

Communiqué regarding the Decree on the Prohibition of Foreign Currency Agreements Has Been Published

Summary

The Communiqué Regarding Amendment on the Communiqué Regarding Decree No. 32 on the Protection of the Value of the Turkish Lira Currency (Communiqué No: 2018-32/34) is published in the Official Gazette dated 06.10.2018, numbered 30557 and came into force on the publication date (Communiqué No: 2018-32/51, the “**Communiqué**”). The Communiqué brings various provisions related to the implementation of the restrictions on agreements in foreign currency or foreign currency-indexed under the Decree no.85 on the Protection of the Value of Turkish Currency numbered 85 that was published on the Official Gazette dated 30534 and numbered 13.09.2018 (“**Decree No.85**”).

With the Decree no.85, which was published and became effective on 13.09.2018, a new paragraph, paragraph (g), was added to the Article 4 of Decree No.32 on the Protection of the Value of Turkish Currency (“**Decree No. 32**”). Accordingly, for residents in Turkey, contract prices and other payment obligations arising therefrom; sale-purchase and rental/lease agreements related to both movable properties (including vehicles) and real estate, employment agreements, independent contractor agreements and service agreements cannot be agreed upon in foreign currency or indexed to foreign currency.

In addition, provisional article 8 was added to the Decree No.32. Accordingly, for such contracts that had been made before the execution date of the Decree (13.9.2018) and still in force and in which contract prices had been determined in foreign currency, the parties shall re-determine the foreign currency contract prices in Turkish Lira within 30 days (until 13.10.2018). Along with this, in both of the new clauses, it was stated that the Ministry of Finance and Treasury (“**the Ministry**”) shall determine exemptions from such prohibition on using foreign currency contract prices.

In this context, abrogated article 8 of the Communiqué Regarding Decree No. 32 on the Protection of the Value of the Turkish Lira Currency (Communiqué No: 2018-32/34) is redrafted by the Ministry. With the new article 8, certain points with respect to the provisions in the scope of Decree No.85 have been clarified.

1. Agreements that cannot be in Foreign Currency or Indexed to Foreign Currency

Contract prices and other payment obligations arising from the agreements listed below that will be executed by and between Turkish residents, shall not be agreed upon in foreign currency or indexed to foreign currency:

- Real estate sales and rental agreements including those for residential and roofed workplaces, relating to real estate in Turkey (including those in free trade zones),
- Employment agreements,
- Service agreements including consultancy, brokerage and transportation services,
- Independent contractor agreements,
- Sales agreements of vehicles (including construction equipment),
- Rental agreements of vehicles (including construction equipment) made after 13 September 2018 .

Along with the Communiqué, it has been clarified that commercial papers drafted within the scope of contracts for which the contract price and other payment obligations arising therefrom cannot be determined in foreign currency or indexed to foreign currency, cannot be drafted in foreign currency or indexed to foreign currency.

2. Agreements that can be in Foreign Currency or Indexed to Foreign Currency

The following agreements are exempted from the prohibition to execute agreements in foreign currency or indexed to foreign currency:

- Employment contracts relating to the work to be performed abroad,
- Service contracts in which the counterparties are not citizens of the Republic of Turkey,
- Service contracts within the scope of export, transit trade, export sales and deliveries, and foreign exchange earning services and activities,
- Service contracts within the scope of activities to be carried out abroad by Turkish residents,
- Service contracts related to electronic communication that starts in Turkey and ends abroad as well as electronic communication that starts abroad and ends in Turkey,
- Contracts executed by banks in relation to transactions of the Treasury and the Ministry of Finance in accordance with the Public Finance and Debt Management Law dated 28/3/2002 and numbered 4749,
- Independent contractor agreements related to the construction, repair and maintenance of the ships that are defined in the Law Amending Turkish International Ship Registry Law numbered 4490 and dated 16.12.1999 and Legislative Decree numbered 491,
- Sales agreements related to movable properties (excluding vehicles and construction equipment),
- Rental agreements related to movable properties (excluding vehicles and construction equipment),
- Sales agreements related to software produced abroad within the scope of information technologies and license and service agreements related to hardware and software,

- Financial leasing agreements related to ships that are defined in the Law Amending Turkish International Ship Registry Law numbered 4490 and Legislative Decree numbered 491,
- Financial leasing agreements that will be executed within the scope of articles 17 and 17/A of the Decree No.32,
- Employment contracts of Turkish residents who do not have Turkish citizenship (*expat contracts*),
- Except for real estate sale and rental contracts, contracts in which one counterpart is a public entity, a public institution or a company of Turkish Armed Forces Foundation (*Türk Silahlı Kuvvetlerini Güçlendirme Vakfı*),
- Contracts -other than those for real estate sales, real estate rental or for employment - in which the contractors contract with third parties within the scope of fulfilment of tenders, contracts, international agreements in foreign currency which public institutions and organizations are party to,
- Obligations related to forming in foreign currency, issuance, purchase and sale and other relevant transactions of capital market instruments within the scope of Capital Markets Law numbered 6362 and other relevant regulations based on this Law (including foreign capital market instruments, depositary receipts and foreign investment fund units), save for the provision of Decree No.32,
- Employment and service contracts of non-residents: having an office, branch office, representative office, liaison office; directly or indirectly holding 50% or more of the shares of companies in Turkey; or - within the scope of their activities in free trade zones - companies in free trade zones,
- Agreements other than real estate sales and rental agreements and employment agreements executed by (i) commercial aviation enterprises resident in Turkey which provide passenger, cargo load and mail transportation services; (ii) companies which provide technical maintenance services related to air freight vehicles, motors and parts and pieces of these; (iii) public or private law legal entities licensed or authorized to perform ground handling services at the airports within the scope of civil aviation legislation; (iv) companies and businesses established by aforementioned enterprises and where such entities have at least 50% of the shares of the companies directly or indirectly.

In addition, it is clearly stated that the agreements above that are exempted from the obligation to execute in foreign currency are also exempted from the obligation to convert to Turkish Lira within the scope of the provisional article 8 as well, even if they were entered into before the execution date of the Decree no.85.

However, upon the request of the exempted parties mutually, contracts prices in the agreements that will be concluded after the effective date of Decree no.85 will be determined in Turkish Lira and contracts prices in foreign currency or foreign currency-indexed in the agreements that were concluded before the effective date of Decree no.85 will be converted to Turkish Lira.

3. The Principles for the Conversions to Turkish Lira

According to the Communiqué, while converting contract prices and other payment obligations arising from the agreements that are under the obligation to convert to Turkish Lira within the scope of provisional article 8 of the Decree No.32, the conversions shall be made as the following:

- While determining the amount in Turkish Lira, the amount agreed upon by the parties, if the parties can reach an agreement for re-determining the pricing in Turkish Lira.
- If the parties cannot reach an agreement for re-determining the pricing in Turkish Lira; increasing Turkish Lira equivalent of the amounts determined in foreign exchange or indexed to foreign exchange in the agreement calculated by using the indicative effective sales quotation of the Central Bank of Turkey as of 02.01.2018, based on the monthly consumer price index (CIP) of the Statistical Institute of Turkey as of 02.01.2018 until such conversion date.

Prices in foreign currency or indexed to foreign currency in real estate rental agreements, including those for residential and roofed workplaces executed before 13.09.2018 (that is the effective date of provisional article 8 of Decree no.85), shall be determined in Turkish Lira in accordance with the aforementioned principles for 2 years. However, for 1 year starting from the end of the rental year that determination in Turkish Lira is made, the rental price shall be determined based on the CIP as of the determination date until the end of the relevant rent year, if the parties cannot reach an agreement for re-determining the pricing in Turkish Lira. For the purpose of determining the rental price in Turkish Lira of the following year; the rental price will be calculated based on the previous year's rental price by applying monthly CIP and this amount in Turkish Lira will be valid until the end of the aforementioned 2 year period, if the parties cannot reach an agreement for determining the pricing in Turkish Lira.

However, the aforementioned principles will not be applied to the receivables in relation to the contracts that cannot be arranged in foreign currency or indexed to foreign currency according to the Decree No.85, which (i) have already been paid or (ii) are overdue.

4. Other Reference Rates Than Foreign Currency

Under the Communiqué, contract pricing, which is based on precious metals and/or commodities that are either priced in foreign currency in international markets or directly or indirectly indexed to foreign currency, shall be considered to be foreign currency indexed contracts in the application of article 4(g) of Decree No. 32. Therefore the prices in the contracts subject to the prohibition cannot be indexed to the mines or commodities determined in foreign currency in international markets such as gold and oil.

5. The Concept of Turkish Residency

Residents in Turkey are defined in Decree No.32 as “*legal and natural persons with a legal settlement in Turkey, including overseas workers, self-employed and independent business owner Turkish citizens*” (article 2/b).

Further it is stated in the Communiqué that in the application of Article 4(g) of Decree No. 32: (i) offices, branch offices, representative offices, liaison offices of Turkish residents abroad; (ii) foreign funds operated or managed by Turkish residents; (iii) foreign companies in which Turkish residents hold 50% or more of the shares and the companies directly or indirect held by these companies shall be considered Turkish residents. Therefore, exemptions shall not be applicable for the agreements, which are subject to the restrictions, executed with aforementioned persons/units/offices.

6. Enforcement of The Communiqué

The provisions of the Communiqué entered into force on the date of publication. In addition, the amounts in the agreements, which were entered into before the execution date of Decree no.85 and still in effect that are not subject to the exemption, shall be re-determined by the parties in Turkish Lira pursuant to the provisional article 8 of Decree no.32.

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