

client alert

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NEW PROTECTIONIST MEASURES IN TURKISH FOREIGN EXCHANGE REGULATIONS

In November 2017, the Central Bank of the Republic of Turkey announced that restraining measures were being considered in order to curb USD 200 billion of f/x debt owed by Turkish companies. After having collected and analysed details of the f/x debt of 110 Turkish companies which represents roughly 23% of the total Turkish private sector f/x debts, Decree No. 32 on the Protection of the Value of Turkish Currency ("**Decree No. 32**") was amended in order to ease the credit burden on Turkish banks and Turkish companies and to stem the weakening of Turkish lira against f/x currencies. The amendments were announced in Official Gazette No. 30312 from 25 January 2018, and will enter into force on 2 May 2018. In this context, the most significant principles of the new amendments may be outlined as follows:

- Turkish individuals (real persons) cannot engage in borrowings in foreign currency, whether from Turkish financial institutions or from foreign financial institutions.
- F/x-indexed loans will cease to exist as of 2 May 2018.
- F/x loans may not be extended to Turkish entities that do not have any f/x income.
- F/x loans to be extended to Turkish entities must comply with the "USD 15,000,000 threshold" rule at the relevant utilisation date.
- Exceptions to the main principle are strictly limited to a number of cases concerning financial institutions, contractors of PPP projects and the defence industry, and exporters.

This client alert aims to briefly summarise the requirements set out under the recent changes brought to Decree No. 32, and to provide some insight about the new currency regime regarding foreign currency denominated loans:

- Two new definitions are included in the Decree No. 32:
 - (i) "f/x income" means "receivables obtained from exports, transit trade, sales and deliveries that which are deemed to be exports, as determined by the relevant legislation and foreign exchange earning services and activities"; and
 - (ii) "Credit balance" means the "total amount of unpaid cash f/x loan debts obtained domestically (within the country) and from abroad."
- In principle, Turkish residents may freely obtain Turkish Lira denominated loans from abroad, provided that such loans are transferred through banks operating in Turkey. Having said that, recent changes introduced in Decree No. 32 provide a restriction on f/x loans whether extended from abroad or from Turkish financial institutions. Turkish residents who do not have any f/x income are not allowed to obtain f/x loans from abroad or Turkish financial institutions.

- In the event that the borrower's total credit balance is lower than USD 15 million as of the utilisation date, the sum of the current credit balance and the amount of the loan planned to be used by the borrower cannot exceed the total amount of its f/x income in the past three financial years. Furthermore, the borrower is obliged to prove its f/x income from the last three financial years in a report drawn up by a certified accountant. Banks, leasing companies, factoring companies, financing companies that extend f/x loans and banks that are intermediaries to the utilisation of foreign f/x loans are obliged to monitor this restriction.
- If it is determined that the Borrower's credit balance exceeds the total amount of the f/x income of the past three financial years, the excess part of the loans extended by banks (including their free trade zone branches), leasing companies, factoring companies and financing companies, will be called and converted into TRY-denominated loans.
- Turkish banks, leasing companies, factoring companies, and financing companies are free to extend each other, directly or by way of syndication, f/x loans without any limitation regarding maturity, subject to the provisions of their respective legislation.
- Decree No. 32 does not allow Turkish residents to use f/x indexed loans from foreign or Turkish financial institutions.
- In addition, Turkish individuals (real persons) are not allowed to use f/x loans from foreign or Turkish financial institutions.
- Starting from 2 May 2018, existing f/x loans of Turkish residents with a credit balance less than USD 15 million will not be renewed as f/x loans or f/x indexed loans. In this respect, it is worth mentioning that f/x loans or f/x indexed loans that are extended prior to 2 May 2018 will be counted in the calculation of the credit balance.
- These restrictions does not apply in the following cases:
 - (i) Loans to be used by public institutions, Turkish banks, leasing companies, factoring companies and financing companies.
 - (ii) Turkish residents with a credit balance of more than USD 15 million on the utilisation date.
 - (iii) F/x loans to be used by Turkish residents within the framework of an investment incentive certificate.
 - (iv) F/x loans to be used in order to finance machinery and equipment whose HS Codes are indicated by reference in Annex (I) of Decree No. 2007/13033 determining the Value Added Tax Rate Applicable to the Goods and Services. This exception also applies to domestic financial lease operations performed in a foreign currency.
 - (v) F/x loans to be used by Turkish residents who win domestic public tenders announced on an international scale, or Turkish residents undertaking defence industry projects approved by the Undersecretariat of the Defence Industry.
 - (vi) F/x loans to be used by Turkish resident-contractors of PPP projects.
 - (vii) Turkish residents who do not have any f/x income in the past three years are also allowed to use f/x loans up to the amount of their potential f/x income, provided that they demonstrate their relationship/link with exports, transit trade, sales and deliveries that are deemed to be exports, as well as foreign exchange earning services and activities and their potential f/x income.

- (viii) F/x loans to be obtained by Turkish residents in accordance with the principles to be determined by the Prime Ministry (to which the Undersecretariat of Treasury is attached).
- (ix) F/x loans obtained domestically, to be used by Turkish residents up to the amount of foreign exchange deposited as collateral in the domestic branches of banks, or up to the amount of f/x securities issued by central governments and central banks of OECD member countries.

Long-awaited changes are provided as a main tool for the limitation of f/x debts of Turkish companies. However, there is some secondary legislation introducing the details of the legal process and implementing these changes that is still expected by the Turkish banking sector.

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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