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## OJK SETS NEW PROVISIONS ON DIGITAL BANKS

By 2021, Indonesian Financial Services Authority (“**OJK**”) has finally issued the long-awaited Financial Services Authority Regulation Number 12/POJK.03/2021 on Commercial Bank (“**POJK 12/2021**”) which serves as the main regulation for commercial banks in Indonesia. POJK 12/2021 was issued for the purpose of strengthening regulatory framework of banks starting from its incorporation, operations, up to its dissolutions, required to ensure that banks are able to function optimally and are responsive and adaptive to the fast-pacing development of information technology.

POJK 12/2021 was also set to anticipate trends in the development of the banking business and industry, including the development and innovation of information technology, as such, POJK 12/2021 stipulates a number of provisions regarding digital bank. POJK 12/2021 defines digital bank as an Indonesian-incorporated bank (“**Commercial Bank**”) which provides and runs its main business mainly by way of electronic channels without utilizing any physical office save for a head office or utilizing only limited number of physical offices.

POJK 12/2021 is effective as of 30 October 2021 and upon being in force, POJK 12/2021 officially revokes several regulations related to Commercial Banks including OJK Regulation Number 11/1/PBI/2009 on Commercial Bank as amended by OJK Regulation Number 13/27/PBI/2011 and Bank of Indonesia Board of Director Decree regarding the revocation of business license, dissolution and liquidation of Commercial Banks as well as the establishment of offices and representative offices of foreign banks. The following are the main aspects of POJK 12/2021 that must be considered by banks who want to be involved in the digital bank business.

### **Requirements of Digital Banks**

Digital banks must meet the following requirements:

- a. have a business model using innovative and safe technology to meet customer needs;
- b. able to manage a prudent and sustainable digital banking business model;
- c. have adequate risk management;
- d. meet the governance aspects including the fulfillment of the Board of Directors who have competence in the field of information technology and other competencies in accordance with the provisions of the OJK regarding the fit and proper test for the main parties of financial service institutions;
- e. carry out protection of customer data security; and
- f. provide a contributive effort to the development of a digital financial ecosystem and/or financial inclusion in a prudent manner and by taking into account good governance in banking.

### **Establishing a Digital Bank**

Digital bank can be established through one of the following procedures:

- a. Establishing new Commercial Bank as digital bank

Establishment of digital bank in principle must also fulfill the requirements and conducted in accordance with the mechanism applicable to Commercial Bank. There are however some exceptions applicable in the event of establishment of Commercial Bank specifically for the purpose of operating as a digital bank. The requirement for establishment of Commercial Bank among others consists of the following aspects:

- (i) Paid-up capital

The minimum amount of capital required to establish a Commercial Bank is IDR 10,000,000,000.00 (ten trillion Rupiah).

- (ii) Ownership

Commercial Bank shall be established and/or owned by Indonesian citizens and Indonesian legal entities, or Indonesian citizens or Indonesian legal entities in partnership with foreign citizens or foreign legal entities. Ownership by foreign citizens or foreign legal entities is at most 99% of the paid-up capital of the Commercial Bank.

(iii) License

Commercial bank establishment permit can be obtained in two (2) stages, namely in-principle approval (*persetujuan prinsip*), which serves as an approval to conduct preparation for establishment of Commercial Bank, and a business license, which is issued after the completion of preparation stages.

An application for in-principle approval must be submitted by at least one of the prospective owners to OJK, accompanied by:

- (i) draft deed of establishment;
- (ii) list of potential shareholders and the shareholding structure;
- (iii) list of candidates for the members of Board of Directors and Board of Commissioners, along with the required administrative documents;
- (iv) human resources and organizational structure;
- (v) a feasibility study prepared by an independent party and business plan, wherein for Commercial Bank established solely for the purpose of operating as digital bank, the submitted feasibility study and business plan shall also reflect the fulfillment of requirement of digital banks as elaborated above;
- (vi) corporate plan;
- (vii) risk management guidelines, internal control systems, information technology systems, and governance implementation guidelines;
- (viii) work systems and procedures;
- (ix) proof of payment of at least forty percent (40%) of the total paid-up capital, except for Commercial Bank established solely for the purpose of operating as a digital bank wherein the minimum deposit for paid-up capital is only thirty percent (30%) of the total paid-up capital;
- (x) written statement by the prospective shareholders representing that the paid-up capital is not derived from loans, or derived from and/or used for money laundering; and
- (xi) the structure of the business group related to the candidate of the controlling shareholders up to the ultimate owner and controller.

OJK will issue approval or rejection over said application within sixty (60) working days as of the receipt of complete application by OJK. In-principle approval shall be valid for six (6) months as of its issuance and may be extended in the event of force majeure or based on OJK's own considerations.

Prior to conducting business activity as a Commercial Bank, upon obtaining in-principle approval, the company shall then submit application to OJK in order to obtain business license, accompanied by among others:

- (i) deed of establishment of legal entity;
- (ii) any amendments to the documents previously submitted in the application of in-principle approval, if any;
- (iii) proof of full payment of paid-up capital;
- (iv) evidence of operational readiness; and
- (v) written statement by the shareholders representing that the paid-up capital is not derived from loans, or derived from and/or used for money laundering.

b. Transformation of an existing Commercial Bank into a digital bank

An existing Commercial Bank can be converted into a digital bank if it meets the requirements of digital banks listed above. Upon the fulfillment of requirements of digital banks, a Commercial Bank may (i) maintain its existing offices and/or electronic banking terminals (*terminal perbankan elektronik*); (ii) periodically or immediately close its offices, save for head office, and/or electronic banking terminals; and/or (iii) increase its offices and/or electronic banking terminals.

**Operation of Digital Banks**

Digital banks will also be subjected to the requirements applicable in general for the operation of Commercial Bank. POJK 12/2021 however specifically provides that Commercial Bank operating as a digital bank is allowed to appoint foreign workers as a director, executive officer and/or expert or consultant. Whilst such appointment may be made without considering the foreign shareholding within, the appointment of foreign workers is still subjected to the provisions stipulated under OJK regulations regulating utilization of foreign manpower and transfer knowledge program in banking sectors.

Commercial Bank operating as a digital bank is also permitted to conduct banking synergy, meaning digital bank may undertake cooperation with banks within the same group, with its controlling shareholder having business in banking, or with its non-bank financial service subsidiaries, for the purpose of efficiency and optimalization of resources and to provide added value to the business activities, services and operations of the cooperating parties.