

# client alert

BANKING & FINANCE | TURKEY |

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## THE CENTRAL BANK IS WATCHING YOU: NEW REGULATION ON MONITORING F/X LOANS

In a recent change in legislation, the Central Bank of the Republic of Turkey ("**Central Bank**") has been allowed to request information and documents from Turkish individuals or entities in order to monitor transactions affecting their foreign exchange positions. Following the amendments made in Decree no. 32 on the Protection of the Value of Turkish Currency on 25 January 2018, Turkish companies and the Turkish banking sector were expecting secondary legislation introducing the details of the legal process and how to implement such amendments. In this regard, the Central Bank introduced the Regulation on the Implementation and Principles regarding Monitoring of the Transactions Affecting Foreign Exchange Position by the Central Bank of the Republic of Turkey ("**Regulation**") in order to regulate the principles for collecting information from the companies having f/x and f/x-indexed credit balance of USD 15 million (or more) as of the last business day of the relevant accounting period.

This client alert aims to briefly summarise the requirements set out under the Regulation and provide a preliminary insight on the new monitoring regime of the Central Bank regarding f/x debts of the Turkish companies.

### What companies must report to the Central Bank?

All companies having an aggregate f/x credit or f/x-indexed credit balance of USD 15 million (or more) as of the last business of the relevant accounting period, are required to make a notification to the Central Bank starting from the subsequent accounting period. In order to determine USD equivalent of other foreign currency loans, the Central Bank's f/x buying rate of the last business day of the relevant accounting period shall be taken into consideration. The f/x credit or f/x-indexed credit balances shall be determined according to the financial statements prepared in line with Turkish Accounting Standards, and, if no financial statement is available in line with Turkish Accounting Standards, the balance sheets submitted to the tax authorities shall be taken into consideration to determine f/x credit or f/x-indexed credit balances. It is also worth mentioning that banks and financial institutions are exempt from the afore-mentioned requirement when it comes to their own funding.

### How often are companies required to report?

Notifications to the Central Bank are required to be made by the end of first month following each quarterly interim accounting period and by the end of third month following the annual accounting period. Should a company's f/x or f/x-indexed credit balance drop to below USD 15 million, such company shall no longer be required to report as of the following annual accounting period.

### How is the reporting to be made?

The Central Bank shall set up a Systemic Risk Data Tracking System ("**System**") to increase efficiency in the management of f/x risks. The Central Bank, reporting companies and their auditors shall have access to this System through Central Bank's web portal ([www.tcmbveri.gov.tr](http://www.tcmbveri.gov.tr)), and enter their data on it directly. User manual and explanatory notes are made available.

**How is the accuracy of information checked?**

Reporting companies are required to conclude an audit agreement with an independent auditing firm or an independent auditor as authorised by the Public Oversight, Accounting and Auditing Standards Authority (*Kamu Gözetimi, Muhasebe ve Denetim Standartları Kurumu*), within 60 days of the entry into force of the Regulation (i.e. 18 April 2018).

Audit of the data pertaining to the annual accounting period shall be finalised by the auditor, and the audit report (containing an unqualified opinion in favour of the reporting company) shall be uploaded to the System by 31 May of the following year.

In the event that the auditor notices any discrepancies during the course of its audit, the company shall be required to correct the relevant data within five days. In the event that the reporting company fails to correct such data, the auditor shall not approve the data and must upload to the System its auditing report containing its negative opinion by the afore-mentioned deadline.

In addition to the above, the Central Bank shall cross-check the data entries, and, if need be, may also conduct on-sight inspections of the reporting companies.

**When does the reporting obligation start?**

Since the Regulation has been published on 17 February 2018 and no grace period was provided to the reporting companies under the Regulation, companies affected by such Regulation shall be required to submit their first audit report by the end of the first month following the first quarterly accounting period of 2018, unless otherwise stated by the Central Bank.

**What sanctions are applicable in the event a company breaches the reporting obligation?**

The management of the company in question shall be liable for the comprehensiveness and accuracy of the information provided to the Central Bank. According to Article 68/IV of Law no.1211 on the Central Bank of the Republic of Turkey, officers of the relevant company who (i) fail to provide information or documents; (ii) provide inaccurate information or documents; or (iii) provide such information and documents inconsistently with the above-mentioned procedures and principles, shall be sentenced to a judicial fine which may vary between TRY 20,000 and TRY 200,000.

*In compliance with Turkish bar regulations, opinions relating to Turkish law matters that are included in this client alert have been issued by Özdirekcan Dündar Şenocak Avukatlık Ortaklığı, a Turkish law firm acting as the correspondent firm of Gide Loyrette Nouel in Turkey.*

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