

Understanding Refinancing Arrangements in Banking Sector

Refinancing is an activity of financing again carried out by applying for a new loan to replace the previous loan. This aims to make the recipient of funds get a bigger profit by getting better loan conditions. Some refinancing products in the banking sector that are widely known to the public are home, car or credit card refinancing. Refinancing has benefits in terms of reducing interest costs, changing the loan period, and reducing the instalment burden.

In the context of corporation, refinancing can be done for several reasons, such as to issue new debt securities, finance new investment projects, obtain funds to operate when the company is in a low-income period, or to refinance the existing debt. There is also the practice of refinancing by issuing bonds to overcome debt obligations that are due soon. One example of corporate refinancing is the syndicated credit facility received by PT Lippo Karawaci Tbk. (LPKR) from PT Bank Negara Indonesia (Persero) Tbk. (BBNI) and PT Bank CIMB Niaga Tbk. (BNGA) worth IDR 6 trillion which was used to refinance senior debt worth USD 845 million in 2023.

The types of refinancing in the banking world generally consist of:

- 1. Rate & term refinancing**
It is an activity to replace the previous loan with a new loan with more favorable loan conditions.
- 2. Cash-out refinancing**
It is an activity to sell assets that are still in a state of credit at a higher price, where then the proceeds from the sale will be used to pay off the credit and the rest of the proceeds become profit.
- 3. Cash-in refinancing**
It is an activity of making credit to pay part of the debt so that the debt gets a smaller interest instalment.
- 4. Consolidation refinancing**
It is an activity similar to rate & term refinancing, but in this case several old loans (at several institutions) are simultaneously replaced with one new loan.

LEGAL ARTICLE



Further information please contact:

Kiki Setiawan, S.H., LL.M.
Managing Partner

Kiki Setiawan & Partners Law Office
EightyEight @Kasablanka, 38th Floor
Jalan Raya Casablanca Kav. 88
Jakarta Selatan 12870
Indonesia

M : +62 813 1488 2322
T : +6221 2963 8070
E : kiki.setiawan@ksplaw.co.id
W : www.ksplaw.co.id

Office:

EightyEight @Kasablanka, 38th Floor
Jalan Raya Casablanca Kav. 88
Jakarta Selatan 12870 - Indonesia
E : mail@ksplaw.co.id
T : +6221 2963 8070
W : www.ksplaw.co.id

In Indonesia, the legal basis for refinancing activities can be traced back to the law on agreements. The Civil Code itself does not specifically regulate credit agreements, so credit agreements are often classified as loan agreements regulated in Article 1754 of the Civil Code, where *“the first party delivers a number of consumable goods to the second party on the condition that the second party will return the same goods to the first party in the same amount and condition.”*

Departing from a contractual relationship, then, the credit agreement cannot be separated from the legal requirements of the agreement contained in Article 1320 of the Civil Code, namely consent, capability, a certain thing agreed upon, and a legal cause. Furthermore, refinancing that stems from credit restructuring can be found in the regulations governing credit restructuring. OJK Regulation No. 40/POJK.03/2019 on Asset Quality Assessment of Commercial Banks states in Article 1 point 25 that *“Credit Restructuring is an improvement effort made by the Bank in credit activities against debtors who have difficulty in fulfilling their obligations.”*

Furthermore, some methods to carry out credit restructuring are outlined in the Explanation of Article 53 of POJK 40/2019 as follows:

“Credit Restructuring is carried out, among others, by:

- a. reduction in the interest rate of the Credit;*
- b. extension of Credit period*
- c. reduction of arrears of Credit interest;*
- d. reduction of arrears of principal*
- e. **addition of Credit facilities;** and/or*
- f. conversion of Credit into Temporary Capital Participation.”*

Obtained from the explanation of Bank of Indonesia Board of Directors Decree No. 31/150/KEP/DIR dated 12 November 1998, refinancing appears in the letter e, which is the addition of credit facilities. Although this decree has been declared invalid after several new provisions including PBI No.14/15/PBI/2012 which was then replaced with OJK Regulation No. 40/POJK.03/201, it is the only decree that provides an explanation of each form of credit restructuring. The addition of credit facilities can be done in several ways, one of which is additional loan funds or refinancing, either by the same creditor or by a different creditor. Refinancing by the same creditor is done by making a new credit agreement where the loan amount is the amount of the previous debt plus the new debt. Refinancing by a new creditor is done by making a new credit agreement where the debtor then uses the credit obtained to pay off his debt to the previous creditor.

Refinancing serves to reduce credit burden and maintain financial stability for Credit Users by consolidating the debt, reducing the interest or changing type of financing.

Office:

EightyEight @Kasablanka, 38th Floor
Jalan Raya Casablanca Kav. 88
Jakarta Selatan 12870 - Indonesia
E : mail@ksplaw.co.id
T : +6221 2963 8070
W : www.ksplaw.co.id

The provision of refinancing as a credit restructuring must also pay attention to the requirements of the credit restructuring itself that the debtor must meet the criteria i.e. experiencing difficulties in making principal and/or interest payments and still have good business prospects and are considered capable of fulfilling their obligations after the credit is restructured. Without the fulfilment of these requirements, banks are not allowed to merely provide credit restructuring with the aim of improving credit quality or avoid increasing the formation of Asset Quality Assessment Provisions.

Aside from the banking sector, provisions regarding refinancing in finance companies were also previously regulated in Presidential Regulation No. 9/2009 on Financing Institutions. In this presidential regulation, it is stated that refinancing can only be carried out by Infrastructure Financing Companies. However, in 2020 the regulation was declared invalid. The current regulation regarding financing companies can refer to POJK No. 35/POJK.05/2018 concerning the Implementation of the Financing Company Business as amended by POJK No. 7/POJK.05/2022. This POJK itself does not mention refinancing as a business activity of finance companies.

As an effort to restructure credit from debtors who have problematic credit, of course, in preparing a refinancing agreement, it must be accompanied by the prudential principle. Credit quality itself is classified into several categories, namely pass credit, credit under special attention/special mention, substandard/less current credit, doubtful credit, and bad credit/loss of credit. To ensure the security of the refinancing agreement, it must contain clauses that can mitigate the risks of these problematic credits. Refinancing as a form of credit agreement cannot be separated from the important clauses of the credit agreement itself. The important agreement clauses in the credit agreement are as follows.

1. Type of credit use, credit purpose;
2. Credit limit, time period, repayment method, instalments, and other credit terms;
3. Interest rates and credit application fees;
4. Representations and warranties;
5. Credit collateral and collateral insurance;
6. Bank actions in the context of credit supervision and rescue;
7. Risk of delay, early repayment penalties, default clauses;
8. Dispute resolution and choice of legal domicile.

Refinancing agreement is an instrument that needs to be carefully prepared and reviewed and hence Kiki Setiawan & Partners Law Office may support both credit users and banks to prepare or review of the refinancing agreement.

Office:

EightyEight @Kasablanka, 38th Floor
Jalan Raya Casablanca Kav. 88
Jakarta Selatan 12870 - Indonesia
E : mail@ksplaw.co.id
T : +6221 2963 8070
W : www.ksplaw.co.id