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FINANCIAL SECTOR KNOWLEDGE SHARING

# ACCELERATING MOBILE MONEY IN INDONESIA

Technical Analysis of Current Regulations Related to  
Electronic Money Networks in Indonesia

**OCTOBER 2011**

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## ACRONYMS

B2B	business-to-business
KYC	Know Your Customer
MNO	mobile network operator
P2P	person-to-person
PNPM	Program Nasional Pemberdayaan Masyarakat (National Community Empowerment Program)
TNP2K	Sekretariat Tim Nasional Percepatan Penanggulangan Kemiskinan (National Team for Acceleration of Poverty Alleviation)

## FORWORD

The Accelerating Mobile Money Action Plan was completed by the Financial Sector Knowledge Sharing (FS Share) project as part of a broader scope of work commissioned by USAID Indonesia to explore how the Mission might support the development of innovative development solutions, such as mobile money, to increase access to financial services. FS Share and subcontractor Open Revolution conducted research and interviews in Indonesia as part of this scope of work in September and October 2011. This technical analysis of current regulations related to electronic money networks in Indonesia complements the *Accelerating Mobile Money in Indonesia Action Plan, October 2011*. The *Action Plan* proposes several potential pilot activities, among other solutions USAID Indonesia may research and consider, to accelerate the development, adoption and usage of mobile money as a vehicle to transform financial inclusion and achieve broad-based economic growth.

### FS Share Rapid Response Hotline

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## SECTION I. INTRODUCTION

This report discusses the major regulatory impediments to the introduction of electronic money networks in Indonesia and proposes alternatives for overcoming these impediments to permit implementation of several potential pilot activities, among other solutions USAID Indonesia may research and consider, to accelerate the development, adoption and usage of mobile money as a vehicle to transform financial inclusion and achieve broad-based economic growth.

The report also addresses whether the Bank of Indonesia's Electronic Money Regulation and its accompanying Circular contain major regulatory impediments that would preclude or unduly delay implementation of such pilot projects and proposes targeted modifications to the rules that would reduce or remove the impediments and accelerate the regulatory approval process.

This memorandum is based primarily on a review and analysis of the following primary source documents: the Electronic Money Regulation, its accompanying Circular, the Bank of Indonesia's Know Your Customer Regulations, the Law on Fund Transfer, and the foundational banking laws<sup>1</sup>.

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<sup>1</sup> Full citations to this legislation are listed in Table 1 on page 5.

## SECTION II. BACKGROUND

FS Share has identified and proposed features of a potential pilot projects that are based on the use of a mobile telephone platform to provide electronic money services to target underserved and rural populations. These are:

- *Pilot 1: Government conditional cash transfer.* Establishment of an electronic money network involving the Ministry of Social Affairs, Sekretariat Tim Nasional Percepatan Penanggulangan Kemiskinan — National Team for Acceleration of Poverty Alleviation (TNP2K), the post office, either a mobile network operator (MNO) m-wallet provider or a financial institution with mobile phone banking capabilities, and retail outlets and other agents to provide cash-out services for social payments to citizens in rural and underserved, unbanked areas. A variation on this model includes a commitment savings feature.
- *Pilot 2: Salary payment.* Establishment of an electronic money network involving the Ministry of Finance, a designated ministry (e.g., the Ministry of Education for teacher payments), or a large corporation that makes significant cash salary payments (e.g., a tobacco company); an MNO m-wallet provider or a financial institution with mobile phone banking capabilities; and retail chains (e.g., IndoMart), MNO outlets, and bank branches to provide salary payments.
- *Pilot 3: Cocoa value chain payments.* Establishment of an electronic money network involving the USAID AMARTA II project, export companies, cocoa collectors, farm associations, input providers, an MNO m-wallet provider or a financial institution with mobile phone banking capabilities, and local retailers to provide electronic payments to cocoa collectors and farm associations which in turn distribute the funds to farmers through m-wallets as payment for cocoa production. A variation on this model includes a provision of credit feature through which farmers may make electronic purchases of input supplies with automatic drawdown of loan repayments from the credit.
- *Pilot 4: PNPM project-based transfers and payments.* Establishment of an electronic money network to facilitate Indonesia's National Community Empowerment Project (PNPM) in urban and peri-urban areas involving PNPM, designated village councils, an MNO m/e-wallet provider or a financial institution with mobile phone banking capabilities, local retailers/merchants, rural and/or commercial bank branches, local post office branches to provide electronic funds transfers to citizens through village councils and the ability to conduct person-to-person (P2P), bill payment, savings, and merchant purchase transactions electronically.

Each pilot network has several common roles. From a regulatory perspective, these key roles include the funds provider, the entity — either an MNO or a financial institution with mobile phone banking capabilities, that establishes and is responsible for the operation of the m/e-wallet — and the entity or entities that provides cash-out directly to

payees (e.g., heads of household, farmers, employees, etc.). Depending on the pilot, this can include contract agents, retail outlets, MNO branches, post office branches, and others.

## SECTION III. STAKEHOLDER FEEDBACK

In the course of the stakeholder interviews conducted by FS Share, we received input from MNOs, commercial banks, and other parties with an interest in branchless banking and electronic money networks. Their specific key regulatory issues are presented in this section.

### A. MNOs

Because of requirements that limit the provision of cash-out services over electronic money systems operated by non-banks (as explained in the discussion of legal issues below), MNO outlets at present offer only merchant payments; they cannot provide cash-out services unless they have fund transfer and remittance administrator licenses. Telkomsel is interested in registering its own outlets as cash-in cash-out points. It presently offers cash-out only through locations in the IndoMart chain, which has received the proper license from the Bank of Indonesia. Nor does it currently offer direct P2P service. Its goal is to be able to register on behalf of the outlets and to use some of the agreements and monitoring that it does as a matter of course with its outlets to satisfy Bank of Indonesia requirements

Telkomsel is interested in participating in a pilot project sponsored by the Ministry of Social Affairs and Post, but the final decision to participate would require approval from its Telkomsel president.

Wallet size and transaction limits applicable to electric money systems create a disincentive to MNO participation in the pilot programs that target rural and underserved populations

In-person enrollment for a merchant payment electronic money system is not required, and SIM enrollment is permitted if the wallet size and transaction limit are below Rp 5 million and Rp 1 million, respectively.

### B. Commercial Banks

Because of restrictions under fund transfer and know-your-customer (KYC) rules that require a face-to-face meeting for customer enrollment, commercial banks are unable to use agents to conduct enrollment. This creates a disincentive to their participation in pilot programs targeted at rural and underserved populations

Rural banks do not face these restrictions and are permitted to use agent enrollment for customer/user sign up. The KYC regulations for rural banks state that intermediaries may be used if they accept the responsibility for obtaining the KYC data and enter into a legal agreement with the customer under which the customer grants the intermediary the authority to act on his or her behalf. These executed agreements must be submitted together with the customer KYC data and all KYC data from the intermediary. It is



unclear whether the regulator would permit a system under which a single agent enrolled more than a handful of individuals under a contractual delegation of authority from the ultimate customer. Inferentially, however, the language of the regulatory provisions seems to be directed at the enrollment of small groups (permits a family unit) by a single representative. KYC rules applicable to commercial banks do not include similar rules permitting intermediaries to enroll individual customers.

## SECTION IV. LEGAL AND REGULATORY ISSUES

### A. Introduction

These activities involving mobile money are addressed by a variety of Indonesian laws, regulations, and government agency rules that determine the eligibility requirements, rules of conduct, rights and responsibilities, and licensing obligations that apply to each function that takes place in the operation of an electronic money network.

The major relevant laws and regulations are:

**Table 1. Indonesia Legislation Relevant to Mobile Banking**

Relevant Indonesia Legislation	
<b>General Banking Law</b>	<ul style="list-style-type: none"><li>• Indonesian Law No. 7 of 1992 on Banking, as amended by Law No. 10 of 1998</li><li>• Law No. 23 of 1999 on the Bank of Indonesia, as amended by Law No. 3 of 2004</li></ul>
<b>General e-Transactions Law</b>	Law No. 11 of 2008 on Electronic Information and Electronic Transactions
<b>General Law and Regulation on Money Laundering</b>	<ul style="list-style-type: none"><li>• Law No. 8 of 2010 on Prevention and Eradication of Money Laundering (which replaced Law No. 15 of 2002 on Money Laundering as amended by Law No. 25 of 2003)</li><li>• Bank of Indonesia Regulation No. 5/23/PBI/2003 on the Implementation of Know Your Customer Rules for Rural Banks (enacted under Law No. 25 of 2003)</li></ul>
<b>Electronic Money Regulations</b>	<ul style="list-style-type: none"><li>• Bank of Indonesia Regulation No. 11/12/PBI/2009 Concerning Electronic Money</li><li>• Bank of Indonesia Circular Letter No. 11/11/DASP/2009 Concerning Electronic Money</li></ul>
<b>General Law on Fund Transfers</b> <b>Rules on Remittance Administrators</b>	<ul style="list-style-type: none"><li>• Law No. of 2011 on Fund Transfer</li><li>• Bank of Indonesia Regulation No. 8/28/PBI/2006 on the Authorization of Registered Non-Bank Agents to Conduct Remittance Transfers (The electronic money regulation circular refers to the remittance regulation, but we have relied on third-party reports describing its substance, as we have not been able to obtain a copy of the original instrument in English translation.)</li></ul>
<b>Regulations on Card-Based Payment Systems</b>	<ul style="list-style-type: none"><li>• Bank of Indonesia Regulation No. 7/52/PBI/2005 Concerning Operation of Card-Based Payment Instrument Activities</li><li>• Bank of Indonesia Circular Letter No. 7/60/DASP/2005 Concerning Customer Protection and Prudential Principles, and Security Improvement for the Operation of Card-Based Payment Instrument Activities</li></ul>

### B. Initial Points

Indonesian law establishes the following initial points.

- The Bank of Indonesia has the broad regulatory authority and supervisory jurisdiction for the creation and operation of electronic money networks, whether by bank or non-bank operators

- The Bank of Indonesia has the power to provide and issue approvals and licenses for the operation of electronic money systems and services and can require operators thereof to submit reports of their activities
- Prior to enactment of the Electronic Money Regulations and Circular, e-money in Indonesia was mainly regulated by the regulations concerning card-based payment instruments (under the rules for prepaid cards)

Enactment of the Electronic Money Regulations and Circular has attempted to address the major obstacles created by having to apply the payment card legislation's definitions and limits to electronic money, but a number of obstacles remain that would inhibit introduction of the electronic money programs that are at the center of the pilot projects.

### **C. Specific Legal and Regulatory Issues for Electronic Money**

The rules express a preference for bank-led electronic money systems where the e-wallet is linked to an individual customer bank account. For MNOs, the transaction limits and the other rules make it easiest to establish merchant payment systems.

Applied to the proposed pilot activity concepts, the limits and restrictions in the electronic money rules on enrollment, provision of cash-in/cash-out services, and the ceiling limits on e-wallet and transaction size pose numerous obstacles to effective implementation and efficient administration of the electronic money networks and system proposed for the pilot projects. These are discussed below.

#### **C1. Cash-Out**

Under the payment card rules, Bank of Indonesia interpreted the term “payment transaction” to include only retail purchases. Accordingly, when electronic money was regulated under the payment card legislation, customers of e-money services could not cash out stored value from their e-wallets. Therefore, they were required to cancel their entire accounts to cash out funds from their e-wallets. Furthermore, customers could not conduct P2P transfers between account holders.

Under the new Electronic Money Regulations, “electronic money” is also defined as a “payment instrument for Merchant[s],” but the regulations permit “cash advances” on which holders can draw at any time by the holders. However, the value of each advance must be “nominal” and in most cases is strictly limited. The Circular provides in Article VII.B of the Circular lists a maximum transaction value limit of Rp 20 million per month, or (a little over U.S. \$2,200).

These rules partially resolve one of the major issues created when the payment card legislation was applied to electronic money. But the transactional limits are so low that it would be difficult to implement a pilot program with any impactful scale. (P2P transactions are still prohibited under the language of the electronic money regulation unless the provider holds a license as a remittances administrator.)

Any electronic money provider that wishes to provide a cash-out service must obtain a license as a business activity administrator for money remittances. This applies to both banks and non-banks.

The eligibility requirement for non-banks (individuals and legal entities) to obtain a money remitter license is compliance with one of the following:

- The individual/entity has explicit permission under laws or regulations (e.g., banks, PT POS)
- The articles of association explicitly specify fund transfer activities as one of the activities of the business
- The individual/entity has approval from the authority regulating the applicant's particular business

No electronic money system may operate services other than merchant payments unless the issuer of the electronic money is a bank or, in the case of a non-bank, the legal entity fulfills the requirements listed above and obtains a license.

For MNOs that seek to be the issuer of electronic money under any one of the pilot projects, this may require a charter amendment or approval from the telecommunications regulator.

## **C2. Peer-to-Peer Transactions**

The Regulation and the Circular provide for the use of electronic money to transfer funds between holders.

If the e-money issuer uses agents, the agency contract needs to include certain minimum clauses, including a prohibition on agent surcharges to customers, and the agent's obligation to protect customer data privacy.

However, a non-bank institution that wishes to provide for P2P transfers as an electric money provider must also obtain separate licenses under the Bank of Indonesia regulations that apply to remittance administrators, and it must obey the funds transfer regulations.

The limits in these regulations also pose numerous obstacles to effective implementation and administration of the electronic money networks and system proposed for the pilot activities.

One primary obstacle limits the uses of any electronic money system that is organized and operated by a non-bank institution. For P2P transfers, for example, the electronic

money system operator must have a license as a remittance administrator, but only banks are eligible to receive such licenses.

The electronic money Circular states: “Issuer C as a Bank has obtained a license and issued Electronic Money and now wishes to add...a service feature for enabling transfer of funds. *This provision is not valid for an Issuer in the form of an Institution Other Than Bank because the Electronic Money funds transfer additional feature must obtain a license as an organizer of a money remittance business facility*” (emphasis added).

### **C3. The Use of Cash-Out Agents**

Provision of a cash-out service is a funds transfer as described under the Law on Fund Transfers: “Fund transfer is a series of activities starting from an order given by a sender to transfer an amount of funds to a beneficiary named in the fund transfer order to the acceptance of the amount by the beneficiary.” In the case of electronic money, the account is the m/e-wallet administered by the MNO and from which agents then make cash-out payments. The Circular on Electronic Money states that a cash-out facility can only be granted for electronic money that has a transfer of funds facility, which itself requires licensing when it is offered by any non-bank.

Under Article 69 of the Law on Fund Transfers, any non-banking corporations that perform fund transfer activities must be incorporated in Indonesia and have licenses from the Bank of Indonesia.

Therefore, all non-bank cash-out agents in an electronic money system must be incorporated businesses in Indonesia, and they must be licensed separately by the Bank of Indonesia. In contrast, separate Bank of Indonesia approval is not required for any bank that wishes to provide fund transfers, given that fund transfer is a banking activity that commercial banks already have regulatory approval to offer.

Additionally, under Article 3 of the Bank of Indonesia’s Funds Transfer Circular, a money transferor is not permitted to use agents to engage in money transfers activities: “A money transferor may only engage in money transfer activities through its own network or through a network provided by an operator based on collaboration between the money transferor and operator.”

To serve rural populations that may be unbanked or do not have access to a nearby bank branch, electronic money systems require a network of non-bank agents to provide cash-out services. Many of these may be small, unregistered “trading-as” sole proprietorships, not incorporated businesses. But, under the rules, they would be prohibited from performing cash-out services.

## **C4. KYC Rules and Other Prudential Issues**

### **Customer Identification Issues**

Many of the prudential requirements applicable to the payment card and funds transfer regimes are transposed to the electronic money regime for obvious prudential reasons.

This includes KYC rules for accepting and identifying customers enacted under the laws against money laundering. The Bank of Indonesia KYC regulation specifies the KYC requirements for commercial banks and lists a government-issued identification card, driver's license, or passport as valid documents for KYC compliance.

The Money Transfer Circular requires nonbank money transferors to comply with the following KYC procedures:

- Identification and verification of sender and/or recipient identities at the time of the funds transfer. This can be done through the government-issued ID card, a driver's license, or a passport.
- Re-identification and re-verification of the sender and/or recipient if
  - The transfer exceeds the value of Rp 100 million (approximately U.S. \$8,600)
  - The transaction is suspicious, or
  - There is doubt regarding the legality of the information provided by the sender/recipient

The Money Transfer Circular also requires money transferors to request information about the source of funds and the purpose of the fund transfer; monitor transactions; and maintain information systems able to identify, analyze, and monitor senders and/or recipients and the transactions in which they engage. Suspicious transactions must be reported.

The Bank of Indonesia Regulation No. 5/23/PBI/2003 on the Implementation of Know Your Customer Rules for Rural Banks (enacted under the prior Indonesian Law No. 25 of 2003 on Money Laundering) (Rural Bank KYC Reg.) states that a customer must present either an identity card, temporary residential permit, driver's license, or a passport.

In some cases, citizens have only provincial identity cards, but the Rural Bank KYC Reg. does not specify whether cards issued by local government or only national cards will be acceptable.

### **Customer Enrollment by Agents**

The rules applicable to commercial banks state that "banks which provide electronic banking services shall meet the prospective customer at least at the time of account opening." The meeting between the bank and the customer can be "held by a special

officer or any person representing the bank to get assurance on the customer identification.”

There is some doubt in the case of commercial banks about whether the “representative” must be an employee of the bank and or may also be a contract agent. If the former, the rule for at least one, face-to-face meeting would be a direct obstacle to the creation of the electronic money networks called for in the proposed pilot activities because sign-up would have to take place at a bank branch.

A rural bank is permitted to open accounts and fulfill its obligations under the Rural Bank KYC Reg. by dealing with an intermediary authorized by the ultimate customer to open an account on his or her behalf. In that case, the intermediary must present the identification of the ultimate customer, the identification of the authorized intermediary, and documents establishing the legal arrangement between the customer and the intermediary. In this case, MNO branches or representatives could enroll customers in a bank account underlying the m/e-wallet. This may be very difficult for pilot activities because of their focus on rural populations who may live far away from the nearest bank branch or may not be willing to enter traditional bank branches for any number of reasons, including mistrust.

The enrollment question is more difficult to answer when the only bank account in play is the electronic money pool in which a non-bank institution such as an MNO establishes m/e-wallets for individual customers. The electronic money regulations allow for individual accounts of very small size that are not linked to individual bank accounts.

## **C5. Value Limits**

Nonbank electronic money issuers have to place 100 percent of the float in a commercial bank, where they can choose among a savings account, a current account, or a time deposit account.

The E-Money Regulation and E-Money Circular require nonbanks to obtain a license to act as an issuer if the amount of the float under management has reached — or is expected to reach — Rp 1 billion (approximately U.S. \$100,000).

The largest aggregate customer transaction value limit is Rp 20 million in any one month.

The rules of the Circular also state that the wallet size limit is Rp 1 million for unregistered electronic money (total float below Rp 1 billion) and Rp. 5 million for registered electronic money

In their applications, these rules require customers to constantly top up or “recharge” their wallet accounts. This could inhibit the use of the systems proposed for the pilots.

## **C6. Licensing Issues**

Non-banks must be limited liability companies to participate in electronic money systems, and all participants must be licensed

This may require some participants in the pilot programs to establish separate subsidiaries with charters that permit them to engage in electronic money networks.

The licensing procedures are detailed, complex, and require extensive documentation. In a case where the proposed principal in the electronic money system is not a bank, the following documents are required in the license application:

- A company profile that contains the principal's activity plan
- Copies of the deed of establishment of the limited liability company
- The proposed roles and responsibilities of, and business arrangements with, the issuer, acquirer, clearing operator, final settlement operator, and/or other parties
- The qualifications of the issuer, acquirer, clearing administrator, final settlement administrator, and/or other parties in the network
- The operating procedures of each party in the system
- A cooperation implementation plan with the issuer, acquirer, clearing operator, final settlement operator, and/or other parties
- The proposed business case for the system, including existing market potential, competitors, populations and areas to be served, an implementation plan, and target revenue forecasts
- Projected results for the first year of operations
- An IT proof of concept and audit of the technology system by an auditor showing compliance with security requirements
- A disaster recovery and business continuity plan
- A written recommendation from a supervisory authority if the non-bank principal is regulated
- A proposed cooperation agreement among the properly licensed limited liability companies that will serve as the principal, issuer, acquirer, clearing processor and/or end settlement processor in the proposed electronic money system, showing:



- Proof of legal instruments
- Covenants permitting the use of the network by all parties to issue electronic money
- Rights and obligations of each respective party
- Cooperation implementation plan
- Cooperation period
- Dispute resolution mechanisms

The Circular to the Bank of Indonesia regulation contains separate and detailed application and document submission requirements for the issuer, the acquirer, clearing operator, and final settlement operator in the proposed system.

The regulations do not appear to provide for the submission of a single application for multiple licenses. This burden and the related expense may inhibit the willingness of banks and non-banks to expand their electronic money operations beyond merchant payment services. This is especially the case for documents that are required to be submitted with all license applications whose required contents appear to have only minor variations.

#### **C7. Technical Issues**

Article 27 of the E-Money Regulation requires e-money providers to provide systems that can be connected to other e-money systems. Article X of the E-Money Circular reiterates this requirement.

For the purpose of a pilot project, which is necessarily time limited, this obligation may create an unnecessary expense and burden on the MNO participant.

## SECTION V. SUMMARY OF CONCLUSIONS

The long and complex Electronic Money Regulation and its accompanying Circular reflect a heightened concern with prudential risks associated with m-banking and electronic money.

The licensing scheme in the Regulation and Circular require the issuance of separate, individual licenses for the principal, issuer, acquirer, clearing processor, and end settlement processor. This disaggregates the roles in an electronic money network when, in fact, it is more likely that individual parties in an electronic money network are likely to be responsible for multiple roles. Yet the regulations do not permit submission of a consolidated application. The simpler licensing models that exist in other countries still manage to satisfy the prudential and liability concerns that are the foundational policy concerns in the Indonesian regulations.

Apart from their complexity, the Regulation and Circular create substantive rules that erect barriers to electronic money services that do not target merchant payments by higher-end banked customers. These barriers are a strong disincentive for banks and businesses to participate in electronic money projects that are targeted on lower-end, unbanked customers from rural and underserved populations, such as the proposed pilot projects currently under consideration.

For example, to participate in a project focused on poor populations in rural areas and meet the face-to-face customer enrollment requirement, a commercial bank would have to incur the expense of establishing some sort of mobile branch that would travel to rural communities to conduct sign-up.

In another example, under the Regulation and Circular an entity that wished to participate in an electronic money project — if it were not already established as an LLC — would have to incur the expense and delay necessary to establish an LLC subsidiary to participate in one of the defined electronic money rules. Bank of Indonesia rules do not provide for an alternate, clear, and strict accounting separation for the electronic money activities, insurance requirements, or the creation of some other kind of special-purpose vehicle that fulfills the policy concerns that underlie the LLC requirement.

The float limits that separate registered and unregistered electronic money (Rp 1 billion, or approximately U.S. \$112,000) create a clear incentive to limit the total size of an electronic money system and focus it on merchant payments for small consumer purchases to avoid the stricter scrutiny and more detailed regulatory requirements that apply to registration of floats above Rp 1 billion.

The wallet size and transaction limits in the Regulation and Circular create a clear incentive to limit the types of transactions to merchant payments for small consumer purchases.

- For registered electronic money, the total e-wallet size limit is Rp 5 million (approximately \$563.83).
- For unregistered electronic money, the e-wallet size limit is Rp 1 million (approximately \$115).
- For both registered and unregistered electronic money, the transaction value limit in any one month is Rp 20 million (approximately \$2,255)

To be effective, these limits create a requirement for frequent account recharge, since an account holder can have no more than \$563 (registered) or \$115 (unregistered) in his e-wallet at any one time, even though over the course of a month he or she is permitted to make transactions worth \$2,255 in aggregate. These rules create a clear incentive to limit the total size of an electronic money system and focus it solely on merchant payments for small consumer purchase.

The e-wallet and transaction value limits should not pose a problem for certain proposed pilot activities, since the payments per user in any one month will be well under the limit. But the total number of enrollees under any such program offered by a non-bank will be significantly limited by the float limit of \$112,000 if the electronic money is unregistered.

The rules that apply to fund transfers and handling of remittances — which electronic money providers must follow if they provide cash-out/cash-in services — limit the ability of banks and non-banks to participate in electronic money systems together. This is because, while there is no restriction in the language of the Regulations and Circulars on joint participation, the more burdensome licensing rules apply once a non-bank is involved. Thus, we are informed by some banks that they are prohibited from doing business with non-banks and must provide cash-outs from a branch.

Another key obstacle to implementing the proposed pilot activities is that all agents that handle money exchanges must be incorporated businesses under the fund transfer rules. The proposed pilot activities are all premised on geographical proximity to cash-out agents that are part of the network, but many of these are small, sole proprietorships that are not registered businesses.

## SECTION VI. RECOMMENDATIONS

- The Bank of Indonesia rules and regulations that contain impediments and disincentives to implementing pilot activities to accelerate and extend the use of mobile money are rules of general application. Modifying these regulations to facilitate implementation of the pilot activities would require changing the rules applicable to *all* electronic money networks. This time-consuming process could delay the development of the pilots for more than a year — assuming that consensus could be reached and the Bank of Indonesia could be persuaded to accept modifications.
- Therefore, to facilitate the pilot activities, including those proposed by FS Share as feasible, it is suggested that a separate regulation on pilot projects be added to the Bank of Indonesia regulations to enable government-sponsored pilot projects to take place under rules with relaxed procedures and the use of alternative mechanisms to fulfill the prudential policy concerns.
- The proposed rules would provide for streamlined consideration and issuance of provisional licenses to geographically and time-limited pilot projects sponsored by a government ministry.
- Additional safeguards in the form of heightened reporting and monitoring should be included.
- If the relaxed rules for pilots prove effective, an advantage of this approach is that they can be used as a source for the amendment and medication of the rules as they apply to all.
- If this approach is approved, a draft proposed decree or regulations will be circulated among the parties for discussion.

## **ANNEX A. OUTLINE OF A [DRAFT] REGULATION**

### **A. Introduction**

It is not clear whether this proposed instrument could be issued as a Presidential Decree or must be issued by the Bank of Indonesia. Under Indonesia Law No. 12/2011 on the Establishment of Legislation, any instrument used to modify the Electronic Money Regulation must be a regulation or an instrument of higher order.

Article 8 of Law No. 12/2011 provides for the Bank of Indonesia to create regulations, provided they are issued under a Law or instrument of higher order. The Electronic Money Regulation is issued under the Law of 1992 on Banking, the Law on Bank Indonesia (which gives the Bank of Indonesia its regulatory authority), and the Law on Limited Liability Companies, among others. Clearly, therefore, the Bank of Indonesia would have the authority to issue a regulation modifying its own prior regulation.

The hierarchy of laws in Article 7 of Law No. 12/2011 also includes Presidential Decrees. These can be issued by the president when a law provides for their issuance or when such a regulation is necessary to implement government power in the executive branch. Since the proposed regulation for pilot projects would involve activities by other ministries and agencies, including the Ministry of Social Affairs, Ministry of Finance, Ministry of Education, and post office, the instrument could arguably also be issued as a presidential decree.

Either way, regulations or presidential decrees are not normally adopted unless they are included in the government's regulatory plan for the year. However, in certain cases, ministries, non-ministerial government entities, or the president may propose regulations outside the scope of initial program. In such an event, a governmental regulation is created either due to the lack of coverage of the laws on the given subject matter or because of the need to provide further guidance for their implementation.

The following is an outline of the proposed possible content in a decree.

## B. Outline<sup>2</sup>

### **BANK INDONESIA REGULATION OR PRESIDENTIAL DECREE**

The [Governor of the Bank of Indonesia or the President of the Republic]:

Considering:

- a. Recitals about the development by the Bank of Indonesia of a regulatory regime for the implementation of Electronic Money
- b. Recitals about the importance of electronic money to the fulfillment of the important social policy objectives for the relief of poverty and the greater integration of citizens in rural communities in Indonesia into the economy
- c. Recitals about the particular program or programs that are the subject of the pilot

In view of:

1. Recital to Electronic Money regulations
2. Recital Fund Transfer regulations
3. Recital to Remittance Administrator regulations
4. Recital to Money Laundering Law and Know Your Customer regulations
5. Recital to the laws and regulations under which the other involved Ministry administers and disburses the payments at issue or has authority to develop pilot programs involving non-government agencies [e.g., the cocoa farmers] HAS  
DECREED:

**Enactment of: Regulation Providing Procedures for the Approval and Provisional Licensing of Government-Sponsored Public-Private Projects to Deliver Social Payments to Rural and Underserved Populations using Electronic Money**

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<sup>2</sup> This draft is meant for discussion purposes and is based on an assessment of best practices. The provisions have not been fully vetted against the English translations of the legislative instruments extant in Indonesia. The objective is to lay out the concepts of streamlined consideration and relaxed substantive and procedural rules for pilot projects.

## **CHAPTER 1**

### **GENERAL PROVISIONS**

#### **Article 1 — Object and Purpose**

General statement of the need for the use of electronic money to deliver the services proposed in the pilots; a recognition that there are impediments in the existing regulations that would prohibit the timely introduction of the pilot programs; the mechanism in this regulation provides for procedures that are designed to enable and facilitate the timely introduction of pilot programs for electronic money under the auspices of the Ministry of \_\_\_\_\_, in cooperation with the Ministry of \_\_\_\_\_, the Ministry of \_\_\_\_\_, and the Ministry of \_\_\_\_\_; that these rules do not weaken the legitimate prudential concerns necessary to provide for the validity, reliability, security, and responsibility for electronic money systems.

#### **Article 2 — Definitions**

1. Add new definitions as appropriate.
2. Terms used in this [Decree/Regulation] that are defined in the existing Electronic Money Regulation shall have meanings assigned to them therein.

#### **Article 3 — Scope of Application**

General description of the type of pilot projects to which the instrument applies.

#### **Article 4 — Additional Regulations**

All the other provisions of the Electronic Money Regulation, and the related regulations concerning electronic money activities (fund transfer, cash-in/cash-out, remittances, etc.) remain in full force and effect and will apply to the pilot project, unless a provision is specifically modified by operation of this [Decree/Regulation].

## **CHAPTER 2**

### **ELIGIBILITY**

#### **Article 5 — Qualifying Pilot Projects**

1. Must be government-sponsored, which shall be evidenced by a written statement of the minister
2. Must be implemented and end within two years from the start date, and extensions or permanent continuation of the pilot shall require an additional license from the Bank of Indonesia under the applicable regulations

3. Population to be served must meet the requirement that they are poor, underserved, unbanked, or residents of rural areas that do not have access to traditional banking and other financial services<sup>3</sup>, as designated by the Minister of Social Affairs in his written sponsorship statement
4. Pilot projects must be limited in their geographic scope to a particular region
5. Must present a Cooperation Agreement executed by the parties that identifies the purpose of the project, how the project t will operate, identities and roles of each party, including any donor support provided.

### **Article 6 — Consolidated Application**

The application for pilot project approval shall contain all of the information required by the Electronic Money Regulation, but a single consolidated application for multiple licenses may be submitted by the sponsor Principal provided that the roles of Issuer, Acquirer, and Clearing and End Settlement Processor are clearly identified and supported by the information required thereunder.

A party may serve in more than one role, and shall not be required to provide duplicate information.

## **CHAPTER 3**

### **RELAXED RULES FOR SPONSORED PILOT PROJECTS**

#### **Article 7 — Unregistered Businesses as Cash-Out Agents**

Notwithstanding the provisions of the regulation on [insert name and citation] concerning eligibility requirements applicable to the appointment of cash-out agents in an Electronic Money system and/or member network, the rules in which require contract cash-out agents to be registered business, individuals that operate unregistered small and micro enterprises as sole “trading-as” proprietorships (unregistered cash-out agents) may serve as agents under contract to a “Principal,” provided that the following requirements are met by the Bank or Non-Bank Institution that has taken the responsibility to manage the Electronic Money system and/or member network:

Parties desiring to serve as unregistered cash-out agents shall provide the Principal with a signed and witnessed or notarized application, the form and substance of which shall be subject to approval by the Bank of Indonesia before it is entered into use that contains the following information:

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<sup>3</sup> The target population for pilot activities can be amended by concerned stakeholders.



- X.1.1.1 Name of the sole proprietor.
- X.1.1.2 Full address of the sole proprietor.
- X.1.1.3 The “trading-as” name of the unregistered business.
- X.1.1.4 The full address and location of the unregistered business.
- X.1.1.5 The national identity card number of the proprietor.
- X.1.1.6 The taxpayer identification number of the proprietor.
- X.1.1.7 At least one other form of personal identification, such as:
  - i. Passport
  - ii. Driver’s License
  - iii. Birth Certificate
  - iv. Provincial identity card
  - v. Specify Other
- X.1.1.8 Two (2) current, passport-sized photographs.
- X.1.1.9 Fingerprints.
- X.1.1.10 A sworn declaration that the proprietor does not have a criminal record.
- X.1.1.11 A sworn declaration that the proprietor has not declared bankruptcy or been found liable for any civil judgment related to financial misfeasance or malfeasance.
- X.1.1.11 Copies of any exiting licenses or permissions related to the sole proprietorship.
- X.1.2 A copy of the completed application shall be affixed to agent contract with the Principal. The original shall be forwarded to the [insert name of department] of the Bank of Indonesia.
- X.1.3 Cash-out agent contracts with sole “trading-as” proprietorships may not take effect until a police background check of the applicant has been conducted, and the [insert name of department in the Bank of Indonesia] shall arrange for the background check to be completed within thirty (30) days after the submission of the application.
- X.1.4 The existence of criminal background (prior conviction of any felony or a misdemeanor involving financial misfeasance or malfeasance), bankruptcy, or a prior civil judgment related to financial misfeasance or malfeasance shall

disqualify the proprietor of an unregistered business from serving as an unregistered cash-out agent.

### **Article 8 — Contracts with Unregistered Cash-Out Agents**

- XX.1 Contracts with unregistered cash-out agents shall provide for:
  - XX.1.1 SIM registration of the unregistered cash-out agent, which data shall be stored by the Principal, or by a member of the Electronic Money system and/or member network acting on its behalf, and be made available to the [insert name of department in the Bank of Indonesia] upon request.
  - XX.1.2 Prudential requirements, including the obligation to abide by the know-your-customer rules that are part of the Electronic Money system and/or member network.
  - XX.1.3 The following additional requirements:
    - XX.1.3.1 [Insert other requirements from the Electronic Money Circular, KYC Regulations, etc.]
    - XX.1.3.2 [Insert other requirements from the Electronic Money Circular, KYC Regulations, etc.]
- XX.2 The Principal shall be liable for damages resulting from all acts or omissions of its unregistered cash-out agents and is required to take out a policy of insurance therefore in the face amount of at least five (5) times the total average weekly cash balances administered by unregistered cash-out agents, a copy of which executed and in-force policy shall be provided to the [insert name of department in the Bank of Indonesia]. Principals may elect to self-insure, but shall segregate sufficient funds for this purpose in the amounts defined in the previous sentence, and shall provide evidence thereof to the [insert name of department in the Bank of Indonesia].

### **Article 9 — Reporting and Monitoring of Unregistered Cash-Out Agent Activities**

- XXX.1 Every month.
- XXX.2 Contents of report to include:

### **Article 10 — Float Limits**

Limit rules to be defined based on pilot project design.

### **Article 11 — Wallet Size Limits**

Limit rules to be defined based on pilot project design.

### **Article 12 — Transaction Limits**

Limit rules to be defined based on pilot project design.

### **Article 13 — Transaction Limits**

Additional reporting and monitoring requirements will be necessary to insure that security a prudential principles are followed.

A steering committee consisting of members from the sponsoring government body and the Bank of Indonesia should be established.

Principal of electronic money pilot project is to attend all steering committee meetings.