

FINANCIAL SERVICES COMPLIANCE

Indonesia



Financial Services Compliance

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights, including into the regulatory framework; registration and authorisation regimes; enforcement; compliance programmes; cross-border regulation and international standards; and other recent trends.

Generated 01 April 2022

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Table of contents

REGULATORY FRAMEWORK

Regulatory authorities
Authorisation regime
Legislation
Scope of regulation
Additional requirements

ENFORCEMENT

Investigatory powers
Disciplinary powers
Tribunals
Penalties

COMPLIANCE PROGRAMMES

Programme requirements
Gatekeepers
Directors' duties and liability
Private rights of action
Standard of care for customers
Rule-making

CROSS-BORDER ISSUES

Cross-border regulation
International standards

UPDATE AND TRENDS

Key developments of the past year

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REGULATORY FRAMEWORK

Regulatory authorities

What national authorities regulate the provision of financial products and services?

Provisions of financial products and services in Indonesia are regulated by two independent government bodies: the Financial Services Authority (OJK) and Indonesia's central bank (BI). The OJK focuses on micro-prudential policy and oversees all financial services institutions, while BI concentrates on macro-prudential policy with the prime objective of achieving and maintaining stability of the rupiah. In pursuing this objective, BI undertakes three sectoral tasks: formulating and implementing monetary policy; regulating and maintaining payment system availability; and maintaining financial system stability.

Law stated - 14 January 2022

What activities does each national financial services authority regulate?

The OJK regulates activities in the fields of:

- banking;
- capital markets, including securities companies, securities brokers and asset management companies; and
- financial services in the fields of insurance, pension funds, financial institutions and other financial services.

Fintech activities, to the extent that they do not relate to payment systems, are also under the supervision of the OJK. Peer-to-peer lending and equity crowdfunding are also regulated by the OJK. The scope of OJK regulation includes the organisation of financial institutions (such as licensing requirements, type of products and activities that can be performed by financial institutions), level of soundness and the application of prudential principles. The OJK also has the authority to investigate financial institutions.

BI regulates and supervises payment systems in Indonesia such as card-based payment activities, payment gateways, issuance of electronic money, foreign exchange activities, rupiah currency handling services and remittance businesses. A business that intends to engage with any of these payment system activities requires a licence from BI.

Law stated - 14 January 2022

What products does each national financial services authority regulate?

The OJK has comprehensive supervisory roles over the activities of financial services institutions; all products issued by each type of financial services institution will need to be approved or reported to the OJK. For the banking sector, all products or services issued by banks must obtain prior approval from the OJK. This also includes deposit and loan products. Banks that act as an agent of offshore financial products must also obtain prior approval from the OJK before engaging in such activity.

In the capital markets sector, under the Indonesian Capital Market Law, securities include promissory notes, commercial papers, shares, bonds, evidence of indebtedness, participation units of collective investment contracts, futures contracts related to securities and all securities derivatives. The OJK supervises all securities transactions in the primary and secondary market (through over-the-counter transactions).

Securities transactions include the following, among others:

- the offering of securities by securities issuers;
- outright sales and purchases;
- grants or bequeathed grants;
- gifts, donations, gratuities and equivalent transactions;
- exchanges;
- transfers relating to court rulings;
- transfers relating to mergers, consolidations, acquisitions and splits;
- repurchase agreement transactions; and
- buybacks.

These are carried out, either directly or indirectly, via Indonesian-registered or Indonesian-licensed securities companies, including securities underwriters and brokers, investment managers and other parties, as determined by the OJK.

Products regulated by BI relate to payment systems, which include:

- credit, automated teller machine and debit cards;
- electronic money and wallets;
- payment gateways;
- foreign exchange trading platforms;
- structured products; and
- certificates of deposit transacted in the money market.

Law stated - 14 January 2022

Authorisation regime

What is the registration or authorisation regime applicable to financial services firms and authorised individuals associated with those firms? When is registration or authorisation necessary, and how is it effected?

Each financial services entity must obtain the appropriate licences from either the OJK or BI (depending on their activities) before starting operations. An application for these licences can be made immediately upon establishment of the company. One noteworthy feature is the restrictions on foreign ownership in the financial services sector. Some financial services sector activities are closed to foreign investment, such as microfinance institutions. Others are permitted a specified foreign ownership percentage, such as multi-finance (85 per cent), the insurance sector (80 per cent) and banking (99 per cent).

The controlling shareholder of a financial services company must also pass a fit and proper test carried out by the OJK before acquiring ownership in the company concerned to demonstrate that it has the capability, qualifications and financial standing to assume this role. The same requirement also applies to board members of the company. BI also applies the same requirement, even though it is not always explicitly stated in the regulation concerned. For instance, in the remittance business, the fit and proper test it is not an explicit requirement; however, case by case, BI might interview controlling shareholders or board members in connection with an application for a remittance licence.

Licences are also required for individuals that represent securities companies in performing their services. This includes representatives of broker dealers, underwriters and investment managers. All of these licences are issued by the OJK. An individual who intends to sell mutual funds or other investment products must also first obtain a mutual

fund agent sales representative licence. To support a licence application, the individual must provide evidence of certification by a professional body recognised by the OJK.

A separate regime applies for fintech, which is under both OJK and BI supervision. Due to the absence of specific regulation for each fintech area, the authorisation for a company engaged in fintech is recordation. Unlike general licences, which must be obtained before the commencement of operations, a fintech company may start to operate even before being recorded with OJK or BI. Once so recorded, the company will be subject to a regulatory sandbox process, the outcome of which then determines whether the company may continue to operate with recorded status, without a specific licence from the OJK or BI. Alternatively, it may be required to apply for a specific business licence from the OJK or BI, or be asked to cease operating if deemed not to be in compliance with the prevailing laws and regulations in Indonesia.

Law stated - 14 January 2022

Legislation

What statute or other legal basis is the source of each regulatory authority's jurisdiction?

BI was established as Indonesia's central bank on 1 July 1953. At that time, BI's main role was to act as a circulation bank as well as a commercial bank that provided loan facilities. BI was not involved in monetary policy as the Monetary Board held that role. In 1965, BI's status as a central bank was removed and BI then acted as a full commercial bank. BI's central bank role was reinstated in 1968 under Law No. 13 of 1968. BI also had new roles as a development agent and administrator of the state treasury; therefore, since 1968, BI has no longer acted as a commercial bank.

The prime objectives of BI are to attain and maintain rupiah stability. The removal of BI's role as a development agent was stipulated in Law No. 23 of 1999 (as amended) (the BI Law). Since that time, BI has incorporated inflation control into its monetary policy regime.

The establishment of the OJK was mandated by the BI Law, under which a new government body was established, the main purpose of which was to oversee the banking sector. This task later expanded to include all financial institutions. From 1999 until the establishment of the OJK, all financial institutions (including banks) were supervised by BI. The OJK was established in 2011 under Law No. 21 of 2011. Previously, non-bank financial services institutions fell under the authority of the capital market and financial institution supervisory agency (Bapepam-LK) and BI. Bapepam-LK then transferred its supervisory responsibilities to the OJK.

Law stated - 14 January 2022

What principal laws and financial service authority rules apply to the activities of financial services firms and their associated persons?

Financial services in banking, capital markets, multi-finance, insurance, microfinance and pension funds have their own set of laws. However, details of their business operation – such as capitalisation structure, corporate governance, licensing requirements (including licensing of their associated personnel), reporting obligations, anti-money laundering rules and risk management – are stipulated in OJK regulations.

Other financial services are subject to regulations established by either the OJK or BI and are broadly similar in scope to those applicable to banking, capital markets, insurance, microfinance and pension funds.

Financial services in the capital markets sector must also follow the rules and regulations set out by the Indonesian stock exchange, the Indonesian Clearing and Guarantee Corporation, and the Indonesian Clearing and Guarantee Institution.

Scope of regulation

What are the main areas of regulation for each type of regulated financial services provider and product?

The main areas of regulation for financial institutions, both under the supervision of the OJK and BI, include:

- scope of business activities and type of products;
- capitalisation and shareholding requirements;
- licensing and registration;
- good corporate governance;
- level of soundness;
- fit and proper test requirements;
- data privacy and data protection;
- risk management;
- consumer protection;
- anti-money laundering and combatting the financing of terrorism; and
- the OJK's authority to inspect the operational activities of the financial institution.

Additional requirements

What additional requirements apply to financial services firms and authorised persons, such as those imposed by self-regulatory bodies, designated professional bodies or other financial services organisations?

Each financial firm and its authorised personnel may be subject to rules and regulations of the professional association concerned. For example, a peer-to-peer lending company would need to comply with the code of conduct of the Indonesian Joint Funding Fintech Association, the focus of which includes the maximum interest that can be charged to customers and periods for repayment or collection. These requirements are not stipulated in the OJK regulation on peer-to-peer lending.

For the capital markets sector, securities trading follows the policies, rules and procedures of the Indonesian stock exchange, the Indonesian Clearing and Guarantee Corporation, and the Indonesian Clearing and Guarantee Institution. They include:

- trading mechanisms;
- trading hours;
- settlement of transactions;
- auto-rejection;
- trade reporting; and
- listing of applications.

ENFORCEMENT**Investigatory powers**

What powers do national financial services authorities have to examine and investigate compliance? What enforcement powers do they have for compliance breaches? How is compliance examined and enforced in practice?

The Financial Services Authority (OJK) is an independent Indonesian government agency that regulates, supervises and monitors banking, capital markets and non-bank financial institutions. The OJK also has the unfettered authority and power to examine, investigate and audit compliance of financial services entities. The OJK has also attained enforcement powers to impose administrative sanctions for breaches of compliance by a party that violates the laws and regulations in the financial services sector.

Indonesia's central bank (BI) also has the power and authority to examine compliance with payment system requirements by financial services entities and impose administrative sanctions on their non-compliance.

Law stated - 14 January 2022

Disciplinary powers

What are the powers of national financial services authorities to discipline or punish infractions? Which other bodies are responsible for criminal enforcement relating to compliance violations?

The OJK may issue regulations with regard to guidelines for the issuance and enforcement of sanctions. The OJK's authority is limited to the issuance of administrative sanctions that range from warning letters, penalties or fines to revocation of business permits.

The responsibility for the imposition of criminal and civil punishment lies with the judiciary system. The OJK, BI and other line ministries that supervise financial services have the authority to formulate criminal and civil sanctions as well as punishment for specified financial services providers, and to investigate violations.

In addition to the above, as part of its consumer and public protection responsibilities, the OJK is authorised to undertake litigation and other actions including:

- to order action against financial services entities to resolve complaints from customers who have suffered losses as a result of action taken by a financial services entity; and
- to file a lawsuit:
 - to recover property owned by an injured party from the one that caused losses;
 - to obtain compensation from a party that caused losses to customers or financial service institutions as a result of a violation of laws and regulations in the financial services sector; or
 - both.

This compensation is used only as payment to an injured party. The OJK may also announce the imposition of administrative sanctions to the public for violations of consumer protection by financial services companies.

Law stated - 14 January 2022

Tribunals

What tribunals adjudicate financial services criminal and civil infractions?

Financial services crimes are the domain of the judiciary system (ie, the criminal court with jurisdiction over the financial services entity concerned).

Civil infractions arising from financial services regulations will be investigated, reviewed and declared by the OJK directly. This is in the form of administrative sanctions such as warnings and revocations of business permit (at most).

There is no venue in which a civil infraction sanction would be disputed within the OJK itself. However, one can appeal the OJK decision with the State Administrative Court, which is the court that has jurisdiction over government institutions' policies or decrees outside regulations.

In the event of a dispute between a financial services entity and its customers, the parties may also opt for an Alternative Dispute Resolution Agency (LAPS) to settle and resolve their disputes. The following are LAPS and their areas of responsibility:

- the Indonesian Insurance Mediation and Arbitration Board (insurance); and
- the Pension Fund Mediation Board (pension funds).

Law stated - 14 January 2022

Penalties

What are typical sanctions imposed against firms and individuals for violations? Are settlements common?

Publicly accessible information is available on the sanctions imposed by the OJK for certain violations by financial services entities. From discussion with clients and a reading of this information, we understand that the most common sanctions handed out by the OJK are written warnings related to administrative violations, ranging from lateness in report submission to failure to comply with monetary requirements such as gearing ratios. Sanctions applicable to individuals are mostly related to tardiness in the renewal of their professional licences.

Law stated - 14 January 2022

COMPLIANCE PROGRAMMES

Programme requirements

What requirements exist concerning the nature and content of compliance and supervisory programmes for each type of regulated entity?

In essence, the Financial Services Authority (OJK) requires compliance appropriate to each financial service within the regulations, while more generic rules are contained in higher-level law that has general applicability (such as the statute on limited liability and the OJK statute) and those concerned with specific financial services (capital markets and insurance statutes).

Typically, compliance provisions adopt principles of:

- transparency, in decision-making as well as relevant disclosure that is publicly accessible;
- accountability, with a clear distinction between the functions and responsibilities of each of the primary functional organs of an entity;
- responsibility, which embodies appropriate management of the entity in accordance with regulations, ethical standards and norms, and best practice;
- independence, with professional and independent management, free from conflicts of interest and immune to external influences; and
- fairness, in which services to customers and shareholders are balanced and just in accordance with the regulations, ethical standards and norms, and best practice.

Law stated - 14 January 2022

Gatekeepers

How important are gatekeepers in the regulatory structure?

Internal gatekeepers have an important supervisory role. Indonesia's statute on limited liability companies mandates a two-tier arrangement comprising boards of directors and commissioners. The latter's sole responsibility is to supervise the board of directors, which has day-to-day management authority.

Financial services companies are required by OJK regulations to empower their board of commissioners with committees (also drawn from the commissioners) to supervise specific areas of the entity's operation, to undertake the roles of corporate secretary (for a publicly listed company), and to form an internal audit committee and a nomination and remuneration committee. Their main function is to assist the board of directors with the following:

- corporate secretaries: to maintain and ensure compliance of the financial services entity with capital markets laws and regulations;
- internal audit: to maintain and strengthen corporate governance of the entity; and
- nomination and remuneration: to nominate and determine the remuneration of members of the boards of directors and commissioners.

Law stated - 14 January 2022

Directors' duties and liability

What are the duties of directors, and what standard of care applies to the boards of directors of financial services firms?

The board of directors is fully responsible for the management of the company and is authorised to represent the company both in and out of court. This includes responsibility for future planning, undertaking new activities in pursuance of the company's objectives and mapping out how company policy will be implemented in practice.

The statute on limited liability companies requires that the company be managed by each director in good faith and with full responsibility. In practice, the articles of association of the company normally provide that certain decisions of the board of directors require prior approval of the board of commissioners – or, alternatively, of a general meeting of shareholders – to define limits on the authority of the board of directors with regard to specified external company matters.

The board of directors, in accordance with the articles of association, is entitled to represent and act on behalf of the company. Activities of the board of directors, however, are also limited to those within the scope of the company's business as defined in the articles, the statute on limited liability companies and the permits or licences under which it operates.

Law stated - 14 January 2022

When are directors typically held individually accountable for the activities of financial services firms?

In general, a member of the board of directors is fully personally liable for company losses if that director is at fault or negligent in the performance of their duties in managing the company in good faith and with full responsibility.

If the board of directors comprises two or more members, personal liability and responsibility jointly and severally apply to every member of the board.

Members of the board of directors may not be held liable for losses if they can substantiate that:

- the losses did not result from their own fault or negligence;
- they managed in good faith and prudence the interests of the company, and within the objectives and purposes of the company;
- they had no conflicts of interest, directly or indirectly, in the acts of management that resulted in the loss; and
- they took measures to prevent the occurrence or continuation of losses.

Law stated - 14 January 2022

Private rights of action

Do private rights of action apply to violations of national financial services authority rules and regulations?

Yes, private rights of action would violate OJK regulations. They are mostly related to infractions related to capital markets, such as fraud, insider trading and market manipulation.

These infractions may lead to imprisonment of up to 10 years and a fine of up to 15 billion rupiah.

Sanctions on investment managers for market manipulation may lead to imprisonment of up to one year and a fine of 1 billion rupiah.

Law stated - 14 January 2022

Standard of care for customers

What is the standard of care that applies to each type of financial services firm and authorised person when dealing with retail customers?

The OJK issued regulation (POJK) No. 1/POJK.07/2013 on consumer protection, which applies to bank and non-bank financial services. The regulation enshrines the following principles: transparency; fairness; dependency; data protection and data privacy; and complaint resolution and dispute resolution procedures.

The above principles are then implemented in the form of detailed action by financial services companies that includes:

- ensuring that transparent information is accessible to customers;
- implementation of simple, jargon-free language in its written communication with customers;
- ensuring that customers fully understand their rights and obligations;
- transparency on fees applicable to customers; and
- taking responsibility for damages sustained by customers due to negligence of the company, its employees or third parties working for the company.

Law stated - 14 January 2022

Does the standard of care differ based on the sophistication of the customer or counterparty?

No.

Law stated - 14 January 2022

Rule-making

How are rules that affect the financial services industry adopted? Is there a consultation process?

Financial services are supervised by a multiplicity of government authorities, including the OJK, the Ministry of Finance and the Indonesian Stock Exchange (specifically for public companies and those listed on the stock exchange).

The steps when adopting a regulation differ according to its position in the regulatory hierarchy. A statute lies just beneath the Constitution and involves four stages before adoption:

1. initial drafting by a government body (typically, a line ministry);
2. review and discussion of the draft by the state legislature (the House of Representatives), which involves back-and-forth debate on its substance and redrafting, if necessary;
3. promulgation, once House of Representatives approval is secured (which includes (non-substantive) checks on procedural formalities and consistency in the language used); and
4. enactment by the government, with final assent from the President.

Stages (1) and (2) tend to require the most time, with up to two years being the norm. At stage (2), stakeholders (including business people, professionals, etc) are afforded an opportunity to comment on the draft.

Regulations that occupy a position beneath a statute in the regulatory hierarchy are issued by the President or line ministries and are subject to their own procedures. However, they are not subject to House of Representatives review.

Law stated - 14 January 2022

CROSS-BORDER ISSUES

Cross-border regulation

How do national financial services authorities approach cross-border issues?

Financial Services Authority (OJK) regulations typically do not apply to entities established outside Indonesia, as its

authority extends to financial services companies incorporated in Indonesia. The law requires that all financial services entities that plan to operate within Indonesia will need to be incorporated and properly licensed by the government in Indonesia.

Law No. 21 of 2011, however, provides that OJK may cooperate with and provide assistance to financial services institutions in other countries and other international organisations or agencies involved in the examination, investigation or prevention of crime in the financial services sector. In addition to the above, Indonesia's central bank may also coordinate or cooperate with other authorities in Indonesia or those abroad to exchange data and information on institutions, transactions, products, services, technology or business models, as well as to discuss recent financial IT issues.

Law stated - 14 January 2022

International standards

What role does international standard setting play in the rules and standards implemented in your jurisdiction?

Indonesia is a member of the G20 forum and other international forums, including the Basel Committee on Banking Supervision (BCBS), and is committed to adopting the recommendations on international standards resolved in these forums. In implementing these standards, the OJK always prioritises the national interest. International standards applicable in Indonesia are expected to provide a basis for the nation's economic growth and development, and are adopted in accordance with the development of Indonesia's financial services sector. Some of the international standards implemented and applied in the Indonesian banking sector are the standard banking provisions issued by the BCBS.

Law stated - 14 January 2022

UPDATE AND TRENDS

Key developments of the past year

Are there any other current developments or emerging trends that should be noted?

The payment services industry in Indonesia continued to develop throughout 2021. Indonesia's central bank has recently issued further implementing regulations to regulate the operation of payment services companies. These regulations include a single ownership policy whereby a party is not allowed to act as a controller in more than one payment system provider company that:

- holds the same type of licence; or
- holds a licence as a payment system provider and is designated as a payment system infrastructure organiser.

Accommodating consumer interest and demand for fast, easy and reliable services in banking industries involves technological assistance. The Financial Services Authority (OJK) has recently updated its regulation on commercial banks (effective as of 30 October 2021) to introduce the concept of digital banks, which can operate completely in cyberspace without the need for conventional premises (apart from a head office). A digital bank can either be newly established or an existing bank that applies for digital bank status.

For peer-to-peer lending, although a new set of regulations was planned to be launched in 2021 to replace the 2016 OJK regulation, as at January 2022 such regulation has not yet been enacted. Therefore, most of the technological

procedure for peer-to-peer operations still relies on the OJK's policy.

Law stated - 14 January 2022

Jurisdictions

	Australia	Herbert Smith Freehills LLP
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