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www.yazicilegal.com
A. Levent Mah. Yasemin Sok. No.13 Beşiktaş 34340 İstanbul **T.** +90 212 269 02 27 **F.** +90 212 269 02 28 **E.** info@yazicilegal.com

The New Capital Movements Circular

The Capital Movements Circular (the "**Circular**") dated May 2, 2018 was published by the Central Bank of the Republic of Turkey (the "**Central Bank**") in order to detail the newly adopted amendments to the Decree No. 32 on the Protection of Value of Turkish Currency (the "**Decree**") of the Council of Ministers published in the Official Gazette dated August 7, 1989 numbered 20249 with the Decree Regarding the Amendment to the Decree No. 32 on the Protection of Value of Turkish Currency numbered 2018/11185 (the "**Amendment Decree**") published in the Official Gazette dated January 25, 2018 numbered 30312. As previously explained through our newsletter in January, the Central Bank has brought a new structure for foreign currency loans with the Decree, which is elaborated on further in the Circular and some of the restrictions are loosened with the inclusion of several other exceptions.

The Decree had changed the principle for natural persons resident in Turkey utilizing foreign currency loans, which prior to the amendments had been possible with the exemptions of persons dealing with import and export activities or loans exceeding certain amounts. The amendment for natural persons is reflected to the Circular without any change.

The Decree had prohibited the extension of foreign currency indexed loans (i.e. TL loans the repayments of which are linked to a foreign currency rate) for all legal and natural persons resident in Turkey, which also is reflected in the same structure within the Circular.

As part of the Decree, legal entities resident in Turkey were prohibited from receiving foreign currency loans unless they had income in a foreign currency.

Additionally, the Circular accepts the legal entities resident in free zones as Turkish non-residents who will therefore be exempt from the foreign currency loan restrictions under the Circular. However, the loans obtained from the free zone branches of banks and financial institutions in Turkey are deemed as loans obtained from Turkey.

In line with the Decree, the scope of foreign currency income is defined under the Circular consisting of the following:

- Income generated from export,
- Income generated from transit trade,
- Income generated from sales and deliveries deemed export,
- Income generated from foreign currency earning services and activities.

Income under the last two items above are indicated with reference to income generated from transactions listed in Paragraph 3 of Article 6 of the Communique numbered 2017/4 on the Tax, Duty and Charge Exceptions on Export, Transit Trade, Sales and Deliveries Deemed Export and Foreign Currency Earning Services and Activities and from the commercial activities approved by the relevant ministry since such income has been collected from Turkish non-residents. Other than the income received in these manners, the Circular sets forth that foreign currency income received from Turkish residents shall not be considered as foreign currency income to qualify for foreign currency loan utilization.

Certain circumstances were listed in the Decree to obtain foreign currency loans without having income in foreign currency. Public institutions and organizations, banks, financial leasing, factoring and financing companies, legal persons whose outstanding foreign currency loan exposures are 15 million USD or more at the time of the utilization of foreign currency loan, holders of Investment Incentive Certificates (as provided specifically under the Circular, for amounts not exceeding the foreign equity amount in the respective certificates), loans used for the financing of the equipment listed under 17 of the Annex-I to the Council of Ministers Decree No. 2007/13033 on the Determination of the Value Added Tax Ratios to be Applied to Goods and Services, loans extended as part of international announced domestic tenders or a defence industry project approved by the Undersecreteriat of Defence Industry, persons entrusted with the execution of public-private partnerships (as provided specifically under the Circular, for amounts not exceeding the contract price), residents able to certificate probable foreign currency income through their export connections and foreign exchange earning operations and several others were listed as exempt from the foreign currency income condition to utilize foreign currency loans. In addition, the Council of Ministers is authorized to determine further exemptions in this respect. In addition, pursuant to the Circular, the following transactions will not be subject to the foreign currency income requirement explained above in order to utilize a foreign currency loan:

- Foreign currency loans to be utilized by residents of Turkey for the financing of investments of renewable energy sources made pursuant to the Law on Use of Renewable Energy Resources for Generating Electricity No. 5346.
- Foreign currency loans to be utilized by residents of Turkey who won the tenders held pursuant to Privatization Law No. 4046 and other public tenders in which the price are set in a foreign currency.
- Foreign currency loans to be utilized by special purpose vehicles resident in Turkey established solely for purchasing a new company's shares and have no operations other than achieving this purpose.

The Circular further provides that the loan exposures and incomes in foreign currency of a holding and its group companies will be calculated based on the total amount for the group as a whole, yet the foreign currency loan extended will only be included in the loan exposure of the company that the loan is extended to.

Parallel to the regime in the Decree, the Circular sets forth that legal entities resident in Turkey who have income in foreign currency may obtain foreign currency loans in an amount that does not exceed the foreign currency income of the previous three financial years, unless they do not have an outstanding foreign currency loan exposure of 15 million USD.

The Circular constitutes a broad framework as to the surveillance and notification obligations of the banks while lending foreign currency loans and tracking the balances of their customers, in order to ensure full compliance with the regime stated in Circular.

The banks may proceed with extending credit cards with a foreign currency limit up to USD 50,000 for residents of Turkey for their utilization out of Turkey, which shall not be affected by the restrictions arising from the foreign currency loan extension regime adopted, and shall not be included in the calculation of the loan exposures of the customers.

The Circular has entered into force on May 2, 2018; abolishing the previous circular on capital movements.

Amendments to the Law on the Protection of the Value of Turkish Currency

Law on the Amendment of Certain Laws numbered 7144 was published on the Official Gazette numbered 30431 dated 25 May 2018 and it has brought certain amendments to the Law on the Protection of the Value of Turkish Currency numbered 1567 dated 25 February 1930 ("**Law**"), along with other laws.

Pursuant to the amendments, entities operating despite failing to obtain a license or a certificate of authorization required under the Law and its related legislation, shall be subject to an administrative fine of TL 50,000 to TL 250,000. The operations of the entity shall be terminated for a period of 6 months to 1 year. If repeated, the operations shall be terminated indefinitely. If the publicity and advertisement of the entity and nature of the business reflects that it has been established to operate in the subject of activity requiring a license or certificate as per the Law and its related legislation, then the operations shall be terminated indefinitely.

The terminations shall be performed by the Governorships of the relevant cities following the request of the Undersecretariat of Treasury.

Exemptions from Registration to Data Controllers Registry

On the Official Gazette no. 30422 dated May 15, 2018, the decision of the Personal Data Protection Authority dated April 2, 2018 and numbered 2018/32 (the "**Decision**") has been published. The decision determines the entities to be exempt from the obligation to register to the data controllers registry according to the Article 16 of Personal Data Protection Law numbered 6698 and Regulation on Data Controllers Registry published on the Official Gazette dated 30 December 2017 and numbered 30286. Those exemptions are as follows:

- Data controllers processing personal data through non-automatic methods, where the processing is a part of a recording system,
- Notary publics acting pursuant to the Notary Public Law dated 18 January 1972 and numbered 1512,
- Associations established pursuant to the Associations Law dated 4 November 2004 and numbered 5253, foundations established pursuant to the Foundations Law dated 20 February 2008 and numbered 5737 and unions established pursuant to the Law On Trade Unions and Collective Bargaining Agreements dated 18 October 2012 and numbered 6356 processing personal data only in accordance with the related legislations ve their purposes, limited with their fields of activity, and only related to their employees, members and donators,
- Political parties established pursuant to the Political Parties Law dated 22 April 1983 and numbered 2820,
- Lawyers acting according to the Attorney's Law dated 19 March 1969 and numbered 1136, and
- Independent accountant and financial advisors and

sworn-in certified public accountants acting according to the Independent Accountant and Financial Advisor and Sworn-in Certified Public Accountant Law dated 1 June 1989 and numbered 3568.

Changes to the Communiqué on Significant Transactions and Sell-out Rights

The Capital Markets Board has published a Communiqué on the Official Gazette numbered 30395 dated 18 April 2018 (the "**Amendment**") amending the Communiqué No II-23.1 on Common Principles regarding Significant Transactions and Sell-out Rights (the "**Communiqué**").

In general, the Communiqué had listed certain situations named as "significant transactions" where the minority shareholders had the right to exit the shareholding.

The Amendment sets forth a new exception to the situations where a transaction will not give rise to sell-out rights. If an asset transfer is made to a non-related party and if not less than 90% of the proceeds are used for the purpose of financing the repayment of cash bank loans and/or debts arising from debt instruments within one month following this disposal, that disposal will not give rise to a sell-out right. However, in case the proceeds will be used to repay all outstanding cash bank loans and/or debt instruments, such ratio of 90% shall be not be applicable.

The Amendment has entered into force on the day it was published.

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This newsletter has been prepared only for information purposes. Please do not hesitate to contact us if you need assistance or more detailed information.

Yours faithfully,
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