Global Financial Services Regulatory Guide - Indonesia

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# 1. Who regulates banking and financial services in your jurisdiction?

## Who regulates banking and financial services in your jurisdiction?

In Indonesia, two regulators have responsibility for the authorization and supervision of banks, insurers and other financial institutions: Bank Indonesia (BI) and the Financial Services Authority (*Otoritas Jasa Keuangan* or OJK).

The OJK was established in 2011 to take over the role of BI in supervising and regulating banks and protecting consumers in the financial services industry and of the Capital Market and Financial Institutions Supervisory Agency (*Badan Pengawas Pasar Modal dan Lembaga Keuangan* or Bapepam-LK) in supervising and regulating non-bank financial institutions and the capital market. BI is responsible for the macro-supervision of the banking and financial services industries.

In January 2023, the Indonesian government enacted Law No. 4 of 2023 on Financial Sector Development and Reinforcement (P2SK Law), an omnibus law that regulates the financial sector. Under the P2SK Law, supervisory authorities over digital financial assets (including crypto assets) and securities-related financial derivatives will shift from the Commodities and Futures Trading Regulatory Agency (*Badan* *Pengawas Berjangka Komoditi* or Bappebti) to OJK, while supervisory authorities over financial derivatives that are related to money market and foreign currencies will shift from Bappebti to BI. The transfer of supervisory duties and authorities will be completed within 24 months from the enactment of the P2SK Law (i.e., January 2025).

The allocation of responsibilities between BI and the OJK is as follows:

BI regulates the macro-supervision of the banking and financial services industries. BI is also responsible for regulating monetary and payment system services for prudential and conduct purposes. BI is also the main regulatory authority for money remittances and payment system services providers such as Visa and MasterCard. BI will also regulate financial derivatives that are related to money markets and foreign currencies.

The OJK regulates banks, insurers and large investment firms (i.e., investment banks) for prudential and conduct purposes, including in relation to regulatory capital requirements. Firms that the OJK regulates include banks, asset managers, brokers, financial advisers, pension funds, insurance companies and multi-finance companies. The OJK has also regulated financial technology companies operating in the financial services space (e.g., P2P lending platform operators, financial aggregators, credit scoring platforms). OJK will also regulate digital financial assets (including crypto assets) and securities-related derivatives.

In addition, financial services and payments companies/firms are required to file reports (on a periodic basis or if triggered by certain types of transactions) to the Center for Reporting and Analysis of Financial Transactions (PPATK). The analysis results produced by the PPATK would serve as recommendations for the other authorities (including the OJK and BI) in deciding whether to pursue further investigations or actions into the financial services or payments company/firm.

# 2. What are the main sources of regulatory laws in your jurisdiction?

## What are the main sources of regulatory laws in your jurisdiction?

Aside from legislation issued by the government and the House of Representatives, much of the relevant law in Indonesia is derived from regulations and decrees issued by BI and OJK.

OJK regulations are the main legal framework in Indonesia for the banking, financial services and insurance industries. There is also a large volume of secondary and delegated legislation. BI regulations are the main regulatory framework for monetary and payment system services and also for macro-supervision of the banking and finance industry.

Both BI and OJK issue rules and guidance, which apply to the firms that they regulate. BI and OJK publish a handbook that contains detailed rules and guidance. These rules and guidance are applicable primarily to Indonesian regulated or supervised firms but are also relevant in certain respects for non-Indonesian firms.

# 3. What types of activities require a license in your jurisdiction?

## What types of activities require a license in your jurisdiction?

Indonesia regulates a broad range of activities, including the following:

Accepting deposits – This covers typical retail banking activities involving the operation of current and deposit accounts.

Issuing and processing electronic money – Electronic money is a prepaid electronic payment product, which can be card or server-based.

Providing payment services – This covers a broad range of activities involving matters such as money remittance, debit or credit card issuance, electronic wallet services, acquiring card transactions (including payment gateway services) and the operation of payment accounts.

Consumer lending – This covers both lending to consumers and activities such as credit brokerage and debt collection on behalf of third parties, including operating P2P lending platforms that connect and match lenders with borrowers.

Carrying out insurance business – This involves effecting and carrying out insurance contracts, both life and general.

Insurance brokerage and agency activities – Indonesian regulations cover various insurance broking activities and the handling of claims on behalf of the insured.

Providing investment advice – Providing advice on most categories of investment is a regulated activity in Indonesia. This activity covers the provision of advice on the merits of acquiring or disposing of particular investments.

Trading in or brokering securities – This covers brokerage of securities for one's interest or the interest of other parties.

Arranging transactions in investments – This activity covers the role of intermediaries in investment transactions. It is very broad and covers infrastructure providers, including electronic communication networks that route orders for execution.

Providing finance leases or other types of financing – This activity is conducted primarily by multi-finance companies.

Underwriting the sale of securities – This includes underwriting shares in a public offering for the issuer's interest with or without the obligation to buy the unsold/remaining securities.

Establishing, operating and winding up a collective investment scheme – Most types of funds will be regarded as collective investment schemes under Indonesian law. This will extend to open-ended corporate bodies and partnerships.

Providing custody (safeguarding and administration of investments) – Providing custody services in relation to assets that include investment is a regulated activity.

Facilitating the trading/exchange of cryptocurrencies and digital assets – Cryptocurrencies and digital assets are recognized as commodities in Indonesia but not as a form of currency.

Regulatory status of crypto assets and cryptocurrencies

Currently, crypto assets are considered as a form of commodity that can be traded on futures exchanges (*bursa berjangka*) or through crypto asset traders (*pedagang fisik aset kripto*), but not as a form of currency or payment method. However, under the P2SK Law, which mandates the transfer of supervisory authority from Bappebti to OJK, crypto assets are considered as digital financial assets. Further, under the P2SK Law, activities involving digital financial assets, including crypto assets, are categorized as technology innovation in the financial sector (*inovasi teknologi sektor keuangan* or ITSK). This new categorization has yet to be fully implemented, as the supervisory authority is expected to be completed in January 2025.

In July 2023, Bappebti officially launched a futures exchange that lists existing licensed crypto asset traders. Additionally, Bappebti has granted licenses to some local companies to serve as clearing houses and asset storage managers for crypto transactions.

As the shift of supervision over crypto assets from Bappebti to OJK approaches as mandated by the P2SK Law, it remains to be seen if OJK will adopt a similar approach to Bappebti in terms of implementing crypto asset trading.

# 4. How do the licensing requirements apply to cross-border business in your jurisdiction?

## How do the licensing requirements apply to cross-border business in your jurisdiction?

Foreign parties who intend to conduct business collecting funds or establishing a financial services company in Indonesia will generally be subject to Indonesian laws and regulations. Indonesian financial services companies should obtain a business license from the relevant Indonesian authorities. The licensing or approval requirements from the relevant authorities also apply to some financial services products, such as collective investment contracts or banking products. However, it is not necessary for foreign parties as the lender to be licensed in Indonesia for international financing transactions. Active marketing activities and provision of financial products and services in Indonesia may trigger a licensing requirement. There is no specific regulatory framework for reverse solicitation under Indonesian law, but marketing and provision of banking services or products on a reverse solicitation may not be subject to any business-specific licensing requirements.

# 5. What are the requirements to obtain authorization in your jurisdiction?

## What are the requirements to obtain authorization in your jurisdiction?

To establish an Indonesian financial services company, the applicant typically should apply for an in-principle and business license based on the relevant laws and regulations, depending on the specific sectors. For some financial services businesses, such as banking, insurance and financing companies, the following conditions will need to be fulfilled:

***Legal form and ownership***

Generally, a financial services company established under Indonesia's law can be in the form of a limited liability company. The law requires at least two shareholders, which could be Indonesian citizens and/or Indonesian legal entities and foreign citizens and/or foreign legal entities, to establish and maintain a limited liability company. However, as mentioned above, foreign parties should consider any foreign shareholding limitation in the relevant sectors. Some types of financial services, such as banks and P2P lending platforms, are also subject to the OJKs single presence policy.

***Fit and proper test***

Primary parties of financial services companies in certain sectors are generally required to pass the fit and proper test by the OJK or BI. The parties who are obliged to undertake the fit and proper test include members of the board of directors and board of commissioners, as well as the controlling shareholders. The fit and proper test is conducted by way of (a) administrative research, which consists of the research of required documents, track record and financial reputation; and (b) interviews with candidates who have completed the administrative research.

***Capital requirement***

The minimum capital requirement will vary depending on the specific sector. For instance, a newly established commercial bank doing conventional banking must have a minimum capital of IDR 3 trillion. The capital must be paid up by the shareholders before the deed of establishment is submitted to the Minister of Law and Human Rights (MOLHR).

***Business plan***

The applicant should be able to provide the regulator with the business plan of the relevant financial services, including feasibility studies on market and economic potential, business activities, and projected balance sheet.

**MOLHR approvals**

A limited liability company must be established before obtaining a particular business license for the relevant financial service. This requires executing the deed of establishment before a public notary, injecting the issued and paid-up capital into the company, and obtaining MOLHR approval for the deed of establishment.

# 6. What is the process for becoming authorized in your jurisdiction?

## What is the process for becoming authorized in your jurisdiction?

In obtaining a business license, an applicant must complete the administrative process, which involves the submission of required documents. The documents that must be submitted to the regulator will depend on the nature of the activities. How long the application process will take will depend on the laws and regulations relevant to the financial services. For example, the approval of an application for a banking business license should, in theory, be issued within 60 business days at the latest after all of the required documents have been submitted to the relevant authority and deemed complete. The approval of a business license for an insurance company should be issued within 30 business days at the latest after all required documents are submitted. In practice, however, the entire process would typically take at least six months.

For some financial services, such as banking and insurance companies, the documents required for a license application include the following:

Deed of establishment

Shareholders', the board of directors' and board of commissioners' data

Evidence of capital injection

Business plan, risk management, and organization structure

Business group structure of prospective controlling shareholders up to the ultimate beneficial owner.

There are two regulatory sandbox regimes in Indonesia for financial technology companies that operate in the financial services and payments sectors. These two sandbox regimes are facilitated by the OJK and BI. Upon the registration of the financial technology company, BI or the OJK may decide to place the company in its respective regulatory sandbox. A regulatory sandbox in Indonesia is essentially a program where BI or the OJK will closely monitor and evaluate the financial technology company's business to determine its reliability and sustainability. During the regulatory sandbox, BI or the OJK may also conduct site visits. The results of the regulatory sandbox do not constitute a license for full-scale operations. A separate application for a license, approval, and/or registration must be lodged by the relevant financial technology company following a successful regulatory sandbox process.

# 7. What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

## What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

Indonesia does not have any financial services "passporting" arrangements with any other country.

# 8. Authors and contact information

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