

The new regulation introduced by the Decree Amending the Decree No. 32 and the Amendment Communiqué

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The Decree Amending the Decree No. 32 on the Protection of the Value of the Turkish Currency (the "**Decree Amending the Decree No. 32**") and the Communiqué (Communiqué No: 2018-32/46) Amending the Communiqué on the Decree No. 32 on the Protection of the Value of the Turkish Currency (Communiqué No: 2008-32/34) (the "**Amendment Communiqué**") have been published in the Official Gazette dated 25 January 2018 and numbered 30312. The Decree Amending the Decree No. 32 and the Amendment Communiqué (except for Article 1 of the Amendment Communiqué) will come into effect on 2 May 2018 (the "**Effective Date**"). The Decree Amending the Decree No. 32 and the Amendment Communiqué introduce new regulations on foreign currency denominated loans borrowed by Turkish resident persons both from within Turkey (from Turkish resident banks, financial leasing companies, factoring companies and financing companies) and from outside Turkey.

These new regulations are outlined below:

1. Borrowing foreign currency denominated loans from within Turkey or from outside Turkey by Turkish resident legal entities which do not have foreign exchange income: Borrowing foreign currency denominated loans from within Turkey or from outside Turkey by Turkish resident legal entities which have foreign exchange income:

In principle, Turkish resident legal entities which do not have foreign exchange income are prohibited from borrowing foreign currency denominated loans from within Turkey or from outside Turkey.

Having said that, the exceptions to the principle of "*having foreign exchange income*" are as follows:

i. Turkish resident legal entities are not required to meet the requirement of "having foreign exchange income" to borrow foreign currency denominated loans from within Turkey or from outside Turkey in each of the following cases:

- a. Foreign currency denominated loans borrowed by public authorities and institutions, banks, Turkish resident financial leasing companies, factoring companies and financing companies;
- b. foreign currency denominated loans borrowed by those whose unpaid balances of foreign currency denominated loans borrowed from within Turkey or from outside Turkey (the "**Loan Balance**") is equal to USD 15 million or more than USD 15 million at the time of the new foreign currency denominated loans are borrowed;
- c. foreign currency denominated loans borrowed under an investment incentive certificate and foreign currency denominated loans borrowed for financing certain machines and equipment determined under list No 17 of Annex I of Decree No. 2007/13033 on Determination of VAT Ratios of Goods and Services;
- d. foreign currency denominated loans for those entities which have been awarded tenders in Turkey where the tender was announced internationally;
- e. foreign currency denominated loans for those who undertake defence industry projects approved by the Undersecretary of Defence Industry;
- f. foreign currency denominated loans for public-private partnership projects; foreign currency denominated loans not exceeding the documented prospective foreign exchange income borrowed by Turkish resident legal

entities which do not have any foreign exchange income in the last three financial years, provided that they document their prospective foreign exchange income from export, transit trade, export sales and export deliveries and foreign exchange earning services and activities; and

g. any other foreign currency denominated loans to be determined by the Ministry under which the Undersecretary of Treasury is organized.

ii. In addition to those listed in paragraph (1) above, Turkish resident legal entities are not required to meet the requirement of "having foreign exchange income" to borrow foreign currency denominated loans from within Turkey in each of the following cases:

a. Financial leasing transactions for the purchase of certain machines and equipment determined under list No 17 of Annex I of Decree No. 2007/13033 on Determination of VAT Ratios of Goods and Services; and

b. foreign currency denominated loans which do not exceed the amount of the foreign exchange money kept by the Turkish branches of banks as collateral and/or the amount of foreign exchange securities issued by the central governments and central banks of the member countries of the OECD or issued by their sureties.

2. Borrowing foreign currency denominated loans from within Turkey or from outside Turkey by Turkish resident legal entities which have foreign exchange income:

If the Loan Balance of a Turkish resident legal entity which has foreign exchange income, is less than USD 15 million at the time of borrowing foreign currency denominated loans from within Turkey or from outside Turkey, the sum of the loan borrowed by the Turkish resident legal entity and its Loan Balance may not exceed the total foreign exchange income generated by the Turkish resident legal entity in its last three financial years. The foreign exchange income generated by the Turkish resident legal entity in the last three financial years must be documented by a certified public accountant.

In addition, Turkish resident legal entities, which have foreign exchange income, may borrow foreign currency denominated loans from within Turkey or from outside Turkey further to the exceptions outlined in Section 1 (*Borrowing foreign currency denominated loans from within Turkey or from outside Turkey by Turkish resident legal entities which do not have foreign exchange income*) above. In such case, the limitation mentioned in the paragraph above shall not apply.

Both:

i. the banks acting as intermediaries for foreign currency denominated loans borrowed by Turkish resident legal entities from outside Turkey; and

ii. Turkish resident banks, financial leasing companies, factoring companies and financing companies providing foreign currency denominated loans to Turkish resident legal entities within Turkey,

are required to monitor the compliance of the loan with the limitations mentioned above.

If it is determined that the Loan Balance in respect of loans provided by Turkish resident banks, financial leasing companies, factoring companies and financing companies or their foreign branches, exceeds the foreign exchange income generated by the Turkish resident legal entity in the last three financial years, the excess shall be requested to be repaid or shall be converted into Turkish Lira denominated loan.

3. Prohibition on borrowing foreign currency denominated loans by Turkish resident real persons: Turkish resident real persons are prohibited from borrowing foreign currency denominated loans from within Turkey or from outside Turkey.

4. Foreign exchange indexed loans: Turkish resident real persons or legal entities are prohibited from borrowing foreign exchange indexed loans from within Turkey or from outside Turkey.

5. Impact of changes in existing loans:

As of the Effective Date:

- outstanding foreign currency denominated loans borrowed from within Turkey or from outside Turkey by Turkish resident legal entities whose Loan Balance is less than USD 15 million may be renewed as a foreign currency denominated loan, only if it meets one of the criteria stated under Section 1 (*Borrowing foreign currency denominated loans from within Turkey or from outside Turkey by Turkish resident legal entities which do not have foreign exchange income*) or Section 2 (*Borrowing foreign currency denominated loans from within Turkey or from outside Turkey by Turkish resident legal entities which have foreign exchange income*) above;
- outstanding foreign exchange indexed loans may not be renewed at all. However, such loan can be renewed as a foreign currency denominated loan, if it meets one of the criteria stated under Section 1 (*Borrowing foreign currency denominated loans from within Turkey or from outside Turkey by Turkish resident legal entities which do not have foreign exchange income*) or Section 2 (*Borrowing foreign currency denominated loans from within Turkey or from outside Turkey by Turkish resident legal entities which have foreign exchange income*) above;
- existing loans can just be repaid according to the terms of the existing loan agreement; and
- the Decree Amending the Decree No. 32 refers to "renewing the loan" without making any further explanation thereon. We will need additional clarification as to whether this would capture any amendment etc. to the existing loan agreements or whether it means refinancing.

6. **Interbank loans:** Turkish resident banks, financial leasing companies, factoring companies and financing companies are free to (i) borrow loans from outside Turkey; and (ii) to provide each other foreign currency denominated loans without any limitation in respect of the term of the loan either as bilateral loans or syndicated loans.

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