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RECENT AMENDMENTS TO EXEMPTIONS OF BAN ON FOREIGN CURRENCY TRANSACTIONS

As announced earlier, Article 4 of the Decree No. 32 on the Protection of the Value of Turkish Currency (the "**Decree**") was amended on 13 September 2018 (the "**Effective Date**"), to the effect that any contractual fees, prices and other payment obligations under; (i) real estate and movable property sale and purchase contracts, (ii) all types of movable property and real estate lease contracts, including those under vehicle lease and financial lease contracts, (iii) employment and service contracts and (iv) contracts of work (*eser sözleşmesi*) cannot be agreed upon in foreign currency or as indexed to foreign currency. In addition, parties to the abovementioned types of contracts have become obligated to redetermine the foreign currency amounts in Turkish Lira currency, within 30 days starting from the Effective Date.

On 6 October 2018, the Ministry of Treasury and Finance published a communiqué amending Article 8 of the Communiqué (No. 2008-32/34) on the Decree No.32 on the Protection of the Value of Turkish Currency (the "**Previous Communiqué**") and clarified the details and exceptions regarding the implementation of the ban introduced by the Decree to a large extent. However, as the exemptions under the Previous Communiqué are criticized of being insufficient, the Ministry of Treasury and Finance published a new communiqué on 16 November 2018 (the "**New Communiqué**") and introduced additional exemptions, as will be explained in detail below.

(i) Amendments with regards to real estate sale and lease contracts

The Previous Communiqué was providing that the contractual price or any other payment obligation under a contract executed between the residents of Turkey for the sale or lease of a real estate (including residences and roofed workplaces) that is located in Turkey (including free trade zones), cannot be determined in (or as indexed to) foreign currency.

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However, the New Communiqué provides an exemption for the real estates located in free trade zones. The New Communiqué also exempts the following transactions from the ban and permits the contractual prices and other payment obligations under the respective contracts to be determined in (or as indexed to) foreign currency:

- Real estate sale and lease contracts, to which individuals without citizenship bond to the Republic of Turkey are parties, as the purchaser or the lessee,
- Real estate sale and lease contracts, to which the branches, agencies, offices, liaison offices located in Turkey of non-Turkish residents, and the foreign capitalized Turkish companies, at least the fifty percent shares or the controlling or mutual controlling rights of which are directly or indirectly held by non-Turkish residents, are parties as the purchaser or the lessee,
- Real estate sale and lease contracts to which the companies located in free trade zones are parties as the purchaser or the lessee, within the scope their operations in the free trade zones,
- Real estate lease contracts for leasing accommodation facilities certified by the Ministry of Culture and Tourism, in order to operate such,
- Real estate lease contracts for leasing tax free shops.

The New Communiqué also clarifies that the security deposits under the real estate lease contracts can be determined in (or as indexed to) foreign currency.

(ii) Amendments with regards to sale and lease contracts concerning movable properties and vehicles and financial lease contracts

In line with the Decree, the Previous Communiqué was providing that the contractual price or any other payment obligation under a contract executed between the residents of Turkey for the sale or lease of vehicles, including heavy equipment, cannot be determined in (or as indexed to) foreign currency. However, the New Communiqué provides an exemption for the heavy equipment. Accordingly, the aforementioned ban is applicable only for the vehicles that are not classified as heavy equipment.

In addition, the New Communiqué removes the obligation to convert the foreign currency amounts under (i) vehicle lease contracts, (ii) contracts for the sale of commercial passenger transportation vehicles and (iii) financial leasing contracts with respect to movable property or real estate that were executed before the Effective Date, into Turkish Lira.

(iii) Amendments with regards to employment and service contracts and contracts of work

The Decree bans designating the contractual fees and other payment obligations under employment contracts, service agreements (including those regarding consultancy, intermediary

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and transportation services), and contracts of work between the residents of Turkey, in foreign currency (or indexing the same to foreign currency). The Previous Communiqué introduced a set of exemptions to this rule. However, as these exemptions are not found sufficient, the New Communiqué sets forth some additional exemptions and narrows down the scope of the ban's implementation.

The Previous Communiqué was allowing the parties to designate the contractual fees and other payment obligations in (or as indexed to) foreign currency under employment contracts or service agreements, if one of the parties is (i) a non-Turkish resident's branch, agency, office, or liaison office in Turkey, (ii) a foreign capitalized Turkish company, at least the fifty percent shares of which are held by non-Turkish residents, or (iii) a company operating in free trade zone which executed such contract within the scope of its operations in the free trade zone.

The New Communiqué broadens the scope of the aforementioned "(ii)", by including the employment contracts and service agreements executed by the companies located in Turkey, that are under the joint or sole control of non-Turkish residents. In addition, the New Communiqué also clarifies that the foregoing exemptions apply only when the aforementioned persons are the employers in employment contracts and the clients in service agreements.

Additionally, the New Communiqué states that (i) the employment contracts of shipmen, and (ii) service contracts that commence in Turkey and end abroad or commence abroad and end in Turkey or commence abroad and end abroad are exempted.

With regards to the contracts of work, the New Communiqué clarifies that the contracts of work with foreign currency costs are exempted as well, and enables the parties to designate the contractual price and other payment obligations in (or as indexed to) foreign currency.

(iv) Amendments to other foreign currency transactions

The Ministry of Treasury and Finance clarifies under the New Communiqué that the amounts indicated in negotiable instruments, which were issued pursuant to the contracts subject to the ban before the Effective Date and already in circulation are not required to be converted into Turkish Lira.

On another note, the New Communiqué provides that indexing the payment obligations under transportation services agreements to fuel prices is no longer prohibited.

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This Client Alert covers only some of the relevant exemptions that are set forth, revoked or amended by the New Communiqué. You may always contact us if you need further information regarding the exemptions.

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