



# Rupiah requirement on transactions in Indonesia update

June 2015

On 31 March 2015, the Indonesian central bank (**Bank Indonesia**) issued Bank Indonesia Regulation No. 17/3/PBI/2015 on the Obligation to Use Rupiah in the Territories of Indonesia (the **Regulation**), which further implements the provision restricting the use of foreign currency in transactions within Indonesian territories as set out in Article 21 of Law No. 7 of 2011 on Currency (the **Currency Law**). It additionally regulates non-cash transactions, which had not been expressly addressed in the Currency Law. On 1 June 2015, Bank Indonesia issued Circular Letter of Bank Indonesia No.17/11/DKSP of 2015 on the Obligation to Use Rupiah in the Territories of Indonesia (the “BI Circular”) providing guidance as to the implementation of the Regulation.

Although the Currency Law and the Regulation require certain transactions conducted within Indonesia to now use Rupiah, there are certain key exemptions. These include:

- international trade transactions;
- international financing transactions where either the lender or the borrower is located outside of Indonesia;
- foreign currency savings/deposits in banks; and
- an additional exempted category under the Regulation, which are transactions in foreign currency made in accordance with applicable laws.

## Obligations imposed under the regulation

The key obligations/restrictions imposed on transactions within Indonesian territories, subject to certain exemptions are:

- Rupiah must be used for cash and non-cash transactions within Indonesia;
- Rupiah must not be refused for payment, fulfilment of obligations, and/or other financial transactions; and
- prices for goods and/or services must be stated only in Rupiah.

## 1 Requirement to use the Rupiah for certain transactions within Indonesian Territories

### 1.1 Extent of the requirement

Under Article 2 of the Regulation, the following transactions need to be made in Rupiah (subject to certain exclusions as set out in paragraph 1.2):

- any transaction that is intended for payment;
- completion of other obligations that must be made with money; and/or
- other financial transactions including the transfer of money from customers to banks.

While the Currency Law was silent about whether the restrictions apply to both non-cash as well as cash transactions and further the Ministry of Finance confirmed that it only applied to cash transactions<sup>1</sup>, the Regulation expressly states that its provisions apply to both. Non-cash transactions include any transactions that use non-cash instruments (such as payment through cheque, giro, credit card, debit card, ATM cards and electronic money) and are made through non-cash mechanisms (such as funds transfer). The BI Circular affirms the application of a territorial principle to the requirement and that as a result the payment for any transaction conducted in Indonesia must be made in Rupiah.

### 1.2 Exempted transactions

Under the Regulation, the following transactions are allowed to be made in foreign currency:

1. certain transactions related to the implementation of the State Budget, such as payment of offshore loans or onshore loans in foreign currency, expenditure relating to foreign goods and capital, state revenue originating from the sale of government bonds in foreign currency and other

transactions made in order to implement the State revenue and expenditures;

2. receipt or provision of grants or donations into and outside of Indonesia, where one of the parties is located outside of Indonesia; and
3. international trade transactions, which include:
  - export/import of goods into and outside of the Indonesian customs area (but not including activities related to such export/import of goods, such as docking of ships at ports, loading/discharging of containers, temporary storage of containers at ports, and airplane parking at airports); and
  - cross border trade in services, including cross border supply (for example, online purchases and call centres) and consumption abroad (for example, services abroad that serve Indonesian customers, such as an Indonesian citizen studying or being treated medically at a hospital abroad).
4. international financing transactions, where either the lender or the borrower is located outside of Indonesia. However, if the lender is a bank (as defined in the Indonesian Banking Law) in Indonesia, the bank must still comply with the restrictions under regulations regarding foreign exchange (**forex**) transactions against Rupiah between banks and foreign parties.

It is worth noting that Bank Indonesia Regulation No. 16/17/PBI/2014 on Forex Transactions Against Rupiah Between Banks and Foreign Parties dated 17 September 2014 (the **Forex Transaction Regulation**) regulates among other things, that:

- forex transactions against Rupiah that meet the stipulated nominal threshold must be based on an underlying transaction in the form of domestic or international trade in goods or services or investment;

<sup>1</sup> Socialization of the Currency Law by the Indonesian Ministry of Finance dated 6 December 2011.

- banks are restricted from the following transactions with foreign parties<sup>2</sup>:
  - (i) providing credit or financing for foreign parties in Rupiah or foreign currency (with certain exemptions: credit or financing in the form of non-cash or guarantee related to investment activities in Indonesia that meet certain requirements<sup>3</sup>; syndicate credit or financing that meet certain requirements<sup>4</sup>; credit cards; credit or financing for consumption domestically; intraday overdraft in Rupiah or foreign currency; overdraft in Rupiah or foreign currency due to administrative costs, takeover of receivables of an agency appointed by the government to manage the assets of the bank for the purposes of Indonesia banking restructuring by a foreign party whereby the financing is guaranteed by a Prime Bank<sup>5</sup>);
  - (ii) placement of funds in Rupiah, which is the investment of the bank's funds into another bank, in the form of giro, interbank call money, time deposit, deposit certificate, credit or financing, and other similar types of funds placements;
  - (iii) purchase of securities in Rupiah issued by foreign parties (with certain exemptions including purchase of securities related to export or import of goods into/out of Indonesia and domestic trade);
  - (iv) interoffice receivables in Rupiah (ie all receivables owned by the bank to its main office or branch located outside Indonesia for the interest of the bank or the customer);
  - (v) interoffice receivables in foreign currency for the purposes of providing credit or financing in Rupiah;
  - (vi) placement of capital in Rupiah (ie investment of the bank's funds in the form of shares in a bank or other companies in the financial sector); and
  - (vii) foreign exchange transactions against Rupiah if such transaction is or could potentially be related to structured products.
- In addition to the above, banks are prohibited from transferring Rupiah overseas. Additionally, there are limitations applicable to the transfer of Rupiah to foreign parties.<sup>6</sup>

#### 5. foreign currency deposits/savings in banks;

6. in addition to the above exemptions that were set out in the Currency Law, the Regulation added other categories of transactions that are allowed by law to use foreign currency:

<sup>2</sup> 'Foreign Party' is defined by the Forex Transaction Regulation as any foreign citizen, foreign legal entity or institution, which does not include foreign branch banks in Indonesia, foreign investment companies, or foreign legal entities or institutions that are non-profit; an Indonesian citizen that has permanent residence overseas and is not domiciled in Indonesia; an office of an Indonesian-headquartered bank that is located overseas; and an office of an Indonesian legal business entity that is located overseas

<sup>3</sup> The Forex Transaction Regulation requires either that: (i) a counter guaranty must be obtained from a Prime Bank (as defined in footnote 5) that is not a branch office of the bank located overseas or a branch office of a foreign bank located in Indonesia or overseas, or (ii) there is a guaranty of deposit for 100 per cent of the value of the guaranty provided.

<sup>4</sup> The credit or financing must: (i) involve a Prime Bank (as defined in footnote 5) as the lead bank, (ii) be provided for project financing in the real sector for productive business located in Indonesia, and (iii) the foreign bank's contribution as a syndicate member is larger than the contribution of the bank in Indonesia.

<sup>5</sup> Prime Bank is defined in the Forex Transaction Regulation as a bank having a certain investment rate from a rating agency and has a total asset that is within the top 200 globally in the Banker's Almanac.

<sup>6</sup> (i) Rupiah may be transferred to an account of a foreign party or joint account between a foreign party and non-foreign party in a domestic bank with a nominal amount up to the equivalent of USD 1 million or between Rupiah accounts belonging to the same foreign party; (ii) transfer of Rupiah with a nominal amount above USD 1 million shall be based on an underlying transaction, except for a transfer of Rupiah that is conducted in regard to the settlement of a rollover transaction, early termination transaction or termination of a transaction (unwind). Further, the bank that receives the transfer of Rupiah shall verify the status of the party that receives the transfer of Rupiah.

- business activities in foreign currency that are carried out by banks (which include branch offices of foreign banks in Indonesia) in accordance with the laws on conventional and *sharia* banking, including credit in foreign currency for export and other activities, interbank money markets in foreign currency, bonds and subordinated debt in foreign currency, trading of securities in foreign currency, as well as other banking transactions in foreign currency as regulated in the laws on conventional and *sharia* banking;
- Government-issued securities transactions using foreign currency in the primary or secondary market; and
- other transactions in foreign currency that are conducted in accordance with applicable laws.

The Elucidation of the Regulation expressly identifies the law on Bank Indonesia, the law on investment, and the law on the Indonesian financing export agency as laws that regulate 'other transactions in foreign currency'. The effect of this exemption is that any transaction specifically contemplated by the above laws can be done in foreign currency.

Accordingly, the exemption should extend to foreign currency transactions carried out by the investors <sup>7</sup> as permitted under the Investment Law. This includes transactions in foreign currency by the investors for the transfer and repatriation of funds in relation to: (i) capital, (ii) profit, bank interest, dividend, and other revenue, (iii) funds necessary for the purchase of materials or goods, or funds necessary to replace capital goods for investment, (iv) additional funds needed to finance the investment,

<sup>7</sup> Article 1 of the Investment Law defines "investor" as: an individual or business entity that conducts capital investment, which can be a domestic investor or a foreign investor. Meanwhile, a foreign investor is a foreign individual, foreign business entity, and/or foreign government that conducts capital investment in Indonesia

(v) funds for repayment of loan, (vi) royalty or cost needed to be paid, (viii) income of foreigners working in the investment company, (ix) compensation for losses and for takeovers, (x) payments made for technical support, payments for technical and management services, payments for project contracts, and payments for intellectual property rights, and (xi) proceeds of the sale of assets.

In light of points (i) and (iv) above, which permit the transfer of foreign currency for capital, as well as additional funds to finance an investment, payment for the acquisition or purchase of shares by an investor should also be allowed in foreign currency.

### 1.3 Bank Indonesia Special Policy

In addition, the Regulation provides that a special policy may be applied by Bank Indonesia on a case by case basis whereby a party with "certain characteristics" (which is not otherwise exempted under the Regulation) may be exempted from the requirement to use Rupiah or the deadline for that party to meet the requirement to use Rupiah may be extended beyond 1 July 2015.

Pursuant to the BI Circular, Bank Indonesia will consider each case on application from the relevant party, taking into consideration the following principles:

- the readiness of the party to use Rupiah and whether the requirement to use Rupiah necessitates fundamental changes in the business systems and/or processes of the party;
- whether the requirement to use Rupiah would affect the ability of the party to sustain its business activities;
- if the party's business activities require funding in foreign currency for a certain period and the obligation to immediately use Rupiah may disrupt such investment(s); and/or

- whether the party's business activities have a significant impact on the growth of the national economy.

## 2 Prohibition to refuse Rupiah for payments, fulfilment of obligations, and/or other financial transactions

### 2.1 Extent of the requirement

Under Article 10 of the Regulation, every individual or corporation is prohibited from refusing to accept Rupiah as a form of payment, to fulfil some obligation that needs to be made in Rupiah and/or for other financial transactions within Indonesia.

### 2.2 Exempted transactions or situations

An individual would be allowed to refuse payment in Rupiah, if:

- the transaction is exempted from the requirement to use Rupiah (as stated in paragraph 1.2 above), provided that the payment or the fulfilment of the obligation in foreign currency has been agreed to in writing;
- the transaction relates to a strategic infrastructure project (as determined by a statement from the authorised ministry/institution), provided that payment or the fulfilment of the obligation in foreign currency has been agreed to in writing and approval is obtained from Bank Indonesia. It is understood that Bank Indonesia will grant its approval on a case by case basis following an assessment of the project. The approval may be granted only for the development phase of the project and a further approval may be required once

the project is selling its products and/or services. It remains unclear following the issuance of the BI Circular whether this exemption applies only to those projects carried out through a public private partnership or also to private infrastructure projects; and

- there is doubt as to the authenticity of the Rupiah, if received in the form of cash.

## 3 Requirement to state the price for goods and services only in Rupiah

### 3.1 Extent of restriction

Under Article 11 of the Regulation, business entities are required to state the prices of their goods and/or services only in Rupiah.

The BI Circular confirms that dual quotations are prohibited and sets out examples of some of the goods and services in respect of which the price must be stated only in Rupiah, including: price labels, service fees, rental fees, tariffs, price lists, offering documents, invoices, delivery and purchase orders and payment receipts.

### 3.2 Exempted transactions

Prices can still be stipulated in foreign currency for the following transactions, provided that they are agreed to in writing:

- transactions that are exempted from the requirement to use Rupiah (as stated in paragraph 1.2 above); and
- transactions related to strategic infrastructure projects (as determined by a statement from the authorised ministry/institution), provided approval is obtained from Bank Indonesia.

## Transitional period for non-cash transactions

The Regulation stipulates that for non-cash transactions that are subject to the requirements under the Regulation, the

obligation to use Rupiah will take effect on 1 July 2015.

The Regulation also provides that any existing written agreements relating to non-cash transactions in foreign currency which have been entered into before 1 July 2015, are still effective until said agreement terminates. However, even though said agreements can still be carried out using foreign currency, the Regulation stipulates that any further extension and/or amendment (i.e. parties, price, object) of said agreements must be adjusted to

comply with the Regulation. The BI Circular confirms that derivative agreements under an umbrella agreement (i.e. purchase orders, delivery orders) signed on or after 1 July 2015 are also subject to the Regulation.

As for the extensions and/or amendments in respect of Exempted Transactions as stated in paragraph 1.2 above, said extensions and amendments are also exempted from the obligations to use Rupiah.

## Implication of violation

Sanctions under the Regulation are as follows:

- Violation of the requirement to use Rupiah in cash transactions under Article 3 (1) and refusal to accept Rupiah payment where required under Article 10 of the Regulation are subject to criminal sanctions of a maximum of one year imprisonment and penalty of IDR 200,000,000 000 (as provided in the Currency Law). (Note that the BI Circular indicates that criminal sanctions in respect of the refusal to accept Rupiah payment apply to cash transactions only).
- Violation of the requirement to use Rupiah in non-cash transactions can be subject to administrative sanctions, ie a written warning, the obligation to pay the larger of 1 per cent of the transaction amount up to a maximum of IDR 1,000,000,000 and/or prohibition from participation in further payment activities. Additionally, Bank Indonesia can also recommend that these violations be followed up by other appropriate authorities.

- Violation of the requirement to state the price of goods and services in Rupiah and failure to submit any report, information and/or data as requested by Bank Indonesia will be subject to written warning. Additionally, Bank Indonesia can also recommend that these violations be followed up by other appropriate authorities.

Nevertheless, enforcement of these provisions will depend on the effectiveness of the monitoring mechanism. Article 13 of the Regulation provides that Bank Indonesia will ensure compliance under this Regulation by:

- requesting reports, information, data, and/or supporting documents, on its own or by involving other related institutions;
- conducting direct monitoring of each party, the implementation of which – based on the existing regulation – still remains unclear; and
- appointing another party to conduct research for purposes of monitoring compliance.

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