

RECENT AMENDMENTS ON DECREE NO. 32 AND THE COMMUNIQUE REGARDING DECREE NO. 32

This legal alert aims to introduce the recent amendments on Decree No. 32 and Communiqué regarding Decree No. 32 adopted by the Council of Ministers and Undersecretariat of Treasury of Republic of Turkey.

In the Official Gazette dated 25 January 2018 and numbered 30312, amendments to two regulations on protection of the value of Turkish currency have been published: (i) Decree Amending Decree No. 32 on Protection of the Value of Turkish Currency (“**Amendment Decree**”) and (ii) Communiqué No. 2018-32/46 Amending the Communiqué No. 2008-32/34 regarding the Decree No. 32 on Protection of the Value of Turkish Currency (“**Amendment Communiqué**”). The enforcement of these two amended regulations is postponed to 2 May 2018, save for the provision under Section B.I of this Alert, which entered into force on the publication date.

A. New set of rules introduced with the Amendment Decree are as stated below:

- I.** Turkish residents, save for Turkish real persons, may borrow foreign currency loans either from abroad or Turkey, provided that such residents shall *generate foreign currency income*. However, the condition regarding *generation of foreign currency income* will not be applicable for Turkish residents borrowing foreign currency loans either from abroad or Turkey only in the following circumstances.
 - i.** Foreign currency loans to be borrowed by public agencies and institutions, banks, financial leasing, factoring and financing companies resident in Turkey;

- ii. Foreign currency loans to be borrowed by Turkish residents with a credit balance equal to or above USD 15 million on the date of credit utilization;
- iii. Foreign currency loans to be borrowed by Turkish residents within the scope of investment incentive certificates and for the financing of certain machines and tools listed in the respective customs tariff statistics positions;
- iv. Foreign currency loans to be borrowed by Turkish residents who won the domestic tenders announced internationally or who has 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;
- vi. Foreign currency loans to be borrowed by Turkish residents who do not have foreign currency income corresponding to the last three (3) financial years, provided however that such residents may authenticate their operations generating foreign currency income on exports, transit trades, sales and deliveries deemed as exports, services and activities as well as their potential foreign currency income and provided that such foreign currency credit amount shall not exceed the Turkish resident's potential foreign currency income.

In addition to the above, in the following circumstances, the condition regarding *generation of foreign currency income* will not be applicable to Turkish residents borrowing foreign currency loans from Turkey.

- i. Foreign currency loans to be borrowed by Turkish residents which do not exceed the amount of foreign currency or foreign currency security issued by or under the warranty of the central administrations or central banks of the member states of OECD, deposited in banks or branches in Turkey as collateral,
- ii. Financial leasing transactions in foreign currency in relation to certain machines and tools listed in certain customs tariff statistics positions.

- II. In respect of foreign-currency borrowing, financial leasing, factoring and financing companies resident in Turkey, are also included within the scope of Decree No. 32.
- III. In accordance with the Amendment Decree, the significant principles to be noted governing the extension of loans to Turkish residents, either from abroad or Turkey, unless such Turkish resident falls within the circumstances listed under Section I (i) above, are as follows:
 - i. In respect of foreign currency loans extended either from abroad or Turkey, in case the credit balance of the Turkish resident borrower is below USD 15 million on the date of credit utilization, the sum of the credit balance and the credit amount to be utilized shall not exceed the total foreign currency income of Turkish resident borrower corresponding to the last three (3) financial years;
 - ii. In respect of foreign currency loans extended from abroad; banks that are acting as an intermediary entity for the extension of loans from abroad and in respect of the loans extended from Turkey; banks, financial leasing, factoring and financing companies resident in Turkey that are directly extending such loans, are in both cases responsible for monitoring and controlling the Turkish resident borrower's compliance with the utilization limit stated under (i) above;
 - iii. In respect of foreign currency loans extended by banks, financial leasing, factoring and financing companies resident in Turkey either through their foreign branches including off-shore branches (excluding free trade zone branches) or local branches (including free trade zone branches), in the event that the credit balance of such loans exceed the total foreign currency income of Turkish resident corresponding to the last three (3) financial years, the exceeding amount will either be reclaimed or converted into Turkish Lira currency loan by the respective lender entity.
- IV. Turkish residents (real persons and legal entities) are prohibited from borrowing foreign currency index loans, either from abroad or Turkey.
- V. Turkish real persons are prohibited from borrowing foreign currency loans, either from abroad or Turkey.

- VI.** Banks, financial leasing, factoring and financing companies resident in Turkey may borrow loans from abroad and lend loans to each other, either directly or through participation to an international syndication, without any maturity limitation.
 - VII.** Banks, financial leasing, factoring and financing companies resident in Turkey may lend foreign currency or Turkish Lira loans to persons residing abroad.
 - VIII.** Financial leasing companies resident in Turkey may execute their financial lease transactions with legal entities resident in Turkey or residents on abroad, in foreign currency. However, the financial lease amounts in foreign currency will be included within credit balance calculation.
- B.** New set of rules introduced with the Amendment Communiqué, further to the rules brought by Amendment Decree, are as stated below:
- I.** Turkish residents may engage in brokerage activities of leveraged transactions¹ and derivatives only through investment institutions authorized by Capital Markets Board of Turkey.
 - II.** Turkish residents shall authenticate their foreign currency income with documents approved by financial advisors.

¹ Leveraged transaction refers to purchase and sale transactions of foreign currencies, precious metals and other assets to be determined by Capital Markets Board of Turkey, with a leverage ratio for the deposited margin amount, through electronic platforms.

CONTACT

Eryürekli Attorney Partnership

T: +90 212 365 9600

info@eryurekli.com

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