

FINTECH

Indonesia



Fintech

Consulting editors

Angus McLean, Oliver Irons

Simmons & Simmons

Quick reference guide enabling side-by-side comparison of local insights into fintech innovation and government / regulatory support; regulatory bodies and regulated activities; cross-border regulation; regulation of sales and marketing and of changes of control; financial crime; peer-to-peer and marketplace lending; artificial intelligence, distributed ledger technology and crypto-assets; data protection and cybersecurity; outsourcing and cloud computing; intellectual property, competition, tax and corporate immigration considerations; and recent trends.

Generated 16 August 2022

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. © Copyright 2006 - 2022 Law Business Research

Table of contents

FINTECH LANDSCAPE AND INITIATIVES

General innovation climate

Government and regulatory support

FINANCIAL REGULATION

Regulatory bodies

Regulated activities

Consumer lending

Secondary market loan trading

Collective investment schemes

Alternative investment funds

Peer-to-peer and marketplace lending

Crowdfunding

Invoice trading

Payment services

Open banking

Robo-advice

Insurance products

Credit references

CROSS-BORDER REGULATION

Passporting

Requirement for a local presence

SALES AND MARKETING

Restrictions

CHANGE OF CONTROL

Notification and consent

FINANCIAL CRIME

Anti-bribery and anti-money laundering procedures

Guidance

PEER-TO-PEER AND MARKETPLACE LENDING

Execution and enforceability of loan agreements

Assignment of loans

Securitisation risk retention requirements

Securitisation confidentiality and data protection requirements

ARTIFICIAL INTELLIGENCE, DISTRIBUTED LEDGER TECHNOLOGY AND CRYPTOASSETS

Artificial intelligence

Distributed ledger technology

Cryptoassets

Token issuance

DATA PROTECTION AND CYBERSECURITY

Data protection

Cybersecurity

OUTSOURCING AND CLOUD COMPUTING

Outsourcing

Cloud computing

INTELLECTUAL PROPERTY RIGHTS

IP protection for software

IP developed by employees and contractors

Joint ownership

Trade secrets

Branding

Remedies for infringement of IP

COMPETITION

Sector-specific issues

TAX

Incentives

Increased tax burden

IMMIGRATION

Sector-specific schemes

UPDATE AND TRENDS

Current developments

Contributors

Indonesia



Winnie Yamashita Rolindrawan
winnierolindrawan@ssek.com
SSEK Legal Consultants



Ruth Margaretha Ginting
ruthginting@ssek.com
SSEK Legal Consultants



FINTECH LANDSCAPE AND INITIATIVES

General innovation climate

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

Similar to last year, the use of fintech by Indonesian consumers continues to increase, with no signs of slowing down. Many potential new players are considering, or are in the process of, entering the Indonesian market. Areas of particular interest include investment, payment systems, digital banking and cryptocurrency trading. The Indonesian government has responded to the continued development and growth of financial technology in Indonesia by updating the regulatory framework for the sector, as the authorities seek to keep pace with fintech business players. To cite just one example, in the cryptocurrency sector, the Indonesian government has committed to establishing a cryptocurrency futures exchange by the end of 2022, which in turn has encouraged more cryptocurrency traders to expedite their investment plans in Indonesia.

Law stated - 21 May 2022

Government and regulatory support

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

The Indonesian government, with the support of the Indonesian central bank, Bank Indonesia (BI) and the Financial Services Authority (OJK) as the main authorities regulating the fintech sector, has remained committed to supporting financial innovation in Indonesia with the hope of strengthening the national digital economy. To achieve this, the authorities have taken steps to provide a more accommodating regulatory framework, to stimulate financial innovation. One example of this is the sandbox regulations issued by the OJK and BI to keep pace with financial innovation.

In addition to its efforts to accommodate financial innovation by updating the regulatory framework, the Indonesian government regularly organises networking events between fintech players, the government as the regulatory authority, investors, financial institutions and other stakeholders, both national and international. This includes the annual Indonesian Fintech Summit held every year since 2019, organised by BI, the OJK and several nationwide fintech associations recognised by the Indonesian government. This summit brings together stakeholders to discuss recent developments and regulatory changes, and also to strategise expediting the digitalisation of the financial services industry and pushing economic recovery.

The Indonesian government also attempts to balance support for fintech development and innovation with the protection of Indonesian consumers and the public. As part of this balancing act, the government, through the OJK, recently issued OJK Regulation No. 6/POJK.07/022 regarding the Protection of Consumers and the Public in the Financial Services Sector, dated 18 April 2022. This regulation provides more robust and specific protections for consumers who use services or goods in the financial services sector.

Law stated - 21 May 2022

FINANCIAL REGULATION

Regulatory bodies

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 (BI) and the Financial Services Authority (OJK).

Regulated activities

Which activities trigger a licensing requirement in your jurisdiction?

Generally, all parties that conduct business activities in Indonesia are subject to licensing and registration requirements under the authority of the Ministry of Investment / Indonesian Investment Coordinating Board. For businesses in the financial sector, there are additional specific licensing requirements under the authority of BI or the OJK.

For business activities that fall under the authority of BI, such as payment systems, whether the licensing requirement is triggered depends on the scope of business activities in which a company engages. For example, business actors in the payment system sector engaged only in the pre-transaction or post-transaction steps will be deemed as supporting providers, which does not trigger any licensing requirement from BI. The same applies to business activities that fall under the authority of OJK and whether they will trigger a licensing requirement.

For financial services regulated under OJK Regulation No. 13/POJK.02/2018 regarding Digital Financial Innovation in the Financial Services Sector, dated 16 August 2018, the following activities are subject to licensing requirements in Indonesia:

- 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, advanced 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.

Foreign organisers of trade through an electronic systems provider (PPMSE), which is any business practitioner that provides electronic communication facilities used in trade transactions and operates from outside Indonesia and fulfils certain criteria, shall be required to appoint a representative in Indonesia and consequently must have a foreign trade company representative office in the country. However, we note that as of this writing, the relevant regulatory authority does not yet have in place the necessary licensing infrastructure for foreign PPMSE.

Law stated - 21 May 2022

Consumer lending

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, as amended by OJK Regulation No. 4/POJK.05/2021 of 2021 regarding Application of Risk Management During the Use of Information Technology by Non-Bank Financial Service Institutions, dated 17 March 2021. The OJK has the authority to regulate, register and issue licences, as well as supervise the fintech consumer lending industry. Pursuant to this regulation, 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 (about US \$70,000). However, the current minimum issued and paid-up capital for foreign investment companies is at least 10 billion Indonesian rupiahs (about US\$700,000). If this minimum issued and paid-up threshold is not met, there is a risk that licensing applications will not be approved.

Once an applicant is registered, he or she will have one year to apply for a licence from the OJK. 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 rupiah directly through an electronic system by using the internet. However, to date, there is a moratorium in effect on the issuance of new peer-to-peer licences in Indonesia. While this moratorium is in effect, the OJK is focusing on expediting the licensing process for existing peer-to-peer players in Indonesia while improving the relevant peer-to-peer regulatory framework. At the end of January 2022, the OJK issued a statement that it would soon issue a regulation in the non-bank financial sector amending fintech peer-to-peer lending regulations. The amendment is said to include provisions on ownership of joint funding service platforms, consumer protection prohibitions, restrictions on controlling ownership of fintech companies, minimum paid-up capital, minimum equity and maximum funding. We expect that by the time the anticipated peer-to-peer regulation is issued that the government will also end the moratorium on the issuance of new peer-to-peer licences.

Law stated - 21 May 2022

Secondary market loan trading

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.

Law stated - 21 May 2022

Collective investment schemes

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 expressly categorise activities into collective investment schemes and there is no specific regulation on collective investment schemes. Instead, the Indonesian government provides regulations with respect to alternative finance products such as equity crowdfunding platforms and peer-to-peer lending, both of which are under the authority and supervision of the OJK. Peer-to-peer lending is described as an information technology-based money lending service, which is specifically regulated under a different regulation than equity crowdfunding. Equity crowdfunding is regulated under the auspices of the OJK, through OJK Regulation No. 57/POJK.04/2020 regarding Securities Offerings Through Information Technology-Based Crowdfunding Services, dated 11 December 2020, as amended by OJK Regulation No. 16/POJK.04/2021, dated 26 August 2021. The OJK has the authority to regulate, register and issue licences, as well as supervise equity crowdfunding activities. For example, for certain equity

crowdfunding business actors, the OJK not only requires a licence but also an additional certificate from Indonesia's Ministry of Communication and Informatics evidencing ESP certification.

Law stated - 21 May 2022

Alternative investment funds

Are managers of alternative investment funds regulated?

There is no regulation that specifically regulates the managers of alternative investment funds. However, in general, investment managers are regulated under the authority of the OJK, pursuant to OJK Regulation No. 24/POJK.04/2014 of 2014 regarding Implementation Guidelines for the Functions of Investment Managers, dated 19 November 2014.

Law stated - 21 May 2022

Peer-to-peer and marketplace lending

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

While marketplace lending is not specifically regulated in Indonesia, peer-to-peer lending is. The activity of 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, as amended by OJK Regulation No. 4/POJK.05/2021 of 2021 regarding Application of Risk Management During the Use of Information Technology by Non-Bank Financial Service Institutions, dated 17 March 2021. It provides the OJK with 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 rupiah directly through an electronic system by using the internet.

Law stated - 21 May 2022

Crowdfunding

Describe any specific regulation of crowdfunding in your jurisdiction.

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. 57/POJK.04/2020 regarding Securities Offerings Through Information Technology-Based Crowdfunding Services, dated 11 December 2020, as amended by OJK Regulation No. 16/POJK.04/2021, dated 26 August 2021. 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 and have registered with and received a licence from the OJK to provide, manage and operate the equity crowdfunding platform.

Law stated - 21 May 2022

Invoice trading

Describe any specific regulation of invoice trading in your jurisdiction.

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

Payment services

Are payment services regulated in your jurisdiction?

Payment services in Indonesia are regulated mainly by Indonesia's central bank, Bank Indonesia (BI), which is in charge of regulating payment system activities in Indonesia. Following the issuance of BI Regulation No. 22/23/PBI/2020 regarding Payment Systems (PBI 22/23), dated 30 December 2020, BI issued several additional regulations that contain more specific and robust provisions with respect to payment system providers (PSPs) and payment system infrastructure providers (PSIPs). These additional regulations are BI Regulation No. 23/6/PBI/2021 regarding Payment System Providers, dated 1 July 2021, and BI Regulation No. 23/7/PBI/2021 regarding Payment System Infrastructure Providers, dated 1 July 2021. PSPs are open to 85 per cent foreign share ownership (with a maximum of 49 per cent of shares with voting rights held by foreign shareholders), while PSIPs are open to 20 per cent foreign share ownership (with a 20 per cent maximum of shares with voting rights held by foreign shareholders).

Law stated - 21 May 2022

Open banking

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 to promote competition, unless to the relevant government agency for supervision purposes or for law enforcement purposes.

Law stated - 21 May 2022

Robo-advice

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

There is no specific regulation on robo-advisers or other companies that provide retail customers with automated access to investment products in Indonesia. However, a definition of robo-adviser is provided in the elucidation of OJK Regulation No. 57/POJK.04/2020 regarding Securities Offerings Through Information Technology-Based Crowdfunding Services, dated 11 December 2020, as amended by OJK Regulation No. 16/POJK.04/2021 dated 26 August 2021. Under this definition, a robo-adviser is an information technology-based investment management service that provides automatic portfolio management based on an algorithm to assist investors in managing their finances and investments without the involvement of a human investment manager.

The general rules regarding licensing for investment advisors are found in the Decision of Head of the Financial Institutions Supervisory Agency (Bapepam) No. Kep-26/PM/1996, which has not yet been revoked although Bapepam is already non-existent and its tasks and authorities taken over by the OJK. In practice, as far as we are aware, only one company with a robo-adviser platform has successfully been licensed by the OJK as an investment advisor.

Law stated - 21 May 2022

Insurance products

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.

Law stated - 21 May 2022

Credit references

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 5/POJK.03/2022 regarding Credit Information Management Agencies, dated 28 March 2022, and BI 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:

- statistics for planning, business development and determining policies;
- information to measure the performance and supervise the risk profile of the debtor or customer;
- 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 credit information.

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 the funding facility of the debtor or the customer.

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 including the behavioural patterns of the debtor or customer.

Law stated - 21 May 2022

CROSS-BORDER REGULATION

Passporting

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.

Law stated - 21 May 2022

Requirement for a local presence

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

In general, to obtain a licence from the Indonesian government to provide financial services in Indonesia, a party must establish a local presence.

Law stated - 21 May 2022

SALES AND MARKETING

Restrictions

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

All activities with respect to the sale and marketing of financial services and products in Indonesia must be conducted by licensed entities. Further, generally, the people providing financial services to the public must fulfil certain competency standards, as evidenced by the obtainment of certification from a registered certification institution approved by the Financial Services Authority. The sectors that require competency certification include capital markets and banking.

Additionally, 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 a loss for consumers.

Law stated - 21 May 2022

CHANGE OF CONTROL

Notification and consent

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 business activities and 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 typically need to obtain prior approval from the central bank, Bank Indonesia, or the Financial Services Authority if a change of control occurs. There are certain sectors that only require submission of a notification and not approval. Additionally, change of control in all financial sectors shall also be notified to the Ministry of Law and Human Rights.

Law stated - 21 May 2022

FINANCIAL CRIME

Anti-bribery and anti-money laundering procedures

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. Players in the cryptocurrency sector in Indonesia, including cryptocurrency traders and futures exchanges, are also required to have in place anti-money laundering procedures and prevention of terrorism funding and proliferation of mass destruction weapons guidelines, pursuant to the Commodity Futures Trading Regulatory Agency (Bappebti) Regulation No. 8 of 2021 regarding Guidelines for the Implementation of Physical Market of Crypto Assets in Futures Exchange, dated 29 October 2021. Bappebti requires companies at least to have internal guidelines before they obtain a registration certificate operating licence from Bappebti. However, initial coin offering and initial token offerings activities are not yet clearly regulated in Indonesia and are not subject to this Bappebti regulation.

Law stated - 21 May 2022

Guidance

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. However, the Financial Services Authority (OJK) has issued a regulation for anti-money laundering and prevention of terrorism financing programmes in the financial services sector in general, which includes fintech companies. This regulation is OJK Regulation No. 12/POJK.01/2017 of 2017, dated 21 March 2017, which was last amended by OJK Regulation No. 23/POJK.01/2019 of 2019, dated 30 September 2019.

Law stated - 21 May 2022

PEER-TO-PEER AND MARKETPLACE LENDING

Execution and enforceability of loan agreements

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 (OJK) Regulation No. 77/POJK.01/2016 regarding Information Technology-Based Money Lending Services, dated 29 December 2016, as amended by OJK Regulation No. 4/POJK.05/2021 of 2021 regarding Application of Risk Management During the Use of Information Technology by Non-Bank Financial Service Institution, dated 17 March 2021, 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 include, at least, the:

- agreement number;
- date of the 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 include, at least, the:

- agreement number;
- date of the 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 the method of production, and is used to make a mass offer of service to users.

Law stated - 21 May 2022

Assignment of loans

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.

Law stated - 21 May 2022

Securitisation risk retention requirements

Are securitisation transactions subject to risk retention requirements?

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

Law stated - 21 May 2022

Securitisation confidentiality and data protection requirements

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, there is a general regulation regarding the protection of personal data in electronic systems, namely, Minister of Communication and Informatics Regulation No. 20 of 2016 regarding Personal Data Protection in Electronic Systems, dated 1 December 2016. In this case, information relating to the borrowers is protected with respect to the process of obtaining, collecting, processing, analysing, storing, displaying, disseminating, providing access to and destroying the borrowers' data. As such, if the special purpose company used to purchase and securitise peer-to-peer or marketplace loans used an electronic system to conduct its business, it will be subject to the duty of confidentiality or data protection laws regarding information relating to borrowers under the above regulation.

Law stated - 21 May 2022

ARTIFICIAL INTELLIGENCE, DISTRIBUTED LEDGER TECHNOLOGY AND CRYPTOASSETS

Artificial intelligence

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, robo-advice is mentioned as an example of an information technology-based supporter of crowdfunding services, along with blockchain, aggregators and big data analytics, pursuant to Financial Services Authority (OJK) Regulation No. 57/POJK.04/2020 regarding Information Technology Based Crowdfunding Services, dated 11 December 2020, as amended by OJK Regulation No. 16/POJK.04/2021, dated 26 August 2021.

Law stated - 21 May 2022

Distributed ledger technology

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. However, blockchain and distributed ledger technology are referred to in the elucidation of OJK Regulation No. 57/POJK.04/2020 regarding Securities Offerings Through Information Technology-Based Crowdfunding Services (Securities Crowdfunding), dated 11 December 2020, as amended by OJK Regulation No. 16/POJK.04/2021 dated 26 August 2021. This regulation defines blockchain as the service of bookkeeping in an information technology-based financial transaction that records and stores transaction evidence or a distributed ledger through a computer network, whether private or public. The regulation does not provide any definition for a distributed ledger.

Law stated - 21 May 2022

Cryptoassets

Are there rules or regulations governing the promotion or use of cryptoassets, including digital currencies, stablecoins, utility tokens and non-fungible tokens (NFTs)?

There is no specific regulation in Indonesia that governs the promotion or use of cryptoassets, including digital currencies, stablecoins, utility tokens and NFTs. The most relevant regulation, Commodity Futures Trading Regulatory Agency (Bappebti) Regulation No. 8 of 2021 regarding Guidelines for the Implementation of Physical Market of Crypto Assets in Futures Exchange, dated 29 October 2021, does not specifically govern the promotion or use of cryptoassets, including digital currencies, stablecoins, utility tokens and NFTs. However, the definition of 'cryptoassets' under this

regulation is very broad.

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

Law stated - 21 May 2022

Token issuance

Are there rules or regulations governing the issuance of tokens, including security token offerings (STOs), initial coin offerings (ICOs) and other token generation events?

There is, to date, no specific regulation governing ICOs or initial token offerings (ITOs) in Indonesia. Commodity Futures Trading Regulatory Agency (Bappebti) Regulation No. 8 of 2021, which is the main regulation for cryptoassets, explicitly states that it does not regulate ICOs or ITOs.

Law stated - 21 May 2022

DATA PROTECTION AND CYBERSECURITY

Data protection

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 Transactions, 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.

Law stated - 21 May 2022

Cybersecurity

What cybersecurity regulations or standards apply to fintech businesses?

There are, to date, no specific cybersecurity regulations or standards applicable across the fintech sector in Indonesia. However, the National Cyber and Encryption Agency (BSSN) has set out general regulations or standards for information security management, which includes cybersecurity under BSSN Regulation No. 8 of 2020 on Security Systems in the Operation of Electronic Systems. Fintech companies may be subject to the provision of this regulation if they use an electronic system in the operation of their business. Under this regulation, certain security standards must be implemented by the electronic system operator, including SNI ISO/IEC 27001 and other cybersecurity standards required by the BSSN or other ministries or institutions.

OUTSOURCING AND CLOUD COMPUTING

Outsourcing

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.

Law stated - 21 May 2022

Cloud computing

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. However, cloud computing is generally regulated under Minister of Communication and Informatics (MOCI) Regulation No. 5 of 2020 regarding Electronic System Providers in the Private Sector, dated 24 November 2020, as amended by MOCI Regulation No. 10 of 2021, dated 21 May 2021.

Law stated - 21 May 2022

INTELLECTUAL PROPERTY RIGHTS

IP protection for software

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 the computer program.

Law stated - 21 May 2022

IP developed by employees and contractors

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 employers to include a clause in employment agreements with employees or contractors or consultants that clearly states that the IP rights of any creation will be solely owned by the employer.

Joint ownership

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.

Law stated - 21 May 2022

Trade secrets

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.

Law stated - 21 May 2022

Branding

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.

Law stated - 21 May 2022

Remedies for infringement of IP

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.

Law stated - 21 May 2022

COMPETITION

Sector-specific issues

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

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

Law stated - 21 May 2022

TAX

Incentives

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.

Law stated - 21 May 2022

Increased tax burden

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 income tax and value added tax (VAT) specifically for fintech businesses, namely, MOF Regulation No. 69/PMK.03/2022 regarding Income Tax and Value Added Tax for the Implementation of Financial Technology. For example, the income generated from a peer-to-peer lending business shall be subject to VAT and income tax. However, VAT collection is exempted for certain fund transfer transactions. The VAT rate for sectors subject to VAT collection is generally 11 per cent.

The MOF also issued a regulation to impose income tax and VAT for cryptocurrency trade transactions, MOF Regulation No. 68/PMK.03/2022 regarding Value Added Tax and Income Tax on Crypto Asset Trade Transactions. VAT in the amount of 0.1 per cent will be imposed if the crypto trader is registered as a trade through electronic systems provider (PPMSE), or 0.2 per cent if the PPMSE is not yet registered.

To qualify as a PPMSE 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 Directorate of General Taxation. 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.

Law stated - 21 May 2022

IMMIGRATION

Sector-specific schemes

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.

Law stated - 21 May 2022

UPDATE AND TRENDS

Current developments

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

We understand that a Financial Services Authority (OJK) moratorium on the registration and licensing of peer-to-peer lending companies in Indonesia is still in effect, so the OJK will, for the time being, no longer accept registration applications. There has been no confirmation on how long the moratorium will last, but the OJK has hinted that it will end soon. We also understand that the OJK is preparing a new regulation on collective funding services based on information technology that would replace the current regulation on peer-to-peer lending, namely OJK Regulation No. 77/POJK.01/2016 regarding Information Technology-Based Money Lending Services, dated 29 December 2016. Although the new regulation had been expected to be issued in the second semester of 2021, it has as not yet been issued as of this writing.

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.

Law stated - 21 May 2022

Jurisdictions

	Belgium	Simmons & Simmons
	Canada	Stikeman Elliott LLP
	China	Simmons & Simmons
	Denmark	Plesner Advokatpartnerselskab
	Egypt	Soliman, Hashish & Partners
	France	Kramer Levin Naftalis & Frankel LLP
	Germany	Simmons & Simmons
	Hong Kong	Simmons & Simmons
	Indonesia	SSEK Legal Consultants
	Ireland	Matheson
	Japan	Anderson Mōri & Tomotsune
	Malta	Ganado Advocates
	Netherlands	Simmons & Simmons
	Nigeria	Perchstone & Graeys
	Singapore	Simmons & Simmons
	South Korea	Bae, Kim & Lee LLC
	Spain	Simmons & Simmons
	Sweden	Vinge
	Switzerland	Homburger
	Taiwan	Lee and Li Attorneys at Law
	Turkey	SRP Legal
	United Arab Emirates	Simmons & Simmons
	United Kingdom	Simmons & Simmons
	USA	Seward & Kissel LLP
	Vietnam	YKVN