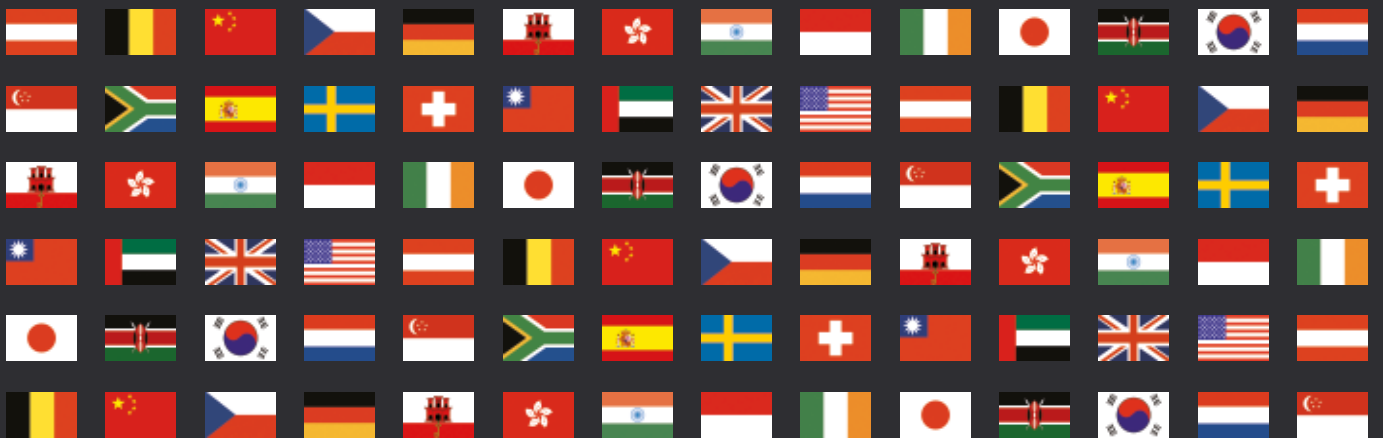


Fintech 2020

Contributing editors
Angus McLean and Penny Miller



Publisher

Tom Barnes

tom.barnes@lbresearch.com

Subscriptions

Claire Bagnall

claire.bagnall@lbresearch.com

Senior business development managers

Adam Sargent

adam.sargent@gettingthedealthrough.com

Dan White

dan.white@gettingthedealthrough.com

Published by

Law Business Research Ltd

87 Lancaster Road

London, W11 1QQ, UK

Tel: +44 20 3780 4147

Fax: +44 20 7229 6910

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between June and August 2019. Be advised that this is a developing area.

© Law Business Research Ltd 2019

No photocopying without a CLA licence.

First published 2016

Fourth edition

ISBN 978-1-83862-148-3

Printed and distributed by

Encompass Print Solutions

Tel: 0844 2480 112



Fintech

2020

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

Lexology Getting The Deal Through is delighted to publish the fourth edition of *Fintech*, which is available in print and online at www.lexology.com/gtdt.

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

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Austria, Gibraltar, Ireland, Kenya and South Africa.

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

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

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



London

August 2019

Reproduced with permission from Law Business Research Ltd

This article was first published in August 2019

For further information please contact editorial@gettingthedealthrough.com

Contents

Introduction	5	Japan	84
Angus McLean and Penny Miller Simmons & Simmons		Ken Kawai, Akihito Miyake and Tomoyuki Tanaka Anderson Mōri & Tomotsune	
Austria	7	Kenya	92
Stephan Heckenthaler and Brigita Rakar Binder Grösswang Rechtsanwälte GmbH		John Syekei, Dominic Indokhomi, Eddah Kiai and Irene Muthoni Coulson Harney LLP	
Belgium	14	Korea	99
Vincent Verkooijen, Jérémie Doornaert and Martin Carlier Simmons & Simmons		Jung Min Lee, Joon Young Kim and Kwang Sun Ko Kim & Chang	
China	24	Netherlands	109
Jingyuan Shi Simmons & Simmons		Jeroen Bos, Aron Berket and Marline Hillen Simmons & Simmons	
Czech Republic	31	Singapore	119
Jan Ditrych, Klára Linhartová, Michal Matějka, Zbyněk Loebel, Martin Švalbach and Matěj Daněk PRK Partners s.r.o. Attorneys at Law		Damian Adams, Jason Valoti, Grace Chong, Ng Aik Kai, Benedict Tan, Marcus Teo and Sun Zixiang Simmons & Simmons	
Germany	37	South Africa	129
Wolfgang Kotzur, Janine Marinello, Steffen Nguyen-Quang, Christopher Götz, Dang Ngo, Martin Gramsch, Sascha Kuhn, Elmar Weinand, Jochen Kindermann and Felix Biedermann Simmons & Simmons		David Geral, Kirsten Kern, Livia Dyer, Claire Franklyn, Xolani Nyali and Bright Tibane Bowmans	
Gibraltar	46	Spain	139
Peter Howitt, David Borge and Kunal Budhrani Ince		Alfredo de Lorenzo, Ignacio González, Carlos Jiménez de Laiglesia, Álvaro Muñoz, Juan Sosa and María Tomillo Simmons & Simmons	
Hong Kong	53	Sweden	148
Ian Wood Simmons & Simmons		Emma Stuart-Beck, Caroline Krassén, Lave Nilsson, Henrik Schön, Viveka Classon, Moa Bodin, Lisa Ullman, Sarah Berger, Malin Malm Waerme and Nicklas Thorgerzon Advokatfirman Vinge	
India	61	Switzerland	156
Stephen Mathias and Anuj Kaila Kochhar & Co		Clara-Ann Gordon and Thomas A Frick Niederer Kraft Frey Ltd	
Indonesia	69	Taiwan	163
Abadi Tisnadisastra and Abdillah S Tadjoedin AKSET Law		Abe Sung and Eddie Hsiung Lee and Li, Attorneys-at-Law	
Ireland	76	United Arab Emirates	172
Liam Flynn and Lorna Daly Matheson		Raza Rizvi, Muneer Khan, Samir Safar-Aly and Ben Lyons Simmons & Simmons	

United Kingdom 183

Angus McLean, Penny Miller, George Morris, Darren Oswick,
Peter Broadhurst, Olly Jones, Kate Cofman-Nicoresi, Sophie Lessar
and Alix Boberg
Simmons & Simmons

United States 197

Sam Kramer
Baker McKenzie

Indonesia

Abadi Tisnadisastra and Abdillah S Tadjoeidin*

AKSET Law

FINTECH LANDSCAPE AND INITIATIVES

General innovation climate

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

Fintech innovation in Indonesia is generally growing positively. This can be seen from the increasing number of registered and licensed peer-to-peer (P2P) lending operators under the authority of the Financial Services Authority (OJK), as well as fintech companies offering payment services that are licensed by the Central Bank of Indonesia (Bank Indonesia or BI). More recently, there has also been growing interest in the *shariah* fintech sector to capitalise on the very large Muslim population in Indonesia. Further, to encourage innovations, support the establishment of the financial technology ecosystem, and cover previously unregulated information technology-based services, BI and the OJK have respectively issued regulations that introduced the 'regulatory sandbox', which will serve as a testing mechanism to assess the reliability of business processes, business models, financial instruments, and governance.

With high rates of internet penetration and mobile phone usage as well as quite a large unbanked and underbanked population, Indonesia is set to become a hotbed of fintech innovation in South East Asia.

Government and regulatory support

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

Yes, the OJK specifically issued OJK Regulation No. 13/POJK.02/2018 on Digital Financial Innovation in the Financial Services Sector (POJK 13/2018). One of the highlights of this regulation is the existence of a regulatory sandbox that allows innovative fintech companies to test their business models for no longer than one year, extendable for another six months if necessary, without having to abide by certain OJK regulations. In April 2019, PT Avatec Services Indonesia (Avatec) was chosen by the OJK to participate in its regulatory sandbox programme in order to provide credit-scoring solutions. Avatec claims to leverage artificial intelligence and machine-learning technologies to provide digital credit assessment solutions.

FINANCIAL REGULATION

Regulatory bodies

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

In Indonesia, there are two bodies that regulate the provision of fintech products and services: the OJK and BI. The OJK regulates provision

of fintech products and services other than those related to payment services, while BI regulates all fintech products and services related to payment services.

Regulated activities

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

The Indonesian financial services sector is primarily under the authority of both the OJK and 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 the OJK. Savings and loan cooperatives may also engage in lending under licence from the Ministry of Cooperatives and Small Business Enterprises (MOCSBE). P2P lending companies, which use an off-balance sheet lending system, are regulated by the OJK and are 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 any other equivalent forms may only be conducted by banking and microfinance institutions licensed by the OJK. Savings and lending cooperatives may also engage in deposit-taking, based on a licence issued by the 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 transfer and switching operations, subject to relevant licences from BI.

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 the OJK. Individuals representing securities companies must also be licensed by the OJK. Parties that provide advisory services on the sale or purchase

of securities must obtain a licence from the 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 equity crowdfunding, insurance and reinsurance companies and intermediaries, and pension fund institutions, also require specific licences from the OJK.

Consumer lending

5 | Is consumer lending regulated in your jurisdiction?

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.

Secondary market loan trading

6 | 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 Market (the Capital Market Law) or commercial paper supervised by BI.

Collective investment schemes

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

The Capital Market 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 hold a licence from the OJK.

P2P lending and equity crowdfunding schemes are not within the scope of the regulatory regime for collective investment schemes, as they are subject to the respective OJK regulations on P2P lending and equity crowdfunding.

Alternative investment funds

8 | Are managers of alternative investment funds regulated?

Yes, investment managers are generally regulated under the Decree of the Head of the Capital Market and Financial Institutions Supervisory Board (Bapepam-LK) No. KEP-479/BL/2009 as amended by Decree KEP-26/BL/2010 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 the 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 or bilateral fund management agreement;
- management of collective investment portfolios through vehicles or products regulated by the 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 the OJK.

Peer-to-peer and marketplace lending

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

The OJK issued OJK Regulation 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 offer P2P lending services 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 the 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 an operator shall be 1 billion rupiah, which must be increased to 2.5 billion rupiah by the time of the licence application.

In offering P2P lending services, operators are prohibited from:

- conducting any activities other than P2P lending services as governed in POJK 77/2016;
- acting as a lender or borrower in their P2P lending platform;
- giving any forms of assurance;
- issuing bonds;
- giving recommendations (eg, recommending certain loans, investments or investors);
- publicising false information;
- giving offers through personal communication without the consent of the user; and
- imposing any fees on users for complaints.

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

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

In addition to POJK 77/2016, the Indonesia Fintech Lending Association (AFPI) has issued a Code of Conduct in which P2P lending companies are, among other matters, prohibited from imposing interest higher than 0.8 per cent per day and from imposing total fees, late fees and other fees that are higher than 100 per cent of the principal amount of loan as well as misusing consumers' data for debt collection purposes.

Crowdfunding

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

OJK Regulation No. 37/POJK.04/2018 dated 31 December 2018 on Information Technology-Based Crowdfunding Services Via Public Offerings (Equity Crowdfunding) defines equity crowdfunding as a share-issue service that is conducted by issuers to sell shares directly to investors via an open electronic system network.

In principle, there are three parties involved in an equity crowdfunding scheme: the issuer, the operator and the investor. An issuer shall be a limited liability company issuing shares via an operator. An issuer shall not be under either direct or indirect control of a business group or conglomerate, a publicly listed company, or a subsidiary of a publicly listed company, and shall not have assets of more than 10 billion rupiah, not including land and building. However, the OJK may have discretion with regard to the requirements to qualify as an issuer.

An operator is a legal entity (either a limited liability company or a service cooperative) that provides, manages and operates equity crowdfunding. In order for an operator to obtain a business licence from the OJK, an operator must fulfil, among other matters, a minimum paid-up

capital of at least 2.5 billion rupiah and have sufficient personnel who have capability or background in information technology as well as the expertise to conduct a review on the operator. An operator shall refrain from doing the following:

- performing business activities other than those stipulated in OJK Regulation 37/2018 except for activities as underwriters, broker-dealers or investment managers if such operators are securities companies, and licensed and registered operators of information-technology-based services;
- providing any financial assistance to investors to invest in the shares of any issuer;
- providing any investment advice or recommendation to investors or prospective investors;
- receiving or holding funds from any investor; treating any issuers and investors in a different manner;
- publishing any incorrect information regarding any equity crowdfunding activity;
- offering any equity crowdfunding service to any issuer, investor or the public via private communication means without consent of the relevant issuers and investors; or
- charging a fee to any investor and issuer for any complaint submitted.

An investor is defined as a party that purchases shares of an issuer via an operator. An investor having an annual turnover of at least 500 million rupiah may purchase shares via equity crowdfunding at not more than 5 per cent of its annual turnover. Meanwhile, an investor that has annual turnover of more than 500 billion rupiah may purchase shares via equity crowdfunding at not more than 10 per cent of its annual turnover. However, these requirements do not apply if an investor is a legal entity and has investment experience in the capital market, as proven by owning a securities account for at least two years prior to the share issue.

It must be noted that share issuance via equity crowdfunding is different from share issuance via an IPO.

Invoice trading

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 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.

Payment services

12 | Are payment services regulated in your jurisdiction?

Yes. Payment services are primarily regulated under PBI (Bank Indonesia Regulation) No. 18/40/PBI/2016 on the Operation of Payment Transaction Processing (PBI on Payment Processing), and the recently introduced PBI No. 20/6/PBI/2018 on Electronic Money (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).

Open banking

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

No, currently, there is no specific law or regulation that requires financial institutions to make customer or product data available to third parties such as via API. However, on 27 May 2019, Bank Indonesia introduced its Indonesia Payment System 2025 Visions, in which one of the visions is to assure the interlink between fintech and banks to contain the escalation of shadow banking risk through regulation of the use of digital technology (eg, API) business relationships and business ownership. Thus it can be seen that BI is aware of the importance that API has and it is expected that BI will issue a regulation sooner or later to regulate the use of API.

Insurance products

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

Marketing of insurance products is generally regulated under OJK Regulation 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 for non-fintech companies. Micro insurance products, however, are allowed to be marketed and sold using information technology (eg, through websites).

Credit references

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

Based on OJK Regulation No. 18/POJK.03/2017 on Reporting and Requesting of Debtor Information through the Financial Information Services System (SLIK), credit information services are currently managed by the OJK through the SLIK, which fully replaced Bank Indonesia's Debtor Information System as of January 2018. The SLIK collects and records credit or loan facility data submitted to the 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 approval from the OJK. Fintech companies, specifically P2P lending companies, may become reporting companies upon obtaining approval from the OJK.

CROSS-BORDER REGULATION

Passporting

16 | Can regulated activities be passported into your jurisdiction?

Unlike in the European Union, regulated activities cannot be passported into Indonesia.

Requirement for a local presence

17 | Can 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, three types of fintech activities have been regulated: payment system services, regulated by BI, and P2P lending services and equity crowdfunding, regulated by the OJK. All of these activities require legal entity status, a licence and a presence in Indonesia. Notwithstanding the foregoing, PBI No. 19/12/PBI/2017 on the Operation of Fintech (PBI on Fintech) does recognise offshore fintech companies in that they are required to register with BI and may be subject to the regulatory sandbox requirement.

SALES AND MARKETING

Restrictions

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

In general, the provisions of Law No. 8 of 1999 on Consumer Protection apply to the sales and marketing of financial services and products in Indonesia.

Under OJK Regulation No. 1/POJK.07/2013 on Consumer Protection in the Financial Services Sector, the OJK prohibits financial services companies from:

- sharing any information about their consumers with third parties unless mandated by law or the consumers have given their consent in writing;
- forcing consumers to buy other products or services in a product or services package when selling in bundles;
- offering products or services to consumers via personal communication means without the consumers' consent;
- misusing standard contracts; and
- imposing a fee on consumers for filing any complaint.

Furthermore, the OJK has also issued Guidelines for Financial Services Advertisements to ensure that financial service companies do not produce any inaccurate, unclear and misleading advertisements of any financial products or services.

CHANGE OF CONTROL

Notification and consent

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

Pursuant to the PBI on E-Money and the PBI on Payment Processing, an entity that acquires a licensed payment system service operator shall notify BI if such operator is in the form of a bank or shall obtain prior approval from BI if such operator is a non-bank institution. Furthermore, non-bank institutions carrying out e-money operation are prohibited from taking any corporate action that results in a change of controlling

shareholder within five years from the issuance of their licences, except where approved by BI under certain circumstances.

For P2P lending companies, POJK 77/2016 provides that a change of ownership requires prior approval from the 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 notification to its employees. Upon 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.

FINANCIAL CRIME

Anti-bribery and anti-money laundering procedures

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

There is no specific regulation that obliges fintech companies to have procedures to combat bribery. However, in 2016 the Supreme Court issued Supreme Court Regulation No. 13 of 2016 on Procedures for Handling Crimes by Corporations, which stipulates that in assessing whether a corporation is guilty of corruption, judges may evaluate whether the corporation has implemented necessary steps to prevent corrupt acts from happening. Based on this provision, the Corruption Eradication Commission (KPK) has issued Guidelines for Corruption Prevention for Businesses whereby companies are encouraged to have internal procedures to combat corrupt acts.

See question 21 for more information on money laundering.

Guidance

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

In 2017, the OJK issued OJK Regulation No. 12/POJK.01/2017 on Implementation of Anti-Money Laundering and Counter-Terrorism Financing Programme in the Financial Services Sector, which outlines the obligations for financial services companies to implement anti-money laundering and counter-terrorism financing programmes through:

- active supervision by the board of directors and board of commissioners;
- policies and procedures;
- internal control;
- management information systems; and
- human resources and training.

P2P lending companies are required to abide by this regulation starting from the 2021, four years after the entry into force of this regulation.

PEER-TO-PEER AND MARKETPLACE LENDING

Execution and enforceability of loan agreements

22 | 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?

POJK 77/2016 specifically requires loan agreements entered into on a P2P lending platform to be executed electronically using electronic signature. On the other hand, execution of security agreements shall abide by the relevant laws and regulations, depending on the type of security.

In practice, a P2P lending company will be the party executing loan agreements for and on behalf of the lenders, whereby it received power of attorney from the lenders to act on their behalf, including executing any loan agreement or security agreement. The power of attorney clause is usually stipulated in the agreement between the P2P lending service operator and the lender.

Assignment of loans

- 23 | 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?

There is no specific regulation on assignment of loans originated on a P2P lending platform. Any assignment of loans shall be in accordance with article 613 of the ICC regarding assignment.

In order to perfect an assignment of loans, the borrower shall be notified of the assignment. The implication for the purchaser if the assignment is not perfected is that the purchaser has no right to request repayment of the loan from the borrower.

It is not possible not to inform the borrower regarding the assignment of loans, as this is stipulated under article 613 of the ICC.

Securitisation risk retention requirements

- 24 | Are securitisation transactions subject to risk retention requirements?

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

Securitisation confidentiality and data protection requirements

- 25 | 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?

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

ARTIFICIAL INTELLIGENCE, DISTRIBUTED LEDGER TECHNOLOGY AND CRYPTOASSETS

Artificial intelligence

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

Yes, POJK 13/2018 allows the use of artificial intelligence and robo-advice in the financial services sector, whereby artificial intelligence is recognised within the market support group while robo-advice is recognised as part of the other digital finance support group.

Distributed ledger technology

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

Yes, POJK 13/2018 recognises the use of blockchain in the financial services sector; the OJK acknowledges the use of blockchain technology in the other financial services activities group.

Cryptoassets

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

No, there are no rules or regulations specifically governing the use of cryptoassets as digital currencies, as BI does not allow cryptoassets to be recognised as legal tender. In accordance with Law No. 7 of 2011 on Currency, Indonesia recognises only rupiah as its legal tender. Accordingly, cryptoassets are also prohibited to be used as digital currencies, including in digital wallets or e-money.

Digital currency exchanges

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

Yes, Commodity Futures Trading Supervisory Authority (Bappepti) Regulation No. 5 of 2019 on Technical Provisions Governing Physical Futures Trading of Crypto Assets, which implements Minister of Trade Regulation No. 99 of 2018 on General Policies on Futures Trading of Crypto Assets, governs the operation of digital currency exchanges.

Initial coin offerings

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

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

DATA PROTECTION AND CYBERSECURITY

Data protection

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

The laws and regulations that govern the processing and transfer of data (both domestic and cross-border) to fintech products and services are Law No. 11 of 2008 as amended by Law No. 19 of 2016 on Electronic Information and Transaction, GR 82/2012 and MOCI Regulation 20/2016 and POJK 77/2016.

Specifically, prior to transferring data, MOCI Regulation 20/2016 requires the transferring entity to obtain consent given in writing either manually or electronically and to implement the principles of accuracy and compatibility with regard to the purpose of transferring and processing such data.

Cybersecurity

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

Cybersecurity regulations that are enforceable to fintech businesses are, among others, the Indonesian Criminal Code, Law No. 11 of 2008 as amended by Law No. 19 of 2016 on Electronic Information and Transactions, POJK 77/2016 and the Licensing Checklist for P2P

lending companies, in which one of the requirements to be fulfilled by P2P lending companies wishing to be licensed is to obtain the ISO 27001 standard.

OUTSOURCING AND CLOUD COMPUTING

Outsourcing

33 | 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 Law No. 13 of 2003 on Manpower, any company in general, including a financial services company, may not outsource its core businesses, or activities that 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.

Cloud computing

34 | Are there 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. However, the OJK has issued Guidelines for the Use of Cloud Computing Services by Financial Services Institutions to serve as a 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 use of data;
- separation or isolation of data;
- outsourcing requirements; and
- data termination requirements.

INTELLECTUAL PROPERTY RIGHTS

IP protection for software

35 | 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 it is the creator of the work in the event of a dispute.

IP developed by employees and contractors

36 | 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?

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 that 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 or facilities that are available owing 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.

With regard to intellectual property rights developed by contractors or consultants in the course of an 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 that 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.

Joint ownership

37 | 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 of use, licence, 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.

Trade secrets

38 | 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 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.

Branding

- 39 | 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?

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.

Remedies for infringement of IP

- 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 and patents, or the district court in case of trade secrets. Alternatively, the parties may settle disputes via arbitration or other alternative dispute settlement mechanism.

Criminal penalties are also applicable for the infringement of IPR.

COMPETITION

Sector-specific issues

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

In recent years, we have seen relatively large and more established fintech companies having the advantage over smaller fintech companies in accumulating data. A potential competition issue that may arise in the future is the fact that these big fintech companies holding a large amount of data may hinder other entrants to the fintech market because smaller players or newer players do not have the same amount of data compared with the incumbents and therefore these new entrants have difficulties in competing with larger companies.

TAX

Incentives

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

No, there is no tax incentive available for fintech companies and investors engaging in the fintech sector.



Abadi Tisnadisastra

atisnadisastra@aksetlaw.com

Abdillah S Tadjoedin

atadjoedin@aksetlaw.com

The Plaza Office Tower, 29th Floor
Jl MH Thamrin Kav 28-30
Jakarta 10350
Indonesia
Tel: +62 21 2992 1515
Fax: +62 21 2992 1516
www.aksetlaw.com

Increased tax burden

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

There is no specific tax regulation that could significantly increase tax administrative costs for fintech companies in Indonesia.

IMMIGRATION

Sector-specific schemes

- 44 | 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?

No, there is no special regime specific to the technology or financial sectors.

UPDATE AND TRENDS

Current developments

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

On 27 May 2019, Bank Indonesia followed in the footsteps of central banks in India, Singapore and Thailand by unveiling the long-awaited Quick Response Indonesia Standard (QRIS), which allows users of a payment service to transfer funds to any other payment service provider within BI's ecosystem. The QRIS allows QR code-facilitated payments to be interoperable and interconnected. According to the latest news, four state banks are currently in talks with We Chat and Alipay and it is expected that these Chinese companies will enter the Indonesian market by accommodating the QRIS. Through the QRIS, Bank Indonesia aims to accelerate the digital transformation of the Indonesian economy.

* The authors would like to thank Glenn Wijaya for his assistance during the preparation of this chapter.

Other titles available in this series

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

Also available digitally

[lexology.com/gtdt](https://www.lexology.com/gtdt)