

November 2018

Re: Decree No. 85 Amending the Decree No. 32 Regarding the Protection of the Value of the Turkish Currency (“Decree No. 32”) and the Communiqué No. 2018-32/52

The Decree No. 85 Amending the Decree No. 32 (“**Decree No.85**”) has been published in the Official Gazette dated September 13, 2018. Accordingly, *“save for the circumstances to be determined by the Ministry, residents in Turkey are not allowed to agree contract price and other payment obligations in any foreign currency or indexed to foreign currency in the agreements between themselves and regarding the sale and purchase of movable and immovable, all kinds of lease and rentals of movables or immovable including vehicle leases and financial leases, employment agreements, service agreements and contracts of work.”* Pursuant to Temporary Article 8 of the Decree No. 85 specifying the implementation principles of the ruling above *“Within thirty days as of the effective date of the Decree No. 85, save for the circumstances to be determined by the Ministry, the amounts in foreign currencies in the agreements mentioned under the said ruling which had been already executed and are in force shall be determined by the parties again in Turkish Currency”* The Decree No. 85 has become effective as of September 13, 2018.

Following the issuance of the Decree No. 85, the Communiqué No. 2018-32/51 regulating the circumstances determined by the Ministry and the implementation thereof has been published in the Official Gazette dated October 6, 2018 and it has become effective as of October 6, 2018.

Due to the different opinions with respect to the said laws, the Ministry made a public announcement on October 12, 2018 explaining the code of practice of the newly promulgated laws.

In addition, due to continuing different opinions with respect to the said laws, the said announcement of the Ministry has been amended and such renewed announcement has been publicly issued on October 16, 2018.

Following the issuance of the Decree No. 85, the Communiqué on Amendment to Communiqué No. 2008-32/34 in respect of Decree No. 32 on the Protection of the Value of the Turkish Currency (“**Decree No. 2018-32/52**”) has been published in the Official Gazette dated November 16, 2018 and it has become effective as of November 16, 2018.

In this review, the remarks we have reached on the legislative amendments have been shared. Since the said legislative amendments have been recently issued, the remarks herein may be subject to change in parallel with the government’s clearer approach and future announcements. Accordingly, please find below our remarks:

No	Subject, (Agreements between residents in Turkey)	In case the Signature Date is prior to September 13, 2018 With foreign currency or foreign currency indexed	In case the Signature Date is on or after September 13, 2018 With foreign currency or foreign currency indexed	Additional Notes
1.	Real Estate Sale Agreements	Should be re-determined in TRY	The agreement shall not be executed in foreign currency or foreign currency indexed amounts	<ul style="list-style-type: none"> * Covers the sale of the real estate located in Turkey * The agreements in which the foreigners resident in Turkey are purchaser are exempt from this restriction. * <u>The agreements in which the (i) non-residents' branches, representative offices, offices, liaison offices in Turkey, (ii) non-residents' companies in Turkey in which non-residents directly or indirectly hold 50% and more than 50% shareholding, and (iii) companies in Turkey under mutual control of the non-resident and/or controlled by the non-residents are purchaser are exempt from this restriction.</u> * The agreements in which the companies in free zones are purchaser within the scope of their activities in the free zones are exempt from this restriction.
2.	Real Estate Lease Agreements	Should be re-determined in TRY	The agreement shall not be executed in foreign currency or foreign currency indexed amounts	<ul style="list-style-type: none"> * Covers the lease of real estate located in Turkey. * The agreements in which the foreigners resident in Turkey are lessee are exempt from this restriction. * <u>The agreements in which the (i) non-residents' branches, representative offices, offices, liaison</u>

				<p><u>offices in Turkey, (ii) non-residents' companies in Turkey in which non-residents directly or indirectly hold 50% and more than 50% shareholding, and (iii) companies in Turkey under mutual control of the non-resident and/or controlled by the non-residents are lessee are exempt from this restriction.</u></p> <p>* The agreements in which the companies in free zones are lessee within the scope of their activities in the free zones are exempt from this restriction.</p> <p>* The leasing for the purpose of operating the accommodation facilities which have the document obtained from the Ministry of Culture and Tourism is exempt from this restriction.</p> <p>* The leasing with respect to duty-free shops is exempt from this restriction.</p>
3.	Employment Agreements	Should be re-determined in TRY	The agreement shall not be executed in foreign currency or foreign currency indexed amounts*	<p>* In case the work will be performed abroad, the agreements may be executed with foreign currency/foreign currency indexed amounts.</p> <p>* The employment agreements of shipman may be executed with foreign currency/foreign currency indexed amounts.</p> <p>* <u>The employment agreements in which the (i) non-residents' branches, representative offices, offices, liaison offices in Turkey, (ii) non-residents' companies in Turkey in which non-residents directly or indirectly hold 50% and more than 50% shareholding, and (iii) companies in Turkey under mutual control of the non-resident and/or controlled by the non-residents are the employer may be executed</u></p>

				<p><u>with foreign currency/foreign currency indexed amounts.</u></p> <p>* <u>The employment agreements in which the companies in free zones are the employer within the scope of their activities in the free zones may be executed with foreign currency/foreign currency indexed amounts.</u></p>
4.	Service Agreements (including consultancy, brokerage and transportation)	Should be re-determined in TRY*	The agreement shall not be executed in foreign currency or foreign currency indexed amounts*	<p>* <u>The service agreements in which the (i) non-residents' branches, representative offices, offices, liaison offices in Turkey, (ii) non-residents' companies in Turkey in which non-residents directly or indirectly hold 50% and more than 50% shareholding, and (iii) companies in Turkey under mutual control of the non-resident and/or controlled by the non-residents are the party being rendered services may be executed with foreign currency/foreign currency indexed amounts.</u></p> <p>* <u>The service agreements in which the companies in free zones are the party being rendered services within the scope of their activities in the free zones may be executed with foreign currency/foreign currency indexed amounts.</u></p> <p>* The following agreements are exceptional and therefore may be executed with foreign currency/foreign currency indexed amounts.</p> <ul style="list-style-type: none"> • Service agreements to which the persons

				<p>who do not have any citizenship relationship with Turkish Republic are a party</p> <ul style="list-style-type: none"> • Service agreements within the scope of export, transit trade, sales and representations deemed as export and service agreements within the scope of foreign currency saving services and activities • Service agreements of residents in Turkey within the scope of activities to be performed abroad • Service agreements to be executed between the resident in Turkey which initiates in Turkey and ends abroad, initiates abroad and ends in Turkey or initiates abroad and ends abroad
5.	Contracts of Work	Should be re-determined in TRY*	The agreement shall not be executed in foreign currency or foreign currency indexed amounts*	* The contracts of work which include costs in foreign currency are exempt from this restriction and may be executed with foreign currency/foreign currency indexed amounts.
6.	Movable Property Sale Agreements (save for vehicle sale agreements)	The agreement may be executed with foreign currency or foreign currency indexed amounts	The agreement may be executed in foreign currency or foreign currency indexed amounts	Vehicle sale agreements are excluded.
7.	Vehicle Sale Agreements	Should be re-determined in TRY	The agreement shall not be executed in foreign currency or foreign currency indexed amounts	Commercial vehicle sale agreements for the purpose of passenger transportation are excluded.

8.	Movable Property Lease Agreements (save for vehicle lease agreements)	The agreement may be executed in foreign currency or foreign currency indexed amounts	The agreement may be executed in foreign currency or foreign currency indexed amounts	Vehicle lease agreements are excluded.
9.	Vehicle Lease Agreements	The agreement may be executed in foreign currency or foreign currency indexed amounts	The agreement shall not be executed in foreign currency or foreign currency indexed amounts	-
10.	Sale of software developed abroad and license and service agreements in respect of the hardware and software developed abroad	The agreement may be executed in foreign currency or foreign currency indexed amounts	The agreement may be executed in foreign currency or foreign currency indexed amounts	Those kinds of agreements regarding the hardware and software developed within Turkey shall not be executed in foreign currency or foreign currency indexed amounts.
11.	Financial Lease and Leasing Agreements in respect of Ships	The agreement may be executed in foreign currency or foreign currency indexed amounts	The agreement may be executed in foreign currency or foreign currency indexed amounts	-
12.	Financial Lease Agreements in respect of movable assets and real assets	The agreement may be executed in foreign currency or foreign currency indexed amounts	The agreement shall not be executed in foreign currency or foreign currency indexed amounts	-
13.	Financial Lease Agreements (leasing) as per Article 17 and 17A of the Decree No.32	The agreement may be executed in foreign currency or foreign currency indexed amounts	The agreement may be executed in foreign currency or foreign currency indexed amounts	-
14.	Agreements within the scope of the law on the regulation of public financing and debt management	The agreement may be executed in foreign currency or foreign currency indexed amounts	The agreement may be executed in foreign currency or foreign currency indexed amounts	-
15.	Agreements to which the Banks are a party within the scope of the law on the regulation of public financing and debt management	The agreement may be executed in foreign currency or foreign currency indexed amounts	The agreement may be executed in foreign currency or foreign currency indexed amounts	-

16.	Capital market instruments (including foreign capital market instruments and depositary receipt and foreign investment fund shares)	The agreement may be executed in foreign currency or foreign currency indexed amounts	The agreement may be executed in foreign currency or foreign currency indexed amounts	-
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OTHER IMPORTANT ISSUES

- A. The Implementation of the law with respect to the Agreements Executed Prior to the Decree No. 85:** The agreements falling within the scope of the exceptions under the law and the agreements which may be executed in foreign currency or foreign currency indexed amounts benefit from this exception even if they have been executed prior to the law and they continue to be in foreign currency or foreign currency indexed amounts.
- B. Conversion to Turkish Currency from Foreign Currency or from Foreign Currency Indexed Amounts:** The amounts in foreign currencies in the agreements which may not be executed in foreign currency or foreign currency indexed amounts must be determined by the parties again in Turkish Currency. The parties may not execute any contrary agreement.
- C. Non-Agreement on Conversion to Turkish Currency:** As per the Decree No. 85, in case the parties cannot agree on the amount of the Turkish Currency until October 13, 2018, the amounts in foreign currency shall be converted into Turkish Currency at the amounts to be calculated taking into account of the indicative effective selling rate of the Central Bank of the Republic of Turkey on January 2, 2018 increased by the change rates (compound) of consumer price index (CPI) determined by the Turkish Statistical Institution for each of the 9 months starting from January 2, 2018 until October 13, 2018 (the last day on which the parties cannot agree). CPI rate shall not be applied on pro-rata basis for the calculations. In other words, the monthly rates will be taken into account, however the days will not be taken into account and they will not be applicable (“**General Conversion Rule**”).
- D. Lease Agreements:**
- **Until the End of the Contractual Year:** For the lease agreements executed in foreign currency or foreign currency indexed amount upon which the parties cannot agree in respect of conversion to the Turkish Currency; we believe the General Conversion Rule shall be applicable (the total CPI change rates for the 9 months (compound)) beginning from the date on which the law is regulated until the end of the current contractual year (“**Current Contractual Year**”).
 - **1 Year Lease Following the Current Contractual Year (“Additional Adjustment Year”):** It should be calculated taking into account of the monthly total CPI change rates (compound) realized in CPI within the period between October 13, 2018 and Current Contractual Year.
 - **Second Adjustment Year Lease:** It should be calculated taking into account of the monthly total CPI change rates (total compound for 12 months) realized in CPI within the Additional Adjustment Year. This date shall not be a date later than the second anniversary of the initial conversion date to which the General Conversion Rule has applied.

- **No provision exists for the period following such two years regulation.**
 - In addition, the provision of the determination the amounts in Turkish currency shall not be applicable for the deposits that have been already granted within the scope of real estate lease agreements (in this respect we are of the opinion that the letters of guarantee are included within this scope) and negotiable instruments that are already in circulation within the scope of performance of the agreements.
- E. Collected or Delayed Receivables:** There is the provision stating that the determination in Turkish Currency in the agreements which are not allowed to be executed in foreign currency or foreign currency indexed amounts shall not be applicable for the “collected or delayed receivables”.
- F. Provision in respect of the Negotiable Instruments:** The amounts in the negotiable instruments to be issued within the scope of the agreements in which the contract price and other payment obligations are not allowed be determined in foreign currency or in a foreign currency indexed amount may not be determined in foreign currency or in a foreign currency indexed amount. However, the negotiable instruments which have been issued and in circulation before September 13, 2018 have been exempted from this restriction with the communique dated November 16, 2018. In addition, the provision of the determination the amounts in Turkish currency shall not be applicable for the deposits that have been already granted within the scope of real estate lease agreements and negotiable instruments that are already in circulation within the scope of performance of the agreements.
- G. Agreements Over/Indexed to Precious Metal:** The agreements indexed to precious metal and/or wares price of which are determined in foreign currency at the international markets and/or indirectly indexed to foreign currency are deemed as agreements indexed to foreign currency within the scope of implementation of sub clause (g) of article 4 of the Decree No. 32. Having said this, as per the law, agreements which are not allowed to be executed in foreign currency or foreign currency indexed amounts shall not be executed over the precious metals such as gold or any index to such precious metals as well. However, indexing to fuel prices for the service agreements in respect of transportation services have been exempted from this restriction with the communique dated November 16, 2018.
- H. Foreign Entities and Deemed as Resident:** Any branches, representative offices, offices, liaison offices of residents in Turkey located abroad, funds located abroad operated or directed by such residents, companies abroad in which such residents have directly or indirectly 50% and more shareholding (mutual control is not applicable here) are deemed as resident in Turkey within the scope of implementation of sub clause (g) of article 4 of the Decree No. 32. However, in case the agreement is being performed abroad, this rule will not be applicable.
- I. Transactions Related to Public Institutions:**

- Save for the real estate sale and real estate lease agreements, for the agreements to which the public institutions and organizations and companies of Turkish Armed Forces Foundation are a party, the contract price and any other payment obligations arising from such agreements may be determined in foreign currency or foreign currency indexed amounts.
- Save for the real estate sale agreements and employment agreements, for the agreements that the contractors or the assigned companies and the parties with whom the contractors and assigned companies are signing agreements will execute with the third parties or the agreements which will be executed within the scope of the below-mentioned projects, the contract price and any other payment obligations arising from such agreements may be determined in foreign currency or foreign currency indexed amounts provided however that such shall be within the scope of the projects to be realized due to the performance of the tenders, agreements and international contracts with foreign currency or indexed to foreign currency to which public institutions and organizations are a party.

J. Other Transportation Transactions: Save for the real estate sale, real estate lease and employment agreements; commercial airline operators engaging in transportation of passengers, freightage or mail; companies rendering technical maintenance services to air freight vehicles, its motors and their parts and tools; governmental institutions or private entities having the legal entity which have obtained the working license or authorized in order to render ground services at the airports within the scope of civil aviation laws and entities and companies that have been established by such institutions and partnerships in which such institutions hold directly or indirectly at least 50% of shareholding and resident in Turkey may execute agreements with Turkish residents including amounts in foreign currency or foreign currency indexed amounts.