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Peer to Peer Lending (P2P LENDING)

A. Legal Basis

1. Financial Services Authority Regulation No. 77/POJK.01/2016 of 2016 on Lending and Borrowing Services based on Information Technology ("**POJK 77/2016**");
2. Financial Services Authority Regulation No. 13/POJK.02/2018 on Digital Financial Innovations within The Financial Service Sector ("**POJK 13/2018**"); and
3. Regulation of Minister of Communication and Information Technology No. 36 of 2014 on Registration Procedure for Electronic System Provider.

B. Definitions

P2P Lending is an organization of financial services to bridge the lenders with the borrowers for the purpose of entering into a loan agreement in rupiah currency directly through the electronic system by using an internet connection. P2P Lending is categorized as one of the types of digital financial innovation that combines new technology and financial services in order to improve and automate the delivery of financial services and eventually to change the business model from conventional to modern ("**Financial Technology**" / "**Fintech**").

P2P Lending is under the supervision of the Financial Services Authority ("**OJK**"). Meanwhile, Fintech, which is engaged in payment system activities (e.g. e-money, e-wallet, mobile payments) is under the supervision of Bank Indonesia.

C. Legal Entity and Capital Requirements

Provider of P2P Lending services ("**Provider**") can be in the form of a limited liability company or a cooperative. The Provider in the form of a limited liability company must have: (i) minimum paid-up capital of Rp1.000.000.000,00 (one billion rupiah) at the time of registration to the OJK and; (ii) minimum paid-up capital of Rp2.500.000.000,00 (two billion and five hundred million rupiah) at the time of applying for the business license. Those two capital requirements equally apply to cooperatives.

D. Limitation of Foreign Ownership

Based on Article 3 paragraph (2) of POJK 77/2016, the maximum shares ownership in the Provider by foreign nationals and/or foreign legal entities, both directly and indirectly is 85% (eighty-five percent).

E. The Threshold for the Loan

The maximum loan to be provided by the Provider under P2P Lending channel is Rp2.000.000.000,00 (two billion rupiahs). However, the OJK may review this limitation at any time subject to its own discretion.

F. Required Licenses

1. Registration Certificate

Providers that will carry out P2P Lending activities must submit a registration application to the OJK. This application is addressed to the OJK c.q. the Chief Executive Supervisor of Insurance, Pension Funds, Financing Institutions, and Other Financial Institutions along with the following documents:

- a. Deed of the establishment of the legal entity including the articles of association along with their amendments (if any) which have been validated/approved by the authorized institution or have been notified to the authorized institution in accordance with the laws and regulations;
- b. Identity and curriculum vitae of the following:
 - i. Shareholders who own minimum shares of 20% (twenty percent);
 - ii. Members of the board of directors (“BoD”);
 - iii. Members of the board of commissioners (“BoC”).
- c. Copy of corporate taxpayer identification number (NPWP);
- d. Provider domicile certificate from the authorized institution (SKDP);
- e. Evidence of operational readiness in the form of documents, which contain operational activity data related to the electronic system used by the Provider;
- f. Evidence of capital payment;

- g. Statement letter regarding the settlement plan in connection with the rights and obligations of the lender and the borrower who utilize the P2P Lending services (“User”), only if the Provider’s license is not approved by the OJK.
- h. Evidence of registration as a provider of an electronic system issued by the Minister of Communication and Information Technology.

the process for reviewing and issuing approval (or rejection) by the OJK normally takes 10 working days as of the submission of complete and correct application documents.

If the Provider has obtained a registration certificate from the OJK, the Provider may conduct business activities or market its products as if the Provider had obtained a business license. However, in practice, the OJK will limit the number of the User who can use the P2P Lending services, depending on the OJK assessment. If the Provider fails to obtain a business license after a period of 1 (one) year, the Provider must settle the rights and obligations of the User in accordance with the settlement plan.

2. Business License as Provider

The Provider which has been registered at the OJK must apply for a business license as Provider no later than 1 (one) year after being registered at the OJK. If such period has elapsed, the Provider which has obtained a registration certificate but does not apply for a license or does not comply with the licensing requirements, its registration certificate as Provider must be canceled. The Provider whose registration certificate is declared canceled must settle the User’s rights and obligations in accordance with the settlement plan.

Application to obtain a business license is addressed to the OJK c.q. the Chief Executive Supervisor of Insurance, Pension Funds, Financing Institutions, and Other Financial Institutions, along with the following documents:

- a. Deed of the establishment of the legal entity including the articles of association along with their amendments (if any) which have been validated/approved by the authorized institution or have been notified to the authorized institution;
- b. list of ownership;
- c. shareholder data;
- d. data of BoC and BoD;
- e. evidence of capital payments;

- f. organization structure of the Provider;
- g. standard guidelines/procedures related to programs of anti-money laundering and prevention of terrorism funding;
- h. 1st (first) year work plan;
- i. evidence of operational readiness in the form of (i) evidence of ownership or authorization of building and office space or outlet, and (ii) office equipment and inventory list;
- j. copy of taxpayer identification number of the Provider;
- k. statement letter regarding the settlement plan related to the rights and obligations of the User if the Provider cannot continue the operational activities of P2P Lending; and
- l. receipt of the licensing fee.

G. Compliance

1. Reporting Obligation

i. Registered Provider

a. **Quarterly Report**

Pursuant to Article 9 of POJK 77/2016, the registered Provider must submit a quarterly report for periods ended March 31, June 30, September 30, and December 31 to the OJK which contains at least the following information:

- (i) Number of lenders and borrower;
- (ii) Loan quality which is received by the borrowers along with the basis for loan quality assessment; and
- (iii) Activities that have been conducted after being registered at the OJK.

b. **Monthly Risk Self-Assessment Report**

Pursuant to Article 24 of POJK 13/2018, the Provider that are already registered at the OJK is required to prepare its own risk self-assessment report on a monthly basis, and to submit them to the OJK.

ii. Business-Licensed Provider

Provider which has obtained a business license must submit the report periodically to the OJK, namely:

a. **Monthly Report**

Pursuant to Article 45 of POJK 77/2016, the Provider's monthly report must at least consists of:

- (i) Financial performance reports of the Provider which is submitted in the form of physical documents and electronic documents;
- (ii) Performance reports on the implementation of P2P Lending in the form of physical documents and electronic documents;
- (iii) Electronic documents containing a database of the element structure of P2P Lending; and
- (iv) User complaints along with follow-ups in resolving complaints.

Monthly reports are submitted to the Chief Executive Supervisor of Insurance, Pension Funds, Financing Institutions, and Other Financial Services Institutions no later than 10 (ten) business days of the following month.

b. **Annual Report**

Pursuant to Article 46 of POJK 77/2016, the Provider must submit an annual report to the OJK for the reporting period from January 1 to December 31. The annual report must consist of: (i) Financial statements; and (ii) Reports on the implementation of P2P Lending activities.

Annual reports are submitted to the Chief Executive Supervisor of Insurance, Pension Funds, Financing Institutions, and Other Financial Services Institutions no later than 20 (twenty) days after the reporting period has elapsed.

2. Other Obligations

- a. The Provider must have a human-resources team that has the expertise and/or background in the information technology sector. Expertise is evidenced by expertise certification or at least 1 (one) year of work experience certificate in the information technology sector.

- b. The Provider must have at least 1 (one) person, who has experienced for at least 1 (one) year in the financial services industry, in the BoD and BoC.
- c. At least 1 (one) of the members of the BoD and BoC must be an Indonesian citizen.
- d. The Provider must have an agreement for the implementation of P2P Lending services which consists of:
 - (i) Agreement between the Provider and the Lender; and
 - (ii) Agreement between the Lender and the Borrower.
- e. The Provider must use an escrow account and virtual account for the purpose of P2P Lending services. The provider must provide a virtual account for each Lender. For the purpose of the loan settlement, the Borrower must make the payment through the Provider's escrow account which is to be forwarded to the Lender's virtual account.
- f. The Provider must its own standard operating procedures in serving the User which is included in the electronic document.
- g. The Provider must be registered as a member of an association which has been appointed by the OJK.
- h. The Provider must provide technology-based customer service center.

H. Requirements for Borrowers and Lenders

1. Borrower

The Borrower must be from and domiciled in the Indonesian jurisdiction, and may be an individual Indonesian citizen or an Indonesian legal entity.

2. Lender

The lender may be from Indonesia or abroad, and can be in the following form:

- (i) Individual Indonesian citizen;
- (ii) Individual foreign citizen;
- (iii) Indonesian/foreign legal entity;
- (iv) Indonesian/foreign business entity; and/or
- (v) International organization.

I. Changes in Ownership/Acquisition

Changes in the ownership of the Provider must be approved by the OJK. Changes in ownership may occur either: (i) after the Provider is registered at the OJK or (ii) after the Provider obtains a business license. To obtain approval from the OJK, below are the required documents:

- a. Application letter signed by BoC of the Provider;
- b. Draft of GMS resolutions;
- c. List of shareholders and its shares number as well as the ultimate shareholders;
- d. Draft of sale and purchase agreements;
- e. The Provider's financial statements and proforma financial statement;
- f. Data of new shareholders, if in the form of a legal entity, they must submit the following documents:
 - (i) A copy of the deed of the establishment;
 - (ii) Financial statement;
 - (iii) Shareholders' proforma financial statement;
 - (iv) List of shareholders and the number of shares owned;
 - (v) Identity of BoD;
 - (vi) Statement letter of BoD regarding compliance to laws and regulations;
 - (vii) Evidence of capital readiness.
- g. If there are changes in BoD and BoC, the documents required are as follows:
 - (i) Evidence of valid identity (KTP or passport);
 - (ii) Curriculum Vitae;
 - (iii) Taxpayer Registration Number (*NPWP*);
 - (iv) Statement Letter of Boc or BOD stating that they:
 - a) are not listed in the list of non-performing credit;
 - b) have never been punished due to committing a crime in financial service and/or economy business sector based on a legally binding court decision in the recent 5 (five) years;
 - c) have never been punished due to committing any criminal acts based on a legally binding court decision in the recent 5 (five) years;
 - d) have never been declared bankrupt or guilty resulting in a company/corporation being declared bankrupt based on a legally binding court decision in the recent 5 (five) years; and
 - e) have never been controlling shareholders, members of the BoD, or members of the BoC in financial services companies of which the business licenses are revoked due to violations in the recent 5 (five) years;
 - (v) Evidence of having experience in the financial sector for at least 1 (one) year (if the previous BoC or BoD that are replaced have experience in the financial sector).
- h. A statement letter from the Provider stating and indicating the controller of the Provider;

- i. A statement letter from current shareholders and potential new shareholders in connection with due diligence of the potential new shareholders;
- j. electronic copy of all documents in connection with the changes in ownership.

Please note that acquisition of the Provider by foreign parties does not require any approval or license from the BKPM.

J. Requirements for Shareholders

Pursuant to Article 11 paragraph (1) of POJK 11/2016, requirements to become shareholders of the Provider are as follow:

1. Individual
 - a. paid-up capital or fund to buy shares is not sourced from loans;
 - b. paid-up capital or fund to buy shares is not sourced from money laundering and financial crime activities;
 - c. not listed in the list of non-performing credit;
 - d. has never been punished due to committing any criminal acts in financial service and/or economy business sector based on a legally binding court decision in the recent 5 (five) years;
 - e. has never been punished due to committing any criminal acts based on a legally binding court decision in the recent 5 (five) years;
 - f. has never been declared bankrupt or guilty resulting in a company/corporation being declared bankrupt based on a legally binding court decision in the recent 5 (five) years; and
 - g. has never been controlling shareholders, members of the BoD, or members of the BoC in financial services companies of which the business licenses are revoked due to violations in the recent 5 (five) years.
2. Legal Entity
 - a. paid-up capital or fund to buy shares is not sourced from loans;
 - b. paid-up capital or fund to buy shares is not sourced from money laundering and financial crime activities; and
 - c. not listed in the list of non-performing credit.

K. Requirements for BoC and BoD

Pursuant to Article 11 paragraph (1) of POJK 11/2016, requirements to become BoD or BoC of the Provider are as follow:

- a. not listed in the list of non-performing credit;
- b. has never been punished due to committing any criminal acts in financial services and/or economy business sector based on a legally binding court decision in the recent 5 (five) years;
- c. has never been punished due to committing any criminal acts based on a legally binding court decision in the recent 5 (five) years;
- d. has never been declared bankrupt or guilty resulting in a company/corporation being declared bankrupt based on a legally binding court decision in the recent 5 (five) years; and
- e. has never been controlling shareholders, members of the BoD, or members of the BoC in financial services companies of which the business licenses are revoked due to violations in the recent 5 (five) years;

In addition to the above, please note that BoC and BoD of the Provider must fulfill the requirements below:

- a. at least 1 (one) of the members of the BoC and 1 (one) of the members of the BoD are experienced and have the position in the managerial level for at least 1 (one) year in the financial services industry either in Indonesia or abroad.
- b. at least 1 (one) of the members of the BoD must be an Indonesian citizen and at least 1 (one) of the members of the BoC must be an Indonesian citizen.
- c. has participated in seminars and obtained a certificate issued by the Fintech P2P Lending Association (AFPI). This requirement has been in force since February 2019.
- d. BoC and BoD must undergo a fit and proper test.

L. Regulatory Sandbox

Regulatory Sandbox is a trial mechanism undertaken by the OJK to assess the reliability of the business processes, business models, financial instruments and governance of Fintech providers.

The requirements for Fintech providers to participate in Regulatory Sandbox are as follow:

- a. being registered as Digital Financial Innovation (“IKD”) at the OJK, or based on an application submitted by the relevant supervisory work unit at the OJK;
- b. being a new business model;
- c. having a business scale with a wide market coverage;
- d. registered at an association of Fintech provider; and

- e. other criteria set out by the OJK.

Regulatory Sandbox must be carried out within a maximum period of 1 (one) year and can be extended for a maximum period of 6 (six) months if deemed necessary.

During the period of Regulatory Sandbox, Fintech providers must:

- a. Provide a notice for all changes made regarding Fintech activities;
- b. Commit to the disclosure of all information relating to the implementation of the Regulatory Sandbox;
- c. Participate in education and counseling programs aimed at developing the financial services sector;
- d. Coordinate and collaborate with other ministries or state authorities; and
- e. Collaborate with financial service institutions or with parties active in the financial services sector.

The results of the Regulatory Sandbox for Fintech provider is: (i) recommended; (ii) need improvement; or (ii) not recommended.

The Fintech providers having the status of “recommended” are entitled to submit an application to register to the OJK. Please note that P2P Lending is one type of IKD that has obtained a recommendation from the OJK. Therefore, the Provider is not required to participate in the Regulatory Sandbox, and the Provider can directly submit the registration application to the OJK.

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By combining commercial sensibilities and legal expertise, ADCO Law assists the clients to structure, organize and implement their business ventures and investments, including structuring, financing and securing investments as well as establishing new foreign companies in Indonesia. Should you have more queries regarding this matter, please do not hesitate to contact us.

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