



October 2021 – 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.

Financial Services Authority (OJK) Regulates Digital Banks

On 30 July 2021, the Financial Services Authority (“**OJK**”) has issued OJK Regulation No. 12/POJK.03/2021 on Commercial Banks (“**POJK 12/2021**”). POJK 12/2021 was issued to anticipate, amongst other things, a business development and banking trend including the development and innovation of information technology. One of the interesting topics of POJK 12/2021 is the introduction of provisions on digital banks.

Under POJK 12/2021, a digital bank is defined as an Indonesian legal entity bank (“**Bank**”) which provides services and engages in its business activities mainly through electronic channels without a physical office other than a head office or using a limited physical office.

The following are the main aspects of POJK 12/2021 which a Bank which intends to engage in the digital banking business must consider.

Operational Requirements

A digital bank engages in its activities electronically and must have one physical office as its head office.

A digital bank must satisfy the following requirements (“**Operational Requirements**”) as long as it remains a digital bank:

- (i) it must have a business model which uses innovative and secure technologies in order to meet the needs of its customers;
- (ii) it must be able to manage a prudent and sustainable digital-banking business model;
- (iii) it must have sufficient risk management;

- (iv) it must meet various governance conditions, including having a Board of Directors which is sufficiently competent in the field of information technology and other fields to comply with the OJK requirements regarding the fit and proper test for financial services institutions;
- (v) it must protect its customers' data; and
- (vi) it must contribute actively to the development of the digital financial ecosystem and/or financial inclusion.

The Establishment of a Digital Bank

A digital bank can operate through either of the following actions:

- (i) The establishment of a new Bank as a digital bank;

For the establishment of a Bank, it must complete the general establishment procedures and satisfy the requirements for a Bank. These requirements include (amongst others) applying to the OJK for in-principle approval (*persetujuan prinsip*) by submitting the following required documents:

- (a) the draft Deed of Establishment;
- (b) the proposed share ownership (foreign investors can only hold up to 99% of the paid-up capital of the Bank) and organizational structure;
- (c) a written statement signed by the prospective shareholders that the proposed paid-up capital is not derived from loans, or the result of or for the purpose of money laundering activities;
- (d) feasibility studies of the establishment prepared by an independent party;
- (e) a business plan; and
- (f) evidence of the deposit of some of its paid-up capital (at least IDR10 trillion).

Specifically for a Bank which operates as a digital bank, the deposit referred to in (f) above must be at least 30% of its total paid up capital. This deposit is evidenced by a deposit slip issued by a Bank in Indonesia in the name of the "Board of Commissioners of the OJK qq one of the founders of the relevant Bank", which includes a statement that the funds can be disbursed with written approval from the OJK.

Further, with the application for in-principle approval that is valid for 6 months after its issuance, the Bank must also submit its business plan for the (i) fulfilment of the Operational Requirements and (ii) its intention (if any) to open new network offices (ie branch offices or functional offices) in addition to its head office. A Bank may not engage in any commercial activities until it has obtained a business license.

Later, before the Bank can operate commercially, the Bank must obtain a business license (*izin usaha*) from the OJK. For this business license application, the Bank must submit, among other things, (i) evidence of payment in full of the paid-up capital, (ii) evidence that the Bank is ready to operate, and (iii) a written statement signed by the prospective shareholders that the proposed paid-up capital is not derived from loans, or result from or for the purpose of money laundering activities; or

- (ii) The conversion of an existing Bank into a digital bank.

An existing Bank can be converted into a digital bank if it complies with the Operational Requirements listed above.

For this, the Bank must submit a business plan to the OJK which explains how it will meet the Operational Requirements. The Bank may choose to (1) retain, (2) close (either simultaneously or gradually), or (3) increase the number of its network offices or electronic banking terminals (*terminal perbankan elektronik (TPE)*)).

In engaging in its business activities, a digital bank must comply with all the regulations which apply to Banks.

Further, Banks which operate as digital banks can also implement 'banking synergy', through cooperation between banks within a bank business group, with a Bank as the controlling shareholder (ie which holds (i) at least 25% of shares with voting rights in the issued capital of the Bank or (ii) less than 25%, but it can be proved that it has direct or indirect control over the Bank, or a subsidiary of a non-bank financial services institution, for the optimization of efficiency and resources by providing support and value-added contributions to the business, services and operational activities of the relevant parties.

The Controlling Shareholders and Management of a Digital Bank

As a digital bank is also subject to the regulations which apply to Banks, some points to be highlighted related to a controlling shareholder are the following:

- a) except in certain circumstances, the shares of a controlling shareholder of a Bank may not be secured in favour of other parties;
- b) a controlling shareholder must pass a fit and proper test conducted by the OJK; and
- c) a controlling shareholder may not be involved in decision making related to the operation of the Bank, unless the controlling shareholder is a director, commissioner or employee of the Bank.

Each of the prospective members of the Board of Directors or the Board of Commissioners must pass a fit and proper test conducted by the OJK. Once he/she has been approved by the OJK, he/she must be appointed as a Director or Commissioner (as relevant) by the General Meeting of Shareholders of the Bank within 6 months of the issuance of the OJK approval.

Digital banks are allowed to employ foreign citizens as directors, executive officers, and experts or consultants without considering the foreign shareholdings in them, but still subject to the utilization of foreign manpower requirements under OJK Regulation No. 37/POJK.03/2017 on The Employment of Foreign Manpower and Transfer of Knowledge Programs in the Banking Sector.



Irina Anindita
Senior Associate
irina.anindita@makarim.com



Maria Sagrado
Partner
maria.sagrado@makarim.com