

**The Shariah Advisory Council of 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**

Part I: SAC Ruling, Its Effective Date and Applicability

Pursuant to section 52 of the Central Bank of Malaysia Act 2009, the SAC has made the following rulings:

Electronic money (e-money) is a permissible payment instrument under Shariah, provided that the e-money has to be structured based on appropriate Shariah contract(s) to preserve the rights and obligations of the contracting parties.

One of the applicable Shariah contracts for e-money is the agency contract (*wakalah*), whereby the approved issuer acts as an agent to make payment on behalf of the user (*wakil bi ad-daf'i*) to the merchant. Therefore, the funds received from the user shall be placed in a Shariah compliant trust account or a dedicated deposit account as required pursuant to section 137 of the Islamic Financial Services Act 2013 (IFSA). An approved issuer is required to comply with the Guideline on Electronic Money (the Guideline) issued by Bank Negara Malaysia (the Bank) dated 31 July 2008 (including revisions from time to time). This includes, amongst others, the requirement on utilisation of the funds for investment purpose and any return generated belongs to the approved issuer,¹ subject to the condition set forth in the Guideline. In this regard, the funds may be construed as a form of loan (*qard*) from the user to the approved issuer.

Since the approved issuer acts merely as an agent to facilitate payment on behalf of the user to the merchant, it is the user's responsibility to ensure that the e-money is used for Shariah compliant transactions.

This ruling comes into effect upon publication of this SAC ruling on the Bank's website on XX May 2020 and is applicable to the following:

- (a) approved issuers of Shariah compliant e-money under the IFSA; and
- (b) approved issuers of e-money under the Financial Services Act 2013 (FSA) approved under section 15(1)(e) of the FSA to issue Shariah compliant e-money, (collectively known as "approved issuers").

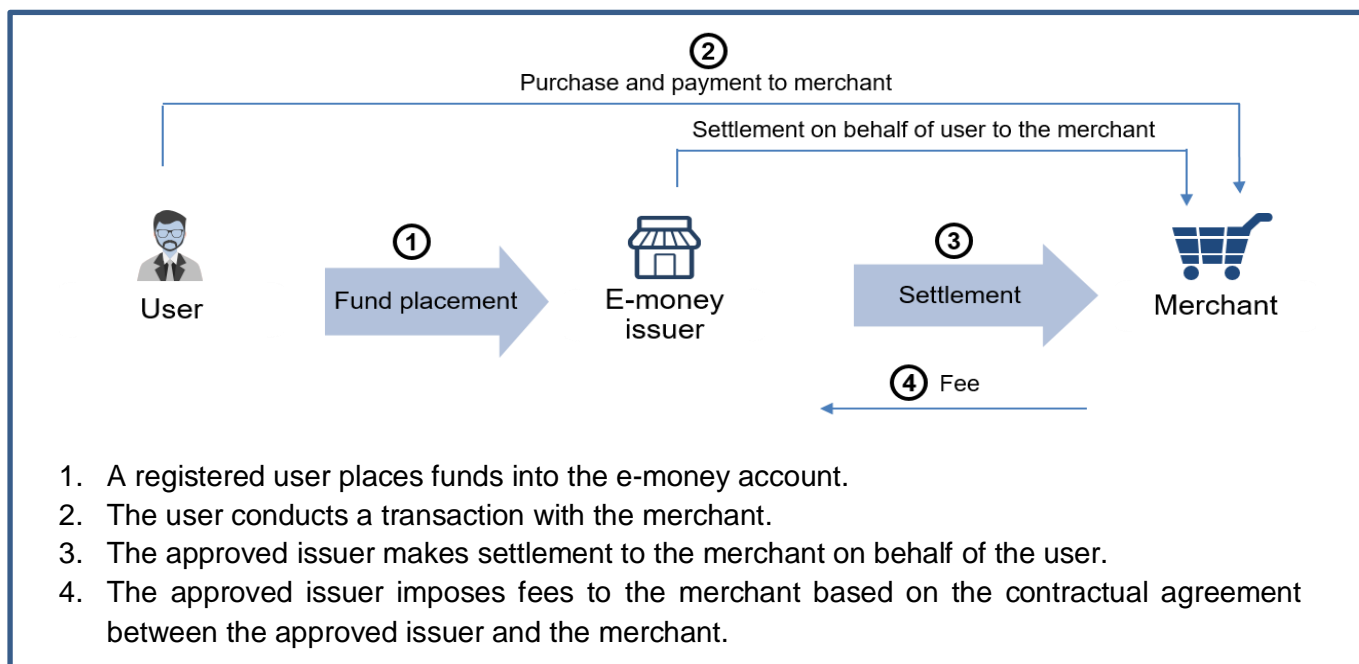
In line with sections 28(1) and (2) IFSA, for the purpose of issuing Shariah compliant e-money, the approved issuers are required to comply with this ruling as a compliance with any ruling of the SAC in respect of any particular aim and operation, business, affair or activity of such approved issuers shall be deemed to be a compliance with Shariah in so far as it relates to such business.

¹ Paragraph 10.2 of Guideline on Electronic Money.

Part II: Background

E-money is one of the payment instruments under FSA and IFSA. As a payment instrument, e-money allows a seamless and cashless transaction through prepaid card or electronic wallet (e-wallet) application. The prevalent use of this instrument and the broad acceptance by the retail community raises the question on the extent to which the operationalisation of e-money fulfils Shariah principles. Briefly, the existing e-money offerings operate as per the following structure:

Illustration: Summary of Operationalisation Structure of E-Money



Shariah issue

Based on the above structure, several issues were discussed by the SAC:

1. What are the appropriate Shariah contracts to govern the contractual relationship between the contracting parties?
2. How should the approved issuer manage the funds placed by the user? Are approved issuers allowed to utilise the funds?
3. Can the approved issuer reward the user?
4. What is the status of payment for transactions involving Shariah non-compliant products?

The SAC's discussion is premised on the distinctive mandate and objective of e-money as a payment instrument, as compared to the mandate of financial institutions as financial intermediaries offering a wide range of financial services.

Part III: Key Discussion

Issue 1: Underlying Shariah contracts between the contracting parties

1(a). Shariah contract between the user and the approved issuer

- In ascertaining the applicable Shariah contracts for issue 1(a), the SAC has considered the following:
 - the role of approved issuer to intermediate payment between the user and the merchant;
 - the funds placed by the user is intended for payment purposes. The funds are kept in a trust account/dedicated deposit account and are managed by the approved issuer; and
 - under the Guideline, the approved issuer is only allowed to:
 - ✓ issue e-money as a payment instrument; and
 - ✓ invest the funds placed in the trust account/dedicated deposit account and thereby use the revenue generated from the investment.
- Based on the above consideration, the SAC is of the view that *wakalah* appears to be one of the suitable Shariah contract that appropriately governs the rights and obligations of the contracting parties in an e-money transaction. The SAC ruled that the application of *wakalah* in the e-money transaction may be structured as follows:
 - the approved issuer offers agency services to make settlement on behalf of the user to the merchant;
 - the user places the fund in a registered e-money account with the approved issuer; and
 - the approved issuer establishes trust account/dedicated deposit account to store funds placed by the user, and shall be used for settlement to merchant or refund to the user.

1(b). Shariah contract between the approved issuer and the merchant

- For the transaction between the approved issuer and the merchant in the current operating structure, the SAC ruled that the contract of services with fee (*ijarah al-khadamat*) or the contract of incentives (*ju`alah*) may be the appropriate *fiqh* adaptation (*takyif fiqhi*).

Issue 2: Fund management by the approved issuer

- For Shariah compliant e-money, the SAC ruled that the approved issuer must place the funds received from the user in a Shariah compliant trust account/dedicated deposit account.
- Under the Guideline, the approved issuer is responsible to manage prudently the funds received from the user. The approved issuer is also allowed to invest the funds and subsequently utilises the return. This can be construed as a loan (*qard*) from the user to the approved issuer.

Issue 3: Imminent presumption of *qard jarra naf'an* in the practice of reward offerings

- The approved issuer may offer rewards for various reasons such as upon subscription to their service, topping up the balance or utilisation of e-money to make payments to merchants. Since the funds received from the user may be construed as *qard* from the user to the approved issuer, it raises the question on whether the practice of offering rewards contravenes Shariah principle that prohibits any benefits to accrue to the lender (*qard jarra naf'an*).

- The SAC ruled that there is no issue of *qard jarra naf'an* in the practice of rewards offered by the approved issuer based on the following considerations:
 - the *qard* contract is only a supplementary contract, which is different from the loan contract for deposit account offered by banking institutions;
 - no inter-conditionality between the funds placed by the user and rewards given by the approved issuer;
 - the rewards neither intended nor targeted to reward the amount placed by the user, but rather intended as a temporary marketing strategy to expand customer participation;
 - the Guideline expressly prohibits approved issuers from issuing e-money at a monetary value that is greater than the amount received;² and
 - the practice (*`urf*) in respect of utilisation of the funds by the approved issuers creates a differentiation from normal banking business, which renders the *qard* contract as a supplementary contract.

Issue 4: Utilisation of e-money to transact with Shariah non-compliant merchants

- The SAC deliberated this issue in the following context:
 - e-money as a Shariah compliant payment instrument; or
 - approved issuer that wishes to be a Shariah compliant approved issuer.
- For any transaction involving Shariah non-compliant merchants, the status of e-money as a Shariah compliant payment instrument is not affected, based on the following considerations:
 - similar to cash, e-money is neutral, except for a fact that the monetary value is stored electronically; and
 - it is the user's responsibility to ensure e-money is being utilised for Shariah compliant transactions.
- Notwithstanding the above, any approved issuer that is approved under IFSA shall observe the following:
 - no transaction with Shariah non-compliant merchants. However, the SAC ruled that in exceptional cases as determined by the qualified Shariah advisor of an approved issuer, such approved issuer shall observe the conditions specified by the qualified Shariah advisor; and
 - no product bundling or cross-selling involving Shariah non-compliant products.

² Paragraph 13.1 of Guideline on Electronic Money.

Part IV: Basis of Ruling

Permissibility to embrace technological advances as means

- Technological advancement has paved the way for digital development to enable seamless and efficient way to do commercial transactions. In this regard, *Majma` Fiqh al-Islami* allows commercial transactions to be concluded through modern communication tools or devices³ given that technology, as a means of transaction, is neutral and is permissible to use. This is in line with the following *fiqh* legal maxim:

الأصل الصحة

“The original state (of thing) is permissible.”⁴

Permissibility for the combination of Shariah contracts

- Collective use of several Shariah contracts in one single product⁵ is allowed provided that each contract is permissible by Shariah and there is no clear Shariah injunction on its prohibition.⁶ However, the collective use of contracts shall observe the following:
 - i. No expressed prohibition on the collective use of the Shariah contracts such as restriction for the combination of sales and loan contracts (*bai` wa salaaf*) and does not lead to *riba (zari`ah ila riba)* such as the combination of two exchange contracts (*bai` `inah*); and
 - ii. No contradiction in the Shariah principle governing each contract, such as *hibah* to a recipient and subsequent sale to the same recipient.
- The collective use of Shariah contracts is intended to fulfil the intention and the needs of the contracting parties as well as to properly reflect the actual operating mechanism of a particular product. The collective use of the Shariah contracts is deemed as an innominated contract in the classical text (*`uqud ghair musamma*)⁷ that promotes innovation in Islamic finance, consistent with the following *fiqh* legal maxim:

الأصل في المعاملات الحل حتى يقوم دليل على التحريم

“The original rule in muamalat is permissibility, unless there is an indication that prohibits it.”⁸

- The intended outcome of a particular contract is subject to the fulfillment of the pre-agreed terms and conditions that are in accordance with Shariah principles as per the following legal maxim:

³ *Qarar Majma` Fiqh al-Islami*, 6th Mu`tamar, 14 – 20 March 1990, Jeddah.

⁴ Al-Ansari, *Asna al-Matalib fi Syarh Rawd al-Talib*, Dar al-Kutub al-`Ilmiyyah, 2000, j. 2, pg. 2154.

⁵ This view is consistent with the decision of the SAC at its 140th Meeting on 28 October 2013 and 166th Meeting on 23 February 2016 that resolves on permissibility to combine several Shariah contracts in one master agreement.

⁶ Hasan Ali al-Syazili, *Ijtima` al-`Uqud al-Mukhtalifah fi `Aqd Wahid*, in *A`maal al-Nadwah al-Fiqhiyyah al-Khamisah li Bait Tamwil al-Kuwaiti*, Bait al-Tamwil al-Kuwaiti, 1998, pg. 506.

⁷ Mustafa al-Zarqa`, *al-Madkhal al-Fiqhi al-`Am*, Dar al-Qalam, Damascus, 2004, pg. 569-570

⁸ Ibnu Uthaimin, *Al-Syarh al-Mumti` `ala Zad al-Mustaqni*, Dar Ibni al-Jauzi, j. 8, pg. 241.

الأصل رضى المتعاقدين ونتيجته هي ما التزمه بالتعاقد

“The original rule of contract is mutual consent or agreement by both contracting parties and the consequence of a contract is based on (rights and responsibilities) agreed in the contract.”⁹

Part V: Implication of the SAC Ruling

- The ruling serves as guidance for any approved issuer that intends to offer Shariah compliant e-money. Approved issuers are encouraged to educate their users on the essence of the Shariah compliant e-money product to avoid misunderstanding of the Shariah ruling.

⁹ Ahmad al-Zarqa, *Syarh al-Qawa'id al-Fiqhiyyah*, Dar al-Qalam, 1989, pg. 482.