

Consumer financial services: What role for ASEAN?

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Chapter 5

Consumer Financial Services: What Role for ASEAN?

5.1 Introduction

The consumer finance marketplace offers a diverse array of products and services, including mainstream banking services (consumer finance). These offerings include personal and housing loans, debit and credit cards, and money transfer facilities.

The growth of consumer finance in ASEAN over the past few years is impressive. Total bank credit to the household sector more than doubled between 1995 and 2015 relative to the region's gross domestic product, with Indonesia and Thailand being standouts.¹ Vietnam experienced an almost 200 per cent increase in credit card transactions during the period 2009 to 2013. During the same time, the number of credit cards in circulation in Vietnam increased from about

¹ M. Schularick and I. Shim, 'Household Credit in Asia-Pacific' in Bank for International Settlements, *Financial Systems and the Real Economy* (Switzerland, Bank for International Settlements, 2017), 129–44, 132. See also S. L. Lim and B. A. Swandono, 'Indonesian Multi-Finance Companies: Bridging Gaps with the Underbanked', DBS Asian Insights Sector Briefing 43 (2017), DBS Group Research, 5, www.dbs.com.sg/corporate/aics/pdfController.page?pdfpath=/content/article/pdf/AIO/052017/170525_insights_indonesian_multi_finance_companies_bridging_gaps_with_the_underbanked.pdf.

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22 million to 68 million. One of the key reasons was increased internet accessibility. About 44 per cent of Vietnamese people had internet access in 2015, which exceeded the Southeast Asian average of 35 per cent.²

The size and sophistication of the ASEAN domestic consumer finance marketplaces vary dramatically. Singapore has a well-developed marketplace with 96 per cent of its adult population having at least one banking account with a financial institution.³ This contrasts with other ASEAN countries where a significant proportion of the population does not have access to basic consumer finance products and services – the ‘unbanked’. For instance, in Cambodia only 22 per cent of adults have access to banking services, whilst only 31 per cent in the Philippines and 36 per cent in Indonesia have access.⁴

Consumer finance markets tend to be domestically based, with relatively few consumers engaging in cross-border borrowings or other financial activity.⁵ Consequently, it is not immediately obvious why regional ASEAN-wide approaches are needed for consumer finance. As explained in the

² B. T. Tran, B. Ong and S. Weldon, ‘Vietnam Banking Industry Report’, Report (2015), Duxton Asset Management, 24–5, www.duxtonam.com/wp-content/uploads/2015/01/Vietnam-Banking-Report_2015.pdf. See also Bank for International Settlements and World Bank Group Committee on Payments and Market Infrastructures, *Payment Aspects of Financial Inclusion* (Bank for International Settlements, 2016), 41, www.bis.org/cpmi/publ/d144.pdf.

³ A. Demirguc-Kunt, L. Kapper, D. Singer and P. Van Oudheusden, ‘Global Findex Database 2014: Measuring Financial Inclusion around the World’, *Policy Research Working Paper*, 7255 (2015), World Bank Group, 84.

⁴ *Ibid.*, 83–4. ⁵ See Chapter 2, Section 2.8.

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Introduction to this Volume,⁶ this Chapter offers a regional perspective on consumer finance. It presents a horizontal view of the ways in which member states can, through the ASEAN organisation and the application of regional strategies, relate to each other, network and even direct each other to adopt measures for consumer finance. Although the focus is on taking a regional perspective, this Chapter furthermore does offer brief insights into the kinds of issues that arise domestically regarding consumer finance and the laws members have introduced to deal with them.⁷ The Chapter then turns attention to the challenges arising from regulating consumer finance that can be more effectively dealt with by using regional networks and strategies. Presently, consumer finance is not receiving sufficient regional attention. There are indications, however, that some attention is being given to the matter. For instance, *The ASEAN Strategic Action Plan for Consumer Protection* sets four goals for a ten-year period commencing 2016 for advancing consumer interests, including the institution of high consumer confidence in cross-border commercial transactions.⁸

There are several reasons why consumer finance should be considered as a matter of regional concern. First, there is a close connection between ensuring the general financial stability of each member and the region as a whole,

⁶ See Chapter 1, Sections 1.4.5 and 1.5. ⁷ See Section 5.2 below.

⁸ Association of Southeast Asian Nations, *The ASEAN Strategic Action Plan for Consumer Protection (ASAPCP) 2016–2025: Meeting the Challenges of a People-Centered ASEAN Beyond 2015*, 1, asean.org/storage/2012/05/ASAPCP-UPLOADING-11Nov16-Final.pdf.

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and the consumer finance market.⁹ Second, economic benefits for each member and the region as a whole can be gained by expanding the size of the consumer finance marketplace. This can be achieved in part by reducing the proportion of 'unbanked' consumers.¹⁰ Increasing financial inclusion (if properly regulated to mitigate against the financial abuses outlined in Section 5.2) can reduce poverty and enhance economic activity. Members could learn from each other, through regional networking, ways of addressing financial exclusion.¹¹

Finally, and relatedly, advancements in communications and information technologies are providing opportunities for financial inclusion, increased competition and product innovation and choice. The catchword used for financial technologies is 'fintech'.¹² Fintech is enabling low-income countries to leapfrog the gradual developmental path that other countries undertook to broaden financial inclusion. It is leading to the development of consumer finance products and services, some of which are being provided by financial institutions, others by partnerships of financial and non-financial organisations, and yet others are becoming available without the involvement of any financial institution. Mobile money is an early fintech product that enables users to transfer funds, including remittances.¹³ It demonstrates that consumer

⁹ See Section 5.3.1. ¹⁰ See Section 5.3.3. ¹¹ See Section 5.3.6.

¹² See generally D. A. Zetsche, R. P. Buckley, D. W. Arner and J. N. Barberis, 'From FinTech to TechFin: The Regulatory Challenges of Data-Driven Finance', *New York University Journal of Law and Business*, 14(2) (2017), 393.

¹³ See Section 5.3.5.

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finance services can be designed for low-income consumers and increase financial inclusion. It also shows how telecommunications companies can provide consumer finance without the involvement of financial institutions such as banks.

Although fintech offers considerable opportunities for consumer finance, it also presents considerable threats. It can enable non-financial institution providers to avoid laws and regulations designed to ensure financial stability and protect consumers that would otherwise apply. These developments are presenting difficult regulatory challenges. It requires government agencies and regulators to comprehend, deal with and take advantage of fast moving and complex developments. These are difficult issues for domestic agencies to deal with on their own. ASEAN members would likely gain considerable benefits from the agencies responsible for consumer protection and financial oversight in each member country engaging in regional networking to deal with the challenges.¹⁴ The networks could facilitate the sharing of lessons learned by various members, the sharing of technical know-how and the coordination of regional strategies.

This Chapter rounds out with the author's reflections on interactions he observed of officials from member states who are responsible for consumer finance in their respective countries. Although the observations are constrained by their subjectivity and the relatively limited number of observations, they do offer some insight into the significant hurdles confronting the officials in developing policies and overseeing the consumer finance marketplace. Despite this, it is suggested

¹⁴ Networking is discussed further in Section 5.3.1.

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in this Chapter that insights gained from network theory and the networked polity that are outlined in Chapter 2 may offer a means to enhance the capacities of member states to advance consumer interests in the finance marketplace.¹⁵

5.2 Some Issues of Domestic Regulatory Concern within ASEAN

Consumer finance is primarily of domestic concern, with each market largely confined within domestic borders. However, ASEAN is seeking to promote improved coordination and harmonisation amongst its members regarding consumer protection measures within the region, including for consumer finance. *The Strategic Action Plan for Consumer Protection* sets several goals, including for the development of a common regional consumer protection framework and the integration of consumer concerns in all ASEAN policies.¹⁶ In developing a framework, ASEAN has produced some high-level principles.¹⁷ These propose that members do several things, including:

- adopt general consumer protection policies and strategies that can be applied across government (Principle 7),

¹⁵ See Chapter 2, Section 2.6.

¹⁶ ASEAN, *The ASEAN Strategic Action Plan for Consumer Protection*, n. 8, 1.

¹⁷ ASEAN Secretariat, *Handbook on ASEAN Consumer Protection Laws and Regulations* (Association of Southeast Asian Nations Secretariat, 2018), 15.

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- adopt up-to-date, comprehensive and flexible consumer protection legislation for dealing with current and emerging problems (Principle 1); and
- ensure the existence of skilled and competent agencies that are equipped with appropriate legislative and other powers to implement relevant legislation and policies (Principle 1).¹⁸

The principles in effect call upon members to provide greater attention to consumer issues at the domestic level, and to adopt a ‘whole of government’ approach (or improved inter-agency coordination) in developing and applying consumer laws and policies within their own jurisdictions.¹⁹ The principles also effectively call upon members to ensure their regulatory agencies have the appropriate skills and capacities to implement these policies and enforce the law.²⁰ For the purposes of consumer finance, the principles might be seen as offering a springboard for government agencies responsible for financial stability and economic growth, such as the treasury, finance department and the reserve bank, to take greater responsibility for consumer finance and coordinate with agencies responsible for consumer protection.

Any policies and strategies adopted by a government for protecting consumers in the financial market should focus at least some attention on the kinds of poor behaviour that the market tends to attract. Such behaviour includes:

- Lenders charging low-income consumers extremely high interest rates, along with excessive penalty rates for late payment of loans. If this practice is widespread it can trap

¹⁸ Ibid. ¹⁹ Ibid., Principle 7. ²⁰ Ibid.; see Principle 1.

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large numbers of low-income members of society in permanent states of poverty.

- Lenders misleading consumers about the terms of the loan or guarantee arrangements.
- Debt collectors using threats and the use of violence to compel loan repayments. In some cases the debt collectors may unlawfully take a person's property, claiming it is for repayment of a debt.
- Lenders having inappropriate access to the credit histories and information of borrowers.
- Agents acting for lenders by completing loan application forms for borrowers which misrepresent the borrower's income and assets. This might lead to lenders providing credit to a borrower who has no realistic capacity to repay the loan. This in turn can lead to the borrower's bankruptcy or the taking of the borrower's property in satisfaction of the loan. Systemic and widespread practices of this kind can have serious economic consequences. For instance, these kinds of practices in the United States sub-prime house lending market during the 1990s and early 2000s triggered the Global Financial Crisis.²¹
- Lenders requiring the borrower to enter into unnecessary or expensive insurance contracts as a condition of having the loan.²²

²¹ V. Acharya and M. Richardson (2009), 'Causes of the Financial Crisis', *Critical Review*, 21 (2009), 195–210.

²² J. Malbon, *Consumer Credit and Banking* (United Nations Conference on Trade and Development, 2015), 8–9, www.asean.org/storage/2012/05/Consumer-Credit-Banking-Module-Final-21Dec15.pdf.

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The International Finance Corporation (IFC) proposed three core policy objectives for bettering the conditions for consumer finance: transparency, fair treatment and effective recourse.²³ Some of these objectives are echoed in the *G20 High-Level Principles on Financial Consumer Protection* (G20 High-Level Principles) which were published in 2011.²⁴ The G20 became the key global forum for economic discussions and cooperation as a result of the 2008 global financial crisis.²⁵ The G20 High-Level Principles set out principles for: the equitable and fair treatment of consumers (Principle 3); disclosure and transparency (Principle 4); the responsible business conduct of financial services providers and authorised agents (Principle 6); the protection of consumer assets against fraud and misuse (Principle 7); the protection of consumer data and privacy (Principle 8); and complaints handling and

²³ International Finance Corporation, 'Responsible Finance in Vietnam', Report (2014), World Bank Group, 14, www.ifc.org/wps/wcm/connect/62dc148045270d65b271bec66d9c728b/IFC+Responsible+Finance+Diagnostic_FINAL.pdf?MOD=AJPERES. The IFC is a member of the World Bank Group and is a global development institution that provides substantial project finance for development projects involving the private sector in developing countries.

²⁴ Organisation for Economic Co-operation and Development, 'G20 High-Level Principles on Financial Consumer Protection' (2011), www.oecd.org/daf/fin/financial-markets/48892010.pdf.

²⁵ Organisation for Economic Co-operation and Development, 'G20 High-Level Principles on Financial Consumer Protection', n. 24. See also C. Sussangkarn and W. Manupipatpong, 'A View from ASEAN' in M. Kawai, Y. C. Park and C. Wyplosz (eds.), *Monetary and Financial Cooperation in East Asia: The State of Affairs After the Global and European Crises* (Oxford University Press, 2015), 102–32, 116.

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recourse (Principle 9).²⁶ These principles could inform any future development of high-level principles by ASEAN for consumer finance.

According to the IFC, the *transparency* objective involves ensuring the establishment of an appropriate disclosure regime for consumers –

- for product pricing and terms and conditions;
- that informs them of the ways in which they can make inquiries and complaints about products and services; and
- in which information is provided using plain language and simple formats.

The *fair treatment* objective involves ensuring there is an appropriate market regime in which there are –

- responsible lending practices;
- fair and appropriate marketing, selling and collections practices; and
- proper and appropriate consumer data handling practices and procedures.

The *effective recourse* objective requires –

- setting standards for internal dispute resolution;
- ensuring accessible or workable recourse for low-income and inexperienced users; and
- the regulators using complaints data for market monitoring.²⁷

²⁶ Organisation for Economic Co-operation and Development, 'G20 High-Level Principles on Financial Consumer Protection', n. 24.

²⁷ International Finance Corporation, 'Responsible Finance in Vietnam', n. 23, 14.

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This Chapter does not attempt anything close to a comprehensive description or analysis of ways of regulating consumer finance. Rather, this Section offers a few ‘flash card’ observations that aim to offer the reader a sense of at least some of the issues at stake in the vast field of consumer finance, and how they are being handled within ASEAN.²⁸ The discussion is guided by the IFC’s proposed core policy objectives of transparency and fair treatment. There is insufficient space for discussing effective recourse, which is been analysed recently elsewhere.²⁹

Transparency

Transparency or disclosure requirements are adopted by many countries. These requirements for consumer finance date back to at least 1968 with the enactment of the US Truth in Lending Act.³⁰ It requires credit providers to provide consumers with mandated disclosure information, including about the annual percentage interest rate for a proposed loan, before a consumer enters a loan arrangement.

²⁸ Measures taken by members for consumer finance are also listed for each member under the heading ‘Consumer Credit and Banking in the ASEAN Secretariat, *Handbook on ASEAN Consumer Protection Laws and Regulations*, n. 17, 19–58’.

²⁹ V. Chen, A. Godwin and I. Ramsay, ‘An ASEAN Framework for Cross-Border Cooperation in Financial Consumer Dispute Resolution’, *Asian Journal of Comparative Law*, 12(1) (2017), 167–96 (summarised in Chapter 1, Section 1.4.1).

³⁰ Truth in Lending Act 15 USC §§ 1601–1667f (2018).

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Arguably, disclosure is an important and effective form of consumer protection. According to the International Finance Corporation:

Effective disclosure is a fundamental component of consumer protection; regulators should focus on improving disclosure on key products (e.g. lending products) that pose the greatest costs/ risks to consumers. [Ministerial proclamations or regulations] should be developed that set out detailed requirements, including proper disclosure in advertising, full disclosure of product costs, potential risks/liabilities, and improve the quality of disclosure (e.g. use of plain language with examples).³¹

An example of transparency requirements set by an ASEAN member is found in Singapore's Moneylenders Act 2008.³² It requires a moneylending business to hold a licence and requires licensees to: inform a borrower in writing of the terms and conditions of the loan before providing the loan; provide the loan contract to the borrower; and supply to the borrower with statements of account, loan documents and receipts.³³

A policy aim of mandatory disclosure requirements is to assist consumers in making informed and rational choices

³¹ International Finance Corporation, 'Promoting Financial Consumer Protection in Cambodia' (2015), www.ifc.org/wps/wcm/connect/6c12edf9-22e9-446f-b025-0c366948b87a/Cambodia+Financial+Consumer+protection-Final.pdf?MOD=AJPERES, 4.

³² Moneylenders Act 2008 (cap 188, 1985 rev ed) (Singapore).

³³ *Ibid.*, ss. 19–20.

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when deciding which product best suits their needs. However, in practice:

... disclosers pile so much information on readers that they cannot possibly cope with the burden of understanding and analyzing what they have read. These problems are intensified by the fact that people are often not literate enough, or schooled enough in the complexities of quite specialized decisions, to use the information profitably. And to explain unfamiliar and complex choices, disclosures must often be written at a college reading level.³⁴

Although there is some limited evidence suggesting that mandatory disclosure requirements are effective in enhancing consumer choice, and therefore lead to improved market efficiency and consumer benefit, the preponderance of the evidence from numerous studies indicates it is mostly ineffective.³⁵ This is not necessarily to suggest that disclosure requirements be abandoned. Rather, legislators and regulators need to be aware of the severe limitations on the capacity of disclosure requirements to modify consumer purchasing behaviour. Nor does the evidence show that such requirements are leading to consumers gaining at least a reasonable understanding of the terms of a loan or their consumer rights.

³⁴ O. Ben-Shahar and C. E. Schneider, 'The Futility of Cost-Benefit Analysis in Financial Disclosure Regulation', *The Journal of Legal Studies*, 43 (2014), 253–71, 258.

³⁵ See e.g. G. Loewenstein, C. Sunstein and R. Golman, 'Disclosure: Psychology Changes Everything', *Annual Review of Economics*, 6 (2013), 391.

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That is to say, disclosure requirements should not be seen as a substitute for other more robust forms of consumer protection and market confidence-building measures.³⁶

According to the *G20 High-Level Principles*, financial service providers should provide consumers with key information that informs them of the fundamental benefits, risks and terms of a financial product.³⁷ The principles extend the disclosure requirements to information about a financial provider's conflicts of interest.

Fair and Appropriate Marketing, Selling and Collections Practices

There are numerous ways of regulating the financial marketplace to protect consumers against abusive practices and to enhance consumer confidence in the marketplace. Two measures outlined below involve the setting of responsible lending obligations, and the protection of consumers against harsh and unfair debt collection conduct.

5.2.1 *Responsible Lending Obligations*

The aim of setting responsible lending obligations is to prevent lenders from engaging in conduct that leads consumers to financially over-commit. This arises if a consumer takes on loans that lead to repayment obligations he or she cannot reasonably sustain. The *G20 High-Level Principles* propose

³⁶ See generally *ibid.*

³⁷ Organisation for Economic Co-operation and Development, 'G20 High-Level Principles', n. 24, 6; see Principle 4.

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that financial service providers be required to assess a potential borrower's capacity to pay before extending any loan to the borrower.³⁸

The effective implementation of responsible lending obligations should benefit individual consumers by reducing the likelihood of them falling into debt traps. It can also reduce the incidence of economy-wide financial instability. Abusive lending practices leading to the financial over-commitment of sub-prime borrowers was a significant contributor to triggering the 2008 Global Financial Crisis. It arose in part from widespread defaults on housing loans in the USA by these borrowers.³⁹

An example of ways to set responsible lending requirements can be found with Singapore's Rules under the Banking (Credit Card and Charge Card) Regulations 2013 which apply to credit cards and other forms of unsecured credit.⁴⁰ The Rules require the lender to make a holistic credit assessment of a potential borrower's financial standing before offering a loan. The lender must assess a potential borrower's credit worthiness by checking his or her credit history for any loan defaults, along with finding out his or her existing credit limits and outstanding debts, if any. The lender must not provide a loan if the amounts

³⁸ Ibid., 7. See Principle 6.

³⁹ See N. Fligstein and J. Habinek, 'How the American Financial Meltdown of 2008 Caused the Global Financial Crisis' in I. Ertürk and D. Gabor (eds.), *The Routledge Companion to Banking Regulation and Reform* (Routledge, 2017), 373–97.

⁴⁰ Banking (Credit Card and Charge Card) Regulations 2013 (No. S 729) (Singapore).

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owing by the potential borrower exceed his or her annual income for a period of three consecutive months or more, or if that person is sixty days or more behind in repaying any credit card or other unsecured debt.

Malaysia's central bank, Bank Negara, is primarily responsible for regulating consumer credit. It publishes credit guidelines that require the minimum monthly repayment on a credit card to be no more than 5 per cent of the value of the total credit used. Credit card guidelines published in 2011 require that principal cardholders earning RM 36,000 per annum be only allowed to hold cards from a maximum of two credit card issuers. The guidelines set a maximum credit limit of two times the cardholder's monthly income per credit card issuer.⁴¹

Singapore's Monetary Authority requires financial institutions to obtain a consumer's consent before increasing his or her credit card limit. In addition, a financial institution must not increase a consumer's debt if he or she has an existing unsecured debt that is more than sixty days in arrears. Nor may it roll over a consumer's existing debt without informing the consumer of the cost of doing so.⁴²

⁴¹ Citibank Malaysia, *New Credit Card Guidelines: Does it Affect You?*, www.citibank.com.my/english/citi-launch/new-measure.htm.

⁴² Monetary Authority of Singapore, *Credit Card and Unsecured Credit Rules Strengthened to Help Individuals Avoid Getting into Debt Problems*, www.mas.gov.sg/news-and-publications/media-releases/2013/credit-card-and-unsecured-credit-rules.aspx. The requirements will take full effect in 2019.

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5.2.2 *Protecting Consumers against Harsh and Unfair Debt Collection Conduct*

A number of jurisdictions have laws designed to protect consumers against harsh and unfair debt collection practices by or on behalf of lenders. The practices include: harassing the borrower by phoning them at all hours of the day; threatening physical violence; taking property owned by the borrower in satisfaction of the debt without providing proper notice so as to give the borrower a chance to make the repayment; taking the borrower's property without first going through proper court processes; selling off a house owned by the borrower even when the amount outstanding on the loan is relatively low (and sometimes selling the house below market rates, in some instances corruptly to friends or associates); shaming the borrower by publicly displaying his or her name and the amount owed in the vicinity of his or her home or to work colleagues; and splashing paint on the doors of a borrower's premises to get him or her to pay up.⁴³

Debt collection practices in Thailand are regulated by the Debt Collection Act 2015.⁴⁴ A debt collection business must be registered with the appropriate government agency.⁴⁵ A range of practices are prohibited under the law,

⁴³ J. Malbon, *Consumer Credit and Banking*, n. 22, 51.

⁴⁴ Debt Collection Act, B.E. 2558 (2015) (Thailand).

⁴⁵ Despite this legal requirement, it has been estimated that 'underground lending' in Thailand in 2012 amounted to about \$US 172 billion, accounting for 40 per cent of the country's total credit market. See A. Prabha and M. Ratnatunga, 'Underground Lending – Submerging emerging Asia?' Milken Institute, Santa Monica, USA (2014), www.milkeninstitute.org/publications/view/647.

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including the use of violence, or causing damage to the debtor's reputation or property, or other conduct such as contacting the debtor in ways that, in effect, would serve to embarrass or intimidate the debtor, or conduct that is fraudulent or misleading.⁴⁶

In Singapore it is a criminal offence under the Protection from Harassment Act 2014 to intentionally or unintentionally cause harassment, alarm or distress; cause fear or provoke violence; or engage in unlawful stalking.⁴⁷ The victim may bring a civil action for statutory tort for a breach of the provisions of the Act or apply to the court for a protection order. The Credit Collection Association of Singapore has established a code of conduct for debt collecting practices with which its members are required to comply.⁴⁸

It is also an offence under the *Moneylenders Act 2008* for an unlicensed moneylender to display or use any threatening, abusive or insulting words, behaviour, writing, sign or visible representation; or commit any act likely to cause alarm or annoyance to his borrower or surety, any member of the family of the borrower or surety, or any other person, in connection with the loan to the borrower.⁴⁹ Over 2010–13

⁴⁶ S. L. Teoh and S. Jongsaritwang, 'Thailand' in R. Fischer, O. Poindexter and J. Mandell (eds.), *The Consumer Finance Law Review* (Law Business Research, 2017), 122–31, 127.

⁴⁷ Protection from Harassment Act 2014 (cap 256A, 2015 rev ed) (Singapore).

⁴⁸ Credit Collection Association of Singapore, *The Voice of Credit Collection Industry*, www.creditcollection.org.sg/.

⁴⁹ Section 28 Moneylenders Act 2008, Ch. 188 (Singapore).

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Singaporean authorities undertook intensive enforcement action against unlicensed moneylenders, which significantly impacted on the underground market.⁵⁰

In Malaysia, it is a criminal offence under the *Financial Services Act 2013* (Malaysia) and the *Islamic Financial Services Act 2013* (Malaysia) to engage in any prohibited business conduct. The prohibited conduct includes exerting undue pressure or influence, or using or threatening to use harassment, coercion or physical force in relation to the provision of any financial service or product to a financial consumer. The central bank, Bank Negara, issued prohibited business conduct rules in 2014, which specifies the types of conduct the bank regards as exerting undue pressure.⁵¹

5.3 ASEAN's Role in Consumer Finance

Although consumer finance markets are largely confined within national borders, and market regulation is primarily a matter of domestic concern, ASEAN has a significant role to play as a regional organisation. Its goal as expressed in the *ASEAN Economic Community Blueprint 2025* (AEC Blueprint

⁵⁰ K. Leong, H. Li and H. Xu, 'Exploiting the Unbanked: Evidence from Singapore's Unlicensed Moneylending Market' (2018), Institute of Labor Studies, Discussion Paper Series www.iza.org, IZA DP No. 11786, para. 3. In 2008, 505 people were arrested for unlicensed moneylending and harassment. The arrests 'increased to 1981 in 2011, plateaued in 2012 and 2013, and decreased to 1468 in 2015' (para. 7).

⁵¹ Bank Negara Malaysia, 'Prohibited Business Conduct' (2014), 7-8, www.bnm.gov.my/guidelines/10_business_conduct/07_Prohibited_Business_Conduct.pdf.

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2025) is to ensure the financial sector is inclusive and stable.⁵² Specifically, it is stated at paragraph 16:

A.4 Financial Integration, Financial Inclusion, and Financial Stability

Ensuring that the financial sector is inclusive and stable remains a key goal of regional economic integration. The financial sector integration vision for 2025 encompasses three strategic objectives, namely financial integration, financial inclusion, and financial stability, and three cross-cutting areas (Capital Account Liberalisation, Payment and Settlement Systems, and Capacity Building).⁵³

This sets out three strategic objectives that are worth consideration, namely regional:

- financial stability;
- integration; and
- inclusion.

5.3.1 *The Financial Stability Objective*

ASEAN has been reasonably successful in building mechanisms for regional financial stability in the wake of the 1997–8 Asian Financial Crisis. The crisis exposed the region's economic vulnerabilities and its dependence on foreign currency

⁵² ASEAN Economic Community Blueprint 2025, Kuala Lumpur, 22 November 2015, para. 16, www.asean.org/storage/2016/03/AECB_P_2025r_FINAL.pdf.

⁵³ Ibid.

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denominated short-term bank loans for long-term projects, and its lack of control over capital inflows and outflows.⁵⁴ The crisis was triggered by a collapse of the Thai baht, leading to a capital flight from the region.⁵⁵ In the aftermath of the crisis, ASEAN took the initiative by inviting the leaders of China, Japan and South Korea to join it in developing ways to promote regional financial stability.⁵⁶ This led to the establishment of the ASEAN+3 group. Its finance ministers agreed to a number of initiatives, including the establishment of currency-swap arrangements and a unified regional bond market.⁵⁷ An Asian bond markets initiative was established in 2002, which involved developing local currency bond markets as an alternative to sourcing funds from foreign currency denominated short-term bank loans for long-term investment financing.

The Asian Bond Market Initiatives have 'shaped a new regional governance in financial co-operation',⁵⁸

⁵⁴ Asian Bonds Online, *Asian Bond Markets Initiative*, www.asianbondsonline.adb.org/regional/abmi.php.

⁵⁵ For a background brief on the crises, see D. Richardson, 'Asian Financial Crisis', Current Issues Brief 23 1997–98 (1998), Economics, Commerce and Industrial Relations Group, www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/CIB/CIB9798/98cib23.

⁵⁶ S. Kim and D. Y. Yang, 'Regional Financial Architecture Beyond the Global Financial Crisis' in G. Capannelli and M. Kawai (eds.), *The Political Economy of Asian Regionalism* (Springer, 2014), 85–104, 86.

⁵⁷ *Ibid.*, 86, 91.

⁵⁸ E. Saputro, *Indonesia and ASEAN Plus Three Financial Cooperation: Domestic Politics, Power Relations, and Regulatory Regionalism* (Palgrave Macmillan, 2017), 169.

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which have required changes in bond market regulations and best practices. Achieving this has entailed collaboration between regulators and other parties within the domestic bond markets. According to one commentator, increased regional cooperation for financial stability measures has shifted from full power governance to a more rule-based form of governance.⁵⁹ It has also lessened the discretionary power of state regulatory agencies involved in the Asian Bond Market Initiatives projects.⁶⁰ The region is presently working towards promoting cross-border bond issues.⁶¹ In addition, the ASEAN+3 grouping agreed on the so-called Chiang Mai Initiative Multilateralization (CMIM), which came into force in March 2010. The aim of the initiative is to address balance of payments and short-term liquidity difficulties within the region, and to supplement existing international financial arrangements.⁶² The size of the CMIM is now \$US 240 billion.⁶³

These developments signal just how effective ASEAN can be when faced with a crisis that threatens the region. The challenge for ASEAN is to act with similar decisiveness and effectiveness without the driver of external threats. The motivator for ASEAN's effective response to the Asian Financial Crisis may have been what was described in Chapter 2 as

⁵⁹ Ibid., at 170. ⁶⁰ Ibid.

⁶¹ Sussangkarn and Manupipatpong, 'A View from ASEAN', n. 25, 110.

⁶² ASEAN+3 Macroeconomic Research Office, *Overview of the Chiang Mai Initiative Multilateralization (CMIM)*, www.amro-asia.org/overview-of-cmim/.

⁶³ Sussangkarn and Manupipatpong, 'A View from ASEAN', n. 25, 116.

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'structural reciprocity'.⁶⁴ That is, the crisis led to a perfect alignment of the members' perceived common interests in dealing with it. Members were prepared to set aside concerns about the risks of constraining their national autonomy to respond in a coordinated and harmonised way. Their actions may have been motivated both by the desire to attain potential benefits from reciprocal financial arrangements, and by a (disciplining) fear that defecting from those arrangements would cause members mutual harm.⁶⁵

The perceived gains from advancing consumer interests in consumer financial markets may appear to be less tangible or less significant than fending off potential financial crises. This possibly explains a lack of traction in the development of a regional approach to protecting consumers and promoting their interests regarding finance. However, a broader reading of mutual self-interest suggests that benefits can be gained from a fulsome commitment to a regional strategy. Theories about collective action outlined in Chapter 2, Section 2.5 of this book suggest that members will more likely engage in regional strategies if they perceive they will jointly benefit from doing so. Although there have been criticisms of such a narrow explanation for why parties engage in collective action, there can be little doubt there is some measure of truth in the theory. In which case, this suggests that members will be more likely to actively engage with regional strategies for protecting and advancing consumer interests in financial markets if they see a mutual benefit

⁶⁴ See Chapter 2, Section 2.4.

⁶⁵ Sussangkarn and Manupipatpong, 'A View from ASEAN', n. 25, 116.

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in so doing. This in turn suggests that a stronger case, with supporting empirical and other evidence, needs to be presented to members to persuade them that it is in their mutual self-interests to take a regional approach to advancing consumer interests.

Broadly speaking, there are claims that financial stability and consumer confidence in the financial market are linked. The G20 High-Level Principles, for instance, state that:

Consumer confidence and trust in a well-functioning market for financial services promotes financial stability, growth, efficiency and innovation over the long term. Traditional regulatory and supervisory frameworks adopted by oversight bodies contribute to the protection of consumers – which is often and increasingly recognised as a major objective of these bodies together with financial stability.⁶⁶

Regional strategies, however, do not need to be limited to harmonisation measures or other such forms of collective action. As mentioned in Chapter 2, effective networking can be a powerful tool for advancing mutual interests.⁶⁷ As explored in Section 2.6, network theory has proven to be highly influential in a range of fields such as management consulting, public health, and fighting crime and terrorism. The theory could be applied and developed to facilitate more effective networking amongst relevant government officials and members of agencies within the region. One example of

⁶⁶ Organisation for Economic Co-operation and Development, 'G20 High-Level Principles on Financial Consumer Protection', n. 24, 4.

⁶⁷ See Chapter 2, Section 2.6.

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an organisation that facilitates networking amongst agencies responsible for financial stability is the Bank of International Settlements (BIS). This provides an example of what Verdier describes as transnational, or transgovernmental, regulatory networks (TRN).⁶⁸ The BIS offers a prototype that could serve, not as a model, but as an indicative structure or *modus operandi* for ASEAN to assist members to coordinate and gain learnings from each other regarding the regulation of consumer and business financial markets.

The BIS represents an international network for dealing with financial instability. It was established in 1930 in Basel, Switzerland. Despite its rather dubious early history, the Bank now serves an important role in providing a forum for its members to engage in discussions and facilitates member collaboration regarding issues about financial stability.⁶⁹ The Bank is owned by the central banks of sixty member nations that together make up about 95 per cent of the world's GDP. The Bank's mission is to serve its central bank members in their pursuit of monetary and financial stability, and to foster international cooperation in this regard. Amongst its

⁶⁸ P.-H. Verdier, 'Transnational Regulatory Networks and Their Limits', *Yale Journal of International Law*, 34 (2009), 113–72, 114. See also A.-M. Slaughter, 'The Real New World Order', *Foreign Affairs*, 76 (1997), 183–97; A.-M. Slaughter, *A New World Order* (Princeton University Press, 2004). See also A.-M. Slaughter and T. N. Hale, 'Transgovernmental Networks' in M. Bevir (ed.), *The SAGE Handbook of Governance* (Sage, 2011), 342. See also Chapter 2, Section 2.7.

⁶⁹ For an account of the BIS' early history, see A. LeBor, *Tower of Basel: The Shadowy History of the Secret Bank that Runs the World* (Public Affairs, 2013).

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other services to its members, it provides research and policy analysis.⁷⁰

The interactions between the central bank officials of the BIS member nations provide an example of cooperation that is based on 'loosely-structured, peer-to-peer ties' rather than formal relationships.⁷¹ More specifically, as mentioned in Chapter 2, Section 2.7 of this book, the Basel Committee on Banking Supervision, which promotes cooperation in bank regulation and supervision, operates as an informal network of national regulators. The Committee can be pointed to as an example of a transgovernmental, regulatory network.⁷² Half of the ASEAN members are also members of the BIS.⁷³ It can be reasonably speculated that BIS networks inform and relate to ASEAN networks for financial stability in some barely visible way.

It is not suggested here that ASEAN establish its own regional version of the BIS. Rather, ASEAN could adapt and apply some aspects of the BIS' ways of facilitating networking for advancing regional approaches to consumer finance.

⁷⁰ Bank of International Settlements, *About BIS – Overview*, www.bis.org/about/index.htm?m=1%7C1.

⁷¹ K. Raustiala, 'The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law', *Virginia Journal of International Law*, 43 (2002), 1–92, 5.

⁷² Verdier, 'Transnational Regulatory Networks and Their Limits', n. 68, 114.

⁷³ The ASEAN members of the BIS are Bank Indonesia, the Central Bank of Malaysia, Bangko Sentral ng Pilipinas (Philippines), the Monetary Authority of Singapore and the Bank of Thailand: Bank of International Settlements, *BIS Member Central Banks*, www.bis.org/about/member_cb.htm.

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The effectiveness of the ASEAN regional networks in relation to consumer finance is yet to be assessed. Nevertheless, on the surface at least, it appears that an encouraging amount of networking activity is taking place. According to a Joint Statement of an ASEAN Finance Ministers' and Central Bank Governors' meeting in April 2017, work is being steered by a number of committees and forums, including:

- the ASEAN Senior Level Committee for Financial Integration;
- the Steering Committee on Capacity Building;
- the ASEAN Capital Markets Forum (ACMF);
- the Working Committee on Capital Market Development;⁷⁴ and
- the ASEAN Infrastructure Fund, which aims to narrow the infrastructure gap in the region.⁷⁵

5.3.2 *The Financial Integration Objective*

The AEC Blueprint 2025 sets out strategic measures for financial integration, inclusion and stability.⁷⁶ In essence, these

⁷⁴ The Committee is pursuing the creation of 'an interconnected, inclusive and resilient regional capital market through targeted capacity building, close collaboration with industry to develop market relevant initiatives. See the Joint Statement of the 3rd ASEAN Finance Ministers' and Central Bank Governors' Meeting (AFMGM), (2017), <https://asean.org/joint-statement-of-the-3rd-asean-finance-ministers-and-central-bank-governors-meeting-afmgm/>.

⁷⁵ Ibid. ⁷⁶ ASEAN Secretariat, AEC Blueprint 2025, n. 52, paras. 16–18.

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strategies commit to a financial liberalisation agenda. More specifically, the measures aim to:

- strengthen financial integration by means of a range of measures, including by increasing the role of indigenous ASEAN banks and developing more connected capital markets; and
- promote the cross-collaboration of various of its working groups to explore the viability and ways of implementing initiatives such as enhancing credit guarantee institutions and improving access to debt resolution agencies for micro, small and medium enterprises (MSMEs).⁷⁷

ASEAN's focus on regional financial integration contrasts with the European Union's (EU) focus on ways of removing hindrances to the cross-border provision of products and services within the Union, including consumer finance, to encourage greater competition and product choice.⁷⁸ ASEAN is less focused on removing trade barriers and promoting competition for consumer finance, and more interested in advancing 'regional economic integration'.⁷⁹ Although there are some cross-border flows of consumer finance, it tends to be rather limited. For instance, only 7 per cent of EU consumers purchase financial products and

⁷⁷ Ibid., para. 17.

⁷⁸ Communication from the Commission to the European Parliament, the Council, The European Central Bank, The European Economic and Social Committee and the Committee of the Regions, Consumer Financial Services Action Plan: Better Products, More Choice, COM (2017)139 (3 March 2017), 4.

⁷⁹ ASEAN Secretariat, AEC Blueprint 2025, n. 52, para. 2.

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services from a European Commission country outside their home country.⁸⁰ There is little reason to suspect the proportion is higher within ASEAN. According to the European Commission, the reasons why consumers are reluctant to shop for consumer finance outside their home country is because they are concerned about:

- potentially excessive fees;
- the nature of products available in other countries;
- redress procedures abroad;
- opaque terms and conditions (particularly when drafted in a foreign language).⁸¹

Excessive account fees, transaction fees and currency conversion rates are also of concern to consumers.⁸² The European Commission is seeking to promote increased trade within the EU for consumer finance as part of the EU's broader agenda for reducing trade barriers within the Union. The Commission proposes that ways of dealing with these barriers is for EU members to:

- reduce legal and regulatory obstacles; and
- support the development of an innovative digital world that can overcome some of the existing barriers to consumers accessing finance outside their home country.⁸³

The EU regional initiatives for the financial market, by comparison with ASEAN initiatives and strategies, tend to be

⁸⁰ Consumer Financial Services Action Plan: Better Products, More Choice, n. 78, 3.

⁸¹ Ibid., 4. ⁸² Ibid., 5. ⁸³ Ibid., 4.

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focused on advancing a European single market and lessening trade barriers between the member countries.⁸⁴ The eventual aim is for the distinction between domestic and cross-border providers of financial services to become insignificant or non-existent.⁸⁵

ASEAN's focus, on the other hand, is upon improving regional banking integration processes, rather than paying attention to enhancing consumer access to cross-border products and services. This is understandable given the need to prioritise financial integration, and because priority needs to be given to providing the unbanked in the region access to consumer finance before attention is given to access to cross-border consumer finance.

⁸⁴ *Ibid.*, 3. The initiatives include the Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on Credit Agreements for Consumers Relating to Residential Immovable Property and Amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No. 1093/2010, OJ 2014 No. L60/34 (28 February 2014); Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the Comparability of Fees Related to Payment Accounts, Payment Account Switching and Access to Payment Accounts with Basic Features, OJ 2014 No. L257/214 (28 August 2014); Regulation (EC) No. 924/2009 of the European Parliament and of the Council of 16 September 2009 on Cross-Border Payments in the Community and Repealing Regulation (EC) No. 2560/2001, OJ 2009 No. L266/11 (9 October 2009); and Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the Taking Up, Pursuit and Prudential Supervision of the Business of Electronic Money Institutions Amending Directives 2006/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, OJ 2009 No. L267/7 (10 October 2009).

⁸⁵ Consumer Financial Services Action Plan: Better Products, More Choice, n. 78, 3.

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In furthering its financial integration strategy, the organisation has established an ASEAN Banking Integration Framework. This is designed to operationalise the banking integration process and formulate initiatives to improve banking regulatory frameworks and cooperation and financial stability arrangements in the region.⁸⁶ According to a Joint Statement of the 3rd ASEAN Finance Ministers' and Central Bank Governors' Meeting held on 7 April 2017, other steps being taken to advance financial integration include establishing:

- *The Financial Services Liberalisation Working Committee*, which 'seeks to achieve the gradual removal of cross-border restrictions on ASEAN banks, insurance companies and investment companies'.
- *The Capital Account Liberalisation Working Committee*, which 'aims to achieve freer flow of capital by gradually removing restrictions on foreign exchange transactions while imposing adequate safeguards'.
- *The Payments and Settlements Systems Working Committee*, which 'aims to establish an ASEAN payment system that is safe, innovative, efficient and more interconnected'.⁸⁷

⁸⁶ Association of Southeast Asian Nations, *ASEAN Finance Ministers' and Central Bank Governors' Joint Meeting: Regional Cooperation in Finance*, www.asean.org/asean-economic-community/asean-finance-ministers-meeting-afmm/.

⁸⁷ ASEAN Singapore 2018: Resilient and Innovative, *About ASEAN Finance Cooperation Process*, www.mof.gov.sg/aseanfinance2018/About-Us/About-ASEAN-Finance-Cooperation-Process.

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5.3.3 *The Financial Inclusion Objective*

Dramatic advances in information and communications technologies, along with the rapid increase in the number of people who have access to telecommunication services via mobile devices including smartphones, are providing new opportunities for people who were previously excluded from the market to gain access to consumer finance. The advances are also presenting significant regulatory challenges.

Technological advances offer the prospect of reducing financial exclusion, which presents a pressing problem, particularly for developing countries both within and beyond ASEAN. There are an estimated 2.5 billion people worldwide who do not have an account for receiving or making payments. In addition, there are an estimated 200 million businesses excluded from the formal financial system.⁸⁸ Financial exclusion restricts the ability of those who are excluded to save and borrow, which may provide them less capacity to absorb financial shocks from natural disasters and crime.⁸⁹

The number of these 'unbanked' people is in slow but steady decline. There was a 20 per cent increase worldwide between 2011 and 2014 in the number of adults

⁸⁸ Global Partnership for Financial Inclusion, '2017 Financial Inclusion Action Plan' (2017), 6, www.gpfi.org/publications/g20-financial-inclusion-action-plan-fiap-2017.

⁸⁹ Global Partnership for Financial Inclusion, 'Principles for Innovative Financial Inclusion' (2011), 1, www.gpfi.org/sites/default/files/documents/G20%20Principles%20for%20Innovative%20Financial%20Inclusion%20-%20AFI%20brochure.pdf.

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with access to formal financial services.⁹⁰ A person enjoys financial inclusion if he or she has access to, and is using, types of financial services that meet their needs.⁹¹ Financial inclusion not only benefits the user, it also improves the economy as a whole.⁹²

An early step towards providing increased access to consumer finance was via 'mobile money services'. The name derives from the fact that the consumers use their mobile phone to make the transfers. Mobile money services have given access to financial services to low-income people who would otherwise be excluded from the financial system.⁹³ Mobile money plays an important role in enabling remittances, particularly within a country. Remittances form a significant proportion of economic activity within some ASEAN countries, as is outlined in Section 5.3.5 below.

A number of international groups and organisations have been actively engaged in developing strategies for financial inclusion, including the G20, the World Bank

⁹⁰ Global Partnership for Financial Inclusion, '2017 Financial Inclusion Action Plan', n. 88, 6.

⁹¹ Bank for International Settlements and World Bank Group Committee on Payments and Market Infrastructures, *Payment Aspects of Financial Inclusion*, n. 2, 4.

⁹² *Ibid.*, 5.

⁹³ See e.g. M. P. Soejachmoen, 'Financial Inclusion in Indonesia: Moving Towards a Digital Payment System' in S. Gopalan and T. Kikuchi (eds.), *Financial Inclusion in Asia Issues and Policy* (Palgrave Macmillan, 2016), 131–86, 131.

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and the Bank for International Settlements.⁹⁴ According to the G20 2017 *Financial Inclusion Action Plan* (Action Plan), there is:

an increasing recognition of financial inclusion as a global priority, capable of bolstering sustainable, balanced, inclusive economic growth at the macro level and promoting economic and social inclusion at the household and enterprise level, especially among financially excluded and underserved populations.⁹⁵

The Action Plan claims that financial inclusion has the dual benefit of assisting the poor, including enterprises and households, while also contributing to the financial sector at the macro level. It also improves financial stability, integrity and consumer protection.⁹⁶ Financial inclusion has a multiplier effect in that it boosts overall economic output and contributes to the reduction of poverty and income inequality. The G20 Action Plan proposes that advancing financial inclusion involve policy advocacy, knowledge sharing and international cooperation.⁹⁷ The Action Plan claims that the fintech

⁹⁴ The ASEAN members whose central banks are also members of the Bank of International Settlements are Bank Indonesia, Central Bank of Malaysia, Bangko Sentral ng Pilipinas (Philippines), Monetary Authority of Singapore, and the Bank of Thailand: Bank of International Settlements, *BIS Member Central Banks*, www.bis.org/about/members_cb.htm?m=1%7C2%7C601.

⁹⁵ Global Partnership for Financial Inclusion, '2017 Financial Inclusion Action Plan', www.gpfi.org/publications/g20-financial-inclusion-action-plan-fiap-2017, 6.

⁹⁶ Ibid. ⁹⁷ Ibid.

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revolution offers 'an unprecedented opportunity to accelerate financial inclusion'.⁹⁸

The active engagement of organisations such as the G20 in seeking to advance financial inclusion suggests that coordinated and integrated regional and international approaches offer a more effective way of extending financial inclusion than would be the case if a state acted in isolation. This in turn suggests that ASEAN could play an important role in advancing financial inclusion, and in doing so could work with the G20 and other organisations and agencies that are active in the area.

In 2014, the World Bank Group and the Committee on Payments and Market Infrastructures of the Bank for International Settlements began examining how payment systems and services affect financial inclusion by convening a task force on Payment Aspects of Financial Inclusion.⁹⁹ The task force's aim was in part to examine whether efficient, accessible and safe retail payment systems and services could be designed to provide access to transaction accounts for two billion people who are presently unserved by regulated financial service providers. Two years later, the Committee reported on measures it believed would address supply and demand factors affecting financial inclusion in the context of payment systems and services. The Committee premised its recommendations on two key assumptions, namely that:

⁹⁸ Ibid., 7.

⁹⁹ See The World Bank, *Payment Aspects of Financial Inclusion (PAFI)*, www.worldbank.org/en/topic/financialinclusion/brief/pafi-task-force-and-report.

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(i) efficient, accessible and safe retail payment systems and services are critical for greater financial inclusion; and (ii) a transaction account is an essential financial service in its own right and can also serve as a gateway to other financial services.¹⁰⁰

The G20 appointed a Financial Inclusion Experts Group (FIEG) to elaborate standards on financial access, financial literacy and consumer protection, amongst other things.¹⁰¹ In response to the recommendations of the FIEG, the G20 leaders at their 2014 meeting in Brisbane committed to:

(i) implementing the G20 Principles for Innovative Financial Inclusion under a shared vision of universal access, (ii) improving data, (iii) supporting capacity-building and training, and (iv) improving national, regional and international coordination.¹⁰²

The leaders at successive meetings have added commitments on financial education and financial consumer protection, financial services for vulnerable groups (including women and young people), expanding opportunities for innovative technologies, and reducing the cost of remittance transfers.¹⁰³

Given these international developments, the 2025 ambitions of ASEAN appear to be underwhelming. The ASEAN Finance Ministers and Central Bank Governors established a Working Committee on Financial Inclusion in 2016. The objectives for the Committee are to ‘support

¹⁰⁰ Bank for International Settlements and the World Bank Group Committee on Payments and Market Infrastructures, *Payment Aspects of Financial Inclusion*, n. 2, 2.

¹⁰¹ *Ibid.*, 22. ¹⁰² *Ibid.* ¹⁰³ *Ibid.*

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a national financial inclusion strategy, capacity building of AMS to enhance a financial inclusion ecosystem, promote innovative digital platforms, and increase financial education and consumer protection'.¹⁰⁴

The Monetary Authority of Singapore (MAS) has taken the initiative by partnering with the United Nations Capital Development Fund (UNCDF) to facilitate the development and access to digital financial services in the ASEAN. The aim is to assist with the digitisation of the operations of low-tier financial institutions to enable them to better provide access to financial services to marginalised populations.¹⁰⁵ This, perhaps, represents an example of an ASEAN member unilaterally engaging in a form of collective action (which may at first view appear oxymoronic). In Chapter 2, it was said that game theory and a narrow reading of collective action cannot explain why a member would engage in behaviours in which it gains no benefit.¹⁰⁶ In this case, Singapore is expending resources on digitalisation for users who are presumably outside its country. Here, there is no obvious benefit to Singapore *narrowly construed*. However, taking a broader

¹⁰⁴ See the Joint Statement of the 3rd ASEAN Finance Ministers' and Central Bank Governors' Meeting (AFMGM), (2017), 3, www.asean.org/storage/2017/04/Joint-Statement-of-the-3rd-ASEAN-Finance-Ministers-and-Central-Bank-Governors-Meeting.pdf. See also Asian Development Bank, *Accelerating Financial Inclusion in South-East Asia with Digital Finance* (Asian Development Bank, 2017).

¹⁰⁵ Monetary Authority of Singapore, *MAS and UNCDF to Collaborate on Driving Financial Inclusion in ASEAN Region*, www.mas.gov.sg/News-and-Publications/Media-Releases/2017/MAS-and-UNCDF-to-Collaborate-on-Driving-Financial-Inclusion-in-ASEAN-Region.aspx.

¹⁰⁶ See Chapter 2, Section 2.4.

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and longer-term view, it is possible that a country such as Singapore, which offers high quality financial services, could benefit from a larger proportion of people within the region being engaged in the consumer finance market.

5.3.4 *Fintech*

Communication and information technologies are enabling the introduction of new consumer finance products and services in addition to mobile money services. These financial technology (or fintech) services enable money transfers, payments and possibly loans to be provided without intermediaries such as banks and credit card companies.¹⁰⁷ The term ‘fintech’ describes ‘technology-enabled innovation in financial services, regardless of the nature or size of the provider of the services’.¹⁰⁸ In some cases fintech services are provided by financial institutions, such as banks. In other cases, they are provided by a non-financial institution, such as an internet-based platform (a platform) or a technology company; for example, Apple, with ApplePay, Google with Android Pay, Samsung with Samsung Pay, Alipay and WeChat with WeChat Pay. These services seek to displace the need for cash payments,¹⁰⁹ but do not usually replace the need for the

¹⁰⁷ K. McGowan and P. Jaisinghani, ‘The End of Financial Marginalization Is in Sight: Here’s the Roadmap’, *Innovations: Technology, Governance, Globalization*, 10 (2015), 9–17, 10.

¹⁰⁸ European Commission, ‘FinTech: A More Competitive and Innovative European Financial Sector’, Consultation Document (2017), 4.

¹⁰⁹ M. E. Burge ‘Apple Pay, Bitcoin, and Consumers: The ABCs of Future Public Payments Law’, *Hastings Law Journal*, 67 (2016), 1493–550, 1494.

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user to hold an existing bank account or credit card. However, these services may eventually become redundant if blockchain networks like Ethereum, Ripple, Bitcoin Cash, Cardano and Litecoin become the mainstay for consumer financial transactions.

The European Commission categorises the impact of the changes that will be brought about by fintech as non-disruptive and disruptive. It views non-disruptive fintech as leading to incremental innovation and efficiency improvements, often in mature markets, while disruptive fintech will lead to more radical breakthroughs, and could create completely new markets.¹¹⁰ This could improve cost effectiveness, address the complex needs of consumers, and add overall value to the economy.¹¹¹

Fintech is providing considerable challenges for regulators. On the one hand, the services ought to be encouraged if they bring about consumer benefit through higher competition, lower prices, increased innovation and increased access to financial services for the unbanked. On the other hand, if the providers are not subject to the kinds of prudential and other regulatory requirements to which financial institutions are subject, there is an increased risk of consumer harm and systemic financial instability.

The regulatory challenges throughout the ASEAN region and beyond are likely to become increasingly complex

¹¹⁰ European Commission, 'Fintech: A More Competitive and Innovative European Financial Sector', n. 108, 4.

¹¹¹ Ibid. See also Ernst & Young, *ASEAN FinTech Census 2018*, 18, [www.ey.com/Publication/vwLUAssets/EY-asean-fintech-census-2018/\\$FILE/EY-asean-fintech-census-2018.pdf](http://www.ey.com/Publication/vwLUAssets/EY-asean-fintech-census-2018/$FILE/EY-asean-fintech-census-2018.pdf).

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due to the quickly evolving nature of the technology and the related complexity of these products. It is also possible fintech will lead to increased cross-border transactions and product offerings. These developments will increasingly require intra-governmental and regional coordination and networking by responsible agencies.

Singapore has responded to the regulatory challenge of being responsive to present and future changes in market-place dynamics by introducing the Payment Services Bill into its Parliament. According to the relevant Minister in delivering the second reading speech for the Bill, it will serve the following purposes:¹¹²

First, we are adopting a regulatory structure that recognises the growing convergence across payment activities . . . For example, payment and remittance services are now often provided as one product to customers.

Second, we are expanding [Monetary Authority of Singapore's (MAS)] regulatory scope to include more types of payment services, such as digital payment token services and merchant acquisition. The Bill includes provisions that level the playing field for banks and non-banks, and that enhance user protection.

Third, we have adopted a modular and risk-focused regulatory structure, so that our rules are tailored to the scope of services being offered by any provider. A modular approach gives MAS the flexibility to regulate payment

¹¹² Payment Services Bill – Second Reading Speech by Mr Ong Ye Kung, Minister for Education, on Behalf of Mr Tharman Shanmugaratnam, Deputy Prime Minister and Minister-in-Charge of the Monetary Authority of Singapore on 14 January 2019 at paras. 7-9.

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service providers that offer one, two or more parts of the payments value chain. It also enables MAS to respond quickly to fast changing payment solutions and business models. A risk-based approach enables MAS to impose proportionate regulatory measures on each type of payment service provider, depending on the scale of their activities.

5.3.5 Remittances and Mobile Money

Mobile money is an important consumer finance service in a number of ASEAN countries. The service enables remittances, which form a significant component of the finance system in some ASEAN member countries and could be a harbinger of further fintech developments that could help further reduce financial exclusion.

Mobile money enables users to purchase products, pay bills and transfer money to relatives or friends, including as remittances.¹¹³ Remittances involve the transfer of funds to family or friends within the individual's own country or overseas. The individual is usually a worker who transfers a portion of his or her wages to family members in his or her home country (i.e. the individual is an 'internal migrant'), or overseas (i.e. the individual is a 'foreign migrant'). One of every seven persons in the world is a migrant. There are more than 750 million internal migrants and 250 million foreign

¹¹³ D, Collins, J. Morduch, S. Rutherford and O. Ruthven, *Portfolios of the Poor: How the World's Poor Live on \$2 a Day* (Princeton University Press, 2009), 174–80.

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migrants; 21.3 million of whom are refugees, with the remainder being 'voluntary' migrants.¹¹⁴ Remittances amounted to \$US 429 billion in 2016.¹¹⁵ The top remittance recipients in 2016 were India, China and the Philippines.¹¹⁶ Remittances are economically significant. They constitute more than 10 per cent of the GDP of twenty-five developing countries. Indeed, total remittances are three times greater than official aid flows. The funds lead to increased investments in health, education and small businesses.¹¹⁷

The appropriate way to regulate remittances is controversial. They are an important source of foreign currency for some developing countries. About two-thirds of the recorded remittances are being received by developing countries, with the Philippines being one of the top recipient countries.¹¹⁸ It is therefore necessary for those countries in particular to have the relatively unimpeded flow of remittances. The livelihoods of many families are dependent on the funds for economic survival. However, the easy transfer of funds across borders also offers a means to fund criminal and terrorist activities.¹¹⁹ On the face of it, regional organisations such as ASEAN offer an important avenue for coordinating

¹¹⁴ World Bank Group, 'Migration and Remittances: Recent Developments and Outlook', *Migration and Development Brief 27* (2017), 13, www.pubdocs.worldbank.org/en/992371492706371662/MigrationandDevelopmentBrief27.pdf.

¹¹⁵ *Ibid.*, 1. ¹¹⁶ *Ibid.*, 3.

¹¹⁷ World Bank Group, *Migration and Remittances: Factbook 2016*, 3rd ed. (International Bank for Reconstruction and Development, 2016), vii.

¹¹⁸ *Ibid.*, xii.

¹¹⁹ R. Mascarenhas and T. Sandler, 'Remittances and Terrorism: A Global Analysis', *Defence and Peace Economics*, 24 (2014), 331–47, 331.

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and assisting the actions of member states in regulating remittance flows.

Mobile money is not the only means by which remittances are being made, but it does offer a quicker and more convenient way of transferring funds, particularly for internal migrants where the service is domestically based.¹²⁰ It differs from mobile banking in that a user can deposit, transfer and withdraw funds without a bank account.¹²¹ Mobile money services are usually offered by a telecommunications company, and not a financial institution.¹²²

One of the first (if not the first) established mobile money service is M-PESA, which began in Kenya in 2007.¹²³ It allows the user to make orders for money transfer via SMS. The M-PESA system involves an extensive network of agents that operate from small shops in almost every city, town and village in Kenya.¹²⁴ M-PESA has been adopted by about 70 per cent of the adult Kenyan population. The service was initiated by Michael Joseph, who was the then CEO of Safaricom, Vodafone's Associate in Kenya. He encouraged a small team in his organisation to focus on developing

¹²⁰ Soejachmoen, 'Financial Inclusion in Indonesia', n. 93, 69; M. Sarma, 'Measuring Financial Inclusion for Asian Economies' in S. Gopalan and T. Kikuchi (eds.), *Financial Inclusion in Asia: Issues and Policy Concerns* (Palgrave Macmillan, 2016), 3–34, 18.

¹²¹ T. Suri, 'Mobile Money', *Annual Review of Economics*, 9 (2017), 497–520, 498.

¹²² *Ibid.*, 501.

¹²³ W. Jack and T. Suri 'Risk Sharing and Transactions Costs: Evidence from Kenya's Mobile Money Revolution', *American Economic Review*, 104 (2014), 183–223, 183–4.

¹²⁴ There were 28,000 agents operating by 2011: *ibid.*, 184.

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innovative products. Vodafone became aware of grants being offered by the UK Department for International Development for firms to develop services for the unbanked. Safaricom obtained a grant and worked on developing basic features for mobile phones that would enable access to financial services. The original aim was to facilitate micro-finance loans. After trialling the service, it soon became apparent that those who were receiving the loans were forwarding the money to other people who were often hundreds of kilometres away. Often these transfers were remittances to families. Safaricom re-engineered the service so it could easily be used for money transfers. A network of local agents was soon created to enable cash to be lodged or dispensed according to money transfer requests sent via messages sent from the users' mobile phones. Within twelve months of the launch of the service, there were 1.2 million customers. A decade later the service expanded beyond Kenya, resulting in nearly 30 million customers and over a quarter of a million agents operating across ten countries.¹²⁵

Mobile money services have been widely adopted in many other developing countries, including a majority of ASEAN countries.¹²⁶ Examples of mobile money service providers include GCash in the Philippines¹²⁷ and Tcash, XL

¹²⁵ Michael Joseph, *M-Pesa: The Story of How the World's Leading Mobile Money Service Was Created in Kenya*, www.vodafone.com/content/index/what/technology-blog/m-pesa-created.html.

¹²⁶ Suri, 'Mobile Money', n. 121, 498.

¹²⁷ B. Maurer, 'Mobile Money: Communication, Consumption and Change in the Payments Space', *Journal of Development Studies*, 48 (2012), 589–604, 589.

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tunai, Dompetku, Uangku and FlexiCASH in Indonesia.¹²⁸ The take up of mobile money services is impressive. By 2016 –

- mobile money services were available in two thirds of low and middle-income countries, with registered accounts surpassing 500 million users;¹²⁹
- the services were available in Indonesia, Malaysia, the Philippines, Cambodia, Thailand and Myanmar;¹³⁰ and
- forty per cent of all new registered accounts were from South Asia.¹³¹

Mobile money services typically make extensive use of agents, most of whom are small business operators who operate a grocery store, petrol station, chemist shop or some other small business.¹³² Regulators in various jurisdictions usually require the agents to report on aggregate transactions and to hold specified minimum cash reserves. Regulations usually place limits on the size of transactions. These requirements, however, are far less stringent than those placed on financial institutions.¹³³

Not only does mobile money provide access to financial services to those who would otherwise be deprived of

¹²⁸ R. E. Sucherly, E. Febrian and M. Hasan, 'The Influence of ICT-Based Customer Value Creation Performance and Customer Win Back Performance on Customer Trust of Mobile Telecommunication Service Companies in Indonesia', *International Journal of Economics, Commerce and Management*, 4 (2016), 660–70, 662.

¹²⁹ GSMA, 'State of the Industry Report on Mobile Money: Decade Edition: 2006–2016', Report (2017), 8, www.gsma.com/mobilefordevelopment/programmes/mobile-money.

¹³⁰ *Ibid.*, 64–5. ¹³¹ *Ibid.*, 17. ¹³² Suri, 'Mobile Money', n. 121, 503.

¹³³ *Ibid.*, 505.

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them, it also seems to operate with relatively low levels of corruption or misuse.¹³⁴ Nevertheless, the cost of a transaction is relatively high, with an average transaction costing about thirty-five cents. This means the service is not often used for paying bills or goods or services, or for repaying loans.¹³⁵ Rather, they tend to be used for paying remittances, or otherwise paying relatives or friends.¹³⁶

Despite the relatively limited uses made of mobile money, it plays an important role in reducing poverty. One study found, for instance, that poverty rates declined by 2 per cent because of the service.¹³⁷ The service has also led to improved nutrition, with a 10–16 per cent increase in diet diversity, and children eating food that was a third more nutritious than had previously been the case, with greater proportions of protein in their diet.¹³⁸ In addition, payments by family and friends often help smooth out a household's financial risks. The service also enables funds to be received from a wider diversity of sources than would otherwise be the case. Mobile money allows payments to be received in relatively private ways, which is often of particular assistance to women. It can allow them to receive funds without the knowledge of their partners or other family members. Mobile money has also enabled many women to move from

¹³⁴ M. W. Buku and M. W. Meredith, 'Safaricom and M-PESA in Kenya: Financial Inclusion and Financial Integrity', *Washington Journal of Law, Technology and Arts*, 8 (2013), 375–400, 396.

¹³⁵ Suri, 'Mobile Money', n. 121, 514. ¹³⁶ *Ibid.*, 510.

¹³⁷ T. Suri and W. Jack, 'The Long-Run Poverty and Gender Impacts of Mobile Money', *Science*, 345 (2016), 1288–92, 1288.

¹³⁸ Suri, 'Mobile Money', n. 121, 512.

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agriculturally based industries, to retail and other small businesses.¹³⁹ According to a World Bank Group study:

Mobile money-based global remittances are growing at a fast pace, especially in East Africa and South Asia, with the proliferation of smartphones, which make online transfers more convenient and cheaper. In addition, mobile money services have partnered with traditional remittance providers and digital-first start-ups, providing an alternative to traditional cash-to-cash models and offering instant online money transfers to mobile accounts. The application of blockchain technology for remittances has great potential, but it is still in its infancy.¹⁴⁰

The European Commission has suggested that fintech could be an important driver for expanding access to financial services for consumers, investors and firms, and overcome some of the present limitations in traditional finance markets such as opacity, lack of use of big data and insufficient competition.¹⁴¹ The Commission advises that policies promoting fintech should be:

- i **Technology-neutral** to ensure that the same activity is subject to the same regulation irrespective of the way the service is delivered, so that innovation is enabled and level-playing field preserved.

¹³⁹ Ibid., 510.

¹⁴⁰ World Bank Group, 'Migration and Remittances', n. 114, 7.

¹⁴¹ European Commission, 'Fintech: A More Competitive and Innovative European Financial Sector', n. 108, 7.

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- ii **Proportional**, reflecting the business model, size, systemic significance, as well as the complexity and cross-border activity of the regulated entities.
- iii **Integrity-enhancing**, as application of technologies to financial services should promote more market transparency to the benefit of consumers and businesses without creating unwarranted risks (e.g. market abuse, misselling, cyber security issues, systemic risks).¹⁴²

The new consumer finance landscape will require considerable regulatory sophistication in getting the settings right. Overly burdensome regulation can severely limit the capacity for new creative and nimble entrants to provide innovative products and services. For instance, in the USA, Google, Amazon, Facebook, PayPal and others have registered as money transmitters in all US states with money transmitter laws as a result of pressure from a multi-state alliance of regulators. The regulatory requirements have proven to be incredibly time consuming for them, and expensive. The licence fees can cost more than \$US 500,000. These time and cost barriers are likely to deter new entrants.¹⁴³ This may provide a cautionary tale to encourage ASEAN members to consider the costs, benefits and unnecessary burdens that existing or proposed regulatory measures may create.

In some instances, central banks have played a key role in developing ubiquitous, secure and efficient electronic

¹⁴² Ibid., 5.

¹⁴³ C. Lowry, 'What's in Your Mobile Wallet? An Analysis of Trends in Mobile Payments and Regulation', *Federal Communications Law Journal*, 68 (2016), 353–84, 369.

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payment systems. The aim is to make payments faster, more convenient and cost-effective, including for cross-border payments. Thailand, for example, is in the process of implementing its National e-Payment Master Plan, which aims to establish an integrated e-payment system. This, it is planned, will enable the government to make tax and social security payments to citizens. The ultimate aim, however, is to transform Thailand into a cashless society. As a first step in its implementation process, it introduced in 2016 a 'PromptPay' or 'AnyID' system. It allows a consumer to transfer funds from her bank account by using her Thai ID card number or smartphone number rather than her bank account number for effecting the transfer.¹⁴⁴

In summary, transformations taking place regarding consumer finance, in part because of fintech, are offering an array of opportunities for expanding the range of consumer products, increased competition and the number of consumers who have access to financial products and services. Fintech also presents a range of complex regulatory challenges. The G20 High-Level Principles neatly outline the challenges and opportunities that arise from a 'renewed policy and regulatory focus on financial consumer protection'. The renewed focus arises because of:

the increased transfer of opportunities and risks to individuals and households in various segments of financial services, as well as the increased complexity of financial products and rapid technological change, all coming at a time when basic access to financial products

¹⁴⁴ Teoh and Jongsaritwang, 'Thailand', n. 46, 124-5.

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and the level of financial literacy remain low in a number of jurisdictions.¹⁴⁵

The G20 High-Level Principles note that increased market risks exist because of: ‘[r]apid financial market development and innovation, unregulated or inadequately regulated and/or supervised financial services providers, and misaligned incentives for financial services providers’.¹⁴⁶ These developments can increase the risks for consumers from fraud, abuse and misconduct. Low-income and less experienced consumers are particularly vulnerable to these abuses.¹⁴⁷

5.3.6 Responding to the Opportunities for, and Threats to, the Consumer Finance Marketplace

Given the dimensions and the complexities of the developments in consumer finance, and the increased risks and opportunities these present for consumers, it makes sense for members to (i) give increased attention to the regulation of consumer finance; (ii) draw closer connections between the maintenance of financial stability and the building of consumer trust in the marketplace. This may involve closer liaison between agencies responsible for financial stability (such as the reserve bank, the treasury and finance departments) and agencies responsible for consumer affairs, or greater responsibility for consumer finance being given to the financial stability agencies; (iii) enhanced capacity building and

¹⁴⁵ Organisation for Economic Co-operation and Development, ‘G20 High-Level Principles on Financial Consumer Protection’, n. 24, 4.

¹⁴⁶ Ibid. ¹⁴⁷ Ibid.

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improved networking both within member governments and between member governments.

Regarding consumer policies more generally, ASEAN indicates its desire to develop tools and technical capacities to assist members. It has developed high-level principles for consumer protection, which amongst other things, aim to 'promote a common base level of cooperation and exchange of experiences and best practices'.¹⁴⁸ *The ASEAN Strategic Action Plan for Consumer Protection* sets a number of strategic goals, including goal 1, which is to establish a common ASEAN consumer protection framework.¹⁴⁹ The strategy for attaining the goal involves developing tools and technical capacity to apply consumer protection legislation (strategy 1.4.1), and to establish an ASEAN knowledge management and information exchange system (strategy 1.4.2).¹⁵⁰ In addition, the ASEAN high-level principles for consumer protection includes a call for members to adopt 'a more "joined-up" approach within the governments' for advancing consumer protection.¹⁵¹

One possible way of building technical capacity and a more joined-up approach is to enhance the benefits that can be gained by a 'network polity', by improving networks comprising of officers in responsible agencies in member

¹⁴⁸ ASEAN Secretariat, *Handbook on ASEAN Consumer Protection Laws and Regulations*, n. 17, 14.

¹⁴⁹ *Ibid.*, 2.

¹⁵⁰ ASEAN, *The ASEAN Strategic Action Plan for Consumer Protection*, n. 8, 2.

¹⁵¹ ASEAN Secretariat, *Handbook on ASEAN Consumer Protection Laws and Regulations*, n. 17, 15; see Principle 7.

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governments. Networks could also be improved through relationships and knowledge sharing and support of relevant officers as between member countries.

In Chapter 2, we discussed the theory about the 'networked polity' in both a descriptive and normative sense. Our discussion was descriptive in the sense that the theory attempts to understand how problems are solved by inter-governmental coordination.¹⁵² The discussion was normative in the sense that it is suggested that ASEAN could more effectively attain its goals by developing a deeper understanding of, and applying, the forms of interactions observed to be effective under the theory. For instance, as we mentioned in Chapter 2, 'the networked polity is organic and heterarchical, in the sense it is based on many to many relationships, rather than the hierarchical many to one relationships'.¹⁵³ Further, the polity 'involves a multiplicity of organisations with overlapping jurisdictions in which the actors engage in cooperative rather than competitive behaviours'.¹⁵⁴ Under these conditions, knowledge and initiative are decentralised and widely distributed.¹⁵⁵ Applying the theory in the normative sense might involve facilitating opportunities for offices to meet and share ideas and experiences. These opportunities ought to include providing environments for informal discussions, as well as confidential

¹⁵² See Chapter 2, Section 2.6. ¹⁵³ Ibid.

¹⁵⁴ Ibid. see also C. Ansell, 'The Networked Polity: Regional Development in Western Europe', *Governance: An International Journal of Policy and Administration*, 13 (2000), 303–33, 308–9.

¹⁵⁵ Ansell, 'The Networked Polity', n. 154, 311.

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discussions that require levels of trust between the participants.

The present status of networks for consumer finance within ASEAN appears to remain rather weak. This claim is made on the basis of informal observations by the author of this Chapter, as well as the analysis set out above and by other recent commentators.¹⁵⁶ As mentioned in Chapter 1, the authors of this book were engaged as consultants for a number of projects for ASEAN during 2013–15 which were supported by AusAid and the United Nations Commission on Trade and Development (UNCTAD).¹⁵⁷ The projects involved them writing research papers, presenting the outcomes of their research at ASEAN conferences and conducting workshops. The presentations and workshops took place in Jakarta, Hanoi, Bangkok and Manila. The participants in the workshops were officials from agencies responsible for consumer affairs in ASEAN member countries, except for Singapore which had a representative from the Consumers Association of Singapore (CASE).¹⁵⁸

The author of this Chapter (the convenor) convened two workshops held in different ASEAN member countries that dealt with consumer finance. The participants to the workshops were officials from member agencies responsible

¹⁵⁶ In the field of redress mechanisms nationally and across ASEAN for consumer financial services, see also the limitations and proposals set out by Chen, Godwin and Ramsay, 'An ASEAN Framework for Cross-Border Cooperation in Financial Consumer Dispute Resolution' (summarised in Chapter 1, Section 1.4.1).

¹⁵⁷ See Chapter 1, Section 1.3.

¹⁵⁸ Consumers Association of Singapore, *Who Are We?*, www.case.org.sg.

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for consumer affairs, again with the exception of Singapore whose representative was from CASE. In each workshop, the convenor asked the participants to identify an issue about consumer finance that was causing significant problems in their jurisdiction. The participants were invited to outline policy options and strategies for dealing with the problem.

In one workshop, the identified problem was that debt collectors were wrongfully repossessing motorbikes purchased with consumer loans. In some ASEAN countries, motorbikes are the sole means for people on low incomes to gain transportation. It is their means for employment or getting to their place of work, and for going about their daily lives. In many instances, the original lender for the bike loan on-sells the loan to another party. That party or the original lender will sometimes engage in aggressive and illegal behaviours towards the borrower if he or she defaults on the loan. This often involves unlawfully taking the bike from the borrower.

In the second workshop, the identified problem was that payday lenders situate themselves immediately outside economic zones. The problem is that the location provides the lenders ready access to workers in the economic zone. These are typically uneducated young males from country regions who are required to work long and tedious hours on relatively low incomes. Much of their income is remitted to their families. Many of these workers are easy prey for the payday lenders. The workers borrow money from the payday lender, and often use it for gambling. Many see gambling as providing them the possibility of escaping their circumstances. However, invariably the loans drive them into debt traps.

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Participants in one workshop were invited to engage in a role play so that the group could better understand the nature and dimensions of the regulatory issues at stake. Participants were given roles by the workshop convenor. The roles assigned to participants included those of the consumer, the lender, the entity, the department responsible for consumer affairs and a police officer to whom the consumer complains about the bike being taken. After the role play, participants were invited to devise strategies for dealing with the problem.

The workshops provided insights into some of the significant issues that agencies responsible for consumer affairs are confronting. The workshops also provided the convenor an opportunity to observe the ways in which officials deal with these issues. The convenor's observations suffer the limitations of being subjective, impressionistic and limited to observations made in two workshops and from comments, presentations and interactions of officials at the ASEAN-convened conferences. Despite these limitations, the observations do offer perspectives about the issues confronting officials and their agencies, and the ways they go about dealing with them.

The impression the convenor gained was that most agencies responsible for consumer affairs are woefully under-resourced and are overwhelmed with an array of significant consumer-related problems. Networks between government agencies within the same country appear to be weak in many cases, and the relationships with ASEAN as an organisation appears to be even weaker. Officers within the agencies are usually well educated and highly motivated but seem often to

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be overwhelmed by the actual and perceived barriers they face in dealing with a significant issue. This impression is reinforced by the observations of the International Finance Corporation, in its report on the Cambodian consumer finance market. It stated that: 'With multiple regulators operating in the financial sector, there is a clear need for information sharing in order to ensure regulators are informed on any and all developments that may impact their activities'.¹⁵⁹

Even attempting information sharing or adopting a coordinated whole-of-government approach to consumer-related problems appears to be a low government priority in many ASEAN member states, and so is often not attempted. A further impression is that member governments themselves do not see that consumer-related issues are of a high priority. To an extent this is understandable given the wide array of challenges the governments face in governing large populations and managing significant issues relating to low incomes and poverty.

A further problem is that in some cases, senior government ministers and officials perceive that there is a zero-sum game between advancing the interests of businesses and consumers. Consumer protection is sometimes seen as being anti-business. On one occasion, the convenor was informed by a senior official that his department regularly invited businesses to inform the department which (consumer

¹⁵⁹ International Finance Corporation, 'Promoting Financial Consumer Protection in Cambodia' (2015), www.ifc.org/wps/wcm/connect/6c12edf9-22e9-446f-b025-0c366948b87a/Cambodia+Financial+Consumer+protection-Final.pdf?MOD=AJPERES at 4.

5.4 CONCLUSION

protection) regulations they considered to be a hindrance. The department then moved to revoke the offending regulations. On another occasion, the convenor was informed that consumer protection obstructs economic development. Indeed, protecting the interests of workers and the environment was also seen as obstructing economic development. It appears that consumer protection will not be taken seriously by some ASEAN members unless and until the perception changes, and the view is broadly accepted, that consumer protection can enhance consumer confidence and trust in the market. Further, the view would need to be taken that this would lead to greater consumer engagement and participation in the market, which could lead to a marketplace offering higher quality products. This would in turn be seen as benefiting businesses and the economy more generally.

5.4 Conclusion

ASEAN has shown a capacity to be able to develop regional networks and systems for gaining financial stability. This suggests that ASEAN could develop effective networks to facilitate information sharing and capacity building for member agencies responsible for consumer finance. What is perhaps lacking is the will to do so. ASEAN members by and large appear to be relatively uninterested in advancing consumer finance in a regionally coordinated and assisted way. There is also an apparent lack of interest in adopting a regional approach to increasing financial inclusion with the assistance of ASEAN networks and forums. Although the AEC Blueprint 2025 mentions the objective of advancing

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financial inclusion, there appears to be relatively little active engagement with the issue on a regional basis. This is the case despite international organisations such as the World Bank, the BIS and the G20 taking the issue seriously.

Fintech offers opportunities for advancing the interests of financially included and excluded consumers alike. It also carries the risks of causing consumer detriment and financial instability. Fintech raises complex regulatory issues. The officials of responsible agencies would be well served if they were well informed of potential developments and the options and strategies available to the agencies for dealing with them. ASEAN could be the organisation best positioned to play a key role in providing assistance if members take the issue seriously.