

Freedom of contract is a strong universal prevailing principle of the Turkish Law of Obligations and the right to contract is an essential part of proprietary rights.

While, by means of making the possession of foreign currency illegal, the executive power may make impossible the performance of foreign currency payment obligations; it has no authority to interfere in the private contracts and as to how the payment considerations are determined whether or not in or indexed to foreign currency or the value of precious metals such as gold etc. The Law 1567 on the Protection of The Turkish Currency grants The President extensive authorities in order for him to take the measures to protect the currency, however the law does not give and cannot be interpreted as giving authority to restrict the private parties' freedom to contract.

Additionally the Decree, with a retrospective effect requires the already concluded and existing agreements to be amended accordingly which is inconsistent with the underlying principle that the laws and regulations cannot have retrospective effects.

Therefore we are of the view that the Presidential Decree is not consistent with the law and should be abolished.

Secondly with the Decree, the President authorizes the Ministry [of Treasury and Finance] to determine the scope of private law contracts that the decree covers [by means of determining exceptions]. It is an established principle of the Turkish public law that the authorities granted to public institutions cannot be delegated without enacting a respective law.

Therefore we are of the view that exercise by the Ministry to determine exceptions would not be consistent with the law.

We consider that the Decree may have been issued in order to reduce the high dollarization [or domestic transactions being denominated in or indexed to foreign currencies] in Turkey in order to help Turkish Lira gain value. However given that resident and non-residents are free to possess, to open bank accounts, incur payments in foreign currencies and to freely transfer foreign currencies the decree is likely to cause the market place change its behaviors finding creative or forceful ways of dealing in hard foreign currencies. Indeed the result that the FX prohibition can be lawfully and easily achieved easily by determining the consideration values linked to differentiation in payment dates: such as determining different values according to (x) date; (y) date and (z) date thus complying with the Decree's prohibition.

Therefore we are of the view that the Decree is not likely to achieve its objectives but rather is likely to cause to turmoil in the market place, to cause chaos in contractual relationships and to emanating thousands of administrative and civil disputes and lawsuits.

We plead and hope that the Decree is either substantially amended to deal only with the currency aspects or completely revoked as early as possible.

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