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INDONESIA: An Introduction to FinTech Legal

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invention while also protecting local interests. This article will briefly discuss those fintech activities that are regulated (and recognised) in Indonesia.

Securities Crowdfunding

On 11 December 2020, Indonesia's financial services authority, *Otoritas Jasa Keuangan* (OJK), enacted OJK Regulation No 57/POJK.04/2020 on securities offerings through information technology-based crowdfunding services (POJK 57), revoking a previous regulation of 2018 on equity crowdfunding. POJK 57 was later also amended by OJK Regulation No 16/POJK.04/2021, which requires the crowdfunding operator to be registered with the Ministry of Communications and Information Technology. In general, POJK 57 expands the scope of crowdfunding to include equity securities in shares and other types of securities, such as debt securities and sukuk, or other convertible equity.

Previously, POJK 2018 required that the issuer must be in the form of a limited liability company or co-operative (*koperasi*), and that the issuer must be in the form of a limited liability company or co-operative (*koperasi*). However, POJK 57 opens an opportunity for foreign investment to participate as a shareholder with a maximum shareholding of 49%.

Even though the equity crowdfunding business seems promising, unfortunately, only a few platform providers have obtained OJK approval to legally operate the crowdfunding activities. From the market's perspective, it is understood that there are some hurdles for business players in developing crowdfunding businesses. Some of the big issues are that: obtaining the licence from OJK is not easy for most platform providers due to the pre-requisite requirements and most of the custodians are not ready to take part/operate in the equity crowdfunding scheme.

Peer-to-Peer (P2P) Lending

The country's P2P business was previously covered in OJK Regulation No 77/POJK.01/2016 on Information Technology-Based Fund-Lending Services (POJK 77), which had been the underlying

Services, as amended by OJK Regulation No 22 of 2023 on Consumer and Public Protection in the Financial Services Sector (POJK 10).

Due to the abuse of P2P business by the operators, the Indonesian government has tightened P2P regulations in POJK 10 to protect the public's interests. POJK 10 adopts the regulations of the existing OJK regulations in other heavily regulated business sectors such as insurance, securities, and multi-finance, and among others the fit and proper test requirement for the controlling shareholders and the board members. This regulation sets the scope of the P2P lending practice, from its business activities, registration and licensing procedures, the relationship between the P2P lending providers and users, risk mitigation, and information technology system maintenance, to prohibitions on P2P lending and the minimum requirements concerning agreements between the lender-borrower and lender-service provider.

POJK 10 also introduces the concept of a Sharia principle for P2P business activities, as further regulated in OJK Circular Letter No 19/SEOJK.06/2023 on Implementation of Joint Funding Services Based on Technological Information ("Circular Letter No 19/2023"). Circular Letter No 19/2023 adds more governance rules for P2P operators in Indonesia, among others regarding the limitation of the maximum rate of interest that can be received by the operators, including the interest and administration fee. The circular letter sets a maximum interest rate of (i) 0.1% per day over the loan amount for productive financing, which would be applicable by 1 January 2024 (this rate would be reduced to 0.067% by 1 January 2026); and (ii) 0.3% per day over the loan amount for consumptive financing, which would be effective by 1 January 2024 (this rate would be reduced to 0.2% by 1 January 2025 and 0.1% by 1 January 2026).

We believe this regulation has been added to address the issue of overly high interest rates that are charged to P2P borrowers. In addition, Circular Letter No 19/2023 also sets some regulations concerning debt collection, and the borrowers can only have active lending arrangements with a maximum of three P2P operators. For further information, the OJK currently suspends

Payment System

On 29 December 2020, the central bank, Bank Indonesia, issued a Bank Indonesia regulation, *Peraturan Bank Indonesia* (PBI) No 22/23/PBI/2020 on payment systems (PBI 22), which has been effective from 1 July 2021. Bank Indonesia explained that the reform is intended to change the payment system regulatory framework from an institutional approach to an activity and risk-based approach. Under PBI 22, payment system providers are classified into two categories.

- Payment services providers, or *penyedia jasa pembayaran* (PJP) – these are banks or non-bank institutions that offer services in facilitating payment transactions to users such as account information services, payment initiation and/or acquiring services, account issuance services, and/or remittance services. A PJP company must obtain a licence from Bank Indonesia.
- Payment system infrastructure providers, or *penyelenggara infrastruktur sistem pembayaran* (PIP) – these are parties that provide infrastructure for transferring funds and carry out clearing and/or final settlement. A PIP company must obtain a so-called appointment from Bank Indonesia.

PBI 22 also introduces foreign direct investment restrictions. PJP business (for non-banking institutions) is open to 85% foreign shareholding, provided that at least 51% of shares with voting rights, management control and veto rights are held by Indonesian shareholders. However, PIP business (for non-banking institutions) is only open to 20% foreign shareholding, provided that at least 80% of shares with voting rights, management control and veto rights are held by Indonesian shareholders. The calculation of the shareholding participation will be traced up to the ultimate beneficiary of the shareholders.

Crypto-Assets

Crypto-assets have been acknowledged as a commodity in Indonesia since 2018 through the issuance of Ministry of Trade Regulation No 99 of 2018 on General Policy on Crypto-asset Trading. As a follow up to this, the Commodity Futures Trading

Organizing the Physical Market for Crypto Assets on the Futures Exchange ("Reg 5"). Reg 5 was most recently revoked by *Bappebti* Regulation No 8 of 2021, as lastly amended by *Bappebti* Regulation No 9 of 2024 ("Reg 8").

Crypto-assets' characteristics under Indonesian law

Under Indonesian law, crypto-assets are categorised as a commodity that can be traded in the market. However, crypto-assets cannot be used as a method of payment in Indonesia. The prevailing laws and regulations in Indonesia only permit the use of the Indonesian rupiah as a currency and method of payment for transactions that are effected within the territory of the Republic of Indonesia.

Crypto-assets can only be traded in the physical market if the crypto-assets are approved by and registered with *Bappebti*. *Bappebti* recently updated the list of crypto-assets that are approved for trading on the local crypto-assets market. With the updates, under *Bappebti* Regulation No 2 of 2024, on the second amendment of *Bappebti* Regulation No 11 of 2022 on the List of Crypto Assets Traded on the Physical Crypto Asset Market, there are now 545 approved crypto-assets to be traded in Indonesia. Some of the notable new entries in the lists are Pepe (PEPE), Secret (SCRT), Axie Infinity (AXS), Ethereum Name Service (ENS), PancakeSwap (CAKE).

Key market players

The key players in the physical crypto-asset futures that are regulated under Reg 8 are, among others, crypto-asset exchanges, crypto-asset clearing agencies, crypto-asset traders, crypto-asset clients, and crypto-asset storage providers. To be appointed as a crypto-asset exchange, crypto-asset clearing agency, crypto-asset trader, crypto-asset client, or crypto-asset storage provider, each party must fulfil certain *Bappebti* requirements, including minimum issued and paid up capital, equity maintenance, employing employees with certain certifications, and passing the fit and proper test requirement (for the members of the board of directors, board of commissioners, shareholders, and controller/beneficial owner).

crypto-assets transactions, as regulated under Minister of Finance (MoF) Regulation No 81 of 2024 on Tax Provision in the Context of Implementing the Core Tax Administration System ("MoF Regulation No 81/2024").

Value added tax (VAT)

The MoF will impose VAT on the following categories.

- Intangible taxable goods in the form of crypto-assets by a crypto-asset trader. This includes (i) sale and purchase of crypto-assets with fiat money, (ii) swap of crypto-assets with other crypto-assets, and/or (iii) swap of crypto-assets with other goods and/or services.
- Taxable services in the form of the provision of electronic facilities for crypto-assets trading by the trade organiser through the electronic system (PPMSE). This includes the provision of services for (i) sale and purchase of crypto-assets with fiat money, (ii) swap of crypto-assets with other crypto-assets, (iii) e-wallet services for the deposit, withdrawal, transfer of one crypto-asset to the other party's account and the management of the media for the storage of the crypto-assets.
- Taxable services in the form of verification of crypto-assets transactions and/or management services of the mining pool of crypto-assets by the crypto-asset miners.

Income tax

Any income received by (i) crypto-assets traders, (ii) trade organisers through the electronic system, or (iii) crypto-asset miners in relation to the crypto-assets will be subject to income tax. The income of the crypto-assets traders will be subject to final income tax with the tariff of 0.1% of the transaction amount (if the PPMSE is a crypto-asset physical trader), or 0.2% of the transaction amount (if the PPMSE is not a crypto-asset physical trader).

The latest development concerning crypto-asset regulation in Indonesia concerns the change of supervising authority. Crypto-assets were previously under the authority of *Bappebti* but were repositioned to fall within the control of the OJK. It is expected

Digital Gold

Trading of digital gold in Indonesia was first legalised through the issuance of Minister of Trade regulation No 119 of 2018 on General Policy on Physical Digital Gold Market Trading on the Futures Exchange. The trading process was further regulated by *Bappebti* through *Bappebti* Regulation No 4 of 2019 on Technical Provisions on Implementation of a Digital Gold Physical Market in Futures Exchange as amended by *Bappebti* Regulation No 13 of 2019 ("Reg 4"). Reg 4 requires a digital gold trader to fulfil certain requirements, including (i) being a member of a licensed futures exchange and a clearing house, and (ii) placing the physical gold in a designated gold storage manager. Further, a digital gold trader is required to fulfil a certain threshold of capital to be able to organise a physical market transaction mechanism.

The digital gold transactions that are allowed to be conducted in the futures exchange and digital gold physical trader according to Reg 4 are (i) sale and/or purchase, (ii) buy as you like until the specified grammation of the gold can be printed for collection, (iii) fixed instalments with later delivery, (iv) entrusted, (v) printing of gold, and (vi) other transactions according to innovations, developments and needs in digital gold trading.

Mutual Funds

In Indonesia, a mutual fund in the form of collective investment fund or KIK Mutual Fund can only be offered and sold to investors by an investment manager. This is regulated under OJK Regulation No 23/POJK.04/2016 as amended by OJK Regulation No 4 of 2023 on Mutual Funds in the Form of Collective Investment Contracts ("POJK 23"). POJK 23 opens an opportunity for investment managers to co-operate with other parties who have (i) wide networks in their business activities (to provide point of sales or sales outlets), and/or (ii) a credible electronic system.

To adapt to the fast-paced technology, the regulation also provides that the transaction of a mutual fund participation unit can be conducted electronically, either through an electronic system built by the investment managers themselves or through co-operation with a third party.

keep up with the changing lifestyles of their customers, banks are required to adapt and provide better services, especially in connection to IT. Thus, banks need to develop business models to include digital banking, enabling their customers to conduct their banking activities online. To accommodate this, the OJK has issued a guideline for conducting digital banking by conventional banks. The guideline allows banks to open digital branches where the customers can perform self-service banking activities. To open these digital branches, the banks will first need to add the digital branches to their submitted business plans to the OJK, meet the required capital thresholds, obtain the approval of the OJK, and ensure the security of their electronic systems to support the digital branches. The regulation of digital banking is also covered under Law No 4 of 2023 (the "P2SK Law").

IT-Based Advisory Services

The IT-based advisory services sector ("automated advisory") is regulated in *Bappebti* Regulation No 12 of 2022 ("Reg 12"). Automated advisory can monitor the market, calculate market entry or exit opportunities, place reasonable transactions and perform risk management by considering each client's needs. It may look similar to the illegal robot trading that has previously been shut down by *Bappebti* but this is different, in that illegal robot trading does the actual trading for customers, in addition to providing advice. On the other hand, automated advisory, as regulated in Reg 12, is only one of the tools to be used by customers in making a decision. That decision and the responsibility for it would be solely in the hands of the customers.

Automated advisory can only be provided by licensed futures advisers (FA) that have obtained *Bappebti* approval to carry out the automated advisory in their service. The FA can apply for the licence online through the *Bappebti* website. FA applicants must comply with a number of requirements, including: (i) a positive recommendation from a futures exchange in respect of the application, system or programme they propose to operate; and (ii) additional issued and paid-up capital of at least IDR1 billion (USD63,000), on top of the existing requirement of net assets worth a minimum of IDR500 million, per *Bappebti* Regulation No 6

The FA must assess the knowledge of the customers, the customers' financial ability, the customer's risk profile, risk appetite and risk objective before promoting automated advisory to their clients. Further, the FA are prohibited from (i) promising that the use of the automated advisory will bring a stable profit or be risk-free, (ii) doing the transaction on behalf of the customer, (iii) promoting profit-sharing to the customer, or (iv) carrying out multi-level marketing schemes to promote the automated advisory. Last, the FA must enter into an advisory agreement with their customers to perform the automated advisory, which clearly states that the FA would not be responsible for any risks and losses that may occur to the customers from the trading activity. However, Reg 12 states that notwithstanding this statement, the FA must be responsible if the *Bappebti* finds that they were responsible for conduct that violates regulatory obligations in performing the automated advisory, or if there is non-compliance of the feature of the program/application, as required by Reg 12.

Law on Development and Strengthening of the Financial Sector

The Indonesian government has been reforming many laws and regulations since 2020 in an attempt to attract more investors. The latest amendment was in respect of the financial sector by the issuance of the P2SK Law. In addition to the change of supervising authority for crypto-asset activities, there are a few regulations concerning financial technology that are regulated under the P2SK Law.

Digital currency

The P2SK Law introduces the concept of the digital rupiah. The management of digital rupiah will fall within the sole authority of Bank Indonesia. Further regulations concerning the digital rupiah are expected to be seen in the following months.

Bullion

The P2SK Law also introduces the concept of bullion activities, which are related to the deposit, financing, trading, safekeeping of gold, and other activities for supporting bullion activities (as

Recently, the OJK has issued OJK Regulation No 17 of 2024 on Organization of Bullion Business activities (POJK 17). POJK 17 governs several key matters concerning bullion activities, including among others the capital requirements, governance, licensing, and prudent principle. POJK 17 states that bullion activities can only be carried out by financial service institutions who carry out credit finance as their business activities (except for the *bank perekonomian rakyat* and micro financial institutions). The minimum core capital requirements for bullion activities are IDR14 trillion (around USD883 million) save for financial service institutions that carry out bullion business activities in the form of gold deposit only.

Financial sector technology innovation (ITSK)

The P2SK defines ITSK as technology-based innovation that impacts products, activities, services and business models in the digital financial ecosystem. ITSK includes payment systems, settlement of securities transactions, risk management, market support, and activities related to digital financial assets, including crypto-assets. The P2SK Law stipulates that a party, unlicensed for Indonesia, that operates ITSK activities, is liable to five to ten years' imprisonment and fines of up to IDR1 trillion (approximately USD63 million). These sanctions are aimed at shutting down the operation of unlicensed (illegal) financial technology companies.

Unregulated fintech activities

As a result of constant innovation in the financial technology sector, some fintech business models are not yet covered by the existing regulations. To deal with this problem, the Indonesian government employs sandboxing and digital innovation regulations.

For fintech related to the payments system, Bank Indonesia Regulation No 23/6/PBI/2021 on Payment Services Providers allows Bank Indonesia to determine that a particular product, activity, service, or business model may be "sandboxed" for testing purposes. The purpose of this is to (i) encourage technological innovation and (ii) monitor/detect opportunities and risks of technological innovation, the development of the digital

For fintech related to lending and all other aspects of fintech, the OJK issued OJK Regulation No 3 of 2024 on the Organization of Technological Innovation in the Financial Sector, which became effective on 16 February 2024 ("POJK 3/2024") and revoked the previous OJK Regulation on Digital Financial Innovations within the Financial Services Sector (OJK Regulation No 13/POJK.02/2018 of 2018). The OJK establishes a digital financial innovation (DFI) regime that consists of three separate aspects – ie, recordation, regulatory sandbox, and registration. Initially, the prospective DFI providers should be recorded with the OJK as the DFI providers. Once the provider has been recorded, the OJK will review whether it is qualified to participate in the regulatory sandbox process. After completing the sandbox process, the OJK will issue a recommendation status. If the provider receives a recommendation for registration, it must apply for registration to the OJK within six months of the issuance of the recommendation. The scope of DFI under POJK 3/2024 includes (i) settlement of securities transactions, (ii) capital raising, (iii) investment management, (iv) risk management, (v) fundraising and distribution, (vi) market support, (vii) activities related to digital finance, including crypto-assets, and (viii) other digital finance activities.

Commentary

In general, the Indonesian government has caught up with the development of fintech business models by issuing regulations for the relevant fintech activities in Indonesia. Further, the government also tries to "govern" unregulated business models through the sandbox mechanism. In addition, the government has established an Investment Alert Task Force according to the Decree of the Head of BAPEPAM-LK No Kep-208/BL/2007, dated 20 June 2007 (the "Task Force"), which is a co-ordination forum between the regulators, supervisory agencies, law enforcement agencies and other related parties for the handling of allegedly unlawful acts in the field of public fundraising and investment management. Although the duties and authorities of the task force are not expressly regulated by specific legislation, we note that the members of the task force (eg, OJK, *Bappebti*, and MCIT) have successfully closed and blocked several un-registered offshore and onshore websites that were allegedly carrying out

options trading platforms, and investment offers with money game schemes. In early 2022, the *Bappebti* closed the operation of some companies that offered robot trading services to Indonesian customers. The so-called robot trading companies offer automated trading services for commodities (either forex, crypto or gold). The *Bappebti* closed the services of these companies because they were unlicensed, leading to many customers losing access to their funds and accounts. The issuance of Reg 12 makes it crystal clear that full-blown robot trading is now prohibited in Indonesia.

The issuance of POJK 17 may open new investment opportunities for Indonesians. While it has been mentioned under the P2SK Law, the regulation is not yet clear on bullion activities. Since it has been specifically regulated under POJK 17, the relevant financial services institution may carry out bullion activities in Indonesia. Hopefully, this can spike the interests of Indonesian citizens so that gold commodities that are relatively idle can be monetised in the market.

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