

CENTRAL BANK ISSUES GUIDELINES FOR COMMERCIAL BANKING FEES

The Central Bank issued a guideline on the implementation of new rules in respect of the commercial banking fees (the "**Guideline**") and clarified the scope and applicable exemptions on the recently introduced restrictions under the Communiqué on Fees Payable to the Banks by Commercial Clients (No. 2020/4) (the "**Communiqué**").

The Communiqué, which capped fees chargeable by Turkish banks for four main categories of services and products (i.e. commercial loans, foreign trade, cash management and payment systems) initially sparked a lot of concern amongst Turkish banks. In an effort to shed light on the grey areas in the Communiqué, the Central Bank introduced a number of important exceptions with the Guideline which attempt to ensure a level playing field in transactions that involve a foreign element, including cross-border syndicated loans and intrabank transactions, and clarified the implementation of oversight and disclosure mechanisms set out in the Communiqué.

The Guideline provides several critical exemptions from the Communiqué: below is a brief summary of some of the key clarifications introduced under the Guideline in respect of banking transactions.

1. Exceptions

- The restrictions under the Communiqué will not be applicable in respect of the services and products offered by Turkish banks within the scope of lending transactions entered into with corporate clients which also involve bank(s) or financial institution(s) established abroad as lenders (e.g. syndicated lending transactions) **provided that**:
 - a foreign bank or financial institution that is not captured by the restrictions under the Communiqué is also a party to the underlying loan agreement together with the relevant Turkish banks; and
 - the underlying loan agreement is not governed by Turkish law, in accordance with the principles set out under the Act on International Private Law and Procedural Law (Law No. 5718).
- Notwithstanding the governing law of the underlying agreement, intrabank transactions entered into between Turkish banks and non-resident banks and financial institutions are not subject to the restrictions introduced under the Communiqué.
- The transactions entered into by Turkish banks with (i) non-resident commercial clients and (ii) resident banks and financial institutions are not captured by the restrictions set forth under the Communiqué.
- The fee caps under the Communiqué will not be binding on the offshore branches of Turkish banks, which would need to comply with the applicable rules in their own jurisdictions.
- Turkish banks may charge fees that have become due but remain unpaid arising under the contracts signed before the effective date of the Communiqué without being subject to the restrictions introduced by the Communiqué. However, fees yet to fall due after the effective date of the Communiqué and arising under contracts signed before the effective date of the Communiqué will be subject to the restrictions introduced by the Communiqué.

2. Oversight and Disclosures

- Turkish banks would need to publish their up-to-date tariffs online in accordance with the Communiqué, including the name of the service/product and the chargeable fee. These tariffs would also need to include the applicable rates for

services and products fees which are not capped under the Communiqué. Any changes in such uncapped fees can only be made with prior notification to the Central Bank.

- The Banks Association of Turkey will publish a consolidated tariff compiling the fees and rates offered by each Turkish Bank.
- Customer or transaction specific fees that may not be standardised or published due to their special nature will not have to be included in the publicly available tariffs **provided that** the relevant Turkish bank obtains the affirmative opinion of the Central Bank to that effect.
- In order to diversify the services and products (fees of which are capped under the Communiqué) by way of introducing sub-categories, a Turkish bank will first need to apply to the Banks Association of Turkey and obtain approval of the requested sub-category. The aggregate amount of fees charged in respect of sub-categories may not exceed the upper limit applicable to the main category introduced under the Communiqué.
- If a Turkish bank wishes to charge fees for specialised services that relate to one of the four categories under the Communiqué but which require differential treatment due to their specific nature, it will need to make an application to the Central Bank through the Banks Association of Turkey, which will also take into account views and assessments of other Turkish banks.
- An information form that includes the applicable tariff for each relevant product and service offered by Turkish banks will need to be included in the banking services agreements to be entered into with commercial clients after the effective date of the Communiqué.

3. Other

- **Prepayment Fees:** The Communiqué allowed Turkish banks to charge a prepayment fee in respect of loans prepaid by the borrower **unless** the interest is calculated subject to a floating rate (such as LIBOR or EURIBOR). In addition, the Communiqué provided that borrowers are entitled to prepay any amounts under their loans in full at any time, and in such case Turkish banks are required to make a discount on the non-accrued interest and other costs.

The Guideline clarifies that Turkish banks are not required to accept partial prepayments (as opposed to prepayment in full) and Turkish banks and their commercial clients may freely agree on the fees to be charged in cases of partial prepayment.

- **BITT:** Banking and Insurance Transactions Tax (BITT) is not included in the caps introduced under the Communiqué and will be charged separately.
- **Out-of-scope Services and Products:** The Communiqué provided that Turkish banks may no longer charge any fees under different names, other than those specifically listed in Annex 1 of the Communiqué or otherwise permitted to be charged under the applicable secondary legislation or separate guidelines to be issued by the Central Bank.
- With the Guideline, the Central Bank clarified that the fees relating to services and products to be offered by Turkish banks outside the scope of the Communiqué (i.e. that are not related to any of the four categories under the Communiqué: commercial loans, foreign trade, cash management and payment systems) may be freely agreed amongst the parties to that transaction. In cases where a Turkish bank would be offering combined services and products (i.e. a service that is subject to the Communiqué together with a service that is not subject to the Communiqué), each agreement will need to be assessed separately in respect of its compliance with the Communiqué provided that these services and products (i) are not offered conditionally upon each other and (ii) are regulated under separate agreements.
- **Third-Party Costs:** In respect of "third-party costs" or "fees reasonably incurred for internally procured services" under the Communiqué (such as security, expert valuation, legal fees etc.), the appropriate fees will be determined based on the value of the underlying transaction and the actual costs incurred. In cases where it is not possible to determine the value of the underlying transaction, Turkish banks may take into account the average of the fees charged in similar transactions in the market. The Guideline further clarifies that fees paid to public institutions will also be considered third-party costs for the purposes of the Communiqué.

The Central Bank appears to have taken into account the concerns raised by the Turkish banking sector following the publication of the Communiqué. Through the changes, exemptions and clarifications introduced by the Guideline, the Central Bank attempts to shed light on the disclosure requirements and also provide comfort to Turkish banks in respect of their cross-border transactions. Please click [here](#) to read our client briefing on the Communiqué for further information.

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