

## Highly anticipated regulation on digital banks finally released!

### Overview

With the rise of digital banking and demand for financial technology in Indonesia, the Indonesian Financial Services Authority (*Otoritas Jasa Keuangan*, **OJK**) recently issued the highly anticipated OJK Regulation 12/POJK.03/2021 on Conventional Banks (the **New Regulation**). The enactment of the New Regulation marks a leap forward for digital banks, mainly because the former legislative regime merely regulated digital banking services, which were seen as only an extension of existing conventional bank activities. The New Regulation now provides clear guidance for the establishment of stand-alone digital banks.

### Key provisions

While the New Regulation governs conventional banks in general, this client update will focus more on the establishment and licensing aspects of digital banks. Below are some of the key provisions relating to digital banks.

#### 1. Definition of digital banks

Digital banks are defined as Indonesian legal entity banks (**Banks**) that carry out their activities mainly by electronic means with few to no offices (save for the head office requirement, as explained below). Digital banks may operate through:

- (a) the establishment of a new Bank; or
- (b) transformation of an existing Bank into a digital bank.

#### 2. Digital bank requirements

##### Specific requirements

A digital bank must:

- (a) have a business model that utilises “innovative and secure technology” to serve its customers;
- (b) manage a prudent and sustainable digital banking business model;
- (c) have competent risk management;
- (d) fulfil governance aspects, including a board of IT-competent directors, together with other competencies assessed by OJK through fit and proper tests;
- (e) protect and secure its customer data;
- (f) contribute to the development of a digital finance ecosystem and “financial inclusivity”; and
- (g) have at least one physical office as its head office.

##### Capital requirements

In addition to the above requirements, the establishment of a digital bank is subject to the same capital and licensing requirements as a conventional Bank. The capital requirements for a digital bank are as follows:

- (a) a minimum paid-up capital of Rp10trillion; and
- (b) a maximum share ownership of:
  - 40% if the shareholder is a financial institution or non-bank financial institution
  - 30%, if the shareholder is a non-financial institution;
  - 20%, if the shareholder is an individual,

in accordance with the shareholder categories set out under OJK Regulation No.56 of 2016 regarding Share Ownership in Commercial Banks, subject to such shareholders being able to increase (“scale up”) their shareholdings with prior OJK approval (so, where such OJK approvals have been granted, their shareholding percentages can go up to a 99% of maximum foreign shareholding).

The source of income for share ownership in a Bank (including in digital banks) must not originate from loans or financing facilities in any form from any bank or parties in Indonesia.

Licensing requirements

In order to establish a digital bank (and conventional Banks in general), two types of licences must be obtained.

	<b>In-principle Approval (<i>Persetujuan Prinsip</i>)</b>	<b>Business Licence (<i>Izin Usaha</i>)</b>
<i>Definitions</i>	An “In-principle Approval” is the first licence issued by OJK to prepare for the establishment of a digital bank.	A “Business Licence” is the licence issued by OJK to undertake digital bank business activities after the In-principle Approval phase.
<i>Requirements to obtain licence</i>	<p>Requirements include:</p> <ol style="list-style-type: none"> <li>draft deed of establishment;</li> <li>ownership data in the form of a list of candidate shareholders together with details of their respective shareholdings;</li> <li>list of candidates for the Board of Directors and Board of Commissioners (accompanied by the relevant fit and proper test documents);</li> <li>organisational composition, structure and human resources plan;</li> <li>feasibility study for the establishment of the bank prepared by an independent party, accompanied by a business plan;</li> <li>corporate plan;</li> <li>risk management guidelines, internal control systems, information technology systems used, and guidelines on the implementation of the bank’s governance;</li> <li>work systems and procedures;</li> <li>proof that at least 30% of the paid-up capital has been paid (in the form of a copy of the relevant deposit slip);</li> <li>written statement from the shareholders that the paid-up capital: (a) did not originate from loans or financing facilities in any form from banks and/or other parties in Indonesia; and (b) did not originate from and is not being used for the purpose of money laundering; and</li> <li>business group structure for any entity acting as a controlling shareholder up to the ultimate shareholder and controller.</li> </ol>	<p>Requirements include:</p> <ol style="list-style-type: none"> <li>deed of establishment of the relevant entity, containing the articles of association approved by the Ministry of Law and Human Rights;</li> <li>[documents no. 2 to 8 of the left hand column (if there are any changes)];</li> <li>proof that the remaining 70% of the required paid-up capital has been fully paid (in the form of a copy of a deposit slip);</li> <li>evidence of operational readiness in the form of at least: (a) a list of fixed assets and inventory; (b) proof of ownership, control or office building rental agreement; (c) a photo of office building and room layout; (d) sample forms or scripts to be used for the bank’s operations; (e) Taxpayer Identification Number; and (f) Business Identification Number;</li> <li>written statement from the shareholders that the full amount of paid-up capital: (a) did not originate from loans or financing facilities in any form from banks and/or other parties in Indonesia; and (b) did not originate from and is not being used for the purpose of money laundering.</li> </ol>

	In-principle Approval ( <i>Peretujuan Prinsip</i> )	Business Licence ( <i>Izin Usaha</i> )
<i>Timeline</i>	Issued no later than 60 days after a “complete” set of documents has been submitted (in OJK’s opinion). This licence is valid for six months after issuance.	Issued no later than 60 days after a “complete” set of documents has been submitted (in OJK’s opinion). The digital bank must start operating no later than 60 days after receiving its Business Licence.

## Conclusion

As the New Regulation has only recently been issued, there is virtually no practice yet regarding its implementation. We are expecting a follow-up OJK regulation or circular letter in the near future to expand on the implementation procedures. Should you have any queries on the New Regulation, please do not hesitate to get in touch with us. We are always monitoring the latest legal developments and will keep you updated as more information on implementation of the New Regulation becomes available.

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*If you would like to discuss any aspect of this update, please feel free to contact us.*



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