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Banking & Finance

[New Restrictions in the Turkish Foreign Exchange Legislation on Foreign Currency Loans](#)

A decree and a communiqué amending the Decree No. 32 on Protection of the Value of Turkish Currency (*published in the Official Gazette dated August 11, 1989, No. 20249*) issued by the Council of Ministers under the Law No. 1567, (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*) (“**Communiqué No. 2008-32/34**”), are published by the Council of Ministers in the Official Gazette dated January 25, 2018.

The amendments will enter into force in May 2, 2018 and with the new restrictions, real sector’s borrowings in foreign currency are now to be determined as per their revenues in foreign currency as well as utilisation of foreign currency indexed loans are no longer possible.

Restrictions on FX and FX Indexed Loans

Turkish residents are prohibited from utilizing FX indexed loans from abroad or within Turkey.

Real person Turkish residents will not be entitled to utilize FX loans from abroad or within Turkey.

On the contrary to the regulatory framework prior to the amendments, Turkish residents that do not have foreign currency revenues are prohibited from utilizing foreign currency loans from abroad or within Turkey.

Exceptions to the Restriction on FX Loans

Although utilisation of FX indexed loans by Turkish residents is prohibited in its entirety, certain exceptions are provided for the utilisation of FX loans by Turkish residents, that do not have FX revenues, from abroad and within Turkey under the Decree No. 32 with the amendments as follows:

- Public institutions and organisations, banks and other financial institutions located in Turkey are exempt from the general prohibition.
- Turkish residents, whose credit balance at the time of utilisation of the respective FX loan is over USD15 Million, are permitted to utilize FX loans from local and foreign financial institutions.
- FX loans to be obtained by Turkish residents within the scope of an investment incentive certificate and FX loans to be utilized for the financing of certain machines and devices are permitted.
- FX loans to be utilized by Turkish residents (i) awarded with a domestic tender that has been announced internationally or (ii) undertaking defence industry projects approved by the Undersecretariat for Defence Industries are permitted.
- FX loans to be utilized by Turkish residents carrying out PPP projects are permitted.
- FX loans to be utilized by Turkish residents that do not have any FX income in the last 3 fiscal years are permitted provided that such Turkish residents certify their connections with their activities relating to export, transit trade, sales and deliveries deemed as export, FX generating services and transactions and their potential FX incomes. Amounts of such FX loans shall not exceed the potential FX income amounts that have been certified by the relevant Turkish residents.
- Other FX loans to be determined by the relevant Ministry are permitted.

In addition to the above exceptions; the following exceptions also apply to FX loans to be extended by Turkish banks and financial institutions to Turkish residents:

- FX denominated financial leasing transactions for the financing of certain machines and devices are permitted.
- FX loans to be extended by Turkish banks to Turkish residents against FX denominated collateral provided in cash and/or in the form of securities (i) issued by the centralized governments and central banks of the OECD members or (ii) secured by the sureties of the authorities listed under (i) are permitted provided that the amount of such FX loans do not exceed the amount of the respective collateral provided as listed under (i) and/or (ii) as the case may be.

FX loans to be utilized by Turkish residents, that have FX income but the credit balance of which are below USD15 Million at the time of the utilization, are permitted, provided that, the sum of the FX loan to be utilized and the current credit balance shall not exceed the total FX income of the respective Turkish resident in the last 3 fiscal years. Intermediary banks in Turkey for FX loans to be utilised from abroad and local financial institutions extending FX loans within Turkey are obliged to monitor that this condition is fulfilled.

In cases where it is later determined that the credit balance relating to the FX loans extended by the foreign branches of Turkish banks and financial institutions (including their offshore branches excluding their free zone branches) exceeds the total FX income of the respective Turkish resident in the last 3 fiscal years, the excess amount of the respective FX loan shall be recalled or converted into TL loans.

Turkish banks, financial institutions and other persons to be determined by the relevant Ministry may freely extend FX loans and TL loans to non-Turkish residents.

Turkish banks and financial institutions are permitted to provide FX loans to each other, directly or through participation in international syndications without any term limitations in accordance with the customary practices.

Further Details on the Restrictions

With the amendments, two new definitions are introduced under the Decree No. 32 to be used in determination of the above mentioned requirements to be complied with while extending or utilising FX loans. As such, 'FX income' of a Turkish resident refers to "the income generated from export, transit trade, sales and deliveries deemed as export, foreign exchange generating services and transactions, as determined under the relevant legislation" and the 'credit balance' of a Turkish resident refers to "the outstanding (i.e. not repaid) amount of the FX cash loans utilised from abroad or within Turkey". Additionally, FX loans and FX indexed loans utilized by Turkish residents before the entry into force of the amendments will also be included in the calculation of the 'credit balance'.

Pursuant to the provisional articles of the amended Decree No. 32; the existing FX and FX indexed loans obtained by Turkish residents whose credit balance is below 15 million USD (whether from abroad or within Turkey) and who do not have any foreign currency revenues shall not be renewed as FX/FX indexed loans, as applicable, except for the loans benefitting from the exceptions set forth under the amended Decree No. 32 for the general prohibition.

Conclusion

Considering the increase in the real sector's foreign currency indebtedness in the recent years, it is observed that the rationale behind the amendments to the Decree No. 32 and the Communiqué No. 2008-32/34 is to enhance the Turkish economy against exchange rate fluctuations and to facilitate the exchange rate risk management in a more efficient manner.

In this context, it is expected that the prohibition and limitations introduced under the Decree No. 32 and Communiqué No. 2008-32/34 with regards to FX loans and FX indexed loans to have significant effects on the financial projections of Turkish companies, in particular small and medium sized enterprises, active in private sector.

It should be noted that issuance of bills and bonds (Eurobond) by Turkish companies is regulated under Article 15 of the Decree No. 32 and the respective article is not amended. Pursuant to this article, Turkish companies may freely issue bills and bonds (Eurobond) abroad. Since the abovementioned limitations with regards to FX and FX indexed loans do not include bills and bonds (Eurobond) to be issued abroad, Turkish companies may freely issue and sell foreign currency denominated capital market instruments abroad, same as before.

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