

Recent Development on Utilization of FX Loans

Decree No. 2018/11185 amending the Decree No. 32 on the Protection of the Value of the Turkish Currency and Communiqué No. 2018-32/46 amending the Communiqué on the Decree No. 32 on the Protection of the Value of the Turkish Currency were published in the Official Gazette No. 30312 on January 25, 2018.

The amendments made by the decree in full and Article 2 of the communiqué bringing amendments in line with the decree will enter into force on May 2, 2018, and the applicable legislation shall continue to apply as of this date. However, 1st Article of the communiqué regarding leveraged transactions and derivative instruments entered into force at its date of publication (January 25, 2018); pursuant to this amendment Turkish residents, will only be able to buy and sell derivative instruments and make leveraged transactions through the organizations authorized by the Capital Markets Board.

What Does The Decree and Communiqué Bring?

With the enforcement of the new regulation, Turkish residents will not be able to utilize foreign currency indexed loans from Turkey or abroad. Adding to this, exceptions allowing real person Turkish residents to utilize foreign currency denominated loans for commercial and professional purposes from Turkey or abroad will be no longer in force. Finally new restrictions regarding utilization of foreign currency denominated loans will be brought on legal entities resident in Turkey.

Foreign currency indexed loans existent at May 2, 2018 the date of the enforcement of amendments will be renewed as foreign currency denominated loans if they comply with the new foreign currency denominated loan utilization requirements if not, they will be converted to Turkish Lira denominated loans.

It should also be noted that the concepts "foreign currency income" and "credit balance" were added to the definitions part of Article 2 of Decree No. 32. These two concepts are important in terms of understanding the amendments as they constitute the legal criteria for determining the parties who can utilize foreign currency denominated loans. Foreign currency income is the income obtained from exports, transit trade, sales and deliveries considered as export and foreign exchange earning services and activities, determined by the relevant legislation; and "credit balance" stands for the unpaid amount of the cash foreign exchange loan debts borrowed from Turkey and abroad.

How Will The Turkish Residents with no Foreign Currency Income Will Utilize Foreign Currency Denominated Loans From Turkey or Abroad?

Turkish Residents with no foreign currency income will only be able to utilize foreign currency denominated loans from abroad in the following cases:

- Foreign currency denominated loans to be utilized by public authorities and institutions, banks and financial leasing companies, factoring companies and financing companies,
- Foreign currency denominated loans to be utilized by Turkish residents whose loan balances are USD 15 million or more at the time of the utilization,
- Foreign currency denominated loans to be utilized by Turkish residents whose utilization of loan is envisaged within an investment incentive certificate and foreign currency denominated loans to be utilized for the financing of certain machines and devices,
- Foreign currency denominated loans to be utilized by Turkish residents that won an internationally announced domestic tender or by Turkish residents undertaking defence industry projects that are approved by the Secretary of Defence,
- Foreign currency denominated loans to be utilized by Turkish residents appointed to carry out projects within the context of a public private partnership,
- Foreign currency loans to be utilized by Turkish residents that do not have foreign exchange income in the last three fiscal years and that do not exceed the amount of their predicted income in foreign currency that is certified, on the condition that their connections regarding export, transit trade, sales and deliveries deemed export, foreign exchange earning services and transactions and possible foreign exchange income is certified,
- Foreign currency loans to be used by residents in Turkey within the principles determined by Ministry.

Regarding the loans that will be utilized locally, adding to the exceptions mentioned above regarding foreign currency denominated loans to be obtained from abroad, the condition of foreign currency income will not be required also in exceptions given below:

- Foreign currency denominated loans obtained by Turkish residents which do not exceed the amount of the receivables kept as foreign exchange in the Turkish branches of banks as collateral and/or the amount of issued securities by the centralized governments and central banks of the member countries of the Organization for Economic Cooperation and Development (OECD) or the amount of securities issued through their sureties.
- Financial leasing transactions in respect of the purchase of certain machinery and equipment in foreign currencies.

How Turkish Residents Who Have Foreign Currency Income Will Obtain Foreign Currency Denominated Loans?

Turkish residents who have foreign currency income and credit balance over 15,000,000 USD at the date of which the foreign currency denominated loan is utilized, will be able to obtain this loan from Turkey or abroad without any restriction. However the sum of the loan to be utilized and the current credit balance cannot exceed the total foreign currency income of the last three fiscal years if the Turkish resident's total credit balance is less than 15,000,000 USD at the time of the utilization.

In the case of which it is determined belatedly that credit balance exceeds the total foreign currency income of the last three fiscal years, for loans utilized both from Turkey or abroad, the excessive amount will be recalled and converted into Turkish lira denominated loan.

As it can be understood from the exceptions mentioned above, banks and financial institutions are still free to utilize loans within the scope of their own regulations.

The issuing and intermediary banks will be responsible of controlling the compliance, of the loans utilized from Turkey or abroad, to these provisions.

Conclusion

These new amendments bring significant restrictions on Turkish legal entities when utilizing foreign currency denominated loans and abolish foreign currency indexed loans and finally Turkish resident real persons' possibility of utilizing foreign currency denominated loans.

Thus in light of the amendments, it would be safe to say that Turkish sole proprietorships shall make their financial plans considering the fact that they will no longer to be able to obtain foreign currency denominated loans and foreign currency indexed loans; and Turkish legal entities, shall evaluate their financial position considering their foreign currency income and credit balance.

Finally it is expected that until May 2, 2018, the date of which regulations enters into force, the requests regarding these credits might increase due to the new requirements of utilizing foreign currency denominated loans and foreign currency indexed loans.



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