

NEW RULES FOR BAN ON FOREIGN CURRENCY CONTRACTS

The Ministry of Treasury and Finance issued the Communiqué numbered 2018-32/52 on 16 November 2018 that revises certain provisions of the Communiqué numbered 2018-32/34 on implementation of the ban on foreign currency contracts

Background

After issuance of the Presidential Decree No:85 (the “**Decree**”) in the Official Gazette dated 13 September 2018 that bans to use foreign currencies or foreign currency indexes in contracts between Turkish residents (the “**FX-ban**”), the Ministry of Treasury and Finance (the “**Ministry**”) issued [the Communiqué numbered 2018-32/51](#) on 6 October 2018 (the “**Former Communiqué**”) that clarifies implementation of the FX-ban and clarification of certain exemptions.

After receiving complaints from and requests of various market participants, the Ministry issued a new Communiqué numbered 2018-32/52 (the “**New Communiqué**”) on 16 November 2018 that mainly aims to extend the scope of exemptions and clarify few gray areas under discussion with respect to implementation of the previous rules.

Additional Exemptions under the New Communiqué

In addition to contracts as defined under the Former Communiqué, the New Communiqué brings exemption, and thus permits to use foreign currencies, in contracts falling under below descriptions:

- (a) Contracts for Rental of Real Estates where a non-Turkish citizen or a local company, branch, representative office, office or liaison office that is held and/or controlled (including joint control status) by foreign shareholders or foreign entities (“**Foreign-controlled Local Entity**”) or a company located at free-trade zones (“**FTZ Entity**”) acts as the tenant.

⇒ *In the Former Communiqué, all the named persons or entities were subject to the FX-ban with respect to contracts for rental of real estates. It should be noted that exemption is applicable only if the referred persons or entities are acting as tenant. Thus, rental contracts where the referred persons or entities act as landlord shall continue to be subject to the FX-ban.*

(b) Contracts for Sale of Real Estates where a non-Turkish citizen or a Foreign-controlled Local Entity or a FTZ Entity acts as the purchaser.

⇒ *In the Former Communiqué, all the named persons or entities were subject to the FX-ban with respect to contracts for sale of real estates. It should be noted that exemption is applicable only if the referred persons or entities are acting as purchaser. Thus, sale contracts for real estates where the referred persons or entities act as the seller shall continue to be subject to the FX-ban.*

(c) Contracts for Rental of Accommodation Facilities where such facilities are licensed by the Ministry of Culture and Tourism.

⇒ *In the Former Communiqué, these contracts were subject to the FX-ban.*

(d) Contracts for Rental of Duty-free shops.

⇒ *In the Former Communiqué, these contracts were subject to the FX-ban.*

(e) Employment contracts with shipmen.

⇒ *In the Former Communiqué, only employment contracts relevant with duties to be served abroad were subject to exemption from the FX-ban. The New Communiqué incorporates the employment contracts with shipmen into this exemption.*

(f) Work contracts consisting of costs on foreign currencies.

⇒ *In the Former Communiqué, all work contracts excluding construction, fixing and maintenance of ships were subject to FX-ban. The New Communiqué redefines the*

exemption as “all contracts consisting of foreign currency costs” rather than referring to construction, fixing and maintenance of ships.

(g) Rental and Sale Contracts for Work Equipment.

⇒ *In the Former Communiqué, rental and sale contracts for work equipment were excluded from exemption from the FX-ban. The New Communiqué omits such exclusion so that rental and sale contracts for work equipment shall also be exempt from the FX-ban.*

(h) Service contracts that commence and end abroad.

⇒ *In the Former Communiqué, only contracts commencing abroad and ending in Turkey and contracts commencing in Turkey and ending abroad were exempt from the FX-ban. The New Communiqué incorporates the contracts commencing and ending abroad to be exempt from the FX-ban.*

(i) Contracts under certain projects where public entities involve and realized under FX and FX-indexed contracts, bids and international treaties to be executed by underwriters, contractors or third parties contracting with the same (excluding contracts for sale of real estates and employment contracts).

⇒ *In the Former Communiqué, only contracts to be executed by underwriters were exempt from the FX-ban. The New Communiqué incorporates the contracts to be executed by contractors or third parties contracting with underwriters and contractors to be exempt from the FX-ban under the defined project contracts.*

(j) Contracts executed under Law on Public Finance and Arrangement for Management of Debts (Law No:4749).

⇒ *In the Former Communiqué, only contracts to be executed by banks under the referred Law No:4749 were exempt from the FX-ban. The New Communiqué broadens the scope of such exemption to cover all contracts, either to be executed by banks or third parties, under Law No:4749 to be exempt from the FX-ban.*

(k) Contracts for Sale of Commercial Vehicles, Contracts for Financial Leasing of Movables and Immovables if executed before 12 September 2018

⇒ *In the Former Communiqué, only car rental agreements that were executed before 12 September 2018 were exempt from conversion requirement into TRY. The New Communiqué broadens the scope of such exemption to cover Contracts for Sale of Commercial Vehicles, Contracts for Financial Leasing of Movables and Immovables that were executed before 12 September 2018.*

Clarifications under the New Communiqué

In addition to defining additional exemptions, the New Communiqué also brings following clarifications for implementation of the FX-ban:

(a) **Contracts for Sale of Hardware and Software**

It is clarified that the exemption from the FX-ban with respect to contracts for sale of hardware and software shall be applicable only for hardware and software that were produced abroad. Thus, sale contracts for sale of hardware and software that were produced in Turkey shall be subject to the FX-ban.

(b) **Employment and Service Contracts of Foreign-controlled Local Entities and FTZ Entities**

It is clarified that the exemption from the FX-ban with respect to employment and service contracts to be executed by Foreign-controlled Local Entities or by FTZ Entities shall be applicable only in cases where such entities act as employer or service-receiver. In contrary where such entities act as employee or service provider, the FX-ban shall continue to be applicable.

(c) **Indexing to Fuel-oil Prices in Service Contracts for Transportation Services**

It is clarified that indexing to fuel-oil prices in service contracts for transportation services would not be treated as indexing to foreign currency, and thus, would be exempt from the FX-ban.

(d) **Entities and Investment Funds Incorporated by Turkish Residents in Foreign Jurisdictions**

The Former Communiqué provides that branches, liaison offices, representative offices or offices incorporated by and investment funds incorporated or managed by Turkish residents in foreign jurisdictions shall be treated as “Turkish Resident” for implementation of the FX-ban. The New Communiqué provides that the contracts to be realised in foreign jurisdictions shall be exempt from

such approach, and thus, the FX-ban shall not be applicable for contracts executed by such entities and investment funds.

(e) Deposits and Securities under Real Estate Rental Contracts

The New Communique clarifies that the deposits paid and securities executed under real estate rental contracts shall not be subject to requirement to convert into TRY. On this basis, in vcase a deposit in FX-currency was paid under a rental contract, even in case the rental contract is subject to the FX-ban, the deposit amount shall continue to be in foreign currency without conversion into TRY.

Specific Considerations for Foreign-controlled Local Entities

Based on the New Communique, following issues shall be noted by Foreign-controlled Local Entities:

1. In contrary to the approach of the Former Communique, the New Communique brings exemption for Foreign-controlled Local Entities with respect to rental and sale contracts for real estates. However, such exemption shall be applicable only in cases where Foreign-controlled Local Entities act as the tenant or the purchaser under such contracts. In contrary where the Foreign-controlled Local Entity acts as the landlord or the seller, the exemption shall not be applicable and such contracts will be subject to the FX-ban.
2. The New Communique restricts the exemption of employment and service contracts of Foreign-controlled Local Entities to be limited to cases where the Foreign-controlled Local Entity acts as the employer or service receiver under such contracts. In contrary where the Foreign-controlled Local Entity acts as the employee or the service provider, the exemption shall not be applicable and such contracts will be subject to the FX-ban.
3. The Former Communique stated that, even in cases where the Foreign-controlled Local Entities may benefit from exemption from the FX-ban (i.e. rental contracts), they would be entitled to request the contracts to be converted into TRY and counter parties would be obliged to comply with such request. Under the New Communique, such clause was omitted. As a result of such omission, Foreign-controlled Local Entities are obliged to continue with foreign currency amounts as provided by such contracts and may not request such contract amounts to be converted into TRY from their counterparties unless they mutually agree for conversion.

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