

## **The Restriction on Foreign Currency Dominated or Indexed Contract Prices Continues**

With the Presidential Decree numbered 85 and dated 12.09.2018, amendments were made on the Decree on the Protection of the Value of Turkish Lira numbered 32 and it was regulated that, besides the exceptions to be determined by the Ministry of Treasury and Finance, the contract prices and other payment obligations of all kinds of movable and immovable purchase and sale and renting, financial leasing and employment, service and work contracts between the Turkey-resident public and private persons cannot not be determined in or indexed to foreign currency. The Communiqué No: 2018-32/51 issued on 06.10.2018 expanded and detailed the mentioned exceptions. Finally, with the Communiqué No: 2018-32/52 issued on 16.11.2018, the final scope of the exceptions was determined.

The Communiqué No. 2018-32/52 stipulates that “*The prices denominated in or indexed to a foreign currency in the lease agreements for residential and roofed workplaces concluded prior to the effective date of the provisional article 8 of the Decree No. 32 (13.09.2018) shall be denominated in Turkish Lira for a period of two years according to the first paragraph of this sub-article...*” Due to the drafting of the two-year transition period, in practice some argued that the prices in the lease agreements for residential and roofed workplaces which had been determined as Turkish Lira can be once again denominated in or indexed to foreign currency whereas there were also those who argued the otherwise that the prices shall remain in Turkish Lira.

The announcement published on the Ministry's official website on 13.10.2020 finally eliminated these two views in dispute and clarified that even after the end of the two-year transition period, contract prices cannot be re-denominated in or re-indexed to a foreign currency. The Ministry also announced that, as the two-year transition period expires, if contracting parties fail to agree on the rate of increase to be applied to the prices in Turkish Lira, the limitations foreseen in the article 344<sup>1</sup> of the Turkish Code of Obligations, which sets forth the rules as to determining the rental price shall apply. It was also stated in the announcement that necessary sanctions with respect to the foreign exchange legislation shall be imposed in case of a practice contrary thereto.

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<sup>1</sup> Article 344: The agreement of the parties regarding the rental fee to be applied in the renewed lease periods are valid provided that the increase rate does not exceed the change in the consumer price index according to twelve-month averages in the previous lease year. This rule shall also be applied to lease agreements that are longer than one year.

In case there is no such agreement between parties, the rental fee will be determined by the judge on an equitable basis, taking into account the condition of the leased property, provided that the increase rate does not exceed the change in the consumer price index according to twelve-month averages in the previous lease year.

Regardless of whether or not an agreement has been made by the parties on this matter, the rent to be applied in the lease agreements of more than five years or renewed after five years and at the end of each five-year period, shall be determined by the judge in the new lease year on an equitable basis and by taking into account the change in the consumer price index according to twelve-month averages, the condition of the leased property and the equivalent rental prices. The rental fee determined by doing so for the rental years following each period of five years can be changed in accordance with the principles in the previous paragraphs.

If the rental price in the agreement is determined in a foreign currency, reserving the provisions of the Law on the Protection of the Value of Turkish Currency No. 1567 dated 20/2/1930, no changes can be made in the rental fee before five years. However, the provision of Article 138 of this Law under the title of "Excessive Hardship of Performance" is reserved. After five years, the third paragraph shall apply in determining the rental price by considering the changes in the value of the foreign currency.