

CLIENT ALERT

EXCHANGE REGULATIONS | TURKEY

APRIL 2022

AMENDMENTS TO COMMUNIQUÉ NO. 2008-32/34 ON DECREE NO. 32 ON THE PROTECTION OF THE VALUE OF THE TURKISH CURRENCY

Communiqué No. 2008-32/34 on Decree No. 32 on the Protection of the Value of Turkish Currency dated 28 February 2008 (the "**Communiqué**") has been amended by the Amendment Communiqué published in the Official Gazette no. 31814 dated 19 April 2022 (the "**Amendment Communiqué**"). New amendments came into force on the same date.

The purposes of the Communiqué as well as the Amendment Communiqué are to set out restrictions in relation to certain types of contracts concluded between Turkish residents to determine the purchase price and other payment obligations in foreign currencies or indexed on foreign currencies.

You may find below a summary of the main changes introduced by the Amendment Communiqué:

PAYMENT OBLIGATIONS UNDER SALE CONTRACTS

According to the Communiqué, it is possible to determine the purchase price and other payment obligations in foreign currencies or indexed on foreign currencies in any sale of goods contract that will be concluded between Turkish residents, excluding for the sale of vehicles. The Amendment Communiqué has introduced that, even if it is allowed to denominate in foreign currency the payment obligations under a sale of goods contracts, the relevant payments must be made in Turkish currency and the counterparty is required to accept the payment in Turkish currency.

The Ministry of Treasury and Finance (the "**Ministry**") has stated that the gist of the Amendment Communiqué was to prioritize the use of the Turkish currency and combat the high use US Dollars, in a follow-up announcement on 21 April 2022. The Ministry also stated that the denomination of payment obligations in foreign currencies or indexed on foreign currencies is still allowed to not unduly disrupt the market's operation or commercial activities. Furthermore, the Ministry clarified the scope of application of the recent amendments and accordingly, the below will be exempt from the requirements introduced by the Amendment Communiqué:

- i- payment obligations regarding the payment instruments (e.g. cheques) which were in circulation prior to 19 April 2022 and were provided *in lieu* of payments arising from sale of goods contracts concluded between Turkish residents before 19 April 2022;
- ii- payment obligations regarding invoices issued before 19 April 2022; and
- iii- payment obligations regarding the purchase and sale of precious metals and precious stones executed in foreign currencies, and settlement of such transactions, within the scope of Borsa İstanbul A.Ş.'s Precious Metals and Precious Stones Market.

As regards the scope of application, as the amendments only relate to the sale of goods contracts concluded between Turkish residents, it is not mandatory to make and accept payments in Turkish currency on the sale of goods contracts that have been or will be concluded between a foreign resident and a Turkish resident. In addition, the amendments will not be applicable to sale of goods contracts to which public authorities and institutions and the companies of Turkish Armed Forces Empowerment Foundation are parties.

Following the Amendment Communiqué, it will not be possible to use payment instruments (e.g. cheques) that are denominated in foreign currencies *in lieu* of payment obligations under the sale of goods contracts concluded between Turkish residents. As regards the sale of vehicles contracts, both the denomination of payment obligations in foreign currencies and the performance of payment obligations in foreign currencies are prohibited.

It is worth noting that the definition of "goods" under the Communiqué covers each and every asset other than immovable assets. Therefore, the amendment seems to be applicable to share purchase agreements and asset purchase agreements as well. In this respect, the obligation to make and accept payments in Turkish currency should be a point of consideration in cases of share or asset acquisition deals between Turkish companies and/or shareholders.

On a separate note, within the scope of the Capital Markets Law No 6362 and its ancillary legislation, capital markets instruments (including, without limitation, foreign capital markets instruments and depositary receipts and foreign investment fund shares) may be created, issued and traded in foreign currencies and the monetary obligations therewith may be determined in foreign currencies.

As can be seen from the above, the new principles wrought by the Amendment Communiqué are not expected to create a significant financial risk for the transaction parties. However, it will most likely create some additional organizational burden on those financial officers who will be planning payment or collecting the Turkish currency purchase price.



In compliance with Turkish bar regulations, opinions relating to Turkish law matters that are included in this client alert have been issued by Özdirekcan Dündar Şenocak Ak Avukatlık Ortaklığı, a Turkish law firm acting as correspondent firm of Gide Loyrette Nouel in Turkey.

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