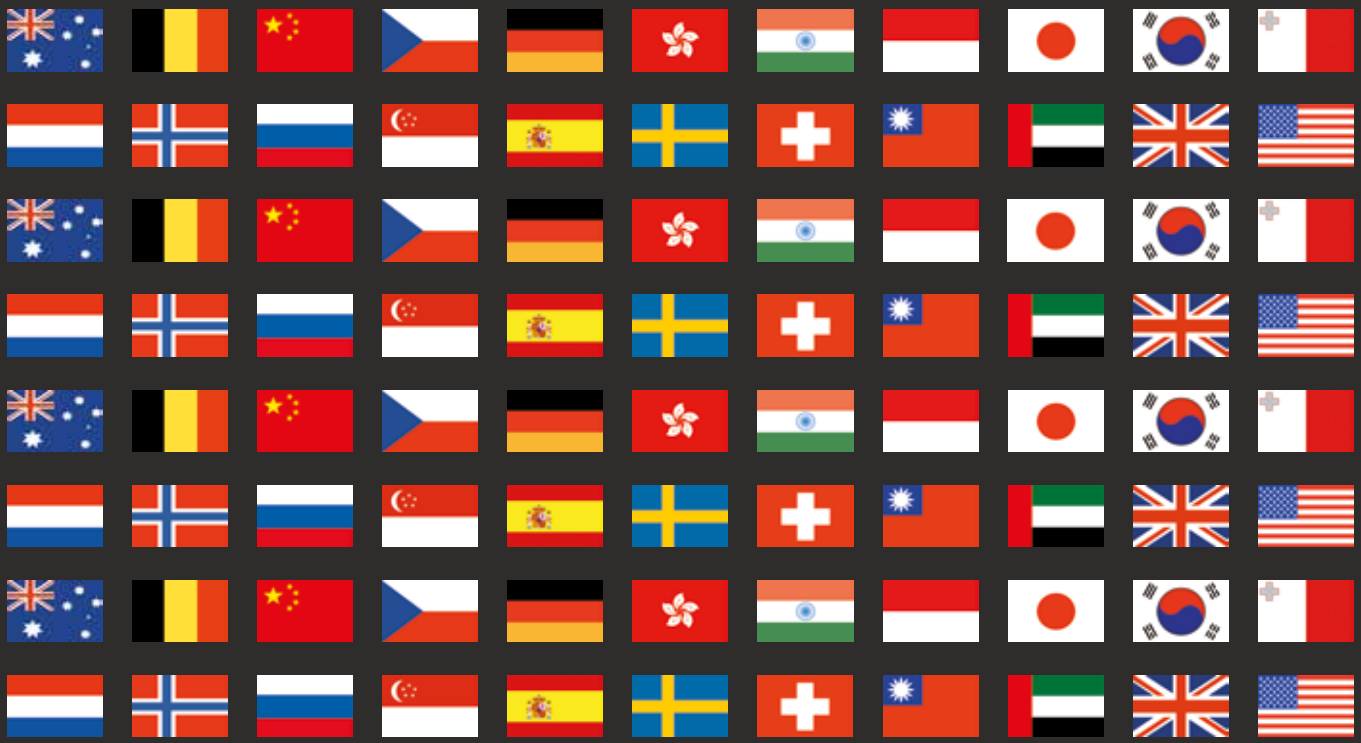
Fintech

Contributing editors
Angus McLean and Penny Miller



2019

GETTING THE DEAL THROUGH

GETTING THE DEAL THROUGH

Fintech 2019

Contributing editors

Angus McLean and Penny Miller

Simmons & Simmons

Publisher
Tom Barnes
tom.barnes@lbresearch.com

Subscriptions
James Spearing
subscriptions@gettingthedealthrough.com

Senior business development managers
Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com

Law Business Research

Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3780 4147
Fax: +44 20 7229 6910

First published 2016
Third edition
ISBN 978-1-78915-024-7

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

CONTENTS

Preface

Fintech 2019

Third edition

Getting the Deal Through is delighted to publish the third edition of *Fintech*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

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 **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

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.gettingthedealthrough.com.

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.

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, for their continued assistance with this volume.

GETTING THE DEAL THROUGH

London
August 2018

Indonesia

Abadi Abi Tisnadisastra, Yosef Broztito and Raja S G D Notonegoro

AKSET Law

Financial services regulation

1 Which activities trigger a licensing requirement in your jurisdiction?

The Indonesian financial services sector is primarily under the authority of the Financial Services Authority (OJK) and the Central Bank of Indonesia (Bank Indonesia or BI). The following are the main activities that trigger licensing requirements in Indonesia:

Extending loans

Generally, entities wanting to provide a platform for lending require a licence. Lending (in various forms) is typically carried out by banking institutions, multi-finance companies, venture capital companies and microfinance institutions, subject to different licences from OJK. Savings and lending cooperatives may also engage in lending under licence from the Ministry of Cooperatives and Small Business Enteprises (MOCSBE). Peer-to-peer (P2P) lending companies (off-balance-sheet lending) has been regulated by OJK and is subject to certain registration and licensing requirements.

Deposit-taking

Acceptance of deposits from the public in the form of demand deposits, time deposits, deposit certificates, savings or equivalent forms may only be conducted by banking and microfinance institutions licensed by OJK. Savings and lending cooperatives may also engage in deposit-taking, based on a licence issued by MOCSBE.

Factoring

Factoring may be carried out by banks and licensed multi-finance companies, with or without recourse. A factoring platform may trigger an OJK licensing requirement.

Payment and transaction processing services

Banks may perform certain fund transfer and payment services. However, non-bank entities may also provide payment and transaction processing services, such as e-money, card-based payment instruments, e-wallet, payment gateways, fund transfers and switching operations, subject to the relevant licences from BI. Licensing of payment services is further discussed in question 12.

Dealing in investments or advising on investments (in the framework of financial services)

These activities fall mainly within the scope of capital markets. Securities companies operating as securities underwriters, securities trading brokers or investment managers are required to hold a licence from OJK. Individuals representing securities companies must also be licensed by OJK. Parties that provide advisory services on the sale or purchase of securities must obtain a licence from OJK as an investment adviser. General investment advisory services, such as financial advisory services for M&A transactions, do not fall under this licensing requirement.

Other financial services by non-bank institutions

Platforms providing other financial services, such as insurance and reinsurance companies and intermediaries, and pension fund institutions, also require specific licences from OJK.

2 Is consumer lending regulated in your jurisdiction? Describe the general regulatory regime.

Yes, consumer lending is a regulated activity in Indonesia. Consumer lending can be provided by banking institutions and multi-finance companies and is generally regulated under the prevailing laws and regulations on the relevant sectors.

3 Are there restrictions on trading loans in the secondary market in your jurisdiction?

Under Indonesian law, loans are generally transferable unless agreed otherwise by the parties. Notification to, or acknowledgment from, the borrower is required in transferring the loan. However, depending on the structure of the loan being traded, it may fall under the scope of securities subject to Law No. 8 of 1995 on Capital Markets (the Capital Markets Law) or commercial paper supervised by BI.

4 Describe the general regulatory regime for collective investment schemes and whether fintech companies providing alternative finance products or services would generally fall within the scope of any such regime.

The Capital Markets Law and its implementing regulations recognise several categories of collective investment schemes, such as mutual funds, limited participation collective investments, asset-backed securities and real estate investment trusts. Companies managing collective investment schemes must possess a licence from OJK.

At present, there is no fintech company in Indonesia that is recognised by OJK as providing a collective investment scheme platform, but theoretically, such a company would be required to hold a licence.

5 Are managers of alternative investment funds regulated?

Investment managers are generally regulated under Head of the Capital Markets and Financial Institutions Supervisory Board Decree No. KEP-479/BL/2009 on Licensing of Securities Companies Conducting Business as Investment Managers. A party wishing to operate as an investment manager needs to obtain a business licence from OJK. Upon issuance of the business licence, the investment manager may carry out the following activities:

- management of securities portfolios for the interest of a particular investor, based on an individual and bilateral fund management agreement;
- management of collective investment portfolios through a vehicle or products regulated by OJK, such as mutual funds, limited participation collective investments, asset-backed securities and real estate investment trusts; and
- other activities in accordance with provisions set by OJK.

6 May regulated activities be passported into your jurisdiction?

No. Regulated activities may not be passported into Indonesia.

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

No. Any company planning to provide financial services in Indonesia must have legal entity status in Indonesia, which requires a presence in Indonesia. Currently only two types of fintech activities have been

regulated: payment system services by BI and P2P lending services by OJK, both of which require a legal entity status, a licence and a presence in Indonesia. Notwithstanding the foregoing, BI Regulation (PBI) No. 19/12/PBI/2017 on the Operation of Fintech (PBI on Fintech), does recognise off-shore fintech companies in a sense that they are required to register to BI and may be subject to regulatory sandbox requirement.

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

To accommodate growing demand for a legal basis governing P2P lending, OJK issued OJK Regulation (POJK) No. 77/POJK.01/2016 on Information Technology-Based Lending Services (POJK 77/2016), which came into force on 29 December 2016.

Parties wanting to operate P2P lending must be in the form of a limited liability company (PT) or a cooperative. Foreign shareholders can only hold shares in operators formed as a PT, with direct or indirect foreign shareholding limited to 85 per cent.

The operator must register with OJK and apply for a licence within one year after being registered. At the time of registration, the minimum capital requirement (issued and paid-up capital for PTs, or owner's equity for cooperatives) for operators is 1 billion rupiah, which must be increased to 2.5 billion rupiah by the time of the licence application.

In operating P2P lending, operators are prohibited from (i) conducting any activities other than operating P2P lending services, as governed in POJK 77/2016; (ii) acting as a lender or borrower in their P2P lending platform; (iii) giving any forms of assurance; (iv) issuing bonds; (v) giving recommendations (eg, recommending certain loans, investments or investors); (vi) publicising false information; (vii) giving offers through personal communication without the consent of the user; and (viii) imposing any fees on users for complaints.

In P2P lending, the borrower must be an Indonesian national or legal entity, while the lender may be domestic or domiciled abroad.

P2P lending is off balance sheet, meaning that operators may only provide an online platform that matches and passes third-party lenders to potential borrowers.

9 Describe any specific regulation of crowdfunding in your jurisdiction.

There is currently none. However, as crowdfunding and similar types of activity have started to take off in Indonesia, OJK is expected to regulate this area in the near future.

10 Describe any specific regulation of automated investment advice in your jurisdiction.

There is currently no regulation which specifically govern automated investment advice such as robo-advice.

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

There is no specific regulation on invoice trading, although it may be recognised as a transfer of receivables (cessie) pursuant to the Indonesian Civil Code (ICC), which does not specifically trigger a licensing requirement. Nevertheless, depending on the business structure, companies carrying out sale and purchase of receivables (eg, factoring businesses) may fall under a regulated activity that requires a specific licence.

12 Are payment services a regulated activity in your jurisdiction?

Yes. Payment services are primarily regulated under PBI No. 18/40/PBI/2016 on the Operation of Payment Transaction Processing (the PBI on Payment Processing), and the recently introduced PBI No. 20/6/PBI/2018 on Electronic Money (the PBI on E-Money), and PBI No. 14/23/PBI/2012 on Transfer of Funds. The scope of regulated activities covers pre-transaction, authorisation, clearing, settlement and post-transaction activities.

The following payment service providers are generally required to obtain a licence from BI:

- principals;
- switching operators;
- card-based payment instruments and e-money issuers;
- acquirers;
- payment gateway operators;
- clearing operators;
- final settlement operators;
- fund transfer operators;
- e-wallet operators; and
- other payment service providers as determined by BI.

In providing payment services, the above-listed providers may cooperate with supporting operators (eg, companies that engage in payment personalisation, providing data centres or disaster recovery centres, terminal provision, technology support for contactless transactions and card printing).

13 Do fintech companies that wish to sell or market insurance products in your jurisdiction need to be regulated?

Marketing of insurance products is generally regulated under POJK No. 23/POJK.05/2015 on Insurance Products and Marketing of Insurance Products, which allows insurance companies to sell and market insurance products through insurance agents, banks or non-bank institutions. Currently, there is no specific regulation governing the selling or marketing of insurance products specifically through fintech companies. Depending on the services offered, the licensing treatment may be the same as non-fintech companies. Micro-insurance products, however, are allowed to be marketed and sold using information technology (eg, through websites).

14 Are there any legal or regulatory rules in your jurisdiction regarding the provision of credit references or credit information services?

Based on POJK No. 18/POJK.03/2017 on the Reporting and Requesting of Debtor Information through the Financial Information Services System (SLIK), credit information services are currently managed by OJK through the SLIK, which fully replaced BI's Debtor Information System (SID) as of January 2018. The SLIK collects and records credit or loan facilities data submitted to OJK in order to generate the credit information status of a person. The scope of reporting companies covers not only banks and other financial services institutions (FSIs), but also non-FSIs subject to an approval from OJK. Fintech companies, specifically P2P lending companies, may become reporting companies upon obtaining an approval from OJK.

15 Are there any legal or regulatory rules in your jurisdiction that oblige financial institutions to make customer or product data available to third parties?

There are no legal or regulatory rules that govern such obligation at present.

16 Does the regulator in your jurisdiction make any specific provision to encourage the launch of new banks?

There are currently no such specific provisions.

17 Describe any specific rules relating to notification or consent requirements if a regulated business changes control.

Pursuant to PBI on E-Money and PBI on Payment Processing, an acquisition of a licensed payment system service operator, (i) requires a notification to BI if such operator is in the form of bank, or (ii) requires a prior approval from BI if such operator is a non-bank institution. Further, non-bank institutions carrying out e-money operation are prohibited from taking any corporate action which results in a change of controlling shareholder within five years as of the issuance of their licence, except where approved by BI under certain circumstances.

As for P2P lending companies, POJK 77/2016 provides that a change of ownership requires a prior approval from OJK.

In general, a change of control of a company that constitutes an acquisition needs to be approved by its General Meeting of Shareholders (GMS). Further, prior to the passing of the GMS resolution approving the change of control, the company is required to carry out a newspaper announcement and a notification to its employees. Upon the completion of the acquisition, the company must notify the Minister of Law and Human Rights (MOLHR) for the change of company data and carry out another newspaper announcement.

Companies holding the status as a foreign capital investment company under the Capital Investment Coordinating Board (BKPM) are

also subject to a prior approval from BKPM for the change of shareholding composition.

18 Does the regulator in your jurisdiction make any specific provision for fintech services and companies? If so, what benefits do those provisions offer?

Yes. BI has established the Fintech Office with four main objectives: (i) to facilitate fintech innovation; (ii) to optimise the development of technology for the growth of Indonesia's economy; (iii) to increase the competitiveness of fintech in Indonesia; and (iv) to support the formulation of fintech regulations and policy. On November 2017, BI introduced PBI on Fintech which is further implemented by the BI Board of Governors Regulation (PADG) No. 19/14/PADG/2017 on Fintech Regulatory Sandbox (the PADG on Regulatory Sandbox) and PADG No. 19/15/PADG/2017 on Registration, Delivery of Information and Supervision of Fintech Operators (the PADG on Registration and Supervision of Fintech Operators). Fintech operators who have carried out or will be carrying out activities that meet certain criteria set by BI must register with BI. However, licensed fintech operators under the category of payment system, as well as fintech operators who are under the authority of other institutions, are excluded from the registration obligation. In addition, BI has created regulatory sandbox mechanism as a limited testing space to provide fintech operators with the opportunity to ensure that their products, services, technologies and business models fulfil relevant criteria and regulatory requirements.

OJK formed two new units – the Digital Financial Innovation Unit and the Fintech Licensing and Supervision Unit – as well as the Fintech Expert Forum. The Digital Financial Innovation Unit will handle research and the regulatory sandbox, while the Fintech Expert Forum will coordinate and facilitate inputs from various stakeholders in the fintech industry. Registration and regulatory sandbox provisions for non-payment system related fintech players will soon to be regulated by OJK.

19 Does the regulator in your jurisdiction have formal relationships or arrangements with foreign regulators in relation to fintech activities?

Both BI and OJK have established cooperation with foreign regulators. For example, OJK entered into cooperation with the Australian Securities and Investments Commission for information exchange and an innovation hub in the field of financial services, including fintech. Additionally, OJK has formal relationships with other foreign regulators, including, among others, the Financial Services Agency of Japan, the China Banking Regulatory Commission and the Financial Supervisory Service of South Korea. Cooperation with foreign regulators is deemed important by the government, which is committed to introducing regulations that support the development of financial services as a strategic step in developing Indonesia's economy.

20 Are there any local marketing rules applicable with respect to marketing materials for financial services in your jurisdiction?

Yes. Rules on marketing are provided in POJK No. 1/POJK.07/2013 on Consumer Protection in Financial Services, and OJK Circular Letter (SEOJK) No. 12/SEOJK.07/2014 on Delivery of Information in the Framework of Financial Services and/or Product Marketing. Such regulations govern the information that may be contained in advertisements circulated by FSIs, such as terms for the use of research data, refunds, the use of the words 'free of charge' and the use of superlatives. Moreover, in every promotion, FSIs are obliged to identify themselves and provide a statement that they are registered and under the supervision of OJK. This allows customers or prospective customers to distinguish offerings of financial products that are not supervised by OJK.

21 If a potential investor or client makes an unsolicited approach either from inside the provider's jurisdiction or from another jurisdiction, is the provider carrying out a regulated activity requiring a licence in your jurisdiction?

Licensing and legal presence requirements may apply to providers carrying out activities in Indonesia, regardless of who makes the approach, within or outside Indonesia. However, a specific answer to this question may need to be formulated on a case-by-case basis, depending on certain factors such as the type of services being provided, and whether there are any specific requirements or restrictions on such services.

22 If the investor or client is outside the provider's jurisdiction and the activities take place outside the jurisdiction, is the provider carrying out an activity that requires licensing in its jurisdiction?

Under the current regime, licensing from Indonesian authorities is required for regulated activities performed in Indonesia. Further, certain compliance requirements may be required if the activities are targeted towards the Indonesian market. If the provider operates outside Indonesia, then it is generally not subject to licensing requirements in Indonesia.

23 Are there continuing obligations that fintech companies must comply with when carrying out cross-border activities?

Currently, there are no regulations that govern continuing obligations for fintech companies in carrying out cross-border activities. Nonetheless, regulations on such obligations may be introduced in the future.

Distributed ledger technology

24 Are there any legal or regulatory rules or guidelines in relation to the use of distributed ledger (including blockchain) technology in your jurisdiction?

BI, through PBI on Fintech, recently acknowledged the use of distributed ledger technology or blockchain as one example of a fintech operation under the category of payment system. Consequently, fintech operators who have carried out or will carry out the use of such technology and who meet certain criteria are generally required to register themselves to BI. However, such technology is prohibited for the operation of virtual currency as a payment instrument.

Digital currencies

25 Are there any legal or regulatory rules or guidelines applicable to the use of digital currencies or digital wallets, including e-money, in your jurisdiction?

Yes. E-money, which is governed under the PBI on E-Money, is defined as a payment instrument that fulfils the following elements: (i) issued based on the nominal value of money deposited in advance to the issuer; (ii) the nominal value of the money is stored electronically in a server or chip; and (iii) the value of the e-money managed by the issuer does not constitute savings under the relevant banking law. Failure to fully fulfil those elements causes the payment instrument not to be considered as e-money.

Principals, issuers, acquirers, clearing processors and final settlement processors of e-money are required to obtain a licence from BI. Exemption to this requirement only applies to close-loop e-money issuers with managed float funds of less than 1 billion rupiah. Other notable provisions under PBI on E-Money are the foreign shareholding restriction, the capitalisation requirement, the single presence policy and the concept of grouping of payment system service operators.

According to the PBI on Payment Processing, virtual currency or digital currency (eg, Bitcoin, Ethereum, BlackCoin, Dash, Dogecoin, Litecoin, Namecoin, Nxt, Peercoin, Primecoin, Ripple and Ven) is prohibited from being used in the processing of payment transactions in Indonesia.

With regard to an e-wallet, or digital wallet, the PBI on Payment Processing defines an e-wallet as an electronic service to store payment instrument data such as payment instruments using cards or e-money, that may also store funds, for payment purposes. Funds stored in the e-wallet may only be used for purchases and paying bills. E-wallet operators are subject to licensing by BI only if the number of active users has reached or is expected to reach at least 300,000 users.

26 Are there any rules or guidelines relating to the operation of digital currency exchanges or brokerages in your jurisdiction?

There are no rules or guidelines relating to the exchanges or brokerages of digital currency or virtual currency at present. The Commodity

Futures Trading Supervisory Body, under the Ministry of Trade, has been studying the necessity of regulating the operation of digital currency as an exchange commodity in Indonesia.

27 Are there legal or regulatory rules or guidelines in relation to initial coin offerings (ICOs) or token generating events in your jurisdiction?

There are no legal or regulatory rules or guidelines in relation to ICOs or token generating events at this point in time.

Securitisation

28 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?

In principle, Indonesia adopts the principle of freedom of contract, whereby an agreement (including loan and security agreements) will be regarded as the law for its parties, as long as the agreement has fulfilled article 1320 of the ICC and does not contravene public order. Under article 1320 of the ICC, a valid agreement comprises the following conditions: (i) consent between the parties; (ii) legal capacity of the parties; (iii) the agreement is for a specific matter; and (iv) the agreement is based on a lawful cause.

With regard to P2P lending agreements (ie, agreement between a borrower and a lender or agreement between an operator and a lender), POJK No. 77/POJK.01/2016 on Information Technology-Based Lending Services (POJK 77/2016) provides that such agreements must be made in an electronic document containing at least the following:

- agreement number;
- date;
- identities of the parties;
- rights and obligations of each party;
- loan amount;
- interest rate;
- instalment value;
- term;
- security (if any);
- relevant costs (if any);
- terms on penalties (if any); and
- dispute settlement mechanism.

As long as the above requirements are fulfilled, the P2P lending agreement should be enforceable.

29 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? May these loans be assigned without informing the borrower?

While POJK 77/2016 does not specifically regulate the assignment of P2P loans, in general, assignment of rights and obligations under an agreement (including a loan agreement, usually in the form of receivables) is governed under article 613 of the ICC. Assignment (cessie) of receivables is required to be set out in a notarial deed or a private agreement. The borrower must be notified of the assignment. Failure to notify or to obtain a borrower's acknowledgement of the assignment will cause the assignment not to have any legal effect as to the borrower.

30 Will the securitisation be subject to risk retention requirements?

There are no such requirements under the current regulatory regime on P2P lending.

31 Would a special purpose company for purchasing and securitising peer-to-peer or marketplace loans be subject to a duty of confidentiality or data protection laws regarding information relating to the borrowers?

Yes, a special purpose company in this case is subject to the rules on data protection. Based on Minister of Communications and Informatics (MOCIT) Regulation No. 20 of 2016 on Private Data Protection in Electronic Systems (MOCIT 20/2016), any party that obtains protected data or information from an electronic system operator (P2P operator) relating to their users (borrowers) is subject to the rules on data protection.

Intellectual property rights

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

Software is mainly protected by copyright under Law No. 28 of 2014 on Copyright (the Copyright Law). Although, in principle, copyright arises automatically when a work is realised in a tangible form, the Copyright Law provides procedures for voluntary registration. Registration is not required for a work to be recognised as copyrighted; it merely confers on the registrant the legal presumption that they are the creator of the work in the event of a dispute.

33 Is patent protection available for software-implemented inventions or business methods?

Law No. 13 of 2016 on Patents (the Patent Law) provides that computer programs, both tangible and intangible, that have technical features and functions for problem-solving may be considered patentable inventions. Business methods that have no technical characteristics are outside the scope of patentability.

34 Who owns new intellectual property developed by an employee during the course of employment?

Ownership of intellectual property depends on the nature of the intellectual property. With regard to copyright, in the absence of express contractual provisions between the employer and the employee that provide otherwise, the employee owns the copyright because he or she is deemed the creator. However, if the work is designed by the employer, and the employee merely realises and performs his or her work under the guidance and direction of the employer who initially designed the copyrighted work, the employer will be regarded as the creator.

In relation to patents, intellectual property rights over inventions made by an employee in the course of employment will be owned by the employer, unless otherwise agreed by both parties. This also applies to inventions developed by employees using data and/or facilities that are available due to their employment. In both cases, the employee, as the inventor, has the right to a reward based on the agreement of the parties, taking into account the economic benefits obtained from the invention.

35 Do the same rules apply to new intellectual property developed by contractors or consultants? If not, who owns such intellectual property rights?

In the course of engagement, contractors or consultants generally own the intellectual property developed by them, as, according to the Copyright Law, the work developed based on the order of others will be owned by the party who developed such work. Despite these rules, both parties may agree otherwise in a contract.

The Patent Law is silent on the case where the invention is made by a contractor or consultant. In practice, this scenario is commonly governed under a contract executed by the parties.

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

Although, in general, the Indonesian laws related to intellectual property recognise joint ownership, limitations related to the rights to use, license, charge or assign specifically under such a joint ownership are not expressly provided. In practice, the parties under a joint ownership usually enter into an agreement to govern in detail the terms on the use, licensing and assignment of rights by them.

37 How are trade secrets protected? Are trade secrets kept confidential during court proceedings?

In Indonesia, trade secrets are protected under Law No. 30 of 2000 on Trade Secrets (the Trade Secrets Law). The scope of protection covers methods of production, processing or sale, or any other information in the field of technology or business. To obtain protection, a trade

Update and trends

In order to facilitate the rapid development of fintech in Indonesia, the regulators have recently issued a number of new regulations. One of these new regulations that needs to be taken into account is PBI No. 19/8/PBI/2017 on the National Payment Gateway (NPG) issued by BI on June 2017, as further implemented through PADG No. 19/10/PADG/2017 on the NPG. The issuance of these regulations is a response to the current condition of the national payment system which tends to be relatively complex and fragmented.

The NPG is meant to be the basis of payment transaction processing through the integration of all payment canals to provide an efficient, secure, reliable, interconnected and interoperable domestic payment system. In principle, it is determined that all domestic payment transactions and all payment instruments that are issued domestically by domestic issuers must be processed domestically. This is deemed necessary in order to expand public acceptance to non-cash payment transactions.

PBI on E-Money issued by BI on May 2018, replacing the previous regulation on e-money and its amendments, also provides quite significant changes to the operation and the use of e-money. Other than for purchase payments and payments for transportation, the use of e-money has expanded over the past few years to support financial inclusion through Digital Financial Service and payments in e-commerce platforms.

This new regulation introduced some new provisions which were not regulated under the previous regulation on e-money, among others the foreign shareholding restriction, the capitalisation requirement, the single presence policy, closed loop e-money operation and the concept of grouping of payment system service operators. BI is expected to issue the implementing regulations of this PBI on E-Money in the near future.

Another set of new regulations is the PBI on Fintech, as further implemented through PADG on Regulatory Sandbox and PADG on Registration and Supervision of Fintech Operators. These regulations categorise fintech operators into several categories, namely (i) payment systems; (ii) market support; (iii) investment management and risk management; (iv) lending, financing and capital raising; and (v) other financial services.

Further, fintech will have certain criteria, namely (i) innovative; (ii) may impact existing products, services, technology and/or financial business models; (iii) provides benefits to the society; (iv) may be widely used; and (v) other criteria as stipulated by BI. Fintech operators who have carried out or will be carrying out activities that meet such criteria must register themselves with BI. Nevertheless, licensed fintech operators under the category of payment system, as well as fintech operators who are under the authority of other institutions, are excluded from such registration obligation.

In addition, these regulations establish a regulatory sandbox as a limited testing space to provide fintech operators with the opportunity to ensure that their products, services, technologies and business models fulfil the criteria set by BI. Although the scope of fintech under these BI regulations cover not only payment system-related fintech operators but also non-payment system-related operators, OJK is expected to separately govern the registration and regulatory sandbox for fintech operators under its authority.

More regulations are expected to be issued in line with the development of, not only a different variety of fintech businesses, but also the use of information technology in general. Some examples of highly anticipated regulations are on the operation of digital currency as an exchange commodity, and the implementing regulations of POJK 77/2016 covering registration, licensing and operation of P2P lending operators.

Despite the increase in regulations, fintech companies are adapting to the changing regulatory environment. It is hoped that the recent issuance of new regulations will boost the industry, creating sound fintech businesses that will contribute to the national economy. As the fintech industry moves with lightning speed, other than issuing regulations, regulators also need to make sure that they have adequate manpower and that they streamline the licensing process to accommodate the growing number of fintech companies that would like to comply with the regulations.

secret must have economic value, must be unknown to the public, and its owner must take the necessary steps to maintain the confidentiality of the information. By holding the right of a trade secret, the holder is entitled to exclusive rights to use the trade secret, grant a licence to or prohibit others from using the trade secret and disclose the trade secret to third parties for commercial purposes.

Disclosing, or breaching an agreed obligation to maintain the confidentiality of, trade secrets, constitutes an infringement of trade secrets. Unlike the general rules of intellectual property that designate the commercial court as the relevant forum for dispute settlement, the Trade Secrets Law specifically provides that disputes related to trade secrets will be settled by the district court. District courts allow closed proceedings in order to prevent the disclosure of trade secrets.

38 What intellectual property rights are available to protect branding and how do you obtain those rights?

Brands are largely protected as trademarks under Law No. 20 of 2016 on Trademark and Geographical Indications (the Trademark Law). Trademarks not only cover conventional marks, such as words, letters, numbers, pictures and logos, but also non-conventional marks, such as three-dimensional objects, sounds and holograms. The rights of trademarks are obtained upon registration with the MOLHR.

The Trademark Law allows applications to be submitted with priority rights. With priority rights, an applicant may submit an application originating from any member state of the Paris Convention for the Protection of Industrial Property, or the Agreement Establishing the World Trade Organization, in order to obtain recognition that the filing date of the country of origin is the priority date in Indonesia, provided that the filing date of the application is made during the period prescribed in the treaty.

39 How can new businesses ensure they do not infringe existing brands?

All brands under registered trademarks are publicly announced and recorded in the trademark database managed by the MOLHR, available for public access online. New businesses are highly recommended to do a trademark search to identify whether there are similar or identical trademarks that have been registered or that are currently under the registration process. It is best to note that applications for trademark registration will be rejected if the trademark has a similarity in an essential part or in its entirety with not only a registered trademark, but also a well-known trademark.

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

In general, the owner of intellectual property rights (IPR) may file a civil lawsuit to claim for compensation or to force the termination of all actions related to the use of such IPR, or both. Such civil lawsuits will be submitted to the commercial court for trademarks, copyrights or patents, or the district court in case of trade secrets. Alternatively, the parties may settle through arbitration or other alternative dispute settlement.

Criminal penalties are also applicable for the infringement of IPR.

41 Are there any legal or regulatory rules or guidelines surrounding the use of open-source software in the financial services industry?

There are none as yet.

Data protection

42 What are the general legal or regulatory requirements relating to the use or processing of personal data?

There are currently no general regulations that govern the use and processing of personal data. Consequently, MOCIT has proposed a Draft Bill on Personal Data Protection (the PDP Bill) for the House of Representatives, which will apply to any entity that stores or processes personal data by electronic or non-electronic means. The use or processing of personal data is governed by several regimes, depending upon its purpose, means, subject and object. For example, protection of personal data under the framework of electronic systems and transactions is regulated in MOCIT 20/2016.

Both the PDP Bill, if promulgated in its present form, and MOCIT 20/2016 require prior written consent from the owners in order to obtain and collect personal data. In obtaining prior consent, the PDP Bill requires all system administrators to disclose the following information to the user:

- legality of the processing;
- purpose of the processing;
- types of personal data that will be processed;
- retention period;
- details on the information that will be collected;
- time period for processing and deletion; and
- rights of the owner to modify or withdraw their consent.

43 Are there legal requirements or regulatory guidance relating to personal data specifically aimed at fintech companies?

Fintech companies, depending on the services provided, may be subject to SEOJK No. 18/SEOJK.02/2017 on Governance and Information-Technology Risk Management for Information Technology-Based Lending Services (SEOJK 18/2017) (for P2P lending operators); BI Circular Letter (SEBI) No. 18/41/DKSP on Operation of Payment Transaction Processing; and SEBI No. 16/11/DKSP on Operation of Electronic Money, as amended by SEBI No. 18/21/DKSP (for payment system operators). Those regulations generally require the use of information technology systems that maintain the confidentiality of personal data. Compared with the other two regulations that are applicable for payment system operators, SEOJK No. 18/2017 provides more detailed requirements for P2P lending operators on the processing of personal data and information of their users.

44 What legal requirements or regulatory guidance exists in respect of anonymisation and aggregation of personal data for commercial gain?

There are none at present. Anonymised or aggregated data may be freely used for commercial gain. In principle, the definition of personal data governed in both the PDP Bill and MOCIT 20/2016 requires the individual to be identified, or at least, identifiable. Thus, as personal data that have been anonymised or aggregated are no longer identifiable, they are not under the scope of regulated personal data protection.

Outsourcing, cloud computing and the internet of things

45 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 regulation governing this matter. Under the Law No. 13 of 2003 on Labour, any company in general, including a financial services company, may not outsource its core businesses, or activities which have a direct relation to its production process. Works that may be outsourced are limited to supporting services, namely cleaning, catering, security, oil and gas, mining and labour transportation.

46 How common is the use of cloud computing among financial services companies in your jurisdiction?

The use of cloud computing among FSIs is becoming increasingly prevalent.

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

At present, there are no specific legal requirements for such use. OJK, however, has issued Guidelines for the Use of Cloud Computing Services by Financial Services Institutions to serve as guidance for FSIs in facing legal and operational issues arising from the use of cloud computing. Every FSI should comply with the following:

- competence and reputation of the service provider;
- review, monitoring and control;
- audit;
- confidentiality and security standards;
- resilience and continuity of business;
- transparency of data location;
- restrictions on the use of data;
- separation or isolation of data;
- outsourcing requirements; and
- data termination requirements.

48 Are there specific legal requirements or regulatory guidance with respect to the internet of things?

There are no specific legal requirements or regulatory guidance on the internet of things (IoT) as yet. As the IoT ecosystem is expected to develop rapidly in the next few years, and given its complexity and scale, the regulators have been under discussion with the relevant stakeholders in order to formulate the road map and regulations related to the IoT.

Tax

49 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 currently no tax incentives specifically for fintech companies. However, there is a general corporate income tax reduction available for companies fulfilling certain requirements (eg, industries that are classified as 'pioneer' and having an authorised capital investment plan of minimum 1 trillion rupiah, or 500 billion rupiah if the company introduces high technology).

Abadi Abi Tisnadisastra atisnadisastra@aksetlaw.com
Yosef Broztito ybroztito@aksetlaw.com
Raja S G D Notonegoro rnotonegoro@aksetlaw.com

The Plaza Office Tower 29th Floor
Jl. M.H. Thamrin Kav. 28-30
Jakarta 10350
Indonesia

Tel: +62 21 2992 1515
Fax: +62 21 2992 1516
www.aksetlaw.com

Competition

50 Are there any specific competition issues that exist with respect to fintech companies in your jurisdiction or that may become an issue in future?

There are no specific issues on competition with respect to fintech companies. Competition in Indonesia is generally regulated in Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, which applies to all business entities, including fintech companies. This regulation prohibits business entities from entering into agreements, or carrying out activities, that may give rise to monopolistic practices or unfair business competition.

Financial crime

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

There is no regulatory requirement for fintech companies to have anti-bribery procedures. However, fintech companies are required to formulate and consistently implement written guidelines for anti-money laundering programmes and deliver the same to BI or OJK. Such guidelines must consider the factor of information technology, which could potentially be misused by money laundering perpetrators.

52 Is there regulatory or industry anti-financial crime guidance for fintech companies?

BI and OJK have issued several regulations and circular letters that serve as guidelines for fintech companies to implement anti-money laundering programmes, as well as prevention of terrorism financing. In general, such guidelines provide minimum standards for customer due diligence or enhanced due diligence, administration of documents, procedures for determination of user profiles, rejection and termination of business relations, and obligatory reporting to the Financial Transaction Reports and Analysis Centre.

Getting the Deal Through

Acquisition Finance
Advertising & Marketing
Agribusiness
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Appeals
Arbitration
Art Law
Asset Recovery
Automotive
Aviation Finance & Leasing
Aviation Liability
Banking Regulation
Cartel Regulation
Class Actions
Cloud Computing
Commercial Contracts
Competition Compliance
Complex Commercial Litigation
Construction
Copyright
Corporate Governance
Corporate Immigration
Corporate Reorganisations
Cybersecurity
Data Protection & Privacy
Debt Capital Markets
Dispute Resolution
Distribution & Agency
Domains & Domain Names
Dominance
e-Commerce
Electricity Regulation
Energy Disputes
Enforcement of Foreign Judgments
Environment & Climate Regulation
Equity Derivatives
Executive Compensation & Employee Benefits
Financial Services Compliance
Financial Services Litigation
Fintech
Foreign Investment Review
Franchise
Fund Management
Gaming
Gas Regulation
Government Investigations
Government Relations
Healthcare Enforcement & Litigation
High-Yield Debt
Initial Public Offerings
Insurance & Reinsurance
Insurance Litigation
Intellectual Property & Antitrust
Investment Treaty Arbitration
Islamic Finance & Markets
Joint Ventures
Labour & Employment
Legal Privilege & Professional Secrecy
Licensing
Life Sciences
Loans & Secured Financing
Mediation
Merger Control
Mining
Oil Regulation
Outsourcing
Patents
Pensions & Retirement Plans
Pharmaceutical Antitrust
Ports & Terminals
Private Antitrust Litigation
Private Banking & Wealth Management
Private Client
Private Equity
Private M&A
Product Liability
Product Recall
Project Finance
Public M&A
Public-Private Partnerships
Public Procurement
Real Estate
Real Estate M&A
Renewable Energy
Restructuring & Insolvency
Right of Publicity
Risk & Compliance Management
Securities Finance
Securities Litigation
Shareholder Activism & Engagement
Ship Finance
Shipbuilding
Shipping
State Aid
Structured Finance & Securitisation
Tax Controversy
Tax on Inbound Investment
Telecoms & Media
Trade & Customs
Trademarks
Transfer Pricing
Vertical Agreements

Also available digitally

Online

www.gettingthedealthrough.com

ISBN 978-1-78915-024-7