New BI Currency Regulations

On March 31, 2015, Bank Indonesia issued Bank Indonesia Regulation No.17/3/PBI/2015 regarding Obligation to Use Rupiah within the Territory of the Republic of Indonesia (hereinafter referred to as "**PBI 17/3**"). This PBI 17/3 come into force on the date of promulgation, i.e. March 31, 2015.

PBI 17/3 requires using of Indonesian Rupiah (IDR) for cash and/or non-cash transactions, covering (a) transaction that has the purpose of payment; (b) settlement of other obligations that must be fulfilled with money; and/or (c) other financial transactions, which are carried out within the territory of the Republic of Indonesia (the obligation to use Rupiah currency for non-cash transactions shall come into effect on July 1, 2015). In principle, it does not apply to cross border transactions.

The above mandatory requirement does not apply to:

1) specific transactions in the framework of implementing the government revenue and expenditures budget;
2) grants to be given to, or received from, an offshore party;
3) international trade transactions covering activities relating to:
   (i) export and/or import of goods into or from outside of the custom areas of the Republic of Indonesia.
   (ii) trade of services beyond the borders of Indonesia, by way of cross-border supply and consumption abroad.
4) foreign currency bank deposits;
5) international financing transactions; or
6) other transactions which are allowed to use foreign currency pursuant to a Law.

PBI 17/3 also provide provisions (i) requiring ascribing of value/price/quotation of offered goods and/or services in (only) Rupiah currency for domestic transactions, and (ii) prohibiting a refusal to accept Rupiah currency as payment or in settlement of obligations within Indonesia unless there are doubts over the authenticity of the Rupiah currency (bank notes) for cash transactions, or it has been agreed in writing (that the payment or settlement of the obligations will be in a foreign currency), to the extent that the agreement relates to the transactions which are exempted as referred to above, or strategic infrastructure projects which have been approved by Bank Indonesia.

Exception of the requirement to accept payment in Rupiah also applies to agreements relating to any non-exempted transactions or transactions that are not related to strategic infrastructure project entered into prior to July 1, 2015, and will remain in force up until the expiration date of the agreement.

Violations of the obligation to use Rupiah in a cash transaction; and/or prohibition from refusing payment or settlement in Rupiah currency, are subject to the criminal sanctions as referred to in Article 33 of Law No. 7 of 2011 regarding Currency (imprisonment of a maximum of one year and monetary penalties of a maximum of Rp 200 million).

Violations of the obligation to use Rupiah in a non-cash transaction are subject to administrative sanctions of a written warning, penalties in the form of an obligation to pay of 1% (one per cent) of the transaction value up to a maximum of Rp 1 billion, and/or prohibition from participating in payment activities.

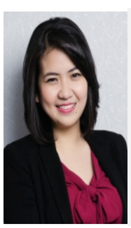
Violations of the obligation to specify the value or prices of goods and/or services in Rupiah currency and submit reports, information, and/or data when required, are subject to administrative sanctions in the form of a written warning.

In addition to the abovementioned administrative sanctions, Bank Indonesia may issue a (letter of) recommendation to the relevant institution to take action in accordance with its authority.

Lucyana Delarosa S.H.

Mochtar Karuwin Komar Law Firm
14th Floor WTC 6 Kav. 31 Jl. Jend.
Sudirman Jakarta 12920
P.O. Box 2844 Jakarta 10001

New POJK: Risk Management (RM) for Non-Bank Financial Institutions



Angel Brigitta S. Rumondor

Mochtar Karuwin Komar Law Firm
14th Floor WTC 6 Kav. 31 Jl. Jend.
Sudirman Jakarta 12920
P.O. Box 2844 Jakarta 10001

Risk management is "the identification, assessment, and prioritization of risks (defined in ISO 31000 as *the effect of uncertainty on objectives*) followed by coordinated and economical application of resources to minimize, monitor, and control the probability and/or impact of unfortunate events or to maximize the realization of opportunities" (Antunes, Ricardo; Gonzalez, Vicente (3 March 2015). "*A Production Model for Construction: A Theoretical Framework*". *Buildings* **5** (1): 209–228).

At a certain point, companies recognized that it was possible to manage risks which were implicit in their given business model. Risk managers could thus establish measures to control risk and thereby arrive at risk financing. Loss control efforts were initially centered on internal risks, and as a result, managers looked for insurance to cover these liabilities. However, over time, risk managers broadened their focus to account for external risk which was connected to and/or caused by external stakeholders.

In addition, risk communication has become more and more important, as companies find themselves dealing with a public with access to more information, which is exchanged at a much faster rate, than ever before. Consequently, in our times, there is a commensurate higher level of accountability that business players are held to.

Sophisticated means are now available to determine and forecast losses and risk. This combined with society's higher expectations has had a great impact on increasing claims. To keep up with these innovations, governments are responding by increasing the scope of regulations on the management and monitoring of risk.

It is in this spirit that the Financial Services Authority (OJK) issued Regulation No.1/POJK.O5.2015 on implementation of Risk Management for Non-Bank Financial Institutions which will come into force on 1 January 2016. The regulation provides guidelines for companies operating in the insurance industry (i.e. insurance companies and insurance brokers), pension funds and financing companies ("**Institutions**") to implement procedures and methods to identify and ultimately control risk.

Institutions must manage various risks depending on their business models and objectives. The POJK stipulates that Risk Management will include the following:

a Supervision of the directors, commissioners or other equivalent parties;
b Adequate policies, procedures, and limitations on determination of risks as well as processes to identify, monitor, measure and control risk; and
c Availability of Risk Management IT and internal control systems.

Risk Management applies to:

	Types of Risk
a	**Strategic risk** (the strategy adopted by the company has failed to reach the institution's goals)
b	**Operational risk** (the human resources or IT or internal systems have been mismanaged leading to failure)
c	**Asset and liabilities risk** (the assets and liabilities have been mismanaged in such a way that the institution is at risk)
d	**Managerial risk** (a lack of competence or integrity on the part of the directors or commissioners had led to losses)
e	**Good governance risk** (a lack of good governance has led to losses and/or has exposed the company to risk)
f	**Funding support risk** (Insufficient funds have been allocated to meet funding needs)

Every institution must implement guidelines for its Risk Management system which must be evaluated every two (2) years (at a minimum) or when a significant change in the RM system is made. Institutions must assess their Risk Management system as of 31 December every year, and such self-assessment must be reported to the OJK on 28 February of the following year. Such self-assessment report will be used as the basis for the OJK to determine the level of risk.

Analysis

In the light of the foregoing, we can conclude that the recent regulation from the OJK highlights the importance for the executive level to be intimately involved in Risk Management, Risk Visualization and Risk Communication. In the past RM was pushed down to mid-level management, but the regulator's focus on its importance (and the heavy weight of sanctions for neglecting it) supports our view that top level executives must take an active interest. The inclusion of **Good Governance Risk** in the new POJK: i.e. *"failure to implement good governance and or inaccurate management methods, controls and the attitude of other related parties in the institution"* is the pivot that shifts the balance of responsibility to upper management in this regard.

Nota bene as well that one of the sanctions for failure to implement sufficient risk management is another fit and proper test. This is yet another reason to conclude that this POJK is of interest to upper level managers.