



Bank Indonesia Streamlines Reporting Requirements

1. Introduction

Bank Indonesia (BI / the central bank) has issued Regulation No. 14/21/PBI of 2012 (the “New Regulation”), which simplifies and streamlines the existing requirements for the reporting of certain “Designated Transactions,” as described in section 2 below. The New Regulation is aimed at collecting accurate data and statistics on Indonesia’s Balance of Payments (a record of the payments and receipts of the residents of one country, including its government, in their transactions with residents of other countries and their governments) and International Investment Position (IIP) (a financial statement setting out the value and composition of a country's external financial assets and liabilities). The harmonized reporting regime entered into effect on 1 January.

The New Regulation, for the most part, applies to non-bank entities, including state and private companies, private individuals, and “other entities,” which are described as including both incorporated and unincorporated foundations, NGOs and educational institutions. However, some of the New Regulation’s requirements are also of relevance to the banking sector, as will be explained below (an entity that is required to report to BI is subsequently referred to in this Update as a “Reporting Entity”).

While most of the reporting requirements dealt with by the New Regulation were already in existence prior to its issuance, they were widely dispersed among a number of different regulations. As they have now been collated in one instrument, it may be instructive to remind ourselves of the prevailing rules governing the reporting of Designated Transactions – rules that frequently tend to be overlooked by both domestic and overseas businesses operating in Indonesia.

2. What Must be Reported?

Prior to the issuance of the New Regulation, BI applied two distinct reporting regimes to Designated Transactions, which consist of (a) trade transactions between residents of Indonesia and non-residents, and overseas financial assets and liabilities held by Indonesian residents in non-residents, whether denominated in Indonesian or other currency, and (b) overseas borrowings by Indonesian residents both on their own or a customer’s account, whether denominated in Indonesian or other currency. An Indonesian resident is defined as an “individual, legal or other entity that is domiciled, or intends to be domiciled, in Indonesia for at least one year.”

Due to, among other things, the duplication of data that needed to be reported, the New Regulation now integrates and harmonizes the two reporting systems. In the case of banks, however, they are only required by the New Regulation to submit reports on the realization of their offshore borrowings (New Regulation Article 4(2)), while other reporting obligations in the banking sector are regulated separately.

Reports are to be submitted online, while the precise format they are to take, their scope and the classification of Reporting Entities are prescribed by way of BI circular.

3. Thresholds

Only one BI Circular (No. 15/5/DSM) has been issued to date so as to give effect to the New Regulation. This imposes no threshold for Designated Transactions (other than overseas borrowings) in the case of the vast majority of non-bank Reporting Entities. However, a general threshold of assets or sales of Rp 100 billion or more per annum applies in the case of entities other than (i) state enterprises; (ii) local government enterprises; (iii) non-bank financial institutions; (iv) public companies; (v) oil and gas companies; (vi) trading companies; (vii) service providers; (viii) companies established under Indonesia's FDI regime; (ix) private sector companies; and (x) other entities with overseas loan positions and other entities. This would appear to cover the vast majority of businesses. Unfortunately, however, no definitions are given as to the precise scope of each category.

Offshore borrowings continue to be governed by BI Regulation 12/24/PBI/2010 (on the reporting of offshore borrowings / "Regulation 12/24") and Circular 13/1/Dint/2011, which provide for a threshold of USD 200,000 in the case of private individuals, but no threshold in the case of corporations.

4. When Must Reports be Submitted?

Reports must be submitted on a monthly basis by not later than the 15th day of the following month, while any changes thereto must be notified by not later than the 20th.

In the particular case of foreign loans, a report detailing proposed borrowings must be filed by not later than 15 March of the operative year, while any changes thereto must be notified by not later than 1 July. The Reporting Entity is subsequently required to submit its financial data every six months, and by not later than 15 June or 15 December, as the case may be, until such time as the loan is fully discharged.

5. Prevailing Reporting Requirements for Offshore Borrowings

The New Regulation's Transitory Provisions state that the reporting obligations under the existing BI Regulation Number 12/1/PBI/2010 (on offshore borrowings by the non-bank sector / "Regulation 12/1") and Regulation 12/24 shall remain in effect until the reporting of June 2013 data in July of this year, when they will be superseded by the provisions of the New Regulation. In order to give effect to New Regulation's rules on the reporting of offshore borrowings, at least one new BI Circular will be required. Should no new Circular be issued by the deadline, then the Circulars issued under Regulations 12/1 and 12/24 will continue to be applied by BI. Consequently, it is necessary to briefly describe the existing rules in this regard (for thresholds, see section 3 above).

i. Regulation 12/1

Regulation 12/1 requires companies (both public sector and private) to apply proper risk management principles before deciding to incur short- or long-term offshore debt. In the case of a proposal to incur long-term offshore debt, the company must submit a prior report to BI covering the following matters:

- a. offshore borrowing plan for a period of one year;
- b. results of risk management analysis;
- c. credit rating (where applicable);
- d. key financial ratios; and
- e. financial statements.

Such reports must be submitted not later than 10 March of the operative year.

A company that has an existing offshore debt position (whether short or long term) is required to submit reports setting out its key financial ratios and financial statements every six months, and by not later than 10 June and 10 December of each year.

In addition, any changes to foreign borrowing plans or positions subsequent to the relevant reporting dates must be notified to BI.

The members of the Reporting Entity's Board of Directors are collectively liable for the accuracy of the reports submitted to BI.

The sanctions for non-compliance, or tardy compliance, consist of warnings and/or reporting to the relevant authority/agency.

ii. Regulation 12/24

This regulation applies to private individuals, companies and other entities resident in Indonesia for at least one year, and requires that "accurate, comprehensive and timely" reports on offshore borrowings be submitted to BI.

An offshore loan is defined as a loan to an Indonesian resident from a non-resident (whether in Indonesian or other currency). It includes a loan based on a loan agreement, debt securities, trade credit, and "other loans," a catch-all provision that is characteristic of Indonesian legislation and which essentially refers to any other form of loan not specifically listed in the regulation.

The offshore borrowings report shall provide data on the key features of the loan (including profiles of the loan and borrower), and loan realization.

Such report must be submitted to BI not later than the 10th day of the month subsequent to the signing of the loan agreement, issuance of the debt securities, extending of trade credit or the extending of an "other loan." Meanwhile, reports on the realization of offshore borrowings must be submitted on a monthly basis by not later than the 10th day of the subsequent month.

6. Sanctions

Despite BI's professed desire to improve data collection, and the importance of such data in ensuring accurate statistics, not to mention the stability of the rupiah, the sanctions provided for by the New Regulation appear mild in the extreme. For example, the maximum fine for failing to submit an accurate and comprehensive report, or for not submitting any report at all, is a derisory Rp 10 million, even lower than the Rp 20 million provided for under the previous rules.

Like its predecessors, the New Regulation also provides for the notification to the relevant authority of a Reporting Entity that fails to submit a foreign borrowings report, but does not specify what consequences this could give rise to.

As to the rationale for such mild sanctions, BI has informed us that it prefers to apply a light touch in such matters, rather than the heavy hand. Thus, the bank believes that a persuasive approach is infinitely preferable to one based on enforcement and coercion.

7. Lost in Translation

The New Regulation, as well as its predecessors dating back to the enactment of the Foreign Exchange Act (No. 24 of 1999), has been the subject of considerable confusion over what precisely is meant by the crucial Indonesian term *lalu lintas devisa*, which appears in the title of the New Regulation and defines its scope. *Lalu lintas devisa* has almost universally been translated into English, both in legal and banking circles, as "foreign exchange transaction(s)," meaning that the scope of the New Regulation, and its predecessors, would be confined to only such dealings. However, the definition given in the New Regulation is actually much wider than this, with the focus being placed firmly on residency. Thus, *lalu lintas devisa* is defined by Article 1 of the New Regulation as "the transfer of a financial asset or liability between a resident and non-resident, including the transfer of a foreign financial asset or liability between two residents." It is irrelevant whether the foreign financial assets and liabilities referred to are denominated in Indonesian or other currency. As pointed out in Section 1 above, in reality the New Regulation and its predecessors are aimed at collecting accurate data and statistics on Indonesia's Balance of Payments and International Investment Position (IIP). Accordingly, the frequently expressed view that the reporting requirements under the New Regulation are confined to "foreign exchange transactions" is misplaced.

8. Conclusion

As mentioned earlier, BI says that it prefers a persuasive approach to reporting. While this may be laudable, the question inevitably arises as to why both the New Regulation and its predecessors provide for such insignificant sanctions? The old adage that a dog without teeth affords very poor protection seems highly apropos.

However, weak sanctions or not, the New Regulation serves as a timely reminder of mandatory reporting requirements that have long been in place, but which have frequently been more honored in the breach than the observance.

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