

New Exemptions to Foreign Currency Restrictions

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The exemptions of foreign currency restrictions introduced by the Decree No. 32 on the Protection of the Value of Turkish Currency are amended by the Communiqué No. 2018-32/52 published in the Official Gazette on 16 November 2018.

A. Background

On 13 September 2018, Presidential Decision No. 85 (the "[Decision No. 85](#)") was published in the Official Gazette, effective as of the same date. It restricted determination of foreign currency-based contract price as well as foreign currency-based payment obligations under certain type of agreements executed by the Turkish residents and Turkish companies (the "[Foreign Currency Restriction](#)"). However, the Decision No. 85 also granted the Ministry of Treasury and Finance (the "[Ministry](#)") with the authority to bring exemptions to this restriction.

Accordingly, the Ministry published the Communiqué Concerning the Protection of Value of Turkish Lira in the Official Gazette on 6 October 2018 (the "[Previous Communiqué](#)") that brought the exemptions to the Foreign Currency Restriction. The exemptions brought under the Previous Communiqué are now amended by the Amending Communiqué published in the Official Gazette on 16 November 2018 that became effective on the same date (the "[Amending Communiqué](#)").

B. Existing Contracts

The Amending Communiqué provides that conversion requirement shall not be applicable for (i) the security deposits submitted under the immovable lease contracts and (ii) the capital market instruments in circulation as of 16 November 2018.

C. Optional Right of the Party Who Benefits from the Exemptions

Pursuant to the Previous Communiqué and the "Questions and Answers Document" issued by the Ministry for the Previous Communiqué, in the case where an exemption is provided for only a party of the contract (not the contract type itself), this party had the right to request conversion of the payment obligations into Turkish Lira, even if it has right to continue on foreign currency or foreign currency indexed prices.

The Amending Communiqué abolishes that right of the parties who benefit from the exemptions. Therefore, even in the cases where the exemption is provided for only one party of the contract, such contract will be continued to be performed based on existing foreign currency or foreign currency indexed prices unless both of the parties agreed otherwise.

D. Analysis of Each Contract Type under the Amending Communiqué

Please see a summary of the amendments compared to the previous status in the Annex attached.

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ANNEX

Previous Exemptions vs. Amending Communiqué

	Restricted Contract	Previous Exemptions	Amending Communiqué
1.	Sale and lease contracts concerning immovable properties	No exemption.	<p><u>New Exemptions brought by the Amending Communiqué:</u></p> <p>(i) Lease contracts signed by the contractors or sub-contractors within the scope of projects performed under the tenders, agreements and international agreements that the public authorities are party to and under which the payment obligations are determined in foreign currency (or indexed to foreign currency).</p> <p>(ii) Sale and lease contracts signed by parties set out below provided that they are the buyer or lessee:</p> <ul style="list-style-type: none"> • Turkish residents who are not Turkish nationals, • Turkish companies with foreign shareholders having equal to or more than 50% share stakes, • branches, liaison offices and representation offices of the foreign companies, • Turkish companies jointly or solely controlled by foreign companies, and • Turkish companies in free trade zones (for their activities in free trade zones). <p>(iii) Lease contracts of duty-free shops.</p> <p>(iv) Lease contracts of rest areas certificated by the Ministry of Culture and Tourism.</p>
2.	Sale or lease contracts concerning movable properties	<p>Sale or lease contracts listed below were exempt from the Foreign Currency Restriction:</p> <p>(i) Sale or lease contracts concerning movable properties except vehicles (including construction vehicles), and</p> <p>(ii) lease contracts concerning vehicles (including construction vehicles) concluded before 13 September 2018.</p>	<p>A. <u>Status of the Previous Exemptions:</u> The Previous Exemptions are still in effect.</p> <p>B. <u>New exemption brought by the Amending Communiqué:</u> Sale contracts concerning the commercial vehicles used for passenger transportation concluded before 13 September 2018 shall be exempt from the Foreign Currency Restriction. The “construction vehicles” statement is deleted by the Amending Communiqué; therefore, sale or lease agreements of construction vehicles shall not be subject to the Foreign Currency Restriction as of 16 November 2018.</p>

	Restricted Contract	Previous Exemptions	Amending Communiqué
3.	Financial lease contracts	<p>Financial lease contracts listed below were exempt from the Foreign Currency Restriction:</p> <ul style="list-style-type: none"> Financial lease contracts concluded within the scope of Articles 17 and 17/A of the Decree No. 32 on the Protection of the Value of Turkish Currency¹, and financial lease contracts related to the ships as defined under the Law Amending Turkish International Ship Registry Law and the Decree Law No. 491². 	<p>A. Status of the Previous Exemptions: The Previous Exemptions are still in effect.</p> <p>B. New exemption brought by the Amending Communiqué: Financial lease contracts concerning movable and immovable properties concluded before 13 September 2018 shall be exempt from the Foreign Currency Restriction.</p>
4.	Service contracts	<p>Service contracts listed below were exempt from the Foreign Currency Restriction:</p> <p>(i) Service contracts including consultancy, agency and transportation contracts:</p> <ul style="list-style-type: none"> concluded with persons who are not Turkish nationals, relating to exportation, transit trade, sales and deliveries deemed as exportation, and services and activities generating foreign currency income, under which the service will be performed abroad, relating to electronic communication services starting or ending abroad. <p>(ii) Service contracts relating to hardware and software produced abroad, including license contracts (sale contracts concerning software produced abroad were also exempted).</p> <p>(iii) Service contracts signed by parties set out below:</p> <ul style="list-style-type: none"> Turkish companies with foreign shareholders having equal to or more than 50% share stakes, branches, liaison offices and representation offices of the foreign companies, and 	<p>A. Status of the Previous Exemptions: The Previous Exemptions are still effective except for the service contracts signed by below parties as a contractor or employee (the ones that are signed by below parties as an owner or employer are still exempt from the Foreign Currency Restriction):</p> <ul style="list-style-type: none"> Turkish companies with foreign shareholders having equal to or more than 50% share stakes, branches, liaison offices and representation offices of the foreign companies, and companies in free trade zones concerning their activities in free trade zones. <p>B. New Exemptions brought by the Amending Communiqué:</p> <ul style="list-style-type: none"> Service contracts signed by Turkish companies jointly or solely controlled by foreign companies as owner or employer shall also be exempted from the Foreign Currency Restriction, service contracts relating to services starting or ending in abroad, shall be exempt from the Foreign Currency Restriction (previously, this exemption was provided only for the service contracts relating to the electronic communication services), and transportation services contracts (i.e., it is possible to make indexation to oil prices).

¹ These articles basically state that only the persons generating foreign exchange income may obtain foreign currency loans.

² Published in the Official Gazette No. 23913 and dated 21 December 1999.

	Restricted Contract	Previous Exemptions	Amending Communiqué
		<ul style="list-style-type: none"> companies in free trade zones concerning their activities in free trade zones. 	
5.	Labor contracts	<p>Labor contracts listed below were exempt from the Foreign Currency Restriction:</p> <p>(i) Labor contracts executed with employees who are not Turkish nationals.</p> <p>(ii) Labor contracts executed by</p> <ul style="list-style-type: none"> the Turkish companies with foreign shareholders having equal to or more than 50% share stakes, and branches, liaison offices and representation offices of the foreign companies. <p>(iii) Labor contracts to be performed in abroad.</p>	<p>A. Status of the Previous Exemptions: The Previous Exemptions are still in effect.</p> <p>B. New Exemptions brought by the Amending Communiqué:</p> <ul style="list-style-type: none"> Labor contracts signed by Turkish companies jointly or solely controlled by foreign companies shall also be exempt from the Foreign Currency Restriction, and labor contracts signed with ship's crew shall be exempt from the Foreign Currency Restriction.
6.	Construction contracts	<p>Construction contracts concerning the construction, repair, or maintenance of ships as defined under the Law Amending Turkish International Ship Registry Law and the Decree Law No. 491 were exempt from the Foreign Currency Restriction.</p>	<p>A. Status of the Previous Exemptions: The specific exemption provided to the construction of ships is deleted but a broader exemption is granted as explained in Section B below.</p> <p>B. New Exemptions brought by the Amending Communiqué: All of the construction contracts, which involve costs in foreign currency shall be exempt from Foreign Currency Restriction.</p>
7.	Capital market instruments	<p>Capital market instruments issued based on the contracts under which the payment obligations are determined in foreign currency were exempt from the Foreign Currency Restriction.</p> <p>The issuance of capital market instruments subject to the Capital Markets Law³ (including foreign capital market instruments, depositary receipts, and foreign investment fund shares) and the obligations related to their issuance, sale, and purchase and relevant transactions were not subject to restrictions.</p>	<p>A. Status of the Previous Exemptions: The Previous Exemptions are still in effect.</p> <p>B. New Exemptions brought by the Amending Communiqué: Capital market instruments issued before 13 September 2018 shall be exempt from the Foreign Currency Restriction.</p>
8.	Contracts concluded by public institutions	<p>The contracts signed within the scope of the projects performed under the tenders, agreements and international agreements that the public authorities are party to and under which the payment obligations are determined in foreign currency (or indexed to foreign currency) (the "Foreign</p>	<p>A. Status of the Previous Exemptions: The Previous Exemptions are still in effect.</p> <p>B. New Exemptions brought by the Amending Communiqué: Immovable lease contracts signed within the scope of the Foreign</p>

³ Published in the Official Gazette No. 28513 and dated 30 December 2012.

	Restricted Contract	Previous Exemptions	Amending Communiqué
		<p><u>Currency Based Projects</u>) were exempt from the Foreign Currency Restriction except the following:</p> <ul style="list-style-type: none"> (i) Immovable property sale contracts, (ii) Immovable property lease contracts, and (iii) Labor contracts signed with Turkish nationals. 	<p>Currency Projects shall also be exempt from the Foreign Currency Restriction.</p> <p>Although, the Previous Exemptions seem to have covered the sub-contracts within the Foreign Currency Based Projects, the Amending Communiqué include an express wording stating that all of the sub-contracts executed with third parties within the scope of the Foreign Currency Based Projects shall be exempted from the Foreign Currency Restriction.</p>
9.	Contracts signed within the Scope of Law No. 4749	The contracts executed by the banks within the scope of Law No. 4749 Concerning Public Financing and Debt Management ⁴ were exempt from the Foreign Currency Restriction.	<p>A. Status of the Previous Exemptions: The Previous Exemptions are still in effect.</p> <p>B. New Exemptions brought by the Amending Communiqué: The contracts executed within the scope of Law No. 4749 Concerning Public Financing and Debt Management shall be exempted from the Foreign Currency Restriction even if those contracts are not executed by the banks.</p>
10.	Contracts of air transportation companies and enterprises	<p>The contracts signed by parties below except the contracts for the sale or lease of immovable properties and labor contracts were exempt from the Foreign Currency Restriction:</p> <ul style="list-style-type: none"> • commercial airway enterprises, • companies providing technical maintenance services with respect to aircrafts, and • establishments providing ground services in airports, enterprises established by the companies providing ground services in airports, and companies in which the establishments providing ground services in airports hold 50% or more of the shares. <p>(Please refer to items no. 1 and 5 above concerning the general exemptions regarding the sale or lease of immovable properties and labor contracts)</p>	<p>A. Status of the Previous Exemptions: The Previous Exemptions are still in effect.</p> <p>B. New Exemptions brought by the Amending Communiqué: No new exemption.</p>

⁴ Published in the Official Gazette No. 24721 and dated 9 April 2002.