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Client Alert

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Indonesia: Key Changes and Implications of OJK's New Regulation on P2P Lending

Subtitle

In brief

To keep pace with the rapid growth of digital lending space and address key aspects such as financial inclusion and consumer protection, the Indonesian Financial Services Authority (Otoritas Jasa Keuangan or "OJK") has issued a new regulation. On 24 December 2024, OJK enacted OJK Regulation No. 40 of 2024 on Information Technology Based Collective Funding Services ("POJK 40"), which updates the requirements for peer-to-peer lending operators ("P2P Operators") and revokes the previous regulation, POJK 10/POJK.05/2022 ("POJK 10").

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Key updates from POJK 40

1. **Foreign Ownership**

POJK 40 stipulates that the foreign ownership cap for P2P Operators will be subject to future government regulations. Until such regulations are issued, foreign ownership (direct or indirect) is capped at 85% of the paid-up capital, consistent with the previous regulation, POJK 10.

2. **Controlling Shareholder and Maximum Shareholding**

Under POJK 40, controlling shareholders must have been operational for at least two years before they can hold shares in P2P Operators. For shareholders that are legal entities, their capital participation in a P2P Operator is capped at the total equity of the shareholder. However, this limitation does not apply to shareholders who are financial service institutions under the supervision of the OJK.

3. **Use of Foreign Workers and Outsourcing of Certain Functions**

P2P Operators who wish to employ foreign workers must include their plans for using foreign workers in their business plans and obtain approval from the OJK. This was not required under POJK 10, which only required P2P Operators to report the employment of foreign workers to the OJK within 20 working days after the foreign worker was employed. This change adds an additional layer of oversight and control, ensuring that the employment of foreign workers is closely monitored and regulated by the OJK. This can help prevent potential misuse or over-reliance on foreign workers. The duration of employment for foreign workers is now limited to two years, with a possible extension of another two years under POJK 40. In contrast, POJK 10 allowed foreign workers to be employed for up to three years for a single term, with no possibility of extension. This change promotes the periodic review and renewal of foreign workers' contracts, ensuring that their employment remains relevant and necessary. It also encourages the development and utilization of local talent.

While both POJK 40 and POJK 10 prohibit outsourcing certain functions, POJK 40 provides more detailed specifications. It prohibits outsourcing functions related to the assessment of funding feasibility and IT operations, including user access management and database management.

4. **Prior Approval and Notification Requirements for Corporate Actions**

POJK 40 introduces a new reporting requirement for changes in ownership that affect shareholders other than the controlling shareholders (PSP) in non-public companies. Any change in ownership that results in an acquisition, including changes in the

PSP or other shareholders, still requires approval from the OJK. This is a relaxation from POJK 10, which mandated OJK approval for every change in ownership. P2P Operators undergoing a change in ownership through acquisition must also ensure their paid-up capital is at least IDR 25 billion, if it is not already.

Additionally, POJK 40 expands the methods for increasing paid-up capital in the event of a change in ownership. The new regulation allows for increases in paid-up capital through cash deposits, conversion or transfer of retained earnings, conversion or transfer of loans, and/or bonus shares. Bonus shares can consist of stock dividends originating from the capitalization of retained earnings, and non-stock dividends originating from the capitalization of share premiums and/or other equity elements. In contrast, POJK 10 limited the increase in paid-up capital to cash deposits, transfer of retained earnings, and/or stock dividends.

5. Business Activities

Under POJK 40, P2P Operators are allowed to engage in additional business activities beyond their primary operations. These activities include acting as a distribution partner for government securities to support government programs, collaborating on informative services, and engaging in other activities with the approval of the OJK. This is an update from POJK 10, which did not regulate these additional activities. This expansion allows P2P Operators to diversify their business operations and potentially increase their revenue streams. However, it also means that P2P Operators need to ensure compliance with additional regulatory requirements for these new activities.

Moreover, POJK 40 specifies that to engage in these additional activities, P2P Operators must meet certain requirements. These include having the plan for additional activities included in their business plan, maintaining a minimum health rating of composite 2, having equity of at least IDR 12.5 billion, and not being subject to administrative sanctions such as business activity restrictions or suspensions.

6. Funding Limits

The key difference between the new and old regulations lies in the flexibility of funding limits for productive loans. Under the old regulations, the funding limit was strictly capped at Rp2 billion per recipient, with no room for exceptions. In contrast, the new regulations introduce an opportunity for increased funding for productive loans up to Rp5 billion, provided that specific conditions are met. These conditions include maintaining a non-performing loan rate of no more than 5% over the past six months and not being subject to sanctions from the OJK. This change reflects an effort to encourage more significant investment in productive sectors while ensuring that financial risks are managed appropriately. By setting conditions for additional funding, the new regulations aim to balance the need for flexibility in financing with the necessity of maintaining financial stability and regulatory compliance.

7. Cooperation with third parties

POJK 40 mandates that a P2P Operator who wishes to engage in cooperation must be with an Indonesian legal entity. This requirement ensures that the cooperation is closely monitored and regulated by the OJK, promoting transparency and accountability.

Additionally, POJK 40 allows P2P Operators to collaborate and share data with other entities to enhance the quality of P2P lending services. To ensure the security and privacy of the exchanged data, P2P Operators are required to document this cooperation in a confidentiality agreement. This ensures that all parties involved are committed to maintaining the confidentiality and integrity of the shared data.

8. Miscellaneous

POJK 40 also introduces some new requirements, including:

a. P2P Operators must maintain an equity ratio of 50% of the paid-up capital.

b. P2P Operators must maintain a minimum liquidity ratio of 120%.

Closing

Given the recent incidents of fraud in the digital lending sector, which have resulted in significant financial losses due to identity theft and synthetic fraud, the need for enhanced consumer protection has become crucial. Recognizing these challenges, the OJK has implemented stricter measures in POJK 40 to safeguard consumers. For more information on POJK 40 and its potential impact on your business, please contact us.

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