



25 JUNE 2021



Megat Hizaini Hassan
Partner
Islamic Finance
T: +603 6208 5863
E: mh@lh-ag.com



Nurul Husna Ahmad
Senior Associate
Islamic Finance
T: +603 6208 5895
E: nha@lh-ag.com



Nurul Afrina Zulkifli
Associate
Islamic Finance
T: +603 6208 5880
E: naz@lh-ag.com

Islamic E-Money under the New Bank Negara Malaysia Regulations

Electronic money (**e-money**), a payment instrument recognised under the Financial Services Act 2013 (**FSA**) and the Islamic Financial Services Act 2013 (**IFSA**), has gained popularity particularly in view of the increased use of e-wallets for online retail transactions in Malaysia. This update deals with Shariah-compliant e-money, as specifically outlined in the recent Bank Negara Malaysia exposure draft of the policy document on e-money.

Shariah-compliant e-money is recognised by the Shariah Advisory Council (**SAC**) of Bank Negara Malaysia pursuant to a ruling issued last year (**SAC E-Money Ruling**), the gist of which is as follows:

- E-money is a permissible payment instrument under the Shariah, provided that such a transaction is structured based on the appropriate Shariah contract(s);¹
- the agency contract (*wakalah*) is an applicable Shariah contract to govern the rights and obligations of the contracting parties in an e-money transaction, whereby the *wakalah* is structured in compliance with the considerations as determined by the SAC, which include the following:
 - the approved e-money issuer (**EMI**) takes the role as agent of the user to make payments (*wakil bi ad-daf'i*) to merchants;
 - the funds received from the user shall be kept in a Shariah-compliant trust account or a dedicated deposit account;²
 - such funds are used to settle payments to merchants or to refund to the user;

¹ The Shariah Advisory Council on Bank Negara Malaysia (SAC) Ruling on E-Money as a Shariah-Compliant Payment Instrument, SAC's 201st Meeting and 26th Special Meeting on 29 and 30 January 2020

² IFSA, s 137

- the EMI is also allowed to invest the funds received from the user and subsequently utilise any return generated from the investment as this is regarded as a loan (*qard*) given from the user to the EMI.³

Recent Electronic Money Exposure Draft by BNM

On 11 June 2021, Bank Negara Malaysia (**BNM**) issued an Electronic-Money Exposure Draft (**E-Money Exposure Draft**) as part of its continuous effort to safeguard the interest of e-money users and to ensure that e-money is a safe and a reliable payment instrument. It is intended to replace the existing guidelines on e-money issued by BNM in 2008. The E-Money Exposure Draft also deals with Shariah-compliant e-money, which it defines as:

“... a designated Islamic payment instrument that is structured based on appropriate Shariah contracts, whether tangible or intangible, that stores funds electronically in exchange of funds paid to the issuer and is able to be used as a means of making payment to any person other than the issuer”.

Shariah governance requirements under E-Money Exposure Draft

Part B of the E-Money Exposure Draft sets out a list of comprehensive requirements for an EMI to establish adequate governance arrangements which are effective and transparent to ensure the integrity of its e-money scheme. An EMI that offers Shariah-compliant e-money (**Shariah EMI**) needs to ensure compliance (among others) with the following Shariah governance requirements:

- compliance with Shariah: such Shariah EMI must comply with the SAC E-Money Ruling and the relevant Shariah standards as issued by the BNM;⁴
- Shariah responsibility of the board of directors and senior management: the Shariah EMI’s board shall ensure overall Shariah compliance of the Shariah-compliant e-money, while the Shariah EMI’s senior management shall ensure that the operationalisation of the Shariah-compliant e-money complies with the Shariah at all times;⁵
- appointment of Shariah adviser: a Shariah EMI must appoint a qualified Shariah adviser who will be responsible for providing objective and sound advice to ensure the Shariah EMI complies with Shariah principles at all times.⁶ Such an adviser can take the form of an individual, a company or an existing Shariah committee within its group affiliate with

³ Paragraph 10.2 of the Guideline on Electronic Money issued by BNM dated 31 July 2008

⁴ Paragraph 12.1 of the E-Money Exposure Draft

⁵ Paragraphs 12.2 and 12.3 of the E-Money Exposure Draft

⁶ Paragraph 12.4 of the E-Money Exposure Draft

qualifications in Shariah law as well as reasonable knowledge and experience in Islamic finance. Further, a Shariah EMI must notify the BNM of the appointment of the Shariah adviser within 14 days of such appointment.⁷

Conclusion

E-money has emerged as one of the preferred choices for payment, by both individual customers and corporate customers. With the SAC E-Money Ruling issued last year and the BNM E-Money Exposure Draft that hopefully will soon be put in place, any EMI can thus offer Shariah-compliant e-money in compliance with Shariah and regulatory requirements, as the position is clear that e-money is ruled as a permissible payment instrument under the Shariah, provided that it employs the appropriate Shariah contract and is in compliance with the requirements of BNM.

Nurul Husna Ahmad (nha@lh-ag.com) and
Nurul Afrina Zulkifli (naz@lh-ag.com)

If you have any queries on Islamic finance, please contact senior associate Nurul Husna Ahmad, associate Nurul Afrina Zulkifli or team partner **[Megat Hizaini Hassan](mailto:mh@lh-ag.com)** (mh@lh-ag.com).

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia

T +603 6208 5888
F +603 6201 0122/0136
E enquiry@lh-ag.com
W www.lh-ag.com

Published by the Islamic Finance Practice

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