The Shariah Advisory Council of Bank Negara Malaysia (SAC) Ruling on Buy Now Pay Later (BNPL) Facility

220th SAC Meeting dated 24 January 2022, 228th SAC Meeting dated 28 February 2023 and 231st SAC Meeting dated 26 June 2023

Part I: SAC Ruling, Its Effective Date and Applicability

Pursuant to section 52 of the Central Bank of Malaysia Act 2009, the SAC at its 220th meeting ruled that the Buy Now Pay Later (BNPL) facility is permissible, provided that the BNPL facility is structured based on appropriate Shariah contract(s) to preserve the rights and obligations of the contracting parties. As such, written approval of the Islamic financial service provider's Shariah committee is required to ensure that the structure of the BNPL facility and its contractual terms and conditions comply with Shariah.

Subsequently, the SAC at its 228th and 231st meeting ruled that a BNPL facility which enables the purchase of gold and silver (*ribawi* items) that have the *`illah* (effective cause) of money must be conducted on spot basis. However, the settlement period of up to T+2 is permitted due to operational constraints and business customary practices (*`urf tijari).*

Consistent with the objectives of Shariah (*maqasid* Shariah), the SAC encourages Islamic financial service providers to uphold responsible practices by having in place a thorough credit evaluation process to assess consumers' affordability. These practices aim to encourage prudent and responsible use of a BNPL facility to ensure that consumers' financial health is not adversely affected.

1.1. This ruling comes into effect immediately upon publication of this ruling on Bank Negara Malaysia's (the Bank) website dated 24 January 2024 and is applicable to the following:

(a) licensed Islamic banks under the Islamic Financial Services Act 2013 (IFSA) including those carrying on Islamic digital banking business;
(b) licensed banks and licensed investment banks approved under section 15(1) of the Financial Services Act 2013 (FSA) to carry on Islamic banking business; and
(c) prescribed institutions approved under section 33B(1) of the Development Financial Institutions Act 2002 (DFIA) to carry on Islamic financial business.

For the purpose of this ruling, the above persons shall be referred to as "Islamic financial service providers (Islamic FSP)".

1.2. In line with sections 28(1) and (2) IFSA and sections 33D(1) and (2) DFIA, as the case may be, Islamic FSP are required to comply with this ruling as compliance with any ruling of the SAC in respect of any particular aim and operation, business, affair or activity of the Islamic FSP shall be deemed to be in compliance with Shariah.

Part II: Background

2.1. In general, a BNPL facility enables consumers to purchase goods or services from merchants with the option of deferring payment and/or splitting the purchase price into instalments. A BNPL provider typically advances full or partial settlement to the merchants on behalf of the

consumers, and consumers will make payments accordingly to the BNPL providers based on the agreed terms and conditions[1].

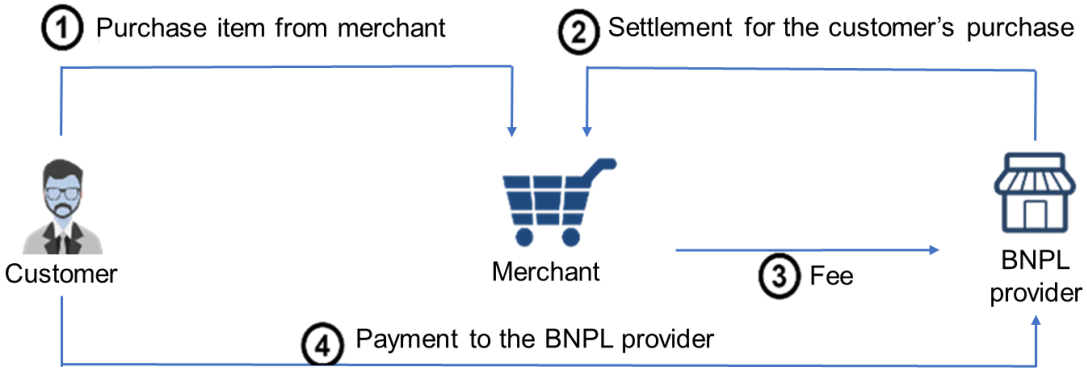
2.2. In Shariah, a BNPL facility may be deemed as an extension of the traditional sale contract[2] which is already well-established and permissible in Islam, provided that the sale transaction is conducted in a manner that is consistent with Shariah principles.

2.3. At present, BNPL facility offered by non-bank providers do not fall within the regulatory purview of the Bank or any regulatory agency. The proposed enactment of a Consumer Credit Act (CCA) will establish the Consumer Credit Oversight Board (CCOB) as an independent competent authority to regulate, among other things, Islamic BNPL.

2.4. A BNPL facility enables merchants to have a faster settlement process, and allow consumers to defer payments for goods and services without being subject to profit rate, provided that the instalments are paid on time. There has been a moderate growth in demand for BNPL facility, supported by the growing numbers of non-bank BNPL providers entering the BNPL market space. While licensed financial institutions have yet to offer BNPL facility at the moment, a licensed financial institution may offer their BNPL facility in a standalone manner or via a partnership with another (existing) BNPL providers.

2.5. Briefly, the (existing) BNPL facility operates as per the following structure:

Illustration: Example Structure of BNPL Facility



1. A consumer purchases item from a merchant using BNPL facility.
2. The BNPL provider makes full or partial settlement for consumer's purchase with the merchant, subject to the arrangement between BNPL provider and merchant.
3. The BNPL provider imposes fee to the merchant based on the contractual agreement between the BNPL provider and the merchant.
4. The consumer pays to the BNPL provider based on the agreed contractual terms and conditions, including instalment period, and fees and charges structure.

Shariah issue

2.6. Based on the above structure, the SAC discussed the key Shariah considerations in structuring a Shariah compliant BNPL facility for Islamic FSP.

[1] Based on the feedback received by the Bank from the industry.
[2] Reference is made to paragraph 4.1.

Part III: Key Discussion

Ensuring Shariah compliance in the Islamic BNPL facility

3.1. The SAC recognises that there are various types of operational model adopted by different BNPL providers in the global and domestic market. While remaining supportive of and accommodative to innovation, in order to ensure that the operational structure and business model of the BNPL facility are consistent with Shariah principles, the SAC requires Islamic BNPL to comply with the following:

a. The collective use of Shariah contracts[3] as the underlying structure for the BNPL facility must observe the relevant Shariah requirements which are applicable to each Shariah contract and to the combined contracts[4];
b. The use of such Shariah contracts under the BNPL facility must preserve the primary objective of the contract *(muqtada `aqad);*
c. The Shariah contracts used under the BNPL facility must appropriately reflect the contractual rights and obligations of the contracting parties;
d. The use of Shariah contracts as the basis of various features in the BNPL facility must not be structured in a way that gives rise to *riba* practices; and
e. Where late payment charges are imposed, such imposition must reflect the actual cost incurred from such late payment and/or defaults by the consumer as it would be considered as compensation *(ta`widh).* The cost component must be justified according to applicable requirements imposed by the Bank and approved by the respective Shariah committee.

3.2. Where a Shariah-compliant BNPL facility is offered on a platform which also sells non-Shariah compliant goods and services, such BNPL facility would not be automatically considered as Shariah non-compliant, subject to the following:

a. The transaction conducted using the Shariah-compliant BNPL facility is confined only to Shariah-compliant goods and services;
b. The Shariah committee of respective Islamic FSP has approved the offering of such Shariah-compliant BNPL facility on such platform; and
c. The Shariah-compliant BNPL facility has in place appropriate safeguards to ensure no transaction involving non-Shariah compliant goods and services can be facilitated.

3.3. Islamic FSP that facilitate the purchase and sale transactions of gold and silver (*ribawi* items) that have the *`illah* (effective cause) of money, shall comply with the following requirements:

a. The transaction must be conducted on spot basis. However, the settlement period of up to T+2 is permitted due to operational constraints and business customary practices (*`urf tijari*)[5]; and
b. The possession of gold and silver purchased by the consumer must take place at the time of transaction, either physically (*haqiqi*) or constructively (*hukmi*)[6].

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[3] The collective use of the Shariah contracts is deemed as an innominated contract in the classical text (*`uqud ghair musamma*) which refers to Shariah contracts that have no specific ruling and classification in classical *fiqh* literatures. (Mustafa al-Zarqa', *al-Madkhal al-Fiqhi al-`Am*, Dar al-Qalam, Damascus, 2004, p. 605 هي التي لم تسم باسم خاص يميزها، أو لم يرتب لها التشريع أحكاما خاصة بها).

[4] Reference is made to paragraph 4.5 of this document.

[5] Similar permissibility is accorded to *bai` al-sarf* (currency exchange) transaction, where the exchange can be extended beyond the contract session due to established customary business practice ('*urf tijari*) resulting from operational constraints.

[6] Especially for online purchase and sale transactions of gold and silver (that have the '*illah* of money). The Shariah requirements of constructive possession must take place i.e., transfer of ownership rights (*takhliyyah*), benefit rights (*tamkin*) and liability rights (*dhaman*).

3.4. The Shariah committee of an Islamic FSP are responsible for providing objective and sound advice to Islamic FSP to ensure that its aims and operations, business, affairs, and activities are in compliance with Shariah.

Advocacy towards responsible and prudent use of BNPL facility

3.5. The easy accessibility and fast credit approval process of the BNPL facility may inadvertently influence consumers to spend beyond consumers' affordability. Given the lack of a central credit bureau reporting for BNPL facility obtained from the non-bank BNPL providers, Islamic FSP may face challenges in assessing consumers' overall credit exposure, risking consumers accumulating larger outstanding debt across multiple BNPL providers. Without proper credit management and financial discipline, this could pose risk to the financial well-being of consumers[7].

3.6. Premised on the above, and in line with the principle of *maqasid* Shariah that encourages the preservation of wealth *(hifz al-mal)*, particularly in striving to avoid excessive indebtedness beyond one's financial affordability, the SAC urges the following:

i. Islamic FSP to uphold responsible practices, where the credit and affordability assessment process should be thorough and must takes into consideration consumers' existing debts and income levels. Islamic FSP should ensure their processes comply with the relevant requirements imposed by the Bank; and
ii. Responsible practices in offering a BNPL facility, including the provision of clear and timely disclosures to consumers, would help consumers to make more informed decisions and further encourage the responsible and prudent use of the BNPL facilities.

The above paragraph is primarily intended to curb potential adverse financial impact to consumers.

Part IV: Basis of Ruling

The BNPL facility as an evolved form of traditional sale contract with deferred payment

4.1. The practice of sale and purchase with deferred payment *(bai' bithaman ajil)* and deferred payment made into a fixed schedule *(bai' taqsith)* are recognised form of commercial transaction since the time of Prophet (ﷺ).

عَنْ عَائِشَةَ، قَالَتْ: اشترى رسول الله صلى الله عليه وسلم من يهودي طعاما إلى أجل ورهنه درعا من حديد

"A'isha, the wife of Prophet (ﷺ) reported: the Prophet (ﷺ) purchased food from a Jew on credit and mortgaged his iron armour to him" [8]

[7] The SAC was presented with the data of market conduct related risk and global payment delinquency that demonstrates the percentage of BNPL users who have missed more than one payment.

[8] Imam al-Bukhari, *Shahih Bukhari*, دار الأرقم للنشر والتوزيع، الكويت, v.3, p. 86, hadith no. 2252 and Imam Muslim, *Shahih Muslim*, مطبعة عيسى البابي الحلبي وشركاه، القاهرة , v. 3, p. 1226, hadith no. 1603.

4.2. As for *bai' taqsith*, Shariah scholars[9] who have opined its permissibility argued that everything that is permissible to be within one's liability/obligation *(zimmah)* for a period, must also be, consistently permissible to be so in two or more terms.

4.3. The occurrence of one's indebtedness in such transaction must be evidenced by proper documentation with a clear stipulation of the tenure, payment schedule, and instalment amount at the point of inception. This is consistent with the following verse:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ

"O you who believed, when you contract a debt for a specified time frame, commit it to writing"[10]

Flexibility to structure new innovative products accorded with specific conditions

4.4. The flexibility accorded in Shariah allows for the emergence of many innovative commercial products that can be structured based on appropriate Shariah contracts to ensure Shariah compliance and to preserve the rights and obligations of the contracting parties. This is based on the following *fiqh* maxim:

الأصل في العقود والشروط الجواز والصحة

"The basic principle with regard to contracts and conditions is permissibility and validity"[11]

4.5. In using the appropriate Shariah contracts, the collective use of several Shariah contracts in one single product is allowed[12] subject to the following conditions:

(i) each contract is permissible by Shariah;
(ii) there is no clear Shariah injunction on its prohibition to be used collectively[13], such as a restriction on the combination of sales and loan contracts (*bai` wa salaf*); and
(iii) there is no contradiction between the Shariah principles governing each contract, such as *hibah* and lease of the same asset to the same recipient simultaneously.

4.6. 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[14]. The emergence of such contracts through the *ijtihad* of Shariah scholars could address the evolving needs in the economy and promote innovation in Islamic finance, whilst consistently observing the relevant Shariah principles.

The transaction of gold and silver

4.7. The purchase and sale transaction of gold and silver (*ribawi* items) with currency must be done on spot basis as guided in the following hadith:

9 Shafi'e and Maliki's school of thoughts in their superior opinion based from *Raudhatul al-Talibin*, v.4,p.11, *Asna al-Matholib*, v.2,p.126, *al-Mughni*, v.4,p.338, *al-Isyraf 'ala al-Masa'il al-Khilaf*, v.1, p.280, *al-Muhazzab*, v.1, p.307.

10 Surah Al-Baqarah, verse no. 282.

11 Muhammad Mustafa Al-Zuhayli (2006), *Al-Qawa`id al-Fiqhiyyah wa Tatbiqatuha fi al-Mazahib al-`Arba`ah*. Damsyik: Dar al-Fikr, v. 2, p. 815.

12 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.

13 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, p. 506.

14 Mustafa al-Zarqa', *al-Madkhal al-Fiqhi al-`Am*, Dar al-Qalam, Damascus, 2004, p. 605.

عَنْ عُبَادَةَ بْنِ الصَّامِتِ، قَالَ: قَالَ رَسُولُ اللَّهِ صلى الله عليه وسلم " الذَّهَبُ بِالذَّهَبِ وَالْفِضَّةُ بِالْفِضَّةِ وَالْبُرُّ بِالْبُرِّ وَالشَّعِيرُ بِالشَّعِيرِ وَالتَّمْرُ بِالتَّمْرِ وَالْمِلْحُ بِالْمِلْحِ مِثْلاً بِمِثْلٍ سَوَاءً بِسَوَاءٍ يَدًا بِيَدٍ فَإِذَا اخْتَلَفَتْ هَذِهِ الأَصْنَافُ فَبِيعُوا كَيْفَ شِئْتُمْ إِذَا كَانَ يَدًا بِيَدٍ

"Ubadah Ibn Samit narrated: Prophet (ﷺ) said: gold is to be paid for by gold, silver by silver, wheat by wheat, barley by barley, dates by dates, and salt by salt, like for like and equal for equal, payment being made hand to hand. If these classes differ, then sell as you wish if payment is made hand to hand."[15]

4.8. However, the operational constraints to conduct the settlement on spot basis in certain circumstances is recognised based on the following *fiqh* maxim:

المشقة تجلب التيسير

"Difficulty calls for facilitation"[16]

4.9. Business customary practices *(`urf tijari)* is recognised in deriving the Shariah ruling based on the following *fiqh* maxim:

العادة محكَّمة

"Custom is a basis for judgment"

The encouragement towards responsible practices and prudent financial behaviour in line with the maqasid Shariah

4.10. While Shariah recognises the concept of debt, it is encouraged for the debt practices to be conducted in a responsible manner, from both creditor and debtor's perspectives. This may include the lender's responsibility to undertake reasonable evaluation on whether the borrower's objective of seeking the debt corresponds with his/her financial affordability. The Prophet (ﷺ) has demonstrated the good practice of honouring a financial commitment and ability to fulfil his debt obligation:

عَنْ إِسْمَاعِيلَ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي رَبِيعَةَ، عَنْ أَبِيهِ، عَنْ جَدِّهِ، قَالَ اسْتَقْرَضَ مِنِّي النَّبِيُّ صلى الله عليه وسلم أَرْبَعِينَ أَلْفًا فَجَاءَهُ مَالٌ فَدَفَعَهُ إِلَيَّ وَقَالَ بَارَكَ اللَّهُ لَكَ فِي أَهْلِكَ وَمَالِكَ إِنَّمَا جَزَاءُ السَّلَفِ الْحَمْدُ وَالأَدَاء

"It was narrated from Isma'il bin Ibrahim bin 'Abdullah bin Abi Rabi'ah, from his father, that his grandfather said: The Prophet (ﷺ) borrowed forty thousand from me, then he received some wealth, and he paid me back while said: 'May Allah bless your family and your wealth, indeed the reward for lending (salaf) is gratefulness and the fulfilment of (the debt) obligation"[17]

[15] Imam Muslim, *Shahih Muslim*, مطبعة عيسى البابي الحلبي وشركاه، القاهرة, v.3, p.1211, hadith no. 1587.

[16] Al-Suyuti, Al-Asybah wa al-Naza'ir, Dar al-Kutub al-`Ilmiyyah, 1983, p. 76-77.

[17] Imam Ahmad An-Nasa'i, *Kitab al-Buyu`* in *Sunan An-Nasa'I, n*o. 235.

4.11. Shariah encourages responsible financial consumption behaviour towards the attainment of benefit and prevention of harm to the individual consumers. Therefore, it is crucial to recognise one's financial capability and to avoid excessive indebtedness beyond the one's actual need and ability to afford. This is in line with the following verse:

وَٱلَّذِينَ إِذَآ أَنفَقُواْ لَمۡ يُسۡرِفُواْ وَلَمۡ يَقۡتُرُواْ وَكَانَ بَيۡنَ ذَٰلِكَ قَوَامٗا

"And (the servants of Allah) are those who, when they spend, do so not excessively nor miserly, but moderately in between"[18]

4.12. Collectively, the inculcation of responsible debt practices and prudent financial behaviour could ultimately give rise to a commercial transaction that does not inflict harm on both creditor and debtor. This resonates well with the following *fiqh* maxim:

لاَ ضَرَرَ وَلاَ ضِرَارَ

"Neither harming nor reciprocating harm (in Islam)"[19]

Part V: Implication of the SAC Ruling

5.1. The SAC Ruling provides clarity on the key Shariah considerations that must be fulfilled by Islamic FSP which intends to offer a Shariah-compliant BNPL facility, as set out in paragraph 1.1. This will ensure an end-to-end Shariah-compliant product structure offered by Islamic FSP.

5.2. Non-bank Islamic BNPL providers that intends to offer Shariah-compliant BNPL facility are encouraged to refer to the SAC Ruling as a guide and educate their consumers on the essence of the Shariah-compliant BNPL facility.

[18] Surah Al-Furqan, verse no. 67.
[19] Ahmad al-Zarqa`, *Syarh al-Qawaid al-Fiqhiyyah*, Dar al-Qalam, 1985, p. 165.