

**COMMUNIQUE REGULATING THE EXCEPTIONS ON CONTRACTS
DENOMINATED IN FOREIGN CURRENCY OR FX-INDEXED MANNER IS
AMENDED.**

After the amendments to the Decree No. 32 on Protection of the Value of Turkish Currency (“**Decree No. 32**”)¹ by the President’s Decree No. 85 (“**Decree No. 85**” or “**Decree**”), published on the Official Gazette on 13 September 2018, it is no longer possible to denominate the contract price and other payment obligations arising from certain agreements in foreign currency or in a FX indexed manner, concluded and to be concluded between the residents in Turkey.

The Ministry of Treasury and Finance (“**Ministry**”) had published Amendment Communique (“**Former Communique**”) (Communique no. 2018-32/51) to Communique (Communique no. 2008-32/34) on Decree No. 32 on Protection of the Value of Turkish Currency, on the Official Gazette on 6 October 2018 and made some important exceptions to the restrictions brought by the Decree.

However, the exceptions on the contracts denominated in foreign currency or FX-indexed manner have been re-regulated by the Ministry with the adoption of the Amendment Communique (“**New Communique**”) to Communique (Communique no. 2008-32/34) on Decree No. 32 on Protection of the Value of Turkish Currency on 16 November 2018, which replaced the Former Communique on the same date.

The significant changes introduced with the New Communique are elaborated below.

I. Changes Regarding the Contracts of Work

The Former Communique was providing a very limited number of exceptions to the contracts of work subject to the FX ban under the Decree. The contracts of work concerning construction, repair and maintenance of ships were the mere exceptions of the FX ban provided under the Former Communique for the concerned contract type.

Such limited number of exceptions applicable to the contracts of work was causing great hesitation in practice, due to the difficulty of precisely distinguishing contracts of work from the

¹ Published in the Official Gazette dated August 11, 1989 and numbered 20249.

service contracts in many cases, the latter being able to benefit from a greater number of exceptions under the applicable Former Communiqué.

However, in the New Communiqué, the Ministry has eliminated such hesitations and provided an exception with broader scope for the contracts of work, which is likely to remove concerns in the market to an important extent. Accordingly, the New Communiqué allows contract price and other payment obligations in the contracts of work to be denominated in foreign currency or in a FX-indexed manner, if such contracts bear cost in foreign currency. The New Communiqué provides no further information with regard to the criteria of bearing cost in foreign currency.

II. Changes Regarding the License and Service Agreements Concerning Hardware or Software

With the implementation of the New Communiqué, the Ministry has eliminated an important ambiguity in the Former Communiqué with regard to originating country of the hardware and software subject to the license and service agreements exempted from the FX ban.

Accordingly, only the license and service agreements concerning hardware or software manufactured in abroad are exempted from the FX ban in the New Communiqué.

III. Changes Regarding the Employment and Service Contracts

The significant changes concerning the employment and service contracts introduced with the New Communiqué are briefly explained in the following.

1. Employment contracts executed by shipmen are exempted from the foreign currency ban in Article 8/6 of the Communiqué no. 2008-32/34 on Decree No. 32 on Protection of the Value of Turkish Currency (“**Communiqué**”).
2. Service contracts concluded between Turkish residents, and commenced and completed abroad are included among the exceptions in Article 8/7 of the Communiqué.
3. The Former Communiqué was providing an exception for the employment and service contracts executed by non-Turkish resident’s branches, representations offices, liaison offices or companies, in which a non-Turkish resident holds directly or indirectly at least 50% of the shares, that are located in Turkey, or executed by companies located in free zones within the framework of their activities in such areas. The New Communiqué has extended such scope by including

the companies in Turkey controlled and/or jointly controlled by non-Turkish residents within the scope. On the other hand, the New Communiqué has also introduced a limitation to such exception by requiring such parties to be employer or service receiving party in such employment and service contracts in order to be exempted to from the FX ban.

IV. Changes Regarding the Sales Contracts and Lease Contracts Concerning Real Estate

The significant changes concerning the real estate sales contracts and real estate lease contracts, introduced with the New Communiqué are briefly explained in the following.

1. The phrase “*including free zones*” has been removed from the first and the second paragraphs of Article 8 of the Communiqué. Hence, the contract price and other payment obligations arising from sales contracts and lease contracts concerning real estates located in free zones can be denominated in foreign currency and in a FX-indexed manner as per the New Communiqué.

2. According to the third paragraph added to Article 8 of the Communiqué, real estate sales contracts and real estate lease contracts are allowed to be denominated in foreign currency or in a FX- indexed manner, if such contracts are executed by either of the following parties as buyer or tenant,

- non-Turkish citizens resident in Turkey, or
- non-Turkish resident’s branches, representations offices, liaison offices or companies, in which a non-Turkish resident holds directly or indirectly at least 50% of the shares, that are located in Turkey, or by companies located in free trade areas within the framework of their activities in such areas.

3. According to the fourth paragraph added to the Article 8 of the Communiqué, real estate lease contracts concerning lease of accommodation facilities certified by Ministry of Culture and Tourism are allowed to be denominated in foreign currency or in a FX- indexed manner.

4. According to the fifth paragraph added to the Article 8 of the Communiqué, real estate lease contracts concerning duty-free shops can be denominated in foreign currency or in a FX-indexed manner.

5. Lastly, financial lease contracts concerning real estates concluded before 13 September 2018 are also exempt from the requirement to re-denominate the contract price in Turkish Liras as per the provisional Article 8 of the Decree.

V. Changes Regarding the Sales Contracts and Lease Contracts Concerning Movable Properties

The sales contracts and lease contracts concerning construction vehicles are exempted from the FX ban as per the New Communiqué.

VI. Other Significant Changes

1. Changes regarding the persons deemed as Turkish residents

The New Communiqué has discarded the provision of the Former Communiqué regulating that the companies directly or indirectly owned by Turkish residents are also deemed as resident in Turkey. Instead, the New Communiqué regulates in Article 8/23 of the Communiqué that companies of which Turkish residents hold at least fifty percent direct or indirect shareholding are to be regarded as resident in Turkey.

The New Communiqué further stipulates that if the agreements executed by any of the parties specified in Article 8/23 of the Communiqué are to be performed in abroad, then Article 8/23 shall not be applicable to such agreement.

2. Changes regarding the negotiable instruments

As per the New Communiqué, the negotiable instruments subject to FX ban are exempt from the requirement to re-denominate the contract price in Turkish Liras as per the provisional Article 8 of the Decree, if such instruments are issued and circulated before 13 September 2018.

3. Changes regarding the FX-indexed prices

Like the Former Communiqué, the New Communiqué also regulates that prices indexed to precious metals and/or commodities quoted in international markets and/or prices indirectly indexed to the foreign currency will be considered as prices denominated in a FX-indexed manner.

However, the New Communiqué also provides an exception to such provision by allowing the parties to index prices to fuel oil in service contracts concerning the carriage activities.

4. Changes regarding the Article 8/25 of the Communiqué

The New Communiqué has removed Article 8/25 of the Communiqué, which was requiring conversion of FX payment obligations in Turkish Liras, where an exempted contracting party requests so, even if such contract is an exempted contract under the Communiqué.

5. Changes regarding the transactions under the Law No. 4749 on Public Finance and Debt Management

The mere exception provided under the Former Communiqué, with regard to the Law No. 4749 on Public Finance and Debt Management, was the contracts executed by a bank within the scope of the transactions of the Ministry carried out under the Law No. 4749.

New Communiqué provides a broader exception from the FX ban with regard to the Law No. 4749, by exempting the contracts concerning transactions carried out within the scope of the Law No. 4749 and the contracts executed with a bank with regard to such transactions.

6. Changes regarding the contracts related to public institutions and organizations

The Former Communiqué was exempting the contracts executed by and between the 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.

The New Communiqué provides a broader exception to the contracts executed for the same purpose, by allowing the contracts executed by contractors, attendant companies or third parties who have a contract with either of the foregoing parties, to be denominated in foreign currency.