



Client Alert August 2022

Consumers and Public Protection in Financial Service Sector

Financial Services Authority Regulation of the Republic of Indonesia Number 6/POJK.07/2022 of 2022 on Consumers and Public Protection in the Financial Services Sector (“POJK 6/2022”)

Overview

In response to the increasingly complex and dynamic development of the financial services sector, Financial Services Authority (“OJK”) considers the need to strengthen regulations on consumers and public protection by issuing POJK 6/2022 which was promulgated on 18 April 2022.

This Client Alert aims to discuss POJK 6/2022 as the updated regulation which is mainly focused on protecting consumers and the public in the Financial Services sector. The discussion will focus on: (i) the form of protection provided to consumers and the public in the financial services sector in POJK 6/2022 and (ii) differences in consumers protection arrangements in POJK 6/2022 with the previous OJK regulation related to consumers protection, namely OJK Number 1/POJK.07/2013 of 2013 on Consumers Protection in the Financial Services Sector (“**POJK 1/2013**”).

Key Highlights of POJK 6/2022

It is noteworthy that POJK 6/2022 wholly replaces POJK 1/2013 which was basically focused on 2 (two) major focal points, i.e. (i) information clarity to FSB's consumers which spread out from context of products and/or services to procedures for complaints; as well as (ii) financial literacy. POJK 6/2022 is aimed to set further tone for consumers protection in financial services/business providers (hereafter referred to as "FSB"), particularly on the good principles in providing services to the FSB's clients.

Measures on good faith under POJK 6/2022 is made by the FSB through several actions by which are principally related to validity and accuracy on consumers' information as well as documents provided to the FSB – in connection with their relationship with such consumers and shall also be implemented through written policies and procedures focusing on consumers protection which cover (among others) equal access to every consumer, consumers' asset protection, protection of consumers' data and/or information and mechanism in using consumers' personal data and/or information.

Further, it is noteworthy that there is reiteration for FSB to have a Consumers Protection Unit to implement consumers protection provisions which at least:

- provide socialization to all employees in FSB regarding consumers and public protection;
- coordinate the planning process and implementation of FSB compliance with the provisions concerning Consumers and Public Protection in the financial services sector;
- coordinate with related units for monitoring and evaluation of the implementation of FSB compliant with the provisions concerning consumers and public protection in the financial services sector;
- report to the board of directors regarding the implementation of consumers and public protection, as well as provide recommendations for improvement and development of consumers and public protection; and
- coordinate the preparation and submission of reports related to consumers and public protection in the financial services sector in accordance with the provisions of the legislation in the financial services sector.

New Provisions on Consumers' Protection under POJK 6/2022

In general, the provisions related to consumers protection as described above have been regulated in POJK 1/2013 before being replaced by POJK 6/2022. The differences and changes provided by POJK 6/2022 are as follows:

- a. Requires FSB to submit a self-assessment report to OJK regarding compliance with consumers protection provisions. The self-assessment report must be submitted to OJK every 1 (one) year no later than September 30 of the current year.
- b. There is an obligation for FSBs to conduct testing of new products and/or services to assess risks that have the potential to harm consumers. The loss in question does not include the potential loss inherent in the product and/or service such as the risk of impairment arising from market conditions.

The testing mentioned therein may be conducted in the forms of: (i) survey (ii) marketing research and/or (iii) limited trial of the product and/or service in question. Regarding limited trial, it is the limited trials for licensing of products and/or services within the Banking Industry.

- c. There are more detailed arrangements regarding product and/or service offerings through personal communication facilities after obtaining approval and must fulfil the following obligations:
 - communication can only be made from Monday to Saturday excluding national holidays from 08.00 - 18.00 local time, except upon approval or request of potential consumers or (existing) consumers;
 - inform the name of the FSB and explain the intent and purpose before offering products and/or services from the FSB; and
 - inform the sources of data and/or personal information of prospective consumers obtained by the FSB, in the event that the FSB obtains data and/or personal information of prospective consumers from other parties.

- d. Expansion of the meaning of the prohibition on exoneration clause. POJK 6/2022 adds the form of prohibited clauses, including:
- declare that the consumers are subject to unilateral amendment by the FSB subsequent to the signing of the agreement by the consumers;
 - give authority to the FSB to avoid or limit the validity of a clause;
 - state that the FSB has the authority to interpret the meaning of the agreement unilaterally;
 - state that the FSB limits its liability for mistake and/or negligence of employees and/or third parties who work for or represent the interests of the FSB;
 - limit the rights of consumers to sue the FSB in the event of a dispute related to the agreement; and/or
 - limit evidence that can be provided by the consumers in the event of a dispute related to the agreement.
- e. In order to ensure the implementation of consumers and public protection, OJK is now authorized to file civil lawsuits against FSB. However, it should be noted that the lawsuit was filed based on the assessment of the OJK and not based on a request from the consumer.

Potential Issues

- While POJK 6/2022 provides requirements for testing of a proposed new product to be issued by FSB, we understand that there may be complexities for products which are considered as novelty by OJK (or other relevant authorities) that fall under e.g. regulatory sandbox's framework in OJK – and how to conduct such testing prior to the product's issuance by both the relevant FSB and OJK. Moreover, we also note that POJK 6/2022 does not specify process and limitation (including e.g. threshold of successful testing) and therefore, one can assume that the FSB may structure their own testing procedures as long as the FSB can ensure that such procedures are robust (by taking into account market practice) and follow up with providing with sufficient financial literacy (through necessary trainings etc) to the targeted consumers.
- As for the complaints, we understand that POJK 6/2022 does not elaborate in detailed manner on criteria for evaluating consumers' complaints which can be raised into lawsuits by OJK.

Key Takeaways

POJK 6/2022 has provided more leniency and protection for the existing consumers and potential ones as evidenced by the broadened prohibition of exoneration clauses, obligations to conduct test for new products or service, protection regarding consumers' information and data, and the ability of OJK to file a claim on behalf of consumer. We would expect that OJK might issue follow-up regulations (or circular letters) to explain some generic clauses under POJK 6/2022.

For further information and/or inquiries related to this alert, you may contact:

Cornel B. Juniarto

Senior Partner

Hermawan Juniarto & Partners

Email: cbjuniarto@hjplaw-deloitte.com

Derryan R. Putra

Junior Partner

Hermawan Juniarto & Partners

Email: dputra@hjplaw-deloitte.com

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which are separate and independent legal entities, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

About Deloitte Legal

Deloitte Legal means the legal practices of DTTL member firms, their affiliates or their related entities that provide legal services. The exact nature of these relationships and provision of legal services differs by jurisdiction, to allow compliance with local laws and professional regulations. Each Deloitte Legal practice is legally separate and independent, and cannot obligate any other Deloitte Legal practice. Each Deloitte Legal practice is liable only for its own acts and omissions, and not those of other Deloitte Legal practices. For legal, regulatory and other reasons, not all member firms, their affiliates or their related entities provide legal services or are associated with Deloitte Legal practices.

About Hermawan Juniarto & Partners

Hermawan Juniarto & Partners is a member of Deloitte Legal network. Hermawan Juniarto & Partners provides only legal services, and it is legally separate and independent from other Deloitte entities.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.