

ISSUANCE REQUIREMENTS OF ELECTRONIC MONEY WITHIN THE FRAMEWORK OF THE ISLAMIC BANKING SYSTEM

مقتضيات إصدار النقود الالكترونية في إطار النظام المصرفي الاسلامي

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Abstract:

Electronic money is an advanced form of payment instrument. It is considered as a means of obtaining goods and services as an acceptable store of value. The role of the state represented by the central bank as legally authorized to issue money. This new form, which requires to take into consideration a number of legislative and regulatory rules Induced from the rules of dealing in the field of electronic banking and the rules of Islamic banking, especially for countries that rely on it as a method to ensure the legitimate circulation of this method In the field of payment.

Keywords: *Electronic Money, Issuance, Islamic Banking, Central Bank, Electronic Payment.*

المخلص:

تعتبر النقود الالكترونية صورة متطورة من أدوات الدفع المتعارف عليها حيث تعتبر كوسيلة للحصول على السلع والخدمات باعتبارها مقبولة كمخزن للقيمة تحقق وظيفة التبادل، ومما لا شك فيه أن دور الدولة ممثلة في البنك المركزي باعتباره المخول قانونا بإصدار النقود لا بد أن يأخذ بعين الاعتبار التحديات القانونية والتقنية التي يطرحها هذا الشكل الجديد والذي يقتضي مراعاة جملة قواعد تشريعية وتنظيمية تستمد مبادئها من قواعد التعامل في مجال الصيرفة الالكترونية ومن قواعد الصيرفة الاسلامية لاسيما بالنسبة للدول التي تعتمد عليها كمنهج لضمان تداول شرعي لهذه الوسيلة المستحدثة في مجال الدفع.

الكلمات المفتاحية: النقود الالكترونية، إصدار، الصيرفة الاسلامية، البنك المركزي،

الدفع الالكتروني.

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INTRODUCTION:

The issuance of money is a sovereign function of the state in which the central bank is authorized through a legislative text as a legally qualified institution with its structures and powers. It has the authority to issue coins and paper money and determine its official exchange rate through a number of scientific data that contribute to the recovery of economic and social development.

Due to the expansion of the adoption of remote electronic contracting system In order to conclude transactions, especially commercial ones, through close or open network, it became necessary to adapt the payment with the requirements and principles of electronic trading where Electronic money is an advanced form of electronic payment methods.

Considering the economic role assumed by electronic money, reducing through the costs of printing money, the absorption of black money on the black market and legitimate its employment in the course of the state economy to achieve the principles of Islamic economy, the circulation of money achieve it's functions and legitimate privileges which was found for it. On the one hand and against the risk of electronic banking "credit risk and liquidity, operational risks." on the other hand.

This can only be achieved through the intervention of the Central Bank with both its legal and economic weight as the supervisor of payment systems to establish the regulatory requirements for the issuance of electronic money through the regulation of legal relations between the participants in this system take into account three basic aspects of legitimacy / technical / economic where they are integrated and give The legal birth of money-exporting institutions through the granting of credit for their issuance, and even the possibility of proceeding at an advanced stage towards the establishment of a legitimate official electronic process of trading in order to build a rational and efficient digital economy.

In light of the above, we ask the following question:

What are the legislative and regulatory requirements for issuing electronic money while adhering to the principles of Islamic banking?

We answer the question under the following plan:

I - the conditions of issuing electronic money according to Islamic banking standards.

- Legislative recognition of electronic money.
- Supervisory and technical supervision of the Central Bank on the issuance of electronic money.

II - The legal effects of the fulfillment of the conditions of issuance of electronic money and its failure.

I - THE CONDITIONS OF ISSUING ELECTRONIC MONEY ACCORDING TO ISLAMIC BANKING STANDARDS

The supervision of the Central Bank on the issuance of electronic money requires the legislative recognition of electronic money as an alternative means of payment and includes the legislative recognition of the definition of electronic money and regulatory provisions, which constitute the technical supervision and legitimacy of the Central Bank it.

Many comparative legislation is based on the definition of electronic money¹

From a technical point of view or what is defined by the narrow concept of electronic money in two main forms, one on the material support which is the prepaid card and the other on a computer program installed on the computer currency encryption² In the form of digital protocols and signatures that allow

¹ - L. 315-1 LOI n°2013-100 du 28 janvier 2013 - art. 5 :

I. – La monnaie électronique est une valeur monétaire qui est stockée sous une forme électronique, y compris magnétique, représentant une créance sur l'émetteur, qui est émise contre la remise de fonds aux fins.

d'opérations de paiement définies à l'article L. 133-3 et qui est acceptée par une personne physique ou morale autre que l'émetteur de monnaie électronique.

II. – Les unités de monnaie électronique sont dites unités de valeur, chacune constituant une créance incorporée dans un titre. "

La définition qui est finalement retenue Directive 2009/110/CE du 16 septembre 2009, art. 2.2 est la suivante :

« la monnaie électronique est « une valeur monétaire qui est chargée sous une forme électronique, y compris magnétique, représentant une créance sur l'émetteur, qui est émise contre la remise de fonds aux fins d'opérations de paiement [...] et qui est acceptée par une personne physique ou morale autre que l'émetteur de monnaie électronique ». VOIR : code monétaire et financier français at : <https://www.legifrance.gouv.fr/initRechCodeArticle.do>". voir aussi : Benjamin May, Maëli Vincent- Moreau, Transposition de la Directive 2009/110 Une deuxième chance pour la monnaie électronique, (revue Banque & Droit) Edition Librairie, no 135 janvier-février 2011 ,p15,16 .

² – أنظر : باطلي غنية.(خصائص وأشكال النقود الالكترونية -دراسة تحليلية نظرية)، مجلة العلوم السياسية والقانون، المركز العربي الديمقراطي للدراسات الاستراتيجية والسياسية والاقتصادية ألمانيا-برلين، المجلد 2، العدد7، فيفري 2018، ص363،364. وانظر ايضا : لعوارم وهيبة، (دور وسائل الدفع الالكترونية في عمليات تبييض الاموال)، مجلة دراسات وابحاث، دورية جزائرية علمية دولية مُحكمة ربع سنوية تصدر عن جامعة الجلفة بالتنسيق مع مركز ابن خلدون للدراسات، العدد 18، مارس 2015، ص200، وانظر ايضا : لوني سي هدى، بن طلحة صليحة، (النقود الالكترونية وسيلة دفع قانونية لتسوية المعاملات المالية عن بعد)، مجلة الأبحاث=

the electronic message to effectively replace traditional currency exchange. Historically, electronic cash has been based on the protocol developed by Digi Cash, which was introduced in the Netherlands in 1994¹ Through a set of payment mechanisms limited value previously paid and stored by smart card, where the exchange through an electronic digital piece for each one of them a specific value, containing information including a serial number and the value of a specific digitally signed by the issuing institution to allow it to verify its validity or By recording the stored value as a balance in the ledger maintained by the account management unit that is contacted to complete the swaps, The electronic money may be nominal by containing information about the person who has the service of withdrawing money from the bank and then continue to follow the movement of money within the electronic system until it is eventually destroyed or is not as nominal as for the banknotes without leaving a trace of identity of those who deal with it and those who moved to and from it, and classified as electronic money through the network, Which is a digital money withdrawn on a bank or financial institution and stored in the computer through an internal metal tool and the money is sent stored under procedures to ensure security and confidentiality through the contact of the contracting parties the electronically source to ensure the safety of money in circulation known, The network is handled without contacting the card issuer² as questionable systems accountable.

A -PREPAID CARDS (LA CARTE PRÉPAYÉE):

The cash value is stored on an electronic chip installed on a plastic card, or the so-called electronic wallet³. The electronic wallet is based on an electronic memory card that allows for storage and calling, and is technically used on the smart card. The units are pre-shipped on the card for use in the payment process

الإقتصادية، تصدر عن كلية العلوم الإقتصادية والعلوم التجارية وعلوم التسيير، جامعة البليدة 2، العدد 18، جوان 2018، ص100.

¹ مطاي عبد القادر، بن شنيعة كريمة، (تنافسية البنوك في بيئة الانترنت. تجربة المملكة العربية السعودية)، مجلة العلوم الاقتصادية والتسيير والعلوم التجارية)، كلية العلوم الإقتصادية والتجارية وعلوم التسيير، جامعة محمد بوضياف المسيلة، الجزائر، العدد17، 2017، ص397.

² ميهوب سماح، أثر تكنولوجيا المعلومات والاتصالات على الأداء التجاري والمالي للمصارف الفرنسية، أطروحة دكتوراه في العلوم الاقتصادية – كلية العلوم الاقتصادية والعلوم التجارية وعلوم التسيير – جامعة قسنطينة 2، السنة الجامعية 2013 – 2014 . ص 98، 99.

³ - *Porte-monnaie électronique* : une carte de paiement prépayée, c'est-à-dire sur laquelle une certaine somme d'argent a été chargée, permettant d'effectuer des paiements électroniques de montants limités, au sens qui lui est donné par l'article 1er du Règlement . voir : le Règlement n°15/2002/CM/UEMOA relatif aux Systèmes de paiement dans les Etats membres de l'Union Economique et Monétaire Ouest Africaine (UEMOA) - Recueil des textes legaux et réglementaires regissant l'activité bancaire et financière dans l'union monétaire ouest africaine, Chapitre V : Réglementation relative aux systèmes et moyens de paiement ,p93.

in the form of electronic units électroniques "unités". This card is associated with prepayment¹.

The prepaid service is defined as the "possession of monetary value in a prepaid account / electronic record that can be used to purchase goods or services from one or more businesses that agree to participate in the prepayment program." The cash value is held in a bank account to be used for the purchase of goods and services as defined and agreed upon between the payee and the payee at the time of purchase of the prepayment service. Transactions between private and non-linked businesses may also be settled. The prepayment tool represents an access device or identity code that enables access to a prepaid account balance or Open the Issuer and Discount Process And access is achieved through a payment card, an Internet wallet, or a device using mobile communications technology, The means of prepayment included in this regulatory framework include any means of access that can provide business services against a prepaid balance, including but not limited to the following:

- Smart Cards(EMV)² Payment cards with compact microprocessor
- Magnetic cards (magnetic stripe cards)
- Internet wallets (Internet accounts where the value is stored).
- Mobile payments.
- Indirect communication payments (close field communication technology).

The Prepaid services range from:

1- OPEN SERVICE:

Means the purchase of goods and services from a group of businesses that are not associated with each other through a prepaid account using a commercial payment mark acceptable to the participating merchants. The service involves a group of contractors, a group of card issuers and a host of hosts. Prepayment: The provision of clearing and settlement services between different institutions, including the ability to collect the value of any part of the prepaid balance through a third party network, such as ATM networks.

¹ - شريف محمد غنام، محفظة النقود الالكترونية رؤية مستقبلية، بحث مقدم الى مؤتمر الاعمال المصرفية بين الشريعة والقانون المنعقد بجامعة الامارات العربية المتحدو بدبي بالتعاون مع غرفة تجارو وصناعة دبي للفترة من 12-15 ماي 2003، ص106،105.

² - *EMV: standrad géré par le consortium international EMV réunissant les principaux systèmes de paiement par carte et définissant un ensemble de spécifications techniques fonctionnelles pour les cartes de paiement à puce .*

Voir : les cartes de paiement en Europes évolutions récentes et défis pour l'avenir synthèse de la conférence organisée par la Banque de France 18 et 19 janvier 2016, rapport annuel de l'observatoire de la sécurité des cartes de paiement ,p45.

2- SERVICE DEFINED:

It is a subset of the Open Service Program, and the acceptance of the program is limited to a specific dealer or network of specific merchants. Examples include a pre-paid service plan to purchase specific services or goods through a network of merchants. For example, a prepaid card for coffee accepted by a group of unrelated coffee shops or a commercial market card is only acceptable in commercial locations within Specific commercial market only ..

3- RESTRICTED SERVICE:

Means the purchase of prepaid goods and services within a specific entity, ie, a single contracting entity, a single issuer, a host of the service or several receivers (hosts), and in its most restrictive form means prepaid accounts for the purchase of goods or services from a particular merchant or chain For example, a locally recognized retail store offers a prepaid card that is locally usable and an independent dealer offers a pre-paid card to be used in one of its stores or at the same time benefit from a prepayment service for settlement operations And clearing¹.

B - RETINAL MONEY OR DIGITAL LIQUIDITY "DIGI CASH":

Which are the payment mechanisms stored in a metal tool placed inside the computer on the Internet it is a digital money sent over the network to the beneficiary, and most systems require the connection of the parties to the contract electronically to the source to ensure the integrity of money traded by opening an account at the source of this money, By containing the information of the person who withdrew the money from the bank at the beginning of the transaction such as the credit card and leave an impression indicating the identity of those who moved from and to him².

2 - THE LEGAL AND TECHNICAL SUPERVISION OF THE CENTRAL BANK TO ISSUE ELECTRONIC MONEY:

The fact that issuing money is a monopoly of the state through the authority of the central bank would increase the stability of the value of money and the confidence of its clients from individuals and companies. Imam **al-Nawawi** says: "The striking of money is the work of the imam." However,

¹ - أنظر في هذا الصدد :قواعد خدمات الدفع المسبق في المملكة العربي السعودية، مارس 2012، ص 8٠9، مقال متحصل عليها من الموقع الرسمي لمؤسسة النقد السعودي العربي .منشور على الرابط الالكتروني التالي:

<http://www.sama.gov.sa/ar-sa/Laws/Pages/BankingRulesAndRegulations.aspx>

² - بوعافية الرشيد، (دور النقود الالكترونية في تطوير التجارة الالكترونية)، المجلة الجزائرية للاقتصاد والمالية، مخبر الاقتصاد الكلي والمالية الدولية، جامعة يحي فارس المدية، الجزائر، العدد 2، سبتمبر 2014 ص113،112.

reaching this goal is linked to a set of constants and through which the State through this central sovereign body to direct economic activity to achieve economic and social development in light of the principles of the Islamic economy based on the following:

- The size of the monetary issue corresponds to the size of the real output. Imam **Ibn Taymiyyah** says: "The Sultan should strike them with the value the right their transactions without injustice to them".

- Not to deal with bank interest because riba is haraam.

"الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ۚ ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا ۗ وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا ۚ فَمَنْ جَاءَهُ مَوْعِظَةٌ مِّن رَّبِّهِ فَاتْتَهَىٰ فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ ۗ وَمَنْ عَادَ فَأُولَٰئِكَ أَصْحَابُ النَّارِ ۗ هُمْ فِيهَا خَالِدُونَ". سورة البقرة الآية (275).

The basic role of banks in the Islamic banking system as an existing system and an alternative to the interest economy is to participate in achieving economic and social development through financing various projects in various agricultural, industrial and social fields and investment for profit, which is the risk return. This is the difference between actual revenues and costs minus factor costs "Land, workers", and risk requires the study of requests and scrutiny in them and takes the role of technical expert and marketing consultant and active for the process of manufacturing and development in accordance with various methods such as speculation, Murabaha, participation and lease financing mine¹.

Therefore, the function of money must not change, despite changing the means of circulation that has become electronic, but it must be an electronic medium value added to better control of money supply by building an official database on the circulation of money in the formal economy, which helps to Building a transparent and rational economy, and this can only be achieved through a set of controls that oblige the issuer or user of electronic money, whether electronic money holder or dealable for the legitimate circulation of electronic money where:

The Issuer shall comply with the Central Monetary Authority's directives and orders by maintaining its financial and credit status, which shall always be able to fulfill its obligation to transfer electronic money to ordinary when customers request, as well as to comply with Shari'a rules for disbursement when making transfers between electronic to ordinary money and the Shari'a rules for the creation of credit.

¹ - راجع: جمال بن دعاس، (الجهاز المصرفي ودوره في إصدار النقود في ظل النظام الإسلامي)، مجلة الإحياء، كلية العلوم الإسلامية، جامعة باتنة، الجزائر، العدد الثالث عشر، ديسمبر 2009، ص 270 إلى 276.

The Islamic banking system, in accordance with the general rules of Islamic banking, is obliged not to deal with bank interest because *riba* is forbidden by law and to pursue the objectives of economic and social development and then to refrain from activities that are not permissible in capital investment and profits of the company and commitment to take the commission from the customer to renew the shipment under *Ijara* controls, The cost is to be increased for the purpose of expanding the base of dealers and providing and renewing guarantees that provide electronic money holder, which accepts the safety when used by developing technical systems and encryption used in In electronic money, where to keep them away from the risk of penetration, theft and so on. For its part, the card user acts as a picture of electronic money to maintain the use of money according to the mechanism imposed by the issuer, and away from the abuse of electronic money in the areas of tax evasion or money laundering, Security breaches of e-money systems to engage in double-dime, electronic theft, and other acts that are criminalized by *Sharia* and the law and used in exchange for the activities and goods (services and products) that should be removed from any activities that are *haram* or forbidden legally¹.

Criminal activities related to the misuse of payment cards by cardholders are growing and changing due to their association with the technical progress of information crime and with the consequent financial losses, it is necessary to take into account a number of preventive and regulatory measures against this form of criminal acts, The protection aspects of the payment card against counterfeiting and misuse actually begin with card issuers ,Where it is necessary to issue payment cards on terms of security similar to the conditions of printing banknotes².

Most notably the electronic signature, the cardholder's signature "cardholder" magnetic stripe card is the way To determine the identity of the payment card holder. A comparison is made by comparing the signature on the signature plate of the card with the signature form. If two signatures match, a presumption is that the cardholder's identity has been verified, available technologies usually support a single broadband solution to verify the identity of the cardholder, "the Personal Identification Number "PIN", where the verification process begins when the "online" is entered when the cardholder enters the "PIN" on the "ATM" keyboard or the terminal at a specific point of sale, by entering the

¹ - سارء متلع القحطاني، النقود الاللكترونية حكمها الشرعي وآثارها الإقتصادية، رسالة دكتوراه تخصص فقه مقارن وأصول الفقه، كلية الدراسات العليا، جامعة الكويت، 2008، ص ص 763، 764.

² - Voir: Anton Korauš and others, (Consumer approach to bank payment card security and fraud), *journal of security and sustainability issues*, September Volume 6 Number 1 , 2016, PP 98-99.

"PIN" code encrypted and then transmitted electronically to decrypt And compare it with the reference PIN available only at issuer's treatment center.¹

Each customer as a holder of the payment card has the duty to protect his or her credit card against theft and the resulting misuse. Many customers may be afraid of forgetting the PIN code and thus make a mistake in writing it on a piece of paper. Exporting banks themselves make an effort to protect their customers Of illegal misuse by another person, based on instructions available on their websites about how to use payment cards safely, these instructions can protect the Customer "Cardholder" sufficiently against theft or misuse of the Card, Treat the user With the PIN of the card a "PIN" in terms of selection, retention or change,² which is not often followed by customers and thus the climate is appropriate for criminal activities related to the payment card.³

As for the issue of technical supervision of the Central Bank on the issuance of electronic money: it means the total rules related to the economic and technical aspects for the safe handling of electronic money, and this in view of two considerations:

THE FIRST CONSIDERATION: relates to the legal form of the institution that provides the electronic money issuing service and its organization in terms of its founders, its managers, their nationality, their titles, their history, the capital of the institution, internal control and how to manage operational and legal risks.

At the procedural level, it is necessary to regulate the relations between the shareholders and those involved in the payment networks or what they call the third party, which provides the path of financial information electronically or what is called by the electronic payment service agents. Where he is also required to be licensed by the Central Bank to carry out the activity of the electronic transfer service of funds through the ratification of the agency between providers of payment services and the source, and that he has not been sentenced to a criminal offense or misdemeanor against honor and honesty

It also takes into account the degree of business risk assigned to it and the ability of the agent in terms of financial solvency through the financial guarantees that the agent undertakes to provide in order to guarantee his commitment to the Agency's contract and the applicable legislation as a guarantee of responsibility and its efficiency in dealing with monetary movements and their management and

¹ - Voir: Goran Kunjadic and others, *Payment cards counterfeiting methods and pin uncovering*, international scientific conference on information technology and data related research, conference paper · january 2017, sinteza 2017, P 64.

² - Steven J. Murdoch and others , *Are Payment Card Contracts Unfair?* , P3.4 . article at: <https://www.researchgate.net/publication/302891524>.

³ - Anton Korauš, *op-cit*, PP 98 - 99.

the ability to review the records and matching necessary for financial operations In order to prevent money laundering and terrorist financing offenses, the ability to maintain the security and protection of clients' data and records, and to deal with and deal with complaints.

The payment service provider is responsible for ensuring that the electronic payment service continues to provide the agent with operational procedures detailing the work done, providing a telephone line to receive complaints and objections from the agent at any time and mechanisms to deal with them is not responsible of Customer any commissions or additional fees other than those specified by the payment service provider and in accordance with the commission policy set by the Central Bank¹

THE SECOND CONSIDERATION: concerns the regulation of the issuer's relationship with the electronic money holders. The contract between the carrier and the issuer is framed within the general rules, which include the conditions for opening an electronic money account, in which the terms of use of electronic money are determined in terms of the permitted operations ceiling and commissions charged by the issuer , Methods and procedures for protest in the case of loss or theft of the card and methods of compensation, complaint mechanisms which are available at all times while maintaining a record of accidents and operations concluded, with the process should be accompanied by an electronic receipt including: reference number, nature of Mlah "push, pull," the source name, the name of the recipient of the payment, process expenses "timing and value"².

¹ - صولي الزهره، (نظام اصدار بطاقة الدفع الالكتروني "التوجه نحو خصوصية النقود" قراءة في ضوء التشريع ونظام التحويل الالكتروني للأموال "الاردن نموذجا")، مجلة العلوم القانونية والسياسية، جامعة الوادي، الجزائر، المجلد 9 العدد 2، جوان 2018، ص 342.

² - Article 29 : " **Ouverture d'un compte de monnaie électronique:**

-L'ouverture d'un compte de monnaie électronique est subordonnée à la signature par l'émetteur de monnaie électronique et le client d'un contrat mentionnant :

- les conditions d'utilisation des services liés à la monnaie électronique ;
- la description des usages possibles des unités de monnaie électronique ;
- les plafonds appliqués aux opérations autorisées ;
- les obligations et responsabilités respectives du bénéficiaire et de l'établissement émetteur
- les risques et les mesures de prudence inhérents à l'utilisation des unités de monnaie électronique
- les modalités, les procédures et le délai d'opposition en cas de vol, de perte, de falsification ou de demande de remboursement des unités de monnaie électronique ;
- les conditions et modalités de contestation des opérations effectuées ;
- les conditions et modalités de remboursement. "

-Le contrat de souscription conclu avec chaque client doit notamment énoncer que l'établissement émetteur de monnaie électronique est responsable, vis-a-vis du client, du bon dénouement des opérations réalisées par le distributeur.=

Which requires determining how to calculate the costs and commissions associated with dealing with electronic money to achieve transparency between the parties to the transaction?

It also requires electronic certificates of attestation to the availability of an information security policy as well as the necessary material and human resources as a technical infrastructure to carry out e-money issuing activities in order to achieve integrity, reliability and confidentiality, and to develop an emergency plan to ensure the continuity of the service especially under the risk of fraud and network penetration¹.

=Article 30 : Garanties spécifiques accordées à la clientèle

- L'établissement émetteur est tenu de mettre à la disposition de sa clientèle, de façon accessible, les conditions tarifaires applicables à ses opérations.
- L'établissement émetteur est également tenu de mettre en place un dispositif d'écoute, de réception et de traitement des réclamations des clients et des accepteurs.
- Ce dispositif de réclamations doit :
 - être accessible par divers canaux à tout moment ;
 - engager l'établissement sur un délai de traitement des réclamations ;
 - assurer la traçabilité des réclamations reçues et traitées.

Toutes les transactions effectuées par le client doivent donner lieu à la production d'un reçu électronique précisant notamment :

- le numéro de référence de la transaction ;
- la nature du service ; **E Monnaie Electronique**
- le nom de l'émetteur de monnaie électronique ;
- le numéro d'immatriculation du distributeur ou du sous-distributeur, le cas échéant ;
- l'identité de l'expéditeur ou du récepteur de la transaction selon le cas ;
- l'heure, le montant et les frais de la transaction. voir L' instruction n°008-05-2015 regissant les conditions et modalités d'exercice des activités des émetteurs de monnaie électronique dans les états membres de l'union monétaire ouest africaine (UMOA). Banque centrale des états de l'Afrique l'Ouest(BCEAO),

https://www.bceao.int/IMG/pdf/instruction_no008_05_2015_intranet.pdf

¹ - Liste des documents et informations constitutifs du dossier de demande d'agrément en qualité d'établissements de monnaie électronique ou du dossier d'autorisation d'exercice d'activité de monnaie électronique

1-Documents et informations d'ordre juridique

- une demande signée par le représentant de l'établissement ou de l'institution dûment habilité à cet effet, adressée à la Banque Centrale et déposée auprès de la Direction Nationale de la BCEAO de l'Etat d'implantation ;
- une fiche de renseignements sur les principaux actionnaires, dirigeants et partenaires de l'institution (copies certifiées conformes des pièces d'identité, curriculum-vitae datées et signées, extraits de casier judiciaire ou tout autre document équivalent datant de moins de trois (3) mois)
- un récépissé d'immatriculation au Registre du Commerce et du Crédit Mobilier ;
- la déclaration de souscription de l'intégralité du capital ,le cas échéant ;=

II - THE IMPLICATIONS OF THE FULFILLMENT OF THE CONDITIONS FOR THE ISSUANCE OF ELECTRONIC MONEY AND ITS UNDERDEVELOPMENT:

The conditions for the issuance of electronic money and the granting of the license shall be fulfilled by a competent body at the level of the Central Bank in accordance with the legal provisions relating to cash and credit¹. The institution that wants to practice the activity of issuing electronic money a set of obligations and any violation of these obligations, the result of the following sanctions are listed below:

• les statuts de la société élaborés, conformément aux dispositions de l'Acte uniforme de l'OHADA relatif au droit des sociétés commerciales et du groupement d'intérêt économique (GIE) ;

• les projets de contrats à conclure avec les partenaires financiers dans le cadre de l'activité d'émission de monnaie électronique ;

les projets de contrats à conclure avec les clients détenteurs, les accepteurs et les distributeurs

• la décision d'agrément du Ministère chargé des finances pour les systèmes financiers décentralisés ;

• la convention de domiciliation des fonds, le cas échéant.

2- Documents et informations d'ordre financier

• une présentation détaillée de l'activité de monnaie électronique que l'établissement ou l'institution souhaite exercer ;

• les états financiers annuels des trois derniers exercices, certifiés par au moins un Commissaire aux comptes agréé pour les établissements assujettis a cette obligation.

• les projections financières établies sur au moins trois ans, de l'activité de monnaie électronique pour laquelle l'agrément ou l'autorisation est sollicitée, avec des hypothèses de sensibilité.

3- Architecture technique

• une copie des contrats et protocoles conclus avec les partenaires techniques dans le cadre de l'activité de monnaie électronique ;

• une présentation de l'architecture des systèmes d'information et techniques ainsi que de leur fonctionnement permettant de vérifier le respect de toutes les normes de sécurité technique ;

• les attestations de certification de la plate-forme, le cas échéant ;

• La politique de sécurisation des systèmes d'information et les procédures y associées ;

• le dispositif de continuité des opérations.

L'instruction n°008-05-2015 regissant les conditions et modalités d'exercice des activités des émetteurs de monnaie électronique dans les états membres de l'union monétaire ouest africaine (UMOA). Banque centrale des états de l'Afrique l'Oues (BCEAO)

https://www.bceao.int/IMG/pdf/instruction_no008_05_2015_intranet.pdf

¹ - According to Algerian legislation, this authority is supposed to be granted to the Monetary and Credit Council as the body responsible for determining the criteria for the safety of means of payment. The Council is formed in accordance with Article 58 of the same Law 58 of the Money and Loan Act of:

1 - The members of the Board of Directors of the Bank of Algeria, which is formed in accordance with the text of Article 18 of the same law of the Governor, the President, the three deputies of the Governor, three employees of the highest degree appointed by decree of the President of the Republic by virtue of their competence in the economic and financial fields.

2- Two individuals chosen by virtue of their competence in economic and monetary matters.

The electronic money source shall abide the obligations that it assumes in accordance with the accepted rules in the field of Islamic banking in terms of dealing with electronic money holders and electronic transfers of funds technically and legally, such as its obligation to ensure the availability of the conditions of validity of data relating to the matter of transfer and signature validity, Transfer, account and date of transfer The availability of two different accounts and an adequate balance in the Payment and Transfer Account, which relate to the verification of the legality of the electronic transfer of funds through the control of operations in relation to money laundering, Verifying the identity of the customers and the obligation to notify Suspicion when there are activities of an unusual nature¹.

The issuer of the card also submits periodic reports on the volume of electronic money that is being circulated as well as the money to be issued, as well as obligating it to transfer it to legal money according to the currency rate determined by the Central Bank, which makes payment by electronic card as a form of electronic money. State Economy².

The legal validity of e-money, especially as it is mainly related to e-commerce transactions via the Internet and the resulting risks that require comparison with the official currency of the state in terms of its power³, The

¹ - بلجودي أحلام، (البنوك في مواجهة التحويل الإلكتروني للأموال)، المجلة الأكاديمية للبحث القانوني، كية الحقوق والعلوم السياسية، جامعة بجاية، الجزائر، المجلد 17، العدد 1، 2018، ص من 230 الى 236.

² - أنظر: حاج صدوق بن شرقي، اليفي محمد، النقود الإلكترونية كوسيلة دفع في إطار الصيرفة الإلكترونية (الأدوار، الأفكار والتصور المستقبلي للتنظيم القانوني)، الملتقى الرابع حول عصرنة نظام الدفع في البنوك الجزائرية واشكالية اعتماد التجارة الإلكترونية في الجزائر، معهد العلوم الاقتصادية، المركز الجامعي خميس مليانة، عين الدفلى، ايام 26، 27 افريل 2011 . وأنظر ايضا محمد ابراهيم محمود الشافعي، (النقود الإلكترونية ماهيتها، مخاطرها وتنظيمها القانوني)، مجلة الأمن والقانون أكاديمية شرطة دبي، القيادة العامة لشرطة دبي، السنة 12 العدد الأول، جانفي 2004، ص ص 172، 173.

³ - « La question est donc finalement celle de savoir si la monnaie électronique est une « propriété » incorporelle assortie d'un droit de créance qui en serait l'accessoire, ou si elle est seulement une créance sur l'émetteur , Or, la monnaie électronique n'a pas une valeur autonome, indépendamment de la valeur de la créance sur une somme d'argent qu'elle représente.

La monnaie électronique n'est donc pas une nouvelle forme de monnaie mais un titre de créance qui permet de faciliter la circulation de la monnaie scripturale. Le système de paiement en monnaie électronique est une nouvelle manière de gérer de la monnaie scripturale, dans lequel le moyen de paiement est une carte chargée d'unités électroniques. D'un point de vue juridique, chaque unité électronique est donc un titre de créance incorporé dans un instrument électronique et accepté comme un moyen de paiement par des tiers autres que l'émetteur.

la monnaie électronique était un droit de créance sur une somme d'argent. Cette créance circule de support en support « voir : La nature juridique de la monnaie électronique, Bulletin de la banque de france. N° 70. Octobre 1999, p56.

transfer of the electronic payment order through the transfer of electronic units, as in the case of prepaid technology through the electronic money portfolio, is not considered a payment in the proper sense, except as part of a previous contractual relationship that guarantees the solvency of the debtors by committing to fulfilling and linking the payment parties between the issuer, the holder, the issuer and the merchant, The amount authorized¹.

If starting from the fact that money has general acceptance and derives its function from the law any legislative text, which makes it a means of discharge², The fact that the state monopolizes the right of instrument and issuance of money as the body that issues the money is the central bank³, While the electronic card issued by banks or public or private institutions according to contractual frameworks in advance, and the money has self-value for goods and services, while the electronic card remains in the possession of the owner as a means to carry money and transfer⁴, Then on this basis law is no more than the form of electronic money⁵, Only an electronic transfer of an account unit from the debtor's account to the creditor's account in a documented done in accordance

¹- *Le commerçant détient sur l'émetteur une créance de conversion des unités électroniques inscrites sur sa carte (ou terminal de paiement électronique TPE). Il n'y a donc pas d'incertitude sur son règlement tenant à la solvabilité du consommateur. Vis- à-vis de ce dernier, le commerçant est définitivement payé. Son règlement ne dépend que de la solvabilité de l'émetteur. Les unités électroniques sont donc bien un instrument de paiement, puisqu'elles éteignent la dette née entre le commerçant et le consommateur.*

voir : *La nature juridique de la monnaie électronique, Bulletin de la banque de France . n° 70. Octobre 1999, p55, 59.*

https://www.banque-france.fr/fileadmin/user_upload/.../bdf_bm_70_etu_1.pdf

²- *Refer to the text of Article 4 of the amended Algerian Monetary and Loan Law, supplemented by Order No. 10-04 of 26 August 2010 on the amended and supplemented currency and loan law of 2017, The Official Gazette Issue: 50, Published: 1 September 2010*

³- *Article 2 of the amended and supplemented Algerian Monetary and Loan Act: "The monetary currency shall consist of notes and coins.*

The state has the privilege of issuing currency through national territory.

The exercise of this privilege shall be vested in the Central Bank, which is called in the text of its relations with third parties, the Bank of Algeria, and subject to the provisions of this Order.

⁴- *محمود الكيلاني، الموسوعة التجارية المصرفية المجلد الثاني تشريعات التجار الإلكترونية، دار الثقافة للنشر والتوزيع، عمان، 2007، ص468، 469.*

⁵- *créance sur un institut d'émission inscrite non pas sur du papier « fiduciaire » ou dans des livres « scriptural » mais sur « support physique » une carte à microprocesseur "porte-monnaie-electronique" ou sur un logiciel " porte monnaie virtuelle ", David Bounie , quelques incidences bancaires et monétaires des systèmes de paiement électronique , revue économique 52 ; p318*

http://www.persee.fr/doc/reco_0035-

[2764_2001_hos_52_1_410292?q=quelque+incidences+bancaires+et+mon%C3%A9taires+des+sys](http://www.persee.fr/doc/reco_0035-2764_2001_hos_52_1_410292?q=quelque+incidences+bancaires+et+mon%C3%A9taires+des+sys)

[t%C3%A8mes+de+paiement+%C3%A9lectronique](http://www.persee.fr/doc/reco_0035-2764_2001_hos_52_1_410292?q=quelque+incidences+bancaires+et+mon%C3%A9taires+des+sys)

with the provisions of the principle of functional equivalence that has no legal value independent of the official currency or the official exchange rate determined by the Central Bank¹, Thus, they do not constitute a new legal form of money since their acceptability is subject to the supervision of the Central Bank over legally qualified institutions, so that they can be considered as an electronically authenticated bond².

The Issuer of electronic money as an electronic payment service provider shall comply with the confidentiality of all transactions related to the company's customers and ensure that the personal data of the customer used for authentication is not available to others. The service provider shall notify the Central Bank of the cases of fraud or breakthrough against the institution or the contracting party As an agent of the payment service provider, and the members of the Board of Directors or its current or former employees and any outsider by virtue of his employment or as a third contracting party are prohibited from giving data directly or indirectly, The ban applies to the company's managers from the administration and the board of directors, and to those who are informed by virtue of his job or his work on such data, including the employees of the Central Bank, the auditors of the accounts and the third party, the service provider who is authorized to manage these data by virtue of the nature of his work, Accordingly, where it is prohibited to view it as a public asset except in the category excluded from the provisions of confidentiality, they are legally authorized to see, according to Article 5 / b, Confidentiality shall be excluded from the confidentiality of the persons authorized by the written approval of the

¹ - *Les billets et pièces métalliques (monnaie fiduciaire) comme les comptes bancaires(monnaie scripturale) sont donc trois instruments monétaires qui contiennent des unités monétaires. Pour la monnaie fiduciaire, le moyen de paiement se confond avec l'instrument monétaire. Le paiement est réalisé par la seule remise de billets ou de pièces métalliques, ce que le juriste appelle la «tradition». Dans le cas de la monnaie scripturale, c'est le compte bancaire qui joue le rôle d'instrument monétaire ; les moyens de paiement, aussi appelés instruments de paiement scripturaux, vont déclencher le paiement en donnant l'ordre à l'établissement bancaire qui détient le compte de transférer des fonds sur le compte de son créancier, par une double opération : une inscription au débit d'un compte (celui du payeur) et une inscription au crédit d'un autre compte (celui du payé) .*

Comme toutes les formes de monnaies, la monnaie électronique doit et peut remplir une fonction d'unité monétaire. Un commerçant n'acceptera pas d'être payé en monnaie électronique sauf s'il est convaincu que la quantité d'unités électroniques reçues du porteur représente l'équivalent de la somme d'argent qu'il aurait reçue s'il avait été payé sous la forme scripturale ou fiduciaire.. voir: La nature juridique de la monnaie électronique, Bulletin de la banque de france . N° 70, . Octobre 1999, p48, 53.

²- *la monnaie – quelle que soit sa forme ou sa nature spécifique– constitue toujours un « titre représentatif » d'une créance sur des biens ». voir :Geoffrey Ingham De nouveaux espaces monétaires ?, Service des Publications de L'ocde,organisation de coopération et de développement économiques ,France 2002 ,P144.*

customer Such as the agent or within the framework of disclosure to the regulatory authorities such as the judicial and administrative authorities in the framework of the Central Bank's policy and its control over the circulation of the monetary mass' bank inspection committees and auditors, Operations according to arrangements determined by the Central Bank, publishing data in statistical figures without revealing the identity of customers¹.

The payment service provider is obliged to consider any objection from the customer to the payment orders within a period specified by the Central Bank and its instructions through a unit allocated by the institution provided to service the payment to receive complaints and the method of deciding them and informing the client of their results².

The conditions for the payment of electronic payment service are still subject to the legal liability of "civil and criminal discipline" and penalties that may be imposed on these institutions. The Central Bank may cancel the work of the license if the service provider so requests or in violation of the relevant laws and regulations, Non-eligibility of the service provider to provide them, including:

- The service provider obtained the license through false information.
- Ruling on the director of the company providing the service of a crime or misdemeanor against honor.
- Failure of the service provider to provide electronic payment services during a certain period specified by special legislative texts.
- Obstructing or preventing representatives of the Central Bank by the service provider from entering the premises for the purpose of inspection and control. The Central Bank is legally authorized to access the system of electronic payment service providers.
- Users were harmed by the service and failed to provide them with agreed specifications and standards and their lack of quality³

¹- Return to: Instructions to protect the personal data of customers of payment services and electronic transfer of funds No. 1/1/5/5537 corresponding to 12 February 2017 issued by the Central Bank of Jordan in accordance with the provisions of Article 13 / B / 4 of the Law of the Central Bank of Jordan No. 23/1971 and its amendments.

²- Return to Article 8, 9 / A, 14, 35, 36 and 41 of the Jordanian Law on the Electronic Transfer of Funds 2017.

³- See: Article 8, 13 of the Iraqi Regime: Regulation No. (3) of 2014 concerning electronic payment services for funds issued by the Council of Ministers Resolution No. 186 of 2014 on 18 March 2014, Iraqi Chronicle, Official Gazette of the Republic of Iraq, No. 4326,

The Central Bank is competent through a competent committee at the level of the penalty to determine its composition and powers in the field of deterrence in accordance with the law Money and Loan¹

In accordance with the principle of criminal legality, there is no crime or penalty except by a legal provision. Administrative penalties are set according to the principle of proportionality according to the seriousness of the violation. In general, the penalties and related procedures range from alerting to presenting a satisfactory program to remove the violation and correcting the situation. To suspend the deal with the third party contracted temporarily or permanently, to impose a fine that does not exceed a specified ceiling by a legislative text in accordance with the principle of criminal legality, to close the company for a period specified by the Central Bank, until the license is revoked².

CONCLUSION:

Electronic money is considered as an innovative form of payment and an alternative to paper and metal money. In the form of a prepaid card and crypto money.

The issuance of electronic money in its two forms must respond to a number of basic technical and legal conditions that guarantee the legal circulation of money as an alternative to conventional money through the legislative recognition and seizure of its legal concept. "

And through the supervision and control of the Central Bank under the penalty of disciplinary sanctions ranging from financial fines Until the withdrawal of the accreditation from the issuing institution, moreover the criminal follow-up in the case of the issuer involved in money laundering operations by electronic money.

And technically through the supervision of the control of the legal form of the issuing institution and its relationship with the holders of electronic cash by not dealing with interest between the issuer and holder of electronic money and obligations in the face of the Central Bank by committing to provide a periodic

¹ - According to Article 106 of the Algerian Money and Loan Act, the members appointed by the President of the Republic are as follows: - Governor, President, - Three (3) members selected by virtue of their competence in the banking, financial and accounting, - Two judges (2) shall be appointed, the first by the Supreme Court and chosen by its first president and seconded by The Council of State, chosen by the President of the Council, after consultation with the Supreme Judicial Council, - A representative of the Accounting Council, to be chosen by the President of this Council from among the first advisors. - A representative of the minister in charge of finance

² - See Article 39 / B of the Electronic Transfer System of Jordanian Funds 2017 - Regulation No. (111) for the year 2017 concerning the system of payment and electronic transfer of funds issued under Articles 21 and 22 of the Jordanian Electronic Transactions Law issued by the Council of Ministers on 18 October 2017.

report on the volume of electronic money circulation and intended to be issued Adhering to a clear information security policy supported by electronic certification to protect customer data from theft, ensure that the transaction is conducted through an approved network connecting the parties that rely on electronic money as a means of payment as a "source, holder, receiver". It also requires The issuer's compliance with Islamic banking rules that make the issuer of electronic money as a partner in the legitimate economic activity and a real intermediary in the circulation of money in the legitimate aspects of spending away from the field of money laundering and the financing of terrorism and other transactions prohibited by sharia and law.

All of the above will contribute to the formulation of controls for the issuance of electronic money, which contributes to the construction of a digital Islamic economy on the basis of transparency and accountability, However, it requires the orientation towards establishing Islamic rulings in dealing with electronic money, or what may be called "electronic jurisprudence".

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