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Indonesia
Lending & Secured Finance

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This country-specific Q&A provides an overview of lending & secured finance laws and regulations applicable in Indonesia.

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Indonesia: Lending & Secured Finance

1. Do foreign lenders or non-bank lenders require a licence/regulatory approval to lend into your jurisdiction or take the benefit of security over assets located in your jurisdiction?

Foreign lenders are not required to obtain a license/regulatory approval to lend into Indonesia or to take benefit of security over assets located in Indonesia. Under Indonesian law, the general rule of enforcing security over assets is to auction the secured assets and use the proceeds for repayment of the loan. Upon the debtor or the security provider's default, a secured party is not entitled to directly acquire the secured assets to enforce and any agreement to that effect is null and void unless:

a. such assets are in the form of cash; or
b. the secured party acquires such secured assets from an enforcement auction.

However, please note that if the foreign lender seeks to take ownership of the secured assets (for assets other than cash or listed company's shares) by acquiring them via an enforcement auction, such action may constitute doing business in Indonesia and trigger the creation of a permanent establishment in Indonesia. Thus, in this situation, it may be necessary for the secured party to become licensed, qualified, or otherwise entitled to do business under Indonesian law.

2. Are there any laws or regulations limiting the amount of interest that can be charged by lenders?

There are no laws or regulations that limit the interest that can be charged by banks. Nonetheless, there is an Ordinance issued by the Netherlands Indies (the colonial predecessor of the Republic of Indonesia), which remains valid to date. Such Ordinance states that if there is a discrepancy in value between the obligations of the creditor and that of the debtor from the onset that is excessively disproportionate, then at the request of the prejudiced party, a judge may govern the obligations of the prejudiced party or declare the contract null and void. The Ordinance is also applicable when a loan agreement does not clearly specify any interest rate. In such instances, the court will enforce either the 6% 'default interest rate' specified in the Indonesian Civil Code or the average interest rate announced by banks.

Specific sectors, in particular the P2P lending sector, have introduced limitations on the maximum economic benefit (which includes interests) that a P2P lending company can impose on each loan. These limitations range from 0.067% to 0.3% per calendar day, depending on the type of loan.

3. Are there any laws or regulations relating to the disbursement of foreign currency loan proceeds into, or the repayment of principal, interest or fees in foreign currency from, your jurisdiction?

Disbursement of foreign currency loan

Under BI Regulation No. 16/10/PBI/2014 on Receipt of Foreign Exchange from Export Proceeds and Withdrawal of Foreign Exchange from Offshore Debt as amended by BI Regulation No. 17/23/PBI/2015, any withdrawal of foreign exchange offshore debt (*devisa utang luar negeri*) must be made through a foreign exchange bank in Indonesia. Such withdrawal must also be reported to Bank Indonesia ("**BI**") at the latest on the 15th day of the following month after the withdrawal date and monthly thereafter at the latest on the 15th day of each month. The report must be accompanied by supporting documents evidencing that the debt has been withdrawn through a foreign exchange bank in Indonesia.

The Indonesian resident (in this case as the borrower) must submit a report of its annual offshore debt plan to BI annually at the latest on 15 March and any correction thereof at the latest on 15 June.

The borrower's obligations under a loan agreement with any non-Indonesian resident lender(s) must be reported to:

a. The Ministry of Finance of Indonesia, initially on the effective date of the Facility Agreement and quarterly thereafter.
b. BI, under BI Regulation No. 21/2/PBI/2019 on the Reporting of "*Lalu Lintas Devisa*" (commonly known as foreign exchange transaction) Activities. This report must contain information regarding: (A) its trade and

other transactions with non-residents of Indonesia; (B) principal information of offshore debt and/or risk participation transaction; (C) utilisation and/or payment of offshore debt and/or risk participation transaction plan; (D); utilisation and/or payment of offshore debt and/or risk participation transaction realisation; (E) position and change of overseas financial assets and liabilities and risk participation transaction; and (F) new offshore debt plan and its amendments. This report, excluding the report on the new offshore debt plan (which will be further elaborated below), must be submitted to BI at the latest on the 15th day of the following month after the date of the loan agreement and monthly thereafter within the first 15 days of each month.

Under BI Regulation No. 16/22/PBI/2014 on the Reporting of Foreign Exchange Transaction Activities and Activities with regard to the Implementation of Prudential Principle in the Management of Offshore Debt for Non-Bank Companies, the borrower must also submit reports on prudential principles implementation activities comprising of:

a. (i) A KPPK report, which is a report on foreign currency assets and liabilities that is due in three and/or six months; and (ii) a quarterly unaudited financial statement, which must be submitted by the end of the third month in the relevant quarterly period;
b. (i) A KPPK report attested by an independent public accountant; and (ii) an audited annual financial statement, which must be submitted by the end of June of the following year; and
c. A credit rating report, which must be submitted by the end of the following month after the date of the loan agreement.

Under BI Regulation No. 16/21/PBI/2014 on the Implementation of Prudential Principle in the Management of Offshore Loan for Non-Bank Companies, as amended by BI Regulation No. 18/4/PBI/2016, the borrower must also comply with the following and report the same to BI, which report constitute part of the KPPK report:

(a) Hedging ratio

The borrower must have a minimum hedging ratio of 25% of:

i. The negative difference between foreign currency assets and foreign currency liabilities maturing within three months from the last date of each quarter (i.e. 31 March, 30 June, 30 September, and 31 December); and
ii. The negative difference between foreign currency assets and foreign currency liabilities maturing between three to six months from the last date of each quarter.

As of 1 January 2017, any hedging transaction for complying with the hedging ratio must be conducted with Indonesian banks or foreign banks having branches in Indonesia. However, the requirement to maintain the hedging ratio does not apply to the borrower if:

i. It has obtained approval from the Minister of Finance to present its financial statement in United States Dollar; and
ii. It is a non-bank corporation having an export revenue to overall business revenue ratio of more than 50% in the previous calendar year;

(b) Liquidity ratio

The borrower must have a provision of foreign currency assets (including receivables under hedging made on the then current or previous quarter) at a minimum liquidity ratio of 70% of the foreign currency liabilities maturing within three months from the last date of each quarter.

(c) Credit rating

For the borrower to receive a new offshore facility, it must have a minimum credit rating that is equivalent to "BB-" from a rating agency recognised by BI, unless exempted from the compliance to the minimum credit rating requirements as set out in the aforesaid BI regulation.

Repayment of principal, interest or fees in foreign currency

Under the Currency Law (Law No. 7 of 2011 on Currency), Rupiah must be used as legal tender for settlement of domestic payment obligations, except for:

a. Certain transactions for the implementation of state revenue and expense budget (*anggaran pendapatan dan belanja negara*);
b. Receipt or provision of grant from or to foreign countries;
c. International trade transactions;
d. Deposits in banks in a foreign currency; or
e. International financing transactions.

Aside from the above, the implementing regulation of the Currency Law, BI Regulation No. 17/3/PBI/2015 on

Mandatory Use of Rupiah in the Republic of Indonesia further describes an "international financing transaction" as a financing transaction in which either one of the borrowers or the lenders is domiciled outside of Indonesia. Hence, repayment of foreign currency loans is allowed to be made in that same foreign currency.

4. Can security be taken over the following types of asset: i. real property (land), plant and machinery; ii. equipment; iii. inventory; iv. receivables; and v. shares in companies incorporated in your jurisdiction. If so, what is the procedure – and can such security be created under a foreign law governed document?

Yes, each of the above types of assets can be secured in Indonesia.

(a) Real property (land)

Land can be secured by way of mortgage (*hak tanggungan*).

A mortgage will be established upon: (i) the execution of a deed to grant land mortgage (*akta pemberian hak tanggungan* or "**APHT**") before a land deed official (*pejabat pembuat akta tanah* or PPAT) and (ii) the registration of the APHT with the relevant land office in Indonesia. Once registered with the land office, a mortgage certificate (*sertifikat hak tanggungan*) will be issued by the land office evidencing the creation of mortgage.

(b) Plant and machinery, equipment, inventory, receivables

Each of the above assets can be secured by way of fiducia security. Fiducia security will be established upon: (i) the execution of a fiducia security deed before a notary and (ii) the registration of the fiducia security deed with the Fiducia Registration Office under the Ministry of Law and Human Rights. Both the signing and the registration of the fiducia security deed requires the involvement of a notary (in the case of registration, only a notary can access the fiducia registration system). Upon registration and payment of the applicable registration fees, the Ministry will issue a fiducia certificate evidencing the perfection of the fiducia security.

A couple of salient points:

i. Fiducia security over receivables or insurance proceeds must be notified to the relevant counterparty/debtor of the fiducia grantor (in this case as the obligor) based on Article 613 of the Indonesian Civil Code, and, despite not being legally required, be agreed and acknowledged in writing by the relevant obligor to be enforceable against them.
ii. Fiducia security provides the flexiblity such that the secured assets can be used by the obligor as long as there is no event of default occuring. For certain types of assets such as such as machineries, equipment, inventory and receivables, this means that such assets can come and go, increase and decrease, from time to time. It is important for the lender to keep track on the secured assets to ensure that if the lender want to enforce that they will have enough assets in the bucket. Hence, it is important that the lender gets a list of the secured assets with sufficient details on the type, amount, place of storage/holder that is frequently and at any time by request of the lender, updated from the security provider.
iii. For secured assets that are located or stored at a place that is not controlled or owned by the security provider itself, it is important to notify the fiducia security arrangement to, and get acknowledgement from such place owner.

(c) Shares in companies incorporated in your jurisdiction

Theoretically under Indonesian law, shares can be secured by way of fiducia security or pledge. In practice, pledge is more often than not, always used.

i. For unlisted shares, pledge of unlisted shares is created upon execution of a privately drawn or notarial pledge of shares agreement. To perfect the security, the pledge must be notified to the company that issued the pledged shares and be registered in the company's shareholder register.
ii. For listed shares, pledge of listed shares is created upon execution of a privately drawn or notarial pledge of shares agreement. To perfect the security, the pledge must be notified to the company that issued the pledged shares and registered in the scripless trading system of the Indonesia Stock Exchange (C-BEST, as managed by PT Kustodian Sentral Efek Indonesia) evidencing the blocking of the pledged shares.

5. Can a company that is incorporated in your jurisdiction grant security over its future assets

or for future obligations?

Yes, this applies for all type of assets that can be secured with fiducia security.

6. Can a single security agreement be used to take security over all of a company's assets or are separate agreements required in relation to each type of asset?

A security agreement must be specific to that specific type of security and specific asset. However, assets that shares the same characteristics can be secured in the same security agreement.

As an example:

a. securing land and receivables must be done by entering into separate APHT over that land and fiducia security deed over the receivables.
b. securing receivables and equipment, must be done by entering into a fiducia security over receivables and a fiducia security over equipment.
c. securing vehicles, machineries and equipment, can be done by entering into a single fiducia security which shall cover all tangible assets of the security provider.

7. Are there any notarisation or legalisation requirements in your jurisdiction? If so, what is the process for execution?

There is no requirement to enter into a security document in notarial deed form, except for APHT and fiducia security. On the other hand, a vessel hypotec it has to be executed in deed form before the relevant ship registrar office where the vessel is registered.

To be used as evidence before the Indonesian courts, a public officer (such as the public notary) or in an enforcement proceeding (including at the auction office), Indonesian law requires a document executed outside of Indonesia to be notarised by a public notary and:

a. Legalised by the Indonesian embassy or consulate in the country of sigining; or
b. For public documents, accompanied with an apostille certificate issued by the relevant central authority having the jurisdiction in the country of signing or where the party or entity signing the document is registered or has operation in (as applicable).

8. Are there any security registration requirements in your jurisdiction?

Yes, but limited to APHT, fiducia security and vessel hypotec.

a. For APHT, it must be registered with the land office as described in point 4(a) above.
b. For fiducia security, it must be registered with the fiducia registration office as described in point 4(b) above.
c. For hypotec over vessel, this will be established upon (i) execution of the minutes of hypothec deeds (*minuta akta hipotek*) over each vessel before the ship registrar office where the vessel is registered, and (ii) the registration of such minutes of hypothec deeds in the relevant main register of vessel (*daftar induk kapal*) maintained by the relevant ship registrar office.

9. Are there any material costs that lenders should be aware of when structuring deals (for example, stamp duty on security, notarial fees, registration costs or any other charges or duties), either at the outset or upon enforcement? If so, what are the costs and what are the approaches lenders typically take in respect of such costs (e.g. upstamping)?

The costs that are typically involved in creating security would be notarial fees to create the notarial deeds, security registration fees with the relevant authorities and stamp duties.

(a) Notaries typically charge for each deed and the cost for each deed would differ depending on the type of security is made. Please find below the range of costs for preparing the notarial deed for each security type:

i. For fiducia security, the cost is between Rp5 million to Rp10 million.
ii. For vessel hypotec, the cost is up to Rp15 million. Please note that different notaries may come up with different calculation.
iii. For mortgage, the cost is between Rp5 million to Rp10 million.
iv. For pledge, the cost is between Rp5 million to Rp7.5 million.

(b) Stamp duty is affixed on each of the executed agreement and the cost is Rp10,000 (or, in the case of post-dated stamp duty, Rp20,000) for each stamp duty.

(c) Registration fees differs depending on the type of security:

i. For fiducia security, the fees are based on the secured amount that is covered by such secured assets, as follows:

Secured Amount	Costs
Rp1 to Rp50 million	Rp50,000 per deed
Rp50 million to Rp100 million	Rp100,000 per deed
Rp100 million to Rp250 million	Rp200,000 per deed
Rp 250 million to Rp500 million	Rp450,000 per deed
Rp500 million to Rp1 billion	Rp850,000 per deed
Rp1 billion to Rp100 billion	Rp1,800,000 per deed
Rp100 billion to Rp500 billion	Rp3,500,000 per deed
Rp500 billion to Rp1 trillion	Rp6,800,000 per deed
over Rp1 trillion	Rp13,300,000 per deed

It is important to note that this expense is excluding additional VAT of 11%.

ii. For vessel hypotec, the cost for the evaluation of each vessel is Rp150,000 and a non-tax revenue charge which is based on the gross tonage of the secured vessel, as follows:

Gross Tonage (GT) of the Vessel	Costs
GT 7 to GT 100	Rp100,000 per deed
GT 100 to GT 500	Rp250,000 per deed
GT 500 to GT 1.500	Rp1,000,000 per deed
GT 1.500 to GT 5.000	Rp2,500,000 per deed
GT 5.000 to GT 10.000	Rp4,000,000 per deed
GT 10.000 to GT 20.000	Rp7,000,000 per deed
GT 20.000 to GT 30.000	Rp10,000,000 per deed
GT 30.000 to GT 40.000	Rp15,000,000 per deed
GT 40.000 to GT 50.000	Rp20,000,000 per deed
over GT 50.000	Rp30,000,000 per deed

iii. For APHT, there is a non-tax revenue charge which is based on the secured value of the property, as follows:

Asset Value	Costs
Rp1 to Rp250 million	Rp50,000 per deed
Rp250 million to Rp1 billion	Rp200,000 per deed
Rp1 billion to Rp10 billion	Rp2,500,000 per deed
Rp10 billion to Rp1 trillion	Rp25,000,000 per deed
over Rp1 trillion	Rp50,000,000 per deed

10. Can a company guarantee or secure the obligations of another group company; are there limitations in this regard, including for example corporate benefit concerns?

Yes, a company can guarantee or secure the obligations of another group company. However, the validity or enforceability of a non-listed company's guarantee, the granting of security over its assets, or a stipulation in an agreement for the benefit of a third party's creditors to secure obligations of the third party ("**third party security**") can be challenged by:

a. its receiver, in a bankruptcy;
b. its liquidator, in a dissolution and liquidation; or
c. that company itself, through its shareholders, board of directors, or board of commissioners, in other circumstances.

The written authorisations and consents of parties listed in point (c) along with affirmations that the granting of third party security is for the benefit of that company should minimise any challenge over the validity or enforceability of third party security based on corporate benefit.

11. Are there any restrictions against providing guarantees and/or security to support borrowings incurred for the purposes of acquiring directly or indirectly: (i) shares of the company; (ii) shares of any company which directly or indirectly owns shares in the company; or (iii) shares in a related company?

We are not aware of such restrictions, except as regulated in OJK Regulation No. 40/POJK.03/2017 on Credit or Facility to Securities Company and Credit or Facility with Security over Shares. OJK is Indonesia's financial services authority.

This regulation states that if an Indonesian bank provides a loan to a borrower for the purpose of acquisition and or expansion and there is additional security in the form of unlisted shares, in such case, the unlised shares that can be pledged to the Indonesian bank is limited to the shares issued by the borrower.

Please note that the above regulation does not apply to foreign lenders lending to Indonesian borrowers.

12. Can lenders in a syndicate appoint a trustee or agent to (i) hold security on the syndicate's behalf, (ii) enforce the syndicate's rights under the loan documentation and (iii) apply any enforcement proceeds to the claims of all lenders in the syndicate?

An agent is generally used in a syndicate transaction in Indonesia and therefore, this can be done. An agent would be able to enforce its rights under the loan documentation, including to appear before the court and receive enforcement proceeds.

For trustee, however, except as stipulated under specific Indonesian laws and regulations, including on the concept of trustee (*wali amanat*) under the laws on capital markets and state sharia securities, Indonesian law generally does not recognise equitable principles, including, without limitation, the relationship between a trustee and a beneficiary or other fiduciary relationships. Accordingly, the enforcement of finance documents in which the trustee concept applies will be subject to the Indonesian court accepting the governing law of that document and accepting that equitable principles have been applied.

13. If your jurisdiction does not recognise the role of an agent or trustee, are there any other ways to achieve the same effect and avoid individual lenders having to enforce their security separately?

Please refer to our answer to question no. 12 above.

14. Do the courts in your jurisdiction generally give effect to the choice of other laws (in particular, English law) to govern the terms of any agreement entered into by a company incorporated in your jurisdiction?

Under Indonesian law, parties to an agreement are free to choose the law to govern their agreements provided that the law chosen has sufficient relationship with the agreement or to the parties to that agreement and the choice of law is not contrary to public order in Indonesia. We wish to point out, however, if the matter is brought before an Indonesian court, Indonesian judges have a very broad discretion in exercising their powers in rendering decisions. Indonesian courts have occasionally applied Indonesian law irrespective of the choice of foreign law by the parties to the contract, without specifically invalidating the choice of law provision in the relevant document.

15. Do the courts in your jurisdiction generally enforce the judgments of courts in other jurisdictions (in particular, English and US courts) and is your country a member of The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (i.e. the New York Arbitration Convention)?

Foreign Court

Judgments of a foreign court will not be enforceable in Indonesian courts. To be enforceable in Indonesian courts, any action brought in such foreign court must be commenced anew in Indonesian courts. However, in such a proceeding, a judgment rendered by a foreign court could be offered as evidence and may be given such evidentiary weight as the Indonesian court may deem appropriate in the circumstances.

Arbitration

Under Presidential Decree No. 34 of 1981 on the Ratification of the "Convention on the Recognition and Enforcement of Foreign Arbitral Awards" ("**Convention**") Indonesia has ratified the Convention. Moreover, the procedure for enforcement of foreign arbitral awards in Indonesia is regulated by Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolutions ("**Arbitration Law**"). Under the Convention and the Arbitration Law, a foreign arbitral award must satisfy the following requirements to be recognised and enforced in Indonesia:

a. the foreign arbitral award is rendered by an arbitration body or panel, or (an) arbitrator(s) in a country that is bilaterally bound to Indonesia or jointly bound with Indonesia under an international convention on the recognition and enforcement of foreign arbitral awards, and its enforcement is based on the principle of reciprocity;
b. the foreign arbitral awards are only limited to awards which, according to Indonesian law, fall within the scope of its commercial law;
c. the foreign arbitral awards do not contravene the public order in Indonesia; and
d. the parties seeking to enforce the foreign arbitral award has obtained an exequatur (writ of execution) from the Central Jakarta District Court.

The application for enforcement of the foreign arbitral award can be made after such award is registered by the arbitrator or proxy to the Secretary of the Central Jakarta District Court, which registration must be accompanied by:

a. the original or authentic copy of the foreign arbitral award and an official translation copy of such award in the Indonesian language;
b. the original or authentic copy of the relevant agreement that forms the basis of the foreign arbitral award and an official translation copy of such agreement in the Indonesia language; and
c. remarks from the Indonesian diplomatic representative in the country where the foreign arbitral award is awarded, certifying that the plaintiff's country is bound by a bilateral or multilateral agreement on the recognition and enforcement of international arbitral awards with Indonesia.

16. What (briefly) is the insolvency process in your jurisdiction?

In Indonesia, main legal framework for insolvency is governed by Law No.37 of 2004 on Bankruptcy and Suspension of Debt Payment ("**Bankruptcy Law**"). Please note that in this context, we use the term 'bankruptcy' for both individual and corporate debtors. Therefore, reference to 'bankruptcy' or 'insolvency' in this advice is interchangeable.

The Bankruptcy Law prescribes two insolvency processes, namely bankruptcy and suspension of debt payment obligations, which is commonly referred to as PKPU (*Penundaan Kewajiban Pembayaran Utang*).

Bankruptcy

In a bankruptcy proceeding, the debtor or creditor may file a petition by providing evidence that the debtor:

a. Has at least two creditors; and
b. The debtor has failed to pay at least one due and payable debt.

The Bankruptcy Law also does not recognise a grace period; meaning that once a debt is due and payable, a creditor can file for bankruptcy against the debtor. The Bankruptcy Law, however, requires the applicant to prove the two foregoing elements in a straightforward manner.

Following a bankruptcy declaration by the Commercial Court, a supervisory judge and a receiver will be appointed to manage and supervise respectively the assets of the bankrupt debtor, and such debtor, by law, no longer has the right to control and manage its assets.

Once the debtor has been declared bankrupt, the bankrupt debtor can still submit a composition plan, unless the debtor was declared bankrupt because it has failed to fulfil a composition plan that was agreed in a PKPU or failed to obtain creditors' approval on composition plan in a PKPU. In the latter case, theoretically, the bankruptcy would directly be followed by liquidation.

PKPU

PKPU, in essence, provides a debtor with a specified period of court sanctioned relief from creditor enforcement. By imposing a moratorium on the debtor's obligation to satisfy debt payments during the course of the court-mandated suspension period, PKPU provides a debtor with a chance to avoid bankruptcy proceeding by allowing it to prepare and submit a composition plan to restructure its outstanding debt to its creditors for their approval.

Requirements for a creditor filing a petition for PKPU are similar to the requirements for filing a petition for bankruptcy. Once granted by the Commercial Court, a PKPU can last for a maximum of 270 days, consisting of:

a. A temporary PKPU: 45 days (or as may be extended by the creditors) from the date on which the decision on the temporary PKPU is made; and
b. A permanent PKPU: up to 270 days from the date on which the decision on the temporary PKPU is made.

As part of its decision to commence a PKPU, the Commercial Court will appoint a supervisory judge, along with an administrator who will, jointly with the debtor, manage the debtor's assets (implementing a debtor-in-possession approach).

Throughout the interim PKPU period, the debtor must submit a composition plan for consideration and voting by its creditors. Both secured and unsecured creditors with valid claims are eligible to participate in this voting process. For the composition plan to be approved, the debtor needs to meet the requisite voting threshold.

If the debtor is not ready to present the composition plan during the interim PKPU, it has the option to request for a permanent PKPU. The decision regarding a permanent PKPU will likewise be contingent upon creditors' votes, adhering to the threshold as voting for a composition

plan.

In order for a composition plan to be approved, it requires both:

a. A simple majority of unsecured creditors present, provided that they represent at least $^{2}/3$ of the value of all accepted unsecured claims held by the concurrent creditors present at the meeting; and
b. A simple majority of the secured creditors present, provided that they represent at least $^{2}/3$ of the value of all accepted secured claims held by the secured creditors present at the hearing or meeting are required.

17. What impact does the insolvency process have on the ability of a lender to enforce its rights as a secured party over the security?

The lenders' rights to enforce security are subject to an automatic stay of:

a. 90 days from the date of the bankruptcy declaration; or
b. the duration of the PKPU (45 days, which can be extended up to 270 days).

18. Please comment on transactions voidable upon insolvency.

Preferential transactions are cancellable if such transactions are not mandatory and prejudice the creditor. This recourse is known as *actio pauliana*, which can be filed by the receiver or the aggrieved creditor.

In this case, the receiver or creditor must prove that the debtor and the counterparty with whom the debtor committed the action or on whose behalf the debtor acted, were aware that it would prejudice other creditors. For certain actions, however, including a transaction between the debtor and its affiliates that is conducted within a year before the bankruptcy declaration, the debtor and the counterparty are deemed to have been aware that the action would prejudice creditors (unless proven otherwise).

19. Is set off recognised on insolvency?

Yes, set-off is recognised in insolvency proceedings. The aforementioned stay does not apply to enforcement over cash security and set-off. Under the Bankruptcy Law, creditors can offset their claims against any amount owed by the creditors to the debtor, which have been materialised before the declaration of bankruptcy/PKPU.

20. Are there any statutory or third party interests (such as retention of title) that may take priority over a secured lender's security in the event of an insolvency?

Yes, there are statutory and third-party interests that may supersede a secured lender's security in an insolvency scenario.

Under Article 1139 in conjunction with Article 1147 of the Indonesian Civil Code, certain claims hold precedence over others concerning specific assets, such as those incurred in property maintenance. In a more specialised fields like aviation law, a similar principle is upheld. The Indonesian Aviation Law specifies that claims from holders of registered international interests in aircraft objects, including maintenance claims, enjoy priority over other claims. This priority can manifest as the retention of possession of the repaired aircraft.

In insolvency proceedings, Article 60 of the Bankruptcy Law empowers preferred creditors, including those outlined in Article 1139 of the Indonesian Civil COde, to demand that secured creditors allocate proceeds from security enforcement to settle their claims first. Further, the Bankruptcy Law safeguards creditors' rights to retain possession of assets, even in the face of a bankruptcy declaration. As a result, the Bankruptcy Law requires the receiver to settle the claims of these creditors first, allowing the assets to be reintegrated into the bankruptcy estate.

21. Are there any impending reforms in your jurisdiction which will make lending into your jurisdiction easier or harder for foreign lenders?

We do not see any impending reforms that may affect foreign lender yet.

22. What proportion of the lending provided to companies consists of traditional bank debt versus alternative credit providers (including credit funds) and/or capital markets, and do you see any trends emerging in your jurisdiction?

We do not have information on this matter.

23. Please comment on external factors causing changes to the drafting of secured lending documentation and the structuring of such deals such as new law, regulation or other political factors

Over the last year, we have not seen any material new regulations, policies, or court decisions that have caused changes to the drafting of secured lending documentation and structuring to Indonesian borrowers.

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