

Rules of foreign currency borrowings have changed for the residents of Turkey

The recent amendments to Decree No 32 on Protection of the Value of Turkish Currency (Decree No 32) and Communiqué No 2008/32-34 regarding Decree No 32 on Protecting the Value of Turkish Currency (the Communiqué) introduce a new set of rules for financings from abroad or in a foreign currency.

General

Since its issuance on 7 August 1989, Decree No 32 has been amended several times in response to changes in fiscal trends and, together with a supplementary set of legislation, including the Communiqué, it sets out the principles and procedures in relation to the protection of Turkish Lira. Borrowings of Turkish entities as well as natural persons resident in Turkey from cross-border markets or in foreign currencies naturally fall within the scope of Decree No 32 and current borrowing practice has been shaped by the principles and practices set out under Decree No 32.

On 25 January 2018, certain rules and requirements in relation to the utilisation of foreign currency loans from cross-border markets were amended by Decree No 2018/11185 on the Amendment of Decree No 32 (**Amendment Decree**) and by Communiqué No 2008/32-34 (**Amendment Communiqué**). The Amendment Decree and the Amendment Communiqué will become effective on 2 May 2018 (**Effective Date**).

Restrictions and exceptions

According to the Amendment Decree: (i) legal entities resident in Turkey that do not generate “foreign currency income” as described under Decree No 32 and (ii) natural persons resident in Turkey are no longer permitted to utilise loans in a foreign currency from either foreign or local markets unless an exception applies. These exceptions include loans utilised by:

- public entities, banks, financial leasing, factoring and financing companies;
- those borrowers whose loan balance as of the utilisation date is above USD15 million;
- those who are entitled to utilise foreign currency loans in accordance with investment incentive schemes or for the purchase of certain machinery and equipment;
- winning bidders of local tenders which were publicised by international announcements or the tenders launched by the Undersecretariat for Defence Industries (*Savunma Sanayii Müsteşarlığı*);
- contractors of projects implemented under the public-private partnership model; and
- those borrowers who can evidence their related and prospective “foreign currency incomes” in connection with export, transit trade, “sales and deliveries qualified as export” or “foreign currency generating” activities, subject to certain limitations.

Limitations

The Amendment Decree also provides for limitations to foreign currency borrowings by the borrowers who have “foreign currency income”. Accordingly, if, as of the utilisation date, the loan balance of a borrower who generates “foreign currency income” is below USD15 million, the aggregate of its loan balance and the amount of the loans contemplated to be utilised by that borrower cannot exceed the aggregate of its “foreign currency incomes” generated within the last three years.

Intermediary banks are responsible for confirming the satisfaction of the abovementioned condition. If the loan balances provided by the branches of banks, financial leasing companies, factoring companies and financing companies outside of Turkey do not comply with this condition, the amount by which the loan exceeds the corresponding foreign currency incomes of the borrower will be recalled or converted into a Turkish Lira denominated loan.

Other notable amendments

- The paragraph under Decree No 32 stating that “the residents of Turkey are free to utilise loans from abroad” has been amended to state that “the residents of Turkey are free to utilise loans in Turkish Lira from abroad”.
- The new article 17/A introduced by the Amendment Decree allows residents of Turkey to open commodity loans based on import and export regimes.
- The Amendment Decree stipulates that persons are allowed to open foreign currency loans between banks, financial leasing companies, factoring companies and financing companies without a maturity limit through direct or international syndications.
- Banks, financial leasing companies, factoring companies and financing companies and those entities determined by the [Prime] Ministry are allowed to open foreign currency and Turkish Lira loans to people residing outside of Turkey.
- Foreign currency borrowings with lower than USD15 million balances and foreign exchange loans, which are taken out by residents of Turkey and remain outstanding as of the Effective Date will not be permitted to be renewed as foreign currency loans or foreign exchange loans, respectively, except for the exceptions set out under the Amendment Decree.
- The foreign currency loans and foreign exchange loans taken out before the Effective Date will also be included in the calculation of the “loan balance”.
- According to the Amendment Communiqué, residents of Turkey will be able to buy and sell commodity derivatives for leveraged transactions and transactions subject to the same conditions as leveraged transactions only through those intermediaries authorised by the Capital Markets Board.

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