

NEW FOREIGN CURRENCY LOAN BORROWING RULES FOR TURKISH ORDINARY PARTNERSHIPS

This Legal Alert seeks to provide information regarding the recent amendments to the “Circular on Capital Movements of the Central Bank of the Republic of Turkey”.

As may have known, the new Circular on Capital Movements of the Central Bank of the Republic of Turkey (“**Circular**”) promulgated by Central Bank of Turkey, entered into force on 2 May 2018, replacing its original. The new Circular provided a guidance on the rules of Decree amending the Decree No. 32 on Protection of the Value of Turkish Currency in the Official Gazette dated 25 January 2018 and numbered 30312 (“**Amendment Decree**”) and provided further clarification regarding the implementation of the new foreign-currency denominated loan (“**FX Loan**”) borrowing regime in Turkey.

In accordance with the letter of Undersecretariat of Treasury dated May 31, 2018, among other amendments made at various dates, a new article has been added under the Circular specifically about

the use of FX Loans by Ordinary Partnerships¹ (*adi ortaklık*) which will hereinafter be referred to as “Partnership”.

With the new Article 53, Partnerships of whose equity is entirely held by legal entities (“**Shareholders**”) may provide FX Loans and accordingly, new rules have been set regarding the utilization of FX Loans by Partnerships. Pursuant to these rules;

- a) Within the scope of application of the Decree No.32, Partnerships solely consisting of Shareholders shall be deemed as “*legal entities residing in Turkey*” and the FX Loans provided to these Partnerships shall be deemed as granted to the use of the Shareholders pro rata to their liabilities in the Partnership.
- b) The aggregated amount of foreign-currency income of each Shareholder will be deemed as the foreign-currency income of the Partnership utilizing the FX Loan. The foreign-currency income of the Partnership shall be calculated based on each Shareholder’s foreign-currency income pro rata to its share in the Partnership.
- c) Partnership’s foreign-currency income pertaining to the last three (3) years shall be documented by way of submitting the below-mentioned documents to the banks and financial institutions resident in Turkey that are either providing the FX Loan or intermediating for the use of FX Loan in Turkey that is provided from abroad (“**Turkish Resident Banks**”):
 - i. Foreign Currency Income Declaration Form (a sample which is under Annex 2 of the Circular) of each Shareholder that shall be prepared and approved by a Certified Public

¹ *Ordinary Partnerships are regulated under Turkish Code of Obligations numbered 6098 and pursuant thereto, they are not assumed to possess legal entities.*

- Accountant (*YMM*) or an Independent Accountant (*SMMM*) based on the unconsolidated financial tables of each Shareholder for the last three (3) years,
- ii. Reports containing information regarding the compatibility of the numbers stated in the Foreign Currency Income Declaration Form with the Shareholders' foreign-currency income and information in relation to the documents that were used for determining such compatibility.
- d) For the use of FX Loans, a notarized copy of the Partnership's Articles of Association shall be submitted to Turkish Resident Bank.
- e) Turkish Resident Banks are required to check the records of the Partnership under The Banks Association of Turkey Risk Center² to determine the loan balance³ of the Partnership which is the aggregate of the loan balance of each Shareholder pro rata to its shares in the Partnership. Based on this calculation;
- If the Partnership's loan balance is equal to or above USD 15 million, such Partnership will be exempt from the foreign-currency income criteria⁴.

² Turkish Resident Bank, intermediating either for utilization or repayment of loan, is required to notify the FX Loans utilized from Turkey or abroad to the Banks Association of Turkey Risk Center.

³ Loan balance refers to the aggregate of the unpaid amount of the cash FX loans utilized from abroad or Turkey.

⁴ Foreign-currency income criteria refers to the following: Legal entities residing in Turkey may borrow FX Loans from Turkey or abroad provided that such entities generate foreign currency income and the aggregate of the new loan to be utilized and the existing loan balance of the relevant entity does not exceed its the foreign currency income for the last three (3) financial years in aggregate, however, if the loan balance of such entity is equal to or above 15 million USD on the utilization date or if such entity meets the other exceptions listed under Article 21 and Article 40 of the Circular, the afore-mentioned foreign-currency income criteria will not be required.

- If the Partnership's loan balance is less than USD 15 million, such Partnership will be subject to the foreign-currency income criteria.
- f) Turkish Resident Banks shall allocate the FX Loan utilized by the Partnership to the loan balance of each Shareholder pro rata to its share in the Partnership and shall notify the The Banks Association of Turkey Risk Center accordingly.

CONTACT

Eryürekli Attorney Partnership

T: +90 212 365 9600

info@eryurekli.com

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