



NEWSLETTER

June 2019

OFFSHORE LOANS TO INDONESIAN NON-BANK COMPANIES

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Bank Indonesia (“BI”) Regulation No. 21/2/PBI/2019 on Reporting of Foreign Exchange Flow Activities dated January 7, 2019 (“**BI Regulation 21/2**”) came into effect on March 1, 2019. BI Regulation 21/2 partially revoked BI Regulation No. 16/22/PBI/2014 on Reporting of Foreign Exchange Flow Activities and Reporting of the Implementation of Prudential Principles on Managing Offshore Loans to Non-Bank Companies dated December 31, 2014 (“**BI Regulation 16/22**”). With effect from March 1, 2019, BI Regulation 21/2 covers the reporting of foreign exchange flow activities (including offshore loans and risk participation transactions) while BI Regulation 16/22 only covers the reporting of the implementation of prudential principles on managing offshore loans to non-bank companies.

Offshore lenders should now take account of the following issues when structuring loans to Indonesian non-bank companies:-

Reporting / Filing Requirements

The requirements for the reporting / filing of offshore loans by Indonesian residents, including Indonesian non-bank companies, are now as follows:-

- (1) BI
The reporting obligations to BI in relation to foreign exchange flow activities (including offshore loans) are set out in Law No. 24 of 1999 on Foreign Exchange Flows and Exchange Rate System as now implemented by BI Regulation 21/2. Indonesian residents who conduct foreign exchange flow activities should report such activities to BI on a monthly basis at the latest by the fifteenth day of the following month through the BI online system. BI Regulation 21/2 provides that BI will issue warning letters to parties who do not comply with the reporting/filing requirements (previously BI Regulation 16/22 provided for the imposition of monetary penalties for failure to comply with the reporting/filing requirements).
- (2) The Ministry of Finance (the “MOF”)
The reporting obligations to the MOF in relation to offshore loans are set out in Presidential Decree No. 59 of 1972 as implemented by Minister of Finance Decree No. KEP-261/MK/IV/5/73 as amended. The reporting to the MOF is carried out manually.
- (3) The Foreign Commercial Loan Team (the “PKLN Team”)
The reporting obligations to the PKLN Team in relation to offshore loans are set out in Presidential Decree No. 39 of 1991 as implemented by PKLN Team Decree No. Kep-05/K.Tim PKLN/1991. The reporting to the PKLN Team is carried out manually.

Prudential Principles Implementation

BI Regulation No. 16/21/PBI/2014 dated December 29, 2014 as amended (“**BI Regulation 16/21**”) requires Indonesian residents, including Indonesian non-bank companies, having offshore loans

denominated in foreign currency to implement prudential principles covering the maintaining of hedging ratios, liquidity ratios and credit ratings. These requirements can be summarised as follows:-

- (a) minimum hedging ratio of 25% of the negative difference between foreign currency assets and foreign currency liabilities which will be due either within 3 months or 3 months to 6 months as of the end of a quarter;
- (b) minimum liquidity ratio of 70%; and
- (c) credit rating of at least “BB-” issued by a ratings agency recognised by the Indonesian financial sector authorities (there are, however, exemptions to the credit rating requirement in certain circumstances).

If the relevant borrower fails to comply with the minimum hedging ratio, the minimum liquidity ratio or the minimum credit rating requirement set out in BI Regulation 16/21, this should not affect the validity or enforceability of the relevant loan agreement and should only result in the issuance of warning letters by BI.

As stated above, BI Regulation 16/22 now only covers the reporting of the implementation of prudential principles on managing offshore loans to non-bank companies. The reporting to BI should be carried out on a quarterly basis through the BI online system.

Withdrawal of Foreign Exchange from Offshore Loans

BI Regulation No. 16/10/PBI/2014 on the Receipt of Foreign Exchange from Export Proceeds and Withdrawal of Foreign Exchange from Offshore Loans dated May 14, 2014 as amended (“**BI Regulation 16/10**”) requires that foreign exchange from offshore loans should be credited to, and withdrawn by the relevant borrower from, an account in the name of the relevant borrower with an Indonesian foreign exchange bank. BI Regulation

16/10 also requires the relevant borrower to report withdrawals of foreign exchange from offshore loans to the extent that such offshore loans are non-revolving in nature and are not used to refinance existing indebtedness.

Other Relevant Issues

- In order to comply with the provisions of Law No. 24 of 2009 on National Flag, Language, Emblem and Anthem, offshore loan agreements should be signed in both the English and Indonesian languages.
- With regard to the choice of law of offshore loan agreements, the only limitation on the parties' choice of law is that the chosen law must have some "nexus" with the transaction.
- With regard to the forum for settlement of disputes under offshore loan agreements, there is no bilateral treaty on the execution of foreign judgements between Indonesia and Singapore. Indonesia has, however, adopted procedures for the enforcement of foreign arbitral awards pursuant to Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution.

If you wish to discuss any issues relating to offshore loans to Indonesian non-bank companies, please contact any of the following MKK attorneys:-

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