

RECENT DECREE BANS FOREIGN CURRENCY CONTRACTS BETWEEN TURKISH RESIDENTS

This Legal Alert aims to set out the amendments made to the Decree No. 32 on Protection of the Value of Turkish Currency (“Decree”)

Presidency of the Republic of Turkey issued a new Presidential Decree (Decree No: 85) in the Official Gazette dated 13 September 2018 and numbered 30534, which brings prohibition to use foreign currencies in contracts between Turkish residents (the “**Amendment**”).

Pursuant to the Amendment, Turkish residents acting as party to below contracts with other Turkish residents are prohibited to use foreign currency (including Turkish Lira indexed to foreign currency) in determining the contractual value and payment liabilities:

- a) Contracts re. purchase and sale of any movables and immovables (i.e. real estates),
- b) Contracts re. rental of any movables and immovables including car rentals and financial leasing contracts,
- c) Leasing contracts,
- d) Employment contracts,
- e) Service contracts,
- f) Contracts of work.

The Amendment also states that, save for the exceptional cases to be determined by the Ministry of Treasury and Finance, existing contracts between Turkish residents with foreign currency or foreign currency indexed Turkish Lira liabilities shall be revised as to define the liabilities in Turkish Lira only within 30 days following the issuance of the Amendment (13 Sep 2018).

In light of the Amendment, following issues shall be noted:

- The prohibition is applicable for contractual liabilities between Turkish residents only. Accordingly, contracts between Turkish residents and foreign persons or foreign entities shall not be subject to the prohibition. For the purpose of the Amendment, Turkish residents refer all real persons and legal entities residing or incorporated in Turkey. On this basis, companies incorporated in Turkey by foreign persons or foreign entities also fall under the prohibition even in case shareholding of such companies is fully owned by foreigners.
- The Amendment clearly bans new contracts to be linked to foreign currency. However, requirement to revise the existing contracts linked to foreign currency may result certain discussions under below aspects:
 - (a) The Amendment does not refer to any mandatory principle in selection of the exchange rates for conversion of foreign currency liabilities in existing contracts into Turkish Lira. It is understood that the Amendment permits the parties to define the conversion rate through mutual agreement. Although this approach sounds smooth, it is also a fact that this liberty would certainly result renegotiation of contractual liabilities and thus substantial terms of existing contracts in Turkish market.
 - (b) Status of existing contracts with foreign currency liabilities where the relevant parties have already made necessary payments in foreign currency in advance is also vague. We expect that this vagueness may result discussions in specific circumstances although we do not expect Turkish courts to permit revisions or restitutions in these contracts.

Based on reactions in Turkish commercial market, further amendments on the same area may be expected.

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