

CLIENT ALERT

# Exceptions on the FX Restrictions



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## Exceptions on FX Restrictions

The Communiqué Regarding the Decree on the Prohibition of Foreign Currency Agreements (Communiqué No: 2018-32/34) was published in the Official Gazette dated 06.10.2018, numbered 30557, which came into force on its publication date.

The Communiqué basically provides explanations regarding the implementation of the restrictions on agreements in foreign currency or foreign currency-indexed under the Decree No.85 on the Protection of the Value of Turkish Currency.

According to the Communiqué, the contracts regarding raw materials and supplies, semi-finished goods, finished-goods sales can be arranged in foreign currency.

In addition, the Communiqué basically brings new restrictions and rules on sale-purchase and rental/lease agreements related to both movable properties (including vehicles) and real estate, employment agreements, independent contractor agreements and service agreements.

### What was introduced by Amending Decree?

Published in the Official Gazette on September 13, Amending Presidential Decree Regarding the Decree on Protection of the Value of the Turkish Currency ("Decree No. 32") introduced FX restrictions on certain domestic transactions accomplished among Turkish residents.

These transactions included sale and purchase of real estate, sale and purchase of movable properties, leasing of real estate and movable properties, including financial leasing and leasing of vehicles (cars and other vehicles) and employment agreements, service contracts and independent constructor agreements.

With the Amending Decree, a 30-day period has been granted for the renewal of the contracts between the parties residing in Turkey.

When we consider the 30-day period granted and the publication date of the Amending Decree, the agreements concluded earlier in foreign currency or denominated in foreign currency between residents in Turkey need to be renewed until October 13, 2018. However, there would be no need to renew the contracts that are going to be included in the exceptions to be announced by the Ministry of Treasury and Finance.

With Amending Presidential Decree, the Ministry of Treasury and Finance was authorized to determine exceptions for agreements to be regulated in foreign currency or indexed to foreign currency.

### What are the Rules and Restrictions on Certain Type of Agreements?

The Communiqué announced by the Ministry of Treasury and Finance includes exceptions for arranging agreements in foreign exchange or indexed to foreign exchange. In this sense, general rules and exceptions regarding the certain types of agreements included in aforementioned Communiqué are summarized in the table below.

### What are the Conversion Principles to Turkish Lira?

Contracting parties can re-determine prices upon reaching an agreement for conversion rate of Turkish Lira.

However, if there is a conflict between contracting parties on the conversion rate, it will be calculated through increasing Turkish Lira equivalent of the amounts determined in foreign exchange or indexed to foreign exchange, using the monthly consumer price index (CIP) of the Statistical Institute of Turkey as of 02.01.2018 until such conversion date.

The initial conversion rate to be increased will be the indicative effective sales quotation of the Central Bank of Turkey as of 02.01.2018.

For real estate rental agreements, including those for residential and roofed workplaces executed before 13.09.2018, prices in foreign currency or indexed to foreign currency will be determined in Turkish Lira in accordance with the aforementioned principles for 2 years.



| Agreement Type   | General Rule   | Exception   |
|--|--|---|
| Real estate sales and rental agreements including those for residential and roofed workplaces, relating to real estate in Turkey (including those in free trade zones) | These agreements <u>cannot be executed</u> in foreign currency or indexed to foreign currency. |   |
| Employment agreements  | These agreements <u>cannot be executed</u> in foreign currency or indexed to foreign currency. | <ul style="list-style-type: none"> <li>i. Employment contracts related to the work to be performed abroad,</li> <li>ii. Employment contracts in which the counterparties are not citizens of the Republic of Turkey,</li> <li>iii. Employment contracts regarding non-residents' branches, representative offices, liaison offices, or their companies whose at least 50% shares are directly or indirectly held by those non-residents; or- within the scope of their activities in free trade zones- companies in free trade zones</li> </ul>   |
| Service agreements including consultancy, brokerage, and transportation services   | These agreements <u>cannot be executed</u> in foreign currency or indexed to foreign currency. | <ul style="list-style-type: none"> <li>i. Service contracts within the scope of export, transit trade, export sales and deliveries, and foreign exchange earning services and activities,</li> <li>ii. Service contracts within the scope of activities to be carried out abroad by Turkish residents,</li> <li>iii. Service contracts related to electronic communication that starts in Turkey and ends abroad as well as electronic communication that starts abroad and ends in Turkey</li> <li>iv. Service contracts between persons who do not have Turkish citizenship</li> <li>v. Service contracts regarding non-residents' branches, representative offices, liaison offices, or their companies whose at least 50% shares are directly or indirectly held by those non-residents; or -within the scope of their activities in free trade zones- companies in free trade zones</li> </ul> |
| Independent contractor agreements  | These agreements <u>cannot be executed</u> in foreign currency or indexed to foreign currency. | Independent contractor agreements related to the construction, repair and maintenance of the ships that are defined in the Law Amending Turkish International Ship Registry Law numbered 4490 and dated 16.12.1999 and Legislative Decree numbered 491  |
| Movable property sales agreements  | These agreements <u>can be executed</u> in foreign currency or indexed to foreign currency.    | Sales agreements including vehicles   |
| Rental agreements related to movable properties  | These agreements <u>can be executed</u> in foreign currency or indexed to foreign currency.    | Rental agreements including vehicles (excluding agreements made after 13 September 2018)  |

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|--|---|--|
| Sales agreements related to software produced abroad within the scope of information technologies and license and service agreements related to hardware and software  | These agreements <u>can be executed</u> in foreign currency or indexed to foreign currency. |  |
| Independent contractor agreements related to the construction, repair and maintenance of the ships that are defined in the Law Amending Turkish International Ship Registry Law numbered 4490 and dated 16.12.1999 and Legislative Decree numbered 491   | These agreements <u>can be executed</u> in foreign currency or indexed to foreign currency. |  |
| Financial leasing agreements that will be executed within the scope of articles 17 and 17/A of the Decree No.32  | These agreements <u>can be executed</u> in foreign currency or indexed to foreign currency. |  |
| Agreements of a public entity, a public institution or a company of Turkish Armed Forces Foundation (Türk Silahlı Kuvvetlerini Güçlendirme Vakfı)  | These agreements <u>can be executed</u> in foreign currency or indexed to foreign currency. | Excluding sales and rental agreements related to immovable properties                          |
| Contracts -other than those for real estate sales, real estate rental or for employment- in which the contractors contract with third parties within the scope of fulfilment of tenders, contracts, international agreements in foreign currency which public institutions and organizations are party to  | These agreements <u>can be executed</u> in foreign currency or indexed to foreign currency. | Excluding sales and rental agreements related to immovable properties and employment contracts |
|  |   |  |
| Contracts executed by banks in relation to transactions of the Treasury and the Ministry of Finance in accordance with the Public Finance and Debt Management Law dated 28/3/2002 and numbered 4749  | These agreements <u>can be executed</u> in foreign currency or indexed to foreign currency. |  |
| Agreements other than real estate sales and rental agreements and employment agreements executed by (i) commercial aviation enterprises resident in Turkey which provide passenger, cargo load and mail transportation services; (ii) companies which provide technical maintenance services related to air freight vehicles, motors and parts and pieces of these; (iii) public or private law legal entities licensed or authorized to perform ground handling services at the airports within the scope of civil aviation legislation; (iv) | These agreements <u>can be executed</u> in foreign currency or indexed to foreign currency. | Excluding sales and rental agreements related to immovable properties and employment contracts |

companies and businesses established by aforementioned enterprises and where such entities have at least 50% of the shares of the companies directly or indirectly

Please contact us for our Client Alert and further details on exceptions applicable for FX Restrictions in Turkey.



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