

E-Money As A Shariah-Compliant Payment Instrument

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Electronic money, widely known as e-money, is a payment instrument recognised under the Financial Services Act 2013 (FSA) and the Islamic Financial Services Act 2013 (IFSA). The usage of e-money has evolved significantly, given the increased usage of e-wallets for online retail transactions in Malaysia. In this article, the authors highlight Shariah-compliant e-money, as specifically outlined in the recent Bank Negara Malaysia policy document on e-money.

Shariah-compliant e-money is recognised by the Shariah Advisory Council (SAC) of Bank Negara Malaysia (BNM) pursuant to a ruling issued in 2020¹ (SAC E-Money Ruling) which is applicable to the approved issuers of Shariah-compliant e-money under the IFSA and Section 15(1)(e) of the FSA. The SAC has made a ruling that e-money is a permissible payment instrument under Shariah, provided that such a transaction is structured based on the appropriate Shariah contract(s). One of the applicable Shariah contracts for e-money is the agency contract (wakalah), whereby the approved e-money issuer (EMI) acts as an agent of the user to make payments (wakil bi ad-daf'i) to the merchant.

The funds received from the user must be kept in a Shariah-compliant trust account or a dedicated deposit account.² Such funds, being construed as a form of loan (qard) from the user to EMI, may be utilised by the EMI for investment purpose and subsequently entitled to any return generated from the investment.

¹ SAC's 201st Meeting and 26th Special Meeting on 29 and 30 January 2020.

² IFSA 2013, s 137.



BNM Policy Document on Electronic Money (E-Money)

BNM recently issued a policy document on Electronic Money (E-Money) (PD), which supersedes the BNM Guidelines on Electronic Money issued in 2008. The issuance of the PD was preceded by the circulation of an exposure draft for public written feedback in 2021. The PD takes effect on December 30, 2022, except for certain provisions that will become effective on December 30, 2023.³

In respect of Islamic e-money,⁴ the PD provides that EMI must ensure that such e-money complies with the rulings of the SAC of BNM and relevant Shariah standards.

To ensure compliance with Shariah at all times, the EMI's board and senior management must appoint a qualified individual, company or (if applicable) an existing Shariah committee within their group as a Shariah adviser. The PD includes further requirements for the appointment of the Shariah adviser of such Islamic e-money.

In addition, the PD introduced various requirements for EMI operating in Malaysia, which are outlined below:

a) Categories of E-Money Issuers⁵

EMI can be classified into the following categories:

(i) Eligible EMI: EMI that have a substantial market presence and meet the criteria set out in Appendix 1 of the PD. They are subject to higher regulatory expectations.

(ii) Standard EMI: the default category of EMI that is approved under Section 11 or Section 15(1)(e) of the Financial Services Act 2013 (FSA) or Section 11 of the Islamic Financial Services Act 2013 (IFSA), but do not meet the criteria for eligible EMI.

³ Policy Document on Electronic Money (E-Money) 2022, Para 7.1.

⁴ Policy Document on Electronic Money (E-Money) 2022, Para 12.

⁵ Policy Document on Electronic Money (E-Money) 2022, Appendix 1 and 2, Para 5.

(iii) Limited Purpose EMI: standard EMI whose business meets the criteria of limited purpose e-money listed in Appendix 2 of the PD.

Non-Bank EMI – though not a separate category, the PD also introduces the concept of “non-bank EMI”, which refers to EMIs that are not licensed banks, licensed Islamic banks, or prescribed institutions/ development financial institutions.⁶

b) Board of Directors⁷

An EMI must only appoint as directors such individuals who are not disqualified under Section 59(1) of the FSA or Section 68(1) of the IFSA and have been assessed as meeting the “fit and proper” requirements specified by BNM. In addition, the EMI’s director must not be an active politician. The PD includes provisions on the composition of the board, including a requirement that at least two-thirds of board members be non-executive directors, and for eligible EMIs, at least one-third be independent directors.

c) Minimum Capital Funds for Non-Bank EMI⁸

A non-bank EMI is required to maintain a minimum amount of capital funds as prescribed by BNM under the FSA and the IFSA. The required capital funds are to be computed using a formula provided in Appendix 4 of the PD. To take into account the initial investments, particularly technology investments, BNM has excluded intangible assets such as goodwill, licences and intellectual properties from the computation of minimum capital fund.



This treatment is consistent with BNM’s approach to capital requirements for other regulated entities.

d) Safeguarding of Funds⁹

A non-bank EMI must deposit the collected funds in a trust account with a banking institution, and these funds can only be used for refunding customers, paying merchants for settled transactions conducted by customers, or paying another e-money account or bank account resulting from a credit transfer transaction conducted by the customer. Furthermore, a non-bank EMI with total outstanding e-money liabilities of less than RM1 million may safeguard the collected funds exchanged for e-money issued using a bank guarantee or other methods, provided that the effectiveness of the method is equivalent to a bank guarantee or trust account and has received BNM’s prior written approval.

To further safeguard customers’ funds, a non-bank EMI must ensure that the funds in the trust account are always sufficient to cover the total outstanding e-money liabilities. If the total outstanding e-money liabilities exceed the funds in the trust account, a non-bank EMI is encouraged to deposit additional funds into the trust account within one working day.

A non-bank EMI must also have sufficient liquidity for its daily operations, and at a minimum, the PD requires an EMI to maintain a liquidity ratio of one.

e) Outsourcing Arrangement¹⁰

According to the PD, EMIs must obtain BNM’s prior written approval before entering into a new material outsourcing arrangement or making material changes to an existing one. The PD outlines several considerations for EMIs to determine whether an outsourcing arrangement is considered material.

⁶ Policy Document on Electronic Money (E-Money) 2022, Para 5.

⁷ Policy Document on Electronic Money (E-Money) 2022, Para 9.

⁸ Policy Document on Electronic Money (E-Money) 2022, Para 15.

⁹ Policy Document on Electronic Money (E-Money) 2022, Para 16.

¹⁰ Policy Document on Electronic Money (E-Money) 2022, Para 18.



f) Account management¹¹

EMIs must obtain BNM's prior written approval if there is an increase in wallet limits that results in the limit exceeding RM5,000 or if there are changes to the functionality and product features of the e-money. If such increase in wallet limit is below the RM5,000 threshold and does not involve changes to the functionality and product features of the e-money, EMIs must notify BNM at least 14 days prior to such increase. A similar condition applies to "white labelling" arrangements entered into by EMIs.

E-money balance refunds to customer accounts must be made within 14 days (for normal cases) or 30 days (for complex cases) from the date the claim is made.

g) Cross-selling financial products or services¹²

A non-bank EMI is prohibited from using its e-money platform or system to promote or cross-sell any financial products or services except with BNM's prior approval. Any arrangements to promote or cross-sell any financial products or services must be reviewed and approved by EMI's board before being submitted to BNM for approval. A non-bank EMI must communicate clearly to its customers the demarcation of roles between the non-bank EMI in respect of its e-money business and the provider in respect of any promoted or cross-sold products or services on the non-bank EMI's e-money platform or system.

h) Regulatory process¹³

EMIs must seek BNM's prior written approval for any significant proposed changes to its e-money business model or changes that alter the risk profile of its business model. In addition, the PD requires an EMI to notify BNM before establishing or relocating its offices in or outside Malaysia, and before appointing an auditor, chairman, director, or CEO. This notification must be submitted to BNM 14 days prior in advance of these events.

In addition, an EMI is required to be a member of an approved Financial Ombudsman Scheme, and membership must begin on the date such EMI begins operation.

The gradual substitution of the traditional method of payment with an electronic payment system via e-money signifies the rapid evolution of the digitalisation of financial services in the world today. The issuance of the PD together with the SAC E-Money Ruling have been highly anticipated and are necessary to ensure the ongoing security and reliability of Shariah-compliant e-money in Malaysia, 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.

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¹¹ Policy Document on Electronic Money (E-Money) 2022, *Paras 20 and 21.*

¹² Policy Document on Electronic Money (E-Money) 2022, *Para 22.*

¹³ Policy Document on Electronic Money (E-Money) 2022, *Paras 32 and 34.*