

8 October 2018

COMMUNIQUE RELATED TO THE DECREE NO. 32 REGARDING THE PROTECTION OF THE VALUE OF THE TURKISH CURRENCY

The amendments to Communiqué related to the Decree No. 32 regarding the Protection of the Value of the Turkish Currency (**Communiqué**) have been published in the Official Gazette on October 6, 2018 and entered into force through its publication.

Pursuant to the Communiqué, the contracts that fall within the scope of the foreign exchange prohibition and are excluded from the scope are assessed below as articles:

1. SALE AND PURCHASE CONTRACTS

a. Subject to Movable Properties

Since a large portion of the sale and purchase contracts subject to movable properties fall within the scope of the exemption, they might be executed in foreign currency. However, vehicle sales contracts, including construction equipment, may not be executed in foreign currency.

b. Subject to Real Estates

Contract value and other payment obligations in real estate sales contracts including residence and roofed workplaces shall not be decided in foreign currency or foreign currency indexed. No exceptions have been made with the Communiqué regarding the real estate sales contracts.

2. LEASE CONTRACTS

a. Leasing of Movable Properties

A large part of the lease contracts are included in the scope of the exemption and made possible to be concluded in foreign currency. Yet, vehicle lease contracts, including construction equipment, may not be executed in foreign currency. However, vehicle lease contracts, including construction equipment executed prior to 13/09/2018, are outside of the scope of the foreign exchange prohibition and such contracts are not required to be adapted to the Turkish Lira.

b. Leasing of Real Estate

Contract value and other payment obligations in real estate lease contracts including residence and roofed workplaces shall not be decided in foreign currency or foreign currency indexed. No exceptions have been made with the Communiqué regarding the real estate lease contracts.

Therefore, modification of the real estate lease contract values as Turkish Lira executed concluded prior to 13/09/2018, including residence and roofed workplaces, is required.

c. Financial Leasing

The following two exceptions have been determined regarding the value of the leasing contracts in foreign currency:

- Lease contracts subject to ships.
- Lease contracts to be executed within the scope of article 17 (obtaining credit from abroad) and article 17/A (obtaining credit domestically) of the Decree No. 32 Regarding the Protection of the Value of the Turkish Currency.

3. EMPLOYMENT AGREEMENTS

According to the Communiqué, the residents in Turkey; except by contracts to be performed abroad, may not decide the contract value and the other payment obligations arising from the contracts to be concluded between them in foreign currency or foreign currency indexed.

The exceptions to the foreign exchange prohibition are as follows:

- Employment agreements to be executed abroad.
- Employment agreements to be executed by residents in Turkey, who are not citizen of Republic of Turkey.
- Employment agreements whose its' one of the parties is abroad residents' branches, representation offices, bureau, liaison offices, companies with share ownership over fifty percent and companies in free zones in Turkey.

4. CONSTRUCTION AGREEMENTS

Contract value in construction agreements shall not be decided in foreign currency or foreign currency indexed. However, for the construction, repair and maintenance of ships, the contract value may be determined in foreign currency or foreign currency indexed.

5. SERVICE CONTRACTS

Residents in Turkey may not determine the contract value and other payment obligations arising from service contracts to be concluded between them in foreign currency or foreign currency indexed, including consultancy, brokerage and transportation.

The contracts for which prices may be determined in foreign exchange or foreign currency indexed are listed below.

- Service contracts whose its contracting parties are not citizen of Republic of Turkey.

- Service contracts to be concluded within the scope of the exportation, transit trade, sales and deliveries accepted as exportation and foreign exchange saving services and activities.
- Service contracts between residents in Turkey within the scope of the activities to be carried out abroad.
- Service contracts to be concluded among residents in Turkey in respect of electronic communication which initiates in Turkey, terminates abroad and vice versa.
- Service contracts whose its' one of the parties is abroad residents' branches, representation offices, bureau, liaison offices, and companies with share ownership over fifty percent and companies in free zones in Turkey.

6. OTHER EXEMPTIONS

a. Contracts whereby State Institutions and Organizations and Turkish Armed Forces Foundation Company are parties:

- The prices related to the contracts of the State institutions and organizations and of the Turkish Armed Forces Foundation Companies might be decided in foreign currency. However, real estate sales, real estate leasing and employment contracts to which the public institutions and organizations and the Turkish Armed Forces Foundation Companies are party may not to be determined in foreign currency.
- In the scope of the execution of tenders, contracts and international agreements in foreign currency or foreign currency indexed to which public institutions and organizations are parties; prices relating to such contracts other than real estate sales, leasing and employment agreements of contractors with third parties, may be decided in foreign currency.
- The contracts of Banks with reference to Transactions of the Ministry of Treasury and Finance within the scope of Public Finance and Debt Management Law dated 28/03/2002 numbered 4749 may be decided in foreign currency.

b. Commercial Airline Enterprises:

- Commercial Airline Enterprises which are resident in Turkey and engaged in transport of passengers, freight and posts,
- Companies providing technical maintenance services for air transport vehicles, engines and parts,
- Public or private legal entities that have been or are authorized with a certificate to perform ground handling services at airports within the scope of civil aviation

legislation, the enterprises and companies established by the aforementioned organizations and partnerships with direct or indirect ownership of at least 50% of their share capital,

May conclude contracts in foreign currency or foreign currency indexed with residents in Turkey. However, real estate sales/leasing and employment contracts of these persons are still subject to the foreign exchange prohibition.

c. Contracts concerning Software and Hardware:

Residents in Turkey, for the

- Sales contracts for software produced abroad in the context of information technologies and,
- License and service contracts for hardware and software,

to be concluded between them, may decide contract values and other payment obligations in foreign currency or foreign currency indexed.

The subject of the provision is designated in the relevant article as sales contracts for software produced abroad in the context of information technologies “and” License and service contracts for hardware and software. Here, there is no clarity as to whether the license and service contracts for hardware and software should be produced abroad in the scope of information technology. Our current view is that the provision introduces certain exceptions and the term of “and” should cover the whole provision and all the hardware and software mentioned in the provision should be software and hardware produced abroad. In other words, it is not possible to determine the contract prices related to software and hardware not produced abroad in foreign currency or foreign currency indexed.

d. Capital Market Instruments

In accordance with the Capital Markets Law no. 6362 and the regulations made based on this Law, it is possible to determine the liabilities related to the creation, export, purchase and sale of capital market instruments in foreign currency or foreign currency indexed.

NEGOTIABLE INSTRUMENTS

For the negotiable instruments issued within the scope of the prohibited contracts to decide in foreign currency or foreign currency indexed, it is not possible to determine the value of the negotiable instruments (checks, bills, etc.) in foreign currency or foreign currency indexed.

HOW TO ENSURE COMPLIANCE WITH THE DECREE?

- Compliance process must be completed within 30 days from 13/09/2018.
- Without prejudice to the more detailed arrangement about adaptation on rental prices of residence and roofed workplace lease agreements, in case the contracting parties could not agree on the foreign currency rate at which date should be based on the calculation, regarding the modification of the contract prices as Turkish Lira, indicative effective sales rate of the Central Bank of Turkey on 02/01/2018 will be taken as a basis and the amount will be determined by adding the consumer price index changes established monthly by Turkish Statistical Institute, from 02/01/2018 until the re-determination date.

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