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# *Restrictions on Foreign Currency Loans imposed by the Amendments on Foreign Exchange Regulation*

**26.01.2018**



# ***Communiqué and Decree about Amendment on Principles Regarding Foreign Currency Loans***

As a result of ongoing efforts regarding foreign exchange liabilities of real sector, “Amendment On Decree no.32 On The Protection Of The Value Of The Turkish Lira Currency (“New Decree” - 2018/11185)” by Council of Ministers and “Amendment On The Communiqué Regarding Decree no.32 On The Protection Of The Value Of The Turkish Lira Currency (“New Communiqué” - 2018-32/46)” by the Undersecretary of the Treasury, are published in the Official Gazette, dated January 25th, 2018, number 30312.

Amendments made by the New Decree and the New Communiqué relate to the provisions about foreign currency loans and aim to encourage residents in Turkey to borrow loans in Turkish Liras (TL) instead of foreign currency, and to decrease the real sector’s foreign currency risk.

Principles regarding foreign currency loans in the New Decree are organized under two separate articles; namely, “loans obtained from abroad” and “loans from Turkey”.

The main amendments made by these regulations are summarized below.



# *Communiqué and Decree about Amendment on Principles Regarding Foreign Currency Loans*

## **I. Restrictions on loans obtained from abroad**

Pursuant to the article of Decree no.32 on the Protection of the Value of the Turkish Lira Currency (“Decree no.32”) about principles regarding loans, residents in Turkey are permitted to obtain loans from abroad via Turkish banks. With the amendments made by the New Decree, some restrictions have been put into effect for residents in Turkey to obtain loans in foreign currency, excluding some exceptions.

### **a) Regarding legal entities resident in Turkey with no foreign exchange earnings**

With the New Decree it is stipulated that **“Residents in Turkey with no foreign exchange earnings shall not obtain loans from abroad”**.

On the other hand, there are 8 different exceptions to the above-mentioned limitation under the New Decree. Those exceptions make it possible to obtain foreign currency loans without the existence foreign exchange earnings. One of these exceptions is “loans to be obtained by residents in Turkey who already have a loan balance of at least US\$ 15 million”.

### **Foreign Exchange Earning**

According to the new amendments, the definition of “foreign exchange earnings” is added to Decree no.32. Income derived from exports, transit trade, sales and deliveries that are considered exports, services or activities generating foreign exchange earnings, as set out in the relevant legislation, are classified as foreign exchange earnings.

### **Loan Balance**

According to the new amendments, the definition of “loan balance” is added to Decree no.32. ‘Loan balance’ is the total outstanding balance of foreign currency cash loans obtained both from abroad and from Turkey.

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## **a) Regarding legal entities resident in Turkey with no foreign exchange earnings (cont.)**

***Foreign currency loans can be obtained from abroad without having foreign exchange earnings only in the following cases***

- Foreign currency loans obtained by public institutions and organizations, banks and leasing companies, and factoring companies resident in Turkey
- Foreign currency loans obtained by Turkish residents who already have a loan balance of at least US\$ 15 million
- Foreign currency loans obtained by residents of Turkey who are projected to use loans within the scope of investment incentive certification and foreign currency loans that will be used to finance machines and devices (except used ones, accessories, parts and incidentals) listed in customs tariff statistics positions, 17th place on Appendix 1 of “Decree on the Determination of the Value Added Tax Rates to be Applied to Goods and Services”
- Foreign currency loans used by residents of Turkey who got domestic tenders announced internationally, and those undertaking defense industry projects approved by the Undersecretary of the Ministry of Defense
- Foreign currency loans obtained by persons who are in charge of conducting projects to be performed under the public-private cooperation model
- Foreign currency loans that do not exceed documented probable foreign exchange earnings, to be used by persons who have not had foreign currency earnings in the past three fiscal years, provided that those persons document their probable foreign exchange earnings and the relation of those loans to exports, transit trade, sales and deliveries that are considered exports and services, and activities generating foreign exchange earnings
- Foreign currency loans used within the principles determined by the relevant Ministry

**Restrictions stated on next page will not be applied to foreign currency loans in above mentioned situations if they are used by residents in Turkey with foreign exchange earnings.**

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## **b) Regarding legal entities resident in Turkey with foreign exchange earnings**

In the New Decree and New Communiqué, residents of Turkey who have foreign exchange earnings are allowed to obtain foreign exchange loans within specified limits. The intention is to balance the related persons' foreign exchange earnings with the size of the loan to be obtained from abroad. According to that regulation;

*“In case the loan balance of the borrower is less than US\$ 15 million on the date of the use of the loan, the sum of the loan amount to be used and existing loan balance can not exceed the sum of the foreign exchange earnings of the past three years.”*

For example, Company X, resident in Turkey with foreign exchange earnings, has;

(A) → Loan Balance	: US\$ 10 million
(B) → Sum of Foreign Exchange Ear (past 3 years)	: US\$ 15 million
(C) → Usable amount of foreign currency loan	: may use a loan of up to US\$ 5 million

$$\begin{aligned}(C) + (A) &\leq (B) \\ \text{US\$ 10 m} + (C) &\leq \text{US\$ 15 m} \\ (C) &\leq \text{US\$ 5 m}\end{aligned}$$

New Communiqué sets out the principals of loan use in the above-mentioned circumstances. In this context, according to the New Communiqué, legal entities resident in Turkey with a total loan balance of less than US\$ 15 million are required to authenticate their past 3 years' foreign exchange earnings with documents approved by certified public accountants at the date of their foreign currency loan requests.

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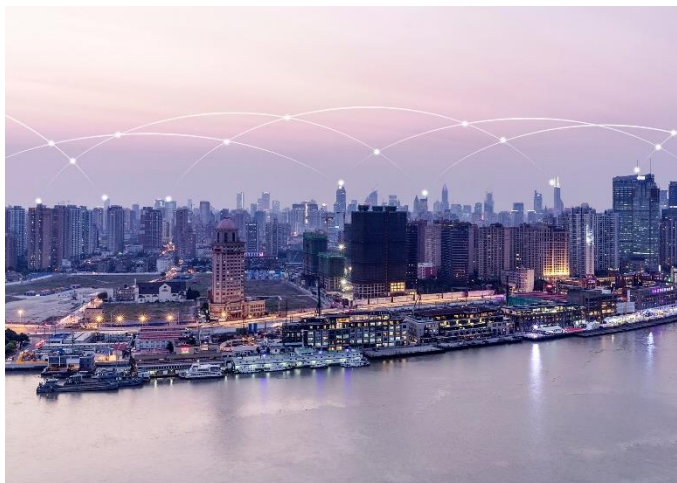
## **b) In terms of legal entities resident in Turkey with foreign exchange earnings (cont.)**

In addition to that, under the New Decree and New Communiqué, if it is detected after the loan use that the loan balance granted by foreign branches of banks, leasing companies, factoring companies and financing companies (including offshore branches, except free zone branches of banks) exceeds the total amount of foreign currency earnings in the past three fiscal years, the exceeding amount will be recalled or converted to a TL loan.

Within the scope of the New Decree, banks, leasing companies, factoring companies and financing companies are not subject to foreign currency loan utilization restrictions. Without prejudice to the provisions of the relevant legislation, these organizations may obtain loans from abroad in their own customs.

Moreover, **the New Decree prohibits Turkish residents from obtaining foreign currency indexed loans abroad.**

**Amount limitation are applied to persons resident in Turkey with foreign exchange earnings, and compliance control duties are applied to intermediary banks.**



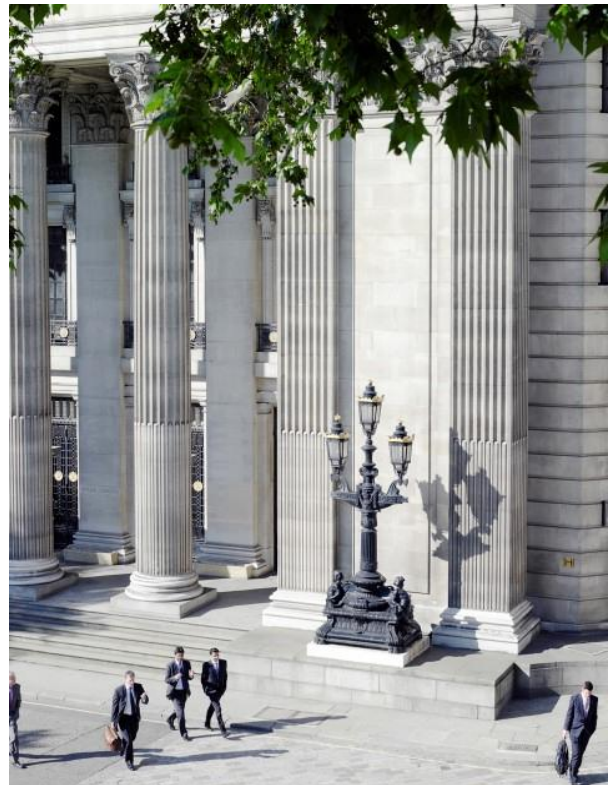
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## **c) Regarding natural persons resident in Turkey**

Before Decree no.32 regarding principles on loans, natural persons resident in Turkey could only obtain foreign currency loans or foreign currency indexed loans from abroad or from Turkey under certain circumstances. For example, it was possible to use foreign currency indexed loans from Turkish banks, for commercial or professional purposes for such persons.

However, with the amendments made by the New Decree, natural persons resident in Turkey are forbidden from using foreign currency loans. This regulation aims to lower foreign currency liabilities of natural persons resident in Turkey.

**Natural persons resident in Turkey will not be able to use foreign currency loans.**



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# ***Communiqué and Decree about Amendment on Principles Regarding Foreign Currency Loans***

## **II. Restrictions on loans obtained from Turkey**

Similar to the rules for foreign currency loans obtained from abroad, certain restrictions are applied to obtaining loans from Turkey by Turkish residents, depending on whether (i) the borrower has foreign exchange earnings, (ii) the borrower has no foreign exchange earnings, or (iii) the borrower is a natural person. These restrictions and exceptions are parallel to foreign currency loans obtained from abroad, as explained on previous pages.

Some relevant articles of the New Decree were changed in order to enable other financial organizations to grant foreign currency loans in parallel with banks. An article related to granting loans of at least US\$ 5 million with an average maturity less than a year to residents in Turkey by banks is removed and allows for the acquisition of foreign currency loans from Turkish banks, leasing companies, factoring companies and financing companies by residents in Turkey.

On the other hand, according to the New Decree and New Communiqué, if it is detected after the loan use that the loan balance exceeds the total amount of foreign currency earnings in past three fiscal years, loans obtained from Turkish banks, leasing companies, factoring companies and financing companies will be recalled or converted to a TL loan.

**Turkish banks and leasing companies, factoring companies, and financing companies will be allowed to grant foreign currency loans to residents in Turkey within limitations.**





# ***Communiqué and Decree about Amendment on Principles Regarding Foreign Currency Loans***

## **Effective date and transitional provisions**

**The New Decree and New Communiqué will be effective from 02.05.2018.**

**Foreign currency loans that are open on 02.05.2018 used in Turkey or abroad by Turkish residents whose loan balance is below US\$ 15 million cannot be renewed as foreign currency loans, unless they are within the scope and limitations mentioned on previous pages.**

**Foreign currency indexed loans that are open on 02.05.2018 cannot be renewed as foreign currency indexed loans, unless they are within the scope and limitations mentioned on previous pages.**

**Foreign currency loans and foreign currency indexed loans used before 02.05.2018 will be included in the calculation of loan balances.**



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# ***GSG Attorneys at Law***

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