

HFW



**INDONESIA IN  
DEPTH: 2019  
INDUSTRY  
OUTLOOK**





Welcome to the first of our Indonesia in depth publications, a series of articles focussing on a range of current issues and emerging trends in Indonesia during 2019 across many of the country's major industries.

From construction to cabotage and innovation to international arbitration, these articles, authored by Partners and Associates across our Jakarta and Singapore offices, illustrate the exciting future – and challenges along the way! – for companies doing business in Indonesia.

#### **About Rahayu & Partners in association with HFW**

HFW has been working with a range of local, regional and international businesses in Indonesia for more than 25 years, across all of our core sectors. We have built an extensive in-depth local knowledge, which we combine with the full services of a global law firm.

On 3 November 2017, HFW formed an association with local law firm Rahayu & Partners in Jakarta, demonstrating our commitment to expanding our capability and geographical reach within Indonesia to offer clients enhanced 'on the ground' support.

Through this association we offer clients a comprehensive range of corporate, finance, and transactional services across HFW's key industry sectors.



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## Paving the way: The impact of Indonesia's Construction Law

Indonesia's issuance of Construction Services Law No. 2 of 2017 (Construction Law) was the country's first major construction-related legal development in 17 years, revoking 1999's Law No. 18 regarding Construction Services.

With 12 January 2019 marking the Construction Law's second anniversary, we explore how – and to what extent – this landmark piece of legislation has affected construction companies working in Indonesia.

### What has changed in Indonesian construction since 2017?

Domestic and international factors have each influenced the construction industry in Indonesia – and will very likely continue to do so in the coming years. Namely:

- Domestically, President Joko Widodo tripled infrastructure project funding in 2015<sup>1</sup>, creating momentum that has fuelled Indonesian construction's growth since 2017.

- Internationally, Indonesia is anticipated to be one of the biggest beneficiaries of China's Belt and Road Initiative (BRI); in April 2018, the President returned from Beijing with US\$23.3 billion of cooperation contracts<sup>2</sup>.

### What challenges does the Construction Law present for international construction companies?

Foreign construction companies working or looking to work in Indonesia should be alive to at least three key ramifications of the Construction Law:

#### 1. Establishment of operations in Indonesia

Indonesia's success in attracting investment for infrastructure improvement must be balanced against legislative requirements.

In particular, the Construction Law prohibits foreign entities from participating in the construction sector unless they have:

- Either: Established representative offices in Indonesia to work in cooperation with a national construction company, which can only implement the high risk, high technology and/or high cost of the construction services market segments.
- Or: Incorporated an Indonesian legal entity in a joint venture with an Indonesian company.

#### 2. Employment of Indonesian workers

While foreign nationals are permitted to work in Indonesia, the Construction Law legislates so that the majority of jobs are given to Indonesian nationals including the head of the representative office.

Whilst encouraging local recruitment will increase the talent available in Indonesia, there is currently a chronic shortage of local construction workers. The result is that construction companies have on occasion struggled to find resources while maintaining compliance with the new law.

1. <https://www.indonesia-investments.com/id/news/todays-headlines/infrastructure-development-indonesia-more-investment-licenses-issued/item5762?>

2. <https://www.legalbusinessonline.com/features/belt-road-indonesia/76222>



### 3. Language of construction contracts

The Construction Law requires all construction contracts to be written in Bahasa Indonesia.

If a contract is written in another language as well as Bahasa Indonesia, the Indonesian language version prevails, should a discrepancy arise.

Foreigners have been accustomed to writing contracts in Bahasa Indonesia, particularly following a 2013 decision by the West Jakarta District Court that contracts written only in English were void.

In practice, however, legislating that the Indonesian version will prevail over the foreign language version was not consistent with the way in which the majority of foreign parties drafted contracts, prior to 2017.

Foreign parties tended to negotiate contracts in English, including an Indonesian translation later. The Indonesian version was not always checked for consistency and so parties relied on a clause giving the English version priority.

The Construction Law has forced a departure from this tendency and towards closer scrutiny and greater importance on the Indonesian language version of a contract.

What changes has the Construction Law directly brought about?

#### Safety

The Construction Law sought to improve security and safety on construction sites, introducing new standards that cover usage of materials and equipment, site security and safety, and environmental protection.

This has provoked meaningful debate on the important issue of construction sector employees' working conditions in the country; something that health and safety professionals have been carefully monitoring.

We anticipate that the issue of workers' safety will move higher up the political and legislative agenda in the coming years.

Changes in the industry at a global level will likely exert pressure on all countries to demonstrate a tangible commitment to effecting positive change.

### Project owners' appointment of construction companies

The Construction Law also relaxed the rules regarding construction companies' appointment by project owners.

The previous law required all contractors to be appointed through a public or limited tender.

Under the new Construction Law, privately funded projects do not need to be publicly tendered before a contractor is appointed. Dozens of project owners on privately funded projects have benefited from this change.

On the other hand, the previous tender requirements have continued to apply to publicly funded projects and construction projects for public services by using electronic procurement, direct appointment and direct procurement in accordance with prevailing regulations. The Construction Law empowered regional governments to issue special policies where a construction project was funded using the regional budget, which fulfill the criteria of small to medium risk, simple technology to intermediate technology, and low to moderate cost.



This included permitting regional governments to have joint operation with regional construction services companies and/or the regional subcontractors to provide specific services.

### Greater administrative burden

The Construction Law continues the previous requirement for all foreign construction businesses to possess licenses and certificates issued by the Ministry of Public Works and Public Housing (the Ministry).

However, since the implementation of Government Regulation No. 24 of 2018 concerning Online Integrated Business Licensing Services, the application process of the business permit for construction service is made through an Online Single Submission (OSS), the new established centralised business licensing system.

### Further anticipated change: Dispute boards

One anticipated change, provided for in the Construction Law but not yet implemented, is subsidiary legislation concerning the dispute resolution, as well as the establishment of dispute boards other than mediation and

conciliation dispute resolution methods.

Such boards are intended to assist in resolving disputes that arise on construction projects.

The usage of dispute boards in construction contracts is becoming increasingly common throughout the world, spearheaded by the Federation of International Consulting Engineers (FIDIC).

FIDIC's standard form contracts generally require the establishment of dispute boards during the early stages of a project.

However, Indonesia is one of the few countries that intends to legislate in favour of it.

### Key takeaways

Indonesia's construction sector is facing an exciting and challenging future.

Greater investment, including from foreign companies, in much-needed infrastructure, sits against a backdrop of strict legislation that prioritises Indonesian interests over those of foreign investors, and is compounded by a shortage of construction workers

We can expect changes but, given that the Construction Law took 17 years to implement, progress is unlikely to be imminent.

In the meantime, foreign investors should pay close attention to the provisions of the Construction Law and other relevant Indonesian legislation.<sup>3</sup>

For more information, please contact the author of this article:

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3. These include but are not limited to: Indonesia Civil Code, Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, Presidential Regulation No. 16 of 2018 on Government Procurement of Goods or Services, which includes provisions relating to the procurement of construction work for international tender, and Bank Indonesia Circular Letter No. 23/7/UKU Tahun 1991, setting out the requirements of a Bank Guarantee, which applies to Contractor Bonds.



## Lost in translation: The use of Bahasa Indonesia and foreign languages in Indonesian contracts

When the Indonesian government enacted Law No. 24 of 2009 on the National Flag, Language, Symbol and Anthem (Law 24), controversy ensued.

This was due to Law 24 requiring the Indonesian language to be used in agreements, contracts and memoranda that involve Indonesian governmental institutions, private entities or citizens<sup>1</sup> (Language Requirement).

In the decade since, how strictly has the Language Requirement been implemented, and what are the key issues to be aware of regarding parties' choice of language in contracts?

### The Minister of Law and Human Rights' view

Immediately after the enactment of Law 24, Indonesia's then Minister of Law and Human Rights (MOLHR) responded to a request by several advocates in Jakarta for clarification on the implications and implementation of the Language Requirement.

MOLHR's response clarified that the absence of an Indonesian language version of the contracts would neither invalidate contracts nor breach the Language Requirement.

### Landmark case: Nine AM v PT Bangun Karya Pratama Lestari

Despite MOLHR's response, in 2013, the District Court of West Jakarta nullified an agreement entered into by Nine AM Ltd. (Nine AM) as creditor and PT Bangun Karya Pratama Lestari as borrower in respect of US\$4.42 million worth of facilities, on the basis that the agreement was not entered into in the Indonesian language.<sup>2</sup>

The case was then brought to the Supreme Court at cassation level. The Supreme Court was of the opinion that, in terms of the regulatory hierarchy, the law ranks higher than presidential regulations.

As such, presidential regulations, including MOLHR's response to the Jakarta advocates, cannot override the provisions and obligations stipulated under Law 24.

The Supreme Court therefore rejected the cassation request filed by Nine AM.

This case, owing to its controversy, became a landmark case referred to by legal practitioners when complying with the Language Requirement.

### Strict implementation: Industry case studies

We have been observing developments regarding the implementation of the Language Requirement. Domestically, President Joko Widodo tripled infrastructure project funding in 2015<sup>3</sup>, who is well known for his support of pro-nationalist policies.

#### Upstream oil and gas

The upstream oil and gas sector typically uses the Indonesian language in contracts.

Upstream oil and gas concession contracts and service contracts are drafted in both the Indonesian and English languages; therefore, they are in line with the Language Requirement.

Further strict implementation of the Language Requirement is reflected in the Tender Guideline No. EDR-0167/SKMMH0000/2017/S7, dated 26 July 2017 (PTK 0167), issued by the Special Task Force of Upstream Oil and Gas Business Activities, the supervising authority of the upstream oil and gas sector (locally known as SKK Migas).

PTK 0167 expressly requires that tender documents submitted by tender participants must be in either the Indonesian language alone or both the English and Indonesian languages.

1. Clause 31 (1) of Law 24.

2. Nine AM Ltd. v PT Bangun Karya Pratama Lestari (2015).

3. <https://www.indonesia-investments.com/id/news/todays-headlines/infrastructure-development-indonesia-more-investment-licenses-issued/item5762?>

**“It is imperative that parties check that they will not be in breach of any relevant regulations before opting for a foreign language (such as English) to be a contract’s prevailing language.”**

It also provides that, in the event of any perceived conflicts when interpreting the Indonesian language and English language provisions, the Indonesian language provisions prevail.<sup>3</sup>

### **Construction**

The construction sector also strictly implements the Language Requirement regarding construction contracts according to the recently enacted Construction Law No. 2 of 2017.

Ben Bury and Gusnandi Haliadi’s article in this publication provides an in-depth exploration.

### **Key takeaways**

The above industry case studies clearly differ from the way in which Law 24 (which is silent on the question of a prevailing language) is generally interpreted – i.e., parties to the agreements are free to make the foreign language of the contract the prevailing language, in the event that there are conflicts in interpretation.

Our observation suggests that foreign parties’ awareness and acceptance of the Language Requirement has increased.

Therefore, it is imperative that parties check that they will not be in breach of any relevant regulations before opting for a foreign language to be a contract’s prevailing language.

To avoid challenges by contractual counterparties, we recommend adopting a conservative approach, particularly with high-value contracts.

Given the above mentioned exposure to non-compliance with Law 24, we recommend that parties prepare the Indonesian language version of the contract in sufficient time to execute the Indonesian and English versions of the contract concurrently.

### **How can HFW help?**

We can advise on the further implications of Law 24 and assist with drafting and translating the full range of commercial contracts, whether in the Indonesian or English language.

Our team is also composed of Indonesian-qualified lawyers, who can assist in interpreting contracts drafted in the Indonesian language.

For more information, please contact the authors of this article:

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Research conducted by Stephanie Koh, Trainee Solicitor.

3. PTK 0167, Chapter II, 2.2.



## Diving deep: An analysis of key developments and imminent changes in Indonesia's shipping sector

### Cabotage rules

Indonesia's implementation of the cabotage principles has been a key factor in the fast pace of the growth of Indonesia's shipping industry.

### A brief history of cabotage in Indonesia

Indonesia's cabotage rules were introduced via Law No. 17 of 2008 on Shipping (Shipping Law). Under this law and its implementing regulations, only Indonesian flagged vessels are allowed to carry passengers and goods between ports located in Indonesian territorial waters (subject to certain exemptions discussed later in this article).<sup>1</sup>

The cabotage principles broadly require that domestic sea trade is carried out by an Indonesian shipping entity, flagged in Indonesia and manned by an Indonesian crew.

They aim to increase and promote Indonesian shipping and shipbuilding interests, by restricting certain activities of foreign vessels operating within Indonesian waters. The principals introduced under the Shipping Law have since been periodically supplemented by various regulations.

A number of exemptions to the restrictions have allowed the operation of foreign flagged vessels, in order to support certain activities in particular sectors.

For example, the oil and gas sector has a requirement for specialised vessels that are not generally available within Indonesia. Exemptions have been introduced to enable the operation of specialised vessels in the oil and gas sector and to support the government's planned infrastructure development projects, especially with regards to construction and power plants.

The Shipping Law applies a "closed" ship registry in Indonesia, meaning that Indonesian-flagged vessels can only be owned by and registered to Indonesian individuals or legal entities.

This includes Indonesian companies with foreign shareholders; these are commonly referred to as a PMA companies (Perseroan Terbatas Penanaman Modal Asing, limited liability companies established under Indonesian laws). PMA companies are the only permitted form of inward Foreign Direct Investment (FDI) in Indonesian shipping by foreigners.

### Foreign ownership restrictions

There is also a restriction on the level of capital ownership in an Indonesian shipping company by foreign investors.

Presidential Regulation No. 44 of 2016 (Negative Investment List)<sup>2</sup> stipulated that an Indonesian shipping company may only have up to 49% of its shares owned by a foreign individuals or companies and must own at least one Indonesian flagged vessel with a gross tonnage of at least 5000 tonnes, if it has any foreign shareholders.

1. See our recent article <http://www.hfw.com/Murky-waters-Six-key-maritime-issues-to-understand-before-doing-business-in-Indonesia-Sep-2018> accessed 2 January 2019.

2. See our previous article on the topic: <http://www.hfw.com/The-New-Indonesia-Investment-Negative-List> accessed 2 January 2019.

However, the government recently announced the 16th Economic Policy Package, which includes a revision to the Negative Investment List, opening up permitted foreign capital ownership to 100% in 25 business categories:

Category	Previous limit on foreign ownership
Oil and gas construction services	49% for offshore pipeline installation
Offshore oil and gas drilling services	75%
Geothermal drilling services	95%

The Government has also decided to open up international freight sea transport (excluding cabotage) (CPC 7211) business activities to 100% foreign investment. This sector was previously limited to foreign investment by ASEAN countries investors with maximum ownership of 70%.

While the 49% cap on the ownership of Indonesian shipping companies remains, these changes give foreign investors greater scope when structuring investments in these sectors.

The Government is currently in the process of issuing a new regulation on the Negative Investment List. Following its issuance, we will provide a further update.

**Nominee arrangements, prohibition in the Investment Law and the requirement to report the ultimate beneficial owner**

There have been instances where foreign investors have used various forms of nominee arrangements to circumvent the Negative Investment List restrictions.

Foreign investors should be aware that Law No. 25 of 2007 on Investment (Investment Law) clearly prohibits domestic and foreign investors alike from entering into agreements and/or making statements asserting that

shares in an Indonesian company are held for and in the name of another person.

The Investment Law further provides that any kind of nominee arrangements in an Indonesian company are void by law.

The government also recently issued Presidential Regulation No. 13 of 2018 on the Implementation of the Principle on Recognising Beneficial Ownership of Corporations in the Framework of the Prevention and Eradication of Money Laundering and Criminal Acts of Terrorism Financing (PR 13/2018).

This regulation obliges Indonesian business entities and non-business organisations to disclose and declare their ultimate beneficial owners and to provide information on their beneficial ownership.

While the stated primary purpose of PR 13/2018 is to tackle the misuse of a business entities or organisations for illicit purposes, such as terrorism financing, money laundering, tax evasion and corruption, it's disclosure requirements will provide more transparency in the ownership of business entities and enable the relevant government agencies to monitor the ownership of business entities.

This regulation will further complicate the creation of workable foreign shareholding arrangements in Indonesia.

**New Minister of Transportation regulation: Updates on the exemption for the use of certain foreign flagged vessels**

In 2011, the Indonesian Ministry of Transportation (MOTP) issued a regulation permitting the use of certain types of foreign flagged vessels for certain activities, other than the transportation of passengers and/or goods.<sup>3</sup> Such permitted activities included offshore drilling, construction, surveys, dredging, salvage and underwater work<sup>4</sup>.

The government has since issued MOTP Regulation PM 92 of 2018, which provides a further extension on the exemptions on the use of foreign flagged vessels until 31 December 2020 (PM 92/2018). It also makes a wider range of vessel types exempt.

In order to secure a permit to use foreign flagged vessels for offshore activities, the Indonesian shipping company must submit an application to the MOTP<sup>5</sup>.

Before submitting the application, the applicant is required to conduct at least one procurement process to ascertain the availability of an Indonesian flagged vessel of the same type and specification.

3. MOTP Regulation PM 14 of 2011 on Procedures and Requirements to Grant Permits to Use Foreign Vessels for Domestic Sea Transportation for Activities Other Than the Transportation of Passengers and/or Goods.  
 4. This regulation was then replaced by MOTP Regulation No. 100 of 2016, which was, in turn, amended by the MOT Regulation No. 115 of 2017 (PM 100/2016). PM 100/2016 permitted the use of certain foreign flagged vessels in Indonesia up to 31 December 2018.



Permitted vessel types and activities in Indonesian waters by foreign flagged vessels now include:

Activities	Vessel types
Offshore drilling	<ul style="list-style-type: none"> <li>● Jack up rig/jack up barge/self elevating drilling unit (SEDU).</li> <li>● Semi-submersible rig.</li> <li>● Deep water drill ship.</li> <li>● Tender assist rig.</li> </ul>
Offshore construction	<ul style="list-style-type: none"> <li>● Derrick/crane, pipe/cable laying/barge/vessel/sub sea umbilical riser flexible (surf) with dynamic position (at least DP1).</li> <li>● Anchor handling tug supply vessel (at least 10,000 BHP).</li> <li>● Pilling barge with crane capacity at least 150 tonnes safety working load (SWL).</li> <li>● Diving support vessel (DSV) with dynamic position (DP2/DP3).</li> <li>● Semi submersible accommodation barge.</li> </ul>
Oil and gas survey	<ul style="list-style-type: none"> <li>● Seismic survey with electromagnetic/broadband triple source.</li> <li>● Geophysical survey.</li> <li>● Geotechnical survey.</li> </ul>
Dredging	<ul style="list-style-type: none"> <li>● Cutter suction dredger (csd) with cutter head of at least 30 inches.</li> <li>● Trailing suction hopper dredger (TSHD) with the capacity of a hopper of at least 3,700 M3.</li> <li>● Multicat with crane with a capacity at least 100 tonnes.</li> </ul>
Salvage and underwater works	<ul style="list-style-type: none"> <li>● Floating crate with capacity of at least 300 tonnes.</li> <li>● Survey salvage/cable ship/barge with dynamic position of at least DP1.</li> <li>● Diving support vessel with dynamic position of at least DP2.</li> </ul>
Offshore supporting operations	<ul style="list-style-type: none"> <li>● Liquid natural gas (LNG) storage.</li> <li>● Floating storage offloading/floating production storage unit.</li> </ul>
Floating power plants	<ul style="list-style-type: none"> <li>● Any type of floating power vessel.</li> </ul>
Wharf constructions	<ul style="list-style-type: none"> <li>● Concrete deep mixing (CDM) barge.</li> <li>● Concrete pipe mixing (CPM) pneumatic pumping barge.</li> <li>● Concrete pipe mixing (CPM) cement placing barge.</li> <li>● Concrete pipe mixing (CPM) anchor boat.</li> </ul>

PMA 92/2018 requires the procurement to be conducted through national electronic or printed media at least three months before the applicant can submit its application to use foreign flagged vessels to the MOTP. This is a significant change from the previous regulation, which only required the procurement to be conducted up to five days before submitting the application.

The procurement process prioritises Indonesian flagged vessels. If an Indonesian flagged vessel is not available, then the procurement should prioritise either those foreign vessels that are to be reflagged as Indonesian flagged or foreign flagged vessels acquired by Indonesian nationals or entities under leasing schemes.

The applicant should notify and provide evidence to the regulators that an attempt has been made to procure an Indonesian flagged vessel without success.

Under PM 92/2018, the permit to use foreign flagged vessels is granted for 6 months and may be extended after being evaluated by, and subject to the discretion of, the MOTP. This period of use of foreign flagged vessels has also been tightened by the MOTP, as the previous regulation allowed the vessel to be used for up to one year.

### **New export and import regulations: Use of Indonesian shipping and insurance companies**

The Minister of Trade (MOT) issued Regulation No. 80 of 2018 (MOT 80/2018) on 30 July 2018<sup>6</sup>.

This requires any company using sea transportation to export coal or crude palm oil or to import rice or government-procured goods to:

- Utilise sea transportation that is controlled by an Indonesian shipping company.
- Obtain insurance from an Indonesian insurance company.

This regulation left a number of points unclear, including:

1. Whether the term “controlled” means vessels are required to be owned by an Indonesian shipping company or if the relevant vessels could be chartered.
2. Whether the vessels used by the exporters or importers must be Indonesian flagged vessels or be manned by an Indonesian crew.

MOT 82/2017 provides an exemption to the requirement for the use of vessels controlled by Indonesian shipping companies and the requirement for insurance to be provided by Indonesian insurance companies in the event that the necessary vessels controlled by Indonesian shipping companies or insurance provided by Indonesian insurance companies were in limited supply or unavailable.

Initially, the requirement to use vessels controlled by Indonesian shipping companies and to use insurance provided by Indonesian insurance companies was scheduled to come into effect on 30 April 2018.

There was a great deal of concern among industry players that both the Indonesian shipping and insurance sectors did not have the necessary resources to provide the requisite shipping and insurance coverage to comply with these obligations.

As a consequence, through a series of amendments to the initial regulations, most recently by MOT 80/2018, the government decided to delay the implementation of the obligation to use vessels controlled by Indonesian shipping companies until 1 May 2020, and to delay the implementation of the obligation to use insurance provided by Indonesian insurance companies until 1 February 2019.

### **Key takeaways for foreign companies and investors in Indonesia**

Despite legal and political challenges in Indonesia, many foreign investors still consider that there are

numerous positive opportunities to invest in the Indonesian shipping sector, particularly in view of the government’s new economic policy to further opening up certain business fields to foreign investment.

However, it is important that foreign investors are guided through the entire process of investment realisation in Indonesia, from structuring the investment, incorporating or purchasing the correct investment vehicles in Indonesia and other jurisdictions, and obtaining the necessary mandatory permits to producing the relevant investment documentation, in order to ensure smooth navigation of Indonesia’s specific legislative and regulatory frameworks.

We can assist you in structuring and restructuring your investments in Indonesia, with lawyers who have advised on complex Indonesian investment and joint venture structures and specialist shipping expertise.

We can also assist you further in a detailed understanding of regulatory conditions and requirements under the Indonesian shipping and related legislation, including PM 92/2018 and MOT 82/2017.

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5. Along with various supporting documents as set out in PM 92/2018.

6. This was the second amendment to MOT Regulation No. 82 of 2017 on Provisions on the Utilisation of National Sea Transportation and Insurance for Export and Import of Certain Goods, which came into effect on 1 August 2018 (MOT 82/2017).



## International arbitration in Indonesia: Common challenges

Badan Arbitrase Nasional Indonesia (BANI) is an important arbitral institution, as oil and gas contracts involving Indonesian projects almost invariably require BANI as their dispute resolution forum.

For any arbitral institution to gain the confidence of its prospective users, parties must feel assured of its transparency and institutional reliability. Our experience has shown that the theory and the practice of applicable arbitral procedures in Indonesia do not always reconcile.

In this article we outline some of the challenges we have encountered in BANI arbitrations, and some of the measures we believe could be taken in order to improve Indonesia's standing as a credible international arbitration centre.

### Court intervention

Under Indonesian law, an agreement to arbitrate must be in writing. This is the case in many jurisdictions including in many "arbitration-friendly" ones, such as Singapore and England).

The Indonesian Arbitration Law of 1999 (AL) provides that, in order for disputes to be arbitrable:

- The dispute must be of a commercial nature and
- The parties themselves must have the authority to resolve the dispute.

If the parties have a valid arbitration agreement, it is a violation of the AL to initiate court proceedings to resolve a dispute.

If a party initiates court proceedings in relation to a dispute, which the parties have agreed in writing to refer to arbitration, judges must declare themselves to have no jurisdiction.

Despite this, the courts have, on occasion, shown themselves willing to try cases in spite of the existence of a valid arbitration agreement.

This causes delay and additional costs. It also becomes very difficult for the claimant to prevent their consensual agreement to arbitrate from being derailed by an obstructive respondent.

One commentator explains:

"Indonesia currently has no specially trained judges who can be assigned to handle arbitration related cases. Besides, the court staff assigned to assist in handling arbitral award registration and enforcement matters generally show no strong understanding of arbitration. Indonesia is also well known for its unnecessary court interference in matters related to arbitral awards, although the situation is now gradually improving."<sup>1</sup>

### Processes and procedures

BANI Rules are less comprehensive than the institutional rules of more established international arbitration bodies. They can be vague and, in parts, even contradict themselves.

Compounding this, many of the BANI procedures are overly bureaucratic, which can hamper efficiency. For example:

- The parties have to be physically present for all procedural and other hearings, which must be conducted orally. There is no scope for the tribunal to decide even procedural directions on paper or following a telephone call with the parties.

1. Tony Budidjaja (Budidjaja International Lawyers) (2017).

- Each party has to submit all correspondence to BANI. BANI then distributes it to the tribunal and other parties, rather than the parties and tribunal communicating directly with one another.
- The final hearing is when the award is read out. Again, all parties must be present, requiring the tribunal and parties to be physically present in Jakarta. In contrast, many other arbitral institutions circulate their awards to the parties by email and post.

### International counsel

Whilst no arbitration is immune to obstruction by hostile respondents, in our experience, the relative lack of infrastructure to support arbitration in Indonesia makes it a particularly fertile terrain for derailment by obstructive respondents.

It is a principle of international arbitral jurisprudence that anyone may represent a party in arbitration, even the individual themselves. Unlike in court litigation, parties' representatives in arbitrations do not have to be lawyers (although, in practice, they usually are).

Not unusually, the BANI Rules provide that, where the substantive law of the contract is Indonesian, any counsel has to be either Indonesian-qualified or, if they are a non-Indonesian representative, must be accompanied by Indonesian counsel.

However, uncertainty surrounding Indonesia's immigration laws can allow an obstructive respondent to effectively ban parties from being represented by international counsel – even where they are accompanied by local counsel – by threatening to report them to the immigration authorities and having them detained.

It is unclear whether a work permit, simply for the purpose of representing a client at arbitration hearings, is required by those foreign counsel not resident and employed in Indonesia.

However, if a work permit is, indeed, required then parties face a conundrum: there is no temporary work permit available that would entitle them to travel to Indonesia

from time to time to represent a client at a hearing.

A business visa only entitles holders to attend meetings; it is not clear whether arbitration hearings would fall within that scope.

This issue needs to be addressed urgently by relevant parties, including BANI, as it creates uncertainty and opens the door for obstructive respondents to exclude foreign lawyers from representing their clients in Indonesian arbitrations.

The impact of this is far-reaching and it undermines Indonesia's potential as a credible international arbitration centre.

### Will the real BANI please stand up?

In 2016 some members of BANI's board defected, establishing another arbitral institution that they named "BANI Pembaharuan".

We understand that currently BANI and BANI Pembaharuan are in the process of lawsuit in several Indonesian courts to determine on the legitimacy of their entity status. However, to date, there is still no certainty on the outcome. In its press release, the newly established institution hailed BANI Pembaharuan as a "transformed BANI". The scope for costly and time-consuming confusion requires no explanation.

Whilst this issue is not insurmountable, for example by parties ensuring that their arbitration agreement clearly specifies to which of the two BANIs they intend to refer disputes, it is a further example of the lack of clarity and reliability that continues to blight the arbitration landscape in Indonesia.

### Obstructive respondents

The lack of institutional coherence can make the arbitral process in Indonesia all too vulnerable to derailment by an unresponsive or obstructive respondent.

This is compounded by the district courts' willingness to intervene in any proceedings referred to them, even though it is a violation of the AL and of the BANI Rules to instigate court

proceedings where the parties have agreed to arbitrate.

Amongst others, some of the particular challenges we have encountered with hostile respondents in Indonesia include those who have:

- Refused to enclose the documents referred to in their submissions, communicate with us directly, and threatened to appeal any procedural directions given by the tribunal that they do not like to court (despite them being disentitled from doing so).
- Tried to ensure that the arbitration is conducted in Bahasa Indonesian, despite the parties' agreement to conduct it in English.

Such conduct is particularly disappointing given that the AL and BANI Rules both expressly provide that the parties will conduct themselves in good faith during the arbitration process.

These tactics serve only to deter parties from choosing to arbitrate in Indonesia and undermine Indonesia's substantial potential as a dispute resolution centre.

### Conclusion

The international arbitration community welcomes Indonesia's emergence as a credible arbitral jurisdiction and wants to see a robust institutional and legislative infrastructure to support its development.

BANI, as the flagship arbitration body for administered arbitrations, needs to be better equipped and supported to withstand the challenges we have outlined.

Relevant parties must rally together to ensure that the process is impartial, objective and expedient, and that the courts respect the parties' agreement to resolve their disputes through arbitration.

Interference with the arbitral process should be restricted to well-defined and narrow grounds, rights of appeal to the courts should be limited, and practices such as permitting an unsatisfied party to have a second bite at the proverbial cherry through the

re-litigation of disputes in the courts should be eradicated.

As was the case with many jurisdictions that are now widely considered 'arbitration-friendly', if Indonesia is to realise its potential as a trusted and credible arbitral jurisdiction, the courts and legislative bodies need to become the guardians of arbitration, rather than the enablers of obstructive parties.

There are many practitioners, jurists and academics putting considerable energy into promoting international arbitration in Indonesia; their efforts must be underpinned by institutional support and infrastructure at the macro level in order to make meaningful progress.

For more information on conducting arbitrations in Indonesia, please contact the authors of this article:

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## Eighteen months on: Indonesia's ratification of the Montréal Convention 1999

Indonesia ratified the Montreal Convention 1999 (MC99) on 20 March 2017. It officially came into force on 19 May 2017.

### **The importance of Indonesia's ratification of MC99**

This brought Indonesia in line with the, now, more than 130 ratifying nations that have ratified MC99, following a global push by the International Air Transport Association (IATA) for its global ratification and adoption.

Indonesia's only prior ratification in this space was the Warsaw Convention of 1929 (WC29); it had neither ratified the 1955 Hague Protocol nor any of the Montreal Protocols.

Adopting MC99 was a positive step towards the global unification of global aviation law and subsequently provided more certainty for participants. Before MC99, parties needed to navigate a patchwork of differing liability regimes.

The global civil aviation community, therefore, welcomed Indonesia's ratification of MC99.

### **The key benefits of MC99 to Indonesia: Promoting greater certainty**

One of MC99's primary effects was abandoning the Poincaré Franc, in favour of the more commonly used International Monetary Fund standard of Special Drawing Rights (SDR).

The outdated nature of the Poincaré Franc meant that its usage often led to differing results, depending on the state in which a claim was presented.

Modernising the international carriage regime in Indonesia through use of SDR should, theoretically, provide greater certainty for carriers; in particular, regarding the table to the right.

### **Practical implications: Uncertainty still remains**

While there is widespread agreement that Indonesia's MC99 ratification and adoption should have led to more certainty for carriers, it is very noteworthy that, in the eighteen months since adoption, the Indonesian courts have yet to make any landmark adjudications in this regard.

	Prior WC29 regime	Change under MC99	Benefits of MC99
<b>Cargo claims: E-freight</b>	If carriers wanted to rely on the limits of liability, they needed a paper airway bill.	MC99 allows the use of electronic documents to record the carriage of cargo by air.	Allowing e-airway bills will speed up the air freight process, eliminating paper-based processes, which will boost Indonesia's competitiveness in the air freight market.
<b>Cargo claims: Greater certainty with regards to cargo limits</b>	Limited to 250 Poincaré Francs per kilogram of cargo carried (breakable limits).  Much uncertainty re carrier liability for cargo losses due to variations between jurisdictions in which claims were brought.	Abandonment of Poincaré Franc.  Imposes a 19 SDR (approx. US\$26) per kilogram unbreakable liability limit for claims relating to cargo destruction, loss, damage or delay.	New compensatory regime - clarity and greater certainty.
<b>Passenger claims</b>	Passenger loss of life claims were limited to 125,000 Poincaré Francs, which effectively limited claims to approximately US\$20,000 (breakable limits).  This was significantly less than the standard set by the Indonesian Government by way of Regulation 77 (see below), which provides for compensation of more than than IDR1 billion (approximately. US\$70,000).	Two tier compensation system: -  1. Strict liability up to 113,100 SDRs subject to proof of loss: liable without exclusion or limitation – but exoneration for contributory negligence is available  2. Unlimited damages (above 113,100 SDRs) unless the carrier can prove death/injury not due to own negligence or solely due to negligence of third party.	

In terms of the interplay with Indonesian domestic aviation regulations, it is unclear if MC99 will be regarded as the sole basis for air carrier liability for passenger injury or death arising from international carriage.

In this context, it should be noted that Indonesian domestic aviation legislation/regulations, including but not limited to the 2011 Minister of Transportation Regulation No. 77 as amended by Regulation No. 92 (Regulation 77) that provides for a different compensatory regime for passenger injury or death, does not seem to clearly distinguish between domestic and international carriage.

It is therefore conceivable that if an aviation accident occurs in the airspace above the territory of Indonesia arising from international carriage it could potentially be regulated by both domestic Indonesian law as well as MC99.

In which case, it remains to be seen as to how the Indonesian courts will resolve any conflicts of law post-MC99 adoption.

Nonetheless, it is envisaged that more detailed guidelines on the incorporation of MC99 into Indonesian law may be enacted, which should provide some welcome clarity.

To discuss further, please contact the authors of this article:

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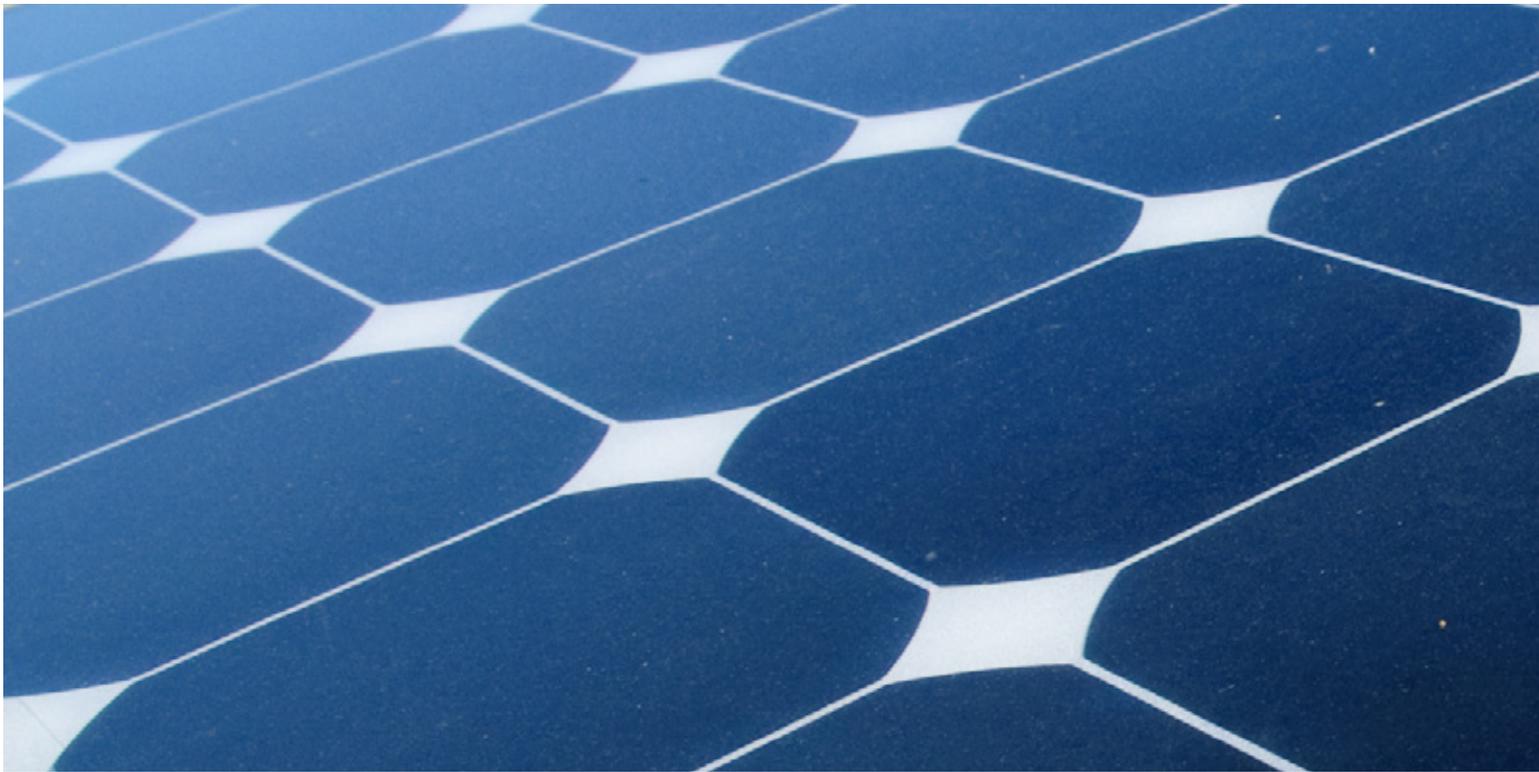


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## Generating progress: Updated regulation aims to encourage consumer use of solar energy for electricity generation

Through the Presidential Regulation No. 22 of 2017 regarding General Planning for National Energy (RUEN), the Indonesian government mandated that rooftops of all government buildings and luxury housing/residential/apartment complexes had, respectively, at least 30% or at least 25% cover by photovoltaic panels.

In order to accelerate consumer use of green energy, on 16 November 2018, the Ministry of Environment and Mineral Resources issued MEMR 49/2018, which sets out the requirements for consumers to use a rooftop photovoltaic power station system (Rooftop PV System).

### What is a Rooftop PV System?

A Rooftop PV System consists of photovoltaic modules, inverters, electrical connections, security systems and an export-import kWh meter.

With the aim of reducing consumers' electricity bills, its use must take into account the safety and reliability of

operation of state electricity company Perusahaan Listrik Negara (Persero) (PLN)'s grid, and comply with the provisions of laws and regulations on the use of domestic goods/services.

However, the Rooftop PV System is not subject to a capacity charge and emergency energy charge.

The capacity of a Rooftop PV System is limited to a maximum of 100% of the consumers' installed capacity, which is determined by the inverter's total capacity.

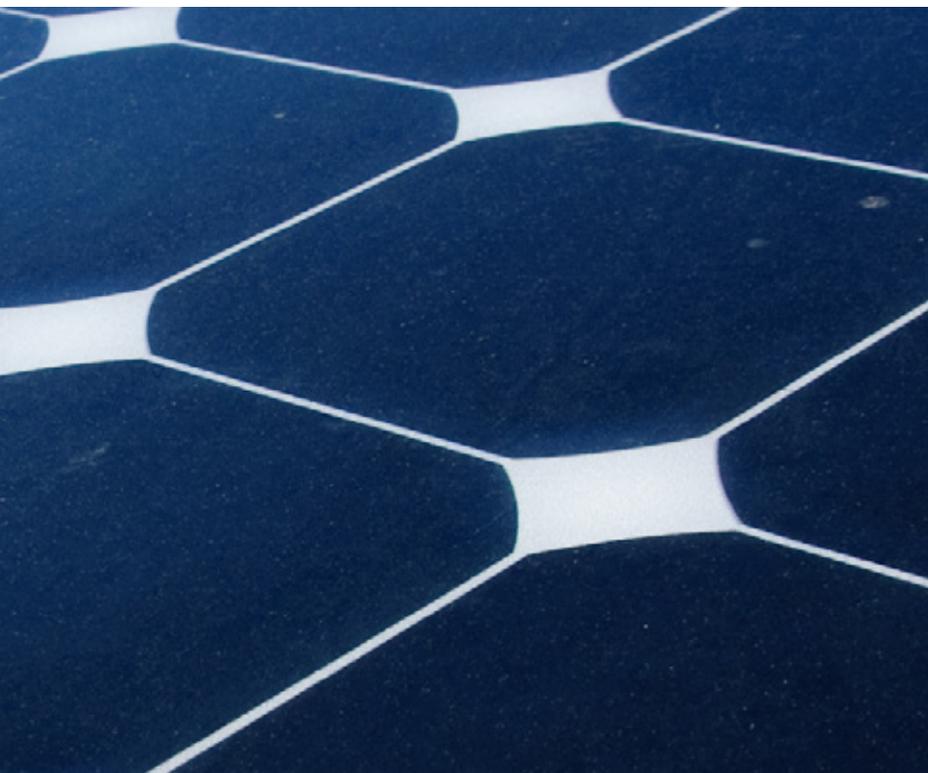
The calculation of a consumer's exported electricity is made based on export kWh value recorded at the export-import kWh meter multiplied by 65%. This differs from the previous regime, where consumers were paid 100%.

A monthly calculation is made regarding to the difference between the import kWh value and export kWh value. The calculation of a consumer's electrical power export-import took effect on 1 January 2019.

A Rooftop PV System may also be operated consumers who are not consumers of PLN, provided that they submit a report on the System's construction and installation to the Director General of New Energy, Renewable Energy and Conservation at Ministry of Energy and Mineral Resources.

Following the issuance of MEMR 49/2018, Rooftop PV Systems that have been built and installed previously are declared to be in accordance with the provisions of MEMR 49/2018.

The method of calculation of the consumers' electrical power export-import by a Rooftop PV System that was built before the issuance of MEMR 49/2018 will remain valid until 31 December 2018.



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### What is the new process for consumers?

<b>Application</b>	<ul style="list-style-type: none"><li>• Consumers must file an application with the general manager of the regional/distribution base unit of PLN, with a copy to the Director General of Electricity and Director General of New Energy, Renewable Energy and Conservation at Ministry of Energy and Mineral Resources.</li></ul>
<b>Evaluation</b>	<ul style="list-style-type: none"><li>• PLN verifies and evaluates the application within 15 working days of submission.</li></ul>
<b>Construction and installation</b>	<ul style="list-style-type: none"><li>• Consumers must not construct or install the System prior to receiving PLN approval.</li><li>• The construction and installation must be done by either:<ul style="list-style-type: none"><li>• a business entity for the construction and installation of the Rooftop PV System.</li><li>• or a state-owned or regional government-owned institution that carries out the construction and installation of new energy power plants and other renewable energy</li></ul></li></ul>
<b>Inspection and examination</b>	<ul style="list-style-type: none"><li>• An Operational Worthiness Certificate (Sertifikat Laik Operasi) is required, issued by the accredited Electrical Engineering Inspection Agency (Lembaga Inspeksi Teknik Tenaga Listrik).</li></ul>
<b>Installation of Export-import kWh Meter</b>	<ul style="list-style-type: none"><li>• PLN is obliged to provide and install a kWh meter to measure the export and import of electricity by consumers.</li></ul>

# New IDERAs: Recent regulatory changes affecting the aviation finance industry

The Indonesian aviation sector continues to grow rapidly. With the majority of aircraft operated by Indonesian airlines being procured from foreign lessors or purchased with financing from foreign lenders, it is important for international stakeholders to be aware of the implications of the Regulation of Minister of Transportation No.52 of 2018 (New MOT Regulation).

## What brought about the New MOT Regulation?

The Cape Town Convention is fully implemented and enforceable in Indonesia.

However, there was confusion surrounding Indonesia's Directorate General of Civil Aviation's (DGCA) treatment of Irrevocable Deregistration and Export Request Authorisations (IDERAs) until the New MOT Regulation was implemented in November 2018.

## What is the Cape Town Convention?

The 2001 Cape Town Convention and its Aircraft Equipment Protocol are, together, known as the Cape Town Convention.

The Cape Town Convention on International Interests in Mobile Equipment is an international treaty intended to standardise transactions involving movable property by creating an international framework for the formation, registration – through an International Registry, protection and enforcement of certain international interests in airframes, aircraft, engines and helicopters.

## What is an IDERA?

An IDERA is an authority document executed by the owner/operator of an aircraft, granting the authorised party or its certified designee the right to, following a default, deregister and export such aircraft from the aircraft registry in the state in which the aircraft is habitually registered.

## How does the New MOT Regulation affect IDERAs?

The New MOT Regulation expressly permits an IDERA to be granted in favour of a creditor i.e. chargee in a security agreement, conditional seller in a title reservation agreement, or lessor in a lease agreement.

The DGCA will consider accepting registration of an IDERA, provided the following requirements are fulfilled:

- The DGCA's new IDERA form is used.
- DGCA prescribed application forms, which may include a Certified Designee Deed of Appointment (CDDA) and Certified Designee Letter (CDL) are completed and submitted.
- The IDERA is in favour of a party other than the direct lessor, e.g. the financier.
- A summary of agreements, written bilingually (Bahasa Indonesian and English), and signed by all parties involved in the agreement is submitted.
- A Statement Letter on the DGCA's prescribed form, signed by the aircraft operator and the party authorised under the IDERA, not to bring any legal action against the DGCA as a result of the IDERA registration.

If the IDERA is in favour of the direct lessor, the DGCA will accept a CDDA from the direct lessor in favour of any owner or financier, provided the IDERA and CDDA are submitted to the DGCA together with the CDL (which will be acknowledged by and registered with the DGCA).

## Key considerations

It is important to note that if the DGCA, for whatever reason, refuses to record an IDERA or even if it simply takes a long time for the IDERA and any CDL to be recorded in Indonesia and that, in the meantime, an event of default occurs, the parties can produce any Deregistration Power of Attorney (DPOA), which would be in favour of the owner, and any Deregistration Consent Letter (DCL), which would be in favour of the financier, in an Indonesian court for the purposes of applying for the deregistration of the aircraft from the DGCA. The DPOA and DCL do not need to be registered in Indonesia for this purpose.

Note: This advice is correct as at December 2018. It is important to obtain advice on current practice and procedure in Indonesia when considering aircraft transactions in Indonesia.

For more information on this or other topics regarding Aviation Finance, please contact the author of this article:

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# Don't keep your head in the sand(box): Advice for fintechs on OJK's new digital financial innovation regulation

Following OJK's recent passing of a new regulation on digital financial innovation, we outline its remit and explore its likely benefits and challenges alike for the financial technology (fintech) industry in the months ahead.

## Current fintech climate

Both the fintech industry and the market have been growing at a rapid pace over the last couple of years.

Based on data compiled by Fintechnews, there were a total of 167 fintech companies established in Indonesia in May 2018; more than triple the number in 2015.<sup>1</sup>

Payment and lending fintechs each compose more than 30% of the pie chart, with these services growing at 16.3% annually.

However, other services, such as market provisioning and aggregators, are predicted to gain traction in the coming years.

## The background to POJK 13/2018

Keeping up with the market trends, OJK has issued a series of regulation targeting fintech services.

It started with fintech lending through Regulation No. 77/POJK.01/2016 on Technology-Based Fund-Lending Services, dated 28 December 2016.

More recently, it has sought to extend its arm to other services by releasing Regulation No. 13/POJK.02/2018 on Digital Financial Innovation in the Financial Services Sector on 15 August 2018 (POJK 13/2018).

POJK 13/2018 sets out the basic regulatory framework to which all digital financial companies will be subject. It is designed to promote

innovation, customer protection and stronger risk management.

Amongst its key features are the establishment of a sandbox and requirements to record and register for fintech operators.

## The scope of POJK 13/2018

The regulation shall be applicable to any digital financial innovation (Inovasi Keuangan Digital or IKD), which is defined as activities surrounding updating Business processes and business models, and financial instruments that provide new added value in the financial services sector, by engaging in the digital ecosystem.

Activities covered under these criteria are:

- Transaction settlement.
- Capital raising.
- Investment management.
- Fund raising and distribution.
- Insurance.
- Market support.
- Other digital financial supporter.
- Other financial services activities, such as block chain-based products.

Mechanism of recordation, regulatory sandbox and registration

To harness the innovation of fintech, POJK 13/2018 requires a company to meet certain criteria. Such requirements include the ability to collaborate with other financial services, benefit for financial inclusion and compliance with consumer and data protection-related regulations.

To test whether a company has fulfilled those criteria and can be legally operating as an IKD, POJK 13/2018 sets three stages that a company must undergo, namely:

1. Recordation.
2. Regulatory sandbox,
3. Registration.

## How to apply

The first step, which is recordation, is a must for any operator of business within the scope of IKD, except for those who have been registered or have obtained licensed from the OJK prior to the enactment of the regulation.

This obligation was effective since 16 September 2018. The application for recordation automatically serves as an application to be tested at the regulatory sandbox. Such application should be accompanied by documentations provided under Article 6.

To be accepted into the regulatory sandbox, a fintech has to fulfil a set of criteria, e.g. being a novel business model, having a sizeable market and being registered in the association of operators.

To clarify, the sandbox may not be suitable for fintech businesses deemed by the OJK to be similar to those already regulated.

POJK 13/2018 also makes a distinction between a financial services institution (LJK) and another party conducting business in the financial sector (non-LJK), in terms of which authority should receive the application.

A non-LJK's application should be submitted to the unit in charge of the research and development of IKD at the OJK (which as we understand has been established since August 2018 under the name OJK Innovation Centre for Digital Financial Technology or OJK Infinity).

1. Fintechnews Singapore, "Fintech Indonesia Report 2018 – The State of Play for Fintech Indonesia," <http://fintechnews.sg/201712/indonesia/fintech-indonesia-report-2018/>, accessed on 3 January 2018.

Meanwhile, an LJK's application should be addressed to the unit at the OJK that supervises the LJK. The supervisory unit of LJK will, in turn, submit the proposal for regulatory sandbox to the OJK Infinity.

The sandbox shall last for a year. The result of the sandbox could be recommended, need improvement or not recommended. Those who are recommended shall have six months since the announcement of the result to file an application to register in the OJK.

Meanwhile, those who need improvement are given another six months in the sandbox to better its performance before the final decision. If not recommended, the operator shall be erased from the record. So far, a more detailed indicator for the assessment has yet to be revealed.

We would like to highlight one clause under Article 14, which states that an IKD operator –after completing the sandbox and obtaining the recommendation –has the right to submit an application for registration.

Further, it states that if a company is similar to an IKD that has been given a recommendation, it is allowed to file for registration to the OJK.

This raises questions as to whether the sandbox is not required for such operator. If so, will OJK require certain documentations to ensure customer and data protection and sufficient risk management at the time of registration?

POJK 13/2018 does not address such concerns, although there is a potential that OJK will tackle this in a separate regulation that deals with the procedure of registration.

### Obligations

The objective of the sandbox is to ensure the technical and legal aspects of a fintech's innovation goals are sound, before safely introducing it to the market.

In doing so, OJK grants a waiver, allowing the businesses to operate without having to comply with certain regulations and without license, in a predetermined time span.

In return, the operators are obligated to improve on their reliability and compliance, particularly relating to consumer protection.

POJK 13/2018 does not provide a clear distinction between the obligations of the operator in each of the stages. Generally, OJK imposes the obligation to conduct self-monitoring in the following aspects:

- Management of information and communication technology, including obligation to have a strategic plan on electronic systems and to place a data centre and disaster recovery centre in Indonesia.

- Customer protection.
- Education and socialisation to customers.
- Data protection.
- Risk management.
- Anti-money laundering and prevention of terrorism funding.
- Transparency of information.

The self-monitoring is implemented by making an inventory of main risk that covers at least:

- Strategic risk.
- Systemic operational risk.
- Individual operational risk.
- Risk of money laundering and terrorism funding.
- Risk of protection of customer data.
- Risk of use of third party services.
- Cyber risk.
- Liquidity risk.

IKD operators, whether in the sandbox or registered, are obligated to produce reports. The obligations of IKDs post-registration are, understandably, more stringent. However and interestingly, the POJK 13/2019 makes distinctions between the two categories of operator as follows:

Sandbox IKD operators	Registered IKD operators
A performance report to OJK every three months.	A monthly risk-self assessment report, which we understand will reflect the result of risk management, as mentioned earlier in this article.
POJK does not provide a guidance on the content or parameters used.	
	A customer report, covering to the performance of investments, its value and/or customers' portfolios.



The lack of POJK guidance on sandbox operators' reports raises the question as to what extent are the sandbox operators required to comply with the above aspects and, accordingly, how much should they invest in IT and other infrastructure, prior to entering the sandbox?

This concern also applies to operators that are recorded but yet to be admitted into the sandbox, as stipulation on the reporting obligation for this category of operator is noticeably absent from POJK.

Additionally, in most regulatory sandbox schemes, authorities would expect the tested company to meet a certain safeguard requirement, usually relating to trial scope and IT security. The fulfilment of these safeguards is usually included as an indicator of performance assessment. Such stipulations are also absent from the POJK 13/2018.

We are hoping that OJK will clarify these matters in its upcoming technical procedural guidance.

## Relations between OJK and Bank Indonesia

The fintech sector is predominantly regulated by the OJK and Bank Indonesia (BI). It is not expressly stated in any regulations as to the division of power between the BI and OJK.

However, it is understood that BI regulations are directed towards payment services, given their impact on monetary stability.

On the other hand, OJK is responsible for the remaining fintech businesses. Similar to OJK, BI has also set up a regulatory sandbox through BI Regulation No. 19/12/PBI/2017 on the Operation of Financial Technology (PBI 19/2017).

It seems that both bodies are aware of the possible overlap of authority, which necessitate a clause regarding coordination, in the event that the testing result shows linkage with the competence of the other authority.

The clause under POJK 13/2018 is not sufficiently clear on this point: If an operator has been decided by BI to have linkage to OJK, would it then be required to go through another sandbox mechanism in OJK?

If yes, then it would mean extra time before being able to fully enter the market, causing delay for the fintech.

## Benefit and challenges of POJK 13/2018 for fintechs

### Benefits

POJK 13/2018 purports to promote the growth of fintech companies without compromising on customer security. This attempt to align innovation with regulatory compliance provides a regulatory certainty that would certainly be beneficial for fintech companies and their stakeholders:

1. Fintechs admitted into the sandbox would have a greater chance of attracting investors who may be hesitant to enter the market without proper assurance of the business's legality.

Of course, the sandbox is not a guarantee of success – if the result is not recommended, then the IKD would be prohibited to continue operation in Indonesia.

Despite that, sandbox participation could be shown as evidence of the fintech operator's commitment to regulatory compliance.

2. The recordation/registration helps the IKD to establish its position in the fintech ecosystem. POJK 13/2018 provides the legal basis to cooperate with other financial services institution, an advantage given exclusively to those that are recorded or registered.

It is currently not expressly provided under POJK 13/2018 but several sources from OJK have revealed plans to limit the operation of unrecorded operators and to block their access to other financial services institutions.

3. Finally, the regulatory sandbox mechanism would ultimately boost market confidence in the IKD. The sandbox is a great opportunity for fintech operators to:

- Learn more about the financial and digital regulatory landscape.
- Prepare infrastructure necessary for compliance.

- Refine their business model, before effectively offering their products to a wider market.

### Challenges

However, there are challenges fintech operators should bear in mind when navigating this complex process.

1. First, investing in adequate and competent manpower when entering the sandbox is essential, especially for those without previous experience in the financial services sector.

The sandbox would require the company to conduct risk assessment and management, build the infrastructure to ensure compliance, and furnish periodic reports, all of which could be overwhelming for startups.

2. OJK needs to provide a clear procedure for the whole process. As of now, the technical procedure for the sandbox is yet to be issued. The same goes for regulation pertaining to the procedure of registration (for those that have completed the sandbox), which could hamper the process of obtaining licenses.

3. Lastly, POJK 13/2018 requires the operator to be a member of an association appointed by the OJK. This means, aside from legislation issued by the government, an IKD should also keep an eye on standards published by the association that it is bound to observe.

For more information on innovation in the financial services sector, please contact the authors of this article:

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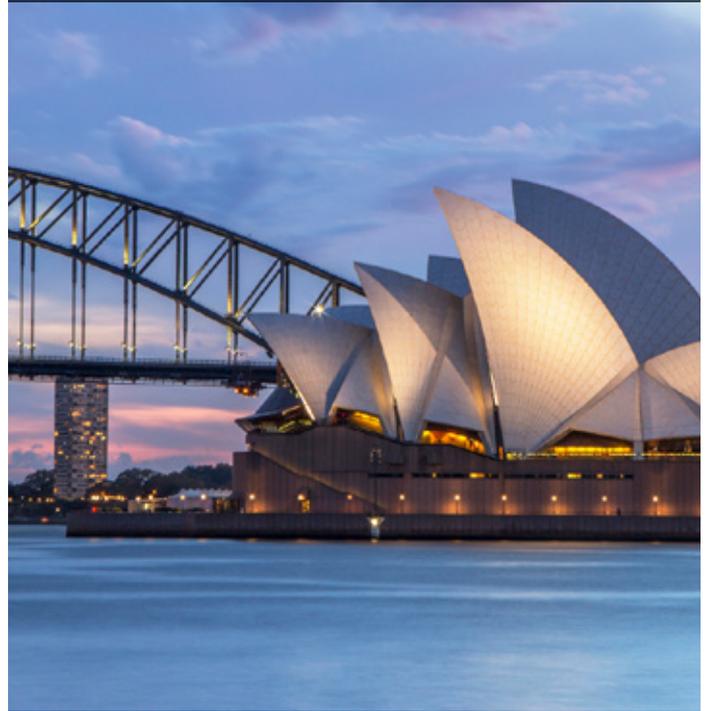


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