



The Indonesian Financial Service Authority (“OJK”) Tighten up Rules on P2P Lending

The Financial Service Authority (“OJK”) recently issued OJK Regulation No. 10/POJK.05/2022 concerning Information Technology Based Collective Financing Services (“**POJK No. 10/2022**”). POJK 10/2022 revoked the previous regulation, namely OJK Regulation No. 77/POJK.01/2016 on Information Technology-based Lending Services (“POJK No. 77/2016”), which was originally introduced to quickly response to the then-growing Peer-to-Peer Lending (“**P2P**”) industry.

The P2P lending market in Indonesia has grown significantly since it was regulated and overseen by the OJK in 2016, with the help of factors including the digital revolution, a large potential market, and public interest in new financial technology. This positive industrial development needs to be directed towards making an optimal contribution to Indonesia through funding to communities, regions, and the business sector that has not been optimally funded by existing financial institutions.

Below is an overview of several key points of POJK 10/2022:

1. Licensing

Please note that under the POJK No. 77/2016, it established a two-step licensing process that consisted of registration and the obtaining of a business license for P2P Lending Provider (“**Provider**”), while POJK No. 10/2022 only requires the obtaining of a business license.

Although the licensing process and requirements are quite similar with the licensing phase under POJK No. 77/2016, POJK No. 10/2022 adds as follows:

- a. an obligation for a Provider to immediately carry out Electronic System Operator (ESO) registration within 30 (thirty) calendar days as of the issuance of business license by OJK;
- b. submission of additional required documents, such as copies of tax return form of the last 2 (two) years for individual shareholder candidates, business feasibility studies for the first 3 (three) years, confirmation from relevant supervisory authority in the country of origin of the foreign shareholders.

2. Higher Capital Requirements

Prior to POJK No. 77/2016, a Provider had to have at least Rp2,500,000,000 (two billion five hundred million Rupiah) in paid-up capital at the time of licensing. The sum is raised to at least Rp25,000,000,000 under POJK No. 10/2022 (twenty-five billion Rupiah). Additionally, the capital must be fully paid up in cash by POJK 10/2022 and kept in the form of a time deposit.

As for the minimum paid-up capital, POJK No. 10/2022 makes a distinction between existing Provider that has already been registered and licensed under POJK 77/2016) and new Provider to be licensed under POJK No. 10/2022. These capital requirements are only applicable for Providers which are to be licensed under the POJK No. 10/2022. Existing Providers are exempted from this capital requirements.



3. Minimum Equity

POJK No. 10/2022 also introduces a new minimum equity requirement of Rp12.500.000.000 (twelve billion five hundred million Rupiah) for both existing Providers and new Providers.

The implementation of this requirement is done through stages within 3 (three) years' time, as follows:

- a. Having at least Rp2,500,000,000 (two billion five hundred million Rupiah) within 1(one) year after the issuance of POJK No. 10/2022;
- b. Having at least Rp7,500,000,000 (seven billion five hundred million Rupiah) within 2 (two) years after the issuance of POJK No. 10/2022; and
- c. Having at least Rp12,500,000,000 (twelve billion five hundred million Rupiah) within 3 (three) years after the issuance of POJK No. 10/2022.

4. Controlling Shareholders

The term "controlling shareholder" (*Pemegang Saham Pengendali* or "**PSP**") is used in POJK No. 10/2022 to refer to a legal person, company, or business group that either (i) holds 25% or more of the voting shares, or (ii) holds less than 25% of the voting shares but has established control over a Provider, whether directly or indirectly.

POJK No. 10/2022 also prohibits a party to be a PSP in more than 1 (one) conventional Provider or 1 (one) sharia-based Provider, whereby a party that has already been a PSP in more than 1 (one) conventional Provider and 1 (one) sharia-based Provider, is given 1 (one) year to adjust to the new regulation.

Further, a licensed Provider must also report its determined PSP and any changes thereof to OJK within 6 (six) months since the enactment of the provisions.

5. Foreign Shareholders Restrictions

The POJK No. 10/2022 restrict shares that can be owned by foreigners. The limit on the foreign shareholding is set at 85% of the paid-up capital. However, this limitation only applies for Providers who are about to apply to be a Provider after the enactment of POJK 10/2022. For listed Provider before the enactment of POJK No. 10/2022, this regulation applies only if the Provider conduct a change of ownership.

Moreover, the limitation of owning no more than 85% of the paid-up capital, does not apply for Provider in the form of Public Company and trading stocks on the Stock Exchange.

6. Fit and Proper Tests

Pursuant to POJK No. 10/2022, a Provider's Main Parties (*Pihak Utama*), that consist of controlling shareholders, directors and commissioners, or Sharia supervisory board members, must pass a fit and proper test. This is a new requirement that was not imposed by POJK No. 77/2016. The fit and proper test shall be conducted based on OJK Regulation No. 27/POJK.03/2016 of 2016 concerning Fit and Proper Test for Main Parties of Financial Services Institutions.

7. Competency Certification



It is now mandatory under POJK No. 10/2022 to Directors, commissioners and executives must be certified by a financial technology certification agency registered with the OJK. Further, Members of the Board of Directors who are foreign nationals must have the ability to speak Indonesian as evidenced by Indonesian language certification no later than 1 year from the date of approval as a member of the Board of Directors by the OJK.

8. OJK Approval on Corporate Actions

POJK No. 10/2022 expands on this by stipulating comprehensive provisions relating to corporate matters requiring OJK's approval, namely:

- change of ownership;
- increase of paid-up capital;
- change of members of Board of Directors ("BOD"), Board of Commissioners ("BOC"), and Sharia Supervisory Board (Dewan Pengawas Syariah or "DPS"); and
- merger and consolidation.

POJK No. 10/2022 further elaborates on what constitutes a change of ownership of a Provider, which consists of changes to the following:

- a. Shareholders of a Provider that is not a public company (direct change of shareholders);
- b. Shareholders of the shareholders of a Provider that is not a public company (indirect change of shareholders);
- c. PSP of a Provider that is a public company; and
- d. PSP of the shareholders of a Provider that is a public company.

There are also additional requirements for a Provider after obtaining OJK approval on corporate matters, such as conducting a General Meeting of Shareholders (GMS) no later than 60 (sixty) working days as of the date of the OJK approval and submitting a report to OJK at the latest 10 (ten) business days as of the date of the GMS. Failure of comply to such provisions will result in various sanctions, such as the void of the OJK approval, written warning, limitation of business activities, and license revocation.

9. Period for Change of Ownership

POJK No. 10/2022 introduces a lock-up period whereby a Provider is prohibited from conducting any of the abovementioned forms of change of ownership that results in any (i) new shareholder, and/or (ii) change of PSP, within 3 (three) years since the date of the Provider's business license from OJK.

10. Limitation of Funding Amount

Article 26 of POJK No. 10/2022 regulates new limitation on the maximum amount of lending that each lender and its affiliates may provide, which is in the amount of 25% (twenty five percent) of the final lending position at the end of each month. Such maximum amount may be conducted in stages, as follows:

- a. 80% (eighty percent) of the final lending position at the end of the month, at the latest 6 (six) months after the enactment of POJK No. 10/2022;
- b. 50% (fifty percent) of the final lending position at the end of the month, at the latest 12 (twelve) months after the enactment of POJK No. 10/2022; and
- c. 25% (twenty five percent) of the final lending position at the end of the month, at the latest 18 (eighteen) months after the enactment of POJK No. 10/2022.



However, lenders in the financial services industry that is under OJK's supervision may provide lending up to 75% (seventy five percent) of the final lending position at the end of each month.

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