

**AMENDMENTS ON DECREE NO. 32**  
**ON PROTECTION OF THE VALUE OF TURKISH LIRA**  
**AND BANS ON USING FOREIGN CURRENCIES**  
**IN CONTRACTS IN TURKEY**

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When initially adopted at 1989, the Decree No.32 on the Protection of the Value of Turkish Lira (“**Decree No.32**”) was regarded as part of a liberalization of markets movement allowing use of foreign currencies within the local market that mainly started with a number of principles and rules referred as Decrees of January 24 adopted at 1980 which initially opened the Turkish market for permitted use and exchange of foreign currencies in Turkey by individuals and companies.

Presidential Decree No. 85 published on the Official Gazette on September 13, 2018 (“**Amendment Decree**”) amending Decree No.32 (*an addition of subparagraph -g to Article 4 and addition of a Provisionary Article 8*) had a very different target. Due to extreme pressure on the value of Turkish Lira experienced with the start of the third quarter of 2018, the Government decided to lower the demand to foreign currencies within the local markets to ease such devaluation pressure and therefore decided to limit the number of dealings that could be agreed upon by use of foreign currencies within Turkey.

During the initial public debate regarding this Amendment Decree, it was noted that the main target was the lease contracts of shops at shopping malls all around Turkey which were based on foreign currency values (most commonly USD or EUR per square-meter) that created an unexpected pressure on retailers to cope with and therefore was having an impact on stagnation of markets and inflation directly. However, the Amendment Decree went far beyond such main concern.

With the Amendment Decree; the subparagraph -g of Article 4 of the Decree No.32 is amended as follows:

*“g) The agreement/contract price and any other payment obligation arising from sale and purchase agreements/contracts for movable and immovable assets; lease/rent agreements for any movable and immovable assets, including vehicles and financial leasing; employment; service; and construction agreements, executed by and between persons residing in Turkey, cannot be denominated in foreign currency or be indexed to foreign currency, except in circumstances determined by the Ministry of Treasury and Finance. (“**the Ministry**”)”*

The Amendment Decree also added a new Provisionary Article to the Decree No.32 as follows:

*“Provisionary Article 8 – The denominations in foreign currencies made in the agreements/contracts in force executed prior to the enforcement of the subparagraph -g of the Article 4 of this Decree, shall be redefined in Turkish Lira within thirty (30) days except for situations determined by the Ministry of Treasury and Finance.”*

Accordingly, the Amendment Decree introduced very broad limitations on use of foreign currency and imposed an ‘exceptional’ retroactive enforcement. Since the limitations were so broadly defined and since the Amendment Decree was not drafted in a fashion with easy-to-understand references to existing contract types under Turkish Laws, the adoption of the Amendment Decree caused many uncertainties.

In order to overcome such uncertainties, the Ministry issued an amendment of the existing Communiqué No.2008-32/34 on the Decree No.32 (*added a new version of the previously invalidated Article 8 of the Communiqué titled ‘Contracts with Foreign Currencies or Indexed to Foreign Currencies’*) with Communiqué No.2018-32/51 at October 6, 2018 (**“First Amendment Communiqué”**). With such Amendment Communiqué the Ministry determined the exemptions of the bans of foreign currency use.

The Ministry then issued an explanatory note at its website under “Frequently Asked Questions” section at October 12, 2018 (**“Ministry Explanatory Note”**) and offered examples of application of the Amendment Decree along with sample calculations for the conversion of the values of the existing contracts already in force (the Ministry then changed its initial sample calculations within the same week due to some errors made).

Following this Amendment Communiqué and the explanatory notes published by the Ministry and since the deadline for the conversion of the existing contracts was approaching fast (November 13, 2018), many players in the market made the conversions required or assumed exemptions to remain unaffected with respect to their contract denominations.

However, on November 16, 2018, the Ministry issued another amendment to the initial Communiqué No.2008-32/34 (*a revised version of the Article 8 of the Communiqué titled ‘Contracts with Foreign Currencies or Indexed to Foreign Currencies’ adopted at October 6, 2018*) with Communiqué No.2018-32/52 (**“Second Amendment Communiqué”**) which was conceived as a surprise since it came days after the deadline of the Amendment Decree therefore creating confusion with implementation of further restrictions on exemptions previously offered (specifically targeting foreign investors operating in Turkey) and regarding the deadline (whether it is extended for conversions that are required due to more limited exemptions or not).

Although there are still some uncertainties and discussions regarding the application, please find below the updated analysis of the restrictions imposed and the exemptions offered for contracts in Turkey using foreign currency directly as value denomination or foreign currency index for calculations as of November 16, 2018.

## **ANALYSIS OF PRESIDENTIAL DECREE NO.85 ON DECREE NO.32 ON THE PROTECTION OF THE VALUE OF TURKISH LIRA**

### **A) TURKISH RESIDENCY**

Since the application on the restrictions refer to residency in Turkey, ‘being a resident in Turkey’ shall be analyzed. Turkish residency is defined in Article 4 of Income Tax Law No. 193 (“ITL”) dated December 31, 1960. As per such Article, people with legal residency in Turkey and people who reside continually within Turkish borders for over six (6) months in one (1) calendar year are deemed as residents in Turkey. Again, as per Article 5 of ITL, business people, scientists, specialists, civil servants, press reporters and other suchlike foreign people who visit Turkey for a specific and temporary duty and foreign people who visit Turkey for collection or treatment or recreation or travel purposes shall not be deemed as Turkish residents even if they reside more than six (6) months.

Since the Amendment Decree notes the term ‘between persons residing in Turkey’, agreements concluded between Turkish resident individuals and legal entities and non-Turkish-resident individuals and legal entities are not subject to any restrictions while determining the denominations of their contracts in foreign currencies among each other.

In addition, the Amendment Decree does not implement any restriction on bank deposit contracts and therefore there is no restriction for Turkish or non-Turkish-residents to open or maintain foreign currency accounts in Turkish Banks.

### **B) AGREEMENTS/CONTRACT TYPES SUBJECT TO RESTRICTIONS FOR USE OF FOREIGN CURRENCIES OR FOREIGN CURRENCY INDEX**

Based on the Amendment Decree, the agreements/contracts that shall be in Turkish Lira when executed between Turkish residents are listed below:

- Purchase and sale agreements/contracts
- Rental agreements/contracts
- Leasing agreements/contracts
- Labor/Employment (‘Service’ Agreements of Employees) agreements/contracts
- Agreements/contracts for services
- Agreement/contracts for performance/fulfillment of tasks (including construction agreements/contracts)
- Agreements/contracts concerning tourism
- Labor/Employment agreements/contracts of football players
- Insurance agreements/contracts

## **1) Sales and Purchase Contracts/Agreements of Immovable Properties (Real Estate)**

The sale and purchase of immovable properties (real estate) are subject to the restrictions and therefore need to be executed in Turkish Lira among Turkish residents. However, subject to Turkish Code of Obligations No. 6098 dated January 11, 2011 (“TCO”) contracts for the transfer of the rights of preemption, redemption and repurchase of real estate properties also fall under sales contract regime and therefore it is disputed whether they are also subject to such restrictions (and therefore conversion of contracts executed prior to the Amendment Decree). For the moment, they are deemed to be exempt from restriction of the use of foreign currencies since the Amendment Decree only refers to sales and purchase contracts. There are only a few exemptions for this restriction which are explained in detail at the section below.

## **2) Sale and Purchase Contracts/Agreements of Movable Properties (Goods/Products)**

The Amendment Decree is very broad on the issue and restricts any and all types of movable property sales and purchases. However, as explained in detail at the section below; the exemptions issued by the Ministry limit the restriction (as opposed to offering an exemption only) and notes that all sales and purchase contracts/agreements executed among Turkish residents could be denominated with foreign currency directly or be subject to foreign currency index except for the contracts/agreements for the sales and purchases of vehicles (all motorized vehicles are regarded as movable properties under Turkish laws) *[paragraph 9 of Article 8 of the Communiqué No.2008-32/34 amended by the Second Amendment Communiqué]*.

In addition, it shall be noted that although securities are also regarded as movable properties under Turkish law, since no amendment was introduced to change the Article 15 of the Decree No.32, they are regarded as exempt from these restrictions imposed and accordingly Turkish company bonds could still be issued and exported in foreign currencies.

### **3) Lease/Rental Contracts/Agreements**

Under TCO, the lease/rental agreements are defined as undertakings to transfer the use or benefits of use of anything to another in return of a consideration. The Amendment Decree is imposed on both movable properties/assets and immovable properties/real estate and therefore any type of lease/rental contracts/agreements among Turkish residents are subject to the restrictions imposed for use of foreign currency denomination and therefore shall be executed in Turkish Lira or be converted into Turkish Lira if executed prior to the enforcement of the Amendment Decree.

Since lease/rental of vehicles (including automobiles) are considered lease/rental agreements, they are subject to these restrictions as well.

The Amendment Decree also refers to ‘any other payment obligation’ and therefore deposits or any types of securities (including checks, promissory notes or bank letter of guarantees) provided as collateral for the performance of the obligations noted in the lease/rental contracts also need to be made/issued in Turkish Liras. However, as for the conversion of the lease/rental contracts/agreements executed prior to the enforcement of the Amendment Decree, the Second Amendment Communiqué introduces an exemption and notes that these deposits and securities provided earlier and/or in circulation need not to be converted back into Turkish Lira *[paragraph 28 of Article 8 of the Communiqué No.2008-32/34 amended by the Second Amendment Communiqué]*.

#### 4) Leasing & Financial Leasing Contracts/Agreements

Under Turkish laws (specifically Financial Leasing, Factoring and Finance Companies Law No. 6361 dated November 21, 2012) leasing is a mid or long-term financing method which provides efficient and profitable usage of resources by renting option instead of spending working capital to make investments. There are mainly two types of leasing contracts in Turkey:

*a) **Financial Leasing:** The invested item is purchased by the leasing company and provided to the use of the lessee in return of rental payments. The lessee may only record the delay interest as an expense but not the entire rental amounts and shall allocate amortization over invested using rights. At the end of the agreement/contract term, the ownership of the item is transferred to the lessee.*

*b) **Operating Lease:** Ownership of the invested item always remain at the leasing company and the lessee leases the invested item for relatively shorter terms. The item is returned back to the leasing company at maturity date and the lessee may record the entire rental amounts as expense.*

Although the Amendment Decree also refers to such ‘leasing’ agreements and therefore, they also need to be executed in Turkish Lira, the Second Amendment Communiqué allows for a wide range of exemptions. Accordingly, financial leasing contracts regarding ships and financial leasing contracts noted in Article 17 and 17A of the Decree No.32 (financial leasing contracts in relation with loans obtained from abroad and financial leasing contracts in relation with loans for goods/products issued locally to Turkish residents under imports and exports regime) are fully exempt from the restrictions and they can be denominated with foreign currency directly or use a foreign currency index. [paragraph 12-13 of Article 8 of the Communiqué No.2008-32/34 amended by the Second Amendment Communiqué].

In addition, the financial leasing contracts/agreements for movable and immovable properties executed before the enforcement date of the Amendment Decree, are also fully exempt from the Turkish Lira conversion requirement and therefore remain as is in case they were denominated in foreign currencies. [paragraph 26 of Article 8 of the Communiqué No.2008-32/34 amended by the Second Amendment Communiqué].

#### 5) Labor/Employment (including ‘Service’ Agreements of Employees) Contracts/Agreements

Employment-employee contracts are defined as labor/employment contracts/agreements (*‘iş sözleşmesi’* in Turkish) under Labor Law No.4857 dated May 22, 2003 (“LL”) but as ‘service’ contracts under TCO (*‘hizmet sözleşmesi’* in Turkish). Other legal systems contain different types of ‘service’ contracts and have a broader differentiation between any goods and services in such sense (such as maintenance or consulting contracts against sales contracts or task/building contracting agreements). However, Turkish laws only refer to ‘service’ contracts under an employer-employee relationship; therefore, when the Amendment Decree referred to ‘employment’ ‘work’ and ‘service’ contracts separately, it triggered a discussion.

Some of such discussions are somewhat resolved by the Explanatory Note and the Second Amendment Communiqué issued by the Ministry which are explained in detail at the section below and in principle, the Amendment Decree notes that all employment agreements and contracts and the service contracts (understood in a broader sense of application under a legal understanding imported from Anglo-American legal system) among Turkish residents need to be executed in Turkish Lira or be converted into Turkish Lira if executed prior to the enforcement of the Amendment Decree.

## **6) ‘Service’ and ‘License’ Contracts/Agreements (apart from Employee ‘Service’ Contracts)**

As above explained and will be examined in detail at the next section, there are no ‘service’ contract (*‘hizmet sözleşmesi’* in Turkish) definitions under Turkish law except for the ones defining employee and employer relationship. However, the intention of the Amendment Decree for imposing restrictions on foreign currency use in contracts is understood to be broader from the general rules of Turkish laws and refers to some types of contracts (although defined/classified differently in other laws) as ‘service contracts’ within the examples provided and exemptions offered at the Explanatory Note and the Second Amendment Communique issued by the Ministry including consultancy contracts and agreements, brokerage agreements, maintenance agreements.

In principle, the Amendment Decree notes that ‘service contracts’ (understood in a broader sense of application under a legal understanding imported from Anglo-American legal system) among Turkish residents need to be executed in Turkish Lira or be converted into Turkish Lira if executed prior to the enforcement of the Amendment Decree.

Being a *sui generis* type of agreement, and since the principle of freedom of contract is accepted in Turkish legislation, license agreements contain features of various different agreements and no specific regulation defines or limits the types of licensing. To sum up briefly, licensing agreement is a legal contract between two parties, known as the licensor and the licensee. In a typical licensing agreement, the licensor grants the licensee the right to produce and sell goods, apply a brand name or trademark, or use patented technology owned by the licensor. In exchange, the licensee usually submits to a series of conditions regarding the use of the licensor's property and agrees to make payments known as royalties.

## **7) Contracts/Agreements for the Performance/Fulfillment of Tasks (including Construction/Contractor Contracts/Agreements)**

Article 470 of TCO, defines such contracts (*‘eser sözleşmesi’* in Turkish) where the (the independent/freelance) contractor undertakes to create a work or handle a task and the party ordering the work/task undertakes to pay a consideration. This type of work/task agreements contain a promise of an outcome/solution/building/creation (and therefore differentiate from the legal understanding of an employment ‘service’ contract or a representation/proxy/attorney contract where the outcome is not directly promised for). The construction contracts, repair and maintenance contracts or plastic surgery operation contracts are examples of this type of contracts/agreements under Turkish law.

In principle, the Amendment Decree notes that work/task contracts among Turkish residents need to be executed in Turkish Lira or be converted into Turkish Lira if executed prior to the enforcement of the Amendment Decree.

## **8) Agreements/Contracts Concerning Tourism**

The Explanatory Note of the Ministry has cleared the content of the service agreements. As per the Explanatory Note; the agreements counted in the Article 6 of Exportation Communiqué 2017/4 are in the scope of service agreements. On the other hand, as per Article 6/1-(h) of Exportation Communiqué 2017/4; domestic and abroad service sales in return of foreign currency of tourism entities (*e.g. hotels*) and travel agencies are in the scope of foreign currency saving transactions. Also, as per the Turkish Hoteliers Union (“**THU**”) explanation; tourism entities and travel agencies shall execute service agreements with the residents in Turkey in foreign currency or indexed to foreign currency.

In this context, we assume that tourism entities and travel agencies are not in scope of foreign currency ban related to their service agreements with residents in Turkey.

## **9) Labor/Employment Agreements/Contracts of the Football Players**

Rates of the football players are considered in scope of labor/employment agreements. As per Article 8 subparagraph 3 of First Amendment Communiqué;

- It is possible to pay the rates of football players who are non-Turkish citizens in terms of foreign currency or indexed to foreign currency
- It is not possible to pay the rates of football players who are Turkish citizens in terms of foreign currency or indexed to foreign currency

## **10) Insurance Agreements/Contracts**

Insurance agreements are not in the scope of Decree No. 32 unless such agreements are provided as other payment obligations of agreements which are banned from the usage of Turkish currency.



**C) APPLICABLE RESTRICTIONS & EXEMPTIONS INTRODUCED WITH THE SECOND AMENDMENT COMMUNIQUE ALONG WITH THE EXPLANATORY NOTES OF THE MINISTRY (UPDATED VERSION AS OF FEBRUARY 27, 2019)**

The Amendment Decree dated September 13, 2018 noted that the exemptions to the introduced restrictions of use of foreign currency in contracts/agreements are to be regulated by the Ministry of Treasury and Finance. The Ministry first issued an amendment to the Communiqué No.2008-32/34 on the Decree No.32 (*added a new version of the previously invalidated Article 8 of the Communiqué titled ‘Contracts with Foreign Currencies or Indexed to Foreign Currencies’*) with the Communiqué No.2018-32/51 at October 6, 2018 (“First Amendment Communiqué”), on November 16, 2018, the Ministry issued another amendment to the initial Communiqué No.2008-32/34 (*a revised version of the Article 8 of the Communiqué titled ‘Contracts with Foreign Currencies or Indexed to Foreign Currencies’ adopted at October 6, 2018*) with Communiqué No.2018-32/52 (“Second Amendment Communiqué”) and finally issued an explanatory note published on its website under “Frequently Asked Questions” section at February 27, 2019 (“Ministry Explanatory Note”) and offered examples of application of the Amendment Decree along with sample calculations for the conversion of the values of the existing contracts already in force (the Ministry then changed its initial sample calculations within the same week due to some errors made).

The following table is drafted for the purposes of analyzing the applicable restrictions and their exemptions:

Agreement/Contract Type	Restriction of Use of Foreign Currency and Conversion from Foreign Currency to Turkish Lira in case Executed Prior to the Amendment Decree	Exemptions Provided
<b>Sales and Purchase of Contracts/Agreements of Immovable Properties (Real Estate)</b>	<u>Restriction Applicable:</u>  Sales and Purchase agreements of immovable properties among residents in Turkey	<u>Exemptions Provided</u>  -Non-Turkish citizens who are residents in Turkey are a party to as buyer
<b>Sales and Purchase of Contracts/Agreements of Movable Properties (Goods/Products)</b>	<u>Restriction Applicable:</u>  -vehicle sales among residents in Turkey	<u>Exemptions Provided</u>  -Sale and Purchase Contracts/Agreements of Movable Properties (Goods/Products) excluding vehicle sales among

		<p>residents in Turkey</p> <p>-Sales and Purchase Contracts/Agreements of software produced abroad within the scope of information technologies among residents in Turkey</p> <p>-where public entities and institutions or Turkish Armed Forces Foundation companies act as a party</p> <p>- by contractors relevant with payment obligations to third parties under f/x based or f/x indexed tenders, agreements and international treaties where public entities and institutions act as a party thereof</p> <p>- commercial aviation enterprises resident in Turkey which provide passenger, cargo load and mail transportation services; companies which provide technical maintenance services related to air freight vehicles, motors and parts and pieces of these; public or private law legal entities licensed or authorized to perform ground handling services at the airports within the scope of civil aviation legislation or their companies and associations they directly or indirectly hold 50% or more of the shares,</p>
<b>Lease/Rental Contracts/Agreements of Immovable Properties (Real Estate)</b>	<p><u>Restriction Applicable:</u></p> <p>-Lease/Rental Contracts/Agreements of Immovable Properties (Real Estate) including residences and roofed workplaces located in Turkey among residents in Turkey</p> <p>The contracts executed by aforementioned parties need to be converted into Turkish Lira before December 16, 2018</p>	<p><u>Exemptions Provided</u></p> <p>-Non-Turkish citizens who are residents in Turkey are a party to as tenant</p> <p>-Lease/Rental Contracts/Agreements concerning duty-free stores</p> <p>-Lease/Rental Contracts/Agreements concerning lodging areas having obtained certificate from the Ministry of Culture and Tourism</p>
<b>Lease/Rental Contracts/Agreements of Movable Properties (Goods/Products)</b>	<p><u>Restriction Applicable:</u></p> <p>-vehicle lease among</p>	<p><u>Exemptions Provided</u></p> <p>-Lease/Rental Contracts/Agreements</p>

	<p>residents in Turkey need to be converted into Turkish Lira before December 16, 2018</p>	<p>of Movable Properties (Goods/Products) excluding vehicle sales among residents in Turkey</p> <ul style="list-style-type: none"> <li>- where public entities and institutions or Turkish Armed Forces Foundation companies act as a party</li> <li>- by contractors relevant with payment obligations to third parties under f/x based or f/x indexed tenders, agreements and international treaties where public entities and institutions act as a party thereof</li> <li>- commercial aviation enterprises resident in Turkey which provide passenger, cargo load and mail transportation services; companies which provide technical maintenance services related to air freight vehicles, motors and parts and pieces of these; public or private law legal entities licensed or authorized to perform ground handling services at the airports within the scope of civil aviation legislation or their companies and associations they directly or indirectly hold 50% or more of the shares,</li> </ul>
<p><b>Labor/Employment Contracts/Agreements (including ‘Service’ Agreements of Employees)</b></p>	<p><u>Restriction Applicable:</u></p> <ul style="list-style-type: none"> <li>- Labor Agreements among residents in Turkey</li> </ul>	<p><u>Exemptions Provided</u></p> <ul style="list-style-type: none"> <li>-Non-Turkish citizens who are residents in Turkey</li> <li>-Labor/Employment Contracts/Agreements to be exercised abroad and executed among residents in Turkey</li> <li>-Labor/Employment Contracts/Agreements to which shipmen are parties of</li> <li>-Branches, representations, offices, liaison offices of real or legal entities that do not reside in Turkey or companies in which they directly or indirectly hold 50% or more of the shares or the companies that they have a common control on and/or over and companies located in free</li> </ul>

		trade zones on the basis of their activities in free trade zones; are a party to as employer
<b>Leasing &amp; Financial Leasing Contracts/Agreements</b>	<u>Restriction Applicable:</u>  -Financial lease agreements executed prior to the Amendment Decree concerning movable and immovable properties are not subjects of conversion into Turkish Lira	<u>Exemptions Provided</u>  -Financial Leasing concerning ships defined in Turkish International Ship Registry Law No. 4490 and Amendment Law on Statutory Decree No. 491  -Financial leasing contracts executed under Article 17 and 17/A of Decree No. 32  -Financial leasing contracts where public entities and institutions or Turkish Armed Forces Foundation companies act as a party  -by contractors relevant with payment obligations to third parties under f/x based or f/x indexed tenders, agreements and international treaties where public entities and institutions act as a party thereof  - commercial aviation enterprises resident in Turkey which provide passenger, cargo load and mail transportation services; companies which provide technical maintenance services related to air freight vehicles, motors and parts and pieces of these; public or private law legal entities licensed or authorized to perform ground handling services at the airports within the scope of civil aviation legislation or their companies and associations they directly or indirectly hold 50% or more of the shares,

<b>License Agreements</b>	<u>Restriction Applicable:</u>  -No Restrictions Applicable	<u>Exemptions Provided</u>  -License agreements for software and hardware produced abroad executed among residents in Turkey  -where public entities and institutions or Turkish Armed Forces Foundation companies act as a party  -by contractors relevant with payment obligations to third parties under f/x based or f/x indexed tenders, agreements and international treaties where public entities and institutions act as a party thereof  - commercial aviation enterprises resident in Turkey which provide passenger, cargo load and mail transportation services; companies which provide technical maintenance services related to air freight vehicles, motors and parts and pieces of these; public or private law legal entities licensed or authorized to perform ground handling services at the airports within the scope of civil aviation legislation or their companies and associations they directly or indirectly hold 50% or more of the shares,
<b>Service, Brokerage and Consultancy Contracts/Agreements (apart from Employee 'Service' Contracts)</b>	<u>Restriction Applicable:</u>  -Among residents in Turkey need to be converted into Turkish Lira before December 16, 2018	<u>Exemptions Provided</u>  -Service Agreements;  -Executed by Non-Turkish citizens  -Of Export, transit trade, export sales and deliveries and foreign exchange earning services and activities  -Within the scope of the activities operated abroad by residents in Turkey  -Start in Turkey and end abroad, start abroad and end in Turkey, start abroad and end abroad executed among residents in Turkey  -For software and hardware produced abroad executed among residents in Turkey  -Branches, representations, offices,

		<p>liaison offices of non-residents located in Turkey or entities located in Turkey in which such non-resident directly or indirectly holds fifty percent or more shares or which are under common control of and/or controlled by such non-resident and companies located in free trade zones on the basis of their activities in free trade zones; are a party to as service receiver</p> <p>- where public entities and institutions or Turkish Armed Forces Foundation companies act as a party</p> <p>-by contractors relevant with payment obligations to third parties under f/x based or f/x indexed tenders, agreements and international treaties where public entities and institutions act as a party thereof</p> <p>- commercial aviation enterprises resident in Turkey which provide passenger, cargo load and mail transportation services; companies which provide technical maintenance services related to air freight vehicles, motors and parts and pieces of these; public or private law legal entities licensed or authorized to perform ground handling services at the airports within the scope of civil aviation legislation or their companies and associations they directly or indirectly hold 50% or more of the shares,</p>
<b>Contracts/Agreements for the Performance/Fulfillment of Tasks (including Construction/Contractor Contracts/Agreements)</b>	<p><u>Restriction Applicable:</u></p> <p>No Restrictions Applicable</p>	<p><u>Exemptions Provided</u></p> <p>- Contracts/Agreements for the Performance/Fulfillment of Tasks (including Construction/Contractor Contracts/Agreements) including any cost in foreign currency executed among residents in Turkey</p>
<b>Contracts Executed within the Scope of Law on Regulating Public Financing and Debt Management No. 4749</b>	No Restrictions Applicable	-All agreements including banks as parties related to transactions within the scope of the Law No.4749
<b>Contracts Regarding Capital Market</b>	<p><u>Restriction Applicable:</u></p> <p>-Without prejudice to the provisions of Decree No.32</p>	<p><u>Exemptions Provided</u></p> <p>-Contracts related to forming in foreign currency, issuance, purchase and sale and other relevant</p>

		transactions of capital market instruments regarding Capital Market Law No. 6362
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#### **D) CONVERSION TO TURKISH LIRA & REVALUATION OF THE PRICE FOR ADAPTATION OF THE AGREEMENTS/CONTRACTS SUBJECT TO FOREIGN CURRENCY RESTRICTIONS**

As noted earlier, the Amendment Decree allowed a thirty (30) days grace period for conversion/adaptation of the contracts already executed in foreign currencies before its enforcement date into Turkish Lira. Although there are discussions on the subject, since the Ministry published the details of the application and exemptions of the Amendment Decree a second time at November 16, 2018; it is deemed that all contracts regulated with these restrictions already executed in foreign currencies shall be converted into Turkish Liras before December 16, 2018. Please also note that the Ministry announced that the invoices issued with regards to the contracts effected by the restrictions shall also be issued in Turkish Lira.

In addition, for the contracts already executed in foreign currencies before the execution date of the Amendment Decree and where the parties cannot agree on the new Turkish Lira denominators, the Ministry announced that the conversion shall be made by using:

- (i) Turkish Lira equivalent of the agreement/contract price shall be determined by using the foreign exchange selling rate of January 2, 2018 announced by the Central Bank of Turkey (“**CBT**”)
- (ii) Such value calculated shall be updated by using the Consumer Price Index (CPI) rate on monthly basis without the consideration of leap days between the date of January 2, 2018 and the contract adaptation/conversion date

The Ministry then published the following sample calculations at the Explanatory Note mentioned earlier. The updated version of these calculations are listed below:

**If the parties of the agreements cannot agree on the new Turkish Lira denominators;**

**Contract date** : February 18, 2017  
**TRL conversion date** : October 11, 2018  
**Foreign exchange contract value** : “annual” contract value included in the contract dated February 18, 2017 with 5 years duration  
**CBT rate** : Indicative foreign exchange selling rate determined on January 2, 2018  
**CPI** : CPI change rate of 9 months between January 2, 2018 and October 11, 2018 announced by Turkish Statistical Institute  
**Contract value redefined in TRL** : (contact value x CBT rate) x (1+CPI)

**Numerical Calculation of the above sample:**

**Contract date** : February 18, 2017  
**TRL conversion date** : October 11, 2018  
**Foreign exchange contract value** : 1000 \$  
**CBT rate** : 3.7776 dollar/trl  
**CPI** : 19.37%  
**Contract value redefined in TRL** :  $(1000 \times 3.7776) \times (1+0.1937) = \text{TRL } 4,509.32$

**-Lease/rental contracts of residences and roofed workplaces already in force is as follows;**

**Contract date** : February 18, 2017  
**TRL conversion date** : October 11, 2018  
**Foreign exchange contract value** : “annual lease value of lease/rental contracts of residences and roofed workplaces” included in the contract dated February 18, 2017 with 5 years duration  
**CBT rate** : Indicative foreign exchange selling rate determined on January 2, 2018  
**CPI<sub>1</sub>** : CPI change rate of 9 months between January 2, 2018 and October 11, 2018 announced by Turkish Statistical Institute  
**Contract value<sub>1</sub>** : Contract value valid from October 11, 2018 to February 18, 2019 (TRL)  
**Contract value<sub>1</sub>** :  $(\text{contact value} \times \text{CBT rate}) \times (1+\text{CPI}_1)$   
**CPI<sub>2</sub>** : CPI change rate of 4 months between October 11, 2018 and February 18, 2019 announced by Turkish Statistical Institute  
**Contract value<sub>2</sub>** : Contract value valid from February 18, 2019 to February 18, 2020 (TRL)  
**Contract value<sub>2</sub>** :  $\text{Contract value}_1 \times (1+\text{CPI}_2)$   
**CPI<sub>3</sub>** : Annual CPI change rate between February 18, 2019 and February 18, 2020 announced by Turkish Statistical Institute  
**Contract value<sub>3</sub>** : Contract value valid from February 18, 2020 to October 11, 2020 (TRL)  
**Contract value<sub>3</sub>** :  $\text{Contract value}_2 \times (1+\text{CPI}_3)$



**Numerical Calculation of the above sample regarding lease/rental contracts:**

<b>Contract date</b>	: February 18, 2017
<b>TRL conversion date</b>	: October 11, 2018
<b>Foreign exchange contract value</b>	: 1000 \$
<b>CBT rate</b>	: 3.7776 dollar/trl
<b>CPI<sub>1</sub></b>	: 19.37%
<b>Contract value<sub>1</sub></b>	: $(1000 \times 3.7776) \times (1+0.1937) = \text{TRL } 4,509.32$
<b>CPI<sub>2</sub></b>	: 6% (ASSUMPTION)
<b>Contract value<sub>2</sub></b>	: $4,509.32 \times (1+0.06) = \text{TRL } 4,779.88$
<b>CPI<sub>3</sub></b>	: 15% (ASSUMPTION)
<b>Contract value<sub>3</sub></b>	: $4,779.88 \times (1+0.15) = \text{TRL } 5,496.86$

**E) STAMP TAX & STAMP TAXES APPLICABLE ON  
CONVERSION/ADAPTATION OF CONTRACTS IN FOREIGN CURRENCIES  
EXECUTED BEFORE THE RESTRICTIONS OF AMENDMENT DECREE INTO  
TURKISH LIRA BY RENEWAL OR OTHER ANNEXES**

**1) Stamp Tax/Duty in Turkey**

Stamp duty (or stamp tax) is an indirect tax of Turkey, which is applied to a wide range of documents, including, but not limited to, contracts, agreements, promissory notes, letters of credit and letters of guarantee, financial statements, and payroll. In principle, stamp tax in Turkey is only applicable to transactions that take place in within Turkish borders. However, even papers signed in foreign countries or the papers signed in foreign embassies, legations and consulates in Turkey may be subject to stamp tax if they are submitted to governmental authorities.

There are two types of stamp tax: (i) proportional stamp tax and (ii) fixed stamp tax. Stamp Duty Law lists the papers which are subject to proportional or fixed stamp tax and the proportional or fixed amounts that must be applied to those papers. In proportional stamp tax, according to the type and essence of the paper, stamp tax is calculated as a proportion of the amount of money written in the paper whereas in fixed stamp tax only the essence of the paper is considered, and the fixed amount specified by the Stamp Duty Law No:488 dated July 1, 1964 (“STL”) is applied.

In most cases the stamp duty is charged in Turkey as a percentage of the value (proportional stamp tax) specified in the document (the highest value/amount mentioned), ranging from 0.189% to 0.948% depending on the type of document (for contracts that contain a monetary amount, the rate is 0.948%). The law provides that each party is responsible for paying the total amount of stamp duty on agreements (the revenue administration may seek to collect from both parties, the parties may agree for equal pay or otherwise by contract, in case one party pays the whole amount and the contract is silent, the party paying for the amount may reflect half of such payment to the other party in practice). Every single original document is a separate entity for the calculation of the amount of the stamp duty. STL also provides for a cap on the amount of stamp duty payable on one document, which is adjusted on a yearly basis. For 2018, the stamp duty cap is TRL 2,135,949.30. There are also various exemptions of stamp taxes for some documents and contracts.

STL was significantly amended at 2016 and some additional highlights could be mentioned regarding such amendments:

- Repetitive stamp tax collected from each copy of a paper will be ceased for the papers subject to proportional stamp tax. Meaning that stamp tax will be collected only once – no matter if the parties agree on execution of the agreement in more than one copy.
- Unless the commitments, which are regulated as a sanction of an agreement such as down payment, forfeit, penalty clause, are directly subject of the agreement, stamp tax will not be calculated based on the amounts of these commitments.
- In case of an amendment to an agreement subject to stamp tax over the highest value determined by law, no stamp tax should be applied if the amendment is only made to the value of the agreement, but the remaining provisions of the agreement remain unchanged.
- The authority of the Council of Ministers for determination of the stamp tax rate has been expanded to decrease the stamp tax rate to zero for the proportional stamp tax. Also, Council of Ministers has been authorized to determine the stamp tax rate for the papers within the scope of banking legislation in addition to their authorities for the papers within the scope of capital market legislation.
- With the amendment concerning the insurance agreements and papers for payment of insurance premiums, insurance commitment clauses written in the same papers are also included within the scope of stamp tax exemption and thus it is intended to collect the stamp tax over the main agreement value.
- Individual retirement agreements will also be exempted from stamp tax.
- Papers for share transfers of joint-stock companies, limited liability companies and partnerships limited by shares will be exempted from stamp tax.
- Stamp tax exemption will be applied for sale and purchase agreements made by real estate investment trusts and real estate portfolios for their real estate portfolio and preliminary sale agreement for real estate.

## **2) Stamp Tax Applications for Turkish Lira Conversion of Denominators in Contracts Containing Foreign Currencies Executed Before Amendment Decree**

Following the enforcement of the Amendment Decree, the issue of stamp tax/duties applicable to the conversion/adaptation of contracts/agreements to change the denominators of such contracts/agreements into Turkish Lira from existing foreign currency value became an issue since such conversion/adaptation could be made/executed legally by the parties involved in writing and with additional contracts/agreements, annexes or other forms of documents containing a monetary value which normally triggers stamp tax/duties. To resolve the dispute and the clear the issue the Ministry issued a circular titled Stamp Tax Circular No.22 at November 22, 2018 (**“Stamp Tax Circular No.22”**).

Stamp Tax Circular No.22 states that if **all the following conditions are met**, no stamp duty shall arise over the revised agreements;

- If there is not a change in the clauses of the relevant agreement (e.g., extension of time, change in party, addition of new business etc.) other than the clause **regarding price**,
- If the total amount of the agreement in Turkish Lira following the revision does not exceed **the amount of the main (original) agreement in foreign currency multiplied by the foreign currency selling rate determined by the Central Bank of Republic of Turkey on the issuance date of the revised agreement**,
- If there is a reference made to the main (original) agreement

### **Same agreement with the new parties**

One of the basic requirements of an agreement is the determination of the parties. Therefore, party amendment of an agreement is equal to abolition of an agreement. If terms of the agreement and the price stays the same, but the parties differ from the original agreement then stamp tax shall occur within the scope of the general conditions for this agreement since there will be a new agreement which is not related to the original.

### **Extension of the first agreement with the new agreement**

If the duration of the first agreement is extended with the new agreement, since the new duration shall be taken into consideration to calculate the tax assessment for the stamp tax and such new tax assessment amount will be higher than the original. Therefore, it is necessary to calculate the stamp tax on the difference that will be realized as a result of the calculation to be made under the new agreement. In case of an increase in the amount agreed upon from the new agreement, stamp tax shall be sought from both the increasing price and the increase price due to the time extension.

### **Applying new subject works to the agreement with the new agreement**

Stamp tax shall be applied to the prices of the new subject works of the agreement.

## **F) SANCTIONS & PENALTIES IMPOSED FOR INCOMPLIANCE WITH AMENDMENT DECREE**

Acts against the Decree No.32 and therefore the restrictions imposed in this regulation by the Amendment Decree are penalized subject to Article 3/1 of Law on Protection of Turkish Currency No.1567 dated February 20, 1930.

Accordingly, each instance (of violation or incompliance) is punishable with an administrative fine of between TRL 3.000 and TRL 25.000 (and subject to reevaluation rates currently considered the amounts shall be considered as TRL 6.300 and TRL 55.000 subject to the Explanatory Note of the Ministry) and be applied individually all parties of the agreements/contracts.

The default interest to run starting from the date of the breach until the collection of the fine, shall also be accrued on top of the fine. The foreign currency selling rate as announced by the Turkish Central Bank on the date of the breach shall be considered for calculating the administrative fine that will be applied to breaches committed in foreign currency and the fines shall be doubled in cases of repetition of the breach. The fines are issued by the Public Prosecutors' offices following audit by officials authorized to audit Exchange regulations (inclusive of tax auditors).

## **G) CONCLUSION**

The changes introduced to Decree No.32 are quite significant and impose strict limitations on contracting in Turkey by using foreign currency denominations. Since the penalties for incompliance are high and may be imposed in a repetitive manner, the denominators in the effected contracts/agreements already executed before September 13, 2018 shall be converted/adopted into Turkish Lira before December 16, 2018 at the latest.

Although there is a minor reference to a two (2) year period as for the adaptation/conversion of the lease/rental agreement terms within the Amendment Communique (that is regarded as a signal of such restrictions that may be abolished after two years following enforcement once stability in foreign exchange rates in Turkey is achieved) there is no legal ground suggesting that such restrictions are for a temporary term. Therefore, parties effected should consider Turkish Lira value for their budgeting purposes at least for the foreseeable short and mid-term.

**FREQUENTLY ASKED QUESTIONS DATED FEBRUARY 27, 2019 REGARDING SECOND  
AMENDMENT COMMUNIQUE (MINISTRY EXPLANATORY NOTE)**

**1. In the fourth paragraph of Article 8 of the Second Amendment Communiqué regarding the issue of renting of accommodation facilities which are certified by Ministry of Culture and Tourism; is it only regulated to rent the whole accommodation facility? Is it possible to conduct the agreements regarding the separate facilities of the accommodation facility such as hairdresser, spa center etc. in foreign currency or be indexed to foreign currency?**

It is possible to conduct the lease value of the lease agreements in foreign currency or be indexed to foreign currency regarding leasing of the commercial areas such as baths, pools, spas, hairdressers and markets of the accommodation facilities which are certified by Ministry of Culture and Tourism. On the other hand, it is not possible to conduct lease agreements to Turkish residents regarding the accommodation of the hotel rooms in foreign currency or be indexed to foreign currency.

**2. What is the scope of the Service Agreements?**

Delivery and transactions that are considered as delivery and services other than importation of goods are called services. The agreements which are in scope of such transactions are accepted as “service agreements”.

**3. What are in the scope of the sales and deliveries deemed as exports and services and activities that bring foreign currencies?**

The sales and deliveries deemed as exports and services and activities that bring foreign currencies covers the scope of service agreements conducted for the services and activities as per Article 6 subparagraph 3 of Communiqué on Export, Transit Trade, Sales and Deliveries Deemed as Exports and Services and Activities that Bring Foreign Currency (Export: 2017/4). However, even though the definition of the service is in scope of services and activities that bring foreign currencies, it is not possible to conduct the agreements regarding the domestic services provided to Turkish residents in foreign currency or be indexed to foreign currency.

**4. Is it possible to denominate the agreements regarding transportation and shipping in foreign currency or be indexed to foreign currency?**

As per Article 8 subparagraph (ç) of the Second Amendment Communiqué it is possible to conduct the service agreements between Turkish residents starting from Turkey and ending abroad or starting abroad and ending in Turkey or starting abroad and ending abroad in foreign currency or be indexed to foreign currency. Therefore, it is possible to conduct the agreements regarding transportation and shipping services that are in scope of aforementioned activities in foreign currency or be indexed to foreign currency.

**5. Is it possible to conduct the employment and service agreements executed in harbors in foreign currency or be indexed to foreign currency?**

It is not possible to conduct the employment and service agreements executed in harbors among Turkish residents in foreign currency or be indexed to foreign currency. Also, it is not mandatory for the Parties to denominate the employment and service agreements executed in harbors among Turkish residents into Turkish Lira which are conducted before the enforcement date of Article 4 subparagraph (g) of Decree No. 32.

**6. Is it possible to denominate the Agreements for the Performance/Fulfillment of Tasks in foreign currency or be indexed to foreign currency?**

As per Article 8 subparagraph 8 of the Second Amendment Communiqué, it is possible to conduct the agreements for the Performance/Fulfillment of Tasks including any cost in foreign currency, in foreign currency or be indexed to foreign currency. It is mandatory that the agreement for the performance/fulfillment of tasks to include a particular amount of foreign currency cost. That particular amount shall be enough to denominate the agreement in foreign currency or be indexed to foreign currency.

**7. What will be the status of the joint agreements involving more than one of the contract types listed in the Amendment Decree? Is it mandatory to convert the joint agreements into Turkish Lira?**

To exempt the joint agreements from the Turkish Lira conversion the all agreement types involved in the joint agreement should be in scope of the exemptions. If one of the agreement types of the joint agreement is not in scope of the exemptions, then the joint agreement shall be converted into Turkish Lira.

**8. Before the Second Amendment Communiqué, since I had imported inputs, I used to sell commercial goods in foreign currency or be indexed to foreign currency within Turkey. After the amendment, is it possible for me to continue to sell them in the same way within Turkey?**

Yes, you may sell the products, since movable sales contracts are not in scope of the restrictions. Only, vehicle sales cannot be denominated in foreign currency or be indexed to foreign currency. Also, it is possible to conduct the agreements for the Performance/Fulfillment of Tasks including any cost in foreign currency, in foreign currency or be indexed to foreign currency.

**9. Is it possible to denominate movable instrument agreements in foreign currency or be indexed to foreign currency?**

Yes, it is possible without prejudice to the provisions of Decree No. 32.

**10. Is there an exemption regarding the restriction of conversion of the vehicle lease and sales agreements into Turkish Lira?**

As per Article 8 subparagraph 25 of the Second Amendment Communiqué, it is not mandatory for the vehicle lease and commercial vehicle on the purpose of passenger transport sale agreements which are executed prior to the enforcement date of Temporary Article 8 of Decree No. 32 which is September 13, 2018 to be converted into Turkish Lira.

**11. Is it possible to conduct the construction vehicle sale agreements in foreign currency or be indexed to foreign currency?**

Yes, it is possible. Construction vehicles are not evaluated in scope of immovable property sales.

**12. What is the scope of “Vehicle” in the Second Amendment Communiqué?**

As per Highway Traffic Law No. 2918, a vehicle is either a motorized or a non-motorized vehicle which is eligible to transport human, animal and cargo on roads. Such definition has been noted within the vehicle statements in the Second Amendment Communiqué.

**13. Is it possible to conduct the restricted contracts based on Turkish Lira and invoice them based on foreign currency?**

It is not possible (without prejudice to the provisions of tax regulations).

**14. What is meant by the term “hardware” on referred to in paragraph 11? Does the statement in question cover counterfeiting machines, copiers, check reading machines and similar machines?**

“Hardware” contained in this paragraph; refers to the mechanical and electronic components as the components of the physical structure of the computer, in other words "mainboard", "processor", "memory" and "computer peripherals (data storage units and other peripherals consisting of input, output and communication units)". Therefore, the computer hardware alone includes a computer system and a computerized mechanical and electronic component which cannot function independently and which require connection. In this respect; If the machines such as counterfeit machine, photocopy machine, check reading machine can perform their functions without the need of a computer system and connection, they should be considered as an individual electronic device and not as a piece of equipment, but by evaluating and implementing the relevant legislation provisions.

**15. Which public institutions and organizations cover the scope of the definition of public institutions and organizations?**

Public institutions and organizations are; institutions and administrations mentioned in the sheets numbered I, II, III, IV in Public Financial Management and Control Law No. 5018 and the companies which affiliated directly or indirectly to such institutions and organizations by at least 50%.

## **16. What does Turkish Armed Forces Foundation Companies mean?**

The Turkish Armed Forces Foundation Companies refer to ASELSAN, HAVELSAN, ROKETSAN, TUSAS, ISBIR, ASPILSAN etc. whose at least 50% of their capital directly or indirectly belong to Turkish Armed Forces Foundation which is established to strengthen Turkish Armed Forces.

## **17. Are insurance contracts within the scope of First Amendment Communiqué?**

Insurance contracts are not covered by the First Amendment Communiqué.

## **18. Are foreign currency credits within this scope?**

Foreign currency credits are not covered under Article 8 of the Communiqué, but within the scope of Article 11. Also, foreign currency are in the scope of Article 17 and 17/A of Decree No.32 on Protection of Value of Turkish Currency.

## **19. Are foreign natural persons and legal entities liable to the foreign currency bans?**

Natural persons and legal entities that do not reside in Turkey are not subjected to the provisions of this Communiqué. Natural people who don't have a Turkish citizenship but who reside in Turkey and legal entities that reside in Turkey are considered as Turkish residents.

However, it is possible to denominate the following agreement values in foreign currency or be indexed to foreign currency;

- rental and sales agreements of immovable properties that non-Turkish citizens are party to (as per the provision of subparagraph 3)
- service agreements that non-Turkish citizens are party to (as per subparagraph (a) of the seventh paragraph)
- labor agreements that non-Turkish citizens are party to (as per the provision of paragraph four)

Also, it is possible to denominate the following agreement values in foreign currency or as indexed to foreign currency;

- rental and sales agreements of immovable properties that legal entities within scope of subparagraph 19 are party to (as per the provision of subparagraph 3)
- labor and service agreements that legal entities within scope of subparagraph 19 are party as employer or service provider

## **20. Are Turkish citizens who live abroad without being a resident within Turkey considered within the scope of Turkish residency?**

As defined in Article 2 of Decision No. 32 on the Protection of the Value of Turkish Currency; natural persons and legal entities who resident in Turkey including workers abroad, Turkish citizens who are self-employed and independent business owner are considered as resident in Turkey. In other words, it is a condition that a person needs to reside in Turkey to be considered as Turkish resident.



**21. Is it possible to pay the fees of the football players in foreign currency or indexed to foreign currency?**

Fees of the football players are considered in scope of labor/employment agreements. As per Article 8 subparagraph 3 of First Amendment Communiqué;

- It is possible to pay the rates of football players who are non-Turkish citizens in of foreign currency or indexed to foreign currency
- It is not possible to pay the rates of football players who are Turkish citizens in of foreign currency or indexed to foreign currency

**22. Can the fees of the pilots be paid in foreign currency or as indexed to foreign currency under subparagraph (ç) of paragraph 7?**

Delivery and transactions that are considered as delivery and services other than importation of goods are called services. Contracts related to these transactions are considered as “service contracts”. Since the contracts regarding the fees of pilots are considered as employment contracts within the scope of this Communiqué, the contracts to be executed abroad, the contracts which the shipmen are parties, and the contracts within the scope of paragraph 14 and 19 are determined in foreign currency or as indexed to foreign currency.

**23. Without prejudice to the sanctions set out in the legislation, to what date can the CPI rate be added up to the date for the contracts to be converted into Turkish lira after the 30-day period determined by the Ministry to return to the Turkish lira? Is it possible to apply CPI until the formation date or will CPI be applied until the determined thirtieth date?**

The monthly CPI change rate to be considered in the calculations to be made for the contracts to be converted into Turkish lira after the 30-day period determined for the return of the contracts to the Turkish lira by the Ministry is CPI change rate announced for September 2018, the final CPI rate announced for each month should not be calculated separately.

In the calculation examples (question 32), the CPI increase rights for the new period real estate rent in Example B are reserved.

**24. Is it possible to make real estate lease agreements in foreign currency within the scope of public-private cooperation (PPC) projects?**

Yes, it is possible. In accordance with the sixteenth paragraph of the Communiqué No. 2018-32/52;

The contract price and the other contractual financial obligations in the agreements executed by and between the contractors or official companies and third parties may be determined in foreign currency or as indexed to foreign currency only within the scope of the execution of the projects with public tenders, agreements and international treaties executed in foreign currency or as indexed to foreign currency where the governmental institutions and organizations are parties of, excluding the real property sales and the employment agreements.

**25. Can the foreign currency denominated debt instrument be issued within the framework of the eighteenth paragraph by the private sector?**

No, it can't be issued. Without prejudice to the provisions of Decision No. 32 of the Eighteenth Article of the Article 8 of the Communiqué, the statement states that the transactions specified in foreign currency in respect of capital market instruments should be in accordance with the provisions of Decision 32. As it is known, Decision No. 32 does not contain a provision allowing the private sector to issue foreign currency debt instruments.

**26. What are the new regulations introduced by the nineteenth paragraph of the Communiqué numbered 2018-32/52 compared to the sixteenth paragraph of the First Amendment Communiqué dated October 6, 2018 and numbered 2018-32/51?**

In the Communiqué No. 2018-32/52, in contrast with the First Amendment Communiqué, the following dark-marked phrases are added;

“(19) The contract price and the other contractual financial obligations in the employment and service agreements executed by branches, representatives, offices, and liaison offices of the real or legal entities that do not reside in Turkey or companies in which they directly or indirectly hold 50% or more of the shares or the companies that they have a **common control and/or over** and free zone companies under their operations in free zones in cases where such entities act as **employer or service-receiver**, may be determined in foreign currency or as indexed to foreign currency.”

**27. What does the subparagraph 19 provided in Second Amendment Communiqué “real or legal entities that do not reside in Turkey or companies in which they directly or indirectly hold 50% or more of the shares or the companies that they have a common control on and/or over” mean?**

To have common control on and/or over companies it is required to hold minimum fifty percent of the shares or to hold privileged shares in case not owning directly or indirectly fifty percent or more of the shares or holding the majority of the voting rights with regards to the other agreements conducted with the other shareholders or holding the right to appoint the majority of Board of Directors or to dismiss them.

**28. Is it mandatory to arrange the lease agreements of immovable properties in a foreign currency executed by non-resident Turkish citizen person resident in Turkey or parties referred in the subparagraph 19 of this article who acts as the tenant?**

According to the subparagraph 3 of the Article 8, the agreement prices and other contractual financial obligations in rental and sales agreements of immovables executed by non-resident Turkish citizen resident in Turkey or parties referred in the paragraph nineteen of this Article who acts as the purchaser or the tenant under such agreements can be determined in foreign currency or be indexed to a foreign currency. In other words, the agreement prices and other contractual financial obligations in rental and sales agreements for immovable cannot be determined in foreign currency or be indexed to a foreign currency however the non-resident Turkish citizen resident in Turkey or parties referred in the paragraph nineteen of this Article who acts as the purchaser or the tenant have been accepted as exemption. In case of the agreement they also can be determined in Turkish Lira.

**29. In cases real estate lease agreements where the companies referred in the subparagraph 19 of the Article who act as the tenant have been converted in Turkish Lira between September 13, 2018 and November 16, 2018, should they be re-arranged in foreign currency within the scope of new exemption?**

As is known, in accordance with the legislation in force in the period between September 13, 2018 and November 16, 2018 there was requirement for the real estate leasing to be converted into Turkish Lira. In the aforementioned period, if the real estate lease agreement has been converted into Turkish currency, it is not possible to demand the value of the agreement in foreign currency which has been converted into Turkish currency previously on the grounds of consent of the lessor has been accepted an exemption after November 16, 2018. The reason is that the parties within the scope of exemptions don't have to arrange the agreement price in terms of foreign currency or be indexed to a foreign currency. In accordance with the aforementioned provision, the agreement price which was previously converted into Turkish Lira can be determined in a foreign currency or be indexed to a foreign currency in case of the parties are in agreement. However, the lease agreements of immovable property concluded before September 13, 2018 are also included in the exemption; it is necessary to analyze whether the price determined in foreign currency regarding real estate lease agreement is converted into Turkish Lira between September 13, 2018 and November 16, 2018. If it is converted, it is possible to determine the price again in foreign currency only if the other party of the agreement is agreed. However, if it is not converted into Turkish Lira between September 13, 2018 and November 16, 2018, it is not required to be converted Turkish Lira in accordance with subparagraph 24 of Article 8 of the Communique since it is included in the scope of exemption on November 16, 2018.

**30. Is it possible for the first landlord to demand lease amount from the broker company in terms of foreign currency or be indexed to foreign currency in the following case; there is a resident company in turkey (first landlord) which rent outs the immovable property to another Turkish resident broker company and such broker company rent outs the same immovable property to another company (final tenant) which is owned by non-residents by holding directly or indirectly fifty percent or more of the shares.**

The agreement prices and other contractual financial obligations in sales agreement of immovable properties located in Turkey including residences and roofed workplaces executed between Turkish residents cannot be determined in foreign currency or be indexed to foreign currency. Therefore, it is not possible to determine such lease agreement conducted between first landlord (resident in Turkey) and broker company (resident in Turkey) in foreign currency or be indexed to a foreign currency.

**31. Is it possible to determine the agreement prices in foreign currency or be indexed to a foreign currency in warehouse lease agreements executed between Turkish residents?**

It is not possible to determine the agreement prices and other contractual financial obligations arising from warehouse lease agreements which are excluded within the scope of the exemption provisions in subparagraphs 3 or 19 and which are subject real estate in Turkey in subparagraph 2 of the Article 8 in terms of foreign currency or be indexed to a foreign currency. However, it is possible to conclude agreements for the leasing of the warehouses abroad in foreign currency.

**32. What does “the agreements indexed to precious metals where values are determined as foreign currency in international markets and/or indexed to commodity” indicated in Article 8 subparagraph 22 of Second Amendment Communiqué mean?**

It means that, it is possible to use gold, petroleum etc., precious metals and/or commodities indexed to foreign currency for the restricted agreements as per Article 8 of Second Amendment Communiqué. It is possible to index fuel prices in service agreements related to transportation activities.

**33. Is it mandatory for leasing agreements to be converted into Turkish Lira before the date of entry into force of the Provisional Article 8 of Decision 32?**

No, it is not. In accordance with the subparagraph 26 of the Communiqué No. 2018-32/52; the financial leasing agreements related to the movable and immovable properties concluded prior to the date of September 13, 2018, which entered the Provisional Article 8 of Decision No. 32 into force, are not required to be converted into Turkish Lira.

**34. Could you please give an example on the calculations regarding Article 8 subparagraph 28 of the Second Amendment Communiqué?**

**Sample A-** The example regarding the calculation as per Article 8/28(1) of First Amendment Communiqué for the conversion of the values of the existing agreements already in force is as follows;

<b>Agreement date</b>	: February 18, 2017
<b>TRL conversion date</b>	: October 11, 2018
<b>Foreign exchange agreement value</b>	: “annual” agreement value included in the agreement dated February 18, 2017 with 5 years duration
<b>CBT rate</b>	: Indicative foreign exchange selling rate determined on January 2, 2018
<b>CPI</b>	: CPI change rate of 9 months between January 2, 2018 and October 11, 2018 announced by Turkish Statistical Institute
<b>Agreement value redefined in TRL</b>	: (contract value x CBT rate) x (1+CPI)

**Sample A- Numerical Calculation**

<b>Agreement date</b>	: February 18, 2017
<b>TRL conversion date</b>	: October 11, 2018
<b>Foreign exchange agreement value</b>	: 1000 \$
<b>CBT rate</b>	: 3.7776 dollar/trl
<b>CPI</b>	: 19.37%
<b>Agreement value redefined in TRL</b>	: $(1000 \times 3.7776) \times (1+0.1937) = \text{TRL } 4,509.32$

**Sample B-** The example regarding the calculation as per Article 8/28(2) of the Second Amendment Communique for the conversion of the values of the existing lease/rental agreements of residences and roofed workplaces already in force is as follows;

<b>Agreement date</b>	: February 18, 2017
<b>TRL conversion date</b>	: October 11, 2018
<b>Foreign exchange agreement value</b>	: “annual lease value of lease/rental agreements of residences and roofed workplaces” included in the agreement dated February 18, 2017 with 5 years duration
<b>CBT rate</b>	: Indicative foreign exchange selling rate determined on January 2, 2018
<b>CPI<sub>1</sub></b>	: CPI change rate of 9 months between January 2, 2018 and October 11, 2018 announced by Turkish Statistical Institute
<b>Agreement value<sub>1</sub></b>	: Agreement value valid from October 11, 2018 to February 18, 2019 (TRL)
<b>Agreement value<sub>1</sub></b>	: (contact value x CBT rate) x (1+CPI <sub>1</sub> )
<b>CPI<sub>2</sub></b>	: CPI change rate of 4 months between October 11, 2018 and February 18, 2019 announced by Turkish Statistical Institute
<b>Agreement value<sub>2</sub></b>	: Agreement value valid from February 18, 2019 to February 18, 2020 (TRL)
<b>Agreement value<sub>2</sub></b>	: Agreement value <sub>1</sub> x (1+CPI <sub>2</sub> )
<b>CPI<sub>3</sub></b>	: Annual CPI change rate between February 18, 2019 and February 18, 2020 announced by Turkish Statistical Institute
<b>Agreement value<sub>3</sub></b>	: Agreement value valid from February 18, 2020 to October 11, 2020 (TRL)
<b>Agreement value<sub>3</sub></b>	: Agreement value <sub>2</sub> x (1+CPI <sub>3</sub> )

#### **Sample B- Numerical Calculation**

<b>Agreement date</b>	: February 18, 2017
<b>TRL conversion date</b>	: October 11, 2018
<b>Foreign exchange agreement value</b>	: 1000 \$
<b>CBT rate</b>	: 3.7776 dollar/trl
<b>CPI<sub>1</sub></b>	: 19.37%
<b>Agreement value<sub>1</sub></b>	: (1000 x 3.7776) x (1+0.1937) = TRL 4,509.32
<b>CPI<sub>2</sub></b>	: 6% (ASSUMPTION)
<b>Agreement value<sub>2</sub></b>	: 4,509.32 x (1+0.06) = TRL 4,779.88
<b>CPI<sub>3</sub></b>	: 15% (ASSUMPTION)
<b>Agreement value<sub>3</sub></b>	: 4,779.88 x (1+0.15) = TRL 5,496.86

**35. Is it necessary to convert into Turkish Lira the deposit amounts in the lease agreements concluded before the date of the entry into force of the Provisional Article 8 of Decision No. 32?**

No, it is not. In accordance with the last paragraph of the subparagraph 28 of the Communique No. 2018-32/52; the deposits given under the lease agreements of the immovable property concluded prior to the date of September 13, 2018, which entered the Provisional Article 8 of Decision No. 32 into force, are not required to be converted into Turkish Lira. However, it is obligatory to determine the deposit amounts in terms of the Turkish Lira within the scope of the agreements concluded after the aforementioned date.

**36. What is the sanction imposed for noncompliance with Second Amendment Communiqué?**

Accordingly, as per Article 3 subparagraph 1 of Law on Protection of the Value of Turkish Lira No. 1567 each instance (of violation or noncompliance) is punishable with an administrative fine of between TRL 3.000 and TRL 25.000 (and subject to reevaluation rates currently considered the amounts shall be considered as TRL 6.300 and TRL 55.000) and be applied individually all parties of the agreements/agreements. In case of the repetition, these penalties are applied as double.

However, the documents that have been sent to Ministry of Treasury and Finance should include concrete information and supporting documents (invoice, agreement sample, price offer) in order to initiate an action by Prosecutor's Office regarding violation the of the Second Amendment Communiqué. The Ministry does not make any transactions regarding the notifications that are not based on any concrete documents.

**37. Will there be a stamp duty exemption for agreements that convert to TRL?**

The Revenue Administration issued a circular title "Stamp Duty in the Agreements to be Adapted to the Turkish Currency" published on November 22, 2018 with the number DV22 / 2018-1. Please copy the link to reach the circular; <http://www.gib.gov.tr/node/132647>

**38. What is the meant by the words "circulation of valuable paper" in subparagraph 28 of the Communiqué?**

By the phrase "circulation of valuable paper within the scope of the execution of an agreement" which is stated above, it means the valuable paper should be issued prior to the publication date of the Second Amendment Communiqué (November 16, 2018) and it should be given to the bearer of the valuable paper by the drawer regarding to the paper type.

Please also note the updated translation of the Second Amendment Communique below:

<p><b>TÜRK PARASI KIYMETİNİ KORUMA HAKKINDA 32 SAYILI KARARA İLİŞKİN TEBLİĞ (TEBLİĞ NO: 2008-32/34)’DE DEĞİŞİKLİK YAPILMASINA DAİR TEBLİĞ (TEBLİĞ NO: 2018-32/52)</b></p> <p><b>MADDE 1</b> – 28/2/2008 tarihli ve 26801 sayılı Resmî Gazete’de yayımlanan Türk Parası Kıymetini Koruma Hakkında 32 Sayılı Karara İlişkin Tebliğ (Tebliğ No: 2008-32/34)’in mülga 8 inci maddesi başlığı ile birlikte aşağıdaki şekilde değiştirilmiştir.</p> <p><b>“Döviz Cinsinden ve Dövizle Endeksli Sözleşmeler</b></p> <p><b>MADDE 8</b> – (1) Türkiye’de yerleşik kişiler; kendi aralarında akdedecekleri, konusu yurt içinde yer alan gayrimenkuller olan, konut ve çatılı iş yeri dâhil gayrimenkul satış sözleşmelerinde sözleşme bedelini ve bu sözleşmelerden kaynaklanan diğer ödeme yükümlülüklerini döviz cinsinden veya dövizle endeksli olarak kararlaştıramazlar.</p> <p>(2) Türkiye’de yerleşik kişiler; kendi aralarında akdedecekleri, konusu yurt içinde yer alan gayrimenkuller olan, konut ve çatılı iş yeri dâhil gayrimenkul kiralama sözleşmelerinde sözleşme bedelini ve bu sözleşmelerden kaynaklanan diğer ödeme yükümlülüklerini döviz cinsinden veya dövizle endeksli olarak kararlaştıramazlar.</p>	<p><b>COMMUNIQUE (COMMUNIQUE NO: 2018-32/52) ON THE AMENDMENT OF THE COMMUNIQUE ON DECREE NO. 32 ON THE PROTECTION OF THE VALUE OF TURKISH CURRENCY (COMMUNIQUE NO: 2008-32/34)</b></p> <p><b>ARTICLE 1-</b> (1) Article 8 of the Communique on the Protection of the Value of Turkish Currency (Communique No: 2008-32 / 34) published in the Official Gazette dated February 28, 2008 and numbered 26801 was amended as follows.</p> <p><b>“Foreign Currency and FX-Indexed Contracts”</b></p> <p><b>ARTICLE 8</b> – (1) The contract prices and other contractual financial obligations in sales agreement for immovables located in Turkey including residences and roofed workplaces executed between Turkish residents cannot be determined in foreign currency or be indexed to a foreign currency,</p> <p>(2) The contract prices and other contractual financial obligations in rental agreements for immovables located in Turkey including residences and roofed workplaces executed between Turkish residents cannot be determined in foreign currency or be indexed to a foreign currency.</p>
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(3) Türkiye Cumhuriyeti Devleti ile vatandaşlık bağı bulunmayan Türkiye’de yerleşik kişilerin veya bu maddenin on dokuzuncu fıkrasında belirtilen kişilerin alıcı ve kiracı olarak taraf oldukları gayrimenkul satış ve gayrimenkul kiralama sözleşmelerinde, sözleşme bedelinin ve bu sözleşmelerden kaynaklanan diğer ödeme yükümlülüklerinin döviz cinsinden veya dövize endeksli olarak kararlaştırılması mümkündür.

(4) Kültür ve Turizm Bakanlığında belgeli konaklama tesislerinin işletilmesi amacıyla kiralanmasıyla ilgili gayrimenkul kiralama sözleşmelerinde, sözleşme bedelinin ve bu sözleşmelerden kaynaklanan diğer ödeme yükümlülüklerinin döviz cinsinden veya dövize endeksli olarak karşılaştırılması mümkündür.

(5) Gümrüksüz satış mağazalarının kiralanmasına ilişkin gayrimenkul kiralama sözleşmelerinde, sözleşme bedelinin ve bu sözleşmelerden kaynaklanan diğer ödeme yükümlülüklerinin döviz cinsinden veya dövize endeksli olarak karşılaştırılması mümkündür.

(6) Türkiye’de yerleşik kişiler kendi aralarında akdedecekleri; yurt dışında ifa edilecekler ile gemi adamlarının taraf oldukları dışında kalan iş sözleşmelerinde sözleşme bedelini ve bu sözleşmelerden kaynaklanan diğer ödeme yükümlülüklerini döviz cinsinden veya dövize endeksli olarak kararlaştıramazlar.

(3) The contract prices and other contractual financial obligations in rental and sales agreements for immovables executed by non-resident Turkish citizen person resident in Turkey or parties referred in the paragraph nineteen of this Article who acts as the purchaser or the tenant under such contracts can be determined in a foreign currency or be indexed to a foreign currency.

(4) The contract prices and other financial obligations arising from contracts for rental of accommodation facilities where such facilities are licensed by Ministry of Culture and Tourism, can be determined in a foreign currency or be indexed to a foreign currency.

(5) The contract prices and other financial obligations arising from contracts for rental of duty-free shops can be determined in a foreign currency or be indexed to a foreign currency.

(6) The contract prices and other contractual financial obligations arising from employment agreement other than those to be performed outside of Turkey between Turkish residents and to be performed with shipmen cannot be denominated in a foreign currency or be indexed to a foreign currency.



<p>(7) Türkiye’de yerleşik kişiler; kendi aralarında akdedecekleri, aşağıda belirtilenler dışında kalan danışmanlık, aracılık ve taşımacılık dâhil hizmet sözleşmelerinde, sözleşme bedelini ve bu sözleşmelerden kaynaklanan diğer ödeme yükümlülüklerini döviz cinsinden veya dövize endeksli olarak kararlaştıramazlar.</p> <p>a) Türkiye Cumhuriyeti Devleti ile vatandaşlık bağı bulunmayan kişilerin taraf oldukları hizmet sözleşmeleri,</p> <p>b) İhracat, transit ticaret, ihracat sayılan satış ve teslimler ile döviz kazandırıcı hizmet ve faaliyetler kapsamında yapılan hizmet sözleşmeleri,</p> <p>c) Türkiye’de yerleşik kişilerin yurt dışında gerçekleştirecekleri faaliyetler kapsamında yapılan hizmet sözleşmeleri,</p> <p>ç) Türkiye’de yerleşik kişilerin, kendi aralarında akdedecekleri, Türkiye’de başlayıp yurt dışında sonlanan, yurt dışında başlayıp Türkiye’de sonlanan veya yurtdışında başlayıp yurtdışında sonlanan hizmet sözleşmeleri.</p> <p>(8) Türkiye’de yerleşik kişilerin; kendi aralarında akdedecekleri, döviz cinsinden maliyet içeren eser sözleşmelerinde sözleşme bedelini ve bu sözleşmelerden kaynaklanan diğer ödeme yükümlülüklerini döviz cinsinden veya dövize endeksli olarak kararlaştırmaları mümkündür.</p> <p>(9) Türkiye’de yerleşik kişilerin; kendi aralarında akdedecekleri, taşıt satış sözleşmeleri dışında kalan menkul satış sözleşmelerinde sözleşme bedelini ve bu sözleşmelerden kaynaklanan diğer ödeme yükümlülüklerini döviz cinsinden veya dövize endeksli olarak kararlaştırmaları mümkündür.</p> <p>(10) Türkiye’de yerleşik kişilerin; kendi aralarında akdedecekleri, taşıt kiralama sözleşmeleri dışında kalan, menkul kiralama sözleşmelerinde sözleşme bedelini ve bu sözleşmelerden kaynaklanan diğer ödeme yükümlülüklerini döviz cinsinden veya dövize endeksli olarak kararlaştırmaları mümkündür.</p>	<p>(7) The contract prices and other contractual financial obligations in the service agreement executed by Turkish residents cannot be determined in foreign currency or be indexed to a foreign currency regarding the consulting, carriage and brokerage agreements, except;</p> <p>a) the service agreement to be executed by persons who are not Turkish citizens,</p> <p>b) the service agreements that are concluded for exports, transit trades, sales and deliveries that are deemed as exports, and services and activities that bring foreign currencies into Turkey</p> <p>c) the service agreements executed within scope of the activities to be performed abroad by Turkish residents</p> <p>ç) the service agreements between Turkish residents starting from Turkey and ending abroad or starting abroad and ending in Turkey or starting abroad and ending abroad</p> <p>(8) The contract prices and other contractual financial obligations arising from work agreements consisting of costs on foreign currencies executed between Turkish residents can be determined in foreign currency or be indexed to a foreign currency.</p> <p>(9) The contract prices and other contractual financial obligations arising from sales agreements between Turkish residents for movables other than vehicles may possibly be determined in a foreign currency or indexed to a foreign currency.</p> <p>(10) The contract prices and other contractual financial obligations arising from rental agreements between Turkish residents for movables other than vehicles may possibly be determined in a foreign currency or indexed to a foreign currency.</p>
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<p>(11) Türkiye’de yerleşik kişilerin; kendi aralarında akdedecekleri, bilişim teknolojileri kapsamında yurt dışında üretilen yazılımlara ilişkin satış sözleşmeleri ile yurtdışında üretilen donanım ve yazılımlara ilişkin lisans ve hizmet sözleşmelerinde sözleşme bedelini ve bu sözleşmelerden kaynaklanan diğer ödeme yükümlülüklerini döviz cinsinden veya dövize endeksli olarak kararlaştırmaları mümkündür.</p> <p>(12) 4490 sayılı Türk Uluslararası Gemi Sicili Kanunu ile 491 sayılı Kanun Hükmünde Kararnamede Değişiklik Yapılmasına Dair Kanunda tanımlanan gemilere ilişkin finansal kiralama (leasing) sözleşmelerinde, sözleşme bedelinin ve bu sözleşmelerden kaynaklanan diğer ödeme yükümlülüklerin döviz cinsinden veya dövize endeksli olarak kararlaştırılması mümkündür.</p> <p>(13) 32 Sayılı Kararın 17 ve 17/A maddeleri kapsamında yapılacak finansal kiralama (leasing) sözleşmelerine ilişkin bedellerin döviz cinsinden kararlaştırılması mümkündür.</p> <p>(14) Türkiye Cumhuriyeti Devleti ile vatandaşlık bağı bulunmayan Türkiye’de yerleşik kişilerin taraf olduğu iş sözleşmelerinde, sözleşme bedelinin ve bu sözleşmelerden kaynaklanan diğer ödeme yükümlülüklerinin döviz cinsinden veya dövize endeksli olarak kararlaştırılması mümkündür.</p> <p>(15) On altıncı fıkra hükümleri saklı kalmak kaydıyla, kamu kurum ve kuruluşları ile Türk Silahlı Kuvvetlerini Güçlendirme Vakfı şirketlerinin taraf olduğu gayrimenkul satış ve gayrimenkul kiralama dışında kalan sözleşmelerde, sözleşme bedelinin ve bu sözleşmelerden kaynaklanan diğer ödeme yükümlülüklerin döviz cinsinden veya dövize endeksli olarak kararlaştırılması mümkündür.</p>	<p>(11) The contract prices and other contractual financial obligations arising from sales agreements for software and hardware produced abroad and service agreements for hardware and software produced abroad as part of information technology can be determined in a foreign currency or indexed to a foreign currency.</p> <p>(12) The contract prices and other contractual financial obligations arising from financial leasing agreements for vessels pursuant to Turkish International Ship Registry Law No. 4490 and dated December 16, 1999 and Law on Amending Statutory Decree No. 491 can be determined in a foreign currency or indexed to a foreign currency.</p> <p>(13) The contract prices as for financial leasing agreements that fall under the scope of Articles 17 and 17(A) of the Decree No. 32 can be determined in a foreign currency.</p> <p>(14) The contract prices and other contractual financial obligations in employment agreements executed by individuals who are not Turkish citizen but who are Turkish residents, (Turkish non-citizen residents) can be determined in a foreign currency or be indexed to a foreign currency.</p> <p>(15) Without prejudice to the provisions stated in the paragraph sixteen the contract price and the other contractual financial obligations in the agreements except the real property sales and immovable rental agreements executed by the governmental institutions and organizations, and Turkish Armed Forces Foundation may be determined in foreign currency or as indexed to foreign currency.</p>
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(16) Kamu kurum ve kuruluşlarının taraf olduğu döviz cinsinden veya dövize endeksli ihaleler, sözleşmeler ve milletlerarası antlaşmaların ifası kapsamında gerçekleştirilecek olan projeler dahilinde; yüklenicilerin veya görevli şirketlerin ve bunların sözleşme imzaladığı tarafların üçüncü taraflarla akdedeceği veya bahsi geçen projeler çerçevesinde akdedilecek gayrimenkul satış sözleşmeleri ve iş sözleşmeleri dışında kalan sözleşmelerde, sözleşme bedelinin ve bu sözleşmelerden kaynaklanan diğer ödeme yükümlülüklerin döviz cinsinden veya dövize endeksli olarak kararlaştırılması mümkündür.

(17) 4749 sayılı Kamu Finansmanı ve Borç Yönetiminin Düzenlenmesi Hakkında Kanun kapsamında gerçekleştirdiği işlemlerle ilgili olarak yapılan sözleşmelerde, sözleşme bedelinin ve bu sözleşmelerden kaynaklanan diğer ödeme yükümlülüklerin döviz cinsinden veya dövize endeksli olarak kararlaştırılması mümkündür. Bu işlemlerle ilgili olarak bankaların taraf olduğu sözleşmelerde, sözleşme bedelinin ve bu sözleşmelerden kaynaklanan diğer ödeme yükümlülüklerin döviz cinsinden veya dövize endeksli olarak kararlaştırılması mümkündür.

(18) 32 Sayılı Karar hükümleri saklı kalmak kaydıyla, 6362 sayılı Sermaye Piyasası Kanunu ile bu Kanuna dayalı olarak yapılan düzenlemeler çerçevesinde sermaye piyasası araçlarının (yabancı sermaye piyasası araçları ve depo sertifikaları ile yabancı yatırım fonu payları da dahil olmak üzere) döviz cinsinden oluşturulması, ihracı, alım satımı ve yapılan işlemlere ilişkin yükümlülüklerin döviz cinsinden kararlaştırılması mümkündür.

(19) Dışarıda yerleşik kişilerin Türkiye’de bulunan; şube, temsilcilik, ofis, irtibat bürosu, doğrudan veya dolaylı olarak yüzde elli ve üzerinde pay sahipliklerinin veya ortak kontrol ve/veya kontrolüne sahip bulunduğu şirketler ile serbest bölgedeki faaliyetleri kapsamında serbest bölgelerdeki şirketlerin işveren veya hizmet alan olarak taraf olduğu iş ve hizmet sözleşmelerinde, sözleşme bedelinin ve bu sözleşmelerden kaynaklanan diğer ödeme yükümlülüklerinin döviz cinsinden veya dövize endeksli olarak kararlaştırılması mümkündür.

(16) The contract price and the other contractual financial obligations in the agreements executed by and between the contractors or official companies and third parties may be determined in foreign currency or as indexed to foreign currency only within the scope of the execution of the projects with public tenders, agreements and international treaties executed in foreign currency or as indexed to foreign currency where the governmental institutions and organizations are parties of, excluding the real property sales and the employment agreements.

(17) The contract price and the other contractual financial obligations arising from contracts executed under Law on Public Finance and Arrangement for Management of Debts No. 4749, may be determined in foreign currency or as indexed to a foreign currency. The contract prices and the other contractual financial obligations arising from contracts executed by the banks with respect to the abovementioned transactions, may be determined in foreign currency or as indexed to a foreign currency.

(18) Provided that the provisions of the Decree No. 32 are reserved, the capital market instruments (including the foreign capital market instruments and depositary receipts, and foreign investment fund shares) may be issued and/or traded in foreign currency or as indexed to foreign currency, or the obligations regarding such transactions may be determined in foreign currency or as indexed to foreign currency within the framework of the Capital Markets Law numbered 6362, and the secondary legislation with respect to the aforementioned law.

(19) The contract price and the other contractual financial obligations in the employment and service agreements executed by branches, representatives, offices, and liaison offices of the real or legal entities that do not reside in Turkey or companies in which they directly or indirectly hold 50% or more of the shares or the companies that they have a common control and/or over and free zone companies under their operations in free zones in cases where such entities act as employer or service-receiver, may be determined in foreign currency or as indexed to foreign currency.

20) Türkiye’de yerleşik yolcu, yük veya posta taşıma faaliyetinde bulunan ticari havayolu işletmeleri; hava taşıma araçlarına, motorlarına ve bunların aksam ve parçalarına yönelik teknik bakım hizmeti veren şirketler; sivil havacılık mevzuatı kapsamında havalimanlarında yer hizmetleri yapmak üzere çalışma ruhsatı alan veya yetkilendirilen kamu ya da özel hukuk tüzel kişiliği statüsündeki kuruluşlar ile söz konusu kuruluşların kurdukları işletme ve şirketler ile doğrudan veya dolaylı olarak sermayelerinde en az %50 hisse oranına sahip olduğu ortaklıkların Türkiye’de yerleşik kişilerle döviz cinsinden veya dövizde endeksli bedeller içeren gayrimenkul satış, gayrimenkul kiralama ve iş sözleşmeleri haricindeki sözleşmeleri akdetmeleri mümkündür.

(21) Bu madde uyarınca sözleşme bedeli ve bu sözleşmelerden kaynaklanan diğer ödeme yükümlülükleri döviz cinsinden veya dövizde endeksli olarak kararlaştırılmayan sözleşmeler kapsamında düzenlenecek kıymetli evraklarda yer alan bedellerin döviz cinsinden veya dövizde endeksli olarak belirlenmesi mümkün değildir. Ancak, 32 sayılı Kararın Geçici 8 inci maddesinin yürürlüğe girdiği tarihten önce düzenlenmiş ve dolaşıma girmiş bulunan bu kapsamdaki kıymetli evraklar anılan geçici madde hükmünden istisnadır.

(22) Uluslararası piyasalarda fiyatı döviz cinsinden belirlenen kıymetli madenlere ve/veya emtiaya endekslenen ve/veya dolaylı olarak dövizde endekslenen sözleşmeler, 32 Sayılı Kararın 4’üncü maddesinin (g) bendi uygulaması kapsamında dövizde endeksli sözleşme olarak değerlendirilir. Ancak, taşımacılık faaliyetlerine ilişkin hizmet sözleşmelerinde akaryakıt fiyatlarına endeksleme yapılması mümkündür.

(20) The contract price and other contractual payment obligations in the agreements executed by the Turkish-resident commercial airline companies operating in transportation of passengers, freight and mails, companies providing technical maintenance services to airplanes or for their motors and other components, public or private legal entities institutions that operate on ground services in airports within the scope of civil aviation legislation, or their companies and associations they directly or indirectly hold 50% or more of the shares, may be determined in foreign currency or as indexed to foreign currency, excluding the real property sales and rental agreements, and employment agreements.

(21) The value of the securities issued within the scope of the agreements indicated hereinabove which cannot be determined in foreign currency or as indexed to foreign currency shall not be determined in foreign currency or as indexed to foreign currency. However, negotiable instruments in this scope, which have been arranged before the date of entry into force of the Provisional Article 8 of Decision 32 and entered into circulation, are exempt from the provision of the provisional article.

(22) The agreements indexed to precious metals where values are determined as foreign currency in international markets and/or indexed to commodity and/or indexed to foreign currency indirectly shall be considered as an agreement indexed to foreign currency within the scope of the subparagraph (g) of the Article 4 of the Decree No 32. However, it is possible to index fuel-oil prices in service contracts for transportation services.

(23) Türkiye’de yerleşik kişilerin yurt dışındaki; şube, temsilcilik, ofis, irtibat bürosu, işlettiği veya yönettiği fonlar, yüzde elli ve üzerinde pay sahipliklerinin bulunduğu şirketler ile doğrudan ya da dolaylı olarak sahipliklerinde bulunan şirketler 32 Sayılı Kararın 4’üncü maddesinin (g) bendi uygulaması kapsamında Türkiye’de yerleşik olarak değerlendirilir. Ancak, sözleşmenin yurt dışında ifa edilmesi durumunda bu fıkra hükmü uygulanmaz.

(24) Bu madde uyarınca akdedilecek sözleşmelerde istisna kapsamına alınan, ancak 32 Sayılı Kararın Geçici 8 inci maddesinin yürürlüğe girdiği tarihten önce akdedilmiş bulunan sözleşmeler de anılan geçici madde hükmünden istisnadır.

(25) Türk Parası Kıymetini Koruma Hakkında 32 Sayılı Kararın Geçici 8 inci maddesinin yürürlüğe girdiği tarihten önce akdedilmiş bulunan taşıt kiralama ve yolcu taşıma amaçlı ticari satış sözleşmeleri anılan geçici madde hükmünden istisnadır.

(26) 32 sayılı Kararın Geçici 8 inci maddesinin yürürlüğe girdiği tarihten önce akdedilmiş bulunan, menkul ve gayrimenkullere ilişkin finansal kiralama sözleşmeleri anılan geçici madde hükmünden istisnadır.

(27) Bu madde uyarınca sözleşme bedeli ve bu sözleşmelerden kaynaklanan diğer ödeme yükümlülükleri döviz cinsinden veya dövize endeksli olarak kararlaştırılması mümkün olmayan sözleşmelerde yer alan bedellerin 32 Sayılı Kararın Geçici 8 inci maddesi kapsamında Türk parası olarak taraflarca yeniden belirlenmesi zorunludur.

(23) The branches, representation or liaison offices of Turkish residents located abroad, their funds which they operate or manage, companies that they hold the 50% or more of the shares, and companies which they directly or indirectly own shall be accepted as the residents in Turkey as per sub-paragraph (g) of the Article 4 of the Decree No 32. However, if the contract is executed abroad, the provisions of this paragraph shall not apply.

(24) The Agreements which are deemed as exceptions in scope of this Article and were executed prior to effective date of provisional article 8 of the Decree No 32 are exempt from abovementioned provisional article.

(25) Rental agreements for the vehicles and agreements for sale of commercial vehicles for passenger transportation executed prior to effective date of provisional article 8 of the Decree No 32 on the Protection of the Value of Turkish Currency are exempt from the provisions of the aforementioned provisional article.

(26) Contracts for financial leasing of movables and immovables executed prior to effective date of provisional Article 8 of the Decree No. 32 are exempt from the provisional article.

(27) It is required to re-determine the agreement values and other contractual financial obligations in Turkish currency of the agreements specifically indicated in this Communiqué pursuant to provisional article 8 of the Decree No 32.

(28) Bu madde uyarınca sözleşme bedeli ve bu sözleşmelerden kaynaklanan diğer ödeme yükümlülükleri döviz cinsinden veya dövize endeksli olarak kararlaştırılması mümkün olmayan sözleşmelerde yer alan bedeller Türk Parası Kıymetini Koruma Hakkında 32 Sayılı Kararın Geçici 8 inci maddesi kapsamında Türk parası olarak taraflarca yeniden belirlenirken mutabakata varılamazsa; akdedilen sözleşmelerde döviz veya dövize endeksli olarak belirlenen bedeller, söz konusu bedellerin 2/1/2018 tarihinde belirlenen gösterge niteliğindeki Türkiye Cumhuriyet Merkez Bankası efektif satış kuru kullanılarak hesaplanan Türk parası cinsinden karşılığının 2/1/2018 tarihinden bedellerin yeniden belirlendiği tarihe kadar Türkiye İstatistik Kurumunun her ay için belirlediği tüketici fiyat endeksi (TÜFE) aylık değişim oranları esas alınarak artırılması suretiyle belirlenir.

Türk Parası Kıymetini Koruma Hakkında 32 Sayılı Kararın Geçici 8 inci maddesinin yürürlüğe girdiği tarihten önce akdedilen konut ve çatılı iş yeri kira sözleşmelerinde döviz veya dövize endeksli olarak belirlenen bedeller bu fıkranın ilk paragrafına göre iki yıllık süre için Türk parası olarak belirlenir.

Ancak, Türk parası olarak belirlemenin yapıldığı kira yılının sonundan itibaren bir yıl geçerli olmak üzere; anılan paragraf uyarınca Türk parası olarak belirlenen kira bedeli, taraflarca belirlenirken mutabakata varılamazsa, belirleme tarihinden belirlemenin yapıldığı kira yılının sonuna kadar Türkiye İstatistik Kurumunun her ay için belirlediği tüketici fiyat endeksi (TÜFE) aylık değişim oranları esas alınarak artırılması yoluyla belirlenir.

Bir sonraki kira yılı Türk parası cinsinden kira bedeli ise, taraflarca belirlenirken mutabakata varılamazsa, önceki kira yılında geçerli olan kira bedelinin Türkiye İstatistik Kurumunun belirlediği tüketici fiyat endeksi (TÜFE) aylık değişim oranları esas alınarak artırılması yoluyla belirlenir ve belirlenen Türk parası cinsinden kira bedeli bu fıkarda belirtilen iki yıllık sürenin sonuna kadar geçerli olur.

(28) Within the scope of the amendments to the Decree, in the event of the parties cannot mutually agree on the exchange rates to be applied to the agreement values or other contractual financial obligations either in foreign currency or as indexed to foreign currency shall be determined by applying the monthly consumer price index rate ("CPI") on the date of redetermination which set by the Turkish Statistical Institute for each month to the exchanged amount in Turkish currency that calculated based on the indicative effective selling rate on January 2, 2018 announced by the Central Bank of the Turkish Republic.

The agreement values which are determined in foreign currency or as indexed to foreign currency regarding rental agreements of residential premises and roofed workplaces which are signed before effective date of provisional article 8 of the Decree No 32 on the Protection of the Value of Turkish Currency, shall be determined in Turkish currency for two (2) years' period according to principles stipulated hereinabove

However, in the event of the parties cannot mutually agree to determine the rental value according to the principles indicated hereinabove on the date of the determination to stay in effect for one (1) year period following the rent year the determination has been made, it is stipulated that the rental value shall be increased based on the monthly changing rates of the CPI that are determined by the Turkish Statistical Institute for each month from the date of determination until the end of such rental year.

In the event of the parties cannot mutually agree to determine rental amount in TRL regarding upcoming rental year, the rental amount for the upcoming rental period shall be determined by increasing the previous rental amount on the basis of the monthly CPI rate and such rental amount shall be valid until the end of two (2) years' period.

<p>Bu fıkra hükmü, bu madde uyarınca sözleşme bedeli ve bu sözleşmelerden kaynaklanan diğer ödeme yükümlülükleri döviz cinsinden veya dövizde endeksli olarak kararlaştırılması mümkün olmayan sözleşmelerde tahsili yapılmış veya gecikmiş alacaklar ile gayrimenkul kira sözleşmeleri kapsamında verilen depozitolar ve sözleşmelerin ifası kapsamında dolaşıma girmiş kıymetli evraklar için bu fıkra hükmü uygulanmaz.</p> <p><b>MADDE 2</b> – Bu Tebliğ yayımı tarihinde yürürlüğe girer.</p> <p><b>MADDE 3</b> – Bu Tebliğ hükümlerini Hazine ve Maliye Bakanı yürütür.</p>	<p>Out of the contracts in which the contract price and other payment obligations cannot be denominated in or indexed to foreign currency as per this article; the receivables collected or delayed and deposits given within the scope of the immovable property lease contracts, and the negotiable instruments circulated within the scope of the performance of the contracts are exempted from the provision of this sub-article.</p> <p><b>ARTICLE 2-</b> This Communique shall enter into force on the date of publication.</p> <p><b>ARTICLE 3-</b> The provisions of this Communique are executed by the Ministry of Treasury and Finance.</p>
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