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COMMENTARY

New Local Currency Regulations Issued in Indonesia

The end of March 2015 saw the Republic of Indonesia's central bank, Bank Indonesia, issue new regulations to supplement and clarify Indonesia's 2011 Currency Law[1] and to further seek to stabilize Indonesia's currency, the rupiah.

Subject to certain exceptions, Regulation No 17/3/PBI/2015 (the "Regulations") provides that, among other things:

- All "cash" (i.e., bank note/coin) transactions and "non-cash" transactions (e.g., electronic transfer of funds, credit card payments) within Indonesia must be settled in rupiah;[2] and
- The price for goods and services in Indonesia may only be specified in rupiah and not in any other currency.[3]

If strictly enforced, the Regulations, as currently drafted, are likely to have a significant impact on businesses in Indonesia since a considerable number of "non-cash" transactions in Indonesia, even between Indonesian-owned companies, are made in United States dollars. Furthermore, while the Currency Law has required the use of rupiah generally since 2011, it was considered to apply to "cash" transactions only and not "non-cash" transactions. In addition, the 2011 Currency Law permits parties to contract out of the requirement to use rupiah by written agreement.[4] However, the right of parties to contract out of the requirement to use rupiah now appears to have been closed by the Regulations other than in limited circumstances. And while foreign companies operating in Indonesia were hopeful that payment transactions made by or to foreign-incorporated entities within Indonesia would be automatically exempt from the Regulations, no distinction is made in the Regulations between foreign-incorporated entities and Indonesian-incorporated entities.

With Certain Exceptions, All Payments Within Indonesia Are Covered by the Regulations

Unless one of the express exceptions contained in the Regulations apply, all "cash", and from 1 July 2015, "non-cash" transactions (e.g., electronic transfer of funds, payment by credit card etc.) carried out in Indonesia must be settled in rupiah. The Regulations therefore go much further than the previously considered position under the 2011 Currency Law, which was thought to apply to "cash" transactions only.

Exceptions to the General Application of the Regulations

Businesses or persons in Indonesia that currently make or receive “non-cash” payments within Indonesia in a currency other than the rupiah will therefore need to consider to what extent these payments within Indonesia will, from 1 July 2015, need to be made in rupiah.

Significantly, there are a number of exceptions to the general application of the Regulations contained in the Regulations including, amongst others:

Grandfathering of Pre-1 July 2015 Agreements. Agreements in writing entered into before 1 July 2015 which provide for payment in a foreign currency for “non-cash” transactions within Indonesia are exempt from the application of the Regulations.[5] Those seeking to rely on this exemption should, however, take note that it does not apply to extensions or certain material amendments made after 1 July 2015.

International Trade Transactions. The exemption from the requirement to use rupiah for international trade transactions is contained in both the 2011 Currency Law[6] and the Regulations.[7] While the term is not defined in either the 2011 Currency Law or the Regulations and is therefore of uncertain scope, the Regulations do specify that international trade transactions include (i) the import or export of goods into/from Indonesia and/or (ii) the provision of services from Indonesia to another country or vice versa. Whilst it is not yet clear how broadly Bank Indonesia will apply this exemption, persons seeking to rely on it for payment transactions within Indonesia that do not fall squarely within (i) or (ii) above should seek guidance from Bank Indonesia even if one or more of the parties to the payment transaction within Indonesian are foreign-incorporated entities, at least until further clarity is provided in writing by Bank Indonesia either by way of a circular letter or otherwise.

International Finance Transactions. As with the 2011 Currency Law,[8] international banks will be relieved to see that the Regulations confirm that the requirement to use rupiah does not apply to international financing transactions where either the lender or borrower is not located in Indonesia.[9] While this clearly applies to the making or repayment of loans into or out of Indonesia, it is unclear whether this particular exemption would apply to loans made within Indonesia by the local branch of an international bank.

State Revenue and Expenditure. As with the 2011 Currency Law,[10] the local currency requirement does not apply to transactions related to state revenue and expenditure which includes, amongst other things, state income generated by the sale of government bonds.[11]

Gifts. As with the 2011 Currency Law,[12] gifts to or from a foreign-domiciled entity are also excluded from the local currency requirements. As gifts are by definition free of charge, we assume that this is directed at gifts of money such as charitable donations to or from a foreign entity located outside of Indonesia.

Foreign Currency Transactions Authorised by Specific Indonesian Laws. The local currency requirement does not apply to foreign currency transactions authorised by specific Indonesian laws.[13] Specific examples of such laws are set out in the Regulations and include the laws and regulations concerning investment.

Pricing to be Specified in Rupiah Only

An additional significant requirement introduced by the Regulations is that businesses in Indonesia must now specify the price of goods or services in rupiah only and not in any other currency.[14] In addition to the obvious impact this will have on goods and services providers operating within Indonesia, the requirenment will also potentially affect a broad range of agreements entered into after 1 July 2015 since the Regulations appear to require that pricing in those agreements is specified in rupiah only.

Contracting Out

While the 2011 Currency Law permitted parties to agree in writing not to use rupiah,[15] the Regulations provide that the right of a party to contract out of the requirement to use rupiah applies only to transactions specifically exempted by the Regulations (e.g., international trade transactions) and infrastructure projects approved by Bank Indonesia.[16]

Noncompliance with the Regulations

While it is difficult to predict now how strictly the new Regulations will be enforced by Bank Indonesia, the consequences of noncompliance are not insignificant and include criminal and administrative law liability.

Consistent with the position under the 2011 Currency Law,[17] the penalties for not using rupiah in a "cash" transaction in Indonesia include imprisonment for a maximum period of one year and a 200 million rupiah fine. Importantly, the Regulations introduce a specific liability regime for not using rupiah in a "non-cash" transaction, including a fine of up to 1 billion rupiah and a bar on carrying out any further payment transactions in Indonesia. In addition, Bank Indonesia also has the power to recommend that the relevant Indonesian issuing authority revoke the business licences of any offender.

Bank Indonesia Discretion

Perhaps recognising the adverse impact the strict application of the Regulations may have on many businesses in Indonesia, Bank Indonesia has wide discretionary powers to take action where businesses with certain (as yet undefined) characteristics encounter problems in complying with the Regulations.[18] Factors that Bank Indonesia may take into account in the exercise of its discretion include, amongst others, the continuation of the relevant activities and the growth of the Indonesian economy. Those that believe the new Regulations will have a significant adverse impact on their operations in Indonesia may therefore wish to enter into discussions with Bank Indonesia sooner rather than later to seek clarification on the application of the Regulations.

Lawyer Contacts

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Jones Day does not practice Indonesian law, and the contents of this Commentary do not constitute an opinon or advice on Indonesian law.

Endnotes

1 Law Number 7 on Currency 2011.

2 See Articles 2 and 3 of the Regulations.

3 Article 11 of the Regulations.

4 Article 23(2) of the 2011 Currency Law.

5 Articles 21(1) and (2) of the Regulations.

6 Article 21(2)(c) of the 2011 Currency Law.

7 Articles 4(c) and 8 of the Regulations.

8 Article 21(2)(d) of the 2011 Currency Law.

9 Article 9 of the Regulations.

10 Article 21(2)(a) of the 2011 Currency Law.

11 Article 6 of the Regulations.

12 Article 21(2)(c) of the 2011 Currency Law.

13 Article 5 of the Regulations and Notes to Article of the Regulations.

14 Article 11 of the Regulations.

15 Article 23(2) of the 2011 Currency Law.

16 Article 10(3) of the Regulations.

17 Article 33(1) of the 2011 Currency Law.

18 Article 16 of the Regulations.