

PwC Indonesia Legal Alert

***Issuance and Transaction of Commercial Papers at the Money Market /
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Bank Indonesia Regulation on the Issuance and Transaction of Commercial Papers at the Money Market

On 19 July 2017, Bank Indonesia (“**BI**”) issued BI Regulation No. 19/9/PBI/2017 on the Issuance and Transaction of Commercial Papers at the Money Market (“**BI Regulation**”). This BI Regulation repeals and replaces Decree Letter of the Board of Directors of Bank Indonesia No. 28/52/KEP/DIR, dated 11 August 1995, on the Requirements for the Issuance and Trade of Commercial Papers through Commercial Banks in Indonesia (“**KEPDIR-BI Regulation**”).

This BI Regulation regulates that issuance of commercial papers (*surat berharga komersial*, hereinafter “**CP**”) by non-bank corporations will be subject of registration with BI certain other requirements. Further, only certain qualified non-bank corporations are permitted to issue CP.

This BI Regulation also emphasizes the establishment of qualified investor-based market, among other things, by way of stipulating minimum purchase price of CP. Qualified investors are further defined as investors having a good investment knowledge, including understanding over investment risks. This is also why disclosure transparency is required.

1) Non-Bank Corporations as Issuers of CP

A non-bank corporation is defined as any legal entity in the form of limited-liability company (*perseroan terbatas*), other than commercial banks (“**Non-Bank Corporation**”). To be able to issue CP, the Non-Bank Corporation shall meet the following requirements:

- a. recorded as shares issuer (*emiten saham*) at the Indonesian Stock Exchange (“**IDX**”) or has issued IDX-registered bonds (*obligasi*) and/or *sukuk* within the last 5 years; or
- b. not recorded as an issuer or a public company, but (i) having operated for at least 3 years or less than three years with certain guarantee (e.g. by a bank or its holding company); (ii) having equity of at least IDR 50 billion; and (iii) having generated net profit for the last 1 year.

Other requirements for Non-Bank Corporation intending to issue CP are as follows:

- a. having its financial statements classified as Fair Without Modification (*Wajar Tanpa Modifikasian*) by BI-registered public accountants for the last three year period;
- b. never in default for the last three years;
- c. Non-Bank Corporation which has been in default is allowed to issue CP, at least, three years as of the date of the default settlement statement, to the extent of reasonable payment;
- d. having management with a good track record;
- e. having implementation guidelines for prudential principles and risk management; and
- f. satisfying administrative requirements set out by BI.

2) Scope of CP

Under BI Regulation, CP is defined as a BI-registered money market instrument issued by Non-Bank Corporations in the form of promissory notes, and with the maturity of up to one year. Further, CP is subject to the following criteria:

- a. CP shall be issued and administered in scripless (*tanpa warkat*) form. CP shall also be electronically transferred, and issued with upfront interest system (*sjstem diskonto*);
- b. CP denomination may be in IDR or a foreign currency;
- c. Value for each CP issuance shall be, at least, IDR 10 billion (or, in case of foreign currency, shall be at least USD 10 million or its equivalent in other foreign currencies);
- d. Value for the purchase of CP by the investors shall be at least IDR 500 million (or, in case of foreign currency, shall be at least USD 50,000 or its equivalent in other foreign currencies);
- e. Maturity setting shall be 1 month, 3 months, 6 months, 9 months, or 12 months; and
- f. CP shall have rate instrument issued by BI-registered rating institution, with a certain minimum limit as set out by BI.

3) BI Approval

A Non-Bank Corporation intending to issue CP (“**Issuer**”) is required to register at and obtain approval from BI. For continual issuance (*penerbitan secara berkelanjutan*) of CP, the Issuer shall also register at and obtain approval from BI before issuing the next phase of CP. Upon BI approval, postponement of CP offering is subject to a certain period set by BI. If no CP is offered after such period, the BI approval will become void. Further, the result of CP offering (e.g. offering memorandum) shall be submitted to BI, otherwise the BI approval will also become void.

4) *Supporting Institutions*

Under BI Regulations, some parties, namely the supporting institutions, are allowed to operate CP-related activities, namely supporting institutions. They are required to register at and obtain approval from BI. The classification is as follows:

- a. *CP Issuance Supporting Institutions*, consist of (i) commercial banks or security companies as arrangers of CP issuance; (ii) rating institutions; (iii) legal consultants; (iv) public accountants; (v) notaries; and (vi) other institutions as set out by BI.
- b. *CP Transaction Supporting Institutions*, consist of (i) security companies; and (ii) brokerage companies.
- c. *CP Administration and Settlement Supporting Institutions*, consist of (i) banks operating in custodian activities; or (ii) security companies.

5) *CP Transaction at the Secondary Market*

CP transactions may be conducted at the secondary market, either directly or through intermediaries of supporting institutions.

6) *Disclosure of Information*

BI Regulation requires the Issuers to disclose sufficient information for their investors, as well as whenever there are changes of material information or facts relating to the CP.

7) *Implications*

- a. The conduct of CP issuance and CP transaction have now been regulated and supervised in detail by BI. This BI Regulation not only addresses the compliance of the Non-Bank Corporations and the executants of CP transaction, but also other supporting institutions, such as legal consultants and public accountants.
- b. While, previously, under KEPDIR-BI Regulation, commercial banks were prohibited to act as guarantors on the CP issuance, they are now allowed under BI Regulation.
- c. While BI Regulation has been in effect since 4 September 2017, exceptions are made for the following requirements:
 - i. Mandatory registration on the issuance of CP by Non-Bank Corporations will be in effect on 2 January 2018.
 - ii. Certain mandatory reporting in relation to CP transaction, submitted by security companies, brokerage companies, and commercial banks, will be in effect on 1 July 2018.

It remains to be seen that provisions under this BI Regulation vary as to when each requirement will be in effect. Either way, CP issuance and transactions are procedural, yet specific in implementations, subject to further advice.

Contacts

Please feel free to contact our Legal Specialists.



Melli Darsa
Founder & Senior Partner
Melli Darsa & Co., Advocates & Legal Consultants
melli.darsa@id.pwc.com
+6221 5212901 ext. 91080



Indra Allen Nasution
Partner
Melli Darsa & Co., Advocates & Legal Consultants
indra.allen@id.pwc.com
+6221 5212901 ext. 91107



Danar Respati Sunartoputra
Junior Partner
Melli Darsa & Co., Advocates & Legal Consultants
danar.sunartoputra@id.pwc.com
+6221 5212901 ext. 91108



Kusumohadiani
Junior Partner
Melli Darsa & Co., Advocates & Legal Consultants
diani.kusumohadiani@id.pwc.com
+6221 5212901 ext. 72689



Vindy Olyvia
Managing Associate
Melli Darsa & Co., Advocates & Legal Consultants
vindy.olyvia@id.pwc.com
+6221 5212901 ext. 72736



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