

LEGAL UPDATES ON P2P LENDING

On 4 July 2022, the Financial Services Authority (*Otoritas Jasa Keuangan* “**OJK**”) issued OJK Regulation No. 10/POJK.05/2022 on Information Technology-Based Collective Funding Services (“**POJK 10/2022**”) as a response to the emerging financial technology business in Indonesia, especially Peer-to-Peer Lending (“**P2P Lending**”). This newly issued POJK 10/2022 revoked OJK Regulation No. 77/POJK.01/2016 on Technology-Based Fund-Lending Services (“**POJK 77/2016**”) as the previous regulation on P2P Lending and encompasses some major regulatory adjustments.

Since it was first regulated and supervised by OJK in 2016, the development of P2P Lending has recorded a high growth rate, far above other financial services institutions. With the number of users continuing to increase significantly, the business models and cooperations with other parties have also developed over the past six years. Thus, the demand for a progressive regulatory framework exists as a response to this rapid buildup.

KEY TAKEAWAYS FROM POJK 10/2022

1. Form and Minimum Capital

A P2P Lending provider (“**P2P Provider**”) must be in the form of a limited liability company (*perseroan terbatas*).¹ With the new regulation, OJK currently has established a higher barrier to entry for new players in this business in that OJK has set a higher minimum issued and paid-up capital of IDR25,000,000,000 (twenty five billion Rupiah) at the company’s establishment² compared to the previous POJK 77/2016, in which the minimum issued capital was IDR1,000,000,000 (one billion Rupiah) at the registration phase and IDR2,500,000,000 (two billion five hundred million Rupiah) at the licensing application phase.

However, this new capital requirement is waived for the existing P2P Providers, which includes existing P2P Providers that (i) have been licensed by the OJK; (ii) are currently in the application process for P2P lending licenses; and (iii) have returned their P2P lending registration certificate (or *tanda daftar*) and will apply for P2P lending licenses prior to the enactment of POJK 10/2022.³

However, the P2P Providers mentioned in point (iii) may be exempted from the minimum paid-up capital requirement only if:

- a. there has not been any change made in the P2P Provider’s controlling shareholder; and
- b. the P2P Provider’s equity is at least Rp2,500,000,000 (two billion five hundred million Rupiah).

2. License

In the previous regime, POJK 77/2016 obliged P2P Providers to undergo 2 (two) phases: (i) the registration phase; and (ii) OJK licensing application phase within 1 (one) year of their registration with OJK in point (i).⁴

POJK 10/2022 has revamped the licensing procedure by removing the registration phase from its licensing process.⁵

¹Article 2 paragraph (2) of POJK 10/2022

²Article 4 paragraph (1) of POJK 10/2022

³Article 113 POJK 10/2022

⁴Article 8 paragraph (1) and Article 10 paragraph (1) POJK 10/2022

⁵Article 8 paragraph (1) and Article 9 paragraph (1) – (2) POJK 10/2022

While the process is now considered more simplified as a sole-licensing phase, the new regulation includes registration as an Electronic System Provider (*Penyelenggara Sistem Elektronik* or “PSE”) at the Ministry of Communication and Informatics (“MoCI”)⁶ as a requirement for P2P Providers to start facilitating the funding from the fund grantor to the fund receiver.⁷ Within 30 (thirty) calendar days after securing the P2P license, a P2P Provider must also submit an application to MoCI for registration as a PSE.

3. Shareholders

Requirements

POJK 10/2022 provides that the following parties are eligible to become shareholders of a P2P Provider:⁸ (a) Indonesian citizens and/or legal entities; and (b) Foreign citizens through the Indonesian Stock Exchange and/ or foreign legal entities with a limitation on direct and/or indirect share ownership of 85% (eighty five percent) of the P2P Provider’s issued and paid-up capital (unless the P2P Provider is a public company listed on the Indonesian Stock Exchange).

Further, P2P Providers that obtained a P2P license prior to the enactment of POJK 10/2022 and are foreign-owned, whether directly or indirectly, in excess of 85% (eight five percent), may be exempted from the limitation on foreign ownership, so long as the P2P Provider’s shareholding composition remains unchanged.⁹

Controlling Shareholder

Further, POJK 10/2022 also introduces the concept of a Controlling Shareholder (*Pemegang Saham Pengendali* or “PSP”).

A PSP is an individual and/or business group that (i) owns 25% (twenty five percent) or more of a P2P Provider’s shares with voting rights; or (ii) owns less than 25% (twenty five percent) of shares with voting rights but can be evidenced to have the ability to exercise control over the P2P Provider, whether directly or indirectly.¹⁰ The P2P Provider must designate 1 (one) PSP or more than 1 (one) PSP provided that such shareholders meet the PSP criteria, and OJK may also determine the PSP of a P2P Provider at their sole discretion.¹¹

Change of Shareholders

POJK 10/2022 describes the following types of change of ownership:¹² (a) change of shareholder of a P2P Provider that is not a public company (direct change); (b) change of shareholder of one of the P2P Provider’s shareholders that is not a public company (indirect change); (c) change of PSP of a P2P Provider that is a public company; and (d) change of PSP of one of the P2P Provider’s shareholders that is a public company.

While the previous regulation did mention that the change of ownership of a P2P Provider required approval from OJK, this POJK 10/2022 further emphasizes that in issuing its approval for a change of ownership resulting in change of PSP OJK will perform a fit and proper test to assess the prospective PSP.

Lock-Up Period

After the issuance of a P2P license by OJK, the P2P Provider is restricted from carrying out all of the changes elaborated above for a 3-year period.¹³

4. Management of P2P Provider

Board of Directors

A P2P Provider’s Board of Directors (“BOD”) must consist of a minimum of 2 (two) members with a requirement that half of the BOD have at least 2 (two) years of managerial experience relating to credit/financing, risk management and/or financial aspects within financial services institutions.¹⁴ The P2P Provider can appoint foreign individuals as a maximum of half of its BOD members, provided that 25% (twenty five percent) or more of the shares in the P2P Provider are owned by a foreign entity. All members of the BOD must be domiciled in Indonesia and have competency certification from a financial technology certification institution registered in OJK or an association if such institution has not been established. This certification requirement also applies to P2P Provider’s personnel who are one level below the BOD. Members of the BOD who are foreign individuals must also be able to master the Indonesian language, as evidenced by obtaining certification no later than 1 (one) year as from the date of approval from OJK for his/her appointment as a member of the BOD.¹⁵

⁶Article 8 paragraph (2) POJK 10/2022

⁸Article 3 of POJK 10/2022

⁹Article 115 POJK 10/2022

¹⁰Article 1 paragraph (29) of POJK 10/2022

¹¹Article 5 paragraphs (1) – (3) and Article 21 paragraph (1) of POJK 10/2022

¹²Article 68 paragraph (2) of POJK 10/2022

¹³Article 68 paragraph (3) of POJK 10/2022

¹⁴Article 55 of POJK 10/2022

¹⁵Article 16 of POJK 10/2022

BOD members are prohibited from holding concurrent positions in 3 (three) or more other companies except for serving as a commissioner.¹⁶

Board of Commissioners

A P2P Provider must appoint at least 1 member of the Board of Commissioners (“**BOC**”), the number of members of which may not exceed the number of directors.¹⁷ A P2P Provider can appoint foreign individuals as a maximum of half of its BOC members titled , provided that 25% (twenty five percent) or more of the shares in the P2P Provider are owned by a foreign entity. Half of the BOC members must have experience in financial services institutions. As also required for the BOD members, all members of BOC must also secure a competency certification.

BOC members are prohibited from holding concurrent positions in 3 (three) or more other companies.¹⁸

Sharia Supervisory Board

POJK 10/2022 acknowledges a Sharia model for P2P Lending that is conducted based on Islamic law. A Sharia-based P2P Provider must have a Sharia Supervisory Board (*Dewan Pengawas Syariah* or “**DPS**”) which consists of at least 1 (one) member.¹⁹ DPS members must have a recommendation from the National Sharia Board prior to their appointment.

5. Fit-and-Proper Test

Fit-and-Proper Test (“**FPT**”) and OJK approval are required for a change of Main Parties (*Pihak Utama*), which include:²⁰ (a) PSP; (b) BOD; (c) BOC; and (d) DPS. The FPTs must be conducted based on OJK Regulation No. 27/POJK.03/2016 of 2016 on FPT for Main Parties of Financial Services Institutions.

Notwithstanding the above, POJK 10/2022 exempted Main Parties who were appointed prior to the issuance of POJK 10/2022 from the FPT and OJK approval requirements. However, in the event that the Main Parties intend to extend their term in their respective positions, they are required to undergo the FPT and secure the OJK approval.²¹

6. Internal Audit

A P2P Provider is required to have an internal audit unit which is made up of 1 (one) person with an audit background and carry out an internal audit at least once a year.²²

7. Expatriate Utilization

A P2P Provider may employ an expatriate for a non-extendable 3-year period. Further, these expatriates may only be appointed as an information technology expert who directly reports to the BOD or as a consultant.²³

8. Provisions on the Conversion of P2P Provider’s Business Principle from Conventional to Sharia

POJK 10/2022 recognises Sharia-based P2P Lending. In furtherance of such recognition, conventional-based P2P Providers may not carry out Sharia-based P2P lending activities unless the conventional-based P2P Provider has secured OJK’s conversion approval, the requirements for which are, among others, as follows:²⁴

- a. meet the required minimum equity;
- b. the conversion must not be detrimental towards P2P Provider users; and
- c. the Escrow and Virtual Account of the Sharia P2P Provider must be at a Sharia Bank.

9. Outsourcing Arrangement

A P2P Provider is allowed to outsource some parts of its work to a third party through an outsourcing agreement.²⁵ Nonetheless, this outsourcing arrangement is prohibited for the following functions below:²⁶

- a. Funding feasibility assessment; and
- b. Information and Technology. Article 58 of POJK 10/2022

10. Lending Limitation for the Lenders’ Affiliates

Aside from regulating a lending limit for each borrower, POJK 10/2022 has further provisions regarding a lending limitation for each of the lenders’ affiliates which is capped at 25% (twenty five percent) of the total lending of the P2P Provider at the end of the month.

¹⁶Article 55 paragraph (4) of POJK 10/2022

¹⁷Article 56 of POJK 10/2022

¹⁸Article 56 paragraph (3) of POJK 10/2022

¹⁹Article 57 of POJK 10/2022

²⁰Article 21 paragraphs (1) and (2) of POJK 10/2022

²¹Article 114 paragraphs (6) and (7) of POJK 10/2022

²²Article 58 of POJK 10/2022

²³Article 18 paragraphs (1) and (2) of POJK 10/2022

²⁴Article 10 POJK 10/2022

²⁵Article 19 paragraph (1) of POJK 10/2022

²⁶Article 19 paragraph (3) of POJK 10/2022

The implementation of the above lending limitation shall be done in the following stages:²⁷

- a. 80% (eighty percent) of the total lending at the end of the ongoing month, no later than 6 (six) months as from 4 July 2022;
- b. 50% (fifty percent) of the total lending at the end of the ongoing month, no later than 12 (twelve) months as from 4 July 2022; and
- c. 25% (twenty five percent) of the total lending at the end of the ongoing month, no later than 18 (eighteen) months as from 4 July 2022.

However, the limitation does not apply to a lender which is a financial services institution. The lending limitation for financial services institutions is capped at 75% (seventy five percent) of the total lending of the P2P Provider at the end of the month.

11. Credit Rating of P2P Provider

POJK 10/2022 provides credit ratings of P2P Providers, which are as follows:²⁸

- a. Current. No delay in the repayment of loan and/or economic benefits of the lending;
- b. Special Attention. If the repayment is up to 30 (thirty) calendar days late as from the maturity date;
- c. Sub-standard. If the repayment of loan and/or economic benefits of the lending are 30 (thirty) to 60 (sixty) calendar days late as from the maturity date;
- d. Doubtful. If the repayment of loan and/or economic benefits of the lending are 60 (sixty) to 90 (ninety) calendar days late as from the maturity date; and
- e. Loss. If the repayment of loan and/or economic benefits of the lending are 90 (ninety) calendar days late as from the maturity date.

12. Collection Procedures

In the case of a borrower's default, the P2P Provider must seek repayment from the borrower through the issuance of a warning letter, the period of which must be in accordance with the agreed terms of payment in the agreement between the lender and the borrower.²⁹

The P2P Provider may opt to establish a cooperation agreement with a third party for debt collection. The third party must be (i) a legal entity; (ii) licensed by the relevant authority; (iii) qualified with OJK-registered-certification to carry out debt collection; and (iv) an affiliate of neither the P2P operator nor the lender.

13. Cooperation with Third-Parties

POJK 10/2022 allows P2P providers to cooperate with third parties, whether financial institutions or non-financial institutions, which have been registered or licensed in OJK or other governmental institutions.³⁰ In addition, P2P Provider may also establish a cooperation with government agencies and serve as distribution partner for Sovereign Papers (or *Surat Berharga Negara*).³¹

14. Protection of Users

The POJK 10/2022 obliges P2P Providers to implement consumer protection principles in accordance with OJK Regulation No. 6/POJK.07/2022 of 2022 regarding Consumer Protection in the Financial Services Sector.³²

15. Timeline of the Placement of Funds in the Escrow Account³³

Although POJK 77/2016 obliges the P2P Provider to use an escrow account and virtual account for the P2P Lending services, POJK 77/2016 is silent on the timeline for the placement of funds in such accounts. With the issuance of POJK 10/2022, it is clearly provided that the period of placement in an escrow account of funds from the lender that have not been used for a transaction should not exceed 2 (two) working days while the period of the placement of funds by a borrower who has made a repayment should not exceed 1 (one) working day. It is worth to note that although this legislative provision has only just come into effect, in practice, this policy has been applied for some time by OJK on a policy basis. POJK 10/2022 also emphasizes that the funds of the lender in the P2P Provider's escrow account and the funds that are being distributed do not constitute assets of the P2P Provider.

²⁷Article 26 POJK 10/2022

²⁸Article 51 POJK 10/2022

²⁹Article 102 POJK 10/2022

³⁰Article 38 POJK 10/2022

³¹Article 39 POJK 10/2022

³²Article 100 POJK 10/2022

³³Article 36 (5) & (6) POJK 10/22

16. Prohibitions

The POJK 10/2022 regulates further on prohibitions for P2P Providers which among others are as follows:

- a. Prohibition from acting as lenders and borrowers;
- b. Prohibition from providing automatic lending features;
- c. Prohibition from granting access for BOD, BOC, DPS, officials and their affiliates to act as lenders or borrowers; and
- d. Prohibition from acquiring loans.

COMMENTARY

All in all, OJK has attempted to regulate the P2P Lending business with a more holistic approach covering a broad range of aspects from the corporate requirements up to the P2P Lending ecosystem itself. This multitude of tighter requirements will certainly have a huge impact on the business actors in the P2P Lending field. Even so, it is to be expected that OJK will issue further implementing regulations to POJK 10/2022 for more specific and technical requirements.

³⁴Article 111 POJK 10/2022

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