

ADVISORY

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Bank Indonesia Issues a New Regulation on the Reporting of Foreign Exchange Flow Activities – Introduces a Requirement to Report Risk Participation Transactions

Overview

Bank Indonesia ("BI") recently issued Regulation No. 21/2/PBI/2019 on the Reporting of Foreign Exchange Flow Activities (*Kegiatan Lalu Lintas Devisa*) ("Reg. 21/2") on 7 January 2019, which comes into effect on 1 March 2019.

Reg. 21/2 partially revokes BI Regulation No. 16/22/PBI/2014 on the Reporting of Foreign Exchange Flow Activities and the Reporting of the Application of the Prudential Principle in the Management of Non-Bank Entities' Foreign Debts ("Reg. 16/22"), replacing all the provisions of Reg. 16/22 on the reporting of foreign exchange flow activities. Therefore, when Reg. 21/2 comes into effect in March 2019, Reg. 16/22 will only cover reporting on the application of the prudential principle (*kegiatan prinsip kehati-hatian* – KPPK).

Foreign Exchange Flow Report

Scope

Reg. 21/2 has added risk participating transactions (*transaksi partisipasi risiko* – "TPR") to be reported as a part of the foreign exchange flow report ("Flow Report"). A TPR is defined as a risk assignment transaction of individual credit or other facilities under a master risk participation agreement. The scope of the Flow Report ("Flow Report Scope") covers the following data and information:

- a) trade transactions of goods, services, and other transactions between a resident (ie a person, legal entity or other entity domiciled in Indonesia) and a non-resident;
- b) principal data of offshore debts (*utang luar negeri* – "ULN") and/or TPR;
- c) the plan of the ULN and/or TPR disbursements and/or payments;
- d) the realization of the ULN and/or TPR disbursements and/or payments;
- e) the position of and amendments to offshore financial assets (*aset finansial luar negeri*), offshore financial liabilities (*kewajiban finansial luar negeri*) and/or TPR; and/or
- f) a new ULN plan and/or its amendment.

Except for TPR and the information required in items c) and d) of the Flow Report Scope above on the plan and realization of ULN and/or TPR disbursements which are now covered by Reg. 21/2, the remaining scope of the Flow Report above is similar to the scope under Reg. 16/22.

The Flow Report must be submitted by the reporting party online through BI's reporting website.

Reporting Party

The following parties are categorized as a reporting party required to submit the Flow Report:

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- a) financial institutions, ie banks and non-bank financial institutions;
- b) non-financial institution business entities, ie legal entities and non-legal entities;
- c) other entities; and
- d) individuals.

Financial institutions and non-financial institution business entities (in the form of legal entities) may also be (i) state-owned enterprises (*Badan Usaha Milik Negara* – BUMN), (ii) regional government-owned enterprises (*Badan Usaha Milik Daerah* – BUMD) or (iii) private entities.

Timings for Flow Report Submission

The following timings apply to submitting the Flow Report:

Flow Report Scope	Period
i) Data and information in the Flow Report Scope (except for the new ULN plan and/or its amendment)	Submitted monthly at the latest on the 15 th day of the following month
ii) Data and information on the new ULN plan and/or its amendment	A new ULN plan and/or its amendments for the ongoing year is to be submitted: <ul style="list-style-type: none">• for <u>the new ULN plan</u>, at the beginning of each year, at the latest on 15 March; and• for <u>an amendment to the new ULN plan</u>, at the latest on 15 June

Previously, Reg. 16/22 required any amendment to the planned new ULN to be submitted by 1 July rather than 15 June.

Corrections to the Flow Report must be submitted at the latest on the 20th day of the relevant submission month (eg if the Flow Report is submitted on 15 March 2019, the correction must be submitted by 20 March 2019). If the deadline for the submision of the Flow Report or the correction falls on a weekend or holiday, the report can be submitted the following working day.

The reporting party is deemed:

- a. to have submitted the Flow Report late (late submission), if the report was submitted after the deadline up to the end of the relevant month;
- b. not to have submitted the Flow Report (no submission), if the Flow Report is not submitted within the time limit under item a. directly above. However, the reporting party must still submit the Flow Report to BI.

Supervision by BI

BI supervises the foreign exchange flow activities of the reporting party through (i) indirect supervision and/or (ii) inspection, and BI may (a) request an explanation, evidence, records and/or supporting documents, with or without involving the relevant agencies (ie institutions, ministries, or authorities with the authority to oversee the reporting party, such as the Financial Services Authority/OJK for banks and the Ministry of State Owned Enterprises for state-owned enterprises) and/or (b) carry out other activities determined by BI.

Upon receiving BI's request, the reporting party must provide the requested information/document within the time limit BI sets. Otherwise, the Flow Report which has been submitted by the reporting party will be deemed incorrect and, if the reporting party has not submitted the Flow Report, the reporting party will be deemed not to have submitted the Flow Report.

Sanctions

Unlike Reg. 16/22, BI under Reg. 21/2 no longer imposes monetary sanctions (fines). A reporting party that:

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- a. submits a Flow Report with incorrect data and/or information (except for the new ULN plan and/or its amendments) and does not submit a correction;
- b. submits the Flow Report late; and/or
- c. does not submit the Flow Report,

will be served written warnings. The written warnings may be served by mail, e-mail or another medium.

Written warnings only apply to new reporting parties after certain periods have lapsed. Reg. 21/2 defines a new reporting party ("New Reporting Party") as:

- i) a reporting party submitting a Flow Report for the first time since Reg. 21/2 came into effect;
- ii) a reporting party which resumes foreign exchange flow activities which previously informed BI that the reporting party would no longer perform foreign exchange flow activities for a minimum period of 1 (one) year; or
- iii) a reporting party which submits a Flow Report for the first time after being discovered to have engaged in foreign exchange flow activities as a result of BI's inspection.

The written warnings served on a New Reporting Party and a reporting party which has not submitted the Flow Report following BI's inspection will only apply under the following conditions:

Condition	Period
i) for a Flow Report for data and/or information (except for the new ULN plan and/or its amendment) – due to: <ul style="list-style-type: none">a. incorrectness and does not submit a correction;b. late submission; and/orc. no submission.	<u>New Reporting Party</u> : the written warning will be served after 3 (three) reporting periods after the first report's submission. <u>A Reporting party which has not submitted the Flow Report to BI</u> : the written warning will be served 3 (three) months after being discovered to have engaged in foreign exchange flow activities.
ii) for a Flow Report for data and/or information of the new ULN plan and/or its amendment – due to: <ul style="list-style-type: none">a. late submission; and/orb. no submission.	<u>New Reporting Party</u> : the written warning will be served after 1 (one) reporting period after the first report's submission.

A reporting party undergoing bankruptcy or is no longer operating may submit an application to BI to not have a written warning served by submitting the supporting evidence (such as copy of the bankruptcy application to the court or a letter evidencing a license revocation from the relevant ministry).

Closing

Reg. 21/2 is effective as of 1 March 2019. The implementing regulations of Reg. 16/22 are still valid as long as they are not contrary to Reg. 21/2, but may be replaced by further regulations by Bank Indonesia related to the Flow Report, particularly on (i) the scope of the report, (ii) report coverage, procedures for submitting the report and report corrections and (iii) the procedures for sanctions.

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