



NEWSLETTER

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REPATRIATION OF FOREIGN EXCHANGE EXPORT PROCEEDS TO INDONESIA

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Introduction

Government Regulation No. 1 of 2019 regarding Foreign Exchange Export Proceeds from Exploitation, Cultivation and/or Processing of Natural Resources (“GR 1/2019”) came into effect on January 10, 2019. GR 1/2019 requires certain exporters in the natural resources sector to repatriate foreign exchange export proceeds to Indonesia.

Prior to the issuance of GR 1/2019, exporters were already required to remit foreign exchange export proceeds to Indonesian foreign exchange banks by virtue of Bank Indonesia Regulation No. 16/10/PBI/2014, and there were similar requirements set out in the following regulations:

- (i) Minister of Energy and Mineral Resources Decree No.1952/84/MEM/2018 which requires exporters of minerals and coal to use letters of credit and to repatriate all foreign exchange export proceeds to Indonesia; and
- (ii) Minister of Trade Regulation No. 94 of 2018 (as amended) which requires exporters of a range of commodities in the minerals, coal, oil and gas and palm oil sectors to use letters of credit and which requires that the proceeds must be received through domestic foreign exchange banks or the Government’s export financing institution.

These regulations have not been revoked by GR 1/2019 and remain in effect.

Implementing Regulations

Bank Indonesia (“**BI**”) and the Minister of Finance (“**MOF**”) have now issued the following implementing regulations for GR 1/2019:

- (i) On January 18, 2019, BI issued BI Regulation No. 21/3/PBI/2019; and
- (ii) On July 1, 2019, the MOF issued (1) MOF Decree No. 1523/KM.4/2019 (“**MOF Decree 1523/2019**”) and (ii) MOF Regulation No. 98/PMK.04/2019 (“**MOF Regulation 98/2019**”).

We set out below the salient points of GR 1/2019 and its implementing regulations.

1. Scope

GR 1/2019 covers foreign exchange proceeds of exports from the exploitation, cultivation and/or processing of natural resources from the (a) mining (b) plantation (c) forestry and (d) fisheries sectors. The types of natural resources in sectors (a) to (d) above are listed in the attachment to MOF Decree 1523/2019 and include derivative products involving processing or manufacturing of natural resources (i.e. not only raw materials).

2. Requirements

GR 1/2019 requires foreign exchange export proceeds from the export of natural resources specified in MOF Decree 1523/2019 to be deposited in the Indonesian financial system. However, GR 1/2019 does not require such foreign exchange export proceeds to be converted to Indonesian Rupiah.

Exporters of natural resources in the mining, plantation, forestry and fisheries sectors must deposit foreign exchange export proceeds in a special account (“**Special Account**”) with an Indonesian foreign exchange bank which is licensed by the Financial Services Authority (“**OJK**”) to engage in foreign exchange operations (“**Forex Bank**”). The definition of Forex Bank expressly excludes overseas branches of banks whose headquarters are in Indonesia.

If export proceeds are to be received by exporters through an “escrow account”, the account must be maintained with a Forex Bank (i.e. the account must be in Indonesia). If exporters have existing escrow accounts overseas, then such accounts must be replaced by escrow accounts with a Forex Bank in Indonesia.

3. Use of Export Proceeds

The export proceeds which are deposited in a Special Account may be used for the following purposes:

- (a) payment of export duties and other levies related to exports;
- (b) payments related to loans;
- (c) payments for imports;
- (d) distribution of profits/dividends; and
- (e) other needs of investors pursuant to Article 8 of Law No. 25 of 2007 regarding Investments.

Transfers from a Special Account in amounts exceeding USD100,000, or its equivalent in other currencies, must be accompanied by supporting documents.

4. Supervision

Supervision of export activities in the relevant sectors will be carried out by the MOF. Supervision of the implementation of the obligation to remit foreign exchange export proceeds to the Indonesian financial system, and the use of the export proceeds, will be carried out by BI. Supervision of the maintenance of escrow accounts at Forex Banks will be carried out by the OJK.

5. Sanctions

Non-compliance with GR 1/2019 and its implementing regulations may result in the imposition of fines, export bans, or, ultimately, revocation of business licenses.

The following administrative sanctions are stipulated in MOF Regulation 98/2019:

- (i) a fine of 0.5% of the total value of foreign exchange export proceeds if exporters do not remit their foreign exchange export proceeds into a Special Account within the required period;
- (ii) a fine of 0.25% of the amount of funds which are used for purposes other than purposes referred to in section 3 above; and
- (iii) postponement of the provision of export customs services if exporters do not open an escrow account with a Forex Bank.

If you wish to discuss any issues relating to repatriation of foreign exchange export proceeds to Indonesia, please contact any of the following MKK attorneys:

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