

New Era for FX Loans and FX Denominated Loans

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I. Legal Framework

This article will address major amendments and novelties stipulated for foreign exchange and foreign exchange denominated loans.

In the first quarter of 2018, taking into consideration the current foreign exchange risks, the Council of Ministers announced a decree and a communiqué amending Decree No. 32 on Protection of the Value of Turkish Currency (published in the Official Gazette dated August 11, 1989, No. 20249) (the “**Decree No. 32**”) and the Communiqué on Decree No. 32 on Protection of the Value of Turkish Currency (published in the Official Gazette dated February 28, 2008 and numbered 26801) (the “**Communiqué No. 2008-32/34**”), in the Official Gazette dated January 25, 2018, which will be put into force on May 2, 2018.

Following these amendments, the Central Bank of the Republic of Turkey (the “**Central Bank**”) introduced the Regulation on the Principles and Procedures regarding Monitoring of the Transactions Affecting Foreign Exchange Position (published in the Official Gazette dated February 17, 2018, No. 30335) (the “**Monitoring Regulation**”) in order to regulate the principles for gathering information from the companies having foreign exchange and foreign exchange denominated loans in the amount of at least USD 15 million as of the last business day of the relevant accounting period.

II. Amendments to Decree 32 and Communiqué No. 2008-32/34

Pursuant to the recent amendment, individuals residing in Turkey will no longer be able to obtain FX loans from banks and financial institutions in Turkey, in addition to the previous restriction on obtaining FX loans from abroad.

Once the amendment to Decree 32 enters into force, it will not be possible to extend FX loans to a legal entity having residency in Turkey unless such entity has foreign currency income or meets certain exceptions provided by the decree.

According to the amendment to Decree 32, it is possible to obtain FX loans without generating foreign currency revenue if:

- (a) the borrower is public authority and institution, bank and financial leasing company, factoring company or financing company;
- (b) the outstanding loan balance of the legal entities having residency in Turkey is at least USD 15 million at the time of the utilization;
- (c) the FX loans are extended to finance an internationally announced domestic tender or a public private partnership project, to carry out a defense industry project approved by the Undersecretariat for Defence Industries, to acquire certain machines and devices or for a transaction within the scope of an investment incentive certificate; or
- (d) the FX loan does not exceed the expected foreign exchange revenue of legal entities having residency in Turkey, as certified by such entity; or
- (e) the borrowing Turkish legal entities fulfill other criteria to be subsequently determined by the Ministry in charge of the Undersecretariat of Treasury.

Other conditions provided for foreign exchange loans (regardless of the source these were obtained from, Turkey or abroad) of the borrowing legal entities having residency in Turkey are as follows:

- If the loan balance of a borrower is less than USD 15 million on the utilization date of the loan, the sum of the loan amount requested and the current loan balance of the borrower shall not exceed the sum of its foreign exchange revenues pertaining to the last 3 fiscal years.
- If the loan balance of a borrower is less than USD 15 million, the borrower shall prove its foreign exchange revenues pertaining to the last 3 fiscal years with applicable documents as certified by the public accountants.

- If it is determined at a later stage after utilization date of the loan that the loan balance of the borrower exceeds the sum of its foreign exchange revenues pertaining to the last 3 fiscal years, the exceeding part of the loan used through the banks, financial leasing companies, factoring companies or financing companies located in Turkey or their foreign branches shall be recalled and converted into a Turkish Lira-denominated loan.

As another novelty; banks, financial leasing companies, factoring companies and financing companies having residency in Turkey have been authorized to provide foreign exchange loans to each other or by way of attending to an international syndication without any maturity limit. Previously, only banks were entitled to engage in such transactions between each other.

In addition, previously, banks were entitled to provide foreign exchange loans to the individuals or legal entities having residency in Turkey for their business needs, up to one third of their foreign exchange loans already provided for financing of the export pertaining to investment goods. However, with the recent changes, this practice has been revoked.

Before the amendment, financing companies were allowed to provide foreign exchange denominated loans to legal entities and individuals for commercial and occupational purposes. However, the amendment entirely prohibits legal entities and individuals residing in Turkey from obtaining foreign exchange denominated loans from abroad or within Turkey.

III. The Monitoring Regulation

1. Purpose of the Monitoring Regulation

The main purpose of the Monitoring Regulation is to follow up the relevant companies' transactions affecting foreign exchange positions by the Central Bank by way of gathering relevant documentation and laying a burden of certain notification liability on those companies. With the Monitoring Regulation, the Central Bank aims to raise effectiveness in the foreign exchange risk management.

2. Companies subject to the Notification Liability

The Monitoring Regulation stipulates that if a company's sum of the foreign exchange loans and the foreign exchange denominated loans obtained from Turkey or abroad exceeds USD 15 million as of the last business day of the relevant accounting period, such company shall be subject to notification liability before the Turkish Central Bank starting from the following accounting period. In order for calculation of the aggregate loan amount, the latest and applicable annual financial statements of the company shall be taken into consideration. In this respect, loan calculations will be based on the foreign exchange buying rates published in the Official Gazette, on the last business day of the relevant accounting period. If the aggregate loan amount of the company goes down the foregoing threshold (i.e. USD 15 million), the company's notification liability shall end as of the following fiscal year.

3. Notification Procedure and Timing

A company subject to the notification liability should convey the relevant data to the Central Bank's Systemic Risk Data Monitoring System (the "**System**") in line with the financial reporting framework within the scope of data form. Exact content of the data form is specified and explained in detail within the disclosure form and user guidelines of the Central Bank.

Notifications to the Central Bank should be made as follows; (i) by the end of the first month following each quarterly interim account period, and (ii) by the end of third month following the annual accounting period.

4. Accuracy Check and Timing

The Monitoring Regulation also stipulates an accuracy check mechanism for the data conveyed by the companies to the System. In this respect, the accuracy check is conducted by (i) duly authorized independent auditors and (ii) the Central Bank separately.

For the accuracy check to be conducted by duly authorized independent auditors, a company under the notification liability should enter into an audit agreement with an independent auditor. This agreement should be signed within 60 days as of commencement date of the company's notification liability (i.e April 18, 2018). Within the scope of accuracy check, the independent auditor assesses accuracy of the data conveyed by the company to the System

based on the company's notification liability. The audit should be completed until May 31 of the following year. During the audit, in case the independent auditor detects any mistake other than any insignificant discrepancies regarding the data, it may request from the company to make the necessary revisions. This being the case, the company should complete the necessary revisions within 5 business days upon the independent auditor's request. If so, the independent auditor will prepare the audit report with a positive opinion. However, if the company does not complete the necessary revisions within 5 business days, then the independent auditor will prepare the audit report with a negative opinion. If the independent auditor cannot audit the mandatory data for any reason, it should not proceed with the audit duty and explain the reason(s) of such leave in written. All of the correspondence pertaining to the foregoing process should be conducted over the System.

In addition to the audit to be conducted by independent auditors, the Central Bank also conducts cross check of the data conveyed by the companies to the System.

5. Applicable Sanctions in case of Non-compliance

If companies do not duly comply with the requirements of the Monitoring Regulation, the relevant individuals and/or executives of the companies may be imposed judicial monetary fine from TRY 20,000 to TRY 200,000.

The Central Bank will notify the independent auditors who prepare the audit report with a positive opinion despite the fact that there is inaccurate and missing data or fail to comply with the required timings stipulated in the Monitoring Regulation, to the Public Oversight Accounting and Auditing Standards Authority.

6. Effective Date of the Monitoring Regulation

The Monitoring Regulation shall be in force as of its publication date, February 17, 2018.

IV. Conclusion

In the light of the foregoing, considering current needs of the free market economy, relevant public authorities of the Republic of Turkey aim to protect the Turkish borrowers' foreign

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currency positions and projections, particularly small and medium sized enterprises, and to monitor various foreign exchange risks of Turkish borrowers by constituting a local database.

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