

9 October 2018

Information Note related to Effects of the Decree No. 32 Regarding the Protection of the Value of the Turkish Currency on Real Estate Lease Contracts

The amendments to the Decree No. 32 regarding the Protection of the Value of the Turkish Currency (**Decree**) have been published in the Official Gazette on September 13, 2018 and entered into force through its publication. In addition to the authority to execute the Decree, as it is stated some types of contracts arranged in the Decree will be excluded from the scope; thus, the Ministry of Treasury and Finance has the authority to decide the contracts to be excluded from the scope of Decree.

In this context, 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. The above-mentioned types of exceptional contracts have been determined by the Ministry of Finance and Treasury.

According to article 4(g) of the Decree, since it is stated that contract amount and other payment obligations arising from leasing of real estate and movable properties including financial leasing and leasing of vehicles, shall not be decided in foreign currency or foreign exchange indexed among residents in Turkey, the provisions of the recent published Communiqué, in particular on real estate lease contracts, are important.

According to article 8(2) which has been added to the relevant Communiqué, it is stated that the amounts of real estate lease contracts concluded or/and to be concluded among residents in Turkey may not be decided in foreign currency. The relevant article is as follows:

*“Residents in Turkey; shall not decide on the contract amount and other payment obligations arising from real estate lease contracts including residence and roofed workplaces whose **subject is real estates located in Turkey, including free zones**, in foreign currency or foreign currency indexed.”*

Scope of the Provision

Ratione Personae (Implementation of the Decree with regards to Persons)

The residents in Turkey fall under the scope of Decree.

Residents in Turkey is defined in Article 2 (b) of the Decree No. 32 Regarding the Protection of the Value of the Turkish Currency as follows:

“ Residents in Turkey in the implementation of this Decree expresses any natural and legal person whose legal domicile is in Turkey, including workers, self-employed persons, independent business owners who are Turkish citizens.”

A provision concerning the concept of Residents in Turkey within the scope of Decree has been introduced pursuant to paragraph 20 which is added to repealed article 8 of the Communiqué relating to the Decree No. 32 Regarding the Protection of the Value of the Turkish Currency, with the recent published Communiqué:

“ Abroad branches; representation offices bureau, liaison offices, funds managed or controlled, companies with share ownership over fifty

percent and companies owned directly or indirectly which are belonging to the residents in Turkey , are deemed as resident in Turkey according to article 4(g) of the Decree No. 32 regarding the Protection of the Value of the Turkish Currency.”

Ratione Loci (Implementation of the Decree with regards to Place)

According to the relevant article of the Communiqué, the lease contracts to be concluded about **the real estates in Turkey** are accepted as one of the types of contracts that prices shall not be decided in foreign currency or foreign currency indexed, thereal estates **in free zones** are also in the scope of arrangement.

Implementation of the Decree with regards to Performance

The rent amount agreed in the lease contract is covered by this prohibition, as well as the agreed deposit in the same contract, the designated cleaning and maintenance costs will be covered by this prohibition.

Effect of the Decree on the Contracts in Force

Payments determined in foreign currency for Agreements in force should be modified by contracting parties within thirty (30) days from the date on which the Decree was published. Accordingly, the contracting parties shall re-determine the pecuniary debt as Turkish Lira within thirty (30) days from 13 September 2018.

In such a case, although the settlement of the parties is expected by the Decree, in virtue of the possibility of a conflict concerning the re-determination of the pecuniary debt as Turkish Lira between the parties, a detailed provision with Article 8 paragraph 24 of the relevant Communiqué was introduced.

The first subparagraph of the paragraph is as follows:

“In accordance with this article, if the contract amount and the other payment obligations arising from such contracts which are not possible to be decided in foreign currency or foreign currency indexed , might not be re-determined by the parties as the Turkish Lira within the scope of the Provisional Article 8 of the Decree No. 32 Regarding the Protection of the Value of the Turkish Currency; 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.”

The Central Bank's data on USD and EUR exchange rates on 02/01/2018 are as follows:

Currency Code	Unit	Type of Currency	Buying Rate	Selling Rate	Effective Buying	Effective Selling
USD/TRY	1	USD	3,7652	3,7719	3,7625	3,7776

EUR/TRY	1	EURO	4,5375	4,5457	4,5343	4,5525
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The CPI rates announced on Turkey Statistical Institute in 2017 and 2018 months are as follows:



In the second sub-paragraph of the paragraph, it is determined how the price determination will be applied especially for the residence and roofed workplace lease contracts. In the first paragraph of the relevant article, it is written that the same principle will be applied for the rent amount by referring to the above mentioned sub-paragraph. It is understood from the wording of the provision that the rent amount should be determined for at least two (2) years.

The relevant sub-paragraph is as follows:

*"In accordance with the first paragraph of this article, the amounts determined as foreign currency or foreign currency indexed in **the residence and roofed workplace lease contracts** concluded before the date of entry into force of the Provisional Article 8 of the Decree No. 32 on the Protection of the Value of Turkish Currency shall be determined as **Turkish Lira for a period of two years**. If the parties cannot reach an agreement about the rent amount to be determined as the Turkish Lira in accordance with the aforementioned paragraph, being valid for one year from the end of the lease year when re-determination is made as Turkish Lira, the amount will be determined by adding the consumer price index changes established monthly by Turkish Statistical Institute, from re-determination date until the end of the lease year when re-determination is made as Turkish Lira. With regards to the rent amount of the next lease year in Turkish currency, if the parties cannot reach an agreement about the rent amount to be determined as the Turkish Lira, the amount will be determined by adding the consumer price index changes established monthly by Turkish Statistical Institute and the rental value determined in Turkish currency shall be valid until the end of the two-year period specified in this paragraph."*

In summary; in the event that there is no agreement between the lessor and the lessee on the determination of the rent amount within the scope of Decree, the rent amount shall be adjusted according to the above data and principles.

In the last sub-paragraph of the article, it has been decided that any receivables that have been collected or are due will be excluded from the scope of the Decree. Although it is due, it is not mandatory to re-determine of unpaid real estate leasing contract prices as Turkish Lira. Although the term “deferred liabilities” is used as a general term in the clause, it is considered that the legislator refers not only to receivables that are defaulted but also due debts.

“The provisions of this paragraph shall not apply to receivables that have been collected or deferred liabilities in contracts which are not possible to be decided in foreign currency or foreign currency indexed in accordance with this article.”

Non-Compliance with Decree

There is no sanction regulated in the Decree. This situation has not changed with the recent published Communiqué.

However, according to Article 3 of Turkish Currency Protection Code;

*‘A person who does not comply with the obligations of the general and regulatory transactions which the President has made in accordance with the provisions of this Code shall be punished with administrative fine **from three thousand Turkish Liras up to twenty five thousand Turkish Liras.**’*

In case of any repetition of such non-compliance, administrative fine penalties are doubled. According to Code; the authority to rule administrative fines belongs to the public prosecutor's office.

On the other hand, in our opinion, it should not be considered that the amounts of in-scope contracts can be kept in foreign currency by applying administrative fines. The party in favor of regulation may apply to the court and request the adaptation of the contract to the Decree and Communiqué system.

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