

CIRCULAR
No: 2018/190eng.

Istanbul, 12.10.2018
Ref: 4/190

Subject:

THE COMMUNIQUE EXPLAINING THE TYPES OF CONTRACTS THAT MAY BE ENTERED INTO BETWEEN RESIDENTS OF TURKEY IN FOREIGN CURRENCY OR AS FOREIGN CURRENCY-INDEXED HAS BEEN RECENTLY ISSUED.

“Communique (Communique No: 2018-32/51) on the Amendments to the Communique Regarding the Decree No.32 on the Protection of the Value of Turkish Currency (Communique No: 2008-32/34)” was published on the Official Gazette issue no. 30557 dated 06.10.2018.

As is known, the following paragraph was added to Article 4 titled “Foreign Currency” of the Decree No.32 pursuant to the Presidential Decree No.85.

“In movable and immovable property purchase/sale contracts, all kinds of movable and immovable property rental/lease contracts, including vehicle renting and financial leasing, and employment, service and work contracts between the residents of Turkey, contract prices and other payment obligations ensuing from such contracts may not be set in foreign currencies or indexed to foreign currencies, except for the cases determined by the Ministry.”

The above regulation became effective as of 13.09.2018. According to this regulation; in

- Immovable property purchase/sale contracts,
- Immovable property rental/lease contracts,
- Movable property purchase/sale contracts,
- Movable property rental/lease contracts,
- Vehicle and heavy machinery rental/lease and purchase/sale contracts,
- Financial leasing contracts,
- Employment contracts,
- Service contracts and
- Work contracts,

contract prices and other payment obligations ensuing from such contracts shall not be set in foreign currency or as foreign currency-indexed.

Also, Provisional Article 8 added to the Decree No.32 dictates that the contract prices set in foreign currency or indexed to foreign currency within the context of contracts of the above types, which were entered into earlier and are still effective, must be reset in Turkish Lira by the contract parties within 30 days from the effective date of the regulation (until 13.10.2018). (We issued the circular no. [2018/183 dated 18.09.2018](#) on this subject.)

In the communique issued by the Ministry of Treasury and Finance;

- The **exceptions** to the regulation dictating that the residents of Turkey may not enter into contracts in foreign currency or indexed to foreign currency are defined,
- The clarifications regarding the contracts that must be made in Turkish Lira are provided,
- The ways to reset contract prices in Turkish Lira in the case of contracts, which were made in foreign currency or indexed to foreign currency earlier, and **where the parties do not reach an agreement as to price resetting**, are regulated.

This communique became effective as of 06.10.2018.

Please note that the terms “residents” and “in foreign currency / indexed to foreign currency” cited in the relevant Decree are used in their broader definitions within the context of the communique.

The Definition of Residents of Turkey Has Been Broadened

The term “**Residents of Turkey**” is defined as “*Individuals and entities having their legal domiciles in Turkey, including Turkish citizens, who are workers, self-employed professionals and proprietors working abroad*” in Article 2 of the Decree No.32. Nevertheless, **the definition of residents of Turkey has been broadened** through the following regulation introduced by the said Communique. According to this regulation;

Overseas

- *Branches,*
- *Representative Agencies,*
- *Offices,*
- *Liaison Offices of and*
- *Funds managed or administered,*
- *Companies owned fifty percent or more and*
- *Companies controlled directly or indirectly by*

residents of Turkey **will be considered as residents of Turkey** within the scope of application of the paragraph (g) of Article 4 of the Decree No.32

The Definition of “In Foreign Currency / Indexed to Foreign Currency” Has Been Broadened

Please be reminded that **the contracts, which are indexed to the prices of precious metals and/or commodities** quoted in foreign currencies in the international markets, and/or which are **indexed to foreign currency indirectly**, are considered as **foreign currency-indexed contracts** as well.

Therefore, the regulation introduced by the said communique must be interpreted by taking the above definitions into consideration.

In light of the above explanations, the below table summarizes the types of contracts that may and may not be entered into between residents of Turkey in foreign currencies or as foreign currency-indexed pursuant to this communique.

	Subject of the contract between residents of Turkey	Contracts made in foreign currency/indexed to foreign currency before 13 Sep 2018	Contracts made in foreign currency/indexed to foreign currency after 13 Sep 2018	Other Considerations
1	Immovable property (immovable properties in the country and free zones) sale contracts and other payment obligations ensuing from such contracts	must be converted to Turkish liras	Not allowed	(Except for the immovable properties abroad)
2	Immovable property (immovable properties in the country and free zones) rental/lease contracts and other payment obligations ensuing from such contracts	must be converted to Turkish liras	Not allowed	(Except for the immovable properties abroad)
3	Employment contracts	must be converted to Turkish liras	Not allowed*	<p>*Employment contracts that will be performed abroad and other payment obligations ensuing from such contracts may be made in foreign currency / indexed to foreign currency.</p> <p>*Employment contracts, except for those that will be performed abroad, and other payment obligations ensuing from such contracts may not be priced in foreign currencies / as foreign currency-indexed.</p> <p>*Employment contracts with individuals that are residents in Turkey</p>

				<p>but are not citizens of the Republic of Turkey and other payment obligations ensuing from such contracts may be made in foreign currency / indexed to foreign currency.</p> <p>*Employment contracts with non-residents' branches, representative agencies, offices and liaison offices located in Turkey and the domestic companies, where they directly or indirectly own fifty percent or more shares, as well as their free zone companies operating in free zones and other payment obligations ensuing from such contracts may be made in foreign currency / indexed to foreign currency.</p>
4	Service contracts (including consultancy, brokerage and transportation)	must be converted to Turkish liras	Not allowed*	<p>*Service contracts with individuals that are not citizens of the Republic of Turkey and other payment obligations ensuing from such contracts may be made in foreign currency / indexed to foreign currency.</p> <p>*Service contracts that are made as part of exports, transit trade, sales and deliveries accepted as exports and foreign currency-earning services and activities and other payment obligations ensuing from such contracts may be made in foreign currency / indexed to foreign currency.</p> <p>*Service contracts that are made as part of activities to be performed abroad by residents of Turkey and other payment obligations ensuing from such contracts may be made in foreign currency / indexed to foreign currency.</p> <p>*Service contracts concerning electronic communication that start in Turkey and end abroad or vice versa and other payment obligations ensuing from such contracts may be made in foreign currency / indexed to foreign currency.</p> <p>*Service contracts with non-residents' branches, representative agencies, offices</p>

				and liaison offices located in Turkey and the domestic companies, where they directly or indirectly own fifty percent or more shares, as well as their free zone companies operating in free zones and other payment obligations ensuing from such contracts may be made in foreign currency / indexed to foreign currency.
5	Sale contracts for software developed abroad within the scope of information technologies and Licensing and service contracts for hardware and software and other payment obligations ensuing from such contracts	may be made in foreign currency / indexed to foreign currency	may be made in foreign currency / indexed to foreign currency	
6	Movable Property Sale Contracts (except for Vehicle and Heavy Machinery sales)	may be made in foreign currency / indexed to foreign currency	may be made in foreign currency / indexed to foreign currency	except for Vehicle and Heavy Machinery sale contracts
7	Vehicle and Heavy Machinery Sale Contracts	must be converted to Turkish liras	Not allowed	
8	Movable Property Rental/Lease contracts (except for Vehicle and Heavy Machinery Renting/Leasing)	may be made in foreign currency / indexed to foreign currency	may be made in foreign currency / indexed to foreign currency	except for Vehicle and Heavy Machinery Rental/Lease contracts
9	Vehicle and Heavy Machinery Rental/Lease contracts	may be made in foreign currency / indexed to foreign currency	Not allowed	Contracts that were executed in foreign currencies / as foreign currency-indexed prior to 13.09.2018 shall be valid until the end of the contract term.
10	Work contracts (except for building, repair and maintenance of ships)	must be converted to Turkish liras	Not allowed	except for building, repair and maintenance of ships
11	Ship building, repair and maintenance	may be made in foreign currency / indexed to foreign	may be made in foreign currency / indexed to foreign	Ships Defined in the International Ship Registry Law No.4490 and the Law About the Amendment to the Decree Law

	contracts	currency	currency	No.491
12	Financial Leasing Contracts (except for ships) (except for financial leasing contracts to be executed within the scope of 17/17A of the Decree No.32)	must be converted to Turkish liras	Not allowed	(except for ships) (except for financial leasing contracts to be executed within the scope of 17/17A of the Decree No.32)
13	Financial Leasing Contracts for Ships	may be made in foreign currency / indexed to foreign currency	may be made in foreign currency / indexed to foreign currency	Financial leasing contracts for Ships Defined in the International Ship Registry Law No.4490 and the Law About the Amendment to the Decree Law No.491 and other payment obligations ensuring from such contracts may be made in foreign currency / indexed to foreign currency.
14	Financial leasing contracts to be executed within the scope of 17/17A of the Decree No.32	may be made in foreign currency / indexed to foreign currency	may be made in foreign currency / indexed to foreign currency	Article 17 of the Decree No.32 specifies the residents of Turkey that may obtain Foreign Currency loans from abroad. Article 17 of the Decree No.32 specifies the residents of Turkey that may obtain Foreign Currency loans domestically.
15	Capital market instruments (including foreign capital market instruments and deposit certificates as well as foreign mutual fund shares)	may be made in foreign currency / indexed to foreign currency	may be made in foreign currency / indexed to foreign currency	Without prejudice to the provisions of the Decree No.32, the creation of capital market instruments (including foreign capital market instruments and deposit certificates as well as foreign mutual fund shares) in foreign currencies, their issuance and trading within the framework of the Capital Market Law No.6362 and regulations made on the basis of this Law, and the obligations regarding the transactions executed
16	Contracts of resident commercial airline operators engaged in passenger, cargo or mail transportation, companies providing technical maintenance services for aircrafts, air engines and their parts and components,	may be made in foreign currency / indexed to foreign currency	may be made in foreign currency / indexed to foreign currency	Immovable property sale contracts, immovable property rental/lease contracts and employments contracts shall be executed in Turkish Lira.

	public or private legal entities that are granted operating licenses or mandated to provide ground handling services in airports within the framework of civil aviation legislation and the enterprises and companies established by these legal entities as well as the joint ventures, where they directly or indirectly own fifty percent or more shares, with residents of Turkey; except for immovable property sale contracts, immovable property rental/lease contracts and employment contracts that are priced in foreign currencies or as foreign currency-indexed			
17	Contracts with public entities and institutions and with the companies owned by the Turkish Armed Forces Foundation, except for immovable property sale contracts and immovable property rental/lease contracts	may be made in foreign currency / indexed to foreign currency	may be made in foreign currency / indexed to foreign currency	Immovable property sale contracts and immovable property rental/lease contracts shall be executed in Turkish Lira.
18	Contracts with Banks (within the framework of Public Finance and Debt Management Law)	may be made in foreign currency / indexed to foreign currency	may be made in foreign currency / indexed to foreign currency	
19	Contracts that will be executed by contractors with third parties (except for immovable property sale contracts,	may be made in	may be made in	Immovable property sale contracts, immovable property rental/lease

immovable property rental/lease contracts and employment contracts) and other payment obligations ensuing from such contracts, provided that these are within the scope of performance of tenders, contracts and international treaties made by public entities and institutions in foreign currencies or as foreign currency-indexed	foreign currency / indexed to foreign currency	foreign currency / indexed to foreign currency	contracts and employments contracts shall be executed in Turkish Lira.
---	--	--	---

1) In case of payments under a contract that may not be executed in foreign currency, the negotiable instruments to be issued shall be in Turkish Lira as well

Monetary values in negotiable instruments to be issued under **contracts that may not be executed in foreign currencies or as foreign currency-indexed shall not be set in foreign currenc or as foreign currency-indexed**. For example; Immovable property rental/lease contracts or vehicle sale contracts must be executed in Turkish Lira. If **payments** to be made under such contracts are **made with checks or promissory notes**, then these **checks or promissory notes** must be issued in Turkish Lira as well.

2) Contracts that have been excluded from the scope of Article 4/g of the Decree No. 32 by the Communiqué but made before 13.09.2018 shall also be held exempt from Provisionary Article 8 of the same decree:

Contracts **that will be held exempt** by the Communiqué but **made before 13.09.2018**, i.e. the date Provisionary Article 8 of the Decree No. 32 on the Protection of the Value of Turkish Currency entered into force, **shall also be held exempt** from the scope of the provisional article in question.

In other words, foreign currency or foreign currency-indexed contracts that have been permitted by the communiqué and made before 13.09.2018 are **not subject to the mandatory conversion to Turkish lira before 13.10.2018**.

3) Contracts made before 13.09.2018 for the lease of vehicles including heavy machinery shall be excluded from the scope of Provisionary Article 8 of Decree No 32

Contracts made before the effective date of the Provisionary Article 8 of the Decree No. 32 on the Protection of the Value of Turkish Currency shall be held exempt from the scope of the provisional article in question.

In other words, foreign currency or foreign currency-indexed contracts for the lease of vehicles, including heavy machinery, that have been banned by the communique **may remain in foreign currency or indexed to foreign currency until their contractual termination date if such contracts are made before 13.09.2018**. Further contracts to be made after the termination date must be made in Turkish liras.

To give a clearer example, fleet lease companies may continue to draw up invoices in line with the contractual fees for foreign currency or foreign currency-indexed contracts made before 13.09.2018 until the termination date of such contracts.

4) For contracts not included in the scope of the exemption, contract prices shall be renegotiated in Turkish liras

Contractual fees and other payment liabilities arising from contracts made before 13.09.2018 **that may not be negotiated in foreign currency or indexed to foreign currency** shall be renegotiated in **Turkish liras by 13.10.2018**.

5) Foreign exchange rates to be used in case parties fail to reach an agreement in the renegotiation of contract prices in Turkish liras

Regarding contracts **made before 13.09.2018** but the **contract prices and other payment liabilities arising from which must be renegotiated in Turkish liras** as per Article 4/g and Provisionary Article 8 of the Decision No. 32, the **consensus of parties** is essential.

Foreign exchange rates to use in case of **disagreement between the parties** are given below:

- a) The amounts in question shall be converted to Turkish liras at the **effective sales price of the Central Bank of the Republic of Turkey of 02.01.2018**, and raised **based on the monthly consumer price inflation from 02.01.2018 to the date of the conversion**.
- b) For **residential and roofed workplace lease** contracts **made before 13.09.2018**, contract prices in foreign currency or indexed to foreign currency shall be converted to **Turkish liras for a period of two years** as per paragraph (a) above. However, for a period of one year starting from the end of the lease year in which the conversion to Turkish liras took place; in case the parties fail to reach an agreement in the converted lease price in line with the above paragraph, the lease prices shall be determined by increasing the converted prices in line with the Turkish Statistical Institute's annual consumer price inflation rates from the date of conversion to the end of the lease year in which the conversion took place. For the following year, in case of a disagreement by the parties in determining lease prices in Turkish liras, the prices in question will be based on the Turkish Statistical Institute's annual consumer price inflation rates, and the resulting lease price in Turkish liras will be effective until the end of the two-year period specified in this paragraph.

- c) Regarding contracts for which contract prices and other payment liabilities arising from which may not be set in foreign currency or indexed to foreign currency, **the principles specified in paragraphs (a) and (b) shall not apply to already collected or overdue payments.**

6) If they so choose, parties may renegotiate contracts, which have been granted exemption, to convert contractual prices into Turkish liras

In the context of contract types that have been granted exemption (i.e. contract that can be made in foreign currency or indexed to foreign currency), new contracts can be made in Turkish liras **upon the agreement of the parties.**

Important Reminder

Businesses are advised to review all contracts and transactions made both before and after 13.09.2018 with regard to the provisions of the decree and the communique, and to seek **legal advice** particularly with respect to the **scope of the contract**. Furthermore, the contracts in question should be reviewed once the terms “**vehicle**” and “**heavy machinery**” in the communique are defined clearly within the context of the law.

Sincerely,

**DENGE İSTANBUL YEMİNLİ
MALİ MÜŞAVİRLİK A.Ş.**

ADDENDUM:

Communique (Communique No: 2018-32/51) on the Amendments to the Communique Regarding the Decree No.32 on the Protection of the Value of Turkish Currency (Communique No: 2008-32/34)

(*) Explanations provided in the circular are for information purposes only. We recommend seeking expert advice and guidance in case of alleviating any uncertainties before committing to a transaction. Our firm cannot be held responsible for damages that may arise from transactions that are based solely on the information provided herein.

(**) For your comments, criticisms and inquiries about the circular, please contact our experts below.

Erkan YETKİNER

SPA

Mazars/Denge, Partner

eyetkiner@mazarsdenge.com.tr

Güray ÖĞREDİK

CPA

Mazars/Denge, Director

gogredik@mazarsdenge.com.tr