



September 2022 – Issue 1

ABOUT M&T ADVISORY

M&T Advisory is a digital publication prepared by the Indonesian law firm, Makarim & Taira S.

It informs generally on the topics covered and should not be treated as legal advice or relied upon when making investment or business decisions.

Should you have any questions on any matter contained in M&T Advisory, or other comments in general, please contact us at the emails provided at the end of this article.

ADDRESS

Summitmas I, 16th & 17th Floors
Jl. Jend. Sudirman Kav. 61-62
Jakarta 12190

PHONE

+6221 5080 8300 | +6221 252 1272

FAX

+6221 252 2750/51

 makarim.com  Makarim & Taira S.

New Financial Service Authority Regulation on Peer-to-Peer Lending (“P2P Lending”)

The Financial Service Authority (*Otoritas Jasa Keuangan* – “**OJK**”) issued a new regulation for P2P Lending Providers that came into force on 4 July 2022, OJK Regulation No. 10/POJK.05/2022 on Technology-Based Collective Financing Services (“**OJK Reg. 10/2022**”). The issuance of this regulation is a response to the ever-growing P2P Lending business and replaces the previous OJK Regulation on P2P Lending activities, OJK Regulation No. 77/POJK.01/2016 on Technology-Based Fund Lending Services (“**OJK Reg. 77/2016**”).

OJK Reg. 10/2022 covers more regarding the management of P2P Lending Providers and has notable differences from OJK Reg. 77/2016. Below we provide an overview of OJK Reg. 10/2022 and its differences from its predecessor, including the transition period for existing P2P Lending Providers to comply (as applicable).

A. OJK Reg. 10/2022 Overview

Minimum Paid-up Capital and Equity

OJK Reg. 10/2022 imposes a new minimum paid-up capital requirement that has increased exponentially from OJK Reg. 77/2016. During their establishment, P2P Lending Providers have a minimum of paid-up capital of IDR25,000,000,000. In addition, OJK Reg. 10/2022 also sets the minimum equity requirement for P2P Lending Providers, ie. a minimum of IDR12,500,000,000.

The Licensing Requirements

Under OJK Reg. 10/2022, P2P Lending Providers must obtain a business license from the OJK (no more registration phase) and must be registered as an Electronic System Operator (“**ESO**”) in the Ministry of Communication and Informatics (“**MOCI**”) system. The ESO registration application must be submitted within 30 calendar days as of the issuance of the business license from the OJK and must be completed in accordance with MOCI Regulation No. 5 of 2020 on Private Sector Electronic System Operators. P2P Lending Providers may only engage in business upon obtaining a business license from the OJK and being registered as an ESO.

You can find our firm’s advisory regarding the general overview of ESO, including its registration procedures at this link: [Advisory on New Regulations on ESO in the Private Sector](#).

Lock-up Period for Change of Shareholding Composition

Upon obtaining a business license from the OJK, P2P Lending Providers are barred from changing their shareholding composition if it would result in the addition of a new shareholder(s) or a change of controlling shareholder, for the following 3 years.

Sharia-based P2P Lending

OJK Reg. 10/2022 prohibits one P2P Lending Provider from providing both conventional and sharia-based lending. Additionally, OJK Reg. 10/2022 allows a party to be the controlling shareholder of a conventional P2P Lending Provider and a sharia-based P2P Lending Provider at the same time.

Single Presence Policy

The single presence policy is now introduced in OJK Reg. 10/2022. A party cannot now be the controlling shareholder of more than one conventional P2P Lending Provider **or** more than one sharia-based P2P Lending Provider. However, as explained above, it is possible for a party to be the controlling shareholder of a conventional P2P Lending Provider and a sharia-based P2P Lending Provider.

Funding Limitation for Lenders

OJK Reg 10/2022 sets out new limitation on the funding by the lenders. Each lender and its affiliates now may only provide funds up to 25% of the final lending position at the end of each month. This limitation will be implemented gradually until January 2023.

The 25% rule however, does not apply to lenders that are financial service institutions under the supervision of OJK. As for the latter, each lender may provide up to 75% of the final lending position at the end of each month, subject to the regulations applicable to the relevant financial service institutions.

Fit and Proper test

The following main parties (including any changes to them) are subject to a fit and proper test administered by the OJK:

- a. the Controlling Shareholder;¹
- b. the Board of Directors (“**BOD**”);
- c. the Board of Commissioners (“**BOC**”); and
- d. the Sharia Supervisory Board (“**DPS**”).

The fit and proper test will be administered in accordance with OJK Regulation No. 27/POJK.03/2016 on Fit and Proper Tests for the Main Parties of Financial Service Institutions and its implementing regulation.

The BOD, BOC and DPS

Below are the requirements and prohibitions that apply to the BOD, BOC and DPS under OJK Reg. 10/2022.

Position	Requirements	Prohibitions
BOD	<ul style="list-style-type: none">• P2P Lending Providers must have at least 2 members on the BOD and at least half of the members must have 2 years of experience in the credit, risk management or financial sectors.• For sharia-based P2P Lending Providers, half of the BOD members must have 1 year of experience in a sharia-based financial services institution.• If there is at least 25% foreign ownership, the P2P Lending Provider may appoint a foreign BOD member(s) as long as the composition is 50/50 with the local BOD members.• All members of the BOD must be domiciled in Indonesia; hence the foreigner must hold a stay permit and working permit.	<ul style="list-style-type: none">• A BOD member may not hold a position in another company except as a BOC member or its equivalent, in up to 3 other companies.• A BOD member and his/her affiliates may not act as a lender or borrower in the P2P Lending activities provided by the P2P Lending Provider.

¹ Controlling shareholder is define as an entity that holds 25% or more of shares at P2P Lending Provider **or** holds less than 25% but can prove its control, whether directly or indirectly, over the P2P Lending Provider.

BOC	<ul style="list-style-type: none"> • P2P Lending Providers must have at least 1 member on the BOC, up to the same number of members as the BOD, and at least half of the members must have 2 years of managerial experience in a financial services institution. • If there is at least 25% foreign ownership, the company may appoint a foreign BOC member(s) as long as the composition is 50/50 with the local BOC member(s). • Half of the BOC members must be domiciled in Indonesia. 	<ul style="list-style-type: none"> • A BOC member may not hold a position on the BOC of more than 3 companies (acting as a member of the BOC of a sharia-based provider while being the same in a conventional based provider does not count, and vice versa). • A BOC member and his/her affiliates may not act as a lender or borrower in the P2P Lending activities provided by the P2P Lending Provider.
DPS	Sharia-based P2P Lending Providers must have at least 1 DPS member that has a recommendation from the National Sharia Board.	<ul style="list-style-type: none"> • A DPS member may not hold the same position in more than 3 sharia-based financial institutions. • A DPS member and his/her affiliates may not act as a lender or borrower in the P2P Lending activities provided by the P2P Lending Provider.

Corporate Actions that Require OJK Approval

Under OJK Reg. 10/2022, the following some corporate actions require approval from the OJK:

- a. a change of ownership;²
- b. a conversion from conventional P2P Lending to Sharia-based P2P Lending;
- c. changes to the BOD, BOC and DPS;
- d. an increment in the paid-up capital;
- e. a merger or consolidation.

² A change of ownership includes a change of i) a private company shareholder; ii) a private company indirect shareholder; iii) a public company controlling shareholder; or iv) a public company indirect controlling shareholder.

B. The Transition Period to Comply with OJK Reg. 10/2022

Key Provisions	OJK Reg. 77/2016	OJK Reg. 10/2022	Transition Period to Comply with OJK Reg. 10/2022
Minimum Paid-up Capital	IDR1,000,000,000 when applying for the registration and IDR2,500,000,000 when applying for a license	IDR25,000,000,000	<p>The new minimum paid up capital requirement does not apply to a P2P Lending Provider that:</p> <ol style="list-style-type: none"> already obtained license; in the process of obtaining a license; has returned the registered certificate and will re-apply for a license, prior to 4 July 2022. <p>The minimum paid up capital requirement for items b and c above are IDR2,500,000,000, which only applicable for P2P Lending Providers that submit the license application within 6 months as of 4 July 2022.</p>
Minimum Equity	Not Regulated.	Must at all times be IDR12,500,000,000.	<p>Must be realized in stages within 3 years as of 4 July 2022:</p> <ol style="list-style-type: none"> a minimum of IDR2,500,000,000 in the first year; a minimum of IDR7,500,000,000 in the second year; and IDR12,500,000,000 in the third year.
License	Must be registered with the OJK and then obtain a license from the OJK.	Must obtain a business license from the OJK and be registered as an ESO.	P2P Lending Provider that has returned the registered certificates and will apply for a license within 6 months

			as of 4 July 2022 must fulfill the following requirements: a. Does not change its controlling shareholder; and b. Has a minimum equity of IDR2,500,000,000.
Single Presence Policy	Not Regulated.	A party may not be the controlling shareholder of more than one conventional or sharia P2P Lending Provider.	Must be realized within 1 year as of 4 July 2022.
Sharia-Based P2P Lending	Not Regulated.	Sharia-based lending may only be conducted by sharia-based P2P Lending Provider.	If a P2P Lending Provider had a sharia-based product or a sharia unit prior to the issuance of OJK Reg. 10/2022, it must cease the marketing of the sharia product and settle the remaining rights and obligations within 6 months of the issuance of the new regulation.
Funding Limitation for Lenders	Not regulated.	Each lender (and its affiliates) may only provide funds up to 25% of the final lending position at the end of each month, unless the lender is a financial service institution under the supervision of OJK	The 25% limitation for funds that may be provided by the lender (and its affiliates) must be complied with in stages within 18 months as of 4 July 2022, with the following conditions: a. Up to 80% in the 6 th month; b. Up to 50% in the 12 th month; and c. Up to 25% in the 18 th month.
Fit and Proper Test	Not explicitly regulated.	The following main parties (including upon any changes to them) are subject to a fit and proper	If after 4 July 2022, any change of composition or extension of the term of the existing main parties occurs, the

		test administered by the OJK: a. the Controlling Shareholder; b. the BOD; c. the BOC; and d. the DPS.	relevant main parties, must undergo a fit and proper test.
BOD, BOC and DPS Requirements	<p><u>BOD & BOC</u> At least 1 BOD member and 1 BOC member must have at least 1 year of experience in the financial services industry.</p> <p><u>DPS</u> Not regulated.</p>	<p><u>BOD & BOC:</u> At least 2 BOD members and at least half of the members must have 2 years of experience in the credit, risk management or financial sectors. All of them must be domiciled in Indonesia.</p> <p>At least 1 BOC member up to the same number as the BOD members, and at least half of the members must have 2 years of managerial experience in a financial services institution. Half of them must be domiciled in Indonesia,</p> <p>If there is at least 25% of foreign ownership, the company may appoint a foreign BOD/BOC member(s) as long as the composition is 50/50 with local BOD/BOC members.</p> <p><u>DPS</u> Sharia-based P2P Lending Providers must have at least one DPS member who has a recommendation from the National Sharia Board.</p>	<ul style="list-style-type: none"> • The required BOD and BOC composition must be complied with within 1 year as of 4 July 2022. • The prohibition on being a BOD member in more than 3 companies must be complied with within 6 months as of 4 July 2022.

In the near future, we expect that the OJK will issue implementing regulations on the technicalities of the provisions of OJK Reg. 10/2022.



Lazuardy Thariq

Associate

lazuardy.makmun@makarim.com



Maria Sagrado

Partner

maria.sagrado@makarim.com

*) Special thanks to Rahel Olivia Manurung who was also involved in preparing this Advisory