

Indonesian government tightens crypto asset trading supervision

Overview

In a bid to increase public confidence in crypto asset trading, the Indonesian government, through the Ministry of Trade's Commodity Futures Trading Regulatory Agency (**BAPPEBTI**) recently expanded its supervisory role over such trading activities.

By issuing BAPPEBTI Regulation No. 8 of 2021 on Guidelines for Physical Trading of Crypto Assets (**New Regulation**) (effective from October 2021), BAPPEBTI now provides (i) clearer guidance on the requirements for crypto asset traders operating in Indonesia; (ii) detailed regulations on BAPPEBTI's approval process for the relevant institutions required for the development of a crypto asset trading business in Indonesia, including a futures exchange and a futures clearing house; and (iii) crypto asset trading mechanism.

The New Regulation increases the minimum capital requirements for crypto asset traders (i.e. brokers) and provides more rigorous registration and approval requirements for business entities to become crypto asset physical traders (compared to the earlier regulation on the same subject that was revoked). A two-stage registration/approval process is contemplated under the New Regulation: a transitional stage, being registration as a "candidate" crypto asset physical trader (**Prospective Crypto Asset Trader**); and a final stage, being approval (licensing) to be a crypto asset physical trader (**Crypto Asset Trader**). These two stages are described in further detail below under the Crypto Asset Trader licensing mechanism.

Key provisions on crypto asset trader requirements

Although the New Regulation also governs the institutional approval process referred to above and the general trading requirements for crypto assets on the futures exchange, this Client Update will focus on the requirements that need to be satisfied to obtain a BAPPEBTI crypto asset trader registration and approval/licence.

1. What are crypto assets?

According to the New Regulation "crypto assets" are defined very broadly, covering intangible commodities in digital form, using cryptography, information technology networks and distributed ledgers (for example, blockchain), to regulate the creation of new units, verify transactions, and secure transactions without the intervention of other parties. Crypto assets are available in various forms, including cryptocurrency and various types of tokens.

2. What are "Crypto Asset Traders" and what is their scope of activities?

The New Regulation defines a Crypto Asset Trader as:

"a party that has obtained the head of BAPPEBTI's approval to carry out transactional activities of crypto assets either on its behalf and/or to facilitate Crypto Asset Customers."

Approved (licensed) Crypto Asset Traders are permitted to carry out the following activities (**Crypto Asset Trader Activities**):

- a. buying and/or selling of crypto assets with Rupiah currency;
- b. exchange between one or more types of crypto assets;
- c. storage of crypto assets owned by customers; and
- d. transfer of crypto assets between wallets.

Before carrying out any of the above activities, Crypto Asset Traders must obtain a licence issued by BAPPEBTI. A licensed Crypto Asset Trader may only carry out additional activities (outside the Crypto Asset Traders' Activities) with BAPPEBTI's prior approval.

3. Crypto Asset Trader licensing mechanism

As mentioned above, the New Regulation currently provides a transitional registration mechanism for business entities wishing to engage in Crypto Asset Trader Activities. The New Regulation also contemplates that all registered Prospective Crypto Asset Traders will eventually need to apply for a Crypto Asset Traders' licence, but only **after** BAPPEBTI has approved a futures exchange and a futures clearing

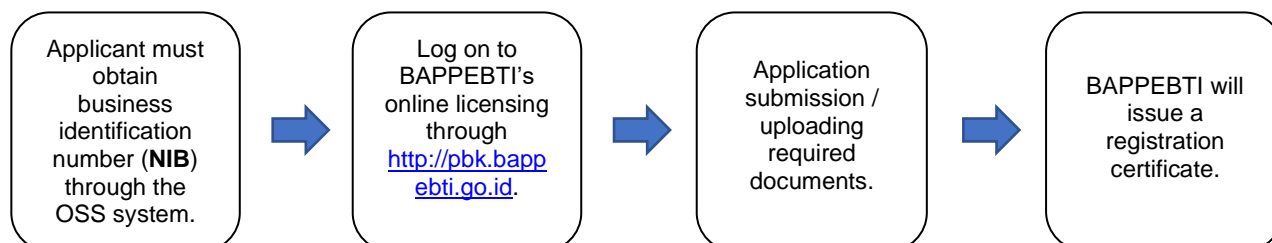
house to deal with crypto assets. As of the date of this Client Update, BAPPEBTI has not yet issued any such approvals, so only Prospective Crypto Asset Trader registration is currently available.

The current list of registered Prospective Crypto Traders is accessible [here](#).

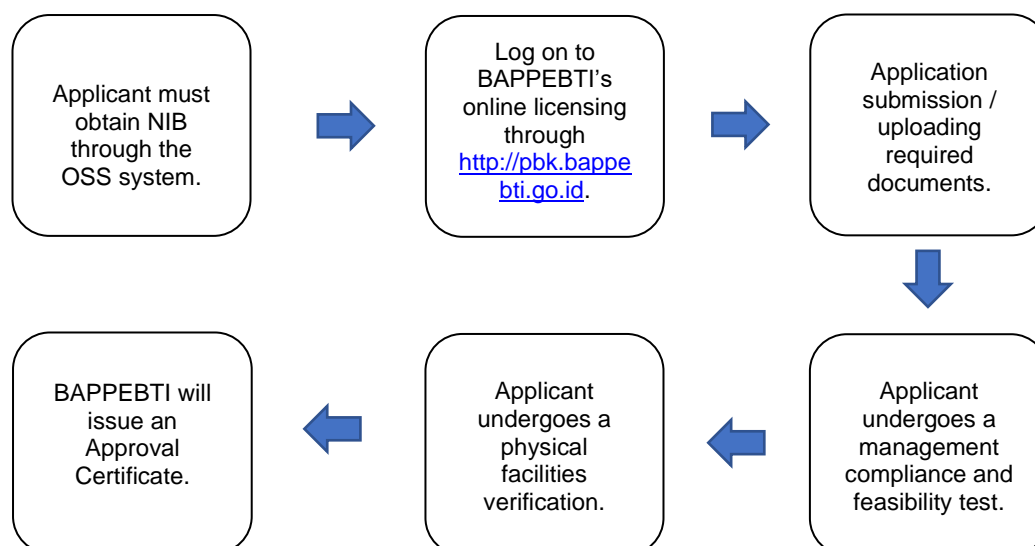
The below diagrams represent the relevant procedures under the New Regulation for an applicant business entity to obtain:

- a. Prospective Crypto Asset Trader registration; and
- b. a Crypto Asset Trader licence.

Prospective Crypto Asset Trader registration procedure (currently available):



Crypto Asset Trader licensing procedure (not yet available):



Requirements to obtain a Prospective Crypto Asset Trader registration certificate

To obtain a Prospective Crypto Asset Trader registration certificate, an applicant business entity is required to complete an application form attached to the New Regulation and submit/upload the following:

- a. a copy of the applicant's deed of establishment together with its officers' and shareholders' identities;
- b. a brief explanation of the applicant's organisational structure together with its duties and responsibilities, traded crypto assets, business processes, rules and regulations;
- c. proof of an electronic system provider registration certificate (*Sertifikat Tanda Daftar Penyelenggara Sistem Elektronik*) issued by the Ministry of Communication and Information Technology for the applicant's proposed system to be used;
- d. the applicant's business plan and financial projections for the next 24 months; and
- e. other data as listed in the New Regulation's annexes (including the applicant's audited financial statements and a copy of their ISO 27001 certificate).

To become a Prospective Crypto Asset Trader, an applicant must also:

- a. have a paid-up capital of at least Rp. 50,000,000,000 (approximately US\$3.5 million); and
- b. maintain equity of at least 80% of the paid-up capital.

Once BAPPEBTI is satisfied that the applicant has complied with all the above requirements, it is required to issue a registration certificate for the Prospective Crypto Asset Trader within three working days. However, the registration period is only valid until BAPPEBTI has approved a futures exchange and a futures clearing house.

Requirements to obtain a Crypto Asset Trader licence

By no later than one month after BAPPEBTI has approved a futures exchange and a futures clearing house, all Prospective Crypto Asset Traders must apply to BAPPEBTI for approval to be licensed Crypto Asset Traders. All such licence applicants are required to have:

- a. paid-up capital of at least IDR 80,000,000,000 (approximately US\$5.5 million);
- b. equity of at least 80% of the paid-up capital;
- c. an organisational structure that includes an information technology division, audit division, legal division, crypto asset customer complaints division, client support division, accounting and finance division;
- d. a trading system and/or means online¹ which is used to facilitate trading of crypto assets linked to the futures exchange and the futures clearing house;
- e. a set of comprehensive trading rules;
- f. a standard operating procedure;
- g. at least one employee who is a certified information systems security professional (**CISSP**) or “collaborates with institutions that have experts” or a direct cooperation agreement with CISSP; and
- h. directors, commissioners, shareholders, controllers and (if applicable) beneficial owners that have passed the fit and proper test organised by BAPPEBTI.

Prospective Crypto Asset Traders must fulfill the above requirements to BAPPEBTI’s satisfaction within a maximum of one year after BAPPEBTI has received the applicant’s licence application. Failure to submit a licence application within the one-month period referred to above and failure to obtain BAPPEBTI’s licence approval within one year of the licence application submission date, will result in revocation and invalidation of the Prospective Crypto Trader’s registration.

Before awarding a Crypto Asset Trader’s licence approval, BAPPEBTI will not only check and confirm compliance with requirements (a) to (h) above, but will also examine the applicant’s facilities, physical infrastructure and trading facilities for engagement in crypto asset trading.

Once BAPPEBTI has approved a futures exchange and futures clearing house, new applicants for Crypto Asset Trader licences are only required to follow the procedure to apply for a Crypto Asset Trader licence, without needing to apply first for Prospective Crypto Asset Trader registration.

Conclusion

In the preamble to the New Regulation, BAPPEBTI has stressed the importance of raising public awareness of the risks involved in crypto asset investments and to make them safer through tightening the requirements for a business entity to become a Crypto Asset Trader.

One clear message from the New Regulation is that the public should ensure that any crypto asset trader they deal with has obtained a BAPPEBTI registration certificate and is therefore a registered Prospective Crypto Asset Trader.

BAPPEBTI has already determined 229 types of crypto assets eligible for trading in the crypto asset physical market (as regulated under BAPPEBTI Regulation No. 7 of 2020 on the Determination of List of Crypto Assets Eligible for Physical Trading of Crypto Assets). This is a strong indication that crypto assets are here to stay and interest in their trade continues to grow. So, it is important for the government to provide more rigorous regulations

¹ Taking into consideration the provisions in Article 14 paragraphs (3) until (7) of the New Regulation.

to supervise crypto asset trading activities, as it has done in the New Regulation.

As the New Regulation has only recently been issued, we are unable to report at this stage on how it is being applied in practice. However, we will continue to monitor the latest legal developments and keep you updated as more information on the New Regulation's implementation becomes available. Should you have any queries on the New Regulation, please do not hesitate to get in touch with us.



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If you would like to discuss any aspect of this update, or your business activities or plans, please feel free to contact us.



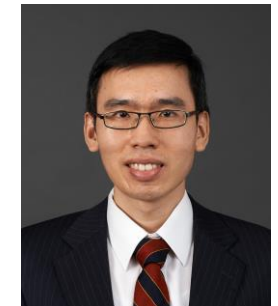
Emalia Achmadi
Partner
emalia_achmadi@soemath.com



Robert Reid
Foreign Counsel
robert_reid@soemath.com



Oene Marseille
Foreign Counsel
oene_marseille@soemath.com



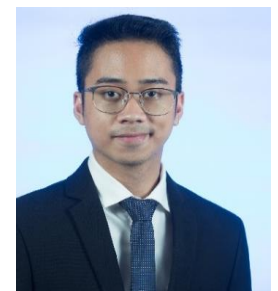
Aris Budi Prasetyo
Counsel
aris_prasetyo@soemath.com



Avindra Yuliansyah
Senior Associate
avindra_y@soemath.com



Ardhitia Prawira Rusyadi
Associate
ardhitia_prawira@soemath.com



Kusuma Raditya
Associate
kusuma_raditya@soemath.com