LAW & FINANCIAL MARKETS

BANKING & CAPITAL MARKETS

Dr. Nasser Saidi

USJ Droit & Banque

March 2003

Regulation of Banking & Financial Markets

- Since 1980 about 140 IMF member countries have experienced significant banking sector problems of which 40 countries had to face real financial crises.
- Goal of banking regulation and supervision:
  - prevent banks from assuming unacceptably high risks which may endanger the interests of creditors, that is, deposit holders and savers in general.
  - Government intervention may also aim at the advancement of other policy objectives: e.g. encourage particular activities in the industrial, the agricultural sector or in the social field.

Regulation of Banking & Financial markets: Why?

- Fiduciary nature of most financial products and services: need to protect consumers
- Monetary and financial stability has become an overriding goal of financial regulation.
- Financial markets seen as:
  - imperfect
  - characterized by asymmetric information,
  - agency problems
  - moral hazard.

Regulation of Banking & Financial markets: Why? 2

- Financial operations are concerned with the future, and hence are characterized by risk and uncertainty → Greater role of expectations and information
- Asymmetric information problems: two parties to a transaction possess different information about conditions, potential risks and returns of investment

➢Regulation of Banking & Financial Markets: Why? 3

- Adverse selection arises due to incomplete information: lender cannot accurately distinguish good risk applicants from bad-risk applicants before making an investment. Therefore so-called 'lemon-premium' will increase the loan rate, so that only risky projects will be funded.
- Moral hazard costs, incurred by the lender in verifying that borrowers are using their funds as intended, further raise the loan rate.

Regulation of Banking & Financial Markets: Why? 4

- Financial markets and financial institutions tend to be more interdependent than is the case for other sectors of the economy.
- Contagion effects: events in one financial market or institution may have important external affects on the rest of the financial system and on the whole economy. Together with the important potential for ‘herd behavior’ it explains the occurrence of so-called *systemic risks*.

Government Regulation & Intervention

- Financial markets regulation is needed to the extent that no solutions for information failures are provided by financial intermediaries.
- Financial intermediaries reduce information problems, but their operation creates in turn similar information and monitoring problems. This has to be solved by regulation and supervision of financial institutions.

Government Regulation & Intervention 2

- The case for government interventions in the operation of financial markets mainly rests upon *asymmetric information* problems that create risks of fraud, negligence, incompetence, and so on.
- Financial products are seen as credence goods, information goods whose value depends on what one believes they are worth, whose quality it is difficult to establish.

Government Regulation 3

- Government regulation and supervision is needed to provide additional ways to reduce the costs of moral hazard to individual savers.
- Failures in market discipline can be best counteracted by requiring that financial information should be *disclosed* promptly and be accurate.
- This can also be achieved by increasing incentives for responsible performance for bankers and bank shareholders. For example, capital adequacy rules (BIS) require shareholders to invest more of their own funds, & augmenting their stake in the bank.

Government Regulation: Financial Stability and the Need for Regulation

- Stock market crashes, bank failures and other financial disasters may endanger the health of the whole economy.
- Public policy intervention then is not only a microeconomic question of protecting individual savers and investors, but becomes a *macroeconomic issue*.
- Events in one financial market or institution may then have important effects on the rest of the financial system. Failure in one market or institution may create a financial panic and end up in a *systemic crisis*.
- Due to ever increasing international capital mobility it may become a worldwide financial crisis. Domino effects, contagion effects lead to a widespread loss of confidence in the banking system and create a 'financial panic'.

Government Regulation & International Cooperation

- Liquidity crisis may be overcome by monetary authorities acting as a lender of last resort and providing additional liquidity. However, this may lead in turn to a moral hazard problem. Financial institutions anticipating the bail-out possibility by monetary authorities may behave in a riskier way.
- Ensuring a stable payments system has been a principal concern of public policy. Therefore financial regulation in a wider perspective contains also a whole framework for controlling the volume of money in circulation, that is a whole set of monetary policy instruments.
- International Financial System architecture: international safety nets and bail-outs? Create similar moral hazard problems.

Regulatory Instruments: Protective Systems (*ex post*)

- Lender of last resort: Credit should only be advanced to solvent financial intermediaries using the good, but illiquid, assets as collateral. They should not be used to bail out insolvent institutions, often at a high cost for taxpayers.
- Lender of last resort interventions may conflict with monetary policy objectives.
- Deposit insurance: systems differ according to their public or private organization, compulsory or voluntary participation, fee structure, degree of coverage, funding provisions.

Regulatory Instruments: Preventive Measures (*ex ante*)

- **Structural Restrictions on entry and on business activities**:
  - Licensing for entry
  - Product line restrictions: commercial v/s investment banking, insurance
  - Geographic restrictions: branching, cross-border
  - Regulation of interest rates: ceilings, type
- **Prudential Portfolio restrictions and supervision**:
  - capital adequacy standards
  - asset restrictions and diversification rules
  - liquidity adequacy requirements
  - Value at Risk
- **Disclosure standards and reporting requirements**
- **Conduct and conflict rules**
- **Inspection, audits and bank examination**

Regulatory Structure: depends on risk of systemic crises

- Need for government intervention as well as the choice of regulatory instruments depend on the threat of the occurrence of systemic crises and on the need for individual investors' protection.
- Three criteria:
  - Risks involved that may lead to their failure
  - Interconnections among intermediaries determining the contagion effect
  - Importance for the whole financial system and the real economy, including liquidity & payments
- Based on 3 criteria, special attention should be given to deposit-taking banks, investment banks and to a lesser extent Non-Bank Financial Intermediaries (NBFI) & Insurance industry

Development of Capital Markets: Four Basic Functions

1. Transform savings into investment: facilitates accumulation of capital and higher productivity, thus promoting economic development
2. Intermediation between buyers and sellers: Allocate savings by way of investments in businesses and public enterprises which create the optimal expected returns
3. Liquidity which reduces costs of capital formation and capital turnover & promotes efficiencies in businesses and public enterprise
4. Price discovery: provides independent valuation of issuer performance; price formation mechanisms and sets benchmarks for value in the economy

Development of Capital Markets 2

- Political, macroeconomic, technological (including payment systems) and legal infrastructure factors influence development of capital markets
- Legal infrastructure factors include:
  - Legal system with timely & effective means of enforcement of private contract rights
  - Company law that adequately provides for corporate governance of securities issuers and accountability to securities holders
  - Banking & commercial laws to facilitate timely and reliable settlement of obligations, permit extension of credit collateralized by stocks and bonds

Development of Capital Markets 2: Legal Infrastructure Requirements

- Bankruptcy & Insolvency laws that fairly address interests of debt and equity holders in re-organizations or liquidation proceedings and interests of securities customers of failed financial intermediaries.
- Competition laws that prohibit anti-competitive securities market practices, including price competition and barriers to entry
- Tax laws that do not impose high or confiscatory taxes on securities market transactions and encourage issuers to reveal true financial performance

Gains from Broadening Stock Markets

- Permits *sharing of the risks* associated with investments: returns are not guaranteed
- *Stabilizes financial system*: equity financing cannot be withdrawn in a crisis and dividend payments are flexible.
- Families, original owners can sell their existing equity claims, diversify their wealth & provide corporate continuity
- Ability to raise equity from outside investors permits a firm to raise more debt finance without incurring a high-risk debt-equity ratio
- Creates investment instrument for long-term investors willing to bear the risks associated with equity

Gains from developing primary markets for medium and long-term bonds

- Reduce *refinancing risk* associated with rolling over short-term financing
- With fixed-rate bonds, firms can avoid the *interest rate risk* associated with rolling over short-term loans
- Domestic bond market enables firms to avoid the *exchange rate risk* associated with international loans
- Facilitates government fiscal planning, as government can avoid:
  - Refinancing risk and interest rate risk associated with rolling over short-term financing
  - Avoid the exchange rate risk associated with foreign borrowing
  - Government bond markets *allow the government to separate fiscal policy from monetary policy*.

Gains from developing primary markets for medium and long-term bonds

- Financial institutions that provide long-term fixed-rate loans, such as housing finance, can eliminate or reduce the interest rate and refinancing risk by issuing fixed-rate liabilities with similar maturities. This aids the development of home mortgage markets.
- Permits financial institutions to securitize assets. This allows them to originate loans that they do not hold on their books
- Increases the stability of the financial system since the supply of financing is less volatile and cannot suddenly be withdrawn
- Provides appropriate investment instruments for institutions, such as pension funds and insurance companies, with long-term fixed liabilities.

Gains from developing active secondary markets

- Enables investors with uncertain savings horizons to hold long-term assets. This broadens the demand for long-term securities and lowers the cost of capital.
- Prices send signal for the allocation of resources. Expectations of higher future earnings will raise a firm's stock price, lower the cost of funding expansions by issuing new equity.
- Facilitates monitoring of financial institutions, such as those offering insurance or pensions, that hold long-term securities.
- Facilitates the establishment of mutual funds (portfolio investment funds), promoting broader ownership of securities.
- Encourages foreign investment since outside portfolio investors value liquidity and quoted prices.

Why is longer-term financing missing in many developing countries and Lebanon ? Two views

- Early/traditional view was that absence of long term financing was a reflection of a market failure. Banks or other institutions were simply unwilling or incapable of taking risks.
- New/modern view is that prerequisites, do not exist for the development of a healthy capital market; that fundamental infrastructure does not exist.

Why is longer-term financing missing in many developing countries and Lebanon ? (2)

- Lack active secondary markets, so investors are reluctant to commit funds in the primary market.
- Lack institutions, such as pension funds, mutual funds, and insurance companies, that would demand long-term securities. If they do exist, such institutions may be required to purchase and hold mainly government securities.
- Financial securities and transactions are subject to heavy taxation

Pre-requisites for longer-term financing in Lebanon and Developing Countries

- Macroeconomic stability. Stable inflation essential to long-term bond markets
- Institutional structure is required to control moral hazard and adverse selection problems:
  - If investors can't assess the risk of the firms issuing long-term securities, adverse selection problems could be so severe that the market does not develop.
  - Managers of publicly held firms might use a firm's resources to benefit themselves, not shareholders.
  - A group of controlling shareholders could loot the assets of the firm, engage in insider transactions to divert profits, or refuse to provide information or respect the rights of minority owners.
  - Owners of firms that issue long-term debt can take actions to increase the risk of the firm, fail to maintain the value of collateral, etc

Missing infrastructure in Emerging Markets 1

- **Lack independent audits** using international auditing standards, so outside investors cannot obtain reliable information about the situation of firms they are contemplating financing or have already financed.
- **Laws, or enforcement of laws**, against fraud and misrepresentation are inadequate.Property rights are unclear so those using property cannot be sure that they legally own it.
- There is **no reliable system for registering claims** (liens) on collateral.Courts are slow to enforce debt contracts and to transfer ownership of collateral.
- **Slow and inefficient bankruptcy procedures.**

Missing infrastructure in Emerging Markets 2

- No laws ensuring that minority shareholders are treated equally to controlling shareholders, or the laws are not enforced.
- No laws limiting the ability of those in control of corporate assets from engaging in insider transactions to divert profits, loot assets, etc
- Issues are much less severe for central government debt markets where credit risk is less of a concern. Easier to develop institutional structure for government debt markets than for corporate and regional government debt markets.
- Banks also face these problems, but minimize them by developing long-term customer relationships, supplying short-term finance that must be renewed, and refusing to finance many firms.

Failure of Traditional Approaches to LT Finance 1

- **Governments established government-owned development banks**. Used to finance industrialization and public infrastructure.
- Development banks make long-term loans (often at below-market interest rates) and raise funds by issuing bonds or taking time deposits. Funding sources may include other banks, frequently under government coercion, or the government itself.
- **Development banks have had a sorry history in Lebanon and in many countries:**
  - Lent long-term with fixed interest rates and borrowed short-term. Subsequent high inflation eroded value of assets.
  - Did not use sound commercial criteria in allocating credit. Allocated credit by government directive.
  - Could not, or did not try to, collect when clients failed to make loan payments

Failure of Traditional Approaches to LT Finance 2

- Governments created specialized institutions to provide financing for housing and agriculture. These encountered many of the same problems as the development banks.
- Governments guaranteed the long-term loans made by commercial banks to specified sectors or firms. Banks were often forced into making these loans. Governments often ended up honoring the guarantee when the firms could not repay the loans. Governments had to re-capitalize banks that failed because of the bad loans.
- These problems should have been expected. Term finance is missing because the *prerequisites* are not in place to make it profitable. Forcing institutions to provide it before these prerequisites are in place will result in losses

Building Capital Markets: Address Fundamentals

- Lay foundations for macroeconomic stability. Medium & long term finance will not emerge in highly unstable settings
- Develop **legal protections** for outside equity and debt investors.
- Ensure that the legal protections are **enforced** reasonably promptly.
- Develop **clear bankruptcy procedures** that offer reasonable protections for creditors' interests and that are reasonably expeditious. These measures may require fundamental reforms in the legal system
- Develop an **active short-term securities market**, before trying to develop a longer-term bond market. Start by developing a primary and secondary market for treasury bills.

Building Capital Markets: Short to Long, Government to Corporate

- Short-term instruments are:
  - Easier to market since they have less inflation and interest rate risk.
  - Useful for open market operations and in inter-bank loan markets (in Swaps, repurchase agreements (Repos), and Reverse Repos).
- The development of a secondary market for government securities will require the creation of broker/dealers, depositories, and clearing and settlement procedures. These systems can be designed to support private-sector securities if they emerge at a later date.
- Dealers in longer-term bonds use money markets (Repos) to finance their inventories
- Once the government has developed an active short-term securities market, it can begin to extend gradually the maturity of the bonds it issues
- Facilitate the development of contractual savings institutions (social security, insurance companies) that demand long-term securities

Equity Markets

- No clear guidelines for the *timing* of development of secondary markets for equities. Most countries moving early have done so as part of a mass privatization effort
- Secondary markets for equities can be organized as Exchanges or as over-the-counter (OTC) markets.
- Exchanges are organized auction markets where buyers and sellers can interact directly or through their agents to trade a listed set of securities: ***call auctions*** or ***continuous auctions***.
- In recent years, open outcry exchanges have been increasingly replaced by computerized trading systems. These lower cost and leave an electronic trail for regulators. They are common in developing countries.
- Exchanges cover their costs by levying trading commissions, access fees, and other charges

Development of Equity Secondary Markets: Requirements 1

- Good systems for tracking ownership of registered securities and for clearing and settlement trade reliably and efficiently.
- Role of the Central Securities Depository (Midclear). [See G10 Recommendations and **Core Principles for Securities Settlement Systems**]
- 'Market makers' require access to substantial credit to finance their positions and instruments to hedge the risk that they incur in holding inventories of securities. Securities Lending & Derivative markets are needed to provide liquidity and in order to hedge.

Development of Equity Secondary Markets 2: Case for extensive regulatory oversight of securities markets

Ensure market transparency, quality & availability of information about issuing firms: more transparent markets lead to increased investor confidence & widen the perception among investors that markets are fair:

- broaden the demand for securities
- Lower the costs of trading in secondary markets.
- Increase demand and lead to higher securities prices $\Rightarrow$ lower external financing costs for firms

Development of Equity Secondary Markets 3: Case for extensive regulatory oversight of securities markets

- Securities dealers may not behave competitively and bid/ask spread will become artificially wide. In auction markets, where agents trade for their own accounts as well as customer accounts, there are dangers that agents will promote their own interests over those of their customers.
- Investors with inside information can have trading advantages.
- Markets can be manipulated with misleading information

Developing Equity Markets

- Many developing countries have organized stock markets but:
  - Low liquidity: only a small number of securities are actively traded
  - Large holders of controlling interests in publicly listed firms have no interest in trading in organized secondary markets. If they trade, they do block trades in informal OTC markets.
- To broaden demand for equities:
  - Promote development of contractual savings institutions and collective investment funds (mutual funds). *See draft Law on Collective Investment Instruments for Lebanon*
  - Relax restrictions on portfolio foreign ownership of domestic securities. However this should be done with prudence: short-term capital flows can generate instability of the financial system
  - Provide protection for investors

Investor Protection 1: Cost of Information

- People go to providers of professional services to benefit from their expertise. To provide good advice, financial service providers need substantial information from their customers: inherent asymmetry of information. Since this takes time, purchasing financial expertise is often costly.
- Because it is costly to obtain the advice, most people seek advice from only one expert. This has two implications:
  - If the expert recommends an action, they ask the expert to conduct the action for them. Since the advisor profits from both the advice service and the brokerage service, there is a clear incentive for the advisor to recommend services that the customer may not need. In the investment advisory business, this leads to "churning."
  - Most people have a small number of people or firms handle a large part of their financial wealth. Fraud or serious mistakes by one of their wealth managers, such as a bank or stockbroker, would be very costly to the consumer

Investor Protection 2: Information Asymmetry

- Consumers have difficulty judging competent experts from the incompetent since the experts, by definition, know something that the consumers do not. Even after they purchase the service, they may not be able to judge the quality of the service since, for example, investment outcomes involve large random components. Generally, only experts in a field can judge the expertise of others in the field.
- Because financial markets and institutions involve large amount of money, they tend to attract people intent upon fraud.
- Since other financial service providers are adversely affected by dishonest or incompetent financial service providers through a reputation-of-the-industry effect, it may be in their interest to establish entry restrictions or certification standards for expertise: self-regulation.
- The government may not want to rely on these measures for a variety of reasons:
  - Entry restrictions may be motivated by the desire for monopoly power
  - Consumers can face a bewildering array of certifications and not be able to discern the meaningful ones from the useless.

Investor Protection 3: Licensing & Certification

- Information asymmetry & moral hazard $\Rightarrow$ lead to demand government licensing as an entry standard. Possession of the license signifies a basic level of competency and no criminal history. This protects consumers against the worst abuses. Professional groups may use certification to impose finer distinctions of professional competence.
- Governments may also require financial service providers to meet a minimum capital standard and to be bonded as further protection against incompetence and fraud. See ***Law on Financial Intermediation*** and BDL Circulars in Lebanon.
- But, as in all areas, consumer protection is not costless:
  - government regulations with consumer protection goals can be incompetent and the regulators are subject to capture by industry interests
  - Enforcement of the regulations takes human and financial resources

Why Regulation?

- ***The self regulation argument*** : That has prevailed in many markets. In London it survived till 1986.
- ***The public law intervention argument:*** The industry is too self interested to police itself and so public law has to intervene to protect consumers among the general public.
- ***The merit vs. disclosure argument:*** Those for "merit" protection argue that they should judge the quality of the products that should be unleashed on the public. Those for "disclosure" argue that the public should judge for themselves so long as the disclosures are full.

The IOSCO Objectives and Principles of Securities Regulation

- Protection of Investors.
- Ensure fair, efficient and transparent markets.
- Reduce systemic risks in the financial system.

Protection of Investors

- From misleading, manipulative or fraudulent practices, including insider trading, and misuse of client assets.
- Ensuring full disclosure of information material to investors' decision, a key part being accounting and financial forecast information.
- Ensuring only qualified persons are allowed as intermediaries by a system of prior authorization.
- Exercising adequate supervision over intermediaries.
- Enforcing the rules effectively.

Ensuring Fair, Efficient and Transparent Markets

1. Ensuring prior authorization of market operators.
2. Ensuring fair competition in the operation of markets.
3. Ensuring timely and widespread dissemination of trading information and that such information is fully reflected in the securities prices.
4. Ensuring transparency of all trading information.

Reducing systemic risk to the Financial System

- Reduce the risk of failure of intermediaries.
- Knowing at all times the risks undertaken by firms and ensuring that they have adequate systems to manage risks.
- Ensuring that there are workable procedures to isolate single failures from contaminating the whole financial system.

IOSCO: Principles Relating to the Regulator

1. The responsibilities of the regulator should be clear and objectively stated.
2. The regulator should be operationally independent and accountable in the exercise of its functions and powers
3. The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.
4. The regulator should adopt clear and consistent regulatory processes.
5. The staff of the regulator should observe the highest professional standards including appropriate standards of confidentiality.

Principles for Self-Regulation

6. The regulatory regime should make appropriate use of Self-Regulatory Organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence, to the extent appropriate to the size and complexity of the markets.
7. SROs should be subject to the oversight of the regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.

Principles for the Enforcement of Securities Regulation

8. The regulator should have comprehensive inspection, investigation and surveillance powers.
9. The regulator should have comprehensive enforcement powers.
10. The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.

Principles for Cooperation in Regulation

11 The regulator should have authority to share both public and non-public information

12 Regulators should establish information sharing mechanisms that set out when and how they will share both public and non-public information with their domestic and foreign counterparts.

13 The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers.

Principles for Issuers

14. There should be full, timely and accurate disclosure of financial results and other information that is material to investors' decisions.
15. Holders of securities in a company should be treated in a fair and equitable manner.
16 Accounting and auditing standards should be of a high and internationally acceptable quality.

Principles for Collective Investment Schemes

17. The regulatory system should set standards for the eligibility and the regulation of those who wish to market or operate a collective investment scheme.
18. The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.
19. Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme.
20. Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.

Principles for Market Intermediaries

21 Regulation should provide for minimum entry standards for market intermediaries.

22 There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake

23 Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility for these matters.

24 There should be procedures for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk

Principles for the Secondary Market

25 The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight

26 There should be ongoing regulatory supervision of exchanges and trading systems which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.

27 Regulation should promote transparency of trading.

28 Regulation should be designed to detect and deter manipulation and other unfair trading practices.

29 Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.

30 Systems for clearing and settlement of securities transactions should be subject to regulatory oversight, and designed to ensure that they are fair, effective and efficient and that they reduce systemic risk

Necessary Conditions for Effective Securities Regulation

1. ***Openness and fairness***: In allowing competition and application of the rules.
2. ***Cost benefit assessment*** : Ensuring that the benefit of regulatory measures is proportionate to the burdens placed on the market.
3. ***Effective legal system***: With a commercial and civil code sufficient to deal with most contractual and tortuous issues and a wide range of private and public law remedies.
4. ***Effective tax system***: Effective collection and tax rates inculcating effective incentives.
5. ***Effective accounting framework***: Allowing meaning to disclosures.

Necessary Conditions for Effective Securities Regulation (Cont'd)

6. ***Effective banking system***: Allowing effective payment and custodian systems and firms to get short and long term capital.
7. ***Effective pensions and insurance systems***: Allowing firms to manage the issue of retirement of their staff and their general risks.
8. ***Effective Companies and Bankruptcy laws***: Allowing markets to nurture high standards of corporate governance and protection of shareholders and creditor rights.
9. ***Effective Dispute Resolution System***: Both within and without the judiciary

Lebanon Capital Market Laws & Regulations

- Current legislation: Stock Exchange Law and Regulations
- Central Securities Depository: Midclear
- Investment Management: Law on Brokers/Dealers
- BDL Regulations on Mutual Funds

Core Issues for the Future

- Complete legal infrastructure:
  - Enact draft "Organization of Capital Markets Law"
  - Enact Draft "Securitization Law"
  - Enact Draft "Mutual Funds Law"
- Set-up independent regulatory body: *Capital Markets Authority* to create a better regulatory environment
- Create a more complete market structure: develop active secondary capital markets
- Develop *Securities Law* to include Options & Derivatives and Securities Lending

Core Issues: Social Security, Pensions System & Privatization

- Social Security Reform & Pension System
  - Pillar I : A Publicly administered defined benefit basic retirement benefit to all workers funded though the social security tax.
  - Pillar II: A Publicly administered defined contribution retirement benefit based on contribution by workers to their own individual accounts.
  - Pillar III: Privately run retirement supplementary schemes.
- Develop the Capital Markets to allow Initial Public Offering (IPO) of Privatization Issues

Draft “Capital Markets Law”: main provisions

- Organizes the capital markets
- Independent Capital Markets Authority
- Independent, private, capital markets operators
- Central Depository
- Guarantee Fund for Investors
- Administrative Procedures
- Special Court for Capital Markets

قانون الأسواق المالي

- تعريف الاسواق المالية

@ هي الاطار المنظّم للتعامل بالصكوك وبالحقوق المالية

- **انشاء الهيئة الوطنية للأسواق المالية**

@*__من صلاحياتها__*: حماية وتشجيع الاستثمار في الاسواق المالية و وضع الانظمة العامة للاسواق المالية لاسيما النظام الذي يحدد فيه الحقوق والصكوك المالية المقبول التعامل بها في مختلف عمليات الاسواق المالية التي يشرف عليها . كما وتلقي الشكاوى والطلبات والمراجعات والاعتراضات من كل معني بالاستثمار في الصكوك والحقوق المالية المتداولة في الاسواق المالية.

هيئات السواق المالية

@ <u>البورصات</u>: تتولى ادارة البورصات شركات لبنانية مغفلة يرخص مجلس الهيئة الوطنية للأسواق المالية بتأسيسها وفقاً لنظام خاص موضوع من قبله يحدد فيه شروط الانشاء والاصول والقواعد التي يتعين على هذه الشركات العمل بمقتضاها.

@ <u>صندوق ضمان المستثمرين في الاسواق المالية:</u> انشاء صندوق تكون غايته ضمان المستثمرين في الصكوك والحقوق المالية المتداولة في الاسواق المالية المنظمة في لبنان.

@ <u>مركز حفظ ومقاصة الادوات المالية للبنان والشرق الاوسط: (شركة ميدكلير ش.م.ل)</u> يتحقق مجلس الهيئة من تقيد القائمين على ادارة شركة بالموجبات المفروضة عليهم بموجب القوانين والانظمة النافذة وله ان يطلب من الشركة اجراء التعديلات التي يراها مناسبة على نظامها الاساسي وانظمة العمل الحالية لديها.

مخالفات – منازعات

@ مجلس ادارة الهيئة

يتولى المجلس التحقق من حصول أي مخالفة وله استقصاء جميع المعلومات والادلة المتعلقة بها. اذا تبين له عدم وجود أي مخالفة يقرر حفظ الملف . اما اذا تبين له العكس فيقرر احالة الاشخاص المسؤولين عن المخالفة على "المحكمة الخاصة بالاسواق المالية ”.

@ الهيئة التأديبية

تحال الى الهيئة الاعمال التي ترتكبها الشركات والمؤسسات والهيئات المنتسبة الى الاسواق المالية المنظمة .يمكن "للهيئة التأديبية" ان تنزل بالمعنيين العقوبات الادارية التالية :

التنبيه ، تعليق العمل بصورة مؤقتة بالبورصة التي تشرف عليها الادارة المخالفة او اقفالها نهائياً ، المنع المؤقت او الدائم من القيام ببعض العمليات ، تعليق التداول بصك او بحق مالي او شطبه من التداول ،الخ.... ولا يحول ذلك دون تطبيق الغرامات والعقوبات الجزائية على المخالفين.

@ المحكمة الخاصة بالاسواق المالية

تنظر "المحكمة الخاصة بالاسواق المالية "في النزاعات الناشئة عن العمليات المجراة في الاسواق المالية والتي لم تلحظ انظمة التعامل في هذه الاسواق وسائل تسويتها وفي المخالفات للقانون الحاضر والانظمة الصادرة بالاستناد اليه والتي لا تدخل ضمن اختصاص "الهيئة التأديبية" .

مشروع قانون هيئات الاستثمار الجماعي بالقيم المنقولة وسائر الأدوات المالية

تعريف الهيئة: هي هيئة الاستثمار الجماعي بالقيم المنقولة وسائر الادوات المالية التي تكون غايتها محصورة بالاستثمار الجماعي بالقيم المنقولة وسائر الادوات المالية للاموال المتلقاة من العموم على ان يتم هذا التوظيف وفقا لمبدأ توزيع المخاطر بحيث تتمثّل "الهيئة" بشكل "صندوق أو شركة

.@ صناديق الاستثمار

.*لا يسأل مالكو الحصص عن عن ديون الصندوق الا بقدر ما قدموه من مال.

*ينشئ المدير الصندوق ويضع نظام عمله.

*تناط ادارة "الصندوق" بشركات متخصصة

- *يصدر "المدير" اما شهادات اسمية واما سندات اسمية او لحامله تمثل حصة او مجموعة حصص من "الصندوق

*تقدّر القيمة البيعية للحصة على اساس القيم والادوات المالية المكونة "للصندوق" :

- أـ فاذا كانت مدرجة في احد الاسواق المالية المنظمة فتقيّم وفق آخر
- سعر معلن .
- بـ اما بالنسبة للقيم والادوات المالية غير المدرجة في الاسواق المالية
- المنظمة ، او التي تم تعليق سعرها مؤقتاً في الاسواق المالية المنظمة فإن تقييمها يتم على اساس قيمة البيع المحتملة التي يقتضي تقديرها
- وفقا للقواعد الدولية للمحاسبة ولاسيما مبدأ الحيطة والحذر .

*لا يجوز لمالكي الحصص او لدائنيهم طلب اجراء قسمة "الصندوق" او تصفيته
.

* يمكن "للصندوق" اعادة شراء الحصص التي اصدرها بناء على طلب اي مالك حصة اذا تضمن نظام عمله امكانية ذلك .

*يجب ان يتضمن نظام "الصندوق" ، على الاقل ، المعلومات التالية :

أ -تسمية "الصندوق" و"المدير" و"الوديع" ومدة عمل "الصندوق" .

ب - السياسة الاستثمارية التي ستتبع

ج - سياسة توزيع المخاطر .

د - مصاريف واتعاب "للمدير".

هـ - الاحكام المتعلقة بكيفية نشر المعلومات .

و - تواريخ اقفال حسابات "الصندوق" .

ز - حالات حل "الصندوق".

ح - طرق تعديل نظام "الصندوق" .

ط - اسس وقواعد اصدار الحصص .

ي - كيفية اعادة شراء الحصص.

ك - حجم المخاطر والاعباء التي تترافق مع التوظيف المعروض .

*يعمل "المدير" باسمه الخاص ويتوجب عليه ان يشير الى انه يعمل لحساب "الصندوق" .

*يجب ان تودع موجودات "الصندوق" لدى "وديع" تتوفر فيه الشروط المفروضة من مصرف لبنان

*من ضمن أعمال الوديع التأكد من ان عمليات الاصدار والبيع واعادة الشراء والغاء الحصص المنفذة لصالح "الصندوق" تتم وفقاً للقانون او لنظام "الصندوق" .

*- يصبح "الصندوق" في حالة تصفية اذا تحققت اي من الحالات التالية :

أ - عند انتهاء المدة المحددة في نظام "الصندوق" .

ب - عند توقف اعمال اي من "المدير" او "الوديع".

ج - في حال اعلان افلاس "المدير".

د - في حال تدنت القيمة السوقية لحصص " الصندوق" عما يعادل 75% من هذه القيمة في بداية السنة المالية.

@شركات الاستثمار ذات الرأسمال المتغير المتخصصة بالتوظيف بالقيم المنقولة وسائر الادوات المالية

*غايتها محصورة بتوظيف اموالها بالقيم المنقولة وسائر الادوات المالية بهدف توزيع مخاطر الاستثمار حماية لتوظيفات مساهميها .

*اسهمها اسمية وقابلة للتداول .

*يحظر نظامها الاساسي على المساهمين القدامى من اصحاب الاسهم الموجودة التذرع باي حق افضلية ، في حال قيام الشركة باصدار لاسهم جديدة او باعادة شراء اسهمها .

*يحدد المجلس المركزي لمصرف لبنان الحد الادنى لرأسمال هذه الشركات

* يجب ان تتوفر في رئيس مجلس ادارة "الشركة" و/او المدير العام الشروط المفروضة من مصرف لبنان.

-

قانون تنظيم مهنة الوساطة المالية

@ تعريفها: تعتبر مؤسسات وساطة مالية الشركات المغفلة اللبنانية وفروع مؤسسات الوساطة المالية الاجنبية التي يكون موضوعها الاساسي القيام باعمال الوساطة المالية التالية:

#عمليات فورية ولاجل ومستقبلية وعمليات على حقوق الخيار والمقايضة وعمليات على سائر الادوات المشتقة او المركبة في كل ما يتعلق :

- بالاسهم وسائر القيم المنقولة والاوراق المالية كافة بما فيها سندات الدين والسندات الحكومية .
- بالاوراق التجارية .
- بالعملات .
- بالمعادن الثمينة .
- بالسلع .

عمليات على سائر الادوات المالية المطروحة للتداول .

عمليات ادارة المحافظ المالية

*يتوجب على مؤسسات الوساطة المالية الحصول على ترخيص مسبق من مصرف لبنان قبل المباشرة بالعمل.

*يجب ان تكون اسهم مؤسسات الوساطة المالية اللبنانية كافة اسهما اسمية تعود ملكية ثلثها على الاقل الى اشخاص لبنانيين بمفهوم القوانين والانظمة المتعلقة بتنظيم التداول باسهم المصارف اللبنانية .

*على مؤسسات الوساطة المالية ان تطلب تسجيلها لدى مصرف لبنان الذي ينشر لائحة بهذه المؤسسات المسجلة .

*يتوجب على مؤسسات الوساطة المالية كافة العاملة في لبنان:

- تزويد زبائنها شخصيا ودوريا، بكشوفات لحساباتهم لديها وبالبيانات العائدة لهذه الحسابات.
- اعلام زبائنها بمخاطر العمليات المشتقة او المركبة .
- التزام المحافظة على سرية المعلومات .

*يحظر على مؤسسات الوساطة المالية العاملة في لبنان :

- تلقي الودائع ، غير انه يمكنها اعطاء تسهيلات مرتبطة بالعمليات التي تنفذها شرط اثبات شروطها بعقد خطي صريح ومفصل .
- فتح حسابات صكوك وحقوق مالية مشتركة بينها وبين زبائنها .
- دمج الصكوك والحقوق المالية المودعة في الحسابات العائدة لزبائنها لديها او لدى الغير الا بعد موافقة خطية صريحة من هؤلاء الزبائن .

قانون تطوير السوق المالية والعقود الائتمانية

@ تعريف العقود الائتمانية:

-عقد الائتمان عقد يولي بموجبه شخص طبيعي أو معنوي، يدعى المنشئ، شخصا يدعى المؤتمن حق الادارة والتصرف، لاجل محدد، بحقوق او بأموال منقولة تدعى الذمة الائتمانية .

- يعمل المؤتمن باسمه وانما لحساب المنشئ وعلى مسؤولية هذا الاخير .
- يجب على المؤتمن ان يصرح عن صفته هذه لكل شخص ثالث يتعاقد معه دون ان يفصح عن اسم المنشئ .
- يجب اشهار صفة المؤتمن من دون الافصاح عن اسم المنشئ او اسم المستفيد.
- يمكن تكوين الذمة الائتمانية لحساب شخص ثالث، يدعى المستفيد .

*تشكل الذمة الائتمانية كتلة مستقلة ضمن ذمة المؤتمن المالية وتدون خارج ميزانيته .

*يلزم المؤتمن بقيد كل ذمة ائتمانية في محاسبته بشكل يميزها عن أي حساب وعن أية ذمة ائتمانية أخرى.

*لا تقبل الذمم الائتمانية الحجز من قبل دائني المؤتمن .

*تبقى الذمم الائتمانية خارجة عن كتلة اموال المؤتمن في حال اعلان توقفه عن الدفع او افلاسه .

*تخضع عقود الائتمان لاحكام عقد الوكالة في كل ما لا يخالف احكام هذا القانون .

* يجب ان تكون جميع عقود الائتمان وتعديلاتها خطية وصريحة تحت طائلة البطلان المطلق.

*يحق للمصارف وللمؤسسات المالية وسائر المؤسسات المرخص لها من مصرف لبنان والمسجلة لديه، مزاولة العمليات الائتمانية وفقا لاحكام هذا القانون .

قانون انشاء وديع مركزي

*يقوم بصورة حصرية، مركز ومقاصة الادوات المالية للبنان والشرق الاوسط – MIDCLEAR، الشركة المغفلة اللبنانية التي يساهم مصرف لبنان في رأسمالها، بدور الوديع المركزي للصكوك المالية والقيم المنقولة المقبولة لديه او المتداولة في الاسواق المالية المنظمة في لبنان .

*يقوم الوديع المركزي ، بصورة رئيسية ، لصالح المنتسبين اليه ، بالعمليات الاتية :

- حفظ جميع الصكوك المالية والقيم المنقولة المقبولة لديه
- فتح حسابات صكوك مالية مصدرة بشكل للحامل .
- اجراء عمليات التسوية والمقاصة بين الصكوك المالية والقيم المنقولة المتداولة .

•

– تسهيل عمليات التداول بشأن هذه الصكوك المالية والقيم المنقولة.

– اعارة الصكوك المالية والقيم المنقولة المودعة لديه والمدرجة في الاسواق المالية الاجنبية وذلك بالوكالة عن مالكيها وبناء على تفويض خطي صريح مسبق بذلك.

*يمكن للمؤسسات التي تتعاطى الوساطة المالية ان تنتسب للوديع المركزي لاجل اتمام العمليات الملحوظة في هذا القانون ولا سيما لتسهيل عمليات التداول بالصكوك المالية والقيم المنقولة عن طريق التحويل من حساب صكوك مالية الى حساب صكوك مالية اخر.

*يفتح الوديع المركزي حسابات باسم المنتسبين اليه ويقيد فيها الصكوك المالية والقيم المنقولة التي يتسلمها .

*لا يمكن للمؤسسات المنتسبة الى الوديع المركزي ان تودع في حساباتها سوى الصكوك المالية والقيم المنقولة لحامله التي لم يعارض مالكوها اعادة تسليمها لهم بارقام مختلفة.

*يحظر القاء الحجز لدى الوديع المركزي في حسابات الصكوك المالية والقيم المنقولة المفتوحة لديه.

*في حال افلاس احد المنتسبين يحق لمالكي الصكوك المالية والقيم المنقولة المودعة لدى المنتسب ممارسة حقهم بالاسترداد وفقا لاحكام قانون التجارة ولا سيما المادة 608 منه.

* يخضع الوديع المركزي لموجبات السرية المهنية