

REGULATORY DEVELOPMENTS ON FINTECH IN INDONESIA (PART 1) - OJK FINALISING FINTECH LENDING REGULATIONS

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Legal Briefings

The Indonesian Financial Services Authority (**OJK**) is in the process of finalising a draft regulation regarding lending services based on information technology (**Draft Fintech Lending Regulation**). The preparation and finalisation of the Draft Fintech Lending Regulation, which is expected this year, is timely as it seeks to address an acknowledged gap in Indonesia's current financial services regulatory framework, in an area (including peer-to-peer and other marketplace lending) where fast moving market developments, driven by new technologies and a surge in innovative online financial services, have currently overtaken the existing regulatory framework.

The Draft Fintech Lending Regulation is primarily focused on marketplace lending and fintech lending operators, and sets out requirements in relation to among others:

Foreign ownership limits

Registration and licensing

Minimum capital requirements

Origin of providers and recipients of loans

Lending limits

Maximum interest amounts

Expertise required of fintech lending operators

Risk mitigation measures

Data centres and data protection requirements

Certain prohibitions

While the Draft Fintech Lending Regulation is currently in draft form only, it does provide an indicative understanding of the key policy drivers underpinning the regulation and also some of the key concepts and provisions which may find their way into the final version.

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| We set out below a summary of the key aspects of the Draft Fintech Lending Regulation. | |
| 1. | <p>Scope. "Fintech Lending" is defined as "the provision of financial services which seeks to connect a provider of loans with a recipient of loans through a direct loan agreement via electronic systems using an internet network". The Draft Fintech Lending Regulation envisages that Fintech Lending is undertaken by a Provider of Loans providing a loan to the Recipient of Loans where the source of funds originates from the Provider of Loans. This is sufficiently broad to capture marketplace or peer-to-peer lending platforms. There are a number of key defined terms in the Draft Fintech Lending Regulation, in particular:</p> <ul style="list-style-type: none"> • "Fintech Lending Operator" which is defined as "Other Financial Services Institution in the form of a legal entity which makes available, manages and/or operates Fintech Lending". • "Provider of Loans" which is defined as "Individuals, state operators, and/or a legal entity which has a right to a receivable pursuant to an agreement or law which can be claimed before a court of law". • "Recipient of Loans" which is defined as "Individuals, state operators, and/or a legal entity which has a debt obligation pursuant to an agreement or law where the repayment obligation can be claimed before a court of law". • "Fintech Lending Users" which is defined as a "provider of loans and recipient of loans and other users who use the Fintech Lending facilities". |
| 2. | Foreign ownership limit. The maximum foreign ownership limit for shareholding in a Fintech Lending Operator is set at 85%. |
| 3. | Registration and Licensing. A Fintech Lending Operator must register with OJK. Once registered, the Fintech Lending Operator must submit an application to OJK for the business license of the operator at the latest within 1 year of being registered with OJK. |
| 4. | Minimum capital requirements. There are certain minimum capital requirements which a Fintech Lending Operator will need to satisfy, namely: <ul style="list-style-type: none"> • at the point of registration of the Fintech Lending Operator with OJK: minimum of IDR 2,000,000,000; and • at the point of submission of an application for the business license to OJK: minimum of IDR 5,000,000,000. |
| 5. | Origin of Provider and Recipient of Loans. The Provider of Loans may originate from both inside and outside Indonesia, and may include loans for individuals and legal entities. However, the Provider of Loans can only provide loans to Recipient of Loans who originates from (berasal dari) the legal territory of Indonesia. |
| 6. | Lending limit. A Provider of Loans may only provide loans to each Recipient of Loans up to a maximum of 20% of the funds owned by the Provider of Loans. It is unclear at this stage how this criteria will be monitored and enforced in practice. |
| 7. | Maximum Interest. A Fintech Lending Operator may only facilitate lending activities where the maximum interest rate charged is 7 times the Bank Indonesia (Indonesian central bank) 7 day repo rate per year. |
| 8. | Expertise. A Fintech Lending Operator must: <ul style="list-style-type: none"> • have available human resources who have expertise and/or background in information technology and related security aspects; and • employ directors and commissioners who have expertise in financial services industry. <p>It is unclear at this stage whether OJK will introduce tests for ensuring these expertise requirements are met, similar to the "fit and proper test" applied to owners and officers of banks and insurance companies</p> |
| 9. | Risk Mitigation. A Fintech Lending Operator is required to undertake risk mitigation measures, through transferring credit risk via credit insurance or credit guarantee. |
| 10. | Data Centre. A Fintech Lending Operator must place its data center and disaster recovery center in Indonesia. A further OJK Circular will be issued in relation to this issue. |
| 11. | Data Protection. A Fintech Lending Operator must ensure: <ul style="list-style-type: none"> • the secrecy, integrity and availability of the personal data, transaction data and financial data from the moment such data is obtained until the data is destroyed; and • that acquisition and usage of the personal data, transaction data and financial data is based on consent of the owner of such data, unless determined otherwise by applicable laws. |
| 12. | Prohibitions. A Fintech Lending Operator is prohibited from: <ul style="list-style-type: none"> • receiving funds from Fintech Lending Users; • collecting funds directly from the public in the form of giro (cheque), savings and/or other equivalent methods; • providing guarantee in any form in relation to the fulfillment of the obligation of another party; • undertaking transactions in relation to the products offered for its own profit or benefit; • agreeing to a quantum of the loan and/or tenor and/or interest exceeding the amount determined by OJK; • providing investment advice or recommendation to the Fintech Lending Users; • being directly engaged or affiliated with the Fintech Lending Users; • issuing promissory note, except as guarantee in relation to debt owed to banks who are creditors of the Fintech Lending Operator, or • taking any action which causes or forces another financial institution which is under the supervision of OJK to breach or avoid applicable laws. |
| Institutional Landscape | |
| 13. | Although regulatory developments in this area still remain at a relatively early stage in Indonesia, the broad outlines of the institutional landscape of the proposed regulatory framework are already beginning to become visible. In broad terms, the main regulator in this area is likely to be the OJK, with the exception that issues relating to payment are likely to be regulated primarily by the Indonesian central bank, Bank Indonesia ("BI"). It is also important to bear in mind the regulatory role played by the Ministry of Communication and Informatics ("MOCIT"), which in broad terms regulates telecommunications and information technology related matters, as it is very likely that certain aspects of the fintech industry may fall under MOCIT's regulatory remit. The Indonesian Foreign Investment Coordinating Board ("BKPM") is also likely to have a role in this space in certain situations involving foreign investors, as BKPM regulates foreign investment generally (with certain notable exceptions, e.g. in the financial services sector). |
| 14. | Given the existence of multiple regulatory bodies with potentially overlapping functions, we envisage that in the immediate future the evolving regulatory framework is likely to be complex and hence a case-by-case analysis is advisable when considering new products and business platforms in this fast evolving sector in Indonesia. That said, there is reason to be optimistic that the regulators in Indonesia will eventually find a workable balance between promoting a nascent (but rapidly growing) industry which has the potential of significantly addressing Indonesia's long term financial inclusion policy objectives, and at the same time addressing the need to create a sound regulatory framework which takes into account prudential corporate governance principles in the financial services sector (including risk management and consumer protection aspects). |
| Preliminary Key Observations | |
| 15. | It remains to be seen whether the draft regulation does strike the optimal balance in practice, as much will depend on the details of the implementation policies. For example, it is not yet clear at this stage the level of financial services industry "expertise" that will in practice be required of a director or commissioner of a Fintech Lending Operator, as imposing too high a standard could potentially inhibit the growth of innovative start-ups. |
| 16. | It is encouraging to see that the foreign ownership limit has been set at a maximum of 85%, as this is likely to attract more foreign investors in this space who may prefer a controlling stake. We will be monitoring this closely to see if this level of maximum foreign ownership is maintained in the final version of the regulation when it is issued by OJK. |
| 17. | It appears that the minimum capital requirements will be implemented in stages, i.e. a minimum of IDR 2,000,000,000 at point of registration with OJK and a minimum of IDR 5,000,000,000 at point of application to OJK for business license (with a maximum period of 1 year allowed between the two stages). This reflects OJK's desire to moderate the impact of imposing capital requirements on a young (but rapidly developing) industry by adopting a measured approach in terms of timing of the envisaged capital requirements. |
| 18. | OJK's consumer protection policy objectives are also evident in the draft regulation, particularly the requirements regarding lending limits, maximum interest and data protection / security. The existence, and proper application, of such rules are likely to increase the level of confidence that consumers have in emerging lending platforms in Indonesia, but again an overly restrictive implementation policy could potentially inhibit the growth of the industry. |
| 19. | The requirement to locate data center and disaster recovery center in Indonesia is a longstanding recurring theme in Indonesian government policy, and it remains to be seen how this requirement will be implemented in practice, as this is an issue which is closely watched by foreign investors. |

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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