

FX LOAN EXEMPTION FOR TURKISH COMPANIES 100% OWNED BY FOREIGN SHAREHOLDERS

This Legal Alert seeks to provide information regarding the recent amendments to the “Circular on Capital Movements of the Central Bank of the Republic of Turkey”.

Summary:

The Circular on Capital Movements of the Central Bank of the Republic of Turkey (“**Circular**”) promulgated by Central Bank of Turkey, entered into force on 2 May 2018, replacing its original. The new Circular provided a guidance on the rules of Decree amending the Decree No. 32 on Protection of the Value of Turkish Currency in the Official Gazette dated 25 January 2018 and numbered 30312 (“**Amendment Decree**”) and provided further clarification regarding the implementation of the new foreign-currency denominated loan (“**FX Loan**”) borrowing regime in Turkey.

Further to the amendments made in the Circular on 31 May 2018 in relation to ordinary partnerships, as explained in our previous Legal Alert dated 19 June 2018, Undersecretariat of Treasury made a new amendment in the Circular on 29 June 2018 in the matters explained hereunder.

Recent Amendments in the Circular:

1. The amendments relate to the use of FX Loans by legal entities incorporated in Turkey which are fully owned by foreign shareholders resident outside of Turkey (hereinafter will be referred to as the “**Companies**”).

Pursuant to these amendments, such Companies, will be exempt from the FX income criteria¹, and they will be able to obtain FX Loans from either one the following:

- Their parent companies (%100 direct or indirect owner of the Company) which are located outside of Turkey and which have foreign shareholders, or
- The subsidiaries of their parent companies (%100 indirect owner of the Company) which are located outside of Turkey and also 100% directly or indirectly owned by the same parent company.

To authenticate the utilization of such FX Loans, in addition to the Loan Agreement and Loan Repayment Schedule, the Company shall submit the relevant Trade Registry gazettes and/or other official letters to the intermediary bank in Turkey documenting that;

¹ Foreign-currency income criteria refers to the following: Legal entities residing in Turkey may borrow FX Loans from Turkey or abroad provided that such entities generate foreign currency income and the aggregate of the new loan to be utilized and the existing loan balance of the relevant entity does not exceed its the foreign currency income for the last three (3) financial years in aggregate, however, if the loan balance of such entity is equal to or above 15 million USD on the utilization date or if such entity meets the other exceptions listed under Article 21 and Article 40 of the Circular, the afore-mentioned foreign-currency income criteria will not be required.

- The parent company fully owns the Company (in case where the parent company acts as the lender) or
 - The subsidiary is directly or indirectly 100% owned by the Company's parent company (in case where the subsidiary of the parent company acts as the lender).
2. The Banks incorporated in Turkey are allowed to provide FX indexed Non-Cash Loans (such as Letters of Guarantee) to persons resident in Turkey on the condition that such loans are given for commercial or professional purposes.

Conclusion:

The recent amendments will enable companies incorporated in Turkey that are fully owned by the foreign shareholders located abroad to use FX Loans from their parent companies or subsidiaries of such parent companies, in both of which case parent company owns 100% shareholding of the Company and the other subsidiary. Further to this, as a result of this amendment, Turkish banks are allowed to issue FX indexed letter of guarantees in favor of Turkish beneficiaries upon the request of Turkish applicants.

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