

Client Alert

March 2019

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Bank Indonesia's New Offshore Loan Regulation Introduces Obligations for Banks Involved In Risk Participation Transactions

Recent Development

Effective this month, Bank Indonesia Regulation No. 21/1/PBI/2019 on Offshore Loans and Other Bank Obligations in Foreign Currencies dated 7 January 2019 ("**Regulation 21/1**") includes new provisions on risk participation transactions. Risk participation transactions ("**RPTs**") refer to transactions which transfer the risk of credit or other facilities from one party to another based on a risk participation agreement. Before this regulation, RPTs were not supervised by Bank Indonesia. Under the new regulation, Bank Indonesia will supervise RPTs by requiring long term RPTs to be approved by Bank Indonesia under the same requirements as long term offshore loans.

Regulation 21/1 also introduces changes to the mechanism and basis of Bank Indonesia in approving Indonesian banks to obtain offshore loans. There are also additional considerations from Bank Indonesia for dealing with applications for Indonesian banks to obtain offshore loans, and additional sanctions in the form of fines and written warnings. These key differences will be explained further below.

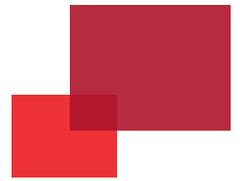
Implications of Reg 21/1 for Banks

Prior Approval for Risk Participation Transactions

Banks can obtain long term obligations in the form of offshore loans (e.g., loan agreements and debt securities), RPTs and foreign currency bonds issued in the domestic market ("**Long-Term Obligations**"). Banks that are going to obtain long term obligations in the form of RPTs will have to obtain prior approval from Bank Indonesia and recommendation from the Financial Services Authority ("**OJK**"). The procedure to obtain this approval is regulated under the newly issued Members of the Board of Governors Regulation No. 21/3/PADG/2019 on Offshore Loans and Other Bank Obligations in Foreign Currency dated 15 February 2019 ("**Board Regulation**"). Based on the Board Regulation banks must present information to Bank Indonesia in the form provided in attachment IV of the Board Regulation. However, this approval is limited to RPTs that are conducted between a bank and a foreign party, that involve offshore fund transfer from the foreign party, and that do not have any assignment or transfer of a claim from the bank to the foreign party.

Requirement to Notify Bank Indonesia for Assignment of Claim in Risk Participation Transactions

Indonesian banks will have to report to Bank Indonesia if there is an assignment or transfer of a claim to a participant that is domiciled outside of Indonesia. Under the Board Regulation, a bank will have to submit a report on



the assignment or transfer of a claim, with the template and information provided in attachment I of the Board Regulation. The report should include the date of the assignment or transfer of a claim, the name of the debtor and the name of the participant. Failure to conduct this reporting will result in a written warning from Bank Indonesia.

Additional Documents to Obtain Long-Term Obligation Approval

The mechanism to approve a Long-Term Obligation now requires supporting documents to be submitted to Bank Indonesia and OJK. The supporting documents are set out in the Board Regulation. These supporting documents include information on the date to enter the market, information on the terms and conditions of the obligation, the reason and purpose of the obligation, forecast cash flow analysis made by the bank, risk management analysis and the draft of the loan agreement or risk participation agreement. Bank Indonesia, based on its analysis of the supporting documents, may require Indonesian banks to submit additional information or documents for clarification.

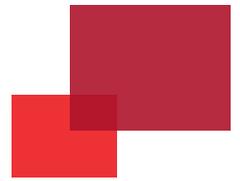
Additional Considerations for Bank Indonesia in Giving Approval

Bank Indonesia now has additional considerations to approve offshore loans and other bank obligations, which are whether the bank has submitted complete supporting documents and other matters that Bank Indonesia deems significant. Regulation 21/1 is silent on what it means by "other matters" that Bank Indonesia deems significant to obtain approval. Based on our confirmation with Bank Indonesia, it is subject to the consideration that they might have after analysing the application documents.

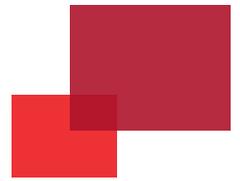
What the Regulation Says

We set out a summary of the regulation by indicating the key differences between Regulation 21/1 and its predecessor regulation.

Provisions	Bank Indonesia Regulation No. 7/1/PBI/2005 and its amendments	Bank Indonesia Regulation No. 21/1/PBI/2019
Sanctions/Fine	<ul style="list-style-type: none"> lateness to deliver the report after entry into market: <i>fine of IDR 100,000 per working day, with a maximum fine of IDR 5 million</i> 	<ul style="list-style-type: none"> lateness of up to 10 days to deliver the report after entry into market: <i>fine of IDR 500,000 per working day</i>
	<ul style="list-style-type: none"> not regulated 	<ul style="list-style-type: none"> banks that do not report at all after entry into market: <i>fine of IDR 10,000,000</i>
	<ul style="list-style-type: none"> limitation of daily balance position of the short term offshore loan: <i>fine of 0.01% per year</i> 	<ul style="list-style-type: none"> limitation of daily balance position of the short term offshore loan:



	<p><i>of the excess of the daily balance limitation</i></p>	<p><i>fine of 0.01% per day of the excess of the daily balance limitation, with minimum of IDR 10 million and maximum of IDR 1 billion</i></p>
	<ul style="list-style-type: none"> not regulated 	<ul style="list-style-type: none"> banks that receive any form of short term obligation that exceeds the approved amount from Bank Indonesia: <i>fine of minimum IDR 100,000,000 and maximum 5,000,000,000</i>
	<ul style="list-style-type: none"> failure to obtain Bank Indonesia approval before entry into the market: <i>fine of 0.002% of the amount of loan</i> 	<ul style="list-style-type: none"> failure to obtain Bank Indonesia approval before entry into the market: <i>fine of 1% of long term obligation, with a minimum fine of IDR 100,000,000 and maximum IDR 5,000,000,000</i>
	<ul style="list-style-type: none"> not regulated 	<ul style="list-style-type: none"> failure to report an assignment of claim in relation to RPTs: written warning from Bank Indonesia
Supervision	<ul style="list-style-type: none"> Bank Indonesia approves/rejects offshore loan 	<ul style="list-style-type: none"> In conducting its supervisory duties, Bank Indonesia can co-ordinate with OJK. Bank Indonesia approves/rejects offshore loan and RPTs proposals. The supervisory duties are non-direct supervision and inspection. Non-direct supervision means Bank Indonesia can seek confirmation and ask the bank to check on the data it has reported.



Actions to Consider

We suggest banks to comply with Regulation 21/1, by following these steps:

- If the bank has not yet obtained an approval for Long-Term Obligations, the bank must present information or any information which Bank Indonesia considers necessary as provided under attachment IV of the Board Regulation.
- Once the Long-Term Obligations have been approved, the bank must submit a realization report to enter into the market (e.g., after the offshore loan agreement has been signed and the debt securities or foreign currency bonds have been issued in the domestic market (for private placement), or on the effective date of the RPTs) within seven working days to Bank Indonesia and OJK.
- Regulation 21/1 is still unclear on whether banks that already have a risk participation agreement prior to the enactment of Regulation 21/1 will have to obtain an approval from Bank Indonesia. In any case, the RPTs will need to be reported to Bank Indonesia as required by Bank Indonesia Regulation No. 21/2/PBI/2019 on Reports of Foreign Exchange Activities dated 7 January 2019 ("**Regulation 21/2**"). We will continue to consult with Bank Indonesia and we will advise you further on future developments on this matter.

We suggest that participants prior to entering into RPTs have their long term risk participation agreement to be in line with Regulation 21/1, by following these steps:

- requesting the Banks to consult with Bank Indonesia for other documents they may need, prior to applying for approval for the long term obligation to ensure that if there are documents required from the participants, those can be prepared and submitted accordingly
- ensure there is a conditions precedent clause to obtain prior approval from Bank Indonesia
- ensure there is a covenant to notify Bank Indonesia in the event of a transfer or assignment of claim to another participant



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We suggest that participants which have entered into RPTs prior the issuance of Regulation 21/1 have their long term risk participation agreement to be in line with Regulation 21/1, by following these steps:

- adding a covenant to report the implementation as per Regulation 21/2, as well as the transfer or assignment of claim
- adding a further covenant clause to comply with regulations including to obtain Bank Indonesia approval if required