

NEW PRINCIPLES FOR BORROWING FOREIGN CURRENCY LOANS

The Decree No. 32 on the Protection of the Value of the Turkish Currency (the “**Decree No.32**”) and the Communiqué No. 2008-32/34 regarding the Decree No.32 on the Protection of the Value of the Turkish Currency (the “**Communiqué**”) are amended by the regulations published in the Official Gazette numbered 30312 and dated 25 January 2018 namely; (i) the Decree Amending the Decree No.32 on the Protection of the Value of the Turkish Currency numbered 2018/11185 (the “**Amending Decree**”) and the Communiqué No. 2018-32/46 Amending the Communiqué No. 2008-32/34 regarding the Decree No.32 on the Protection of the Value of the Turkish Currency (the “**Amending Communiqué**”), respectively (together with the “**Amending Regulations**”).

Trough the Amending Regulations, the scope of existing restrictions regarding borrowing foreign currency loans by Turkish residents either from abroad or in Turkey are extended to protect small and medium sized enterprises.

This Monthly Update aims to highlight the amendments introduced with the Amending Regulations with respect to borrowing foreign currency loans by Turkish residents.

Major Changes Introduced by the Amending Regulations

With the Amending Regulations, restrictions regarding borrowing foreign currency loans and foreign currency indexed loans by Turkish residents (*both legal entities and real persons*) are extended. With such amendment, Turkish residents (*both legal entities and real persons*) can no longer be able to utilize foreign currency indexed loans from abroad and in Turkey. Additionally, besides the foreign currency indexed loans, real persons residing in Turkey are no longer allowed to obtain any loan in foreign currency either from abroad or in Turkey.

On the other hand, legal entities residing in Turkey may borrow foreign currency loans provided that they have foreign currency income. However, foreign currency income condition shall not be required in the following circumstances:

- (i) foreign currency loans to be borrowed by public authorities and institutions, banks, financial leasing, factoring and financing companies;
- (ii) foreign currency loans to be borrowed by Turkish residents, who has an outstanding foreign currency loan balance of US\$ 15 million or more at the utility date of the loan;
- (iii) foreign currency loans to be borrowed by Turkish residents within the scope of an investment incentive certificate and for the financing of certain machinery and equipments stated under the list No:17 of Annex I of the Decree No. 2007/13033 on the Determination of VAT Ratios of Goods and Services;
- (iv) foreign currency loans to be borrowed by Turkish residents, who have won the domestic tenders where the tender announced internationally or who have undertaken the defense industry projects approved by the Undersecretariat for Defense Industries;
- (v) foreign currency loans to be borrowed by Turkish residents who are responsible for operating the projects to be conducted within the framework of public private partnerships; or

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- (vi) foreign currency loans to be borrowed by Turkish residents, who, although, do not have foreign currency income in the last three financial years, residents certify their operations generating foreign currency income on exports, transit trades, sales and deliveries considered as exports, services and activities and their potential foreign currency incomes provided that the foreign currency loan amount shall not exceed the Turkish resident's potential foreign currency income.

In addition to the above, in the following circumstances, the condition regarding having foreign currency income shall not be applicable to Turkish residents borrowing foreign currency loans in Turkey:

- (i) amounts of foreign currencies deposited in the Turkish branches of banks as collateral and/or foreign currency loans borrowed by Turkish residents not exceeding the foreign currency securities issued by the OECD member states' central banks; or
- (ii) financial leasing transactions in foreign currency in relation to certain machinery and equipment stated under the list No:17 of Annex I of the Decree No. 2007/13033 on the Determination of VAT Ratios of Goods and Services.

Principles of Borrowing Loans by Legal Entities Having Foreign Currency Income

In principal, Turkish resident legal entities that have foreign currency income may freely borrow foreign currency loan, both from abroad or in Turkey. However, in case such entities have, at the time of the utilization of the loan, an outstanding foreign currency loan balance in the amount below US\$ 15 million, the total of the loan amount that will be utilized and outstanding foreign currency loan balance cannot exceed the total of foreign currency income of the borrower entity accounted for the last three financial years. Such amount shall be certified by a public accountant.

Banks acting as intermediaries for the utilization of foreign currency loans extended from abroad and in terms of foreign currency loans extended in Turkey and banks, financial leasing, factoring and financing companies resident in Turkey extending foreign currency loans shall be responsible for controlling the compliance of such loans with the limitations mentioned above.

In case the balance of loans extended by Turkish resident banks, financial leasing, factoring and financing companies or their foreign branches exceeds the total foreign currency income of Turkish resident legal entities accounted in their last three financial years, the exceeding amount shall either be reclaimed or converted into Turkish Lira currency by the lender.

Interbank Borrowing

According to the Amending Decree, Turkish resident banks, financial leasing, factoring and financing companies are entitled to (i) borrow loans from abroad; and (ii) extend each other foreign currency loans without any limitation in respect of the term of the loan either as bilateral loans or syndicated loans.

Effective Date of the Amendments

According to the provisional article of the Amending Decree, the amendments made through the Amending Decree will enter into force as of 2 May 2018. Additionally, save for certain provisions introduced through the Amending Communiqué, the amendments in the Amending Communiqué which are explained above will also enter into force on 2 May 2018.