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## Banking & Finance

### **Most Awaited Exceptions to the FX Payment Restriction have been introduced by the Ministry of Treasury and Finance**

Following the amendments to the Decree No. 32 on Protection of the Value of Turkish Currency (*published in the Official Gazette dated August 11, 1989 and numbered 20249*) (the “**Decree No. 32**”) by the President’s Decree No. 85 (*published in the Official Gazette dated September 13, 2018 and numbered 30534*) (the “**Decree No. 85**”), it was no longer possible to denominate contract value and other payment obligations in FX or in a FX indexed manner (the “**FX Payment Restriction**”) in the following transactions concluded between Turkish residents:

- Sale and purchase of real estate (including residences and roofed workplaces) situated in Turkey (including free trade areas) and movable properties;
- Lease of real estate and movable properties, including financial leasing and vehicle leases; and
- Employment contracts, service contracts (including consultancy, brokerage and transportation contracts) and independent constructor contracts and contracts of work.

The Ministry of Treasury and Finance was granted with the authority to provide exceptions to the above prohibition and obligation of conversion to Turkish Lira (“**TL**”).

Furthermore, Turkish residents who are parties to any of the above-stated contracts in effect were required to re-determine such FX/FX indexed amounts under such contracts as amounts in TL within thirty days as of the entry into force of the FX Payment Restriction (i.e. September 13, 2018).

The Ministry of Treasury and Finance has amended the Communiqué on the Decree No. 32 (Communiqué No. 2008-32/34) (*published in the Official Gazette February 28, 2008 and numbered 26801*) and introduced exceptions to the FX Payment Restriction. The recent amendments have been published in the Official Gazette dated October 6, 2018 with immediate effect.

## What's New?

With the recent amendment the following contracts are exempt from the FX Payment Restriction:

- Employment contracts that will be (i) performed outside Turkey, or (ii) executed by a non-Turkish citizen, or (iii) executed by a non-Turkish resident's (a) branches, representations, offices, liaison offices or (b) companies, in which a non-Turkish resident holds directly or indirectly at least 50% of the shares, that are located in Turkey, or (iv) executed by companies located in free trade areas, only as part of their activities in such areas;
- Service contracts, a party of which is (i) a non-Turkish citizen, or (ii) a non-Turkish resident's (a) branches, representations, offices, liaison offices or (b) companies, in which a non-Turkish resident holds directly or indirectly at least 50% of the shares, that are located in Turkey, or (iii) companies located in free trade areas, only as part of their activities in such areas;
- Service contracts concluded as part of export, transit trade, sales and deliveries deemed as export, and services and activities generating FX;
- Service contracts concluded as part of activities to be conducted abroad by Turkish residents;
- Service contracts which will be entered into by and between Turkish residents, and which will pertain to electronic communications commencing in Turkey and ending up abroad, or vice versa;
- Contracts of work to be executed for the construction, repair and maintenance of vessels;
- Sale, purchase and lease contracts of movable properties other than vehicles (including heavy equipment);
- Sale contracts of any software produced abroad within the context of information technologies, and license and service contracts relating to hardware and software;
- Financial leasing contracts with respect to vessels;
- Financial leasing contracts which fall within the scope of any of exemptions set out under Articles 17 and 17/A of the Decree No. 32;
- Contracts executed by public institutions and organizations, and companies owned by the Turkish Armed Forces Foundation (e.g. Aselsan, TUSAŞ, Roketsan, Havelsan, etc.);
- Contracts to be entered into by and between contractors and third parties for the purpose of performing obligations under FX denominated/indexed tenders, contracts and international treaties that have been executed by public institutions and organizations;
- Contracts to be executed by banks in connection with transactions carried out by the Ministry of Treasury and Finance in accordance the Law No. 4749 on Public Finance and Debt Management;

- Contracts to be entered into by and between (i) Turkish residents and (ii) (a) commercial airline operators located in Turkey which engage in passenger, cargo or mail transport activities, or (b) companies providing technical maintenance services for air vehicles, motors and parts and components thereof, or (c) public/private legal entities licensed to conduct ground services in airports, or (d) enterprises and companies incorporated by such entities, or (e) companies, in which the said entities hold, directly or indirectly, at least 50% of the shares; and
- Formation, issuance, purchase and sale of FX denominated capital market instruments under the Capital Market Law No. 6362 and the secondary legislation thereof, and FX denomination of any payment obligations relating to the relevant transactions.

In addition to the above, Turkish residents cannot indicate any FX or FX indexed values on negotiable instruments issued with respect to contracts within the scope of the FX Payment Restriction.

Furthermore, for the purpose of the Decree No. 32, contracts which are (i) indexed in precious metals/commodity, values of which are determined in FX in international markets, and/or (ii) indirectly indexed in FX shall be considered as “FX indexed contracts”. In parallel, a Turkish resident’s branches, representations, offices, liaison offices; companies, in which a Turkish resident holds at least 50% of the shares; companies owned directly or indirectly by a Turkish resident; funds managed by a Turkish resident that are located abroad shall fall within the scope of the “Turkish resident” definition under the Decree No. 32.

### **Conversion into TL**

It should initially be noted that thirty days grace period for the fulfilment of obligation to convert FX or FX indexed denominated values into TL has not been extended by the recent amendments.

If the parties fail to agree on a foreign exchange rate to convert contract values and other payment obligations; effective selling rate of the Central Bank of the Republic of Turkey on January 2, 2018 shall be applied by the parties and such calculated TL amounts shall be increased as per the monthly changes ratios in the consumer price index determined by the Turkish Statistical Institute for a period between January 2, 2018 and the respective conversion date. Additionally, FX/FX indexed values under lease contracts of residences and roofed workplaces which have been executed before September 13, 2018 shall be converted into TL as per the aforesaid method for a period of two years. That being said, if the parties fail to reach an agreement on TL denominated values of such contracts, the respective TL amounts shall be determined in accordance with the rules introduced by the recent amendments.

Moreover, collected or due receivables with respect to FX or FX indexed denominated contracts which are now subject to the FX Payment Restriction cannot be converted into TL as above. However, (i) any contracts falling within the scope of any of the exceptions listed above and (ii) lease contracts of vehicles (including heavy equipment) that have been concluded prior to entry into force of the FX Payment Restriction (i.e. September 13, 2018) shall benefit from the above exceptions.

On a final note, in the event that parties benefitting from the above exceptions request mutually for (i) denomination of contract values and other payment obligations in TL, or (ii) conversion of contract values and other payment obligations in FX or indexed in FX to TL; contract values and other payment obligations under the relevant contracts shall be denominated in/converted to TL.

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