

# CRYPTOASSETS & BLOCKCHAIN

## Indonesia



# Cryptoassets & Blockchain

Consulting editors

**Richard B Levin, Kevin Tran, Megan Kilissanly**

*Nelson Mullins Riley & Scarborough LLP*

---

Quick reference guide enabling side-by-side comparison of local insights, including into the legal and regulatory framework; use of cryptoassets for investment, financing, trading and payments; cryptocurrency mining; blockchain and other distributed ledger technologies; and recent trends.

---

Generated 10 March 2023

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. © Copyright 2006 - 2023 Law Business Research

## Table of contents

### **GENERAL LEGAL AND REGULATORY FRAMEWORK**

- Legal framework**
- Government policy**
- Regulatory authorities**
- Regulatory penalties**
- Court jurisdiction**
- Legal status of cryptocurrency**
- Fiat currencies**
- Industry associations**

### **CRYPTOASSETS FOR INVESTMENT AND FINANCING**

- Regulatory threshold**
- Investor classification**
- Initial coin offerings**
- Security token offerings**
- Stablecoins**
- Airdrops**
- Advertising and marketing**
- Trading restrictions**
- Crowdfunding**
- Transfer agents and share registrars**
- Anti-money laundering and know-your-customer compliance**
- Sanctions and Financial Action Task Force compliance**

### **CRYPTOASSET TRADING**

- Fiat currency transactions**
- Exchanges and secondary markets**
- Custody**
- Broker-dealers**
- Decentralised exchanges**
- Peer-to-peer exchanges**
- Trading with anonymous parties**
- Foreign exchanges**
- Taxes**

## **CRYPTOASSETS USED FOR PAYMENTS**

**Government-recognised assets**

**Bitcoin**

**Banks and other financial institutions**

## **CRYPTOCURRENCY MINING**

**Legal status**

**Government views**

**Cryptocurrency mining licences**

**Taxes**

## **BLOCKCHAIN AND OTHER DISTRIBUTED LEDGER TECHNOLOGIES**

**Node licensing**

**Restrictions on node operations**

**DAO liabilities**

**DAO assets**

**Open source**

**Smart contracts**

**Patents**

## **UPDATE AND TRENDS**

**Recent developments**

## Contributors

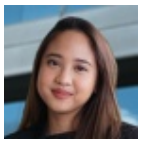
### Indonesia



**Syahdan Z. Aziz**  
syahdanaziz@ssek.com  
*SSEK Law Firm*



**Winnie Yamashita Rolindrawan**  
winnierolindrawan@ssek.com  
*SSEK Law Firm*



**Farrah Azizah Habibie**  
FarrahHabibie@ssek.com  
*SSEK Law Firm*

## GENERAL LEGAL AND REGULATORY FRAMEWORK

### Legal framework

What legal framework governs cryptoassets? Is there specific legislation governing cryptoassets and businesses transacting with cryptoassets?

The crypto industry in Indonesia falls under the auspices of the Commodity Futures Trading Supervisory Body (Bappebti), under the Ministry of Trade (MOT) and in coordination with other institutions such as the Financial Services Authority (OJK), Bank Indonesia (BI) and the Ministry of Communication and Informatics (the MOCI). The MOT has acknowledged cryptoassets, including but not limited to digital coins (virtual currency or cryptocurrency), as tradable commodities for which Bappebti acts as the regulator and supervisor. Nevertheless, on 12 January 2023, the Indonesian government enacted an omnibus law for the financial sector that will transfer the authority over cryptoassets from Bappebti to the OJK.

As regulated under Bappebti Regulation No. 8 of 2021 regarding Guidelines for Organising Crypto Asset Physical Trading Market on the Future Exchange, as amended by Bappebti Regulation No. 13 of 2022 dated 9 November 2022 (together Bappebti Regulation 8/2021), cryptoassets are defined as intangible commodities in digital form, using cryptography, information technology networks and distributed ledgers to regulate the creation of new units, verify transactions and secure transactions without the intervention of other parties. In essence, cryptocurrencies may be traded if they have been approved by the head of Bappebti. This Regulation further categorises cryptoassets as follows:

- Coins: a coin is defined as a form of cryptoasset with a separate configuration of blockchain and characteristics like a cryptoasset that appears for the first time, for example, bitcoin.
- Tokens: a token is defined as a derivative product of a coin.

Specifically for the determination of cryptoassets that are tradable, Bappebti has enacted Bappebti Regulation No. 11 of 2022 dated 8 August 2022 regarding the Determination of the List of Tradable Crypto Assets within the Crypto Asset Physical Market (Bappebti Regulation 11/2022). This Regulation provides guidelines on tradable cryptoassets in Indonesia, as well as technical guidelines for such cryptoassets. The Regulation includes a list of 383 cryptoassets (both coins and tokens) that may be traded by crypto exchanges in Indonesia.

*Law stated - 30 January 2023*

### Government policy

How would you describe the government's general approach to the regulation of cryptoassets in your jurisdiction?

Generally, cryptoassets are relatively new and regulation is limited to the activities of:

- cryptoasset physical traders, commonly known as crypto exchanges;
- cryptoasset storage managers;
- the Futures Exchange; and
- the Futures Clearing Agency.

Certain aspects and activities related to cryptoassets remain unregulated.

## Regulatory authorities

### Which government authorities regulate cryptoassets and businesses transacting with cryptoassets?

Bappebti Regulation 8/2021 regulates cryptoassets as intangible commodities in digital form that use cryptography, information technology networks and distributed ledgers for the creation of new units, to verify transactions and to secure transactions without the interference of other parties.

Pursuant to the Indonesian Commodity Futures Trading Law (CFT Law), commodities are defined as all goods, services, rights and other interests and any derivatives of commodities that can be traded and become the subject of futures contracts, sharia derivative contracts and other derivative contracts. CFT Law states that commodities can be used as the subject of futures contracts, sharia derivative contracts and other derivative contracts that are regulated by the head of Bappebti.

Additionally, as stated in the CFT Law, the regulation, development, guidance and day-to-day supervision of futures trading activities (defined as activities related to buying and selling commodities with withdrawal of margin and with later settlement based on futures contracts, sharia derivative contracts and other derivative contracts under the CFT Law) shall be carried out by Bappebti.

We note that MOT Regulation No. 99 of 2018 dated 2 October 2018 regarding General Policy on the Organisation of Cryptoasset Futures Trading (MOT Regulation 99/2018) states that cryptoassets are designated as a commodity that can be used as the subject of futures contracts to be traded on the Futures Exchange. MOT Regulation 99/2018 also regulates that further arrangements, guidance, supervision and development regarding cryptoassets as commodities that can be used as the subject of futures contracts traded on the Futures Exchange shall be further determined by the head of Bappebti. Therefore, cryptoassets as commodities are currently regulated under Bappebti.

Bappebti Regulation No. 2 of 2019 dated 4 February 2019 regarding the Organisation of the Commodities Physical Market in the Futures Exchange, as amended by Bappebti Regulation No. 10 of 2019 dated 26 July 2019 (Bappebti Regulation 2/2019), states that the regulation, development, guidance and supervision of activities in the physical market are carried out by Bappebti. With reference to Bappebti Regulation 2/2019, the physical market is understood as an organised physical market that is carried out using electronic means facilitated by the Futures Exchange or electronic facilities owned by physical commodity traders.

Regarding businesses transacting with cryptoassets, current regulations provide that cryptoassets shall be used in the cryptoasset physical market at the Futures Exchange. Bappebti Regulation 8/2021 defines the 'cryptoasset physical market' as the physical market for cryptoassets held using electronic facilities owned by cryptoasset physical traders for selling or buying cryptoassets, whose market supervision is carried out by the Futures Exchange.

Pursuant to the definition of the cryptoasset physical market, it should be noted that any transactions in Indonesia related to cryptoassets are limited to the selling or buying of said cryptoassets from or to cryptoasset physical traders or crypto exchanges.

Despite the above, it should be noted that on 12 January 2023, the Indonesian government, through the DPR, formally ratified a new omnibus law, Law No. 4 of 2023 regarding the Development and Strengthening of the Financial Sector (PPSK Law), which, if not ratified by the president after one month, shall automatically become law.

Under the PPSK Law, cryptoassets are now considered a financial sector technology innovation (ITSK), which is defined as a technology-based innovation that has an impact on products, activities, services and business models in the digital financial ecosystem.

Additionally, the PPSK Law provides for a change of regulatory and supervisory duties for digital financial assets and

commodities, which includes financial instruments that are the subject of futures contracts, sharia derivative contracts and other derivative contracts from Bappebti to regulatory authorities in the financial service sector.

The official elucidation of the PPSK Law states that the Bappebti shall transfer regulatory and supervisory authority to:

- the OJK for commodities, including financial instruments that are the subject of futures contracts, sharia derivative contracts and other derivative contracts related to capital market derivatives and digital financial assets, including cryptoassets; and
- the BI for commodities that include financial instruments that are the subject of futures contracts, sharia derivative contracts and other derivative contracts related to money market derivatives and foreign exchange markets.

This change of regulatory authority is regulated to take place at the latest within 24 months after the promulgation of the PPSK Law.

Further provisions regarding the transition of regulatory and supervisory duties are also to be regulated in a government regulation that must be stipulated no later than six months after the promulgation of the PPSK Law.

It is still unclear as of this writing how the new PPSK Law will directly impact cryptoasset physical trader candidate approval and crypto exchanges. This will most likely be further regulated in a government regulation set to be implemented within six months as of the enactment of the PPSK Law.

The implementation of the above points for cryptoassets may also be subject to further government regulations or OJK regulations.

*Law stated - 30 January 2023*

## Regulatory penalties

### What penalties can regulators impose for violations relating to cryptoassets?

Pursuant to Bappebti Regulation 8/2021, Bappebti is authorised to impose administrative sanctions on any party violating the provisions of Bappebti Regulation 8/2021. Bappebti Regulation 8/2021 further provides that parties that commit violations or do not carry out obligations as stipulated in said Regulation are subject to administrative sanctions, in the form of:

- written warnings;
- fines;
- the suspension of business activities;
- the cancellation of registration as a cryptoasset physical trader candidate; and
- the cancellation of approvals.

In coordination with the MOCI, Bappebti may also terminate or block access to foreign cryptocurrency trading platforms by the Indonesian market through Indonesian internet protocols.

Specifically, regarding termination of access or access blocking, to offer activities as a crypto exchange or trading platform service in Indonesia, the provider of the platform is required to have a presence in Indonesia by establishing a local company and obtaining the necessary licence as a cryptoasset physical trader. Without the required licence and presence in Indonesia, foreign crypto exchange companies cannot offer their services to the Indonesian market.

In practice, Bappebti is relatively proactive in its surveillance and supervision of businesses (foreign and domestic) that



conduct business activities in Indonesia as a cryptoasset physical trader without obtaining the required licence. The Indonesian government, through Bappebti and the Investment Alert Task Force (SWI), may investigate foreign crypto exchange companies to determine if the foreign company has a local presence and licence in Indonesia. If not, the Bappebti or the SWI may add the company and its platform to a blacklist on its website and may terminate access to the company's platform. Several crypto exchange companies have been sanctioned in this manner. However, we are unaware of Bappebti seeking criminal sanctions for foreign business actors.

Despite the above, please be advised that there is no provision in Indonesian law that expressly seeks to capture cross-border crypto exchange platform activities in Indonesia. Therefore, Bappebti's authority to regulate cross-border crypto exchange platform activities in Indonesia must be founded on the theory that such activity occurs in Indonesia.

Therefore, without licensing and a presence in Indonesia, foreign crypto exchange companies are not allowed to enable access to their platforms through Indonesian networks.

Additionally, as cryptoassets and crypto exchange business activities are categorised as commodity futures trading business activities, they are subject to the provisions on criminal sanctions in the CFT Law. Article 73(d) of the CFT Law provides that any party offering futures contracts for transactions without a valid business licence from Bappebti is subject to criminal sanctions of five to 10 years imprisonment and fines of 10 to 20 billion rupiahs.

These regulations also provide for administrative sanctions in the form of:

- a written warning;
- the suspension of a business licence;
- an administrative fine;
- the limitation of business activities;
- the revocation of a licence;
- the cancellation of approval; and
- the cancellation of a registration certificate.

Criminal sanctions under the CFT Law may also apply to the company, employees, officers or directors of the company, and the expatriate workers of the company who engage in futures trading (including crypto business activities) in Indonesia without a valid business licence. The employees and any party involved may also be required by the criminal investigator to be witnesses for the criminal investigation of these criminal activities. Under the CFT Law, Bappebti has the authority to appoint investigators for the purposes of investigating criminal acts in the futures trading field. The results of any investigation shall be relayed to public prosecutors through the state police based on provisions under the Indonesian Criminal Procedural Law.

*Law stated - 30 January 2023*

## Court jurisdiction

### Which courts have jurisdiction over disputes involving cryptoassets?

Under the CFT Law, without prejudice to the rights of parties to resolve civil disputes related to futures trading in court or through arbitration, parties must attempt to settle any dispute related to futures trading (including cryptoassets) through:

- deliberation to reach a consensus between the disputing parties; or
- the utilisation of facilities provided by Bappebti or the Futures Exchange if deliberations to reach consensus are not successful.

Furthermore, under Bappebti Regulation 8/2021, in the event of a dispute between the parties in the implementation of trading in the cryptoasset physical market, a settlement must first be carried out by way of deliberation to reach a consensus between the parties within the time limit as stipulated in the agreement between the parties or Bappebti regulations. If no consensus is reached, the disputing parties can resolve disputes through dispute settlement facilities provided by the Futures Exchange within the time limit as stipulated in the agreement between the parties or based on the rules and regulations of the Futures Exchange or Bappebti regulations. If a consensus is still not reached, disputing parties may settle through the Commodity Futures Trading Arbitration Board (BAKTI) or the relevant district court according to the choice of dispute settlement forum as stipulated in the agreement between the parties.

Bappebti Regulation 8/2021 states that further provisions regarding the provision of facilities and procedures for settling disputes between the parties in the implementation of trade in the cryptoasset physical market, as well as the time limit for settling disputes, shall be further regulated in Bappebti regulations. To date, Bappebti is yet to enact further regulations on this matter.

Referring to dispute settlement through the Futures Exchange, once the Futures Exchange has obtained approval from the head of Bappebti, it will facilitate and supervise the trading of cryptoassets. The Futures Exchange will be responsible for implementing cryptoasset physical market transactions to ensure that the market is carried out in an orderly and transparent manner. Reports related to all trading transactions in the physical market must also be submitted to the head of Bappebti by the Futures Exchange. It is also noted that a Futures Exchange that has already obtained approval from the head of Bappebti may not facilitate transactions for other commodities other than crypto commodities.

Bappebti Regulation 8/2021 regulates that the Futures Exchange must also provide a dispute resolution mechanism for parties in the cryptoasset physical market in accordance with agreements made by the parties involved and rules and regulations of the Futures Exchange. The Futures Exchange will also review, recommend, and evaluate the types of cryptoassets that can be traded in the cryptoasset physical market.

To date, the Futures Exchange for cryptoassets in Indonesia is yet to be established.

*Law stated - 30 January 2023*

### **Legal status of cryptocurrency**

Is it legal to own or possess cryptocurrency, use cryptocurrency in commercial transactions and exchange cryptocurrency for local fiat currency in your jurisdiction?

Articles 1(7), 1(8) and 1(1) of Bappebti Regulation 8/2021 allow for the sale and purchase of cryptoassets at cryptoasset physical traders, which cryptoasset customers will carry out. Furthermore, article 13(2) of Bappebti Regulation 8/2021 regulates that the scope of activities of cryptoasset physical traders will include the following:

- the selling or buying of cryptoassets and rupiah currency;
- exchanges between one or more types of cryptoassets;
- cryptoassets storage belonging to the cryptoassets customer; and
- transfers of cryptoassets between wallets.

Based on the above, cryptoasset customers in Indonesia are permitted to possess cryptocurrency and exchange cryptocurrency for local fiat currencies at cryptoasset physical traders.

However, it must be noted that current regulations only allow for transactions in the form of buying and selling

cryptoassets with cryptoasset physical traders, and the use of cryptocurrency in other commercial transactions is yet to be regulated.

*Law stated - 30 January 2023*

## **Fiat currencies**

**What fiat currencies are commonly used in your jurisdiction?**

Pursuant to the Indonesian Currency Law, the official currency used in Indonesia is the rupiah. The Indonesian Currency Law provides that the use of the rupiah is mandatory for payments, the settlement of other liabilities that must be settled with money and other financial transactions in Indonesia. In other words, crypto currency cannot be used as legal currency for financial transactions in Indonesia.

*Law stated - 30 January 2023*

## **Industry associations**

**What are the leading industry associations addressing legal and policy issues relating to cryptoassets?**

The leading industry associations related to cryptoassets are (1) the Indonesian Crypto Asset Traders Association; and (2) the Indonesian Blockchain Association.

*Law stated - 30 January 2023*

## **CRYPTOASSETS FOR INVESTMENT AND FINANCING**

### **Regulatory threshold**

**What attributes do the regulators consider in determining whether a cryptoasset is subject to regulation under the laws in your jurisdiction?**

Pursuant to article 3 of Bappebti Regulation 8/2021, cryptoassets may only be traded if they meet the following criteria:

- they are based on distributed ledger technology;
- they are in the form of utility cryptoassets or asset-backed cryptoassets (crypto-backed assets); and
- they have the results of their assessment using the analytical hierarchy process (AHP) set by Bappebti.

The assessment using the AHP method shall be conducted by considering the following:

- the market capitalisation value (market cap) of the cryptoasset (coin market cap);
- whether they are traded at the world's largest cryptoasset exchanges;
- whether they have economic benefits, such as taxation, growing the digital economy or the informatics industry, and competence of experts in the field of informatics (digital talent); and
- whether a risk assessment has been carried out, including the risk of money laundering and financing of terrorism and the proliferation of weapons of mass destruction.

As a general rule, Bappebti Regulation 11/2022 regulates that the guidelines for the determination of tradable

cryptoassets consist of general recommendations for the assessment of cryptoassets conformity and technical guidelines for the implementation of cryptoassets assessments, which contain the general principles and criteria. These requirements are further set out under Appendix I of Bappebti Regulation 11/2022. Even if cryptoassets are seen to have fulfilled these requirements, cryptoasset physical traders are still only allowed to trade such coins or tokens if the coins or tokens have been listed as tradable cryptoassets by Bappebti.

*Law stated - 30 January 2023*

## Investor classification

### How are investors in cryptoassets classified and treated differently?

Under article 1(10) of Bappebti Regulation 8/2021, cryptoasset customers are defined as parties that use the services of cryptoasset physical traders to buy or sell cryptoassets that are traded on the cryptoasset physical market. As stated in article 16(6) of Bappebti Regulation 8/2021, the trading of cryptoassets shall be conducted by cryptoasset customers who are individuals. Business entities are explicitly prohibited from trading cryptoassets at licensed crypto exchanges.

Relevant regulations do not provide any further distinctions for investors of cryptoassets (such as ordinary (retail), institutional, sophisticated, or accredited customers).

*Law stated - 30 January 2023*

## Initial coin offerings

### What rules and restrictions govern the conduct of, and investment in, initial coin offerings (ICOs)?

Under article 13(2) of Bappebti Regulation 8/2021, the scope of activities of a cryptoasset physical trader is limited to the following:

- selling or buying between cryptoassets and rupiah currency;
- exchanges between one or more types of cryptoassets;
- the storage of cryptoassets belonging to cryptoasset customers; and
- transfers of cryptoassets between wallets.

Although article 13(3) of Bappebti Regulation 8/2021 further stipulates that cryptoasset physical traders may carry out activities other than as stated above, based on approval from the head of Bappebti, article 2(3) of Bappebti Regulation 8/2021 also explicitly states that the provisions stipulated in Bappebti Regulation 8/2021 are not intended for initial coin offerings (ICOs) or initial token offerings. As a result, it should be noted that such activities may not be carried out by cryptoasset physical traders.

To date, there are no regulations regarding the conduct and investment for ICOs. Therefore, the determination for the implementation of an ICO shall be subject to further regulation.

Nevertheless, in practice, there are cryptoasset physical traders in Indonesia that have already conducted ICOs in Indonesia despite the lack of clarity in the legal status.

*Law stated - 30 January 2023*

## Security token offerings

What rules and restrictions govern the conduct of, and investment in, security token offerings (STOs)?

Similar to ICOs, security token offerings (STOs) are not regulated under relevant laws and regulations and, thus, shall be subject to further regulations.

Under article 13 of Bappebti Regulation 8/2021, the scope of activities that may be conducted by a cryptoasset physical trader is limited to the activities stated therein, which does not include STOs. As previously noted, article 13(3) of Bappebti Regulation 8/2021 stipulates that cryptoasset physical traders may carry out other activities with the approval of the head of Bappebti.

*Law stated - 30 January 2023*

## Stablecoins

What rules and restrictions govern the issue of, and investment in, stablecoins?

Applicable regulations do not explicitly regulate the issuance of or investment in stablecoins. As stated in articles 1(14) and 1(15) of Bappebti Regulation 8/2021, applicable regulations only regulate coins and tokens, defined as follows:

- Coins: a coin is defined as one of the forms of cryptoasset having separate configurations of blockchain and having characteristics like a cryptoasset that appears for the first time, for example, bitcoin.
- Tokens: a token is defined as a derivative product of a coin.

Nevertheless, it should be noted that stablecoins such as USD Coin (USDC), Tether (USDT) and Binance USD (BUSD) have been included in the list of tradable cryptoassets in Indonesia, as provided in Appendix II of Bappebti Regulation 11/2022. Furthermore, to the best of our knowledge and based on current practice, the pricing of cryptoassets or their transfer within a crypto exchange platform is permitted to be done in USD stablecoins (eg, USDT and USDC).

*Law stated - 30 January 2023*

## Airdrops

Are cryptoassets distributed by airdrop treated differently than other types of offering mechanisms?

The distribution of cryptoassets through airdrop is currently unregulated. Furthermore, given that distribution via airdrop is not included in the scope of activities of a cryptoasset physical trader under article 13 of Bappebti Regulation 8/2021, its conduct may require further approval from the head of Bappebti.

*Law stated - 30 January 2023*

## Advertising and marketing

What laws and regulations govern the advertising and marketing of cryptoassets used for investment and financing?

Pursuant to article 2(1) of Bappebti 8/2021, the implementation of cryptoasset trading must ensure protections for cryptoasset customers. Article 16(1)(m) of Bappebti 8/2021 regulates that in carrying out activities as a cryptoasset physical trader, parties must organise literacy and educational activities for the public in the form of seminars, promotions, workshops, training or the like related to the cryptoasset physical market. Materials used in these activities must be reported to Bappebti in no later than five working days prior to the activity. Article 14(1) of Bappebti Regulation 8/2021 also requires cryptoasset physical traders to have standard operating procedures regarding the marketing and acceptance of cryptoasset customers.

Advertising and marketing activities for cryptoassets fall under the Indonesian Consumer Protection Law, the provisions of which apply to cryptoasset customers.

Principal obligations under the Indonesian Consumer Protection Law include:

- to act in good faith in conducting business activities;
- to provide correct, clear and honest information regarding the condition and guarantee of goods and services, and to provide an explanation for the use, repair and maintenance of goods and services;
- to treat and serve consumers properly, honestly and without discrimination;
- to guarantee the quality of goods or services produced and traded based on the applicable provisions on quality standards for the goods or services;
- to provide consumers with an opportunity to test or try certain goods or services as well as provide a guarantee or warranty for the goods produced or traded;
- to provide compensation, indemnity or replacement for losses due to the use, consumption, and utilisation of goods or services that are traded; and
- to provide compensation, indemnity or replacement if the goods or services received are not in accordance with the agreement.

*Law stated - 30 January 2023*

## Trading restrictions

Are investors in an ICO/STO/stablecoin subject to any restrictions on their trading after the initial offering?

ICOs and STOs are currently unregulated in Indonesia. Certain stablecoins (such as USDC, USDT and BUSD) are included in the list of tradable cryptoassets in Indonesia as provided in Appendix II of Bappebti Regulation 11/2022. Thus, the trading of stablecoins falls under the same requirements and regulations as tokens and coins.

*Law stated - 30 January 2023*

## Crowdfunding

How are crowdfunding and cryptoasset offerings treated differently under the law?

To date, there are no regulations in Indonesia specifically regarding any form of crowdfunding for cryptoasset offerings. Cryptoasset physical traders are only permitted to conduct the activities as regulated under article 13 of Bappebti Regulation 8/2021 or otherwise with the approval of the head of Bappebti. Thus, although unregulated, crowdfunding and cryptoasset offerings may be conducted in Indonesia if approved by the head of Bappebti.

The Financial Services Authority (OJK) regulates fintech activities related to financial services. OJK Regulation No. 13/POJK.02/2018 of 2018 dated 16 August 2018 regarding Digital Financial Innovation in the Financial Services Sector (OJK Regulation 13/2018) and its official elucidation categorises digital finance innovation (IKD) services into the

following:

- transaction settlement, which focuses on, among other things, investment settlement;
- capital raising, which includes equity crowdfunding, virtual exchange, smart contracts and alternative due diligence;
- investment management, including advanced algorithms, cloud computing, capability sharing, open-source information technology, automated advice and management, and social and retail algorithmic trading;
- fundraising and fund disbursement, including P2P lending, alternative adjudication and third-party application programming interfaces;
- insurance, including sharing economy, autonomous vehicles, digital distribution, securitisation and hedge funds;
- market support, including machine-readable artificial intelligence or machine learning, machine readable news, big data, social sentiment, market information platforms, automated data collection and analysis;
- other digital finance supporting activities, including social and eco-crowdfunding, sharia digital financing, e-waqf, e-zakat, automated digital advisory and credit scoring; and
- other financial services activities, including invoice trading, vouchers and products using blockchain-based applications.

Nevertheless, the above does not specifically regulate crowdfunding activities for cryptoasset offerings.

*Law stated - 30 January 2023*

## **Transfer agents and share registrars**

### **What laws and regulations govern cryptoasset transfer agents and share registrars?**

There are no laws or regulations in Indonesia that explicitly govern cryptoasset transfer agents or share registrars.

*Law stated - 30 January 2023*

## **Anti-money laundering and know-your-customer compliance**

### **What anti-money laundering (AML) and know-your-customer (KYC) requirements and guidelines apply to the offering of cryptoassets?**

Pursuant to Bappebti Regulation 8/2021, cryptoasset physical traders are required to apply know-your-customer (KYC), customer due diligence (CDD) or enhanced due diligence (EDD) principles to ensure the correctness and completeness of the data of cryptoasset customers. The accounts of a cryptoasset customer can only be used once the customer has gone through an identification and verification process, which shall be carried out using regulatory technology (regtech).

The implementation of CDD or EDD must also be carried out in accordance with provisions from Bappebti, as well as provisions of laws and regulations regarding the implementation of anti-money laundering and prevention of terrorism funding programmes. It is also noted that cryptoasset physical traders must verify customers using population administration data from the Ministry of Home Affairs.

Under Bappebti Regulation 8/2021, cryptoasset customers must at least:

- be 17 years old;
- have an Identity card for Indonesian citizens, or a passport and identity card issued by the country of origin of the customer and an Indonesian permanent stay permit or limited stay permit for foreign nationals; and

- use their own funds or cryptoassets and not funds or cryptoassets sourced or owned by other people, or from the proceeds of crime, money laundering, the financing of terrorism or weapons of mass destruction.

Bappebti Regulation 8/2021 also requires cryptoasset physical traders to report any suspicious financial transactions to the head of the Financial Analysis and Transaction Reporting Centre (PPATK), and to comply with other reporting obligations in accordance with laws and regulations governing the implementation of anti-money laundering and prevention of the financing of terrorism and proliferation of weapons of mass destruction programmes.

Bappebti Regulation No. 6 of 2019 dated 11 March 2019 regarding the Implementation of Anti-Money Laundering and Prevention of Terrorism Financing Programmes Related to the Implementation of the Physical Commodity Market in the Futures Exchange (Bappebti Regulation 6/2019) provides that regulations regarding the implementation of anti-money laundering and counter-terrorism financing programmes apply directly to cryptoasset physical traders.

In practice, we note that Bappebti generally views that crypto business actors are free to determine the extent of KYC and CDD implementation for the purpose of customer onboarding, so long as the minimum requirements under Bappebti Regulation 8/2021 have been fulfilled.

*Law stated - 30 January 2023*

### **Sanctions and Financial Action Task Force compliance**

What laws and regulations apply in the context of cryptoassets to enforce government sanctions, anti-terrorism financing principles, and Financial Action Task Force (FATF) standards?

Laws and regulations that apply in the context of enforcing government sanctions, anti-terrorism financing principles and Financial Action Task Force (FATF) standards include:

- Law No. 8 of 2010 dated 22 October 2010 regarding the Prevention and Eradication of Money Laundering Crimes;
- Law No. 9 of 2013 dated 13 March 2013 regarding the Prevention and Eradication of Criminal Acts of Terrorism Financing;
- Head of PPATK Regulation No. PER-02/1.02/PPATK/02/2014 of 2014 dated 27 February 2014 regarding Integrated Service User Information Systems; and
- PPATK Regulation No. 2 of 2021 dated 29 January 2021 regarding the Procedures for Submission of Transaction Reports and Suspicious Financial Transaction Reports Through the GOAML Application for Providers of Other Goods and/or Services;
- Bappebti Regulation 8/2017;
- Bappebti Regulation 6/2019; and
- Bappebti Regulation 8/2021.

Additionally, although not explicitly mentioned under prevailing laws and regulations, it should be noted that the implementation of FATF standards and recommendations are generally permitted, as Indonesian regulations on these matters attempt to adopt certain FATF standards.

*Law stated - 30 January 2023*

## **CRYPTOASSET TRADING**



## Fiat currency transactions

### What rules and restrictions govern the exchange of fiat currency and cryptoassets?

As previously discussed, the exchange of fiat currency and cryptoassets is currently regulated by the Commodity Futures Trading Supervisory Body (Bappebti) under Bappebti Regulation 8/2021 and shall be carried out by a cryptoasset physical trader.

Bappebti Regulation 8/2021 regulates that the scope of activities of cryptoasset physical traders will include the following:

- the selling or buying of cryptoassets and rupiah currency;
- exchanges between one or more types of cryptoassets;
- cryptoassets storage belonging to the cryptoassets customer; and
- transfers of cryptoassets between wallets.

Therefore, the exchange of fiat currency and cryptoassets shall be subject to the requirements and restrictions of a cryptoasset physical trader.

*Law stated - 30 January 2023*

## Exchanges and secondary markets

### Where are investors allowed to trade cryptoassets? How are exchanges, alternative trading systems and secondary markets for cryptoassets regulated?

Based on relevant laws and regulations, it must be noted that Indonesia is yet to establish or regulate any alternative trading systems or secondary markets for cryptoassets.

Nevertheless, cryptoassets may be traded in the cryptoasset physical market at the Futures Exchange, understood as the physical market for cryptoassets and organised using electronic facilities owned by cryptoasset physical traders for the sale or purchase of cryptoasset transactions, whose market supervision is carried out by the Futures Exchange. However, to date, the Futures Exchange for cryptoassets is yet to be established.

*Law stated - 30 January 2023*

## Custody

### How are cryptoasset custodians regulated?

In Indonesia, cryptoasset custodians are regulated as cryptoasset storage managers. Under Bappebti Regulation 8/2021, cryptoasset storage managers are defined as parties who have obtained approval from the head of Bappebti to manage cryptoasset storage to carry out the storage, maintenance, supervision and delivery of cryptoassets.

To provide storage and custody services in Indonesia, Bappebti Regulation 2/2019 provides that cryptoasset storage managers must comply with the following requirements:

- be in the form a limited liability company;
- have adequate facilities and infrastructure to carry out the function of safe, reliable and accountable commodity storage;

- obtain a recommendation from the Futures Clearing Agency; and
- obtain approval from the head of Bappebti.

Further, pursuant to Bappebti Regulation 8/2021, a cryptoasset storage manager must obtain approval from the head of Bappebti and shall fulfil capitalisation, management, manpower and technical requirements. Manpower requirements for cryptoasset storage managers include having employees certified with (1) a Certified Information Systems Auditor (CISA) certificate; (2) a Certified Information Systems Security Professional (CISSP) certificate; and (3) as Certified Information Systems Security Professional (CISSP) experts.

Bappebti Regulation 8/2021 regulates that the Futures Clearing Agency will recommend cryptoasset storage managers as well as the system and mechanisms for the storage of cryptoassets to the head of Bappebti for approval. Cryptoasset storage managers are also prohibited from carrying out business activities other than storing cryptoassets once approval has been obtained from Bappebti, and must be responsible for the cryptoassets they manage. Additionally, Bappebti Regulation 8/2021 states that cryptoassets kept by cryptoasset physical traders are limited to a maximum of 30 per cent of online or hot storage, and at least 70 per cent of cryptoassets shall be stored offline or in cold storage. Such cold storage may be stored at cryptoasset storage managers.

*Law stated - 30 January 2023*

## Broker-dealers

### How are cryptoasset broker-dealers regulated?

Article 1(8) of Bappebti Regulation 8/2021 defines a cryptoasset physical trader as a party that has obtained approval from the head of Bappebti to carry out physical commodity transactions either on their own behalf, or to facilitate customer transactions. As previously discussed, Bappebti Regulation 8/2021 regulates that the scope of activities of cryptoasset physical traders will include the following:

- the selling or buying of cryptoassets and rupiah currency;
- exchanges between one or more types of cryptoassets;
- cryptoassets storage belonging to the cryptoassets customer; and
- transfers of cryptoassets between wallets.

Article 13(3) of Bappebti Regulation 8/2021 further stipulates that cryptoasset physical traders may carry out activities other than those above, based on approval from the head of Bappebti.

To carry out business activities as a cryptoasset physical trader, a party is required to obtain a cryptoasset physical trader licence in the form of cryptoasset physical trader approval issued by the Bappebti. The overall procedure requires fulfilment of certain capitalisation, manpower, and technical requirements, which technically necessitate the cryptoasset physical trader to be in the form of an Indonesian company.

Furthermore, article 12(1) of Bappebti Regulation 2/2019 stipulates that a physical commodity trader must be in the form of an Indonesian company. While the nomenclature is different – cryptoasset physical trader versus physical commodity trader – Bappebti Regulation 2/2019 defines the term ‘physical commodity trader’ in the same way that ‘cryptoassets physical trader’ is defined under Bappebti Regulation 8/2021. Thus, the requirement to be in the form of Indonesian company applies equally to a cryptoassets physical trader, as they are meant to be the same.

In view of the foregoing, it is noted that broker-dealer activities of cryptoassets are not explicitly depicted as a part of the scope of activities of a cryptoasset physical trader. Current laws and regulations do not further regulate

cryptoasset broker-dealers services. Thus, such activity may require further approval from Bappebti.

*Law stated - 30 January 2023*

## Decentralised exchanges

### What is the legal status of decentralised cryptoasset exchanges?

Currently, there are no laws and regulations that explicitly prohibit or allow for activities of decentralised cryptoasset exchanges. Thus, its legal status in Indonesia is still unclear.

*Law stated - 30 January 2023*

## Peer-to-peer exchanges

### What is the legal status of peer-to-peer (person-to-person) transfers of cryptoassets?

Currently, there are no laws and regulations that explicitly prohibit or allow peer-to-peer transfers of activities. Thus, its legal status in Indonesia is still unclear.

*Law stated - 30 January 2023*

## Trading with anonymous parties

### Does the law permit trading cryptoassets with anonymous parties?

No. As stated under Bappebti Regulation 8/2021, the trading of cryptoassets shall be conducted by cryptoasset customers who are individuals. Furthermore, business entities are also explicitly prohibited from trading cryptoassets at licensed crypto exchanges.

In addition to the above, article 27 of Bappebti Regulation 8/2021 also requires cryptoasset physical traders to apply principles of know-your-customer, customer due diligence or enhanced due diligence to ensure the correctness and completeness of the data entry of cryptoasset customers, as well as the background or profile of the cryptoasset customer. The cryptoasset customer account can only be used once the cryptoasset customer has passed the identification and verification process, which shall be carried out based on regulatory technology (regtech), with the qualifying criteria of using face recognition with liveness features integrated with biometric data.

It is also noted that verification of cryptoasset customers must also be conducted by cryptoasset physical traders through connecting to population administration data that is owned by the Ministry of Home Affairs.

*Law stated - 30 January 2023*

## Foreign exchanges

### Are foreign cryptocurrency exchanges subject to your jurisdiction's laws and regulations governing cryptoasset exchanges?

In Indonesia, to offer activities as a crypto exchange or trading platform service in Indonesia, a foreign crypto exchange or provider of the platform is required to have a presence in Indonesia by establishing a local company and obtaining the necessary licence as a cryptoasset physical trader. This is applied in practice where the Bappebti has required certain foreign crypto exchanges who offer their services to the Indonesian market to establish a presence in Indonesia and obtain the required licences.

Bappebti has been seen to block access to foreign crypto exchanges that provide services in Indonesia and require such entities to localise. Such access blocking may be carried out by the Bappebti or the Investment Alert Task Force (SWI). Additionally, it must be noted that based on provisions under the Ministry of Communication and Informatics (MOCI) Regulation No. 5 of 2020 dated 24 November 2020 regarding Private Scope Electronic System Providers, as amended by MOCI Regulation No. 10 of 2021 dated 21 May 2021 (together MOCI Regulation 5/2020), a business actor that is an electronic system provider (ESP) shall be subject to the requirement to conduct ESP registration at the MOCI if the following criteria are met:

- there is an electronic system;
- the electronic system is provided by a private scope ESP;
- the ESP has a portal, site or application that is used for one of the purposes under article 2(2) of MOCI Regulation 5/2020; and
- if the ESP is foreign, it must either:
  - provide its service in Indonesian territory;
  - conduct its business in Indonesia; or
  - its electronic system must be used or offered in Indonesian territory (the ESP registration threshold).

The result of such registration would be an ESP Registration Certificate.

MOCI Regulation 5/2020 provides that both foreign and domestic private scope ESPs are required to register their electronic systems when the ESP operates a portal, site or application that is available through the internet and fulfils any one of the criteria below:

- providing, managing or operating offers or trade of goods or services;
- providing managing or operating financial transaction services;
- transmitting paid digital material or content through the data network either by downloads through portals or sites, transmission via electronic mail or through some other application to the device of the electronic system user;
- providing, managing or operating communication services including but not limited to short messages, voice calls, video calls, electronic mails and conversations in the network in the form of a digital platform, network service or social media;
- providing search engine services, services related to the provision of electronic information in the form of writing, voice, images, animation, music, videos, movies and games or a combination of a part or all of them; or
- processing personal data for operational activities serving the public related to electronic transaction activities.

With respect to the above, the foreign crypto exchange would be required to conduct ESP registration at the MOCI if the foreign crypto exchange fulfils the requirement of:

- providing services within the territory of Indonesia;
- doing business in Indonesia; or
- having its electronic system used or offered in the territory of Indonesia.

Additionally, under MOCI Regulation 5/2020, if a private scope ESP does not conduct the required ESP registration, the MOCI may impose administrative sanctions in the form of access blocking to the foreign entity.

Therefore, the Bappebti and the MOCI may, at their discretion and on a case-by-case basis, consider certain business activities conducted by a foreign entity that has not yet been licensed by or registered with the Indonesian authorities

as conducting its business without the proper business licence.

*Law stated - 30 January 2023*

### Under what circumstances may a citizen of your jurisdiction lawfully exchange cryptoassets on a foreign exchange?

There are no restrictions for Indonesian citizens to exchange cryptoassets at a foreign exchange. If the Indonesian citizen has fulfilled the respective requirements for registration as a customer at these foreign exchanges, there are no sanctions imposed by Indonesian regulatory authorities. Nevertheless, it is likely that the foreign exchange has been blocked from access by the Bappebti or MOCI, and Indonesian citizens are likely to use a VPN to access these platforms.

*Law stated - 30 January 2023*

### Taxes

#### Do any tax liabilities arise in the exchange of cryptoassets (for both other cryptoassets and fiat currencies)?

Pursuant to Ministry of Finance (MOF) Regulation No. 68/PMK.03/2022 of 1 May 2022 regarding Value-Added Tax and Income Tax on Crypto Asset Transactions (MOF Regulation 68/2022), the delivery of the following shall be subject to value added tax (VAT):

- intangible taxable goods in the form of cryptoassets by cryptoasset sellers;
- taxable services in the form of electronic facilities and the provision of services used for cryptoasset trading transactions by organisers of trade through electronic systems (PPMSEs); or
- taxable services in the form of cryptoassets transaction verification services or mining pool management services by cryptoasset miners.

Further, MOF Regulation 68/2022 further states that the delivery of cryptoassets refers to the delivery of cryptoassets by cryptoasset sellers within the customs area or to cryptoasset buyers within the customs area, through electronic facilities organised by organisers of trade through electronic systems, such as:

- the sale and purchase of cryptoassets with fiat currency;
- the exchange of cryptoassets with other cryptoassets (swap); or
- the exchange of cryptoassets with non-cryptoassets or services.

Article 5 of MOF Regulation 68/2022 provides that payable VAT shall be collected and deposited in a certain amount, at:

- 1 per cent of the VAT tariff multiplied by the cryptoasset transaction value, in the event that cryptoasset physical traders are PPMSEs; or
- 2 per cent (of the VAT tariff multiplied by the cryptoasset transaction value, in the event that cryptoasset physical traders are not PPMSEs.

Regarding income tax, article 19 of MOF Regulation 68/2022 imposes the requirement of income tax to:

- cryptoasset sellers;
- PPMSEs; and
- cryptoasset miners.

Article 20 of MOF Regulation 68/2022 further regulates that the imposition of income tax in relation to cryptoasset transactions shall include income from all types of cryptoasset transactions, in the form of:

1. transactions involving payments in fiat currency;
2. exchanges of cryptoassets with other cryptoassets (swap);
3. cryptoasset transactions other than the transactions referred to in (1) and (2);
4. which are conducted through electronic facilities provided PPMSEs.

The above income shall be subject to article 22 final income tax with a tariff of 0.1 per cent of the cryptoasset transaction value, excluding value-added tax and sales tax on luxury goods, as regulated under article 21 of MOF Regulation 68/2022.

*Law stated - 30 January 2023*

## **CRYPTOASSETS USED FOR PAYMENTS**

### **Government-recognised assets**

Has the government recognised any cryptoassets as a lawful form of payment or issued its own cryptoassets?

No, using cryptoassets as payment instruments is strictly prohibited under Indonesian laws and regulations. Pursuant to the Indonesian Currency Law, the rupiah is mandatory for payments, the settlement of other liabilities that must be settled with money and other financial transactions in Indonesia. Similarly, Bank Indonesia (BI) Regulation No. 17/3/PBI/2015 dated 31 March 2015 regarding the Mandatory Use of Rupiah (BI Regulation 17/3) stipulates that any person is required to use the rupiah in transactions conducted within the territory of the Republic of Indonesia.

BI Regulation 17/3 states that the obligation to use the rupiah in every transaction applies to every cash or non-cash transaction conducted in Indonesia, except where specifically exempted. BI Regulation 17/3 also provides several exemptions from the mandatory use of the rupiah, including:

- transactions related to the state budget;
- the acceptance or disbursement of grants from or to foreign countries;
- international trade transactions;
- bank savings in the form of foreign exchange;
- international financing transactions;
- foreign exchange activities performed by banks;
- transactions on securities that are issued by the government in primary and secondary markets;
- other transactions in foreign exchange in accordance with laws and regulations;
- transactions as money changer; and
- the carriage of foreign bank notes to or from Indonesia in accordance with prevailing laws and regulations.

Any violation of the mandatory use of the rupiah in non-cash transactions may be subject to sanctions in the form of a written warning, fines of up to 1 per cent of the transaction value (maximum 1 billion rupiahs), or prohibition from participating in payment traffic in Indonesia, or both.

*Law stated - 30 January 2023*

## Bitcoin

Does Bitcoin have any special status among cryptoassets?

In Indonesia, there are no specific provisions in prevailing laws and regulations that provide special status to bitcoin. In other words, bitcoin is generally treated the same as regular cryptoassets. However, it is noted that bitcoin is specifically referred to by the Commodity Futures Trading Supervisory Body (Bappebti) in the definition of a coin, as regulated under Bappebti Regulation 8/2021.

*Law stated - 30 January 2023*

## Banks and other financial institutions

Do any banks or other financial institutions allow cryptocurrency accounts?

No. Banks or other financial institutions do not allow for cryptocurrency accounts. Pursuant to Indonesian banking law, deposits are defined as funds entrusted by the public to banks based on a fund deposit agreement in the form of giro, deposits, certificates of deposit, savings and or other equivalent forms. Therefore, banks may keep deposits and have accounts in rupiah or foreign currency, but not in cryptocurrency.

*Law stated - 30 January 2023*

## CRYPTOCURRENCY MINING

### Legal status

What is the legal status of cryptocurrency mining activities?

Currently, there are no laws and regulations that explicitly prohibit or allow cryptocurrency mining activities. Thus, cryptocurrency mining activities are generally permitted by relevant regulatory authorities. We are aware of several business actors that conduct such activities in Indonesia.

*Law stated - 30 January 2023*

### Government views

What views have been expressed by government officials regarding cryptocurrency mining?

As mentioned above, we understand that there are no explicit prohibitions regarding cryptocurrency mining business activities in Indonesia. Nevertheless, the Commodity Futures Trading Supervisory Body (Bappebti) has previously relayed that they are aware of these cryptocurrency mining activities in Indonesia and have not seemed to impose sanctions or restrict such activities.

*Law stated - 30 January 2023*

## Cryptocurrency mining licences

### Are any licences required to engage in cryptocurrency mining?

There are no specific business licences issued by the Bappebti that are required for a company to carry out cryptocurrency mining.

For regulatory purposes, each type of business activity an Indonesian company may engage in is assigned a five-digit business classification number from the Indonesian Standard Business Classification (KBLI). As part of its business licence, each Indonesian company will report one or more of these KBLI numbers reflecting the business activities the company will engage in.

The current catalog of KBLI numbers is set out in the Head of the Central Statistics Agency Regulation No. 2 of 2020 regarding the KBLI (the KBLI Regulation). Based on the KBLI Regulation, the following KBLI numbers, based on their description, may be deemed as the applicable business lines of a company conducting cryptocurrency mining:

- KBLI No. 63241 (Blockchain Technology Development Activity); and
- KBLI No. 63122 (Web Portal or Digital Platform with Commercial Purposes) if the crypto mining will be carried out through a digital platform.

The business licensing required for each business activity is determined based on the designated level of risk applicable to the corresponding KBLI number, as stipulated in Annex I of Government Regulation No. 5 of 2021 regarding Risk-Based Business Licensing (GR 5/2021). Pursuant to GR 5/2021, if a foreign investment company carries out cryptocurrency mining, the above KBLI numbers are prescribed with the following risk levels and shall require the following business licences:

- KBLI No. 63241: medium-low risk, requiring a business identification number (NIB) and standard certificate; and
- KBLI No. 63122: medium-high risk, requiring a NIB and verified standard certificate. The NIB serves as a company's registration number and is obtained online from the online single submission (OSS) business licensing platform.

If the cryptocurrency mining activities fulfil the ESP registration threshold, such activities may be required to register as an ESP as required under the Ministry of Communication and Informatics (MOCI) Regulation 5/2020. The result of such registration would be an ESP Registration Certificate.

*Law stated - 30 January 2023*

## Taxes

### How is the acquisition of cryptocurrency by cryptocurrency mining taxed?

Pursuant to MOF Regulation 68/2022, the following sets out VAT and income tax for mining services.

#### VAT

The VAT rate for the delivery of cryptoasset transaction verification services or services for the management of cryptoasset mining groups (mining pool) by cryptoasset miners, or both, is collected by the cryptoasset miners. Such



services shall be imposed with 10 per cent of the general VAT rate, multiplied by the value in money of the cryptoassets received by the cryptoasset miners, including cryptoassets received from cryptoasset systems, namely, block rewards.

## Income tax

The income tax rate for cryptoasset mining shall be subject to article 22 final income tax of 0.1 per cent, which must be self-remitted by the miners.

*Law stated - 30 January 2023*

## BLOCKCHAIN AND OTHER DISTRIBUTED LEDGER TECHNOLOGIES

### Node licensing

Are any licences required to operate a blockchain/DLT node?

Similar to cryptocurrency mining, there are no specific licences or regulations applicable to operate a blockchain/DLT node.

Based on the KBLI Regulation and based on its description, the applicable KBLI number for the operation of a blockchain/DLT node may be KBLI No. 63241 (Blockchain Technology Development Activity).

Pursuant to Annex I GR 5/2021, if a foreign investment company carries out the operation of a blockchain/DLT node, KBLI No. 63241 is prescribed with the risk level of medium-low risk and shall require an NIB and Standard Certificate. The NIB serves as a company's registration number and is obtained online from the OSS business licensing platform.

Furthermore, if the operation of a blockchain/DLT node fulfils the electronic system provider (ESP) registration threshold, such activities may be required to register as an ESP as required under the Ministry of Communication and Informatics (MOCI) Regulation 5/2020. The result of such registration would be an ESP Registration Certificate.

*Law stated - 30 January 2023*

### Restrictions on node operations

Is the operation of a blockchain/DLT node subject to any restrictions?

There are no laws and regulations that explicitly regulate the operation of a blockchain/DLT node.

However, under the Financial Services Authority (OJK) Regulation 13/2018 and its official elucidation, 'other financial services activities' that include blockchain-based applications shall be deemed as digital finance innovations (IKDs). IKDs are generally understood as unregulated financial activities subject to the OJK's prior assessment and pre-consultation through a regulatory sandbox. Further, given the evolving nature of financial services that are technology based, the OJK has established a regulatory sandbox to test the feasibility of services it deems as IKDs. OJK Regulation 13/2018 requires businesses that may fall under the category of an IKD to go through the regulatory sandbox process. Here, the OJK will assess whether companies engaging in these activities are eligible to continue to carry out their business activities in the determined IKD category.

As a regulatory sandbox participant, parties will carry out their business activities in the prescribed categories. During this phase, companies are not limited to conducting testing and marketing activities and are able introduce and innovate technology to be used in the provision of their services. These services shall be provided on a trial-and-error basis and shall be reported to the OJK, without the need to apply for further approval from the OJK. During this period, OJK Regulation 13/2018 provides that regulatory sandbox participants shall be required to:

- inform the OJK of every change made to the IKD;
- commit to disclosing every piece of information relevant to the implementation of the regulatory sandbox;
- attend necessary education and counselling for the development of business within the financial service sector;
- attend every implementation of coordination and cooperation with other authorities or ministries and institutions; and
- collaborate with financial service institutions or parties undertaking activities in the financial services sector.

During the regulatory sandbox period, the OJK will test the feasibility of the business process, business model, financial instrument and governance of the provider. Furthermore, the regulatory sandbox shall be implemented by the OJK for a maximum period of one year, which can be extended by six months if required. The results of the regulatory sandbox tests may result in a:

- recommendation, where the OJK will recommend further registration of the business with the OJK;
- request for improvement, where the OJK will give the provider an additional six months to improve its business as advised by the OJK; or
- removal of the business provider as a regulatory sandbox participant, in effect rejecting the participant's proposed business activity.

Despite the above, it should be noted that blockchain-based applications under OJK Regulation 13/2018 are not further defined or elaborated on and, thus, determining if the operation of a blockchain/DLT node may fall under the category of IKD activities shall be at the discretion of the OJK.

*Law stated - 30 January 2023*

## **DAO liabilities**

What legal liabilities do the participants in a decentralised autonomous organisation (DAO) have?

We note that Indonesia has not acknowledged or regulated decentralised autonomous organisations (DAO) as standalone entities that embody legal power as limited liability companies or other recognised forms of legal entities in Indonesia. Furthermore, we have not seen any statements or official letters from the government authorities relating to DAOs.

*Law stated - 30 January 2023*

## **DAO assets**

Who owns the assets of a DAO?

As stated above, Indonesia has yet to acknowledge DAOs. Thus, there are no further regulations or requirements for the ownership of assets of a DAO in Indonesia.

*Law stated - 30 January 2023*

## **Open source**

## Is DLT based on open-source protocols or software treated differently under the law than private DLT?

Currently, there are no specific laws or regulations in Indonesia that specifically address the use of open-source protocols or software and private DLT.

However, pursuant to OJK Regulation 13/2018 and its official elucidation, open-source information technology and blockchain-based applications are considered as IKD activities and, thus, may be subject to the regulatory sandbox and its requirements.

Despite the above, open-source information technology and blockchain-based applications under OJK Regulation 13/2018 are not further defined or elaborated on, and determining if open-source protocols or software and private DLT may fall under the category IKD activities shall be at the discretion of the OJK.

*Law stated - 30 January 2023*

## Smart contracts

### Are smart contracts legally enforceable?

Preliminarily, the Bappebti does not regulate smart contracts. However, pursuant to the Appendix of MOCI Regulation No. 3 of 1 April 2021 regarding Standard Business Activity and Product Standards on the Implementation of Risk-Based Business Licensing in Post, Telecommunications, and Electronic Systems and Transactions (MOCI Regulation 3/2021), smart contracts are defined under KBLI No. 63241 (Blockchain Technology Development Activity) as an agreement between two parties in the form of a computer code that runs on a blockchain network that is stored in a public network and cannot be changed.

Additionally, pursuant to article 3 of OJK Regulation 13/2018 and its official elucidation, smart contracts are considered as an IKD activity and, thus, may be subject to the regulatory sandbox and its requirements. However, we note that smart contracts under OJK Regulation 13/2018 are not further defined or elaborated on and, thus, determining if smart contracts may fall under the category IKD activities shall be at the discretion of the OJK.

Smart contracts are also now regulated by the PPSK Law, which states that in agreements on transactions in the capital market, money market or foreign exchange market, including transactions involving derivative instruments, parties may use smart contracts as stipulated in laws and regulations regarding information and electronic transactions (article 44(1) of the PPSK Law).

Furthermore, under article 1(17) of Law No. 11 of 2008 dated 21 April 2008 regarding Electronic Information and Transactions, as amended by Law No. 19 of 25 November 2016 (EIT Law), an electronic contract is defined as an agreement between parties made through an electronic system. Article 18(1) of the EIT Law further regulates that electronic transactions through electronic contracts are binding to the relevant parties. Article 44(2) of the PPSK Law further provides that smart contracts or their printouts, or both, may be used as valid legal evidence, as regulated in the EIT Law. The official elucidation of article 44(2) of the PPSK Law further regulates that smart contracts or their printouts, or both, are an extension of valid evidence in accordance with the procedural law in force in Indonesia.

Article 44(3) of the PPSK Law elaborates that the use of a smart contract shall be followed by an agreement that at least contains the terms and conditions regarding the automation of the implementation of rights and obligations based on the smart contract.

Thus, smart contracts may be seen as an 'electronic contract' and, therefore, shall be binding and enforceable, if they fulfil the requirements of a valid and binding agreement under article 1320 of the Indonesian Civil Code, as follows:

- free consent of the parties;
- legal capacity of the parties to conclude an agreement;
- a defined object; and
- a lawful purpose.

*Law stated - 30 January 2023*

## Patents

### Can blockchain/DLT technology be patented?

Generally, blockchain-related inventions can be protected as patents. Pursuant to the Indonesian Patent Law, patents are defined as exclusive rights granted by the state to inventors for their inventions in the field of technology for a certain period of time to carry out the invention itself or provide consent to another party to carry it out. Furthermore, inventions are also defined as an inventor's idea translated into a specific problem-solving activity in the technology field in the form of a product or process or improvement and development of a product or process.

Indonesian Patent Law stipulates that patent holders have the exclusive right to exploit their patents and to prohibit other parties without their consent, from:

1. making, using, selling, importing, renting, handing out, or providing for the sale or rent the patented product; and
2. using the manufacturing process protected by the patent to manufacture goods or other activities stipulated in (1) above.

The Indonesian Patent Law allows patent holders to file claims in the Commercial Court if another party infringes the rights under their patent.

Several blockchain-related technologies have been registered for a patent to the Directorate General of Intellectual Property.

*Law stated - 30 January 2023*

## UPDATE AND TRENDS

### Recent developments

Are there any emerging trends, notable rulings or hot topics related to cryptoassets or blockchain in your jurisdiction?

As discussed above, the Indonesian government has recently enacted Law No. 4 of 2023 dated 12 January 2023 regarding the Development and Strengthening of the Financial Sector (PPSK Law), which provides a change in regulatory authority over cryptoassets from Commodity Futures Trading Supervisory Body (Bappebti) to the Financial Services Authority (OJK), at the latest within two years. The PPSK Law also regulates that the Indonesian government is set to enact a new government regulation regarding this change in authority in no later than six months after the promulgation of the PPSK Law. It is unclear how such changes will affect existing crypto exchanges in Indonesia.

Under the PPSK Law, it must be noted that cryptoassets are now considered a financial sector technology innovation (ITSK). Bank Indonesia (BI) and the OJK shall regulate and supervise the implementation of ITSks in accordance with their respective scope of authority and through coordination. BI and the OJK are also permitted to coordinate with other ministries, institutions and other parties. ITSK providers must also comply with the licensing requirements set by BI and OJK, in accordance with their respective authorities.

Nevertheless, the supervision and regulation of cryptoassets as an ITSK shall be subject to further government regulations or implementing regulations from the relevant government authority.

The amendment of Bappebti Regulation 8/2021 also introduced in article 40A a new provision regarding Supporting Activities of Cryptoasset Physical Market Activities, for example, payment service providers, transaction facility service providers for cryptoassets, or other supporting activities. Such supporting activities may only be performed by parties that have not been licensed by Bappebti as, among other things, a crypto exchange or cryptoasset storage manager. These supporting activities are expected to be further regulated by Bappebti.

Further, Indonesia's Futures Exchange for cryptoassets is yet to be established. Currently, Bappebti Regulation 8/2021 requires a company to obtain a cryptoasset physical trader licence in the form of a cryptoasset physical trader approval from Bappebti to engage in business as a cryptoasset physical trader.

The licensing process under the Regulation involves fulfilling capitalisation, manpower, technical and membership requirements at the Futures Exchange and the Futures Clearing Agency.

However, as the infrastructure for the Futures Exchange and Futures Clearing Agency is yet to be established, in their absence, Bappebti Regulation 8/2021 requires both existing and new cryptoasset physical trader companies first to apply for registration to obtain a cryptoasset physical trader candidate approval. Successful registration allows companies to do business before obtaining the cryptoasset physical trader licence.

*Law stated - 30 January 2023*

## Jurisdictions

	<b>Austria</b>	Schoenherr
	<b>Cyprus</b>	Kinanis LLC
	<b>France</b>	Nomos
	<b>India</b>	AZB & Partners
	<b>Indonesia</b>	SSEK Law Firm
	<b>Israel</b>	FISCHER (FBC & Co.)
	<b>Italy</b>	Lexia Avvocati
	<b>Japan</b>	Nishimura & Asahi
	<b>Liechtenstein</b>	Niedermüller Rechtsanwälte   Attorneys at Law
	<b>Luxembourg</b>	CMS Luxembourg
	<b>Mexico</b>	Ramos, Ripoll & Schuster
	<b>Portugal</b>	Morais Leitão, Galvão Teles, Soares da Silva & Associados
	<b>Singapore</b>	RHTLaw Asia LLP
	<b>South Korea</b>	Bae, Kim & Lee LLC
	<b>Switzerland</b>	MLL Meyerlustenberger Lachenal Froriep Ltd
	<b>Taiwan</b>	Lee and Li Attorneys at Law
	<b>Turkey</b>	SRP Legal
	<b>USA</b>	Nelson Mullins Riley & Scarborough LLP