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## Banking & Finance

### **Turkish Residents to Notify The Central Bank of their FX Positions**

In line with the recent amendments to the Decree No. 32 on Protection of the Value of Turkish Currency (“**Decree No. 32**”), the Central Bank of the Republic of Turkey (“**CBRT**”) has enacted the Regulation on the Principles and Procedures regarding the Monitoring of Transactions Affecting Foreign Exchange Position by the Central Bank of the Republic of Turkey (the “**Monitoring Regulation**”) (*published in the Official Gazette dated February 17, 2018 and numbered 30335*) with a view to enable the CBRT to monitor the foreign exchange positions (“**FX Positions**”) of Turkish resident individuals and legal entities.

The Monitoring Regulation sets forth that Turkish residents, whose credit balance is equal to or exceeds USD 15 million shall notify the CBRT of their FX Positions, which would certify their ability to borrow FX loans as per the recent amendments to the Decree No. 32.

The Monitoring Regulation has entered into force immediately following its publication in the Official Gazette on February 17, 2018.

### **Residents Liable to Make Notification to the CBRT**

Pursuant to the Monitoring Regulation, in cases where the total amount of the cash FX loans and FX indexed loans utilized by a Turkish resident, other than banks and financial institutions, from abroad or within Turkey is equal to or exceeds USD 15 million as of the last business day of the relevant accounting period, the respective Turkish resident (“**Declarant Resident**”) is obliged to notify the CBRT of its FX Position as from the following accounting period.

As per the Monitoring Regulation, the Declarant Residents will be determined based on the respective resident's financial position statements prepared in compliance with the Turkish Accounting Principles and, in the absence of such financial position statements, on the balance sheet prepared by such Turkish resident for the submission to the relevant public authorities as per the applicable tax legislation.

Note that the calculation of the USD denominated FX Position of Declarant Residents shall be based on the buying rates of exchange announced in the Official Gazette at the last business day of the relevant accounting period.

### **Notification Procedure & Period**

All relevant data relating to the FX Positions of Declarant Residents shall be registered with the Systemic Risk Data Monitoring System ("**System**")<sup>1</sup> to be established by the CBRT as per the Monitoring Regulation and the System users will be limited to (i) the CBRT; (ii) Declarant Residents; and (iii) the auditors of the Declarant Residents which shall be registered with the System via electronic signature and electronic signature generating devices.

The Declarant Residents shall complete, and upload to the System, a data form including all required information to be notified to the CBRT and shall ensure that the data form is completed in a manner compliant with the financial reporting framework (i.e. the accounting and reporting principles) applicable to the respective Declarant Resident.

The Declarant Residents shall notify their FX Positions within the month following the interim accounting periods ending on March 31<sup>st</sup>, June 30<sup>th</sup> and September 30<sup>th</sup>; and within 3 months following the annual accounting period ending on December 31<sup>st</sup> as per the Monitoring Regulation.

### **Auditor Appointment & Data Verification on the System**

With the new system introduced under the Monitoring Regulation, the Declarant Residents shall appoint an auditor within 60 days following the date on which their notification obligation arises, in order for the audit and verification of the relevant information uploaded by the Declarant Resident to the System. The Declarant Residents shall ensure that the appointed auditor is registered with the System as a user and upload a copy of the relevant audit agreement thereunder.

The audit of the information provided by the Declarant Residents under the System shall be conducted by the appointed auditors until May 31<sup>st</sup> of the following year (i.e. the year following the date of the audited data) and shall cover the accuracy of the information provided relating to the annual accounting period and the consistency of data relating to interim accounting periods with the same. Upon auditing the relevant data uploaded to the System, the appointed auditors are obliged to issue an audit report and declare an affirmative or negative opinion on the information provided by the Declarant Residents under the System. Such audit reports (whether affirmative or negative) shall also be submitted to the System.

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<sup>1</sup> The System will also include an explanatory form and user guide setting forth the steps and requirements to be complied with whilst completing the data form.

In the event that the respective auditor of a Declarant Resident determines that there are certain errors in the information provided under the System, the respective auditor requests the Declarant Resident, via the System, to make relevant corrections thereto. The Declarant Residents are obliged to make such corrections and upload the same to the System within 5 business days; otherwise, the appointed auditor shall issue a negative opinion and shall not proceed with the approval procedure.

Furthermore, all of the data submitted by a Declarant Resident (and approved by its appointed auditor) shall also be subject to the CBRT's cross check. Also note that the CBRT is granted with the authority to make inspections and audits at the Declarant Residents, where necessary, in order to verify the relevant information uploaded to the System.

### **Sanctions Relating to Notifications**

The Declarant Residents (i) failing to make relevant notifications; (ii) providing incorrect or deficient information; or (iii) failing to correct incorrect data or errors that result with the negative opinion of the appointed auditor shall be subject to judicial monetary fines specified under the Law on Central Bank of the Republic of Turkey (Law No. 1211) (*published in the Official Gazette dated January 26, 1970 and numbered 13409*).

Additionally, the CBRT shall file a complaint with the Public Oversight Accounting and Auditing Standards Authority in relation to appointed auditors who (i) approve incorrect or deficient information provided under the System or (ii) do not comply with the time periods set forth under the Monitoring Regulation.

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