

FREQUENTLY ASKED QUESTIONS
BANK INDONESIA REGULATION NUMBER 14/17/PBI/2012
DATED 23rd NOVEMBER 1012 CONCERNING
BANK BUSINESS ACTIVITY IN THE FORM OF TRUST
(State Gazette of the Republic of Indonesia 2012, Number 260)

1. What is the background and purpose of the Bank Indonesia Regulation (PBI) regarding Trust Management in Banks?

This policy is a follow-up of macroprudential policy on receipt of export proceeds (DHE) and withdrawal of foreign exchange from external debt (DULN) through domestic foreign exchange banks. This policy is motivated by the fact that businesses, particular firms in the oil and gas sector, continue to use the trustee services offered by offshore banks. This policy is expected to provide the legal infrastructure required by banks to conduct activities in trust management domestically. The foreign exchange management by banks is also expected to foster financial deepening in the domestic financial market. Thus, this policy is expected to help economic players in the management of their foreign exchange, boost the supply of foreign exchange and make a positive contribution to the stability of the exchange rate and the competitiveness of the domestic banks.

2. What is the legal basis for the new Trust regulation?

Act No. 7 of 1992, as amended by Act No. 10 of 1998 (the Banking Act), that:

- Bank may undertake custodial¹/trust activities on behalf of another third party based on a contract (Article 6, letter (i));
- Bank conducting custodial/trust activities shall be responsible for safe-keeping (managing) of the property of the depositor, and fulfil other obligations according to the concluded contract (Article 9, paragraph (1));
- Assets under custody/trust shall be entered into bank's administration and recorded separately (Article 9, paragraph (2));
- In the event that a Bank goes into bankruptcy, all properties entrusted in the custody/trust of the Bank shall not be included into the bankruptcy estate, and shall be returned to the concerned depositors (Article 9, paragraph (3));

3. What is a Trust?

A Trust is a form of business activity conducted by a bank to manage the assets of a third party. The activity of custodianship with management of settlor's assets is based on a written agreement between Bank as trustee and settlor for the interest of beneficiary.

¹ Memory fund to lifting : custodial cover trust

4. Who are the parties involved in Trust activity?

There are three parties involved in Trust activity, namely:

- a. **Settlor** is the party who owns and entrusts assets/fund to be managed by the trustee;
- b. **Trustee** is a Bank engaged in trust activity pursuant to this regulation; and
- c. **Beneficiary** is the party that receives the benefit from the trust. In this activity, the Settlor may also be the Beneficiary.

5. What are general guidelines or principles need to be met in conducting Trust activity ?

- a. Trust activities shall be conducted by a business unit that is separate from Bank's other activity units;
- b. Assets entrusted by Settlor are limited to financial assets;
- c. Assets entrusted by Settlor are recorded and reported separately from Bank's assets;
- d. in the event a Bank that conducts Trust activities is liquidated, all Trust assets shall not be included in the bankruptcy assets and shall be returned to the Settlor or transferred to a successor trustee appointed by the Settlor;
- e. Trust activities shall be set forth in a written agreement between Trustee and Settlor;
- f. Trustee shall safeguard the confidentiality of data and information related to Trust activities as provided in the Trust agreement, except where related to the purpose of reporting to Bank Indonesia;
- g. Bank that conducts Trust activities shall comply with prevailing provisions and legislations.

6. What is the scope of Trust activity?

The scope of trust activity is as follows:

- a. Paying agent;
- b. Investment agent based on conventional and/or Sharia principles; and /or
- c. Borrowing agent based on conventional and/or Sharia financing agent.

Trustee may act as a paying agent, investment agent and borrowing agent in the name of the Settlor. In relation to the function as an investment agent, all activities conducted by the Trustee must adhere to a clear and detailed instruction from the Settlor in accordance with the type of activity or instruments used.

7. How is the trustee acting as an investment agent?

In conducting investment activity, a bank acting as a Trustee must adhere to prevailing rules and regulations, among others, the Banking Act. Shall the Trustee invest funds beyond the scope permitted by law, the investment must be made through an investment manager and Trustee shall act as the paying agent or a paying agent and the connecting agent between the investment manager and the Settlor.

8. How is a Trustee acting as a borrowing agent based on conventional principles and/or financing agent based on Sharia principles?

Trustee may conduct the following activities:

- a. obtaining borrowings based on conventional principles or financing based on sharia principles, which are evidenced by loan agreements or financing agreements based on sharia principles;
- b. undertake hedging or *tahawwuth* based on sharia principles;
- c. reserve funds for repayments of borrowings or financing based on sharia principles, which shall be based on the mechanisms set by Settlor; and/or;
- d. other activities related to borrowing or financing based on sharia principles.

9. How is the trust activities recorded?

Trustee must:

- a. maintain records of Trust activities separately from Bank's records, including details of each Trust activity. The records shall at least cover records concerning Trust asset transactions and positions. Procedures for the recording of Trust activities shall refer to prevailing Statements of Financial Accounting Standards.
- b. Use a domestic bank account for all Trust activities;
- c. undertake the recording of account movements separately for each Settlor and Beneficiary.
be audited by internal auditor and external auditor no less than 1 (one) time in 1 (one) year.

10. Who can conduct Trust activity?

Trust activity can be conducted by a bank or branch office of foreign bank that have met the requirements and has obtained a principle approval and a confirmation letter from Bank Indonesia. The confirmation letter is given to one bank office .

11. What are the Trustee requirements?

To become a Trustee, a Bank or a branch office of foreign bank must meet the following requirements:

- a. Bank:
 - i. being Indonesian legal entity;

- ii. being a foreign exchange bank with core capital of not less than Rp Rp5,000,000,000,000.00 (five trillion rupiah);
 - iii. having ratio of Obligatory Minimum Capital Provision or Capital Adequacy Ratio (CAR) of not lower than 13% (thirteen percent) for the last 18 (eighteen) months consecutively;
 - iv. having Bank Soundness Level as follows:
 - 1. no lower than Composite 2 Rating in the assessment period of the last 12 (twelve) months consecutively; and
 - 2. no lower than Composite 3 Rating in the assessment periode of 6 (six) months prior to the period referred to in number 1;
 - v. stating Trust activity plan in the Bank Business Plan; and
 - vi. having the capacity to perform Trust activities based on the result of Bank Indonesia's assessment.
- b. Branch Office of Foreign Bank :
- a. Meeting the requirement of being Indonesian legal entity no later than 3 (three) years since the effectiveness of this Bank Indonesia Regulation.
 - b. Owning minimum Capital Equivalency Maintained Assets (CEMA) with calculation that is in accordance with prevailing provisions and at no less than Rp5,000,000,000,000.00 (five trillion rupiah); and
 - c. having ratio of Obligatory Minimum Capital Provision or Capital Adequacy Ratio (CAR) of not lower than 13% (thirteen percent) for the last 18 (eighteen) months consecutively;
 - d. having Bank Soundness Level as follows:
 - 1. no lower than Composite 2 Rating in the assessment period of the last 12 (twelve) months consecutively; and
 - 2. no lower than Composite 3 Rating in the assessment periode of 6 (six) months prior to the period referred to in number 1;
 - e. stating Trust activity plan in the Bank Business Plan; and
 - f. having the capacity to perform Trust activities based on the result of Bank Indonesia's assessment.

12. Does the requirements have to be fulfilled by the Bank or the branch office of foreign bank for as long as trust activities are conducted ?

Yes. Banks must maintain a minimum core capital of Rp5 trillion; a minimum capital adequacy ratio of 13%; and a bank soundness level of no less than a composite rating of 2. Furthermore, a foreign bank branch offices must meet the minimum CEMA calculated pursuant to prevailing regulations and no less than Rp5 trillion; a capital adequacy ratio of no less than 13%; and a bank soundness level of no less than a Composite Rating of 2.

13. What happens if a bank or Foreign bank branch office cannot meet the requirements as a trustee?

A trustee failing to meet the requirements will be granted six months to meet the trustee requirements and during that time must make no new trust agreements.

14. What if the Bank or the foreign bank branch office as a Trustee cannot meet the requirements of a Trustee?

The Bank or foreign bank branch office is given the opportunity to meet the requirements no later than six months after the violation occurs and during that time, the Bank or the Foreign Bank Branch office is prohibited from setting up a new Trust Agreement.

15. What if after six months, the bank or foreign bank branch office still does not meet the requirements as Trustee?

The Bank or Foreign Bank Branch Office must return the Trust assets/fund to the Settlor or to the Successor or Substitute of Trustee appointed by the Settlor pursuant to the Trust Agreement.

16. Are there any sanctions/penalties for violation of the requirements?

Yes, there are. Sanctions may be imposed in the form of:

- a Written Notice;
- Lower Bank Soundness Level;
- Ban on conducting Trust activity; and/or
- Revocation of the approval to conduct Trust activity.

17. What happens if the Bank as a Trustee is liquidated?

Bank Indonesia aims to minimize the potential liquidation of a Bank conducting Trust activities by selecting specific requirements for Banks subjected to perform Trust activities. However, as a precaution measure, in the event of liquidation, this regulation rules that the Bank or Liquidation Team must return the Trust asset to the Settlor or to Successor or Substitute Trustee pursuant to the Trust Agreement.

18. How does a Bank apply to engage in Trust activity?

Banks wishing to engage in Trust activity must submit an application for principle approval to Bank Indonesia. Based on the principle approval, the Bank has to apply for a confirmation letter from Bank Indonesia. Applications submitted to:

- Banking Supervision Department or Sharia Banking Department, Radius Prawiro Tower, Jl. M. H. Thamrin No. 2, Jakarta, 10350, for the Bank which is headquartered in the region of the Bank Indonesia's Head office; or
- Bank Indonesia Regional Office, for the Banks domiciled outside the region of Bank Indonesia's Head Office;

Copies of the application letter should also be submitted to Banking Research and Regulation Department, Bank Indonesia, Jl. M. H. Thamrin No. 2, Jakarta, 10350.

19. What are the requirements to become a Settlor?

A Settlor must be a corporate client and not affiliated with the Bank as Trustee.

20. Is the Bank required to reports to Bank Indonesia?

Yes. Banks are required to periodically submit a written report to Bank Indonesia no later than the 15th day of the following month. The reporting procedure will be set out in the Bank Indonesia Circular Letter.

In addition to the submission of periodical reports to Bank Indonesia, the Banks is also required to provide a report to the Settlor pertaining the performance of the Trustee in managing the Trust fund.

21. Are there penalties for late reporting and failure to report Trust activities to Bank Indonesia?

Yes. Delay in the submission of Trust activity report will be fined at Rp1 million each working day of delay, and Rp50 million for failure to report Trust activities.

22. When will this regulation concerning Trust be effective ?

The regulation will be effective upon the date of issuance.

Any further enquiry may be directed to:

Email: helpdesk-trust@bi.go.id

Tel: 62-21-3817074; 3817478; 3818454; and 231010 ext. 4791, 6485, 4813.