

## Law Bulletin

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### EXEMPTIONS TO BAN ON FOREIGN CURRENCY TRANSACTIONS AMONG TURKISH RESIDENTS

The Presidential Decree, amending Decree No. 32 on the Protection of the Value of Turkish Currency (the "**Decree**") has entered into force on 13 September 2018 (the "**Effective Date**"). The Decree has introduced a new ban on foreign currency transactions between Turkish residents. Under the Decree, all contract prices in; real and movable property sale and purchase contracts, all types of movable and real property lease contracts, including vehicle lease and financial lease contracts, employment and service contracts and contracts of work (*eser sözleşmesi*) and any other payment liabilities arising from the foregoing contracts, cannot be agreed upon in foreign currency or indexed to foreign currency.

In addition, the Decree states that the parties who have entered into an agreement falling into the scope of the ban, before the Effective Date, are obliged to convert the foreign currency amounts into Turkish Lira (or redetermine a new amount in Turkish Lira) within 30 days starting from 13 September 2018.

The scope of the ban is limited to contracts executed between Turkish residents, regardless of their citizenship status. The Decree has not provided any exemptions to the ban therefore, the secondary legislation was curiously awaited.

Following the Decree, the Communiqué on the Amendments to the Communiqué on the Decree No.32 on the Protection of the Value of Turkish Currency (the "**Amending Communiqué**"), published in the Official Gazette dated 6 October 2018 and numbered 30557, has entered into force with its publication. The Amending Communiqué has introduced a set of exemptions to the ban brought by the Decree. The Amending Communiqué has also clarified that, if the parties cannot reach an agreement while redetermining the contract price in Turkish Lira, the said price

# KOLCUOĞLU DEMİRKAN KOÇAKLI

will be determined by; calculating the corresponding Turkish currency value of the foreign currency amounts based on the banknote selling rate declared by the Turkish Republic Central Bank on 2 January 2018 and, increasing that by applying the monthly consumer price index ("CPI") as announced by Turkish Statistical Institution ("TSI"), starting from 2 January 2018 until the renewal date (the "Conversion Method").

This note covers the notable exemptions introduced by the Amending Communiqué, which may have an important effect on everyday commercial transactions.

## **(i) Real estate sale and lease contracts**

As per the Amending Communiqué, the contract price in real estate sale and lease contracts between Turkish residents (including residences and roofed workplaces) located in Turkey (also including those in free zones) cannot be determined in foreign currency or indexed to foreign currency. The ban also covers any other payment liabilities (i.e. penalty payments) arising from the foregoing contracts.

In case of residence and roofed workplace lease contracts executed before the Effective Date; the Amending Communiqué requires such contracts to be also converted into Turkish Lira for a period of two years. If the parties cannot reach an agreement while redetermining the relevant amounts in Turkish Lira for these contracts, first, the Conversion Method must be followed to determine the relevant contract's Turkish Lira amount. This amount will be effective until the end of the lease year in which the parties have redetermined the relevant amounts as per the Conversion Method. If the parties cannot reach an agreement on the new rental fee for the following one-year period, the Amending Communiqué sets forth that the redetermined amount will be increased by applying the monthly CPI as announced by the TSI, for the term starting with the date of redetermining until the end of that lease year in which the parties have redetermined the amounts. Similarly, for the subsequent lease year, if the parties cannot reach an agreement, the rental fee will be increased by applying the monthly CPI as announced by the TSI, on the previous year's rental fee.

## **(ii) Exemptions in respect of sale and lease contracts regarding movable property, vehicle leases and financial leases**

As per the Amending Communiqué, the contract price and any other payment liabilities under sale and lease of movable property contracts between Turkish residents, including sale contracts with respect to software developed abroad, can be determined in foreign currency or indexed to foreign currency.

However, the sale and lease contracts with respect to vehicles, including heavy equipment, cannot be determined in foreign currency or indexed to foreign currency; whereas lease contracts with respect to vehicles which are executed before the Effective Date, are exempted from the said provisional article.

# KOLCUOĞLU DEMİRKAN KOÇAKLI

With regards to financial leasing contracts, the contract price in financial leasing contracts for ships and any other payment liabilities arising from the foregoing contracts, can be determined in foreign currency or indexed to foreign currency. Prices regarding financial leasing contracts which will be executed within scope of Article 17 and 17/A of Decree No. 32, can be determined in foreign currency.

## **(iii) Exemptions in respect of employment and service contracts and contracts of work**

As per the Amending Communiqué, the contract price in employment contracts, service contracts (including consultancy, agency and transportation services), and contracts of work, that will be executed among Turkish residents, and any other payment liabilities arising from the foregoing contracts, cannot be determined in foreign currency or indexed to foreign currency.

However, the contract price in below contracts that will be executed among Turkish residents, and any other payment liabilities arising from the foregoing contracts, can be determined in foreign currency or indexed to foreign currency:

- Employment contracts that will be performed abroad,
- Employment contracts to which, residents in Turkey without a citizenship bond to the State of the Republic of Turkey, are parties,
- Employment and service contracts executed by Turkish branches, Turkish agencies, Turkish offices and Turkish liaison offices of the foreign companies, and foreign capitalized Turkish companies, fifty percent and more shares of which are held by the foreigners,
- Employment and service contracts executed by the companies located in free zones within the scope their operations in free zones,
- Service contracts to which, individuals without citizenship bond to the State of the Republic of Turkey, are parties,
- Service contracts executed within scope of exportation, transit trade, sales and deliveries which are deemed as exportation, and foreign currency earning services and operations,
- Service contracts executed within scope of operations that will be conducted abroad by residents in Turkey,
- Service contracts executed among Turkish residents with regards to electronic communications which begin in Turkey and end abroad or begin abroad and end in Turkey,
- License and service contracts with regards to hardware and software, within the scope of information technologies, which will be executed among Turkish residents,
- Contracts of work with regards to construction, repair and maintenance of ships.

# KOLCUOĐLU DEMİRKAN KOĐAKLI

This note covers only some of the relevant exemptions introduced by the Amending Communiqué. Currently, the exemptions set forth under the Amending Communiqué and their implementation are still not clear. We believe that there will be a clearer picture in terms of the implementation of the exemptions in the coming days.

## CONTACT

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