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Should you have any questions on any matter contained in M&T Advisory, or other comments in general, please contact us at the emails provided at the end of this article.

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Update on the Terms of Domestic Non-Deliverable Forward Transactions Under Indonesian Law

Continuing its constant effort to encourage liquidity, efficiency and transparency while maintaining prudence in an ever-developing foreign exchange market, and to support and maintain the stability of the Rupiah exchange rate through the advancement of hedging instruments to cover the Rupiah exchange rate risk, Bank Indonesia ("**BI**") has updated its regulation on domestic non-deliverable forward ("**DNDF**") transactions. The previous regulation on DNDF, BI Regulation No. 20/10/PBI/2018 on DNDF, was amended three times, in 2019, 2020 and 2021. Now this regulation has been replaced by Bank Indonesia Regulation No. 24/7/PBI/2022 on Foreign Exchange Market Transactions ("**BI Reg. 24/7/2022**"). Our previous publication on DNDF can be found here.

Bank Indonesia's regulations on foreign exchange transactions in Indonesia are now integrated under BI Reg 24/7/2022. Meanwhile, a more specific implementing regulation on DNDF has been issued under Bank Indonesia Board of Governors Regulation No. 24/11/PADG/2022 on Domestic Non-Deliverable Forward Transactions ("**DNDF Regulation**") which came into effect on 4 July 2022.

The DNDF Regulation covers the overall management of DNDF in Indonesia. It provides, among other things, the definition of a DNDF, the terms of underlying transactions and the documents required, as well as an introduction to the new thresholds for permissible transactions. This Advisory covers the notable amendments to how DNDF are conducted and the salient new provisions of the DNDF Regulation.

The Definition of a DNDF

The definition of a DNDF under the DNDF Regulation is similar to that under the previous regulation. A DNDF, as an alternative hedging transaction in the foreign exchange markets, is defined as a foreign currency against Rupiah forwarding transaction with settlement by calculating the difference between the referred to exchange rate and the agreed to exchange rate.

The Thresholds for DNDF

The DNDF Regulation sets the following thresholds for DNDF transactions:

a. for DNDF purchase transactions: USD100,000 or its equivalent per month per transaction per party in the foreign exchange market; and
b. for DNDF sale transactions: USD5,000,000 or its equivalent per month per transaction.

(the "**Thresholds**")

The impact of the Thresholds is that now banks are required to make sure that the DNDF transactions that they conduct with their customers have an underlying transaction if the nominal value of the DNDF transactions is above the Thresholds. This provides greater leniency than under the previous DNDF regulation, which required all DNDF transactions (regardless of the value) to have an underlying transaction.

Underlying transactions and the documents required

As explained above, underlying transactions are now only required for DNDF transactions above the Thresholds. Under the DNDF Regulation, the underlying transactions required for DNDF above the Thresholds are the following:

i. Current Account (*kegiatan transaksi berjalan*) transactions, which include among others, goods export and import transactions from and to Indonesia, primary revenue transactions, and secondary revenue transactions;
ii. Financial Account (*kegiatan transaksi finansial*) transactions, which include among others, direct investments, portfolio investments and other investments;
iii. Capital Account (*kegiatan transaksi modal*) transactions;
iv. credit or funding facilities provided by banks to Indonesian citizens (which, by definition, include legal entities) for trading and investment purposes;
v. the onshore trading of goods and provision of services, which transactions should be exempt from the obligation to use Rupiah under the Bank Indonesia regulations on the obligation to use Rupiah in Indonesia; and
vi. other permissible underlying transactions determined by Bank Indonesia.

Banks must make sure that the nominal value of a DNDF transaction (which requires an underlying transaction) does not exceed the nominal value of the relevant underlying transaction and the period of a DNDF transaction should not exceed the period of the underlying transaction.

DNDF Contracts

DNDF transactions are to be conducted under a contract. The following are the types of contract that can be used for DNDF transactions:

i. Indonesian Derivative Master Agreements (*Perjanjian Induk Derivatif Indonesia* – "**PIDI**"), a draft sample of which is provided in Appendix I to the DNDF Regulation;
ii. standard contracts issued by the relevant association (such as an ISDA Master Agreement); and
iii. other types of contract, such as foreign exchange agreement.

The use of a PIDI as the contract for a DNDF transaction was first introduced in the 2021 amendment to the previous DNDF regulation. Continuing its first introduction in 2021, under the DNDF Regulation, banks can also use a PIDI as the contract for a DNDF transaction. It appears that Bank Indonesia would like banks to prefer the use of a PIDI as the contract for derivative transactions (including DNDF transactions) in Indonesia.

The above contracts should provide at least: (a) the date of the contract; (b) the name of each party involved in the foreign exchange market; and (c) the rights and obligations of each party involved.

The DNDF Regulation also requires the above contracts to be supported by written confirmations that ensure the occurrence of the transaction. A written confirmation should provide at least: (a) the date of the transaction and the transaction closing date; (b) the transaction type; (c) the currency; and (d) the transaction's nominal value.

Other noteworthy points in the DNDF Regulation

The DNDF Regulation allows the unwinding (*pengakhiran transaksi*) of a DNDF transaction and now allows a DNDF transaction to be rolled over, which was prohibited under the previous DNDF regulation. However, the prohibition against terminating a DNDF transaction early (*percepatan penyelesaian transaksi*) still applies.

Similar to the previous DNDF regulations, banks are required to use the JISDOR (Jakarta Interbank Spot Dollar Rate) published by Bank Indonesia as the exchange rate reference for United States Dollars against Rupiah DNDF transactions.

The sanctions for violating or failing to comply with the DNDF Regulation are administrative sanctions such as a written warning and an obligation to pay a certain amount to Bank Indonesia.

Given the above, we can see that Bank Indonesia is allowing greater leniency under the new DNDF Regulation than under the previous DNDF regulation. However, it remains to be seen whether the market will react positively to the new DNDF regulation or not.

Please do not hesitate to contact us if you need further information about or assistance with the above.

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