New Bank Indonesia Regulations: An Effort to Bring Home Offshore Loan and Export Proceeds

In Brief

On 30 September 2011, Bank Indonesia promulgated new Bank Indonesia regulations[1] requiring export and offshore loan proceeds to be received and drawn down (as applicable) through foreign exchange banks in Indonesia (including branches of foreign banks in Indonesia) ("**FX Banks**") which will come into effect as of 2 January 2012 ("**Bank Indonesia Regulations**"). These regulations are intended to ensure stability in the supply of and demand for foreign currency in the domestic market which will in turn lead to stability in the Rupiah exchange rate. However, it is worth noting that there is no requirement under these regulations to convert the export and offshore loan proceeds into Rupiah or to deposit them in Indonesia for a certain minimum period.

Export Earnings

In general, all export earnings must be received through FX Banks, unless the importer is in default, bankrupt or in a force majeure situation, in which case the exporter must submit a written explanation and supporting documents to Bank Indonesia within ninety days (90) of the date the Export Declaration Form (*Pemberitahuan Ekspor Barang* – "**PEB**") is filed with the customs authority or within 14 days of the due date, if the export earnings are paid by way of usance L/C, consignment, contingent payment or collection, and are due within 90 days or more of the date of the PEB.

To ensure that Indonesian banks have effective control over compliance with the requirements under the Bank Indonesia Regulations, reference to the date of export and the value of the exports provided in the PEB is used. The Bank Indonesia Regulations provide that export proceeds in foreign currency are to be received through FX Banks within ninety (90) days of the date of registration of the PEB and the value of the export earnings received by the exporter must be the same as the value in the PEB. Deviations from these requirements are allowed in the following circumstances;

1. if a payment of export earnings is by way of a usance L/C, consignment, contingent payment or collection, and will be due 90 days or more as of the date of the PEB, the export earnings must be deposited in FX Banks within 14 days of the due date. In this case, the exporter must provide a written explanation with adequate supporting documents to the relevant FX Bank within 14 days of the PEB date, explaining that it will receive the export earnings payment by this method; and

Makarim & Taira S.
Summitmas I, 16th & 17th Fls.
Jl. Jend. Sudirman Kav. 61-62
Jakarta 12190
Indonesia
P: (62-21) 252 1272, 520 0001
F: (62-21) 252 2750, 252 2751
E: makarim&tairas@makarim.com
www.makarim.com

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1 Bank Indonesia Regulation No. 13/20/PBI/2011 on Receipt of Export Earnings in Foreign Exchange and Withdrawal of Offshore Loans in Foreign Exchange and Bank Indonesia Regulation No. 13/22/PBI/2011 regarding the Reporting of Withdrawals of Offshore Loans in Foreign Currency.

2. if the value of the export earnings received by the exporter is less than the value in the PEB, the exporter must provide a written explanation of the difference with supporting documents to the relevant FX Bank to be forwarded to Bank Indonesia, within five (5) days of the end of the month in which the exporter received the export earnings.

Any export earnings which it has been agreed will not to be received through FX Banks and/or in connection with the exporter's obligations under agreements signed before 2 January 2012, do not need to be deposited in FX Banks until 2 January 2013. However, these export earnings, together with the supporting documents, must be filed with Bank Indonesia within 14 days of the date of the PEB.

Offshore Loans

The Bank Indonesia Regulations also require proceeds from offshore loans in foreign currency to be received through FX Banks. The proceeds from offshore loans which must be received through FX Banks are limited to foreign currency loans in the form of cash generated from (i) non-revolving loan agreements which will not be used for refinancing, (ii) surplus refinancing facilities, and (iii) debt securities (such as bonds, medium term notes, floating rate notes etc.). If the total offshore loan drawn down is below the total commitment, the debtor must submit a written explanation to Bank Indonesia before the offshore loan falls due. These requirements do not apply to loan agreements signed before 2 January 2012, **BUT** the regulations will apply to any increase in a loan commitment resulting from an amendment to the relevant loan agreement after 2 January 2012.

The drawing down of an offshore loan through FX Banks must be reported to Bank Indonesia at the latest on the 10th day of each month (or if it falls on a Saturday or public holiday, the next business day after this deadline) and must include supporting documents showing that the offshore loan has been drawn down through an FX Bank. This report is not necessary for loan agreements signed before 2 January 2012, **BUT** it will apply to any increase in a loan commitment resulting from an amendment to the relevant loan agreement after 2 January 2012. Note that this report is in addition to other offshore loan reporting obligations required by other Bank Indonesia regulations.

Sanctions

Violations of the requirements related to export earnings are subject to fines of up to IDR100 million (approximately USD 11,000). If an exporter fails to pay the fine its Customs Identity Number (Nomor Identitas Kepabeanan) will be suspended and the exporter will no longer be able to export goods from Indonesia. These sanctions will only apply as of 2 July 2012.

Violations of the requirements related to offshore loans are subject to fines of up to IDR10 million (approximately USD 1,100). The sanctions will only apply for the loan draw-down report in June 2012 that must be submitted in July 2012.

MAKARIM & TAIRA S.
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