

Bank Indonesia issues further guidelines on the mandatory use of Rupiah in Indonesia

Bank Indonesia (BI) issued Circular Letter No. 17/11/DKSP, dated 1 June 2015, on the Mandatory Use of Rupiah within the Indonesian Territory (the Circular Letter). The Circular Letter has been issued as a further guideline to the implementation of BI Regulation No. 17/3/PBI/2015 (Regulation 17) issued in March 2015, which mandates the use of Rupiah in financial transactions in Indonesia.

Please refer to our previous [Briefing Note](#) issued in April 2015 for information on Regulation 17.

Key provisions of the Circular Letter

Territorial application of the mandatory use of Rupiah

The Circular Letter re-emphasises the territorial application of the mandatory use of Rupiah, i.e. that it applies to all transactions carried out in Indonesia (with the limited specific exceptions specified in Regulation 17 and as highlighted on page 2), regardless of whether they are carried out by residents or non-residents, in cash or non-cash. Transaction and the payment are viewed as integral elements, and as a result the payment to an Indonesian party in respect of a transaction carried out in Indonesia must be made in Rupiah. Conversely, the requirement to use Rupiah does not apply to a transfer of funds in foreign currency from an onshore party to an offshore party that is not intended for payment or the settlement of an obligation arising from a transaction carried out in Indonesia.

Further guidelines on price quotations

The Circular Letter provides that all businesses in Indonesia must use only Rupiah in price quotations for goods or services (other than in respect of the exceptions highlighted on page 2), and are prohibited from using dual pricing quotations (e.g. price quotations using Rupiah and another currency). This requirement applies to quotations made for, among other things: service fees, rental rates, tariffs (e.g. loading/unloading of containers at ports), price lists, contracts (e.g. a clause on pricing in an agreement), delivery orders, purchase orders, invoices and receipts.

Further guidelines on the exemption relating to strategic infrastructure projects approved by BI

The Circular Letter provides further guidance and sets out the framework for applying for an exemption in relation to strategic infrastructure projects.

A project sponsor (or a consortium of project sponsors) can apply to BI for an exemption from the use of Rupiah provided that the project is declared a strategic infrastructure project by the central government or a regional government, as evidenced by a statement letter issued by the relevant government body to the project owner.

In reviewing the application, BI will consider the source of financing for the project and the project's impact on the macroeconomic stability.

The Circular Letter states that BI approval would be issued within 30 days of receipt of a complete application and may include exemptions for the following:

- for transactions carried out within the framework of project development, exemption until the development of the project is completed; and/or
- for transactions carried out within the framework of a sale of products or services produced by a project, exemption until the end of a specified period, provided that it has been agreed to from the beginning of the project's development.

Exceptions listed under Regulation 17

The following types of transactions are specifically exempted under Regulation 17:

- Transactions for the purpose of implementing the State Budget (e.g. payment of foreign or domestic debt, and state income from government securities)
- Acceptance or disbursement of grants from or to overseas, where the payer or recipient is located outside Indonesia
- International trade transactions, which comprise:
 - export or import of goods to or from Indonesia (but the exemption does not apply to ancillary activities occurring within the Indonesian territory such as berthing, container loading/unloading, temporary storage, airport/plane parking/holding fees, etc);
 - cross border supply of goods or services by a party outside Indonesia to a party in Indonesia, or vice versa (e.g. online purchase of goods); and
 - consumption by an Indonesian consumer of goods or services outside Indonesia;
- Bank savings in a foreign currency
- International financing transactions, where the borrower or the lender is located outside Indonesia
- Foreign currency transactions conducted under the prevailing laws and regulations, such as foreign exchange activities conducted by banks under the banking and Sharia banking laws; commercial paper transactions issued by the Government in foreign currency in the primary and secondary markets; other transactions in foreign currency which are conducted under the investment law (among others).

The exceptions listed in Regulation 17 would cover most international transactions, to the extent they are carried out in the framework of international trade and financing. Accordingly, international loans and structured finance transactions may continue to be performed in foreign currencies.

Special policy for businesses facing difficulty in satisfying the mandatory use of Rupiah

The Circular Letter provides for the possibility for BI to apply a special policy in the event a party with "certain characteristics" has difficulty in complying with the requirement to use Rupiah in non-cash transactions. In granting such "special policy" the Circular Letter specifies that BI may consider:

- the party's readiness to apply the use of Rupiah: Will doing so require a fundamental change to its business systems and/or processes?
- the continuity of the party's business: Will an immediate switch to Rupiah impact the sustainability of the business?
- the investment required by the party: does the business activity require foreign currency financing for a certain period, and will the immediate use of Rupiah hamper the relevant investment requirements?
- macro-economic impact: does the party's business activities have a significant impact on the growth of the national economy?

BI will also consider the party's compliance with the relevant BI requirements concerning the receipt of export proceeds and the application of prudent principles in managing offshore loans for non-bank corporations.

Banks and money transfer agencies to implement the use of Rupiah in customer transactions

The Circular Letter adds additional provisions mandating banks and money transfer agencies to inform their customers who intend to carry out transactions using a foreign currency regarding the mandatory use of Rupiah. If the customer insists on using a foreign currency, the bank or money transfer agency must request that the customer state the purpose of the transaction in the relevant transfer form or receipt.

Sanctions for breach of Regulation 17

The Circular Letter sets out the various penalties for non-compliance with Regulation 17.

- Administrative sanctions:
 - A party (whether payer and payee) who breaches the obligation to use Rupiah in cash transactions or the prohibition against refusing Rupiah in cash transactions could upon conviction be liable to a fine of up to IDR200 million or to imprisonment of up to one year.

- A party (whether payer and payee) who breaches the obligation to use Rupiah in non-cash transactions as of 1 July 2015 may be subject to penalties which vary from a written warning, a fine up to Rupiah 1 billion and/or a ban from conducting any further payment transactions in Indonesia.
- A party who fails to provide a price quotation in Rupiah is subject to a written warning.
- Other sanctions:
Other than the above administrative sanctions, BI may issue a recommendation to the relevant authority to revoke the business licence or to require the cessation of the operations of a party in breach of Regulation 17.

It is worth noting that the Circular Letter also provides that if BI does not approve an application for an exemption of a strategic infrastructure project or an application for "special policy" (as mentioned above), it may impose an administrative sanction on the relevant party for a breach that is committed on or after 1 July 2015.

Treatment of agreements entered into before 1 July 2015

Regulation 17 provides that written agreements on non-cash payments or settlement of obligations in foreign currency entered into before 1 July 2015 will continue to be valid until their expiry. The Circular Letter further provides that the term "written agreement" includes the relevant master agreement, any of its derivative agreements or ancillary documents in relation to transactions to be carried out by the parties, such as purchasing orders and delivery orders. However, if a written agreement is a derivative or an implementing instrument that is entered into on or after 1 July 2015 and treated as a standalone agreement, it must follow the requirements of using Rupiah.

Any extensions or amendments to such written agreements made on or after 1 July 2015 will be subject to Regulation 17.

Practical impact and implementation of Regulation 17 and the Circular Letter

The Circular Letter confirms the Indonesian government's firm intention to implement the mandatory use of Rupiah in

transactions carried out in Indonesia from 1 July 2015. It is clear that Rupiah must be used in cash and non-cash transactions in Indonesia other than the specifically exempted transactions. However, it does provide the possibility for businesses facing difficulties in implementing the use of Rupiah to seek a special policy which allows them some time to adapt.

Some of the previously open questions have, to a certain extent, been addressed by the Circular Letter although not conclusively. In a public session on the Circular Letter and Regulation 17, held by BI on 9 June 2015, BI provided further clarity on certain types of transactions. For example:

- Are Indonesian banks allowed to lend to Indonesian borrowers in foreign currency? BI's view is that only Indonesian banks with foreign exchange licences (i.e. *bank devisa*) may lend to Indonesian borrowers in foreign currency.
- Do the salaries of expatriate employees need to be paid in Rupiah? The general indication is that this will be the case if the expatriate is employed by an Indonesian company. However, BI's indication is that remuneration of expatriate members of the board of directors and board of commissioners of a PMA company, who are assigned by a foreign shareholder, may continue to be paid in a foreign currency.
- Can payments be calculated in a foreign currency, and then converted into (and paid in) Rupiah at an agreed exchange rate? The Circular Letter makes it very clear that quotations for transactions in Indonesia (unless otherwise exempted) must be stated in Rupiah and may not use a foreign currency together with Rupiah. However, BI's view is that it is possible to structure the quotation in a manner that allows for adjustment flexibility whilst complying with the Rupiah quotation requirement.
- Can an Indonesian service provider continue to quote to, and receive payments from, offshore clients in a foreign currency? BI's view is that this is possible, as this would fall within the international trade exemption specified in Regulation 17.

It is now clear that Indonesian companies who have foreign currency borrowings or payment commitments (under the exempt transactions), but trade locally, will be subject to greater foreign exchange risk.

There is likely to be an increase in the uptake in hedging instruments to mitigate this risk. In addition, we may see some transactions being moved to offshore group companies so as to take advantage of the exemption for payments to or from a recipient or payer located outside Indonesia.

Concluding remarks

With the issuance of the Circular Letter, the mandatory use of Rupiah for non-cash transactions appears to be on course to commence on 1 July 2015. Whilst a number of questions remain unanswered as to how the provisions of Regulation 17 can be effectively implemented, some clarity is now provided in the form set out in the Circular Letter. We would also advise businesses to consider their options for minimizing foreign exchange risk by entering into hedging arrangements; revisiting their commercial activities (particularly agreements for the provision of goods and services which are paid for in foreign currency) before 1 July 2015; and/or building flexibility in the quotations to deal with exchange rate fluctuations.

For further information, please contact one of our key contacts below.

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