

### RECENT AMENDMENTS IN DECREE NO. 32 IN RELATION TO LEVERAGED TRANSACTIONS

**This legal alert aims to summarize the recent amendments made in Decree No: 32 in relation to the leveraged (i.e. FOREX) transactions to be conducted by Turkish residents.**

As per the amendment to the Decree No. 32 regarding Protection of the Value of the Turkish Currency (“Decree”) that was published in the Official Gazette dated 3 July 2017 and numbered 30113, certain provisions of the Decree, particularly provisions relevant with leveraged transactions, were amended.

The provision prescribed under the ninth paragraph of Article 6 of the Decree that authorizes the Turkish Central Bank (“TCB”) to regulate forward buying and selling of foreign exchange has been replaced as follows:

***“Leveraged transactions and derivative transactions determined to be subject to the same provisions as the former shall be conducted by the people resident in Turkey only through competent institutions authorized by the Capital Markets Board.”***

In parallel with this amendment, it has been provided by new sub-paragraph (e) of the Article 15 of the Decree that ***“The people resident in Turkey are entitled to sell and buy leveraged transactions and derivative instruments determined to be subject to the same provisions as the former only through competent institutions authorized by the Capital Markets Board.”***

Under Communiqué regarding Investment Services (III-37.1) (the “**Communiqué**”) issued by the Capital Markets Board (“**CMB**”), leveraged transactions are defined as “***sale and purchase transactions through leverage of the foreign exchange, precious metals and other assets designated by the Capital Markets Board, on an electronic platform, in consideration of collateral deposited***”. Based on this definition, all leveraged transactions on foreign exchanges and precious metals are subject to the referred amendments in the Decree.

Furthermore, pursuant to the Communiqué, contract for differences (“**CFDs**”), traded at over-the-counter markets, are defined as derivative products subject to provisions of leveraged transactions. Accordingly, CFDs traded at OTC markets shall also be subject to the referred amendments in the Decree.

With the amendment in the Decree, liberty of Turkish residents to be a party to investment transactions in foreign countries without being subject to prior permission or licensing requirements has been restricted in terms of leveraged transactions and derivative instruments determined to be subject to the same provisions as the leveraged transactions (i.e. CFDs). For the purpose of the Decree, any real persons or legal entities holding an official residency in Turkey are considered as “Turkish residents”.

It is worth to note that, pursuant to Article 28 of the Communiqué, following transactions shall not be subject to the provisions on leveraged transactions and may be freely conducted without being subject to restrictions or prohibitions relevant with leveraged transactions, including the subject amendment:

- a) Sale and purchase of assets under definition of leveraged transactions (i.e. foreign exchanges or precious metals) in physical form;
- b) Transactions conducted among Banks (bank-to-bank);
- c) Transactions to be conducted by Banks to provide liquidity to intermediary institutions.

In consideration of strict rules governing the FOREX business in Turkish market, it has been an issue for Turkish authorities that Turkish residents relocated their FOREX transactions from local institutions to foreign institutions, particularly through web sites, where no restrictions or prohibitions exist. On this

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basis, this amendment mainly provides a clear prohibition for Turkish residents to conduct any leveraged transactions through foreign institutions.

Lastly, it should be noted that, in contrary where Turkish residents conduct leveraged transactions through foreign financial institutions and so act in breach of the Decree, penalties for this type of breaches applicable for Turkish residents are not very clear and shall be subject to various legal discussions that are not subject of this alert.

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