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## The legal and regulatory challenges of making e-transactions a defining part of the Lebanese economy

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# ABSTRACT

With the simple push of a button, billions of dollars in commerce are exchanged throughout the globe on a daily basis. Today, electronic money transfer services (EMT) have reduced transaction costs for the general public, enabled business growth through e-commerce, and created a universal payments system that helps everyone, except Lebanese people. Although numerous services in Lebanon are lacking in technological development, the reason for the lack of progress in Lebanon's EMT services is due to decades of market dominance and protectionism that has inflated the cost of service.

The main objective of the research is to dress the legal framework of electronic money transfers in Lebanon, and the fundamental responsibility of the Central Bank of Lebanon as a regulator in this field.

Legislation allowing electronic money transfers was finally passed by Lebanon's parliament on November 10, 2018 after a 20-year period in which Lebanon's financial regulatory structure was unable to keep pace with advanced financial technology because of a severe absence of coherence in the process of strategic financial planning.

However, even though we had high hopes as Lebanese consumers that Lebanon will finally benefit from the consequences of a liberal financial vision, the impact of this law –unfortunately- did not meet the standards that we were hoping for.

In this respect, I am seeking through this research to highlight the fragilities and loopholes in the Lebanese legal framework and regulatory and propose modern recommendations for the introduction of modern electronic money services in the country; which would undeniably have a major effect in the quest of financing development in Lebanon's crumbling economy. In this respect, the capital control that has heavily emerged in the country since the beginning of 2020 has further paralyzed the e-transactions' sector.

When it comes to sending or receiving money in Lebanon, consumers only have few and expensive options thanks to the country's e-transaction rules, which have helped banks and financial organizations maintain the status quo.

We will study to what extent the Lebanese system has had an impact on making Lebanon's risk profile and regulatory unattractive compared to other countries in the region. Furthermore, there are major challenges of e-transfers in Lebanon today because of the banks' capital control.

In that respect, the purpose of that research is to set a series of recommendations that we believe is crucial to revolutionize the EMT sector in the country and to help boost the Lebanese economy that has exacerbated devastatingly during the last couple of years.

**Keywords:** Electronic money transfers, Regulatory, Personal data law, Central Bank of Lebanon, Capital Control, Financial technology, Commercial law.

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# CHAPTER ONE

## INTRODUCTION

As of October 10, 2018, Lebanon has become one of 145 countries having e-transaction laws, making it one of the 107 countries around the world with data-protection laws. (Chedid, 2019)<sup>1</sup>. The Lebanese Parliament has finally passed this legislation under the concept of “the legislation of necessity” which is already an absurd creation that is highly disputed on a constitutional level.

### 1. HISTORIC OVERVIEW:

#### 1.1 The evolution of Lebanese e-commerce laws: From law 133/1999 to law 81/2018.

It was in late 2018 that the Lebanese government passed the law on Electronic Transactions and Personal Data, revising the previous law (No. 133), which was passed in 1999. The law codifies electronic signatures and guidelines for data privacy protection in electronic transactions, after nearly fourteen years of extensive research. (Law No. 81 Relating to Electronic Transactions and Personal Data, 2018)<sup>2</sup>.

Since the beginning of the twenty-first century, Lebanon had perceived the need for a new Law to create an auto-regulatory legal framework that fills the gaps left by the "digital revolution". A research and study project were developed under the aegis of the Ministry of Economy and Trade, with the scientific support of the ADIL. The project was very ambitious because it extended to practically all the matters covered by the European Directives and by some other international conventions. The terms of reference specifications listed ten fields of application:

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<sup>1</sup> (2019, January 21). *Tion*. New Lebanese law on e-transactions and data protec. [www.dentons.com/en/insights/alerts/2019/january/21/new-lebanese-law-on-etransactions-and-data-protection](https://www.dentons.com/en/insights/alerts/2019/january/21/new-lebanese-law-on-etransactions-and-data-protection)

<sup>2</sup> (n.d.). smex.org/wp-content/uploads/2018/10/E-transaction-law-Lebanon-Official-Gazette-English.pdf

- Electronic signature;
- On-line contracts;
- Consumer protection in electronic commerce;
- The security of payments and banking operations;
- Intellectual property rights;
- Protection of privacy and personal data;
- Infringements related to networks and e-commerce;
- International aspects;
- Taxation of electronic commerce;
- The infrastructure of electronic networks.

Thus configured, the project obtained financing from the European Union, which allowed Lebanon to remunerate two foreign experts, assisted by a team of bilingual Lebanese jurists (Catala, n.d.)<sup>3</sup>.

The mission of this group was to propose legal provisions forming a coherent body of rules compatible with the Lebanese legal "corpus". It was therefore not a simple report, but a genuine draft of a potential legislation "the EcomLeb Bill".

The legal agenda noted however that "the fate of this draft was similar to most Lebanese draft laws, which are modified to the point of distorting them and striking the foundations on which they were built. In August 2010, the Lebanese parliament's advisory committee, headed by MP Ghenwa Jalloul, presented an amended version of the EcomLeb bill which provoked negative reactions from civil society organizations and the legal community."

The draft law was approved by the government of President Najib Mikati in 2012 and referred to the Lebanese Parliament, and discussions began in various parliamentary committees regarding the content of the Bill, between

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<sup>3</sup> (n.d.). [www.fondation-droitcontinental.org/fr/wp-content/uploads/2013/12/le\\_droit\\_du\\_commerce\\_electronique\\_-\\_pr\\_catala.pdf](http://www.fondation-droitcontinental.org/fr/wp-content/uploads/2013/12/le_droit_du_commerce_electronique_-_pr_catala.pdf)

2012 and 2018, which extended the date of its transfer to the public body and its adoption at the September 24<sup>th</sup> legislative session under number 81.

Therefore, it was not until more than 13 years after the first draft that the law was adopted in its final version. According to a number of experts familiar with the process of the draft law, this was possible thanks to the legislative momentum witnessed by the parliament in 2018 in the context of the CEDRE conference and the reforms undertaken by the Lebanese state to encourage donor countries to provide the necessary support.

This law was one of the most anticipated, as positivist legislation was no longer compatible with reality. While electronic dealing has extensively affected civil and commercial relations, the laws (especially the code of Civil Procedure and the Penal Code) have dealt only with paper-based dealing. In that respect, the choice was either to amend existing laws, or to pass a new law/framework that addresses all the topics related to the electronic field from E-writing, to e-commerce, cybercrime etc. The second option was made by the group of experts who developed the first draft of the bill.

At a later stage, it was anticipated that a clause on the protection of personal data would be included to the bill during the second reading. However, this law has obsolete and inefficient foundations for protecting the personal data of Lebanese individuals. Despite being updated between 2004 and 2018, its content was unchanged: to allow for greater e-commerce while ignoring its effect on data protection.

In truth, the EU's General Data Protection Regulation as well as all other data privacy laws are not embodied in the Lebanese law. The GDPR (2018) is described as “the most comprehensive privacy law in the world”, (Mhanna, 2019)<sup>4</sup>. Other internationally recognized laws set important standards for data protection:

-Brazil: General Data Protection Law (LGPD) 2020

-USA: California's Consumer Privacy Act (CCPA) 2020

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<sup>4</sup> [Miriam Mhanna.2019.Notes on the Electronic Transactions Law: Freedom of Expression is at the Mercy of the Public Prosecution.Legal-agenda.com](https://www.legal-agenda.com/en/notes-on-the-electronic-transactions-law-freedom-of-expression-is-at-the-mercy-of-the-public-prosecution/)

- Japan: Act on the Protection of Personal Information (APPI) 2003
- Australia: The Privacy Act and associated Australian Privacy Principles (APPs) 1988
- Canada: Personal Information Protection and Electronic Documents Act (PIPEDA) 2004 (Morrow, 2020)<sup>5</sup>

In 2004, the proportion of internet users in Lebanon was only 9%, as opposed to the 76.1% that exists right now. Meanwhile, social media networks have taken over our regular lives, which implies that internet users in Lebanon never produced huge amounts of data as they do today. Personal data was not as important in 2004 (and therefore did not carry the same risks of exploitation) as it is today. All these factors show how much change has taken place in the system, yet until 2017 Lebanon remained outside the list of 120 countries with personal data protection laws (Baker, 2018)<sup>6</sup>. This historic background serves as further proof that the corrupt and outdated procedures are the number 1 obstacle when it comes to legislations not serving its purposes or not being auto-regulatory.

## 1.2 Definitions

### 1.2.1 Electronic Money Transfers

Electronic Money Transfers, also known as EFTs (electronic funds transfers) are a common technique to transfer funds from one account to another via a computer server. Electronic funds transfers, which provide customers the convenience of handling their own banking, replace paper-based transactions and human intermediaries. (BARGHOUTI, 2019)<sup>7</sup>.

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<sup>5</sup> Morrow, S. (2020, September 14). *Ultimate guide to international data protection and privacy laws*. Infosec Resources. [resources.infosecinstitute.com/topic/ultimate-guide-to-international-data-protection-and-privacy-laws/](https://resources.infosecinstitute.com/topic/ultimate-guide-to-international-data-protection-and-privacy-laws/)

<sup>6</sup> [Miriam Mhanna.2019.Notes on the Electronic Transactions Law: Freedom of Expression is at the Mercy of the Public Prosecution.Legal-agenda.com](#)

<sup>7</sup> (2019, May 30). *Emoney\_No\_Space.Indd*. [secureservercdn.net/160.153.137.163/f62.e5d.myftpupload.com/wp-content/uploads/2019/05/Reforming-Electronic-Money-Transfers-in-Lebanon-300-1.pdf](https://secureservercdn.net/160.153.137.163/f62.e5d.myftpupload.com/wp-content/uploads/2019/05/Reforming-Electronic-Money-Transfers-in-Lebanon-300-1.pdf)

Every time a client of a bank utilizes their credit or debit card at a point of purchase or electronically, an electronic transfer of money occurs. EMTs are used for any pre-approved expenditures, such as energy bills or direct deposits.

Some businesses use EMTs to create a community payment network. The transmitter basically states that they want to transfer funds to a recipient via an application or webpage in this example. This normally includes transferring funds from one bank account to some other, but it can include transferring funds to the service directly, wherein the beneficiary can transfer money manually to their bank balance.

Electronic financial transfers are encrypted by a personal identification number (PIN) or authentication tokens that activate the client's digital banking services. An automated clearing house is used to settle the request (ACH).

### **1.2.2 Mobile Money Transfers MMT**

Mobile Money Transfers are services that allow consumers to send and receive money using their mobile device - or, to put it another way, utilizing a smart telephone to make a payment digitally from one user to the other. Money transfer services include both domestic and international, or cross-border, remittances (BARGHOUTI, 2019).

### **1.2.3 E-signature**

An electronic signature is a general word that refers to any sort of signature that is stored in a digital form. According to the European Union's (EU) laws on electronic signatures (eIDAS), an electronic signature is “*data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign.*” (Electronic Signature Definition, n.d.)<sup>8</sup>

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<sup>8</sup>(2004, April 30). *Electronic signature*. Wikipedia. [en.wikipedia.org/wiki/Electronic\\_signature](https://en.wikipedia.org/wiki/Electronic_signature)

### 1.2.4 Electronic Trading Platform

A computerized application software that can be utilized to purchase items of financial products through a network with a financial intermediation in the finance industry is described as an electronic trading platform, sometimes referred as an online trading platform. The trading system can exchange a range of financial items immediately among users or subscribers of the trading platform, or with a stock broker over a telecommunications network.

Financial middlemen such as brokers, market participants, investment banks, and stock exchanges provide access to stocks, bonds, currencies, commodities, derivatives, and other financial products. Investors can perform digital trade from any location, as opposed to traditional floor trading utilizing public outcry and telephone-based trade. The term "trading platform" is occasionally applied to the trading software alone.

In addition to current market rates on which participants can sell, electronic trading platforms typically include additional trading instruments including charting programs, news streams, and account monitoring features. Certain portals were specifically designed to provide users with entry to financial markets that were formerly exclusively accessible to highly specialized trading companies. They could also be configured to exploit high-frequency trades or specific trend analysis strategies (Electronic Trading Platform, n.d.)<sup>9</sup>

Bank Audi Group and the Athens Stock Exchange (ATHEX) have been given a license by Lebanon's Capital Markets Authority (CMA) to set up and run an electronic trading platform (ETP).

The Bank Audi-ATHEX partnership will pay \$20 million to the creation of a special purpose company (SPV) to operate the platform. The consortium has made it possible for banks and financial institutions to contribute to the capital of the SPV.

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<sup>9</sup> (2009, January 8). *Electronic trading platform*. Wikipedia. [en.wikipedia.org/wiki/Electronic\\_trading\\_platform](https://en.wikipedia.org/wiki/Electronic_trading_platform)

The winning consortium will be required to list almost 60% of the SPV shares on the ETP after ten years of operation.

For market-making efforts, the consortium has committed up to \$100 million. In the lack of demand, a market maker facilitates trade and listing of shares by purchasing offered shares.

The trading platform will enable the listing, trading, and investment of various types of securities. The ETP will be divided into sub-platforms. Small and medium-sized firms (SMEs) will have their own sub-platform, while startups will have their own. Other assets and financial instruments, such as bonds, commodities, precious metals, and currencies, will have their own sub-platforms.

The ETP, according to the BDL governor, would work with stock exchanges across the world and will attract investment from Lebanese expats who will be able to trade and invest on the market using their cellphones. Expatriates will have access to the ETP using a mobile application that will connect them with local brokers who will open accounts for them (Nakhoul, 2019)<sup>10</sup>.

#### **1.2.5 Online Banking:**

Online banking is a protected digital channel that allows clients of a bank or some other financial institution to execute a variety of financial operations via the financial organization's webpage, without having to leave their homes. (BARGHOUTI, 2019).

#### **1.2.6 FinTech:**

Technology utilized by financial service providers to provide automated and improved services is referred to as Fintech (Financial Technology). Advances in technology, such as Mobile Payments, have drastically altered the way we handle our money. Technologically savvy clients and in particular millennials are looking for simple,

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<sup>10</sup> (2019, June 20). *Bank Audi to manage electronic trading platform*. BusinessNews.com.lb.  
[www.businessnews.com.lb/cms/Story/StoryDetails/7172/Bank-Audi-to-manage-electronic-trading-platform](http://www.businessnews.com.lb/cms/Story/StoryDetails/7172/Bank-Audi-to-manage-electronic-trading-platform)

secure and scalable methods of money transfer, loan management and investment that do not require the involvement of a human or the visit to the bank in the process.

Existing bank products are increasingly being supplanted, and banking has become more accessible, efficient, and quick to access for both businesses and people. Compared to classic banking, FinTech companies can respond to changing customer needs far more swiftly and with better agility.

FinTech in motion may be seen in smartphone payment applications, cryptocurrency, and blockchain platforms like Bitcoin and Gemini. FinTech services are expected to continue to revolutionize the industry in the future, thanks to advances in artificial intelligence (AI) and machine learning, which will make FinTech goods an indispensable part of our digital lives. (Mouaffak, 2020)<sup>11</sup>.

#### **1.2.6 Automated Clearing House (ACH):**

An automated bank-to-bank transaction is classified as an ACH payment. Instead of flowing through card processors like Visa or Mastercard, it's done through the ACH system. (What are ACH payments and how do they work?, n.d.)<sup>12</sup>

### **1.3 Lebanon's incapability of keeping up with the worldwide revolution in information and technology**

People in Lebanon can send money abroad for \$15 to \$35, on average, depending on the particular EMT service being used. Some hidden fees they pay include currency exchange rates that are some 5% more than those of modern platforms. Remittances have their place, but imagine how much money we would save our loved ones if we could send or receive money locally without having to bear the hefty fees associated with traditional remittance services. Not only would this imply that another 55% of the population would use these services, but

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<sup>11</sup> Karim Mouaffak.2021.Regulating FinTech in the Middle East : Challenges and solutions. (Lau.edu.lb)

<sup>12</sup> (n.d.). *ACH Payments | Automated Clearing House Explained*. GoCardless. [gocardless.com/guides/ach/what-is-an-ach-payment/](https://gocardless.com/guides/ach/what-is-an-ach-payment/)

it would mean direct caller billing would enable 55% of the population, the unbanked, to receive financial services. However, everyone is not worse off because of the economic circumstances.

Banque du Liban has allowed approximately 65 commercial banks, and a handful of money transfer companies, to carry out internal and international electronic money transfers. And, because of this, they've become substantial competitors with little desire in offering reasonably priced services, like same-day transactions, or reasonable exchange rates. Banks now make their money almost entirely through charging fees. The latest numbers from the Lebanese Banks Association show that non-interest income is approximately 70 percent of the money commercial banks earn on interest.

In fact, PinPay is the only 'independent' and 'modern' EMT service that has received an EMT license. PinPay, on the other hand, received that license only after Bank Audi and Bankmed purchased the company and endorsed its solvability & security (Fransabank invested later). The two banks subsequently made PinPay exclusive to their customers (with no access to the unbanked population), a service that other Lebanon banks have since replicated. In effect, this acquisition strategy snuffed out Lebanon's only contemporary EMT service, returning us all to where we are now—unable to make electronic payments to anyone outside our own banks without paying enormous costs.

While the law 81/2018 gives modern EMTs new hope, it also puts the onus entirely on BDL, granting it exclusive authority to alter its existing extensive and nearly two-decade-old EMT laws. For example, the regulatory environment in Lebanon currently lacks a legal definition for peer-to-peer EMTs, which are digital money transfers conducted from one user to the other, generally via a payment platform. When a market lacks this level of transparency, companies like PayPal and TransferWise, as well as homegrown fintech, stay away (Halabi, 2019)<sup>13</sup>.

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<sup>13</sup> Halabi, S. (2019, June 7). *The need to reform electronic money transfer regulations*. Executive Magazine. [www.executive-magazine.com/business-all/the-need-to-reform-electronic-money-transfer-regulations](http://www.executive-magazine.com/business-all/the-need-to-reform-electronic-money-transfer-regulations)

After witnessing neighboring nations pass legislation that safeguard customers, enforce international compliance standards, and promote access to contemporary EMT services, it's difficult to believe BDL is oblivious of these requirements. What is easier to comprehend is that the banking sector has exerted pressure to prevent easy access to cheaper, more secure, and efficient payments, hence protecting their market power. There is an alternative.

In that respect, with this paper, I intend to answer the following questions:

*To what extent did the law 81/2018 create a positive change in the field of electronic money transfers?*

*What are the challenges and fragilities of this law when it comes to the proper introduction of modern and internationally recognized EMT services in the Lebanese market?*

*What are the recommendations that need to be implemented in order to let the law 81/2018 serve its purpose?*

*Why does the change in the country's sect-based and corrupt order sound necessary to get rid of the exclusive and unjustified monopolism of a few banks and financial institutions in providing EMT services?*

*What could possibly be the long-term consequences of the current capital control on the field of e-transactions and what are the proper solutions to ensure a scientific recovery?*

## **CHAPTER TWO**

### **LEGAL FRAMEWORK**

The Law 81/2018 was long-awaited and solved many of the legal dilemmas that paralyzed the EMT services in the country. It is divided into 8 parts.

The legislation commences with a section headed preliminary provisions, that incorporated new legal terminology like "Certification service provider" and "Network service provider," but also modified preexisting legal notions like "Signature" and "Bank Card."

Since Article 4 of Chapter 1 of Law 81 addressed the difficulty that the previous commercial legislation had been experiencing, specifically, the dilemma of proof weight equivalence between classical and digital writing and signatures, the first part of the legislation addresses electronic writing and verification. All features of electronic bonds, writings, and the service providers that deliver them are governed by Chapters two, three, and four.

The sequel covers e-commerce and electronic agreements, while the first chapter introduces a vital concept: the right to partake in e-commerce within the constraints of the law, as established in Law 81, article 30. The two chapters that follow, in that sequence, are about electronic contracts and electronic financial services.

As established in article 65 of Law 81, the third section governs the communication of any signals, documents, pictures, sounds, and communications of any sort to the general public through electronic methods, as far as they are not regarded personal communications.

Webpage identifiers and domains, notably (.lb) domains, and also the creation of a "national council for maintaining Lebanese domain names," that will have significant control over the dimensions and conditions of the intended protection, are discussed in the fourth section. The Minister of State for Administrative

Development was also tasked with coordinating and supervising the registering of public entity webpages (article 80).

Section 5 aims at safeguarding customers' personal data, which really is essential in today's digital economy, where the client is indeed a commodity that generates revenue for service providers. This section explains the concept of personal data, the legal justifications for data gathering, the prerequisites and licenses for data collectors, and most importantly, the right to examine and alter somebody's personal data.

The sixth and seventh sections are penal provisions that amend the Lebanese Criminal Law and the Lebanese Consumer Protection Act to handle cybercrime or crimes perpetrated via digital methods. They also suggest new types of crimes, such as cybercrime and information crime.

The final section contains concluding clauses that allude to all parties with an interest in this new law, including governmental entities (Sofia, 2019)<sup>14</sup>.

In distinction to traditional legislation, which have an overwhelmingly dominating approach, this legislation is a daring and intelligent initiative that reflects a revolutionary concept in the Lebanese regulatory environment, since it encompasses a wide variety of laws, encompassing civil, civil procedural, commercial, criminal, and criminal procedural.

## **2.1 E-signatures and E-documents**

One of the most important achievements of Law No.81/2018 (the Law) is that it recognizes today's corporate culture, in which electronic communications are commonplace. The main contribution of the Law in this regard is an attempt to equal electronic signatures and electronic documents with paper-based signatures and documents. It's worth noting that, prior to the legislation's implementation, e-communications in Lebanon could exclusively be used as preliminary evidence. This posed a significant business challenge.

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<sup>14</sup> [Karim Sofia. LAU Thesis Redacted.pdf \(lau.edu.lb\)](#)

However, the law and the surrounding environment are insufficient to treat e-documents and paper-based papers equally in every way. In order to tackle the legal acknowledgment of electronic authentication licenses, for example, an implementing decree is required (utilized in the procedure of authenticating e-signatures). Without any implementing decree issued by the Lebanese government, the criteria and detailed procedure to authenticate digital signatures will remain largely vague. More importantly, unless verification service providers (as well defined as certification service providers or CSPs) are authorized by the Lebanese Accreditation Council (COLIBAC), that has yet to identify the prerequisites for such accreditation, the tribunals in that scenario will have discretionary authority to evaluate the evidentiary mass and trustworthiness of all electronic documents and relating electronic signatures. (Chedid, 2019).

### **2.1.1 E-Signatures and E-documents validity and recognition**

Both writings and signatures have been defined for the first time in the law No.81/2018.

The **writing** is defined irrespective of the format in place and the channel through which the data is transferred, which can equally be paper or electronic, while the **signature** is defined by its common function, as a requirement to the completion of a legal process in order to identify the party thereto and confirm their consent to the signed legal process.

Furthermore, the law's key accomplishment is the equating of electronic signatures and papers with paper-based signatures and documents. “Electronic writings and signatures must have the same legal effect as writings and signatures made on paper or any other medium,” according to article 4 of Law No.81/20018, if the following two conditions are met:

- Assuming that the individual who creates the papers can be identified; and
- that the documents are arranged and maintained in a secure manner.

One specific and important legal impact addressed by this law (article 7) is the evidential weight of e-documents and e-signatures, which must be regarded as evidence and as legitimate and reliable as written paper documents in terms of validity and proof.

Otherwise, if the electronic writing fails to meet the aforementioned conditions, it will be treated as circumstantial evidence which weighs less than direct evidence as it lacks authentication.

Under article 10 of Law No.8/2018, the requirement of having multiple copies specified in the 152<sup>nd</sup> article of the Civil Procedure Law for paper-based documents still applies to e-documents. As long as the document is arranged in line with legal requirements of dependability, and each party has access to a copy of that document, that condition is considered to be fulfilled. (Tohme, 2020)<sup>15</sup>.

## **2.2 The Law 81/2018 adopts the principle of technological neutrality**

In the law on electronic transactions No. 81/2018, the Lebanese legislator approved a broader concept of writing that accommodates everything produced by the revolutionary technology of new techniques and forms of writing, and thus has pre-empted all that can be influenced by the technical development in the field of expression of will.

This is known as the principle of technological neutrality that was adopted by the United Nations Commission on the law of international trade (UNCITRAL): “Legislation shall not impose the use of or otherwise favor any specific technology.” (Mhanna, 2019)

## **2.3 The Challenges of implementing the law 81/2018 when it comes to e-documents/e-signatures**

### **2.3.1 Regarding official electronic documents:**

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<sup>15</sup> (n.d.). *COVID-19 and Electronic Signatures in Lebanon*. Tohme Law Firm. [www.tohmelaw.com/news/covid-19-and-electronic-signatures-lebanon](http://www.tohmelaw.com/news/covid-19-and-electronic-signatures-lebanon)

One of the first challenges in putting the law into effect is dealing with official electronic documents. These papers will have no legal force unless and until they are regulated by a governmental decree proposed by the Minister of Justice. The yet-to-be-issued decree will cover the specific processes and assurances related to documents and their applicability.

Some transactions that should be considered official in principle, such as those involving personal law (marriage, divorce, and wills) and real estate, tend to be excluded from e-transactions laws in general; this is particularly the case of the UAE's Federal Law No. 1 of 2006 concerning Electronic Transactions and Commerce.

The Lebanese Legislation No. 81/2018, on the other hand, makes no exception in this regard. We have yet to learn if the aforementioned transactions will be possible to do electronically following the issuance of the decree of implementation pertaining to official documents, or if they will be prohibited (Tohme, 2020).

### **2.3.2 In terms of the security of electronic writings and signatures**

Another important issue is how to guarantee the security of electronic writings and signatures, which is a legal necessity for their validity.

As previously stated, one of the requirements that will allow e-writings and signatures to gain the same effects of paper-based counterparts is their organization and storage "in a way that ensures their safety."

Article 5 of the aforementioned law defines "storage of electronic data" as "the recording of data on a storage medium in a way that ensures that the data is safe and accessible at all times in a way that allows copying or extracting content," but how to ensure the security of e-writings and signatures remains a mystery. The law 81/2018 does not appear to be clear on this point.

In reality, in e-commerce, safety is crucial, which is why e-transactions must be controlled in all of their specifics and technicalities; for safety breeds integrity, and integrity breeds reliability. This concept is mirrored in the law's article 15, which states that "protective measures are applied in electronic writings and signatures to make them more credible." The security measures will aid in a variety of tasks, including verifying the document

organizer's identification, providing the document has a valid date, and/or ensuring the document's archiving and content integrity (in other words, in way that does not allow the modification of its content).

If an e-signature is issued as well as certified via a procedure conducted by a licensed authentication service provider, the law establishes a "presumption of credibility" in article 9. Only in this situation, unless shown otherwise, is it assumed that the signatory is identifiable and that the signature conforms to the legal procedure at hand. However, what exactly represents a trusted authentication service provider?

The use of one or more authentication service providers (referred to also as Certification service providers or CSPs) is one of many methods used by the legislation to guarantee the security of signatures and writings. Following the completion of the aforementioned functions, these authentication service providers will issue a certificate of authentication to the individual involved (article 15).

The Lebanese Accreditation Council (COLIBAC) will set the requirements of CSP accreditation, a governmental decree will be necessary to implement the legal acknowledgement of e-authentication licenses, according to Chapter IV of the aforesaid law.

Due to the lack of such a decree and the fact that COLIBAC is unable to carry out its tasks, including defining accreditation standards, the Law's full implementation is unfortunately delayed.

In the interim, and until the COLIBAC approves CSPs: The article 9 presumption of reliability has been disabled.

Unless the parties agree otherwise, the judges shall have discretion to evaluate the strength of evidence of a digital signature or writing (article 18).

Law 81/2018 further states that the functions listed above (organizer identity, document date, content security, and so on) may be performed using other approaches, which are left to the imagination of the interested parties because the law does not mention any of them (Tohme, 2020).

### 2.3.3 Regarding the law's broad execution:

It has been in effect since January 2019 (3 months from its publication in the official gazette). According to article 134, “details of the present Law's enforcement shall be defined, where necessary, by decrees issued by the Council of Ministers on the proposal of the Minister of Justice, the Minister of Economy and Trade, the Minister of Finance, the Minister of Industry, and the Minister of Telecommunications, each within their power.”

However, Article 64 of the law, which allows the Central Bank to issue implementing measures for the verification of e-signatures related to e-payments, remains an exception to the Lebanese government's pace. The Central Bank's autonomy in supervising the application of banking regulations explains why the banking sector is ahead of the rest of the economy, particularly in terms of e-commerce.

Because no implementation decree for the aforementioned Law has been issued, the successive councils of Ministers that have been in existence since its enactment are postponing the implementation of the new Lebanese e-transactions and data protection law (Tohme, 2020).

### 2.3.4 The COLIBAC problematic:

In order to prove that the electronic signature meets the necessary reliability requirements, the provider of authentication services according to Article 1 of the law is supposed to be a legal public or private officer who proclaims authentication certificates following putting into effect the protective procedures that guarantee the functions specified in Article 15 of this law or one of them. **When an authentication provider is used, the system may verify whether or not an individual user is authorized to access the system and whatever groups or roles they have been allocated.**

The provider of authentication services is not obliged, but can, on request, obtain a certificate of accreditation issued by the Lebanese Accreditation Council (COLIBAC) and become an accredited authentication service provider in accordance with Article 16.

Does this mean that the authentication service provider must necessarily be certified in order for the signature to be reliable? In other words, is it the adoption itself as a procedure that makes the signature technically reliable? If the authentication service provider is not certified, the signature then becomes unreliable?

Article 15 of the law stipulates that the means of protection applied to electronic writings and signatures are designed to enhance their reliability.

The function of the protection means is to verify the identity of the issuer of the bond and/or give a valid date to it and/or ensure the integrity of its terms and secure its preservation, these functions or each of them are secured by an authentication service provider or several providers, who, upon completion of the certificate of authentication to the holder, guarantees the reliability of the electronic signature.

On the other hand, the original French language version of the law was inspired by what was applied in France with regard to the French accreditation procedure. The French accreditation commission-another specialized body to evaluate authentication service providers is accredited and does not do so directly.

Article 14 of Chapter III of Title III of the ECOMLEB project, which constitutes the original and preliminary text of Law No. 81/2018, provided that the COLIBAC shall establish an accreditation body that shall ascertain the technical requirements for writing and for electronic signatures, but this article has been withdrawn from the expressed text of the law without adapting the following articles.

In fact, Article 21 of Law No. 81/2018 states that COLIBAC shall establish for itself the list of technical conditions that service providers must respect in order to obtain accreditation, and this list of conditions shall specify the elements necessary to properly complete the technical evaluation procedures, especially the elements of an administrative, technical and financial nature attached to the application file for accreditation, provided that COLIBAC shall take into consideration the technical international standards that are adopted in the same fields.

This is impossible, unless the purpose of this Article 21 is to expand the function of the COLIBAC beyond what is allowed by its law No. 572/2004, as such an expansion of the functions of the COLIBAC changes the nature of its work and therefore requires a complete amendment of the above-mentioned law. The legal contradiction is that Law No. 81/2018 expands the role and autonomy of COLIBAC by giving it roles that were not offered by the original COLIBAC law. Hence, an amendment of the law is inevitable at this point.

The law establishing the Lebanese council for the accreditation of COLIBAC was drafted in conjunction with the beginnings of the ECOMLEB project in 2004, by which time the legislator had no doubt that COLIBAC would soon be active and assume its functions. Article 8 of Law No. 572/2004 established a maximum four months period after the date of its entry into force for the adoption of decrees defining the council's regulations (internal regulations, financial regulations, employees' regulations, and owners' terms of appointment). However, the regulations of the sole national accreditation body in Lebanon came to light only in 2010.

As for today, the COLIBAC is an inactive and non-functioning entity due to the absence of a director and appointed staff and therefore cannot play the role assigned to it like other accreditation bodies around the world. Therefore, it is unable to perform its duties specified in the law with regard to conformity assessment, the invocation of Article 131 of law 81/2018.

Accreditation in Lebanon is currently provided by accreditation bodies that sign international agreements related to accreditation topics such as ILAC-MRA, IAF-MLA and EA-MLA, which provide an acceptable practical solution for the assessment of conformity by accredited bodies abroad. It should be noted that the European Commission has established a list of accredited bodies in accordance with the requirements of the eIDAS regulation

In addition, in accordance with Article 12 of Law No. 572/2004, proof-of-conformity bodies operating in Lebanon can continue their work temporarily as long as the COLIBAC is suspended, provided that they submit their complete files no later than three months from the date of the declaration of the COLIBAC to carry out its functions. The COLIBAC can be attributed to any other national or foreign party.

Therefore, the application of accreditation as provided for in Chapter IV of Title I of law 81/2018 is not necessary at this time, as this is pending on the condition that the COLIBAC resumes its activity. In addition, the proposal for a decree regulating official electronic attribution may not be linked to the requirement of application of accreditation because such assets are not even after COLIBAC has been activated. Parties may agree to accept the reliability of the electronic signature in accordance with the provisions of the first paragraph of Article 9, even if the third party certifying is not accredited by COLIBAC or others. In that respect, it is necessary to agree on the means of proof between the parties to the legal act in question.

As far as technical infrastructure is concerned, it is not the duty of the minister of justice to ascertain whether the administration and public institutions are equipped with infrastructure and ready for a digital transformation. The role of the Ministry of justice is to ensure a legal arsenal that is ready to adapt to technological reality, otherwise our laws become obsolete.

In conclusion, the COLIBAC did not exist and did not get any subsequent attempt to activate it, since 2004 until 2018 and the case remains the same to this date.

Since draft law 81/2018 was the subject of debate and discussion in parliamentary committees for a long time before the adoption of the law, why was it not amended to comply with the fact that there was no effective adoption council? Were they unaware of the content of Law No. 572/2004, or were they not familiar with the subject of electronic signatures and credentials, or were they not serious?

These legitimate questions open up another thorny topic for us regarding the way legislations are passed in Lebanon and make us question the experience, competence and real familiarity of the people who participate in the decision-making as well as their motivation (Adham, 2020)<sup>16</sup>.

## **2.4 Personal data protection under law 81/2018**

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<sup>16</sup> (2020, July 5). *81/2018*. Digital Commons @BAU.[digitalcommons.bau.edu.lb/lsjournal/vol2020/iss2020/7/](https://digitalcommons.bau.edu.lb/lsjournal/vol2020/iss2020/7/)

Despite the fact that the law covers the concerns of collecting, processing, and usage of personal data through electronic means, the law contains various shortcomings, particularly in the field of personal data protection. Specifically, the law fails to provide adequate legal protection for Lebanese citizens' right to redress and rectify their collected personal data, and right to be protected against unethical uses of their personal data, such as automated decision-making that could have a negative impact on their livelihood.

Article 7 of the Constitution provides personal freedom to individuals who do not break the law, and that no penalty may be enforced unless it is legal. There are several instances where businesses make automated choices about customers or users (for example, on social media platforms) that have a significant impact on their life and may expose them to serious harm. Even if automated decisions are paired with human decisions, this is still a major breach of privacy which raises important constitutional debates that need to be discussed (Eter, 2019)<sup>17</sup>.

#### **2.4.1 How law 81/2018 endangers the right of personal data protection**

First, when entities collect personal data from Lebanese citizens, the E-transaction law does not provide for total protection. Although the legislation requires that individuals or groups be told about their data being collected, informed consent is not necessary if the organization collecting the data can invoke circumstances that make it difficult to notify the people from whom the data is being gathered (Article 88).

Participants should have the right to know how their personal data is handled at all phases of data management, starting with acquisition and ending with deletion, according to the Signal Code (Harvard Humanitarian Initiative, 2016). Furthermore, in accordance with OCHA (2019) data protection standards (OCHA, 2019)<sup>18</sup>, this requirement applies to sensitive data pertaining to a specific population rather than an individual, as long as the collection of that data can lead to the identification of the population and put the population at risk of harm.

The E-transaction regulation, on the other hand, fails to specify what constitutes "an effort that is not commensurate with the benefit of the conducting" (Art. 89). As a result of this gap, data processing businesses

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<sup>17</sup> Eter, S. (2019, April 30). *The Lebanese E-transaction Law In Relation With Personal Data Protection*. Data and Society. [medium.com/data-and-society/the-lebanese-e-transaction-law-in-relation-with-personal-data-protection-26e6112322f1](https://medium.com/data-and-society/the-lebanese-e-transaction-law-in-relation-with-personal-data-protection-26e6112322f1)

<sup>18</sup> (n.d.). [data.humdata.org/dataset/2048a947-5714-4220-905b-e662cbcd14c8/resource/c7053042-fd68-44c7-ae24-a57890a48235/download/ocha-dr-guidelines-working-draft-032019.pdf](https://data.humdata.org/dataset/2048a947-5714-4220-905b-e662cbcd14c8/resource/c7053042-fd68-44c7-ae24-a57890a48235/download/ocha-dr-guidelines-working-draft-032019.pdf)

might take advantage of the legal framework and avoid gaining informed consent from individuals. Those who are already marginalized and living in deplorable situations are particularly vulnerable to losing their data agency. This is not only unethical, but also goes against the Lebanese Constitution's guarantees of rights. Article 7 of the Constitution as mentioned earlier, assures that all Lebanese are equal in law, that they have the same civic and political rights, and that they are equally liable for their civic tasks, according to Dorine Saleh, a Lebanese judge. “The E-transaction law is weak because it does not ensure that people get the help they need to understand their rights in relation to personal data protection; and it assumes that all citizens are equally capable of understanding a legislative text and other types of legal and administrative documents like an informed consent form,” Saleh continued (Eter, 2019).

#### **2.4.2 How the Ministry of Economy and Trade monopolizes data collection and storage**

Rather than establishing an independent agency to supervise the collecting, processing, and use of personal data, the law places most of the duty for protecting citizens' rights over their personal data in the hands of the Lebanese Ministry of Economy and Trade. Granted the high level of corruption in Lebanon's public sector, observers believe that citizens' data rights will be weakly protected, and that corporations with ties to the government would be given carte blanche to exploit their customers' personal data as they see fit.

When it comes to information exchange, Law No. 81 gives the executive arm of government a near-monopoly on data collection, storage, modification, use, and even publication. The concentration of enormous power in one arm of government undermines the legitimacy of the law as a whole by undermining the concept of checks and balances and increasing the potential of exploitation and blackmail, among other problems. The Ministry of Economy is given the authority to exchange information, although the criteria under which it can do so are unclear (Khalifeh, 2018)<sup>19</sup>.

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<sup>19</sup> [Khalifa.2018. Comments on the Law No. 81/2018 related to electronic transactions and data of a person. Droit en retard/ - mahkama.net](#)

Once a suitable legal order is acquired, the Ministry of Interior and the Ministry of Defense are given the authority to use any data relevant to internal or external security concerns. This begs the question of whether a security concern is internal or external.

Unfortunately, the above-mentioned ministries can construe such a concept as they like. In addition, the law specifies "judicial procedures of various kinds" as a valid justification for the Minister of Justice to grant access to certain types of internet information. The cherry on top of this surveillance sundae is the fact that this data can be used without informing the subject or obtaining their oral or written approval.

Moreover, the law is quite ambiguous when it comes to what constitutes a legitimate cause for data acquisition. Instead, it focuses on presenting a broad list of organizations that are excluded from the requirement of obtaining a permit to collect and process personal data (Art. 94). This lack of specificity makes it very easy for the Ministry of Economics and Trade to award permits to organizations that it favors while rejecting applications from those that are not in the ruling party's good graces. Furthermore, it is safe to presume that the Ministry of Economics and Trade lacks the necessary resources (skilled staff with sufficient time) to ensure that all data management aspects covered by the E-transaction law are effectively monitored. Even if individuals allege abuse, their requests will be handled with significant delays, preventing citizens from preserving their personal data on time. "It would have been much preferable to have a larger separation of powers between the executive and administrative departments, and the law should have formed a distinct and independent body for the monitoring of the handling of personal data," said Saleh, a Lebanese University graduate (Eter, 2019).

In contrast, article 8(3) of the Charter of Fundamental Rights of the EU mandates that EU nations establish national authorities tasked with safeguarding personal data. These bodies are independent and autonomous under a checks and balances system.

For example, the French data protection authority is the National Commission for Data Protection and Liberties (CNIL). As an autonomous public entity, the CNIL has been charged with sanction, control and investigation and regulatory powers. It is in no way under the direction of any governmental authority -unlike the Lebanese data protection system- which makes it impartial and effective (Baker, 2018).

Furthermore, the EU has established the European Data Protection Board (EDPB); an autonomous European body entrusted with assuring that data protection regulations are adhered to uniformly throughout the EU. The General Data Protection Regulation (GDPR) gave rise to the EDPB.

Representatives from EU/EEA countries' national data protection authorities and the European Data Protection Supervisor comprise the EDPB. The European Commission attends Board meetings and participates in their operations, but does not have voting rights. The EDPS serves as the secretariat for the EDPB. The Chair of the Board appoints the secretariat to carry out his or her duties.

The EDPB's primary responsibilities are to provide general guidance on key GDPR and Law Enforcement Directive concepts, counsel the European Commission on personal data privacy concerns and newly suggested laws in the European Union, as well as issue binding judgements in conflicts between national supervisory bodies.

In that respect, not only did European countries give data protection powers to independent autonomous bodies, but the integrity of these bodies was also supervised by a European Data Protection board. For example, the European Union's General Data Protection Regulation (GDPR) establishes two categories of penalties for entities that gather, retain, exchange, or analyze data that might be exploited to recognize a person from an EU state. Both are onerous.

**Level 1:** 2% of yearly worldwide income, or ten million euros, whichever is greater. Failure to comply in domains such as data breaches, failure to undertake a Data Privacy Impact Assessment (DPIA), and inadequate recordkeeping are all examples of noncompliance.

**Level 2:** 20 million euros, or 4% of yearly worldwide revenue Non-compliance in domains like failure to get permission or failing to safeguard consumer rights under GDPR standards are examples of non-compliance (Morrow, 2020).

Unlike Lebanon, changes in political powers in the government does not affect the regulatory task of the independent authority.

### **2.4.3 The right to redress and amend personal data under law 81/2018**

The Lebanese E-transaction law also fails to adequately protect the right to redress and amend any aspect of the data gathered. Individuals have the right to request changes to data that is misleading, inaccurate, or incomplete, as long as it complies with the Signal Code's criteria (Harvard Humanitarian Initiative, 2016). However, it is unclear whether this right applies during the time that personal data is managed. Ordinary persons, for example, can object to the collection and processing of data only if they have not previously agreed to the processing; nevertheless, the data owner can ask the data processing officer not to process, acquire, or transfer his data under Art. 101. Furthermore, the law stipulates that if an individual notifies the data officer of his or her desire to have his or her data deleted and the data officer fails to take effective action, the individual must file a complaint with the Magistrate of Summary Justice (Art. 102), making the exercise of the right to redress and rectify extremely costly and difficult for Lebanese citizens.

However, if a single person is accused of harming the public interest or the greater good of the country, it is permissible to access the suspect's cellphone data pertaining to phone calls. As a result, personal data can be accessed under one rule, which is in the country's and public's best interests. The public's higher interests include inflicting harm to the country as a whole or being linked to terrorist attacks.

Finally, the law has an article that refers to the right to be safeguarded against decisions made using automated processing that have legal or administrative consequences (Art. 86). However, the law only mentions that individuals have the right to review and object, and it makes no mention of the data officer's responsibility to provide individuals with an explanation of the decision and an effective means to challenge it, as required by European data protection legislation (Eter, 2019).

### **2.4.4 Breach of constitutional individual rights**

As we have previously stated, the Lebanese Constitution protects personal data. Even though the E-transaction law has made some legislative advances that will undoubtedly aid the development of electronic commerce and electronic contracts, it has completely failed to solve the issue of personal data protection. Citizens in Lebanon appear to be at the mercy of enterprises and organizations whose data management policies are only regulated

by the Ministry of Economics and Trade, which already has a lot on its plate and is unprepared for this issue. Also, the removal of some standards and the ambiguity of several of the provisions make it relatively easy for entities to continue processing the personal data of Lebanese citizens without regard for their constitutional sacred right of personal data protection. As a result, it is unlikely that this law will aid in the resolution of concerns relating to the management of personal data by Lebanese citizens. Instead of giving citizens more control over their personal data that may be utilized by various corporate and public bodies, it simply provides the government more authority over this data.

## **2.5 The Lebanese central bank: the sole regulator of EMT services in Lebanon**

Throughout the last decade, there has been a boom of EMT activities conducted by Automated Clearing House (ACH) networks in Lebanon, notably the SWIFT network, which is used by commercial banks across the globe. Banks and non-banking financial institutions (including as Western Union and MoneyGram) are using these networks to handle transfer demands from and to their consumers. Simultaneously, a bank or financial institution have to be licensed by the Lebanese Central Bank in order to perform EMTs in Lebanon. However, only traditional banks, a few multinational financial institutions, and one local mobile EMT business have had such licenses as of April 2019.

As a result, when it comes to transmitting or obtaining money, consumers in Lebanon tend to encounter very expensive costs and lengthy procedures. (BARGHOUTI, 2019).

### **2.5.1 BDL Decision 7548/2000: the only regulation governing EMTs**

In comparison to Jordan, Egypt, and the United Arab Emirates, the Lebanese Central Bank has clearly fallen behind on updating EMT legislation. The only regulation governing EMTs in Lebanon is a circular published by the BDL in 2000 called Basic Decision No. 7548 (Bank, n.d.)<sup>20</sup>. This Decision specifies basic conditions relating to financial entities wishing to carry out EMTs in the country, including capital prerequisites and anti-money

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<sup>20</sup>(n.d.). [www.bdl.gov.lb/circulars/download/17/en](http://www.bdl.gov.lb/circulars/download/17/en)

laundering (Intermediate Circular No. 498 , 2018)<sup>21</sup> and counter-terrorist financing regulations (Schanzer, 2020)<sup>22</sup>. These are, however, typical laws which fail to explicitly select or set out crucial components of the latest financial technology, let alone those that make it easier for EMT service providers to enter the market.

The definition of EMTs is the following: "all operations or activities concluded, executed, or promoted by banks or financial institutions or any other institution through electronic or photo electronic means (telephone, computer, internet, ATM, etc.) by banks or financial institutions or any other institution," as stated in the Central Bank's Basic Decision No.7548.

Furthermore, it defines EMT-authorized financial institutions being "issuers or promoters of all types of electronic charge, debit, or credit cards; institutions engaged in the electronic transfer of cash; and websites specializing in offers, purchases, sales, and all other electronic banking services."

That wide regulatory description leaves a lot of room for reinterpretation and is unsuccessful when it comes to giving definitions to EMT or MMT services, placing financial technology professionals in legal limbo. Similar obstacles have been faced and conquered in other nations in the area.

The Central Bank of the United Arab Emirates, for example, updated its EMT legislation to include and distinguish between Payment Service Providers (PSP) and Payment System Operators (PSO), as well as particular categories that come under each..

Such elements in the EMT regulatory framework are critical not just to identify these providers and operators, but to also offer specific and appropriate laws to govern their services in the location of operation. It's also ambiguous how non-banking technologies like Apple Pay and Google Wallet, and also direct carrier billing systems as Boku and Fortumo, would be classified legally under the Lebanese Central Bank's standards..

Despite its late implementation, Law 81 provides optimism for a modern EMT legislation.

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<sup>21</sup> (n.d.). [www.bdl.gov.lb/files/circulars/int498\\_en.pdf](http://www.bdl.gov.lb/files/circulars/int498_en.pdf)

<sup>22</sup> (2020, August 4). *Fdd | Crisis in Lebanon*. [www.fdd.org/analysis/2020/08/04/crisis-in-lebanon/](http://www.fdd.org/analysis/2020/08/04/crisis-in-lebanon/)

Aside from some heavily awaited consumer rights measures, such as forcing financial companies to alert clients of any charges, costs, commissions, or taxes in connection with their digital payments, the Law No. 81 does not require the Lebanese Central Bank to amend its Basic Decision No. 7548, which was issued in 2000, or to regulate the EMT sector.

Law 81, like the preceding law, keeps the BDL in charge of issuing licenses to financial organizations that want to perform EMTs. As a result, any and all EMT providers wishing to conduct their services in Lebanon are firstly obliged to seek BDL clearance, which is a time-consuming and difficult process.

Companies must, for example, present extensive personal details for all of their employees, including curricula vitae, criminal records, and bank account statements, as well as have their applications signed by the BDL's governor.

Exorbitant costs continue to plague Lebanon's banked population, while individuals who do not have any connection with the finance sector (about 53 percent of adults) might acquire financial literacy very rapidly if current EMT services just like direct carrier billing were available (BARGHOUTI, 2019).

Lebanon, its central bank, and policymakers preserve a financial status quo that favors banks and a few financial organizations, putting their profits ahead of Lebanese consumer welfare once again. In that respect, if Lebanon continues to organize the EMT sector based on decades-old norms, any potential reform of that sector would be more costly and time-consuming. On the other hand, Lebanese consumers will continue to be the real victims of such old-fashioned approaches and their suffering will continue.

In Lebanon, the usage of online services in the fields of banking, among other things, is progressively gaining popularity. In an attempt to regulate the market, the Central Bank of Lebanon recently published Intermediate Circular # 393/ 2015 which prohibits all financial operations between clients of different banks from being carried out via portable or stationary electronic devices, unless the clients are receiving money transfers. These money transfers can't be done using an app or any other program on the client's device; they have to be done through the standard SWIFT network, which is used by commercial banks. Furthermore, no one party can issue or trade any type of electronic money.

Commercial banks were also expected by the Central Bank to be cautious when it came to the consumers who were participating in these money transactions. The back office of banks that handle electronic money transfers should ensure that the transaction follows all rules and regulations. Banks should also use official papers to verify their clients' identities and addresses. Clients who make electronic money transfers worth \$10,000 or more must keep special records, and banks must keep a copy of these documents for at least five years (Halabi, 2019).

### **2.5.2 Lebanon's political and regulatory risk profile: an obstacle to the liberalization of EMT services**

The political and regulatory crises and challenges in Lebanon are the main reason behind the fact that Lebanon as a business and investment destination is substantially unattractive to multinational EMT providers in comparison to other nations in the region.

PayPal, for example, stated in 2013 that it is willing to launch its services in Egypt and Lebanon. Despite this, it is currently operating in Egypt, Algeria, Bahrain, Yemen, Saudi Arabia, the United Arab Emirates, Qatar, Jordan, Tunisia — but not Lebanon.

Indeed, Lebanon is one of the few countries on PayPal's forbidden countries list because of "Persons Undermining the Sovereignty of Lebanon or Its Democratic Processes and Institutions" – a phrase that comes within US sanctions on several organizations around the world.

For example, terrorist funding fears have prompted the United States to target Lebanese money service enterprises and banks (Lebanon - Country Commercial Guide - Trade Financing , n.d.)<sup>23</sup>. As a result of these sanctions, in addition to tougher regulations by correspondent banks abroad, the Lebanese Central Bank has limited the types of transactions that money service businesses can conduct and only allows larger enterprises to conduct foreign transactions. Consequently, numerous money service organizations have closed, along with one of the Top 5.

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<sup>23</sup> (n.d.). *Lebanon - Trade Financing*. Trade Financing . [www.trade.gov/country-commercial-guides/lebanon-trade-financing](http://www.trade.gov/country-commercial-guides/lebanon-trade-financing)

While it is obvious that intruding influences, such as those on PayPal, have had an impact, the country's regulatory environment, or lacuna thereof, is perhaps the most significant hindrance to the development of EMT services in the nation.

Banks claim to have robust investigation systems in place to ensure compliance with international and domestic standards, in addition to the implementation of Lebanon's anti-money laundering & counter-terrorist financing legislation (Bank, Basic Circular No 144, 2017)<sup>24</sup>. Customers are informed about Know-Your-Customer standards and are asked about the purpose of opening new accounts and the sources of monies to be deposited by banks. The Foreign Account Tax Compliance Act is observed by Lebanese banks as being in compliance (FATCA). Since January 1, 2018, Lebanon has been using the OECD Common Reporting Standards.

### **2.5.3 Circular No. 514/2019: the BDL tightens rules for electronic transfers**

Non-banking entities (money transfer businesses) that receive electronic money transfers from outside must henceforth pay them out in Lebanese pounds alone, according to the Central Bank of Lebanon (BDL).

According to analysts, the order, which can be found in Circular No. 514 (Decision No. 12978) dated January 14th, will assist to regulate the pecuniary supply in the market and close vulnerabilities in the financial sector that can be used for money laundering.

The money transfer businesses Western Union, MoneyGram, and OMT are among those affected by the judgment, and they have stated that they will comply.

The Central Bank's decision is part of "Lebanon's long-standing resolve to combat money laundering." This obligation extends back to the ratification of Anti-Money Laundering Law No. 318 in 2001. Law No. 44 on Combating Money Laundering and Terrorism Financing updated it in 2015.

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<sup>24</sup> (n.d.). [www.bdl.gov.lb/circulars/download/17/en](http://www.bdl.gov.lb/circulars/download/17/en)

It was debated that "This ruling mandates that non-banking entities (money transfer businesses) settle electronic money transfers received from outside exclusively in Lebanese pounds," he explained.

According to some, the decision was added to fundamental circular No. 69/2000, which is directed to all institutions that perform electronic financial and banking activities, and it puts money transfer businesses to Central Bank monitoring.

According to Tony Farah, economic editor at al-Joumhouriya daily, the Central Bank's move is a continuation of a number of earlier initiatives.

He stated that the decision serves two purposes: controlling the money supply in the market and attempting to prevent the outflow of hard currency; and closing vulnerabilities in the banking sector that can be used for money laundering.

Money transfer and currency exchange organizations are known to be a weak link in the fight against money laundering, he said.

BDL has issued various circulars targeting to regulate the banking sector in accordance with internationally accepted standards to remedy this, he noted.

"The decision to require [electronic] money transfers to be paid in Lebanese currency comes in the context of greater monitoring of cash entering Lebanon through money transfer businesses," Farah explained.

However, On August 6, 2020, the Central Bank issued a new intermediate circular No. 566 to non-banking electronic money transfer institutions like Money Gram, OMT, and Western Union. All electronic money transfers received from outside and processed by these institutions must be settled in cash US dollars, according to the circular.

The decision overturns a prior intermediate circular issued on April 16 that required identical payments to be processed in local currency using the Central Bank's Sayrafa app's current exchange rate.

This decision was made as part of a plan to help those who were harmed by the August 4 blast by covering the costs of repairing their homes (Topalian, 2019)<sup>25</sup>.

#### **2.5.4 Circular No. 159/2021: controversial circular**

Banks in Lebanon will now purchase "fresh" Dollars on the black market. The Lebanese Central Bank (the "BDL") issued basic circular number 159 (basic decision no: 13353) (the "Circular") on August 17, 2021, which restricts and reports requirements for banks operating in Lebanon with relation to particular foreign exchange operations.

Since the beginning of the financial crisis in Lebanon and the fall of the Lebanese Pound ("LBP") against the US Dollar, there have been suspicions about banks buying "fresh" US Dollars from their clients or from the secondary market in exchange for LBP or "Lollars".

The Circular forbids Lebanon-based banks from:

- For the purposes of accounting, funds received in foreign currency (in cash or via international wire transfer) by their clients are considered to be overvalued if they are used for anything other than their original nominal worth. As a result, banks will no longer be able to convert Fresh Dollars into "Lollars" by applying standard multipliers that represent the LBP/USD foreign exchange rate.

Exception: if the customer wants to pay off an existing debt in full, the banking control commission (the "BCC") must be informed.

- Buying foreign currency on the black market.

With one exception: banks are permitted to purchase foreign currencies from their clients' wired cash from overseas at the current market rate, but only:

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<sup>25</sup> (2019, February 4). *Central Bank of Lebanon tightens rules for electronic transfers*. Al-Mashareq. [almashareq.com/en\\_GB/articles/cnmi\\_am/features/2019/02/04/feature-03](https://almashareq.com/en_GB/articles/cnmi_am/features/2019/02/04/feature-03)

- To increase their foreign currency liquidity ratios; to pay obligations due outside Lebanon; or for mid- and long-term investment goals. The Sayrafa platform should keep track of all of these transactions.
- Buying or selling foreign currency checks and bank accounts on their own behalf, either directly or indirectly.

Because of this, banks are no longer allowed to buy or sell checks (in Lollars or LBP) in exchange for Fresh Dollars or cash LBP. Is it true that banks have been participating in these kinds of transactions before this Circular was issued? It's important to note that, in practice, most banks forbid or make it extremely difficult for their customers to buy or sell checks because of compliance issues.

By ordering banks to declare to BCC any transactions covered by this circular that occurred between 2019 and the date of this circular, the Circular concludes. This will provide some insight into the bank operations during the previous two years in respect to their liquidity and foreign currency reserves, as well as their dealings with the parallel market and their impact on it.

While this Circular appears to impose prohibitions on banks in respect to some (controversial) transactions, we feel that in reality it is a contrario legitimization or validation of such transactions, but within specified limits (Lebanese Banks to buy “fresh” Dollars from the parallel market, 2021)<sup>26</sup>.

### **2.5.5 Circular No. 157/2021: the BDL launches the “Sayrafa” Platform**

The Lebanese Central Bank (the "BDL") released basic circular number 157 (basic decision No: 13324) (the "Circular") on May 10, 2021, establishing the legal and regulatory basis for the "Sayrafa" platform's establishment, organization, and regulation. Sayrafa is a new electronic platform designed by the BDL to track all Lebanese Pounds foreign exchange transactions into any other foreign currency by all persons and businesses licensed to do so (the "Platform"). The goal of this Platform is to help eliminate black market currency exchange operations by serving as the official reference point for the market value of the Lebanese lira.

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<sup>26</sup> William Melki. (2021, September 8). *BDL Circular 159 | Banks buying "Fresh Dollars" | Melki & Associates*. Melki Law Firm. [melkilawfirm.com/latest-news/bdl-circular-158-banks-buying-fresh-dollars-melki-associates/](https://melkilawfirm.com/latest-news/bdl-circular-158-banks-buying-fresh-dollars-melki-associates/)

The following are the Circular's primary rules:

- All Lebanese banks will be invited to join the Platform via an invitation delivered to their IP addresses;
- All Lebanese banks must record all foreign exchange operations on the Platform instantly and clearly, including, but not limited to, the following information:
  - Date of the transaction;
  - Monetary worth of the transaction
  - The transaction's goal;
  - Full name, phone number, and photo ID for physical people;
  - Company name, phone number, and evidence of incorporation for entities.
- Banks may carry out all transactions in banknotes (or in otherwise unconstrained "fresh" cash) based on market supply and demand;
- Banks shall not charge exceptional spreads as a result of foreign exchange transactions, and in no event shall spreads exceed 1% of the purchase price;
- All Lebanese banks must obtain a banking secrecy waiver from the client in order to lift secrecy on each transaction conducted on the Platform in favor of the BDL and its Banking Control Commission;
- On the "open" and "close" of each trading session, all Lebanese banks must declare their daily cash balances in Lebanese Pounds and foreign currencies.

The central bank stated that it will intervene in the market to absorb liquidity in order to sustain the market value of the lira "if it deems [this] suitable and within its powers."

However, given its depleting hard currency reserves, BDL's capacity to pump hard currencies into the market is in doubt. The finance minister has already stated that the country may run out of money to cover imports of basic needs (BDL circular on the “Sayrafa” Platform, 2021)<sup>27</sup>.

### **2.5.6 The BDL closing in on the launch of its own cryptocurrency**

BDL Governor Riad Salameh stated during the fourth Anti-Cybercrime Forum held by the Economy and Labor press group and the Central Bank at the end of October of 2019: “Lebanon will introduce its own digital money in the near future”. This future digital currency, which will be “100% Made in Lebanon”, is going to be launched by the Central Bank in Lebanese Pounds and will only be used within Lebanon. "Its purpose is to simplify payment methods, undertake a technology revolution of financial institutions, and reduce consumer expenses," Riad Salameh added.

The Lebanese Central Bank’s attention to digital currencies began back in 2013, when it underlined the relevance of, as well as the risks associated with, their growth. In that respect, Lebanon was the first Middle Eastern government to issue an official warning against its trade. Salameh reaffirmed his position in 2017, indicating that the introduction of a Lebanese digital currency in the Lebanese currency was under consideration. "We recognize that cryptocurrency will play a significant role in the future. But first, the BDL must take the required steps and build a cybercrime prevention system," he stated at the time.

The 81/2018 Law was the first to ever officially bring up "electronic and crypto currency" in a jurisdictional paragraph in Article 61 of the law. The Parliament avoided the dilemma by assigning the Central Bank with the establishment of a regulatory infrastructure for these currencies.

The Central Bank of Lebanon seems to be invested in crypto currencies since it considers dematerialization as an essential milestone towards financial inclusion. The International Monetary Fund (IMF) endorses these "Central Bank Digital Currencies" (CBDC), which can help enhance access to secure billing technologies by

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<sup>27</sup> William Melki. (2021, May 11). *BDL circular on the "Sayrafa" Platform*. Melki Law Firm. [melkilawfirm.com/latest-news/bdl-circular-on-the-sayrafa-platform/](https://melkilawfirm.com/latest-news/bdl-circular-on-the-sayrafa-platform/)

making payments sustainable, instant, and far less costly than bank transfers, while also protecting against the price fluctuations that typify crypto-currencies like Bitcoin.

In this regard, an electronic replica of an actual currency, like the Lebanese Pound, could act as a bridge in between tangible and virtual realms, enabling everybody to switch cash money to digital money after opening an account with the Central Bank, and therefore increasing financial inclusion.

This allows BDL to profit from the benefits of digital currencies without removing the state's financial institutions' central authority. It is clear that the formation of a "stablecoin" or a decentralized crypto-currency unregulated by the Central Bank would never have been recognized by the Lebanese banking system. Aside from issues regarding national security and sovereignty, any such crypto-currency could undoubtedly have a significant influence on money flows between Lebanon and the immigrant population across the globe. If Lebanese consumers adopted a peer-to-peer decentralized crypto-currency, they would indeed be capable of transmitting money without needing to pay exorbitant fees to Lebanese Banks.

### **2.5.7 Risks of Money Laundering**

Even when monitored and standardized, digital currencies may pose hazards that the authorities in control claim to be completely aware of. During the October forum, Alwaleed Al-Sheikh, the Executive Secretary of the Financial Action Group of the MENA Region, a regional organization based in Bahrain, stated, "It is urgent that countries take concerted measures against the use of electronic assets in money laundering and terrorism financing operations."

"Crypto currencies were more often utilized for money laundering than for terrorism financing," Riad Salameh said at the time, "since no exchange mechanism existed for these currencies in war zones." If the Central Bank confirms the sources of monies turned into virtual currency by people, money laundering hazards can be mitigated. As indicated by the latest German police investigation on the Deutsche Bank, physical money is by far the most prevalent way of money laundering.

Authorities in Lebanon will need to satisfy adherence, client identification checks, and the source of the customer's assets (AML) requirements that are analogous to those required by the original banking sector in order for a sustainable digital currency to develop in the country. However, relevant techniques differ significantly and are frequently based on the blockchain. According to the law 81.2018, some firms specializing in financial technology security already exist and could be potential certifiers. These certification service operators might produce private and public credentials on behalf of BDL to authenticate digital operations. Personal data (name, email, phone number, etc.) would be handled by such a corporation, which could similarly operate as a go-between for the virtual agreement's signatories.

### **2.5.8 The Colibac conundrum**

If a disagreement developed, the Lebanese Accreditation Council (Colibac), that was created by legislation number 575 of December 11th, 2004, and still never enacted, as previously mentioned, would examine private accreditation providers if they had never been certified before. Colibac's accreditation is not required, however it could substantially accelerate the resolution of complaints and provide the judiciary with any evidence of criminal behavior discovered.

Given the system's complexity and the projected slowness of execution, due in part to COLIBAC's inactivity, blockchain technology presents an intriguing option. It would allow for the automated preservation and confirmation of electronic transactions based on predetermined official criteria, practically eliminating the chance of a dispute (Maloux, 2019)<sup>28</sup>.

## **2.6 Lebanon's recent capital control and its effect on EMTs**

Capital control refers to any measure taken by governments, central banks, or other regulatory national authorities in the purpose of regulating the movement of offshore capital into the onshore economy. Such

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<sup>28</sup> (2019, January 30). *The Banque du Liban closing in on the launch of its own crypto-currency*. Commerce du Levant. [www.lecommercedulevant.com/article/28813-the-banque-du-liban-closing-in-on-the-launch-of-its-own-crypto-currency](http://www.lecommercedulevant.com/article/28813-the-banque-du-liban-closing-in-on-the-launch-of-its-own-crypto-currency)

controls include taxes, levies, regulations, volume limitations, and market-based factors. Capital requirements apply to several asset types, including equities, securities, and foreign currency trading (Barone, 2020)<sup>29</sup>.

Capital controls manage the flow of money from the capital markets to and from a state's capital account. For example, these limits might be imposed on a whole industry or only a portion of it. Government monetary policies could be used to establish capital controls. In order to limit the ability of locals and foreigners to buy overseas assets (capital outflow controls) or domestic assets (capital inflow controls), they may implement limitations (Al-Mahmoud, 2020)<sup>30</sup>.

The Finance and Budget Committee of the Lebanese Parliament drafted a capital control bill that places temporary and extraordinary limits on overseas transfers and cash withdrawals from banks in Lebanon. The draft law exempts "fresh funds" or "fresh accounts," as well as international financial institutions', foreign embassies', and international and regional organizations' deposits, from all restrictions.

Foreign transfers from consumers' accounts at Lebanon's banks, as well as banks' and financial institutions' accounts, are prohibited under the draft law. Based on the availability of funds, the law establishes four exemptions to international transfers, including transfers for education-related expenses, mortgage payments, tax and fee settlement, and online subscriptions. The Central Council of the Banque du Liban (BDL) will set the limitations for each transfer category, provided that the total amount transferred from a client's accounts at all banks in Lebanon, including joint accounts, does not exceed \$50,000 per year. Furthermore, the draft law establishes a monthly maximum of LBP 20 million for cash withdrawals from bank accounts in Lebanon, excluding salary withdrawals.

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<sup>29</sup> Barone, A. (2008, February 11). *Capital Control*. [www.investopedia.com/terms/c/capital\\_control.asp](http://www.investopedia.com/terms/c/capital_control.asp)

<sup>30</sup> English, A. A. (2020, November 15). *Lebanon's informal capital controls explained: Why can't Lebanese access their money?*. Al Arabiya English. [english.alarabiya.net/features/2020/11/15/Lebanon-economy-Lebanon-s-informal-capital-controls-explained](https://english.alarabiya.net/features/2020/11/15/Lebanon-economy-Lebanon-s-informal-capital-controls-explained)

Moreover, the text permits consumers to withdraw banknotes in foreign currencies from their accounts if the funds did not come through the conversion of Lebanese pound deposits after 2016, as long as the cash does not exceed the equivalent of 50% of the Lebanese pound withdrawals. The draft law requires BDL to devise a "unique formula" for calculating the Lebanese pound conversion rate that will be utilized in this transaction, which must take into account the US dollar exchange rate on BDL's Sayrafa electronic platform.

Furthermore, the draft rule prevents banks from changing deposits from Lebanese pounds to any foreign currency unless they have adequate cash on hand to carry out and pay the change.

In addition, the plan mandates that BDL establishes a central unit to handle international transfer applications and create separate files for each recipient with the specifics of each transfer operation. The article also lays out a procedure for banks to follow whenever they receive a transfer request from a client, which includes delivering all relevant documentation to BDL in order to proceed with the transactions. Banks that fail to transfer money after receiving proper clearance from the client will face fines under Clause 208 of the Law of Money and Credit, according to the draft law.

The capital control law, according to the wording, will prevail over and amend all existing laws, rules, and regulations that are in conflict with the new law, as well as all outstanding litigation between banks and their clients. Also, the law allows depositors to pay their taxes and official fees from their foreign currency accounts to the Lebanese Treasury via transfers or bankers' checks depending on the Sayrafa platform's exchange rate.

All the loopholes, fragilities and regulatory challenges that we have discussed above describe the situation of EMT services in Lebanon before the devastating economic crisis that we are currently living.

It has become crystal clear that unless bank customers have fresh accounts, electronic money transfers are impossible and would be subject to exorbitant fees and hidden bank fees. The cost would also be flagrant in non-banking financial institutions.

Realistically speaking, it is unlikely to address any of the legal fragilities of the law 81/2019 in the near future, especially as long as Lebanese people are living under an exceptional capital control and an unprecedented crisis.

At the end of the day, all challenges lead to the same root: bad, corrupt, outdated and non-scientific governance (LEBANON: BUDGET & FINANCE COMMITTEE DRAFTS CAPITAL CONTROL LAW, 2021)<sup>31</sup>.

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<sup>31</sup> (n.d.). *Lebanon: Budget & Finance Committee Drafts Capital Control Law*. [www.ice.it/it/news/notizie-dal-mondo/178474](http://www.ice.it/it/news/notizie-dal-mondo/178474)

## CONCLUSION

With the emergence of Covid19 across the globe, there is an international tendency of switching towards a cashless economy. The change on the international scene means that reforms in Lebanon are not only recommended; but vital and inevitable as we are lagging behind even with no crisis at all (Amin, 2017)<sup>32</sup>.

We have discussed how the economic crisis that Lebanon is currently facing -which is one of the worst in modern history- has caused severe damage to the development process of EMT services in the country.

The regulatory structure in Lebanon when it comes to electronic money transfers and the countless BDL circulars raise a lot of questions as they do not tackle the origin of the problem which causes exceptional delays in reforms.

With the formation of a new government, the priority should be implementing reforms that gain the trust of the IMF and international community.

As soon as the new cabinet takes office, talks with the IMF are anticipated to resume. Macroeconomic imbalances and structural barriers must be addressed in order to move out of the current crisis.

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<sup>32</sup> Amine-, Y. E. (2017, April 27). As e-commerce slowly grows in region, Lebanon lags behind. Annahar. [en.annahar.com/article/575838-as-ecommerce-slowly-grows-in-the-region-lebanon-lags-behind](http://en.annahar.com/article/575838-as-ecommerce-slowly-grows-in-the-region-lebanon-lags-behind)

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