

Exemptions to Foreign Currency Restrictions

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On 6 October 2018, the Communiqué No. 2018-32/51 Amending the Communiqué regarding the Decree No. 32 on the Protection of the Value of Turkish Currency (the “**Communiqué**”) was published to set out the exemptions to the foreign currency restrictions brought by Decree No. 85 Amending the Decree No. 32 on the Protection of the Value of Turkish Currency in September (the “**Decree**”).

A. Restrictions and exemptions

The Decree prohibits the determination of payment obligations in a foreign currency (or indexed to a foreign currency) for contracts between persons (both legal and real persons) resident in Turkey (or deemed a Turkish resident) for the following subject matters:

- The sale or lease of any kind of immovable properties,
- The sale or lease of any kind of movable properties including vehicles,
- Labor and service, and
- Construction.

The Communiqué clarifies the scope of some of these restrictions and sets out certain exemptions, as summarized in the tables in **Annex-I and Annex-II** attached to this Çakmak Alert.

B. Turkish residents abroad

The Communiqué states that, for the purposes of the restrictions, the notion of a Turkish resident includes (i) branches, representation offices, ordinary offices, and liaison offices of Turkish residents located abroad, (ii) funds abroad that are operated or managed by Turkish residents, (iii) companies abroad in which Turkish residents hold 50% or more of the shares, and (iv) companies abroad that are directly or indirectly owned by Turkish residents. Therefore, it would not be possible to benefit from the exemptions through a company established by Turkish citizens or companies abroad.

C. What should be done for the contracts that do not benefit from the exemptions?

- 1) The parties must convert the contract’s relevant amounts to Turkish Lira by 13 October 2018 (the Communiqué does not extend the original deadline set by the Decree).

- 2) If the parties cannot agree on the foreign currency exchange rate to be used for the conversion, then the relevant amounts shall be converted to Turkish Lira based on the indicative effective selling rate determined by the Central Bank of the Turkish Republic on 2 January 2018 and the amount obtained this way shall be increased based on the monthly fluctuation of the Consumer Price Index (CPI) until the date of conversion.
- 3) Concerning contracts for the lease of residences and workplaces with roofs, the lease amount shall be determined in Turkish Lira in accordance with the methods stated in items 1 and 2 above for a period of two years. However, if the parties cannot reach an agreement during this process, the lease amount can be increased based on the monthly fluctuation of the CPI for one year following the year when the conversion to Turkish Lira is made. For the following year, the lease amount can again be increased based on the monthly fluctuation of the CPI for one additional year.

D. What about mixed contracts?

In practice, contracts are often of a “mixed” nature, meaning that they have more than one object. For example, the scope of a contract can contain both the sale of a movable property that is subject to restrictions, and the provision of services relating to the movable property that would, standing alone, benefit from the exemptions. If the contract includes separate payment obligations for each of its objects, the application of the Decree and the Communiqué could be as follows: the payment obligations that relate to a subject matter falling within a restriction that does not benefit from an exemption need to be converted to Turkish Lira by 13 October 2018, whereas the payment obligations that relate to a subject matter falling within a restriction that benefits from an exemption do not need to be converted to Turkish Lira. However, for mixed contracts where it is not possible to separate the payment obligation, it is not clear what needs to be done. To be prudent, the parties should consider converting the payment obligation into Turkish Lira to comply with the Decree.

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ANNEX – I

Table of Restrictions and Exemptions Based on Contract Types

Contract Type	Restriction	Exemption
Sale and lease contracts concerning immovable properties	The restriction applies to the sale or lease of any kind of immovable properties. The Communiqué confirms that this restriction applies to the sale or lease of residences and workplaces with roofs that are located in Turkey (including in its free trade zones).	The Communiqué does not provide any exemptions to this restriction.
Sale or lease contracts concerning movable properties	The restriction only applies to the sale or lease of vehicles, including construction vehicles. Other movable properties are not subject to any restrictions.	The Communiqué provides one category of exemption for lease contracts concerning vehicles (including construction vehicles) concluded before 13 September 2018. Please also see Annex – II below.
Financial lease contracts	The restriction applies to the financial lease of any kind of movable and immovable properties.	The Communiqué provides two categories of exemptions for financial lease contracts: <ul style="list-style-type: none"> • 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 • related to the sea vessels as defined under the Law Amending Turkish International Ship Registry Law and the Decree Law No. 491². Please also see Annex – II below.
Service contracts	The restriction applies to any kind of service contracts. The Communiqué confirms that this restriction applies to consultancy, agency, and transportation services contracts.	The Communiqué provides five categories of exemptions for service contracts: <ul style="list-style-type: none"> • under which the service/labor will be performed abroad, • concluded with persons that do not have Turkish nationality even if they are resident in Turkey, • relating to electronic communication starting or ending abroad, • relating to exportation, transit trade, sales and deliveries deemed as exportation, and services and activities generating foreign currency income, and • relating to hardware and software, including license contracts (sale contracts concerning software produced abroad are also exempted). Please also see Annex – II below.

¹ These articles basically state that only the persons generating foreign exchange income may obtain foreign currency loans. Please [click here](#) for our Client Alert on the subject for more detail.

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

Contract Type	Restriction	Exemption
Labor contracts	The restriction applies to any kind of labor contracts.	The Communiqué provides one category of exemption for labor contracts under which the labor will be performed abroad. Please also see Annex – II below.
Construction contracts	The restriction applies to any kind of construction contracts.	The Communiqué provides one category of exemption for construction contracts concerning the construction, repair, or maintenance of sea vessels as defined under the Law Amending Turkish International Ship Registry Law and the Decree Law No. 491. Please also see Annex – II below.
Capital market instruments	The Decree does not provide any clear restrictions on this subject.	The Communiqué confirms that the issuance of capital market instruments subject to the Capital Markets Law ³ (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 are not subject to restrictions.

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

ANNEX – II

Table of Restrictions and Exemptions Based on the Parties to the Contract

Contract Party	Restriction	Exemption
Public institutions and organizations	<p>The restriction applies to contracts entered into by public institutions and organizations for the:</p> <ul style="list-style-type: none"> • Sale or lease of immovable properties including by the Turkish Armed Forces (“TSK”) Support Foundation’s companies), and • Sale or lease of immovable properties and labor contracts for the subcontracts concluded within the scope of foreign currency indexed tenders, contracts and performance of international agreements to be executed with the public institutions and organizations. 	<p>The Communiqué provides two categories of exemptions for contracts entered into by public institutions and organizations:</p> <ul style="list-style-type: none"> • contracts concluded by public institutions and organizations and the Turkish Armed Forces (“TSK”) Support Foundation’s companies, including contracts signed with banks within the scope of the Law on Public Financing and Debt Management⁴, and • subcontracts concluded within the scope of the performance of tenders, contracts and international agreements to be executed with the public institutions and organizations, provided that the payment obligations under these tenders, contracts and international agreements are determined in foreign currency or as foreign currency indexed payments. <p>Please also see Annex-I above for a further exemption for labor contracts.</p>
Companies engaged in air transportation	<p>The restriction applies to contracts for the sale or lease of immovable properties and labor contracts.</p>	<p>The Communiqué provides three categories of exemptions for contracts entered into by companies engaged in air transportation:</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 establishments 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 also see Annex-I above for a further exemption for labor contracts.</p>
Companies located in free trade zones	<p>The restriction applies to contracts for the:</p> <ul style="list-style-type: none"> • Sale or lease of any kind of immovable properties, • Sale or lease of any kind of movable properties including vehicles, and • Construction contracts. 	<p>The Communiqué provides two categories of exemptions for:</p> <ul style="list-style-type: none"> • service contracts, and • labor contracts. <p>Please also see Annex-I above for further exemptions for (i) the sale and lease of movable properties, and (ii) construction contracts.</p>

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

Contract Party	Restriction	Exemption
<p>Foreign capital companies:</p> <ul style="list-style-type: none"> • foreign residents' branches, representation offices, ordinary offices, and liaison offices located in Turkey, • Turkish companies in which foreign residents directly or indirectly hold 50% or more of the shares 	<p>The restriction applies to contracts for the:</p> <ul style="list-style-type: none"> • Sale or lease of any kind of immovable properties, • Sale or lease of any kind of movable properties including vehicles, and • Construction contracts. 	<p>The Communiqué provides two categories of exemptions for:</p> <ul style="list-style-type: none"> • service contracts, and • labor contracts. <p>Please also see Annex-I above for further exemptions for (i) the sale and lease of movable properties, and (ii) construction contracts.</p>
<p>Turkish residents that do not have Turkish nationality</p>	<p>The restriction applies to contracts for the:</p> <ul style="list-style-type: none"> • Sale or lease of any kind of immovable properties, • Sale or lease of any kind of movable properties including vehicles, and • Construction contracts. 	<p>The Communiqué provides two categories of exemptions for:</p> <ul style="list-style-type: none"> • service contracts, and • labor contracts. <p>Please also see Annex-I above for further exemptions for (i) the sale and lease of movable properties, and (ii) construction contracts.</p>