

# Fintech 2021

Contributing editors  
Angus McLean and Penny Miller



**Publisher**

Tom Barnes

tom.barnes@lbresearch.com

**Subscriptions**

Claire Bagnall

claire.bagnall@lbresearch.com

**Senior business development manager**

Adam Sargent

adam.sargent@gettingthedealthrough.com

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# Fintech 2021

**Contributing editors****Angus McLean and Penny Miller****Simmons & Simmons LLP**

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Lexology Getting The Deal Through is delighted to publish the fifth edition of *Fintech*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Australia, Brazil, Denmark, Egypt, Liechtenstein, Malta, New Zealand and Turkey.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Angus McLean and Penny Miller of Simmons & Simmons LLP, for their continued assistance with this volume.



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For further information please contact [editorial@gettingthedealthrough.com](mailto:editorial@gettingthedealthrough.com)

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Simmons & Simmons LLP

# Indonesia

Winnie Rolindrawan and Harry Kuswara

SSEK Legal Consultants

## FINTECH LANDSCAPE AND INITIATIVES

### General innovation climate

1 | What is the general state of fintech innovation in your jurisdiction?

Fintech innovation is developing rapidly in Indonesia and the government has issued several regulations relevant to fintech in recent years and has endeavoured to register new fintech activities to ensure they do not cause losses to the public. New innovations and solutions are surfacing that are boosting the business activities they support, with more roles available as, for example, aggregators, e-know your customer support, financing agents, financial planners, equity crowdfunding support, payment system support and market support. Among fintech businesses, peer-to-peer lending appears to have had the largest impact on the market to date and has received the most media coverage.

### Government and regulatory support

2 | Do government bodies or regulators provide any support specific to financial innovation? If so, what are the key benefits of such support?

The government is continuously trying to monitor and supervise fintech activities and developments in the sector. To keep abreast of recent developments in the market, support the players and at the same time ensure Indonesian consumers are well protected, the Indonesian central bank, Bank Indonesia, and the Financial Services Authority (OJK) each provide sandboxes for new innovations with the potential to have a long reach and an impact on Indonesian consumers. Bank Indonesia focuses on the aspects of the fintech sector related to payment systems and the OJK focuses on the aspects of the fintech sector related to financial services, such as banking, investment and insurance.

## FINANCIAL REGULATION

### Regulatory bodies

3 | Which bodies regulate the provision of fintech products and services?

Fintech products and services in Indonesia are mainly regulated by two government bodies, Bank Indonesia and the Financial Services Authority (OJK).

### Regulated activities

4 | Which activities trigger a licensing requirement in your jurisdiction?

Bank Indonesia Regulation No. 19/12/PBI/2017 regarding the Organisation of Financial Technology, dated 30 November 2017, regulates

fintech activities that require licensing or registration in relation to monetary stability, financial system stability and payment systems, as follows:

- payment system activities, including authorisation, clearing, final settlement and implementation of payment; for example, blockchain or distributed ledgers for the provision of fund transfers, electronic money, electronic wallet and mobile payments;
- market support (ie, activities that use information or electronic technology, or both, to facilitate the faster and more cost-efficient provision of information to the public on financial products and services; for example, the provision of information comparing available products or services in the financial services area);
- investment management and risk management for the provision of online investment and online insurance, among others; and
- lending, financing or funding and capital raising including peer-to-peer lending or information technology-based fundraising (crowdfunding).

Digital financial innovation, commonly referred to as fintech, is regulated from a financial services perspective under OJK Regulation No. 13/POJK.02/2018, dated 16 August 2018, regarding Digital Financial Innovation in the Financial Services Sector. This regulation covers:

- transaction settlement: this focuses on, among other things, investment settlement;
- capital raising, such as equity crowdfunding, virtual exchange, smart contracts and alternative due diligence;
- investment management; for example, advance algorithms, cloud computing, capability sharing, open source information technology, automated advice and management, social trading and retail algorithmic trading;
- fundraising and fund disbursement: this includes activities such as peer-to-peer lending, alternative adjudication and third-party application programming interface;
- provision of insurance; for example, sharing economy, autonomous vehicles, digital distribution and securitisation and hedge funds;
- market support; for example, artificial intelligence or machine learning, machine readable news, big data, social sentiment, market information platforms and automated data collection and analysis;
- other digital finance supporting activities, such as social and eco-crowdfunding, Islamic digital financing, e-waqf, e-zakat, robo-advisers and credit scoring; and
- other financial services activities; for example, invoice trading, vouchers and products using blockchain-based applications.

The Indonesian government fairly recently issued Government Regulation No. 80 of 2019 regarding Trade Through Electronic Systems, dated 25 November 2019 (GR 80/2019). It then issued Minister of Trade (MOT) Regulation No. 50 of 2020 regarding Provisions on Business Licensing, Advertisements, Guidance and Supervision of Business Practitioners in Trade Through Electronic System, dated 19 May 2020 as

an implementing regulation for GR 80/2019. These regulations impose new obligations for organisers of trade through electronic systems (PPMSE), which is any business practitioner that provides electronic communication facilities used in trade transactions. A PPMSE operating from outside Indonesia and that fulfils certain criteria is now required to appoint a representative in Indonesia and, consequently, must have a foreign trade company representative office in the country. PPMSE that have completed transactions with more than 1,000 consumers in a year or have delivered more than 1,000 packages to consumers in a year, or both, are required to appoint a representative in Indonesia.

### Consumer lending

#### 5 | Is consumer lending regulated in your jurisdiction?

Consumer lending is regulated in Indonesia, with a particular focus on information technology-based money lending services (peer-to-peer lending), as regulated under OJK Regulation No. 77/POJK.01/2016 regarding Information Technology-Based Money Lending Services, dated 29 December 2016. The OJK has the authority to regulate, register and issue licences, as well as supervise the fintech consumer lending industry. A company engaging in the provision of peer-to-peer lending activities can have a maximum foreign ownership of 85 per cent, which means at least 15 per cent of the ownership must be in the hands of Indonesian parties. A company that wishes to register with the OJK is required to have a minimum issued and paid-up capital of 1 billion Indonesian rupiahs. Once an applicant is registered, it will have one year to apply for a licence from the OJK, and the company's minimum issued and paid-up capital must then be 2.5 billion rupiahs. A company engaging in the provision of peer-to-peer lending is not allowed to engage in any other business activities. The regulation refers to information technology-based money lending services (peer-to-peer lending) as the provision of financial services that allow the lender to meet the borrower in the framework of entering into a lending agreement in rupiahs directly through an electronic system by using the internet.

### Secondary market loan trading

#### 6 | Are there restrictions on trading loans in the secondary market in your jurisdiction?

Currently, the trading of loans in the secondary market in Indonesia is not specifically regulated and there is no specific restriction on this activity.

### Collective investment schemes

#### 7 | Describe the regulatory regime for collective investment schemes and whether fintech companies providing alternative finance products or services would fall within its scope.

The prevailing regulations do not categorise activities into collective investment schemes. They only specifically regulate alternative finance products in the form of equity crowdfunding platforms. Peer-to-peer lending is described as an information technology-based money lending service, which is specifically regulated under a different regulation. Equity crowdfunding is regulated under the auspices of the OJK, through OJK Regulation No. 37/POJK.04/2018 regarding Equity Crowdfunding, dated 31 December 2018. The OJK has the authority to regulate, register and issue licences, as well as supervise equity crowdfunding activities.

### Alternative investment funds

#### 8 | Are managers of alternative investment funds regulated?

Collective investment in the form of an equity crowdfunding platform is described as the provision of share offering services whereby the issuers sell shares directly to investors through an open electronic system network, as governed by OJK Regulation No. 37/POJK.04/2018 regarding Equity Crowdfunding, dated 31 December 2018. Collective investment undertakings through the internet, whereby capital is raised from a number of investors and invested in accordance with a defined investment policy for the benefit of those investors, are not specifically regulated.

### Peer-to-peer and marketplace lending

#### 9 | Describe any specific regulation of peer-to-peer or marketplace lending in your jurisdiction.

Marketplace lending is not specifically regulated in Indonesia. Peer-to-peer lending is specifically regulated under OJK Regulation No. 77/POJK.01/2016 regarding Information Technology-Based Money Lending Services, dated 29 December 2016. It provides the OJK the right to regulate and supervise peer-to-peer lending activities, including handling the registration and licensing of peer-to-peer lending platform providers. Peer-to-peer lending in Indonesia is described as the provision of financial services whereby the lender meets the borrower in the framework of entering into a lending agreement in rupiahs directly through an electronic system by using the internet.

### Crowdfunding

#### 10 | Describe any specific regulation of crowdfunding in your jurisdiction.

To date there is no specific regulation that deals with donation-based crowdfunding in Indonesia. Equity crowdfunding covers the provision of share offering services conducted by issuers to sell shares directly to investors through an open electronic system network. Equity crowdfunding is regulated under OJK Regulation No. 37/POJK.04/2018 regarding Equity Crowdfunding, dated 31 December 2018. Under this regulation, a licensed equity crowdfunding platform provider or organiser is able to provide access for issuers (Indonesian limited liability companies) to sell their shares to investors that are also using the platform. An equity crowdfunding platform company is required to be an Indonesian limited liability company or an Indonesian cooperative with a minimum issued and paid-up capital of 2.5 billion rupiahs and to have registered with and received a licence from the OJK to provide, manage and operate the equity crowdfunding platform.

### Invoice trading

#### 11 | Describe any specific regulation of invoice trading in your jurisdiction.

The prevailing regulations do not specifically address invoice trading in Indonesia.

### Payment services

#### 12 | Are payment services regulated in your jurisdiction?

Payment services in Indonesia are regulated mainly by Indonesia's central bank, Bank Indonesia, which is in charge of regulating payment system activities in Indonesia.

## Open banking

- 13 | Are there any laws or regulations introduced to promote competition that require financial institutions to make customer or product data available to third parties?

To date there is no law or regulation that requires financial institutions to make customer or product data available to third parties, unless to the relevant government agency or for law enforcement purposes.

## Robo-advice

- 14 | Describe any specific regulation of robo-advisers or other companies that provide retail customers with automated access to investment products in your jurisdiction.

To date there is no specific law or regulation that addresses robo-advisers or other companies that provide retail customers with automated access to investment products.

## Insurance products

- 15 | Do fintech companies that sell or market insurance products in your jurisdiction need to be regulated?

In principle, the selling and marketing of insurance products in Indonesia is regulated and licensed by the OJK, although there seems to be no differentiation yet between fintech companies and companies that engage in the conventional selling and marketing of insurance products. In practice, licensed insurance companies in Indonesia have been selling their products over the internet, through their own platforms or by cooperating with other parties (eg, e-commerce platforms or e-money platforms) to assist in facilitating the selling and marketing of their insurance products. The OJK is still in discussions over whether unit-linked products can continue to be sold without a face-to-face meeting with the potential insured party. The prevailing regulations require unit-linked products to be sold with a face-to-face meeting that is used to explain the product to the potential insured party.

## Credit references

- 16 | Are there any restrictions on providing credit references or credit information services in your jurisdiction?

There are restrictions on providing credit information services. In Indonesia, credit reports can only be issued by a credit bureau licensed by the Financial Services Authority (OJK). A credit report is defined under OJK Regulation 42/POJK.03/2019 regarding Credit Information Management Agencies dated 31 December 2019 and Bank Indonesia Circular Letter No. 15/49/DPKL regarding Credit Information Management Agencies dated 5 December 2013 (together, the Credit Bureau Regulation) as a product or service generated by a credit bureau in writing, verbally or by some other method, sourced from credit data and other data owned by the credit bureau. The credit report generated by the credit bureau, among other things, contains information on:

- the feasibility of the debtor or customer to obtain funds;
- the track record of the debtor or customer in fulfilling its fund provision obligations;
- the ability of the debtor or customer to fulfil its fund provision obligations;
- the character of the debtor or customer; and
- other information that may be utilised to assess the abilities of the debtor or customer.

Pursuant to the Credit Bureau Regulation, a credit bureau engages in the business activities of collecting credit data and other data, and processing credit data and other data to generate a credit report.

The Credit Bureau Regulation also specifically mentions that a credit bureau must be in the form of an Indonesian limited liability company and is subject to applicable foreign shareholding restrictions. In addition, a credit bureau must obtain a business licence from the OJK to conduct its business activities. While the total ownership of one or more foreign parties in a credit bureau is limited to 20 per cent, if one foreign party owns more than one credit bureau that foreign party's total ownership in all the credit bureaus combined is limited to 20 per cent.

In collecting and processing credit information, a licensed Indonesian credit bureau obtains credit data from the OJK. The credit data from the OJK consists of data submitted to it by financial institutions. A licensed Indonesian credit bureau may also cooperate with financial institutions to obtain credit data or financial institutions and non-financial institutions for other data, or both. A credit bureau must make an effort to ensure that the source of the data informs the relevant debtor or customer of how the credit data and other data will be utilised. Credit data is defined as data regarding the condition of funding facility, funding from non-bank institutions and other facilities that can be deemed similar to the foregoing.

Other data in relation to a credit bureau is defined as data other than credit data that can be used to describe the capability of a certain party in fulfilling the party's financial obligations.

## CROSS-BORDER REGULATION

### Passporting

- 17 | Can regulated activities be passported into your jurisdiction?

The prevailing laws and regulations in Indonesia do not recognise the concept of passporting, and regulated activities cannot be passported into Indonesia.

### Requirement for a local presence

- 18 | Can fintech companies obtain a licence to provide financial services in your jurisdiction without establishing a local presence?

No. To obtain a licence from the Indonesian government to provide financial services in Indonesia, a party must establish a local presence.

## SALES AND MARKETING

### Restrictions

- 19 | What restrictions apply to the sales and marketing of financial services and products in your jurisdiction?

There are regulations for the sale and marketing of financial services and products in the traditional sense, such as conventional banking, investment and insurance. There is far less clarity regarding the organisation of the sale and marketing of unconventional financial services, for example, investments related to cryptocurrency and initial coin offerings. The main principle of sales and marketing by financial and fintech businesses is a prohibition on misleading information and causing loss for consumers.

## CHANGE OF CONTROL

### Notification and consent

- 20 | Describe any rules relating to notification or consent requirements if a regulated business changes control.

The rules relating to notification or consent requirements in a change of control depend on the specific licence held by the entity. As a matter of general principle, entities holding a licence in the financial services

sector and the payment system services sector need to obtain prior approval from the Indonesian central bank or the Financial Services Authority.

## FINANCIAL CRIME

### Anti-bribery and anti-money laundering procedures

#### 21 | Are fintech companies required by law or regulation to have procedures to combat bribery or money laundering?

In general, fintech companies are required to implement anti-money laundering procedures and also need to conform to anti-bribery regulations in Indonesia. Initial coin offering activities are not yet clearly regulated in Indonesia. Commodity Futures Trading Regulatory Agency (Bappebti) Regulation No. 5 of 2019 (as amended by Bappebti Regulation No. 9 of 2019 regarding the Amendment of Bappebti Regulation 5/2019 dated 26 July 2019; Bappebti Regulation No. 2 of 2020 regarding the Second Amendment of Bappebti Regulation 5/2019 dated 7 February 2020; and Bappebti Regulation No. 3 of 2020 regarding the Third Amendment of Bappebti Regulation 5/2019 dated 31 March 2020) only deals specifically with the administration of the implementation of crypto-asset exchanges within Indonesia and does not address or cover the implementation and operation of crypto-asset exchange platforms outside Indonesia offering products and services to customers in Indonesia on a cross-border basis.

#### Guidance

#### 22 | Is there regulatory or industry anti-financial crime guidance for fintech companies?

Currently, there is no specific regulatory or industry anti-financial crime guidance for fintech companies.

## PEER-TO-PEER AND MARKETPLACE LENDING

### Execution and enforceability of loan agreements

#### 23 | What are the requirements for executing loan agreements or security agreements? Is there a risk that loan agreements or security agreements entered into on a peer-to-peer or marketplace lending platform will not be enforceable?

Loan agreements in a peer-to-peer lending platform are acknowledged and regulated. Based on Financial Services Authority Regulation No. 77/POJK.01/2016 regarding Information Technology-Based Money Lending Services, dated 29 December 2016, there are two agreements in a peer-to-peer lending scheme:

- an agreement between the provider of the peer-to-peer lending service (the provider of the platform) and the lender; and
- an agreement between the lender and the borrower.

The agreement on the provision of peer-to-peer lending between a provider and a lender is made in electronic document format and must contain, at least, the:

- agreement number;
- date of agreement;
- identities of the parties;
- provisions on the rights and obligations of the parties;
- amount of the loan;
- interest rate of the loan;
- amount of commission;
- tenor;
- breakdown of relevant expenses;
- provisions on fines (if any);

- mechanism of dispute settlement; and
- settlement mechanism if the provider is unable to continue its operational activities.

The provider is required to provide the lender with access to information on the appropriation of funds. This information does not include information related to the identity of the borrower. The information will include, at least, the:

- amount of loaned funds to the borrower;
- purpose of the use of the funds by the borrower;
- amount of the loan interest; and
- tenor of the loan.

The lending agreement between the lender and borrower is made in electronic document format and must contain, at least, the:

- agreement number;
- date of agreement;
- identities of the parties;
- provisions on the rights and obligations of the parties;
- amount of the loan;
- interest rate of the loan;
- instalment value;
- tenor;
- object of guarantee (if any);
- breakdown of relevant expenses;
- provisions on fines (if any); and
- mechanism of dispute settlement.

The provider is required to provide the borrower with access to information on the position of the received loan. This information will not include information related to the identity of the lender. The agreements above are made by using electronic signatures in accordance with the prevailing laws and regulations on electronic signatures. If the provider uses a standard agreement (for any agreement between the provider and the users of the platform, be it lenders or borrowers, the standard agreement must not:

- transfer the responsibilities or obligations of the provider to the user; or
- state that the user is subject to new regulations, addendums, supplementary or amendments drawn up unilaterally by the provider within the period during which the user uses the service.

A standard agreement or standard clause is described as a written agreement as set forth unilaterally by the provider and that contains standard clauses regarding content, format, as well as method of production, and is used to make a mass offer of service to users.

### Assignment of loans

#### 24 | What steps are required to perfect an assignment of loans originated on a peer-to-peer or marketplace lending platform? What are the implications for the purchaser if the assignment is not perfected? Is it possible to assign these loans without informing the borrower?

Presently there is no specific fintech law or regulation that addresses the assignment of loans on a peer-to-peer lending platform. Given this absence, the assignment of loans should be allowed under the freedom of contract principle contained in the Indonesian civil law code. Any assignment of a loan will need notification to the borrower.

### Securitisation risk retention requirements

25 | Are securitisation transactions subject to risk retention requirements?

This is not specifically regulated under the prevailing laws and regulations.

### Securitisation confidentiality and data protection requirements

26 | Is a special purpose company used to purchase and securitise peer-to-peer or marketplace loans subject to a duty of confidentiality or data protection laws regarding information relating to the borrowers?

This is not specifically regulated under the prevailing laws and regulations. However, to date, there is no exemption for business practitioners for the implementation of data protection principles apart from for law enforcement and public interest purposes.

## ARTIFICIAL INTELLIGENCE, DISTRIBUTED LEDGER TECHNOLOGY AND CRYPTO-ASSETS

### Artificial intelligence

27 | Are there rules or regulations governing the use of artificial intelligence, including in relation to robo-advice?

Presently, there is no specific law or regulation that addresses the use of artificial intelligence, including robo-advice. However, artificial intelligence is mentioned in Financial Services Authority (OJK) Regulation No. 13/POJK.02/2018, dated 16 August 2018, regarding Digital Financial Innovation in the Financial Services Sector as one of the examples of digital financial innovation in the category of market support. Other examples of market support include artificial intelligence or machine learning, machine-readable news, big data, social sentiment, market information platform, and automated data collection and analysis. Robo-advice is also referred to in this OJK Regulation as a type of other digital finance supporting activity. Other examples activities include social and eco-crowdfunding, Islamic digital financing, e-waqf, e-zakat, robo-advice and credit scoring. The regulation is silent on any specific provisions for artificial intelligence and robo-advice. Therefore, the principles and provisions under OJK Regulation No. 13/POJK.02/2018 is generally applicable to artificial intelligence and robo-advice used in the fintech sector in Indonesia.

### Distributed ledger technology

28 | Are there rules or regulations governing the use of distributed ledger technology or blockchains?

There is no specific rule or regulation governing the use of distributed ledger technology or blockchains. Blockchain and distributed ledger technology is referred to in Bank Indonesia Regulation No. 19/12/PBI/2017 regarding the Organisation of Financial Technology, dated 30 November 2017. The regulation refers to blockchain and distributed ledgers as one of the recognised examples of fintech activities within the payment system category. Payment system activities include authorisation, clearing, final settlement and implementation of payments, with examples such as blockchain or distributed ledgers for the provision of fund transfers, electronic money, electronic wallets and mobile payments. The regulation is silent on any specific provisions for artificial intelligence and robo-advice; therefore, the principles and provisions under Bank Indonesia Regulation No. 19/12/PBI/2017 is generally applicable to blockchain and distributed ledgers used in the fintech industry in Indonesia.

From the perspective of financial services, under OJK Regulation No. 13/POJK.02/2018, dated 16 August 2018, regarding Digital Financial Innovation in the Financial Services Sector, blockchain and distributed

ledgers are referred to as examples of other financial service activities, which include such examples as invoice trading, vouchers and products using blockchain-based applications.

### Crypto-assets

29 | Are there rules or regulations governing the use of crypto-assets, including digital currencies, digital wallets and e-money?

Crypto-assets trade is specifically regulated in Indonesia by Bappebti, an agency under the Ministry of Trade, under the following regulations:

- Bappebti Regulation No. 5 of 2019 regarding the Technical Provisions for the Implementation of the Crypto Asset Physical Market in Futures Exchange dated 8 February 2019 (Bappebti Regulation 5/2019);
- Bappebti Regulation No. 9 of 2019 regarding the Amendment of Bappebti Regulation 5/2019, dated 26 July 2019;
- Bappebti Regulation No. 2 of 2020 regarding the Second Amendment of Bappebti Regulation 5/2019, dated 7 February 2020; and
- Bappebti Regulation No. 3 of 2020 regarding the Third Amendment of Bappebti Regulation 5/2019, dated 31 March 2020.

Under the regulations listed above, crypto-assets are deemed commodities that can be traded in a crypto-asset exchange. The regulations describe crypto-assets as intangible commodities in the form of digital assets, using cryptography, peer-to-peer network and distributed ledger to manage the creation of new units, verify transactions and secure transactions without any intervention by other parties. In Indonesia, crypto-assets or cryptocurrencies are not recognised as a payment instrument and, therefore, are prohibited from being used as a payment instrument.

Digital wallets in Indonesia are commonly viewed as part of the payment system environment and, therefore, are regulated under the regulations of Bank Indonesia, which oversees payment system activities in Indonesia. Digital wallets or electronic wallets as referred to in regulations in Indonesia are mainly regulated by Bank Indonesia Regulation No. 18/40/PBI/2016 regarding the Provision of Payment Transaction Processing, dated 9 November 2016. This regulation defines an electronic wallet (e-wallet) as an electronic service to store all payment instrument data (among others, payment instruments using cards and electronic money) and an e-wallet is also able to store credits (funds) to conduct payments.

E-money in Indonesia is also viewed as part of the payment system environment and is, therefore, regulated under regulations of Bank Indonesia. E-money is mainly regulated by Bank Indonesia Regulation No. 20/6/PBI/2018 regarding Electronic Money, dated 4 May 2018. This regulation defines e-money as a payment instrument:

- that is issued based on the value of money that has been first deposited to the
- issuer;
- where the value of money is deposited electronically in a server or chip; and
- where the value of electronic money managed by the issuer does not constitute savings as intended in banking laws.

E-money issued in Indonesia is required to be issued in Indonesian rupiahs.

### Digital currency exchanges

30 | Are there rules or regulations governing the operation of digital currency exchanges or brokerages?

There is a regulation in Indonesia that specifically deals with the trading of crypto-assets. The operation of a digital currency exchange is governed by Bappebti Regulation No. 5 of 2019 and its amendments.

### Initial coin offerings

- 31 | Are there rules or regulations governing initial coin offerings (ICOs) or token generation events?

There is, to date, no specific regulation governing initial coin offerings (ICOs) in Indonesia. Bappebti Regulation No. 5 of 2019, which is the main regulation for crypto-assets, explicitly states that it does not regulate ICOs.

## DATA PROTECTION AND CYBERSECURITY

### Data protection

- 32 | What rules and regulations govern the processing and transfer (domestic and cross-border) of data relating to fintech products and services?

The main laws and regulations relevant to personal data protection and transfer are:

- Law No. 11 of 2008 regarding Electronic Information and Transaction, dated 21 April 2008, as amended by Law No. 19 of 2016, dated 25 November 2016;
- Government Regulation No. 71 of 2019 regarding the Provision of Electronic Systems and Transactions, dated 10 October 2019; and
- Minister of Communication and Informatics Regulation No. 20 of 2016 regarding Personal Data Protection In Electronic Systems, dated 1 December 2016.

### Cybersecurity

- 33 | What cybersecurity regulations or standards apply to fintech businesses?

There is, to date, no specific cybersecurity regulations or standards applicable across the fintech sector in Indonesia. However, the obligations to maintain system security and transaction security seem to be principles that generally exist in the various regulations related to the fintech business.

## OUTSOURCING AND CLOUD COMPUTING

### Outsourcing

- 34 | Are there legal requirements or regulatory guidance with respect to the outsourcing by a financial services company of a material aspect of its business?

There is no specific legal requirement or regulatory guidance with respect to the outsourcing by a financial services company of a material aspect of its business.

### Cloud computing

- 35 | Are there legal requirements or regulatory guidance with respect to the use of cloud computing in the financial services industry?

There is no specific legal requirement or regulatory guidance with respect to the use of cloud computing in the financial services industry.

## INTELLECTUAL PROPERTY RIGHTS

### IP protection for software

- 36 | Which intellectual property rights are available to protect software, and how do you obtain those rights?

Under Indonesian laws and regulations on intellectual property rights, a computer program, which, consequently, includes software, is regulated under Law No. 28 of 2014 regarding Copyrights, dated 16 October 2014. Copyright protection for computer programs is automatically provided by this law, without requiring the registration of this computer program.

### IP developed by employees and contractors

- 37 | Who owns new intellectual property developed by an employee during the course of employment? Do the same rules apply to new intellectual property developed by contractors or consultants?

In principle, the IP rights will remain with the creators, which in this instance is the employees or contractors or consultants, unless stated otherwise in an agreement. To avoid any uncertainty, it is common practice in Indonesia for the employer to include a clause in the agreement with the employees or contractors or consultants that clearly states that the IP rights of the creation will be solely owned by the employee.

### Joint ownership

- 38 | Are there any restrictions on a joint owner of intellectual property's right to use, license, charge or assign its right in intellectual property?

There is no such restriction under Indonesian law.

### Trade secrets

- 39 | How are trade secrets protected? Are trade secrets kept confidential during court proceedings?

Law No. 30 of 2000, issued on 20 December 2000 (the Trade Secret Law), provides a very generic approach to the definition of a trade secret. A trade secret is defined as information that is not publicly known in the fields of technology or business, with an economic value owing to its usefulness in a business activity, and whose confidentiality is kept by the owner of the trade secret. The Trade Secret Law indicates that trade secrets are inherently protected without needing to undergo a specific procedure. Holders of trade secrets may bring a claim for compensation and a cease-and-desist action. Court proceedings involving trade secrets may be held confidentially upon the request of a party in the case.

### Branding

- 40 | What intellectual property rights are available to protect branding and how do you obtain those rights? How can fintech businesses ensure they do not infringe existing brands?

Under Law No. 20 of 2016 regarding Marks and Geographical Indications, a brand (mark) is protected once it is registered with the relevant government IP office in Indonesia. As a precautionary action a fintech business can check with the government IP office to see if there are similar brands or trademarks already registered in Indonesia. It can also conduct market monitoring of known brands in its industry in Indonesia.

## Remedies for infringement of IP

- 41 | What remedies are available to individuals or companies whose intellectual property rights have been infringed?

Individuals or companies whose intellectual property rights have been infringed may bring claims to the counterparty for compensation and a cease-and-desist action. These claims can go through commercial court, arbitration or alternative dispute settlement.

## COMPETITION

### Sector-specific issues

- 42 | Are there any specific competition issues that exist with respect to fintech companies in your jurisdiction?

The prevailing regulations do not address competition issues particular to fintech companies. We have not identified any specific competition issues in the fintech industry.

## TAX

### Incentives

- 43 | Are there any tax incentives available for fintech companies and investors to encourage innovation and investment in the fintech sector in your jurisdiction?

There are no specific tax incentives available for fintech companies and investors.

### Increased tax burden

- 44 | Are there any new or proposed tax laws or guidance that could significantly increase tax or administrative costs for fintech companies in your jurisdiction?

The Indonesian Minister of Finance (MOF) recently issued a regulation on VAT for digital goods and services: MOF Regulation No. 48/PMK.03/2020 regarding Procedures for the Appointment of Collectors and for the Collection, Deposit and Reporting of VAT for the Use Inside the Customs Area of Intangible Taxable Goods and/or Taxable Services from Outside the Customs Area through Electronic System Trade Activities. This is an implementing regulation for Government Regulation in Lieu of Law No. 1 of 2020 regarding State Financial Policy and Financial System Stability for the Management of the Coronavirus or COVID-19 Pandemic and/or in Facing Threats to the National Economy and/or Financial System Stability (GR 1/2020). GR 1/2020 has since been adopted into law, as Law No. 2 of 2020. Starting 1 July 2020, a 10 per cent VAT will be applicable to intangible taxable goods and services from outside Indonesia that are utilised in Indonesia through electronic system trade activities (PMSE). These goods and services include digital goods and services. If the utilisation of goods and services from outside Indonesia is the result of a transaction between foreign traders or foreign service providers and the Indonesian purchasers, the VAT will be directly collected, paid and reported by these foreign parties. The foreign traders or foreign service providers will be appointed by the Directorate General on Taxation (DGT) as the PMSE VAT Collector.

To qualify as a PMSE VAT Collector a party must have a transaction value with Indonesian purchasers that exceeds a certain threshold within 12 months; a traffic volume or number of persons who accessed the party's platform that exceeds a certain threshold within 12 months; or both. These thresholds will be further set out by the DGT. Indonesian government officials have been quoted in various media reports saying that they are targeting providers such as Spotify and Netflix that operate outside of Indonesia with a significant number of users in the country.



Indonesian Legal Consultants

### Winnie Rolindrawan

winnierolindrawan@ssek.com

### Harry Kuswara

harrykuswara@ssek.com

Mayapada Tower I, 14th Floor  
Jalan Jend. Sudirman Kav. 28  
Jakarta, 12920  
Indonesia  
Tel: +62 21 521 2038 / +62 21 2953 2000  
www.ssek.com

## IMMIGRATION

### Sector-specific schemes

- 45 | What immigration schemes are available for fintech businesses to recruit skilled staff from abroad? Are there any special regimes specific to the technology or financial sectors?

There is no specific immigration scheme for fintech businesses, and, therefore, the general immigration scheme is applicable. An Indonesian entity must act as the sponsor for any foreign national who will work in Indonesia, and foreign workers can only fill positions that are allowed for foreign workers, as set out by the Ministry of Manpower.

## UPDATE AND TRENDS

### Current developments

- 46 | Are there any other current developments or emerging trends to note?

We understand that the Financial Services Authority has introduced a moratorium on the registration and licensing of peer-to-peer lending companies in Indonesia. The Financial Services Authority will no longer receive applications for the registration of peer-to-peer lending companies. There has been no confirmation on how long the moratorium will last. There are also ongoing discussions of a draft Personal Data Protection Law, but it is not clear when the law might be passed by the House of Representatives and issued by the government.

### Coronavirus

- 47 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The Indonesian government has not issued any specific emergency legislation or relief programme for fintech businesses.

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