

Welcome to FX-lessness

If the reader of this article is non-Turkish and a non-resident of Turkey, just skip it. For others who have business in Turkey, you must read it very carefully as a new regulation brings serious, but confusing, rules for contractual relations. Although some parts of the Presidential Decree No.85 and the relevant Communiqué are opaque, we will try to make it as clear and brief as possible for you.

It all started at the beginning of this summer. The idiosyncratic balances of the Turkish economy started to tremble due to aggregated vulnerabilities. Thereafter came preventive measures, one after another, like the compulsory repatriation of export income within 180 days and the limitations on foreign currency loans ordered by Turkish foreign exchange legislation.

Not long after, on September 13, with Presidential Decree No.85, further restrictions arrived with amendments to Decree No.32, imposing prohibitions on certain contracts based on foreign currency or indexed to foreign currency. The Ministry of Treasury and Economy was authorized to offer exemptions to the prohibitions but lack of clarity paralyzed the market.

Finally, in the very early morning hours of October 6, a Communiqué was announced to clarify the scope of the prohibitions and who could qualify for exemptions.

Which contracts are prohibited from being priced in foreign currency?

The following contracts cannot be priced in foreign currency or indexed to foreign currency:

- Real estate sales and rental agreements including those for residential and roofed workplac-

es, 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

If you are not a resident/citizen of Turkish Republic

There are special provisions in the Communiqué to prevent citizens of other nations and certain other parties who are out of the scope of the prohibitions. Those who are a part of the following contracts can freely determine contract price in any currency without limitation:

- Employment contracts relating to the work to be performed abroad or in Turkey
- Service contracts in which the counterparties are not citizens of the Republic of Turkey
- Service contracts within the scope of activities to be carried out abroad by Turkish residents
- Employment and service contracts of non-residents (meaning those having an office, branch office, representative office, liaison office; directly or indirectly holding 50 percent 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).

Other contracts are outside the scope of the prohibition

The so-called 'precipitous amendments; have been rolled

back for most of the players in the market as they were caught with high foreign currency positions in their balance sheets and such an obligatory enforcement would have brought them into an unenviable maelstrom. Therefore, the following are left outside the scope of the restrictions by the Communiqué:

- Service contracts within the scope of export, transit trade, export sales and deliveries, and foreign exchange earning services and activities
- 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
- 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 that will be executed within the scope of articles 17 and 17/A of Decree No.32
- 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

How to convert to TRY for contracts under the prohibition and made before September 13

The Communiqué defined a formula for how to convert current contracts to TRY if they are in foreign currency or indexed to foreign currency:

- 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, which were determined in foreign exchange or indexed to foreign exchange in the agreement calculated using the indicative effective sales quotation of the Central Bank of Turkey as of January 2, 2018, based on the monthly consumer price index (CPI) of the Turkish Statistical Institute from that date until the conversion date.

There are also other detailed explanations for how to deal with the conversion of rental contracts into TRY if no consensus is reached.

It is obvious that even if the formulas, by definition, are easy to read, there will surely be complications in practice. Lastly, it is worth underlining that the deadline is October 13 which will have passed as you read this article.

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