

OKAT LAW INSIGHT

KEY UPDATES IMPACTING CROSS-BORDER DEALMAKING in 2025

- Derivatives
- Foreign Currency Borrowing
- RUSF Levy
- Carbon Credits
- Precious Metals





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CONTENTS

I.	Introduction	1
II.	Derivatives Intermediary Obligation Repealed	1
III.	Tighter Regulatory Oversight for Cross-Border Leverage Transactions	2
IV.	Protection of the Value of Turkish Currency	2
V.	1% Levy on Local Foreign Currency Loans	3
VI.	Carbon Credits	3
VII.	Cross-Border FX Borrowing	4
VIII.	Banks are Allowed to Trade Unprocessed Gold	4

I. Introduction

Cross-border lending, derivatives, and similar transactions engage multiple areas of Turkish law. These areas are highly dynamic and subject to frequent legislative and regulatory amendments. This Okat Law Insight covers legal developments in 2025 that have an impact on cross-border deal-making.

II. Derivatives Intermediary Obligation Repealed

Under Turkish law, provided that the transfer of funds is carried out through banks, the purchase and sale of all types of derivative instruments (including forward transactions and option contracts) shall be conducted through banks and intermediary institutions authorized by the Capital Markets Board (Decree No.32, 6/8).

The amendment on March 15, 2025 over Decree No.32 (the “Decree No.32 Amendment”) provided a major exception to this rule. Accordingly,

- on the condition that no promotional, advertising, or marketing activities are directed toward residents in Türkiye,
- It is not mandatory for derivative transactions executed entirely at the own initiative of persons residing in Türkiye with financial institutions established abroad to be conducted through banks and intermediary institutions.

Notwithstanding the above, the transfer of funds related to such transactions shall be carried out through banks.

This amendment effectively removes the intermediary requirement for unsolicited cross-border derivative transactions, including those documented under ISDA agreements.

III. Tighter Regulatory Oversight for Cross-Border Leverage Transactions

Decree No.32 Amendment prohibits Turkish residents to carry out transfers abroad in relation to leveraged transactions. With respect to the prevention of such transactions, banks, payment/electronic money entities are obliged to take any measures to prevent such transfers. For the purpose of taking such measures, the Capital Markets Board, the Banking Regulation and Supervision Agency, and the Central Bank of the Republic of Türkiye shall, within the scope of their respective authorities, directly provide to one another, or through an established system, any and all information under their control upon request. In the event that transactions in violation of these provisions are identified, a notification shall be made to the Ministry of Treasury and Finance.

IV. Protection of the Value of Turkish Currency

Protection of the Value of Turkish Currency Law (Law No. 1567) amended to cover the changes below (July 24, 2025):

1. The President is authorized to issue resolutions regarding precious metal refining activities.
2. Unlawful import or export of foreign currency or precious metals shall be subject to an administrative fine ranging from one-half to twice the market value of such assets. Previously, the administrative fine was equal to the market value.
3. Where unauthorized activities are carried out in a workplace, operations may be suspended for one month (previously: suspension for 1 to 6 months; permanent termination in case of repetition). The workplace shall be terminated permanently in case it is operated solely for unlawful activities.
4. The Amendment clarified the activities subject to license under the Law:
 - A. Purchase and sale of foreign currency for commercial purposes,
 - B. Carrying out activities as a member of the Borsa Istanbul Precious Metals Market,
 - C. Precious metal refining activities,
 - D. Activities to be carried out under the Kimberley Process Certification Scheme.
 - E. Licenses shall be cancelled in cases where operations were performed out of the scope of permitted business purposes.

V. 1% Levy on Local Foreign Currency Loans

No Resource Utilization Support Fund ("RUSF") levy was applicable on foreign currency (and gold) denominated commercial loans extended by banks and finance companies in Türkiye. A 1% RUSF levy was introduced by Presidential Resolution No. 10094 (O.G. July 18, 2025). TRY-denominated commercial loans remain subject to a 0% RUSF levy, and no RUSF levy is applicable on foreign currency-denominated loans extended locally to factoring and financial leasing companies.

0-3% (zero to three percent) RUSF levy shall continue to be applicable for cross-border loans extended to Turkish residents. The amendments do not affect the existing maturity-based RUSF framework applicable to cross-border loans, which remains governed by earlier Council of Ministers' and Presidential resolutions.

VI. Carbon Credits

Revenues obtained by persons resident in Türkiye from the sale of carbon credits, as determined by internationally accredited institutions, to persons resident abroad shall be deemed “foreign currency income” pursuant to a provision added (on July 25, 2025) to the Capital Movements Circular of The Central Bank of Republic of Türkiye (**the “Capital Movements Circular”**). Under Turkish law, the classification of an income as “foreign currency income” is legally significant, *inter alia*, for purposes such as eligibility to utilize foreign currency loans.

VII. Cross-Border FX Borrowing

As per various amendments of the Capital Movements Circular, the following categories of Turkish residents are permitted to obtain foreign currency loans in the absence of foreign currency income:

- A. Companies with (A) or (B) level EYDEP certificate issued by the Presidency of Defense Industry,
- B. Legal entities under control/ joint control of public entities,
- C. Turkish-resident subcontractors of winning bidders of international privatization tenders, in case such subcontractors carried out foreign currency agreements with winning bidders
- D. Turkish residents who won sales and liquidation tenders conducted by the Savings Deposit Insurance Fund in relation to confiscated companies, provided that such loans are used for the performance of share transfer agreements.

In addition, Turkish residents are permitted to issue letters of guarantee and provide guarantees or sureties in favor of persons resident in Türkiye or abroad where the beneficiary is resident abroad.

VIII. Banks are Allowed to Trade Unprocessed Gold

Decree No.32 Amendment allows banks to engage in the purchase and sale of standard unprocessed precious metals and minted precious metals, including gold.

To discuss the impact of the above further, please contact our Managing Partner Yalçın Özge Okat: yookat@okatlaw.com.

Kind regards,

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