

Summary

On 29 December 2010 Bank Indonesia issued a new regulation related to Offshore Loan Reporting to Bank Indonesia. This was followed by the issuance of its implementing regulation on 20 January 2011. These new regulations revoke previous regulations on Offshore Loan Reporting to Bank Indonesia and now require further types of loans to be reported by Indonesian borrowers. Changes provided in the new regulations also include, among others, a new time limit for reporting and a requirement for the reporting party to appoint an officer or responsible person to draft, verify and submit the report.

The new requirements above should also be considered together with the existing requirements for non-bank corporate borrowers to submit preliminary Offshore Loan Reports to Bank Indonesia.

Importantly for all recipients of offshore loans, there is now indication that the Government will soon commence the imposition of sanctions for breaches of the regulations. Whilst sanctions have existed previously these were never actually enforced in practice. This situation may well change.

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New Bank Indonesia Regulations

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The reporting of funds borrowed from offshore is currently regulated in Bank Indonesia Regulation No. 12/24/PBI/2010 dated 29 December 2010 on Reporting Requirements for Offshore Loans ("**Regulation No. 12/24**"), as implemented by Circular Letter of Bank Indonesia No. 13/1/DInt dated 20 January 2011 ("**Circular No. 13/1**").

Regulation No. 12/24 stipulates that offshore loans must be reported to Bank Indonesia. The term 'offshore loan' is defined as "all loans made by residents to non-residents, whether in foreign currency and or Rupiah, based on loan agreements, debt securities, trade credits or other debts, except government two step loan, current accounts, saving accounts and time deposits". Debt securities, in this matter, cover import Letters of Credit accepted by banks, bonds, commercial papers, promissory notes, medium term notes and floating rate notes.

Regulation No. 12/24 does not provide any threshold for an amount of offshore loan to be reported by banks, non-bank companies or individuals. However, Circular No.13/1 sets an amount equal to or exceeding US\$200,000 or its equivalent at the time of signing or issue as the reporting threshold for offshore loans obtained by individuals. Under Regulation 12/24, any debtor who fails to file a report on grounds of force majeure may apply to Bank Indonesia for an exemption from the offshore loan reporting obligation.

The administrative penalty for failure to report offshore loan activity accurately, timely and completely is Rp.10,000,000 (approximately US\$1,100). The administrative penalty for failure to report the loan, any amendments and/or the realization of the loan in time, with Bank Indonesia, is Rp.100,000 for each day of delay, with a maximum of Rp.10,000,000 for each entity/individual. Please note, however, that these penalties/sanctions will not be imposed until June 2011.

It is also arguably necessary to submit a periodic report to the Offshore Commercial Loan (PKLN) team and the Ministry of Finance, as the general consensus is that these reporting obligations have not yet been revoked. There is no minimum amount of loan to be reported to the PKLN team and the Ministry of Finance. In practice however, the periodic report submitted to Bank Indonesia can simply be copied to the PKLN team and the Ministry of Finance.

Reporting Procedures

Offshore loans can be reported to Bank Indonesia through on-line (web technology) or off-line media (ie. attachment e-mail, floppy disk/CD or other storage means) or in hard copy through courier.

In reporting for the first time (initial report), a cover letter to Bank Indonesia, an appointment letter, the relevant forms provided by Bank Indonesia together with copies of the Tax Registration Number (NPWP), the Articles of Association (except for individuals) and the Loan Agreement or its summary and/or debt securities are required. Usually, for the first filing, the representatives of the company (or the individual) will be required to personally file the completed

forms to Bank Indonesia. Bank Indonesia can also train borrowers on how to prepare the periodical reports through its online system. Therefore, it is advisable to bring a laptop when meeting the Bank Indonesia officer.

The initial report for a new offshore loan or its amendment must be filed with Bank Indonesia not later than the 10th day of the month following the date of execution or the date of the issuance of debt securities, and/or acknowledgment of trade credits and/or other debts. The realization of offshore loan reports or realization reports (ie. the follow-up reports after the initial report) must be submitted not later than the 10th day of each following month. A party will be deemed to have failed to submit a new offshore loan or realization report if the party does not submit the report by the 6th month as of the required reporting deadline.

The relevant report is deemed received by Bank Indonesia according to the date the letter was stamped by the Postal Service or according to the date the documents were received by Bank Indonesia from the courier. Reports using off-line media or hard copy which are delivered by courier must be received by Bank Indonesia by 4:15 pm on the day of the filing.

Imposition of Penalties

Whist offshore loan reporting obligations have existed for a number of years, the activation of the penalties section for non-compliance has been delayed a number of times. The latest Bank Indonesia circular on this matter (Circular No. 13/1) sets the commencement date for penalties for not reporting the June 2011 monthly reporting period, to be reported in July 2011. As mentioned above, the applicable fine for late reporting will be Rp.100.000,- (approximately US\$11) per day in delay in reporting up to a maximum of Rp.10.000.000,- (approximately US\$1,100). The application of penalties may be delayed again but this cannot be relied upon to occur.

Preliminary Offshore Loan Report

In addition to the above offshore loan reporting requirements, under Bank Indonesia Regulation No. 12/1/PBI/2010 dated 28 January 2010 (revoking Bank Indonesia Regulation No. 10/7/PBI/2008 dated 19 February 2008), any company (a borrower) planning to obtain a long-term offshore loan of more than a 1 year term is required to submit to Bank Indonesia (i) its financial ratio; (ii) its financial statements; (iii) a rating report (only for companies which already have a credit rating); (iv) its one year offshore loan plan; and (v) a risk management analysis. These documents must be submitted prior to obtaining the loan, at the latest on 10 March of the relevant year (or the next business day if it falls on a holiday). Further, a company which has short-term and/or long-term offshore loans is required to submit to Bank Indonesia (i) its financial ratio and (ii) its financial statements.

Certain periodical reports (as follow-up reports) must also be submitted to Bank Indonesia by the borrower after submitting the above preliminary offshore loan report. The financial ratio and financial statements must be submitted every 6 months at the latest by 10 June and 10 December (or the next business day if it falls on a holiday) of the relevant year for each respective year. For any amendments to proposed long term offshore loans or the risk management analysis, the company must file a report at the latest on 1 July of the relevant year (or the next business day if it falls on a holiday). If the borrower proposes to take out a long term offshore loan after 10 March, the borrower must also file a report to Bank Indonesia.

The above reports can be submitted in either hard copy and/or soft copy or by other means to Bank Indonesia. A borrower will be deemed not to have submitted the required reports if Bank Indonesia does not receive the reports within 30 days of the required date.

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