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Offshore Lending to Borrowers in Indonesia: Recent Supreme Court Judgments Highlight Enforceability Problems**

On April 15, 1985, the Supreme Court of the Republic of Indonesia issued a judgment[1] stating that Indonesian lower courts had correctly ruled offshore loan agreements invalid and therefore unenforceable in Indonesia when Indonesian statutory reporting requirements with respect to such loans had not been met. On February 27, 1986, the Supreme Court issued a second judgment[2] on the same subject matter, which appeared to reverse its earlier position. The Supreme Court stated that according to the relevant decrees promulgated by the Minister of Finance and Bank Indonesia,[3] sanctions for noncompliance with reporting and prior approval requirements are administrative sanctions, which do not directly affect the validity of the loan agreements concerned.

These two contradictory judgments painfully illustrate the problems that offshore lenders now face in interpreting and applying Indonesian statutory approval and reporting requirements applicable to offshore lend-

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1. Judgment of Apr. 15, 1985, Supreme Court Indonesia, 2958 K/Pdt/1983. This decision has not yet been published in Indonesia.

2. Judgment of Feb. 27, 1986, Supreme Court Indonesia, 2826 K/Pdt/1984. This decision has not yet been published in Indonesia.

3. Bank Indonesia is the central bank authority of the Republic of Indonesia.

ing. Problems are caused partly by the text of the relevant decrees, which in places is inconsistent and leaves room for varying interpretations; the essential cause, however, is that many Indonesian private sector borrowers have consistently shown reluctance, in practice, to comply with statutory approval and reporting requirements. Indonesian borrowers have a variety of motives for this reluctance, including: traditional aversion to public disclosure in general; fear that compliance may significantly delay availability of loan funds; and concern that compliance will draw attention to their (sometimes worrisome) debt-to-equity ratios. Noncompliance has been and to a certain extent currently still is being condoned by offshore lenders. In any event, the result is that in many offshore credit facilities granted to Indonesian borrowers, approval and reporting requirements have not been met. This failure exposes the lenders concerned to the serious risk that in the event of default recovery will be impeded or even fully frustrated because of noncompliance. In addition, offshore lenders are exposed to the risk that, if the Government of the Republic of Indonesia were to reinstitute exchange control regulations restricting the currently permitted free flow of foreign currency funds abroad (and it is not wholly inconceivable that this will happen), it would become substantially more difficult to realize repayment abroad if the loans concerned were not properly approved and recorded.

The subject matter of this article concerns not only banks and financial institutions, but also foreign commercial enterprises with loans outstanding in Indonesia, because the relevant decrees on prior approval and reporting requirements do not make any distinction between credit facilities extended by offshore banks and those extended by commercial enterprises. For various reasons, loan capital inflow into Indonesia from foreign commercial enterprises is substantial. One important factor is that, at present, the possibilities for direct equity investments in Indonesian enterprises are limited.[4] A possible alternative investment mode fre-

4. Foreign investment in Indonesia is in principle subject to the provisions of Law No. 1 (1967) amended by Law No. 11 (1971) and implementing regulations. This legislation, complemented by Government foreign investment policies, restricts foreign investments to certain specific industrial sectors, which are identified by the Indonesian Capital Investment Coordinating Board (Indonesian acronym: BKPM) in periodically published, so-called Priority Scale Lists (Indonesian acronym: DSP). Foreign investments outside these sectors are not permissible in the form of direct equity investments. The most recent DSP is issued by virtue of Presidential Decree No. 22 (May 31, 1986) (published, in offical English translation, by Bus. News No. 4364, Jun. 11, 1986). In May and October 1986 new sets of investment regulations were issued, known as respectively "the May 6, 1986 package" and "the October 25, 1986 package"; these new regulations widen the scope of possibilities for direct equity investments by foreign investors. The May 6, 1986 package is published in unofficial English translation in ECON. BULL. WARTA CAFI, May 1986 (spec. ed.). The October 25, 1986, package is published in unofficial English translation in Bus. News No. 4413/4414, Oct. 28, 1986, Bus. News No. 4422/4423, Oct. 29,1986, Bus. News No. 4425/4426, Nov. 5, 1986, Bus. News No. 4427, Nov. 7, 1986, Bus. News No. 4428, Nov. 10, 1986.

quently used is the provision of loan capital, supplemented by contractual arrangements designed to provide to the foreign lender a position similar to that of a shareholder. Another factor is that foreign shareholders of Indonesian companies often prefer to provide capital investment and working capital financing by way of shareholder loans rather than arranging for bank loans to be extended directly to the Indonesian companies concerned. In addition, foreign shareholders often must provide financial assistance to their Indonesian partners, who are unable themselves to provide funds to comply with their equity contribution requirements.

This article provides a short survey of the relevant decrees, the practical problems related to the application thereof, and an analysis of the two Supreme Court judgments mentioned above.

I. The Applicable Decrees

The principle legislative instruments are Presidential Decree No. 59 of October 12, 1972, the Decree of the Minister of Finance No. Kep-261/MK/IV/5/73 of May 3, 1973, and the Decree of Bank Indonesia No. 5/9 Kep. Dir. of June 23, 1972.[5] Summarized, the following approval and reporting system is imposed by these decrees:

(1) Offshore loans granted to wholly or partially state-owned enterprises are subject to the prior approval of the Minister of Finance.[6] Such loans must in addition be reported to the Department of Finance and to Bank Indonesia.

(2) Offshore loans granted to PMA-companies[7] are not subject to the prior approval of the Minister of Finance, but they must be sub-

5. The texts of these decrees are not published. Unofficial English translations are in circulation.

6. *See* Presidential Decree No. 59, art. 4, para. 1, *in conjunction with* Decree of the Minister of Finance No. KEP 261/MK/IV/5/73, art. 2, para. 1. The Presidential Decree provides that government departments and institutions (both central and local) may not directly receive foreign credits; such credits must be provided to the Republic of Indonesia, which will then by way of its established budget application procedures further allocate such foreign credit funds. According to art. 2, para. 3 of the Decree of the Minister of Finance, the prior approval may only be issued after the Minister has consulted the Governor of Bank Indonesia, the Chairman of the National Development Planning Agency, and the State Minister of Economic, Financial, and Industrial Affairs. The prior approval requirements will enable the Minister of Finance to control Government related borrowings and the terms and conditions thereof, and to ensure that there will be no direct or indirect state guarantee or security on state-owned assets. Such guarantee or security is not permitted; however, security on assets owned by corporations that are partly state-owned is permissible. The Department of Finance has endorsed the point of view that negative pledge clauses in loan agreements to which the Republic of Indonesia is a party as borrower do not apply to such assets.

7. PMA-companies are Indonesian joint venture companies, in which the equity is in whole or in part foreign owned, and which are governed by the provisions of Law No. 1 (1967) and its implementing regulations, *supra* note 4.

mitted to Bank Indonesia for approval in advance of being executed.[8] If, however, such PMA-companies are partially state-owned corporations, the prior approval requirement will of course apply. Offshore loans granted to PMA-companies must in addition be reported to Bank Indonesia.

(3) Offshore loans granted to private sector borrowers other than PMA-companies[9] must be reported to Bank Indonesia, but are not subject to any prior approval requirements.

II. Types of Offshore Lending Subject to the Decrees

It is prudent to assume that any form of offshore[10] credit facility will be subject to the requirements of the decrees. An exception is made only for credits received from international organizations such as the International Monetary Fund, the International Bank for Reconstruction and Development, the International Development Agency, and the Asian Development Bank, or from foreign governments that are members of IGGI (the so-called Intergovernmental Group on Indonesia). These credits are not subject to the requirements of the decrees. Not only loans are covered, but also other types of credits such as note purchase arrangements, hire purchase contracts, charter-purchase contracts, deferred payment purchase transactions, and possibly, certain types of leasing.[11] (Insofar as

8. *See* Decree of the Minister of Finance No. KEP 261/MK/IV/5/73, art. 1, para. 1 (b), *in conjunction with* Bank Indonesia Decree No. 5/9, art. 2. Bank Indonesia will review the terms and conditions of the loan documents to determine their compatibility with current regulations and policies. No approval will be given unless the amount of the loan is included in the sources of investment funds specifications contained in the investment permit of the PMA-company concerned. *See* Presidential Decree No. 59, art. 6, para. 1.

9. Private sector borrowers other than PMA-companies are wholly Indonesian owned entities that may or may not have so-called "PMDN-status." If they have PMDN-status (which means that they are established by virtue of the provisions of Law No. 6 (1968), are supervised by BKPM, and enjoy certain investment incentives) there is an additional requirement that the amounts of the loans must be included in the sources of investment funds specifications contained in the investment permit of the PMDN-company concerned.

10. The term "offshore" is not a legal term of art. The Decree of the Minister of Finance No. KEP 261/MK/N/5/73 gives a definition that encompasses (1) all offshore loans that cause an obligation to repay abroad, whether in Rupiah or in foreign currency, and (2) all domestic loans that may cause an obligation to repay abroad, whether in Rupiah or in foreign currency.

11. *See* Decree of the Minister of Finance No. KEP 261/MK/IV/5/73, art. 1 para. 1. The Decree does not give a definition or description of these types of agreements. A note purchase arrangement provides for the purchase by a financial institution of series of promissory notes as an alternative to a straightforward lending arrangement. A hire purchase contract is a purchase contract whereby the purchaser will automatically obtain title to the purchased goods if and when the purchase price, payable in installments, has been fully paid; until such time, the purchaser has the legal position of a lessee. A charter purchase transaction is a similar type of arrangement involving vessels. Deferred payment purchase transactions are transactions whereby the purchase price is payable in installments, but title to the purchased goods passes immediately to the purchaser. The leasing transactions mentioned here are principally financial leasing arrangements.

leasing transactions are concerned, these may be effected on an offshore basis only in restricted circumstances.[12]) It is doubtful that offshore guarantee facilities or related reimbursement agreements[13] fall under these requirements. Bank Indonesia officials, on some occasions, have advised informally that these should not be considered subject to the decrees. In this article, the term "loan" will continue to be used, but should be considered to encompass also the other types of credits mentioned above in this section.

Insofar as loans to PMA-companies and other private Indonesian borrowers are concerned, these will be subject only to the prior approval of Bank Indonesia if they have a maturity of more than one year from the date of conclusion of the relevant agreement (not from the date of the first disbursement).[14] Short-term credit facilities having an initial repayment period shorter than one year, but having rollover mechanisms extending the maturity beyond the one-year term, will be deemed to meet this criterion, even if the rollover mechanism is not contractually provided. The term "rollover" should not be given a restrictive meaning. Rollover includes any explicit or implicit mechanism designed to extend the maturity. With respect to loans extended to PMA-companies, it is sometimes argued that prior approval of Bank Indonesia is not required if the loans concerned are not investment capital loans but working capital loans. This argument, in my opinion, is incorrect. A distinction between investment and working capital loans is not made in the decrees. The distinction of course does in fact constitute the rationale for the minimum maturity criterion, but this, from a legal viewpoint, is not relevant.

III. State-Owned Enterprises

The scope of prior approval requirements for offshore lending to wholly or partially state-owned enterprises is unclear. The text of the relevant decrees provides no guidelines as to the correct interpretation. It is clear that all government business entities (whether they are separate legal entities or not), and all enterprises in which the state has a direct equity

12. The principal decrees regulating leasing are: (1) the Joint Decrees of the Minister of Finance, Minister of Industry and the Minister of Trade, No. KEP-12/MK/IV/2/1974, No. 32/M/SK/2/1974, No. 30/Kph/I/1974 (Feb. 7, 1974); (2) Decree of the Minister of Finance No. KEP 649/MK/IV/3/1974; (3) Decree of the Minister of Finance No. KEP 650/MK/IV/5/1974 (May 6, 1974); and (4) Announcement of the Director General of Monetary Affairs, No. Peng. 307/DJM/111.1/7/1974. To the knowledge of this writer, these decrees are not published.

13. Reimbursement agreements are agreements by which a guarantor ensures his rights of recourse as against the guaranteed debtor. For a variety of reasons, guarantors in practice will give preference to the execution of such agreements over and above reliance on the subrogation provisions of the Indonesian Civil Code arts. 1400-1403.

14. *See* Decree of the Minister of Finance No. KEP 261/MK/IV/5/73, art. 1, para. 2.

stake, are covered, including the state-owned commercial and development banks. Less clear is whether enterprises in which the state is an indirect shareholder would fall within the scope of the prior approval requirements.

Several distinct forms of indirect state ownership can be identified. In one form, indirect ownership is established via a separate government agency. In my view, such enterprises are certainly covered by the prior approval requirements. In another form, indirect ownership is established via state-owned, limited liability corporations. Do the prior approval requirements apply to subsidiaries of such corporations? Do they apply in the same manner to subsidiaries of corporations that are only partially state-owned? Again, I would tend towards a conservative approach: if prior approval is not obtained, backup, in the form of a confirming Department of Finance ruling, should be obtained. Obtaining rulings, however, may be extremely difficult. In addition, rulings have no defined legal status in Indonesia, and Indonesian courts will not necessarily follow the point of view expressed in such rulings.[15]

IV. Complying with Prior Approval Requirements

Prior approval should be obtained before the actual execution of loan documentation.[16] Execution of a loan agreement containing a condition precedent providing its effectiveness is subject to approval by the Department of Finance (and/or Bank Indonesia), does not meet the prior approval requirement. Final drafts of the loan documentation must be submitted, together with a cover letter requesting approval. Usually the borrower or the legal counsel of the lender or the borrower makes the submission. The lender may also make the submission. Unclear is whether the entire package of loan documentation must be submitted in final draft form. It could be argued that only the main loan agreement needs to be submitted.[17] I, however, would advise submitting the whole package, including security agreements, forms of promissory notes, guarantees, schedules, and the like. In normal circumstances, there should be no objection to such an extensive submission, and it precludes the possibility of arguments that approval was given on incomplete documentation and therefore should be deemed improperly obtained. Once the approval is in place, the documentation may be formally executed, but no further

15. In Judgment of Apr. 15, 1985, Supreme Court Indonesia, 2958 K/Pdt/1983, the lower courts had not given heed to a letter issued by Bank Indonesia, which stated that violation of the reporting requirements should not invalidate the loan agreement concerned.

16. *See* Decree of the Minister of Finance No. KEP 261/MK/IV/5/73, art. 2, para. 2.

17. *Id.* (the text of article 2, para. 2 speaks only of submission of "the draft of the credit agreement").

amendments should be made in the documentation itself prior to execution. If, after execution, amendments are made, then application for prior approval must be made again. In case of a transfer of a loan, whether to other branches of the same lender, or to a third party, such transfer is subject to prior approval (albeit that different procedures apply). The same applies if there is a change in the currency or currencies in which loans are made, and if loans are rescheduled.[18]

V. Reporting Requirements

Insofar as reporting requirements are concerned, special forms[19] must be used that are made available by Bank Indonesia. Reporting must be done as soon as practicable after the execution of the loan documents, and in any event, on or prior to the date upon which the loan documents become "effective," and thereafter every three months.[20] The language of the decrees indicates that the obligation to report is imposed on the borrower.[21] In the first of the two Supreme Court judgments that are discussed later in this article, the Supreme Court endorsed the decision of the court of first instance, which included a ruling that borrowers are responsible for reporting, and that reporting effected by the lender will not necessarily constitute compliance with the statutory reporting requirements. Surely the court of first instance gave an incorrect interpretation here. All intents and purposes of the statutory requirements would seem to have been fully satisfied if reporting has taken place, regardless of who actually submitted the reports in question.

VI. Sanctions

The banking community and the legal profession in Indonesia have always been concerned that noncompliance with prior approval requirements could have serious consequences. First, noncompliance clearly makes it impossible for foreign lenders to obtain foreign investment repatriation protection.[22] Second, noncompliance could restrict or preclude

18. These observations are based on the fact that in all approval letters of the Minister of Finance it will be specifically stipulated that any changes in the loan provisions will again be subject to prior approval. In the experience of this writer, the term "changes" is very broadly interpreted by the Department of Finance officials concerned.

19. These are preprinted forms, known as Forms DP 005 and DP 006.

20. *See* Decree of the Minister of Finance No. KEP 261/MK/IV/5/73, art. 3, para. 1.

21. *Id., in conjunction with* Presidential Decree No. 59 (1972), art. 5, para. 2.

22. This is the repatriation protection that is provided for in arts. 19 & 20 of Law No. 1 (1967). The protection extends only to capital that is invested in PMA-companies in accordance with the sources of funds specifications of the investment permits of the PMA-companies concerned, and that is recorded with Bank Indonesia.

repayment abroad in the event exchange control restrictions are imposed in the future.[23] It was for some time doubtful whether noncompliance would result in invalidity or unenforceability of loan agreements, but in 1981 the Supreme Court unequivocally ruled that a loan granted to a PMA-company that had not been approved in advance by Bank Indonesia was invalid and unenforceable.[24]

With respect to reporting requirements, the notion that noncompliance could result not only in administrative sanctions but also in invalidity or unenforceability of the loan documentation itself, has not been seriously entertained in the past. In practice, the most frequently voiced concern was whether noncompliance could restrict or preclude the possibility of repatriation of foreign currency in the event exchange control regulations were subsequently introduced. In hindsight, this approach seems curiously lighthearted. A number of precedents exist to prove that Indonesian Government agencies can be unpredictably severe and restrictive in their interpretation and application of regulations. Two examples are the substantial fines that Bank Indonesia imposed on a number of foreign bank branch offices for violations of a decree restricting such offices in rendering services to customers outside Jakarta,[25] and a ruling of the Director General of Taxes that the Indonesian branch offices of foreign banks could be held responsible for failure of Indonesian borrowers to pay interest withholding taxes.[26]

VII. The Supreme Court Judgments

The first Supreme Court judgment, referred to at the beginning of this article, concerned loans made by the Singapore branch office of The Chartered Bank to an Indonesian private borrower. This loan was secured

23. Exchange control regulations currently permit the free flow of funds from Indonesia to abroad. However, the enabling legislation authorizes the Government to reimpose restrictions by the issuance of departmental decrees if there would be a change in policy.

24. Judgment of 1981, Supreme Court Indonesia, 1750/K/SIP/1976, in the matter of European Asian Bank/Soetantyo/P.T. Agfacolor Laboratories Indonesia (unpublished).

25. This concerned violations by foreign bank branch offices of (1) Board of Directors of Bank Indonesia Decree No. 6/77/KEP/Dir/BIRO/74 (Feb. 13, 1974), and (2) Circular letter of Bank Indonesia No. SE 6/50 UPPB (Feb 20, 1974), and (3) Circular letter of Bank Indonesia No. SE 7/13 UPPB (Jun. 20, 1974). Unofficial English language translations of these decrees and letters are contained in K. MULJADI, REGULATIONS FOR FOREIGN BANKS OPERATING IN THE REPUBLIC OF INDONESIA. The prohibition against branches of foreign banks conducting business outside of Jakarta has now been relaxed. *See* Board of Directors of Bank Indonesia Decree No. 19/54/KEP/Dir (Dec. 1, 1986), published in unofficial English translation in Bus. News No. 4441, Dec. 12, 1986. This Decree replaces the Decree mentioned under (1) above.

26. Letter of the Director-General of Taxation No. S-443/PJ.22/1982 (Apr. 5, 1982) to Algemene Bank Nederland N.V. An English translation of this letter is published in ECON. BULL. WARTA CAFI, May 27, 1982, (daily ed.).

by joint and several guarantees of certain Indonesian citizens. Following the bankruptcy of the borrower, The Chartered Bank commenced collection proceedings against the guarantors. The latter successfully argued before the lower courts that the offshore loans concerned should be deemed illegal because reporting requirements were not met. The basis of the argument accepted by the lower courts seems to have been that because such noncompliance carries a criminal sanction, it should be deemed to violate Indonesian public order. Agreements violating the public order could not be deemed valid and enforceable.[27] Under Indonesian law guarantees are deemed to be "accessory,"[28] which essentially means that guarantees cannot exist independently from the contractual obligations they secure. Consequently, if the contract is null and void, the guarantors will not be liable for the performance of obligations thereunder. Accordingly, the guarantors argued that on the basis of the "accessory" character of the guarantees, and the illegality of the loan agreements, they had no liability to The Chartered Bank. Interestingly, the lower courts did not recognize as valid a clause in the guarantee contract that purported to confer liability on the guarantors even if the underlying loan agreement were invalid or unenforceable. The Supreme Court, regrettably without providing an authoritative interpretation of its own concerning the legal aspects of the dispute, simply stated that the judex facti (i.e., the lower courts) had correctly applied the law. In effect this decision means that the judgments of the lower courts were fully sanctioned and confirmed by the Supreme Court.

The second Supreme Court judgment concerned a dispute between P.T. Indokaya Nissan Motors and Marubeni Corporation. The latter had guaranteed a loan provided by Bank of Tokyo to Nissan. Upon failure by Nissan to repay, Marubeni honored its obligations as guarantor by making payment of the amounts of principal and interest due to Bank of Tokyo. Marubeni and Nissan had concluded a reimbursement agreement,[29] which provided that Nissan would reimburse Marubeni for any amounts paid under the guarantee. This reimbursement agreement was made subject to Indonesian law and provided for the nonexclusive jurisdiction of the Indonesian courts. In this case, Nissan argued, inter alia, that the loan agreement between Bank of Tokyo and Nissan was invalid because of violation of statutory reporting and prior approval requirements, that

27. Indonesian Civil Code, arts. 1320, 1335, 1337. The lower courts, in my opinion, seem to have failed to appreciate that compliance with reporting requirements bears no direct relation to the substance of the loan agreement concerned, and therefore, could not affect the legal validity of the loan agreement itself.

28. The "accessory" character of guarantees follows from the provisions of Indonesian Civil Code, arts. 1820, 1821 and 1822.

29. *Supra* note 13.

therefore Marubeni's payment to Bank of Tokyo was not legally required, and that Nissan was accordingly not bound to reimburse Marubeni. The Supreme Court rejected this line of argument using the following reasoning:

> [T]hat furthermore in accordance with the prevailing regulations of the Minister of Finance and Bank Indonesia, the sanctions in respect of violations of the said decrees are only administrative in character (vis-à-vis the companies or foreign banks concerned), while with respect to the loan agreement itself there are no legal consequences in the form of sanctions which directly affect [the validity of] the said [loan] agreement.[30]

It appears from this second judgment that the Supreme Court, relatively abruptly changed its point of view on the subject. Nevertheless, it would be imprudent to assume that the threat of invalidity or unenforceability of loan agreements when statutory prior approval or reporting requirements are not met now has been removed. It should be borne in mind that the common law principle of stare decisis does not apply in Indonesia, which is essentially a civil law country; although Supreme Court decisions have high persuasive authority and will usually be followed by the lower courts, the latter are not actually bound to follow prior judgments of higher ranking courts. In addition, there is always some doubt as to whether Supreme Court decisions may be characterized as representing a dependably definitive viewpoint on the subject matters dealt with therein.

VIII. Conclusions

What, then, are the consequences of these Supreme Court judgments for the practice of offshore lending to Indonesian borrowers? As long as uncertainty on the issue remains, lenders should continue to maintain a very cautious approach to the question of the effect of noncompliance on the validity and enforceability of loan agreements. Prudent lenders will review their existing portfolios on compliance, take remedial action wherever possible, and also review their lending policies and control procedures, as much as practically possible, to ensure compliance. Finally, it would be advisable to amend standard loan documentation to ensure that agreements: (1) contain clauses authorizing, but not obligating, lenders to comply with prior approval and reporting requirements on behalf of borrowers; (2) contain as a condition of disbursement submission of proof that reporting requirements have been complied with up to the date of each disbursement; and (3) contain a clause to the effect that borrowers will comply with all reporting requirements and that failure to do so will create a separate and independent obligation on the part of the borrower to indemnify the lender against any losses, damages, and costs of the

30. Page 11 of the original text of the decision, second paragraph.

lender resulting from noncompliance. Although obviously providing only a limited measure of comfort, clauses such as these will help lenders to ensure, as much as circumstances will permit, that borrowers will comply with the relevant requirements. It should be noted, however, that lenders may weaken their legal position vis-à-vis noncompliance if they create, but subsequently do not make use of, a contractual mechanism to force borrowers to comply.

Finally, it is recommended that the Minister of Finance restate more clearly and comprehensively the approval and reporting requirements for offshore borrowings (and the legal consequences of noncompliance therewith) in one new legislative instrument that would replace the current decrees mentioned in Section I of this article. One of the arguments made by counsel for The Chartered Bank in the first of the two above-mentioned Supreme Court proceedings was that in the interest of obtaining banking services for the benefit of Indonesian borrowers, banks should be given legal protection against fraudulent and incorrect practices of borrowers and guarantors. This suggestion of course does not constitute an impressive legal argument. Nevertheless, it has undeniable merit as a policy argument, which the Department of Finance should take to heart. The Indonesian private sector continues to be heavily dependent on offshore (non-Rupiah) borrowings.[31] In addition, in the worrisome current state of the Indonesian economy, many Indonesian borrowers will have to rely more heavily on their bankers. In many cases bankers will have to accept sacrifices in the form of write-offs and reschedulings. Certainly a streamlining and clarification of the regulatory regime applicable to offshore lending into Indonesia should contribute to a financial climate that provides more security to foreign banks, financial institutions, and commercial enterprises. This stability is crucial for necessary further growth of the private sector in Indonesia.

31. According to consistently applied policies of BKPM, PMA-companies are in principle required to obtain their loan funding for investment purposes from abroad in foreign currencies. Loan funding for working capital purposes may now be obtained in Rupiah from the state-owned banks. *See* Presidential Decree No. 17 of 1986, dated May 6, 1986 (published as part of the May 6, 1986 package, *supra* note 4, and in Decree of the Board of Directors of Bank Indonesia No. 19/IT/KEP/DIR, (June 4, 1986) (published in unofficial English translation in Bus. News No. 4363, Jun. 6, 1986).