



Review Paper

## A Comparative Analysis of Electronic Money in United Kingdom and Pakistan

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### Abstract

*Over the years, there is phenomenal change in technology and market competition and these are the forms through which the money ownership is transferred from one person to another. Originally a physical substance such as gold and silver or even alive – cattle were considered as forms of money. Even though the greater amount of money used by the individuals in their daily transactions is still in the form of coins and notes, but if we compare it with the intangible money that exists only as entries in bank records, it quantity is much smaller. Perhaps banknotes and coins will become as obsolete as cowries' shells. This intangible (electronic) money acts as a replacement for cash, where monetary value is stored on a smart card and is used to make daily small payments. Therefore, electronic money has become an essential element and affects our lives in one way or another. This paper investigates the electronic money in two different regimes that is, The United Kingdom and Pakistan. Here the Legal Framework, payment mechanism, permission for issuance, authorization requirements and purse limit of the electronic money in these two countries has been investigated. Prudential and other requirements which are regulating and affecting the electronic money in these regimes have been investigated here. The various restrictions and limitations imposed by the authorities in these regimes on the electronic money firms have been discussed in this paper. Assessments of the Consumer Protection laws in these regimes which are relevant to the electronic money have been touched as well.*

**Keywords:** Electronic money, legal framework, banking, consumer protection, payment mechanism, permission, prudential regulations.

### Introduction

Innovation is normal when it comes to the subject of money. Over the years, there is phenomenal change in technology and market competition and these are the forms through which the money ownership is transferred from one person to another<sup>1</sup>. Originally a physical substance such as gold and silver or even alive – cattle were considered as forms of money. Even though the greater amount of money used by the individuals in their daily transactions is still in the form of coins and notes, but if we compare it with the intangible money that exists only as entries in bank records, it quantity is much smaller. Perhaps banknotes and coins will become as obsolete as cowries' shells<sup>2</sup>.

This intangible (electronic) money acts as a replacement for cash, where monetary value is stored on a smart card and is used to make daily small payments. Such smart cards are known as stored-value cards (SVCs), which have a stored cash value and can be used to purchase goods, services, etc. Electronic money has been defined as 'monetary value as represented by a claim on the issuer which is, i. stored on an electronic device, ii. issued on receipt of funds of an amount not less in value than the monetary value issued, and iii. accepted as a means of payment by undertakings other than the issuer<sup>3</sup>.

Banking Code has defined it as a 'cash in wallet, though digital, having monetary value in the form of digital information, which may be transferred from the cardholder to retailer, in the satisfaction of payment obligation (The law of banking in Scotland by Lorne D. Crerar, 2, 480 (2007)).

It is issued by an originator to a participating bank which pays for it and the bank re-issue it to customers in electronic purses, which can be used then just like cash. There is a contractual relationship between originator and the participating banks and between the banks and its customer, but in order for the system to work the obligations to redeem the digital cash (by converting it into real value) undertaken by the originator and the participating banks should be enforceable not only by the contracting parties but also by anyone who has acquired the digital cash. The originator and participating banks make a standing offer to redeem digital cash by displaying the relevant logo, which is accepted by anyone who tenders the digital cash for conversion into real value<sup>4</sup>.

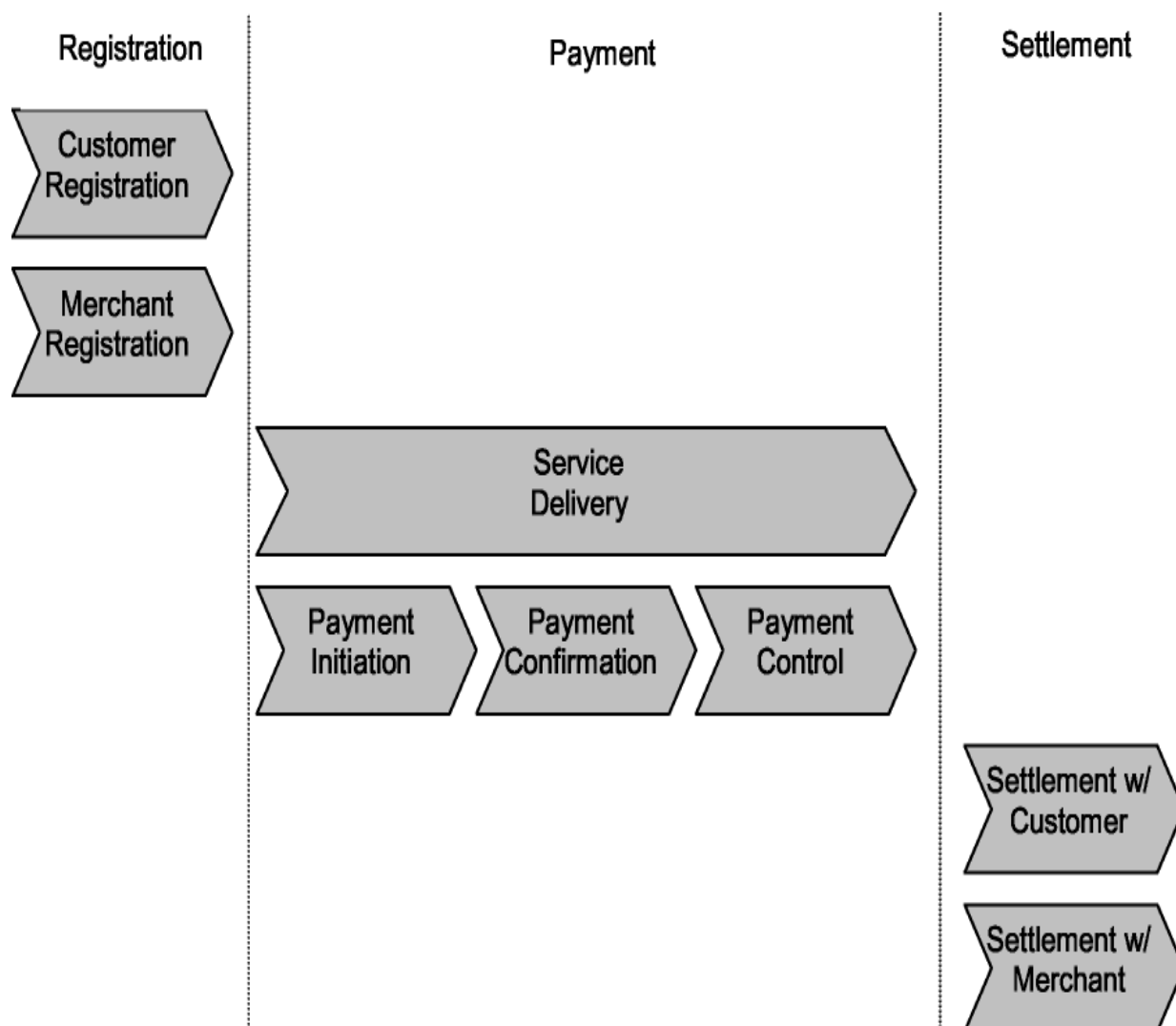
E-money can be, identified as e-money and anonymous e-money (also known as digital cash). E-money which contains information revealing the identity of the original holder is known as identified e-money and it poses limited risk to holder,

whereas anonymous e-money works just like real paper cash which can be spent or given away without leaving a transaction trail and the loss or theft may result in loss of e-money stored in it<sup>5</sup>.

Moreover, there are further two kinds/varieties of each type of e-money: online e-money and offline e-money. Online means one is required to interact with a bank (via modem or network) to conduct a transaction with a third party. Offline e-money means a transaction without having to directly involve a bank<sup>7</sup>. Launching e-money in any economy is nothing less than injecting a different blood group in human body while keeping it alive at the same time, so complications are likely to take birth. Unchecked and unsupervised issuance of electronic

money in any economy may affect the ability of financial authorities and central bank authorities to control money supply and to effectively implement monetary policy. Electronic money cannot be adopted generally unless there is a market confidence in the electronic money schemes and legal protection to consumers and merchants who use it in their businesses transactions particularly in respect of the potential for systemic failure of such schemes<sup>8</sup>. There is also range of other policy issues such as consumer protection, competition, access and standards as well as the possible financial risks borne by issuers of e-money. This essay revolves around the legal framework of electronic money in UK and its comparison with that of Pakistan, therefore we shall first of all consider legal framework for e-money in UK.

#### E-Payment Mechanism<sup>6</sup>:



**Figure-1**  
Shows the process of e-money

## The Legal Framework of E-money in U.K.

**Sources of the electronic money;** E-money regime of the UK is marked from the implementation of the Electronic Money Directive (2000/46/EC) and Banking Directive (2000/28/EC) and other associated instruments, in the UK<sup>9</sup>. Under a separate regulatory regime, the 'Electronic Money Directive', is in force in UK since April 2002, for electronic money institutions, which is linked to the general regulatory scheme concerning finance and other institutions under The Financial Services and Markets Act 2000 (the 'FSMA 2000'). Accordingly, a number of subsidiary legislative instruments have been introduced to amend the FSMA 2000 and other relevant legislation. The two main instruments: i. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>10</sup> (the 'Regulated Activities Order') as amended by, firstly, S.I. 2001/3544 and especially by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (SI 2002/682), which was to insert necessary references for e-money in The Regulated Activities Order; ii. The Electronic Money (Miscellaneous Amendments) Regulations 2002 (SI 2002/765); and the Financial Services Authority ("FSA")'s Handbook of Rules and Guidance, which contains a number of Modules. The principal Module is the Sourcebook for Electronic Money Issuers, known as ELM, which contains more detailed provisions implementing aspects of the Electronic Money Directive and the Banking Directive. Other relevant Modules include the General Provisions (GEN), the Threshold Conditions (COND) and the Authorization (AUTH) and Supervision (SUP) Manuals.

Under the FSMA 2000, the issuing of electronic money is as a regulated activity<sup>11</sup> and e-money firms are credit institutions. Electronic money is defined in Article 3(1) of the Regulated Activities Order (as amended by S.I. 2002/682)<sup>12</sup> as 'monetary value, as represented by a claim on the issuer, which is – i. stored on an electronic device; ii. issued on receipt of funds; and iii. accepted as a means of payment by persons other than the issuer.

**Subjects of E-Money Regime:** It is 'to ensure that only persons who are subject to a prudential regime designed to deal with the risks of issuing e-money engage in that activity<sup>13</sup>.' Under s.19 FSMA 2000 only authorized or exempt person may issue e-money in the UK and if this section read with s. 40(1) of FSMA 2000, regulatory regime is restricted and applicable only to e-money firms. E-money firm is defined in ELM, as one 'whose permitted activities includes issuing e-money' and provisions of ELM vary according to the category of e-money firm. It includes banks and building societies that also issue electronic money. Next, it is extended to an 'Electronic Money Institution' (ELMI or sometimes EMI), which refers to 'an undertaking or any other legal person, other than a credit institution ... that issues means of payment in the form of electronic money<sup>14</sup>.' Further sub-categorizations

identified in ELM include an ELMI that is not a 'lead regulated firm'<sup>15</sup>; a small e-money issuer; an e-money firm that is either an incoming EEA firm or an incoming Treaty firm<sup>16</sup>; and, an ELMI that is established outside the EEA - although chapters 2, 3 and 7 of ELM do not apply to it if such a ELMI is also a lead regulated firm.

**Permission for issuing e-money:** Any credit institution, intending to issue e-money, must get permission under Part IV of the FSMA, except small e-money issuers. AUTH § 2.3.3[G] provides that under s. 23 FSMA 2000, it is an offence, with two years of imprisonment and unlimited fine, for any person carrying out activities in breach of s. 19 FSMA 2000. The Authorization Manual, like s. 22 FSMA 2000, requires that for an activity to be regarded as regulated one, must be carried on by way of business. However, a mere distributor not being issuer or originator of e-money by way of business is not subjected to FSA as per references contained in Regulated Activities Order (as amended by S.I. 2002/682) nor activity of a small or local issuer who is working on the basis of a certificate. Moreover, authorization is required under s. 19 FSMA 2000, if the regulated activity carried on by way of business 'in the UK'. Account-based electronic payment schemes also fall within the regulatory regime, and are deemed to be within definition of e-money - so long as they are distinct from deposit taking as per § 3.3.15 [G] of Appendix 3 to Authorization Manual. Firstly, because money credited to user's electronic account, constitute monetary 'value' being units, denominated in the currency or currencies of account that are a capable medium of exchange. Secondly, an e-money device includes any device that a holder of electronic money uses to hold or to spend or to otherwise use his electronic money. According to the FSA consultation paper 172 issued in 2003, prepaid airtime on mobile phones to buy premium rate services if used to acquire goods or services that are consumed by means other than the mobile phone, such as physical delivery of goods, the prepaid airtime would be considered as electronic money. Secondly, Electronic Traveler's Cheque if used to withdraw cash from third parties' ATMs or to buy goods and services from third parties and lastly, e-money schemes where the float moneys received against the issue of e-money are allowed to be invested in a trust account remains within the definition of e-money<sup>17</sup>.

## Authorization Requirements

For an e-money issuer to carry on the regulated activity of issuing e-money lawfully in the UK it must be either an ELMI which is authorized by having obtained Part IV permission to do so, a bank or building society (or full credit institution) that is authorized by having obtained Part IV permission to do so, an EEA firm<sup>18</sup> or a Treaty firm<sup>19</sup> that is authorized by qualifying for authorization to do so under either schedule 3 or 4 of the FSMA 2000, or a small e-money issuer that has been granted a certificate by the FSA under Article 9C of the Regulated Activities Order.

## Prudential Supervision

For the prudential supervision of electronic money issuers regarding the objectives like market confidence, public awareness, consumer protection and the reduction of financial crimes, detailed provisions are set out in Module ELM of the Handbook of Rules and Guidance which implements parts of the Electronic Money Directive and the Banking Consolidation Directive, concerned with the regulated activity of issuing electronic money. These provisions are explored in next sections.

## Required capital and limitation on investment

As to the provisions concerning the initial and continuing own funds requirements, besides the initial capital<sup>20</sup>, it must have own funds not less than one million euro or its equivalent (ELM § 2.3.1[R]). However, these provisions do not apply to banks and building societies, lead regulated firms and incoming EEA or Treaty firms and also excludes institution whose capital requirements are set under Directive 2000/12/EC (ELM § 2.1.1 [R]).

The provisions concerning the limitation of the types of investment that an ELMI can engage in are limited to only those ELMI's which are making only low risk and high liquidity investments in order and this limitation is to ensure the stability of such institutions and the electronic money sector generally as well as to protect consumers. An ELMI is also required, to maintain adequate liquidity, taking into account the nature and scale of its business, in order to meet its obligations as they fall due (ELM § 3.6.1 [R]). Limits are also set on the amount of large exposure that an ELMI may have. To protect its e-money float an e-money firm must have sufficient funds to ensure that its foreign exchange exposure does not exceed its absolute foreign exchange exposure limit. Moreover, an ELMI is also prohibited from engaging in derivative or quasi-derivative contracts save for listed exceptional circumstances (ELM § 3).

## Restrictions on e-money firms

To preserve a level playing field between ELMI's and other credit institutions, as provided in ELM § 4, restrictions are placed on the business activities of ELMI's. Their business activities are restricted to issuing e-money but they can provide other financial and non-financial services (like storing data on e-money devices) relating to issuing e-money. They are strictly prohibited from granting any credit, paying any interest or any similar sum on the e-money they issued or having ownership share in another undertaking except those relating to the performance of operational or other ancillary functions related to e-money issued or distributed by that ELMI. These restrictions are not applicable to banks and building societies (that are also e-money firms) and incoming EEA or Treaty firms. But they are applicable to ELMI's having their registered or head office outside UK, on worldwide basis (e.g., a non-EEA

overseas ELMI's), to protect regulatory regime in UK (ELM § 4.1).

The issuing of e-money by an ELMI at a discount is prohibited and prohibitions extends to any bank, building society and a non-EEA overseas ELMI's (but only in relation to e-money issued by such an ELMI from an establishment in the UK), except an incoming EEA and Treaty firm (ELM § 4.4.1 [R]). It would seem that the prohibition would include issuing e-money at a discount in a member State of the European Union (ELM § 4.1.2 [G]).

## Management and system Controls

Business of an ELMI excluding a bank, building society and an incoming Treaty or EEA firm, must be conducted by at least two individuals, with their active participation in all significant matters of the firm (ELM § 5.3). Besides, an ELMI is also required to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (ELM § 5.4).

**Information:** For protection of consumers and enhancing market confidence, e-money firms are required to provide certain information to holders of its e-money, observe set purse limits, and to allow holders of its e-money the right to redeem e-money<sup>21</sup> in stated circumstances. These provisions are applicable to e-money issued by an establishment in the UK except an EEA or Treaty firms carrying on business in the UK on a cross-border services basis only (ELM § 6).

**Redemption of E-Money:** It is mandatory for every e-money firm to disclose before issuing e-money to any person as to any permitted fee in connection with the redemption of e-money issued by it or in the case if no fee is applicable, details of how to redeem e-money issued by the firm to that person, the permitted minimum amount of e-money that can be redeemed, and the length of period for which e-money issued by the firm is valid (ELM § 6.8.4[R]). In addition, an e-money firm must also inform to actual and prospective holders of e-money issued by it as to the Terms of redemption in all cases of loss or fraud, liability of the holder or the conduct of another person in relation to that holder's e-money, loss, mal-function or theft of electronic money device and any other significant risks in connection with the holding of the e-money (ELM § 6.8.5[R]). An e-money firm must also notify an actual or prospective holder of its e-money that the Financial Services Compensation Scheme<sup>22</sup> does not cover claims in connection with issuing e-money and, however, of any other complaints and redress procedures available to the holder, including the Financial Ombudsman Service<sup>23</sup> and details of any scheme that compensates holders in respect of e-money issued by the firm, or the absence thereof, where it is unable to satisfy claims. Finally, an e-money firm must also provide the holder with information about how the holder may initiate the available

complaints and redress procedures as well as a geographical address at which the firm may be contacted(ELM § 6.7).

**Purse Limits:** The purse limit for e-money issued by an e-money firm to a consumer e-money holder is set to £1000 or its equivalent in another currency(ELM § 6.9.1[R]).But it can exceed from the stated amount if stated holder is willing to face the risks consequent to excess(ELM § 6.9.5[R]), undertakes the liability as a result of unauthorized use<sup>24</sup> or the scheme is such that resultant loss can be prevented (ELM § 6.9.8[R]).E-money firm is required to print on the card or the packaging in which it was delivered to original holder, the address to be contacted and a brief summary of the risks relating to loss or theft(ELM § 6.9.7[R]).

An e-money firm must, upon request from the person to whom it issued the e-money or from any other person holding the e-money in accordance with the e-money scheme rules other than a merchant who has accepted e-money in the course of business in settlement of goods or services<sup>25</sup>, redeem at par any e-money (in the currency in which e-money is denominated) that it has issued, as soon as possible after following the procedure to prevent money laundering or fraud(ELM § 6.3.4 [R]).

In case of cash immediately and in case of electronic transfer according to payment instructions, payment must reach the holder's account within five business days allowing for the failure owing to reasons outside the reach of firm's control (ELM § 6.3.6 [R]).There will be no duty to redeem if e-money to be redeemed has a par value of less than 10 Euro or its equivalent and this exception is expressly provided for by the e-money scheme rules (ELM § 6.4.1 [R]).An e-money firm must not issue e-money that is valid less than a year and if it is distributed through banks or some other distributor, it should be ascertained that e-money is valid at least up to one year (ELM § 6.4.3 [R]).But e-money would be no more redeemable if it has not been redeemed within the time provided in e-money firm's scheme rules(ELM § 6.4.2 [R]).

**Consumer Protection:** For the consumer protection, the development of encryption protocols/standards for online payment (e.g., SSL - Secure Sockets Layer; and SET - Secure Electronic Transaction) has provided greater assurance and encouraged payment online by means of credit cards. The general law relating to credit card transactions applies in relation to card payments for e-commerce transactions as well<sup>26</sup>.

Consumer Credit Act 1974 (CCA) does not give consumer protection to a consumer e-money device or even a consumer e-money card because the Act according to s. 14 of the CCA 1974, is concerned with credit tokens given by a person carrying on consumer credit transactions and not with the e-money which is 'issued on the receipt of funds'. Besides, protection extended in CCA 1974, is more suited to smart cards rather software based e-money<sup>27</sup>. Consumer protection afforded in relation to 'payment cards' in the Distance Selling Regulations 2000 can

be stretched to consumer e-money devices and cards - as far as distance contracts are concerned. Regulation 21(6) uses the word 'includes' to refer the cards to which it is applicable, so it can be construed to include a consumer e-money card as well as the objective of Electronic Money Directive, to enhance consumer confidence, also supports this inclusion<sup>28</sup>. The Banking Code (March 2005), although related only to an 'electronic purse' undertakes to take immediate preventive measure after being informed by customer that card is lost, stolen or as to vulnerability of PIN<sup>29</sup>. Code limits the customer's liability to £ 50 in case of unauthorized transfer from account if customer fails to report its loss, theft or misuse after transfer (12.15 of The Banking Code 2005) and no liability at all if reported before transfer (12.16 of The Banking Code 2005). Said Code covers only consumer e-money card because it falls in definition of electronic purse (Glossary of the Banking Code 2005) provided card is issued or distributed by the bank.

### Pakistan's regulatory framework for e-money

**Source of Pakistan's e-money legal framework:** Around the globe, the Banking sector is closely regulated and Pakistan is no exception. The Regulatory framework has undergone substantial changes along with financial liberalization and other developments in the financial sector, particularly with reference to the financial sector reforms of the last few years.

But as far as legal infrastructure for electronic money is concerned, it is still lagging far behind as compared to that of UK and its regulatory framework is existing only in the shape of different circulars and standing orders issued by the State Bank of Pakistan<sup>30</sup> (the central bank of Pakistan), though supported by other laws and codes. Nevertheless, rules and regulations to support the legal infrastructure of electronic money which State Bank of Pakistan has implemented in the form of its circulars and standing orders have been encoded as 'Payment Systems and Electronic Funds Transfers Act (PSEFTA) 2005', which is waiting for its legislative approval. Proposed Act (PSEFTA 2005) deals with any electronic fund transaction, so it addresses all the payment cards and electronic devices at the same time. While dealing with other payments systems, the proposed Act (PSEFTA 2005) also deals with the basic issues of electronic money in its regulatory perspective and s. 2(o) of the proposed Act (PSEFTA 2005) defines electronic money in the following words:

'Electric funds or electronic money means money transferred through an electronic terminal, telephone instrument, computer, magnetic medium or any other electronic device so as to order, instruct or authorize a banking company, a financial institution or any other company or person to debit or credit an account and includes monetary value as represented by a claim on the issuer which is stored in an electronic device or payment instrument, issued on receipt of funds of an amount not less in value than the monetary value issued, accepted as means of payment by undertakings other than the issuer and includes electronic store

of monetary value on a technical device that may be used for making payments.’

So, any money, which is electronically transferred, irrespective of the fact that money is transferred through debit card, smart card, credit card or any other such card, it would be considered as electronic money or electronic fund. Moreover, definition embodies the wording of Electronic Money Directive (2000/46/EC) regarding e-money and it also recognizes any technical device on which money is electronically stored in the shape of units having monetary value, which can be used in satisfaction of any payment obligation. And an undertaking which is duly authorized to issue electronic money is an electronic money institution<sup>31</sup> and a payment system (s.2(y) of Payment Systems and Electronic Funds Transfers Act, 2005(A bill)), in which payment instruments, or transfer, clearing, payment settlement, supervision, regulation or infrastructure including the clearing, settlement or transfer of book entry government securities, if implemented electronically, shall be regarded as electronic payment system (S.2(r) of Payment Systems and Electronic Funds Transfers Act, 2005(A bill)).

A financial institution (S.2 (t) of Payment Systems and Electronic Funds Transfers Act, 2005(A bill)) is one, as defined in the Financial Institutions (Recovery of Finances) Ordinance, 2001 (Pakistan) or any other institution or person that issues a card and agrees with the consumer to provide electronic fund transfer services and includes a banking company as defined in the Banking Companies Ordinance 1962 (Pakistan). Proposed Act (PSEFTA 2005) declares the State Bank of the Pakistan (SBP) as the main financial and supervisory authority (S.7 of Payment Systems and Electronic Funds Transfers Act, 2005 (A bill)) and any applicant who wants to become an electronic money institution shall submit an application to the State Bank of Pakistan for the issue of a license, to perform electronic money activities and such an institution is restricted to the activities which are authorized by the SBP for the purpose of issuing electronic money on the basis of license (S.23 of Payment Systems and Electronic Funds Transfers Act, 2005 (A bill)). Proposed Act (PSEFTA 2005) also strictly prohibits any electronic money institution, from issuing electronic money in excess of the value of funds received by it from a consumer (S.23 of Payment Systems and Electronic Funds Transfers Act, 2005 (A bill)).

Any institution involved in electronic transfer shall *maintain record* (S.7 of Payment Systems and Electronic Funds Transfers Act, 2005 (A bill)) of electronic transactions in electronic form, in the manner provided in s. 6 of the Electronic Transaction Ordinance, 2002 (Pakistan). Proposed Act (PSEFTA 2005) provides that an unauthorized electronic transfer of funds and an incorrect electronic transfer of funds to and from the consumer’s account shall be considered an error. If during the investigation of error, consumer’s account is not provisionally re-credited or investigation of error is not found to be bona fide, concerned financial institution shall be liable to pay triple damages to the

consumer(S.38 of Payment Systems and Electronic Funds Transfers Act, 2005 (A bill)). Burden of proof shall be upon financial institution in any case involving consumer’s liability for any unauthorized transfer of electronic funds (S.40 of Payment Systems and Electronic Funds Transfers Act, 2005 (A bill)). Proposed Act (PSEFTA 2005) also provides for the suspension of consumer obligation to another person in case there is any technical malfunction in electronic transfer unless the other person made a written request to make the payment through some other way(S.47 of Payment Systems and Electronic Funds Transfers Act, 2005 (A bill)).

An unauthorized disclosure of any information relating to an electronic fund transfer or affairs and account of the customer shall not be made except if it is allowed by law or practice or usage customary among bankers it is necessary or appropriate to make such a disclosure, otherwise any such information can be given with the consent of customer (S.67 (1) of Payment Systems and Electronic Funds Transfers Act, 2005(A bill)).

Rules governing the operation of individual accounts will be applicable to the electronic fund transfers as to their disclosure to third parties (S.67(3) of Payment Systems and Electronic Funds Transfers Act, 2005(A bill)). Strict criminal liability is provided in the shape of imprisonment which may extend to three years and may also be liable to pay fine which may extend to three hundred thousand rupees, for anyone who fails to comply with the provisions of this proposed Act (PSEFTA 2005)(S. 55 of Payment Systems and Electronic Funds Transfers Act, 2005(A bill)) and still severer in the case the violation affects foreign commerce extending to an imprisonment up to ten years and one may also be liable to fine up to ten hundred thousand rupees (S. 56 of Payment Systems and Electronic Funds Transfers Act, 2005(A bill)). Whoever pretends to be some other person, or substitute one person for another and fraudulently or dishonestly use any credit or debit card, or code or any other means of access to an electronic fund transfer device to his wrongful gain shall be punished with rigorous imprisonment for a term which may extend to ten years and with fine which shall not be less than the wrongful loss caused to any person (S. 57 of Payment Systems and Electronic Funds Transfers Act, 2005(A bill)).

### **UK e-money regime as compared to that of Pakistan**

Comparison of the two legal framework for electronic money: Despite many differences in the basic concept of e-money regime, efforts have been made to provide a brief comparison of the two systems, which still has a lot of similarities as well. The definition of electronic money in U.K., means electronic specie of money in pursuance of electronic money directive, but as far as Pakistan is concerned, it includes every electronic transfer of funds to debit or credit any account and also includes the electronic storage of monetary value on a technical device as well which may be used for making payments. On the other

hand, the Pay Pal (Europe) Ltd., which requires a different interpretation regarding e-money's definition in UK, whereas it can be safely considered as an e-money issuing institution in Pakistan as well as any other new technology, for which e-money definition in UK requires a revision, so in the context of technology e-money definition of Pakistan is more exhaustive.

The extent, to which two regulatory authorities, i.e. FSA and State Bank of Pakistan, are exercising their control to regulate electronic money, is also different. State Bank of Pakistan enjoys more discretionary and supervisory powers as compared to FSA, which has to follow the clear-cut list of rules. For a foreign e-money issuing firm, Pakistani regime also put more to the discretion of State Bank of Pakistan unlike the U.K. regime.

There is no distinction between small and large e-money issuers in Pakistan; therefore no qualification regarding the capital is required. The Proposed Act (PSEFTA 2005) in itself does not set any limit as to the minimum or maximum limit for issuing e-money unlike the e-money regime of UK, therefore in the former case; an element of uncertainty is likely to arise. UK's regime may have succeeded in creating bearer confidence; but it still lacks the adequate bearer protection. In Pakistan consumer protection and provisions for privacy, provided to other payment cards or devices extend equally to electronic money. Customer's liability in case of failure to report the loss, theft or vulnerability of PIN before the unauthorized transfer, is limited to £50 in UK, whereas customer's liability in case of default of the provisions of the proposed Act is stricter in Pakistan than that provided in e-money regime in UK. Criminal liability for non-compliance, non-compliance affecting foreign commerce or unauthorized use of e-money card or device, is also severer in Pakistan than in UK.

However, the extent of carrying on activities regarding electronic money in both regimes is concerned; only licensed or authorized activities are allowed and provide almost the same pack of information before issuing electronic money. The rule that an e-money firm would not be liable in case it fails to make electronic transfer of funds owing to circumstances beyond its control is same under both regimes. Unlike e-money regime in Pakistan, due to stricter regulation like strong own funds requirements, limited investment opportunities and heavy supervision, place a serious burden on electronic money institutions in UK.

## Conclusion

With careless brevity it can be said, that the legal framework for electronic money in Pakistan is passing through its metamorphosis. Most of the rules are only orders of a financial authority and the proposed laws for e-money although provide for stricter accountability and protection for consumer but lacking in their certainty. On the other hand, e-money regime of UK is more exhaustive and certain but lacking in proper shields for consumer protection and contains stricter provisions for

small and new entrants into the regime, requiring a fresh perusal of current issues.

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14. For definitions of various types of electronic money issuers, see the Glossary of Definitions section of the Handbook of Rules and Guidance (2000)
15. A 'lead regulated firm' is defined in the Glossary of Definitions as 'a firm, which is the subject of the financial supervision requirements of an overseas regulator in accordance with an agreement between the FSA and that regulator relating to the financial supervisions of firms whose head office is within the country of that regulator' (2000)
16. An incoming EEA firm is an EEA firm which is exercising or has exercised its right to carry on a regulated activity in the United Kingdom in accordance with Schedule 3 to the FSA (EEA "passport rights") while an incoming Treaty firm is a Treaty firm that is exercising or has exercised its right to carry on a regulated activity in the United Kingdom in accordance with Schedule 4 to the FSA (Treaty rights) (2000)
17. [http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2003\\_2/bamodu/20/01/2013](http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2003_2/bamodu/20/01/2013) (2013)

18. An 'EEA firm' issuing electronic money is one which has its head office in any EEA country other than United Kingdom but it is authorized by its home state regulator and its 'Passport Rights' are the rights to establish a branch in or to provide cross border services into the United Kingdom under a 'single market directive' and an EEA firm exercising these right is an incoming EEA firm (2003)
19. A "Treaty firm" is one whose head office is in an EEA State (its home state), other than the United Kingdom, and which is recognized under the law of that State as its national. Its authorization to carry on a regulated activity not covered by a single market directive in the United Kingdom, are its 'Treaty Rights' and a treaty firm exercising such rights is an incoming Treaty firm (2003)
20. ELM(Electronic Money Institution) § 2.4.2 [R]FSMA (2000)
21. The right to redeem must be expressed as a contractual term. For this purpose, the e-money firm must ensure that there is a contract between itself and any person to whom it issues e-money or any person with a redemption right (such as a merchant accepting its e-money as payment), in the case of the former, before it issues the e-money and in the latter before the person with the redemption right obtains the e-money or as soon as reasonably possible afterwards. (ELM § 6.7)FSMA (2000)
22. Established under s. 213 FSMA 2000 for compensating persons where authorized persons are unable to satisfy claims against them (2000)
23. Scheme set up under Part XVI of the FSMA 2000 by which some disputes may be resolved quickly and with minimum formality by an independent person. S. 225 - 234 of the FSMA (2000)
24. ELM(Electronic Money Institution) § 6.9.8[R] FSMA (2000)
25. Electronic Money Sourcebook (Amendment) Instrument, (2005)
26. Re. Charge Card Services Ltd Ch. 497 (1989)
27. Mark Hapgood, Paget's Banking,370-371(Nov, 2002) (2002)
28. [http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2003\\_2/bamodu/25/01/2013](http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2003_2/bamodu/25/01/2013) (2013)
29. The Banking Code § 9.15 (March 2005) (2005)
30. Master Circular of Payment Systems' Statements, PSD Master Circular/2005, Dated August 27, (2005)
31. S.2(q) of Payment Systems and Electronic Funds Transfers Act, 2005 (A bill) (2005)