BANK INDONESIA REGULATION
NUMBER: 7/1/PBI/2005
CONCERNING
BANK FOREIGN BORROWINGS

THE GOVERNOR OF BANK INDONESIA,

Considering :
a. whereas foreign borrowings are an important factor affecting the strength of the balance of payments and monetary stability;
b. whereas foreign borrowing by banks must take account of prudential principles, the national economic interest, and efforts to maintain international confidence;
c. whereas the provisions concerning foreign borrowings need to be brought into line with developments in the banking system and national economy;
d. now therefore, based on the considerations set forth in letter a, letter b, and letter c, it is deemed necessary to enact renewed provisions concerning bank foreign borrowings in a Bank Indonesia Regulation;

In view of :
1. Act Number 7 of 1992 concerning Banking (State Gazette of the Republic of Indonesia Number 31 of 1992, Supplement to the State Gazette of the Republic of Indonesia Number 3472), as amended by Act Number 10 of 1998 (State Gazette of the Republic of Indonesia

Number 182 of 1998, Supplement to the State Gazette of the Republic of Indonesia Number 3790);

2. Act Number 23 of 1999 concerning Bank Indonesia (State Gazette of the Republic of Indonesia Number 66 of 1999, Supplement to the State Gazette of the Republic of Indonesia Number 3843) as amended by Act Number 3 of 2004 (State Gazette of the Republic of Indonesia Number 7 of 2004, Supplement to the State Gazette of the Republic of Indonesia Number 4357);
3. Act Number 24 of 1999 concerning Foreign Exchange Flows and the Exchange Rate System (State Gazette of the Republic of Indonesia Number 67 of 1999, Supplement to the State Gazette of the Republic of Indonesia Number 3844);

HAS DECREED:

To enact : THE BANK INDONESIA REGULATION CONCERNING BANK FOREIGN BORROWINGS.

CHAPTER I
GENERAL PROVISIONS
Article 1

The terminology used in this Bank Indonesia Regulation has the following meanings:

1. "Bank" is a Commercial Bank as defined in Act Number 7 of 1992 concerning Banking, as amended by Act Number 10 of 1998, including its overseas branch offices and the branch office of a foreign bank in Indonesia.

2. "Bank …

2. “Bank Foreign Borrowings”, hereinafter referred to as Foreign Borrowings, are all forms of borrowings or liabilities of Banks ~~in respect of~~ to non-residents in rupiahs and in foreign currency and securities in foreign currency issued by Banks.
3. “Non-Residents” are natural persons, legal persons, or other entities not domiciled in Indonesia or domiciled in Indonesia for less than 1 (one) year and whose primary activities are not in Indonesia.
4. “Short Term Foreign Borrowings” are Foreign Borrowings with a term of up to 1 (one) year, and demand deposits, time deposits, savings deposits, or other equivalent form.
5. “Long Term Foreign Borrowings” are Foreign Borrowings with a term of more than 1 (one) year.
6. “Bank Capital” is:
   a. Tier 1 and tier 2 capital, for a Bank having its head office in Indonesia; or
   b. net head office funds, for a branch office of a foreign bank.

   as stipulated in the Bank Indonesia regulations concerning the ~~Minimum Capital Requirement for Commercial Banks~~ Bank Capital Adequacy Requirement (KPMM).
7. “Operating Capital” is net head office funds of a Foreign Bank in its branch office in Indonesia, comprising a component of capital for the branch office of the foreign bank as stipulated in the Bank Indonesia regulations concerning the Requirements and Procedure for Establishment of Branch Offices, Sub-Branch Offices, and Representative Offices of Foreign Banks.

Article 2

(1) A Bank may take on both short term and long term Foreign Borrowings.

(2) In the course of taking on Foreign Borrowings as referred to in paragraph (1), Banks are required to apply prudential principles.

Article 3

Bank Foreign Borrowings as referred to in Article 2 may consist of:

a. borrowings, whether in rupiahs or in foreign currency, from Non-Residents executed on the basis of loan agreements;
b. securities, whether in rupiahs or in foreign currency, issued on international financial markets;
c. securities, whether in rupiahs or in foreign currency, sold over the counter (OTC) to Non-Residents;
d. securities in foreign currency issued on the domestic financial market;
e. securities in foreign currency sold OTC to residents;
f. liabilities in the form of demand deposits, time deposits, savings deposits, call money, and other liabilities to Non-Residents, whether in rupiahs or in foreign currency;
g. forms of liabilities and securities as referred to in letter a through letter f based on sharia principles.

CHAPTER II

SHORT TERM FOREIGN BORROWINGS

Article 4

Banks are required to limit the daily balance of Short Term Foreign Borrowings to no more than 30% (thirty percent) of Bank Capital.

Article 5

(1) Exempted from the requirement for Banks to limit the daily balance of Short Term Foreign Borrowings as referred to in Article 4 are:

a. Short Term Foreign Borrowings from the controlling shareholder(s) to resolve liquidity difficulties faced by the Bank;
b. Operating Capital for a branch office of a foreign bank in Indonesia to a maximum limit of 100% (one hundred percent) of declared Operating Capital;
c. demand deposits, savings deposits, and time deposits held by foreign diplomatic representation and international agencies, including their staff members;
d. demand deposits held by Non-Residents used for investment activities in Indonesia.

(2) Exemption of Short Term Foreign Borrowings as referred to in paragraph (1) shall be supported by adequate evidence and the evidence shall be administered by the Bank.

Article 6

(1) A branch office of a foreign bank shall determine the amount of declared Operating Capital to be effective for no less than 2 (two) years commencing from the date of determination and declare this information to Bank Indonesia, cq. relevant Directorate of Bank Supervision or local Bank Indonesia Regional Office, with a copy to the Directorate of International Affairs.

(2) A branch office of a foreign bank is required to maintain a daily Operating Capital position of no less than 90% (ninety percent) of total declared Operating Capital as referred to in paragraph (1).

(3) A branch office of a foreign bank may maintain a daily position of Operating Capital in excess of 100% (one hundred percent) of declared Operating

Capital as referred to in paragraph (1), subject to the provision that the excess Operating Capital shall be treated as Short Term Bank Foreign Borrowings.

Article 7

(1) Upon expiration of the effective period of the declared Operating Capital as referred to in Article 6, the branch office of the foreign bank shall be required to inform Bank Indonesia, cq. relevant Directorate of Bank Supervision or local Bank Indonesia Regional Office, with a copy to the Directorate of International Affairs, of the new declared Operating Capital, irrespective of whether there is change or no change in the amount of declared Operating Capital.
(2) A branch office of a foreign bank may add to the amount of declared Operating Capital prior to the expiration of the effective period by submitting an application for additional declared Operating Capital to Bank Indonesia, cq. relevant Directorate of Bank Supervision or local Bank Indonesia Regional Office, with a copy to the Directorate of International Affairs, stating the reason and purpose for the addition.
(3) Approval for additional declared Operating Capital as referred to in paragraph (2) shall be issued by Bank Indonesia after taking into account the needs of the Bank and domestic monetary conditions.

CHAPTER III

LONG TERM FOREIGN BORROWINGS

Article 8

(1) A Bank intending to proceed with market entry to raise Long Term Foreign Borrowings is required to obtain prior approval from Bank Indonesia.

(2) A Bank may only take on Long Term Foreign Borrowings to a maximum limit of the planned total Long Term Foreign Borrowings approved by Bank Indonesia.

(3) The market entry plan referred to in paragraph (1) shall be disclosed in the business plan of the Bank.

Article 9

(1) A Bank intending to proceed with market entry shall submit a complete application for approval of market entry plan no later than 1 (one) month prior to market entry, using a form according to the specimen in Appendix 1 to this Bank Indonesia Regulation.

(2) Application for approval of market entry for Foreign Borrowings in the form of Subordinated Loans (SOL) based on a recommendation by a Bank supervisor may be submitted by the Bank at any time.

(3) Application as referred to in paragraph (1) and paragraph (2) shall be submitted to Bank Indonesia, cq. Directorate of International Affairs with a copy to relevant Directorate of Bank Supervision or the local Bank Indonesia Regional Office.

Article 10

Bank Indonesia shall issue approval for market entry after taking into account the following:

a. the plan for Long Term Foreign Borrowings disclosed in the business plan of the Bank;
b. the terms and conditions of the loan;
c. condition of the domestic and overseas financial markets;
d. domestic monetary conditions; and

e. the risk profile of the Bank.

Article 11

(1) Approval for market entry issued by Bank Indonesia shall be effective for a period of 3 (three) months commencing from the date of issuance of the approval for market entry.
(2) If the period referred to in paragraph (1) has expired and the Bank has not undertaken market entry and still plans to proceed with market entry, the Bank shall resubmit the application for approval for market entry as referred to in Article 9.

Article 12

(1) A Bank is required to submit a market entry report no later than 7 (seven) working days after market entry according to the example in Appendix 2 to this Bank Indonesia Regulation.
(2) In the event of any difference in the loan terms and conditions before and after market entry, the Bank shall provide adequate explanation for the reasons thereof in the market entry report.
(3) A report as referred to in paragraph (1) shall be addressed to Bank Indonesia, cq. Directorate of International Affairs, with a copy to the relevant Directorate of Bank Supervision or the local Bank Indonesia Regional Office.

Article 13

Within the framework of weighing together the Debt Sustainability Analysis (DSA), equilibrium in the Balance of Payments, monetary stability, and adequacy of international reserves, Bank Indonesia may establish a Long Term Foreign Borrowings ceiling for an individual Bank.

CHAPTER IV
SANCTIONS
Article 14

(1) Any Bank failing to comply with the provisions referred to in Article 4 shall be liable to a financial penalty of 1% (one percent) per annum of the excess for each day.

(2) Any Bank failing to comply with provisions referred to in Article 6 paragraph (2) shall be liable to a financial penalty of 1% (one percent) per annum of the shortfall for each day.

(3) Any Bank failing to comply with provisions referred to in Article 8 paragraph (1) shall be liable to a financial penalty of 0.2% (zero point two percent) of the amount of borrowing received.

(4) Any Bank failing to comply with the provisions referred to in Article 8 paragraph (2) shall be liable to a financial penalty of 0.2% (zero point two percent) of the excess over the amount approved by Bank Indonesia.

(5) Any Bank ~~violating~~ failing to comply with the provisions referred to in Article 12 paragraph (1) shall be liable to a financial penalty of Rp 100,000 (one hundred thousand rupiahs) per working day to a maximum of Rp 5,000,000 (five million rupiahs).

(6) If in the opinion of Bank Indonesia there are fundamental changes in regard to terms and conditions as referred to in Article 12 paragraph (2) and the Bank is unable to provide satisfactory explanation, Bank Indonesia may impose administrative sanctions in the form of:

a. written warning; and/or

b. prohibition ~~on~~ for taking ~~on~~ of Foreign Borrowings for a specified period.

Article 15

(1) Within the framework of imposition of sanctions as referred to in Article 14, Bank Indonesia shall inform the Bank in writing of:
  a. nature of the offense;
  b. amount of financial penalty; and
  c. calculation of the financial penalty.

(2) The Bank shall be given opportunity to respond to the imposition of financial penalty as referred to in paragraph (1) no later than 10 (ten) working days commencing from the date of written notification from Bank Indonesia.

(3) If upon expiration of the deadline referred to in paragraph (2) the Bank has not delivered a response or the response delivered by the Bank is unacceptable to Bank Indonesia, Bank Indonesia shall impose the sanctions by means of debit of the rupiah demand deposit account of the Bank at Bank Indonesia.

CHAPTER V

TRANSITIONAL PROVISIONS

Article 16

Securities in foreign currency issued by the Bank on the domestic financial market prior to the promulgation of this Bank Indonesia Regulation shall be exempted from the provisions of this Bank Indonesia Regulation through to the maturity of the securities concerned.

Article 17

Foreign Borrowings guaranteed by a Letter of Guarantee (LOG) from Non-Resident shareholders taken on by a Bank to the promulgation of this Bank

Indonesia Regulation shall be exempted from the provisions of this Bank Indonesia Regulation until the expiration of the LOG.

CHAPTER VI
CONCLUDING PROVISIONS
Article 18

The provisions in this Bank Indonesia Regulation shall not apply to Bank liabilities incurred in the course of international trade insofar as these liabilities are supported by adequate evidence of underlying transactions.

Article 19

With the issuance of this Bank Indonesia Regulation:

a. Decree of ~~the Management~~ the Board of Managing Director of Bank Indonesia Number 29/192/KEP/DIR dated March 26, 1997, concerning Guidelines for Banks Foreign Commercial Borrowings ~~by Banks~~;
b. Decree of ~~the Management~~ the Board of Managing Director of Bank Indonesia Number 30/186/KEP/DIR dated January 21, 1998, concerning Amendment to Article 13 of Decree of ~~the Management~~ the Board of Managing Director of Bank Indonesia Number 29/192/KEP/DIR dated March 26, 1997, concerning Guidelines for Banks Foreign Commercial Borrowings ~~by Banks~~;
c. Circular Letter of Bank Indonesia Number 29/55/ULN dated March 26, 1997, concerning Guidelines for Banks Foreign Commercial Borrowings ~~by Banks~~
d. Circular Letter of Bank Indonesia Number 30/40/ULN dated January 21, 1998 concerning Amendment to Article 13 of Decree of ~~the Management~~ the Board of Managing Director of Bank Indonesia Number 29/192/KEP/DIR dated March 26, 1997, concerning Guidelines for Banks Foreign Commercial Borrowings ~~by Banks~~,

are revoked and declared no longer valid.

Article 20

This Bank Indonesia Regulation shall come into force on the date of its enactment.

Enacted in: Jakarta
Dated: January 10, 2005

THE GOVERNOR OF BANK INDONESIA

BURHANUDDIN ABDULLAH

STATE GAZETTE OF THE REPUBLIC OF INDONESIA NUMBER 3 OF 2005
DPNP/DLN

ELUCIDATION

TO

BANK INDONESIA REGULATION

NUMBER: 7/1/PBI/2005

CONCERNING

BANK FOREIGN BORROWINGS

GENERAL REVIEW

Foreign Borrowings play a vital role as a source of Bank funding in support of the growth of business in banking and the national economy. Nevertheless, excessive and improperly managed flows of loan funds, especially for short term loans, can trigger fluctuation in the exchange rate and impact the strength of the balance of payments and monetary stability. For this reason, ~~careful~~ prudent regulation of Foreign Borrowings is needed to ensure that borrowing does not have an adverse impact on monetary stability.

As stipulated in Act Number 23 concerning Bank Indonesia, one of the functions of Bank Indonesia is to establish and implement monetary policy. This monetary policy is implemented primarily through the banking system and Bank Indonesia thus needs to enact banking regulations that specify the prudential principles needed to build a sound banking system.

Foreign Borrowings managed by Banks in disregard of prudential principles may affect the repayment ability of the Bank, which in turn may undermine international confidence in the banking sector and in the country as a whole. This in turn will have an adverse impact on monetary stability.

Experience shows that regulation of Bank Foreign Borrowings has been reasonably effective in monitoring the growth of Bank Foreign Borrowings. Nevertheless, due to urgent need for improvements to the economic and banking infrastructure in Indonesia and for measures to restore and maintain international market confidence, promote an improved investment climate and international trade, and anticipate excessive borrowing by the banking system, it is deemed necessary to introduce improvements to the provisions for Bank foreign borrowings as stipulated in this Bank Indonesia Regulation.

ARTICLE BY ARTICLE

Article 1

Self-explanatory

Article 2

Self-explanatory

Article 3

Letter a

Self-explanatory

Letter b through letter e

Securities may comprise Bonds, Commercial Paper, Promissory Notes, Medium Term Notes (MTNs), Floating Rate Notes (FRNs), Negotiable Certificate Deposit (NCDs), and other form of securities.

Letter f

"Other liabilities" are defined as other liabilities recorded on balance sheet.

Demand deposits, time deposits, and savings deposits shall be treated as short term Foreign Borrowings irrespective of their term.

Letter g

Self-explanatory

Article 4

Self-explanatory

Article 5

Paragraph (1)

Letter a

"Controlling shareholder" is defined as a controlling shareholder as stipulated in the Bank Indonesia regulations concerning Commercial Banks and Commercial Banks Conducting Business based on Sharia Principles.

Letter b

Self-explanatory

Letter c

Self-explanatory

Letter d

Investment activities may consist of direct equity participation or purchase of securities.

Paragraph (2)

"Adequate supporting evidence" is defined as including but not limited to:

a. for borrowings by a controlling shareholder to resolve liquidity difficulties sustained by the Bank, at least a cash flow statement.

b. for placement of Operating Capital from the head office of a foreign bank at its branch office in Indonesia, at least evidence of placement/transfer and the financial statement of the Bank.
c. for demand deposits, savings deposits, and time deposits held by foreign diplomatic representation and international agencies, including their staff members, at least copies of account holder identification.
d. for direct equity participation, at least full evidence of equity participation including amount, identity of payer and identity of beneficiary of the equity participation.
e. for purchase of securities, at least evidence of payment to a capital market brokerage company, agreement with the capital market brokerage company, account statement from the capital market brokerage company, and evidence of purchase of shares/bonds.

Article 6

Self-explanatory

Article 7

Self-explanatory

Article 8

Paragraph (1)

The understanding of market entry is differentiated by each type of Long Term Foreign Borrowing instrument as follows:

a. for loan agreements is upon signature of the loan agreement.

b. for …

b. for securities issued on the stock exchange is at the time of public exposé.

c. for securities sold through private placement, including but not limited to MTNs, FRNs, or Credit Link Notes (CLNs), is upon issue of the securities.

Paragraph (2)

Self-explanatory

Paragraph (3)

"Business plan" is business plan as stipulated in the Bank Indonesia regulations concerning Commercial Bank Business Plans.

Article 9

Paragraph (1)

"Complete application for approval" is defined as including changes to the plan for market entry, if any.

Paragraph (2)

The party eligible to apply at any time is a Bank under special surveillance as stipulated in the Bank Indonesia regulations concerning Bank Supervisory Actions and Determination of Bank Status.

Paragraph (3)

Self-explanatory

Article 10

Letter a

The information disclosed in the Bank Business Plan shall be at least the planned amount of Long Term Foreign Borrowings.

Letter b

Terms and conditions cover among others the nature of the loan, interest rate, currency, maturity profile, and relevant charges.

Letter c

Conditions on domestic and international financial markets cover among others developments in financial markets, sovereign rating, and trends in market interest rates.

Letter d

Domestic monetary conditions cover among others the national debt composition, supply of foreign currency from foreign borrowings, and interest rate and exchange rate trends.

Letter e

The Bank risk profile covers levels and trends in all risk exposures inherent to a Bank, such as credit risk, liquidity risk, and market risk, as stipulated in the Bank Indonesia regulations concerning Application of Risk Management by Commercial Banks.

Article 11

Self-explanatory

Article 12

Paragraph (1)

Self-explanatory

Paragraph (2)

"Difference in loan terms and conditions" in this matter includes but is not limited to change in nature of loan, currency, amount of

loan, …

loan, currency of loan, interest rate, maturity profile, other charges, and debt covenants.

Paragraph (3)

Self-explanatory

Article 13

Self-explanatory

Article 14

Self-explanatory

Article 15

Self-explanatory

Article 16

In the event of extension/renewal of securities at maturity, the applicable provisions are the provisions of this Bank Indonesia Regulation.

Article 17

Self-explanatory

Article 18

"Bank liabilities incurred in international trade" are defined as including but not limited to L/C, usance L/C, red clause L/C, stand by L/C, and other similar liability.

Article 19

Self-explanatory

Article 20 …

Article 20

Self-explanatory

SUPPLEMENT TO THE STATE GAZETTE OF THE REPUBLIC OF INDONESIA NUMBER 4467