

19 November 2018

## INFORMATION REGARDING THE SECOND EXEMPTIONS TO THE RECENT PROHIBITIONS ON THE FOREIGN CURRENCY PAYMENTS

### A. INTRODUCTION

As you may know, in the Official Gazette dated 6 October 2018, the Ministry of Treasury and Finance (the “**Ministry**”) has published a communiqué (the “**First Exemptions Communiqué**”) providing certain exemptions, to the foreign currency payment prohibitions which had been introduced on 13 September 2018 for the following transactions:

- Sale agreements for movable and immovable assets;
- Lease agreements for movable and immovable assets, including financial leasing and leasing of vehicles;
- Employment agreements;
- Service agreements; and
- Construction agreements

Now, in the Official Gazette dated 16 November 2018, the Ministry has published a new communiqué (the “**Second Exemptions Communiqué**”) providing certain new exemptions to the foreign currency payment prohibitions as well as certain amendments and clarifications to the First Exemptions Communiqué.

### B. SECOND EXEMPTIONS TO THE PROHIBITONS ON THE FOREIGN CURRENCY PAYMENTS AND OTHER PRINCIPLES

#### I. Exemptions

In addition to the agreements mentioned under the First Exemptions Communiqué, the following agreements are exempted from the foreign currency payment prohibitions in accordance with the Second Exemptions Communiqué:

1. Sale and lease agreements for immovable executed by
  - i) non-Turkish real persons residing in Turkey; or

- ii) branches, representative offices, offices and liaison offices of a person residing abroad; or companies in which a person residing abroad has directly or indirectly 50% or more shareholding or joint control and/or control; or companies in free trade zones, only for their activities in the free trade zone; as the purchaser or lessee;
- Under the First Exemptions Communiqué, all sale and lease agreements for immovable were subject to the foreign currency payment prohibitions.
2. Lease agreements executed for the lease of the accommodation facilities licensed by the Ministry of Culture and Tourism;
    - Under the First Exemptions Communiqué, these agreements were subject to the foreign currency payment prohibitions.
  3. Lease agreements for the lease of the duty-free shops;
    - Under the First Exemptions Communiqué, these agreements were subject to the foreign currency payment prohibitions.
  4. Employment agreements executed by sailors;
    - Under the First Exemptions Communiqué, only the employment agreements executed for duties to be served abroad were exempted. The Second Exemptions Communiqué incorporates the employment agreements executed by sailors into this exemption.
  5. Service agreements executed between persons residing in Turkey that start in Turkey and end abroad, or vice versa, or start and end abroad;
    - Under the First Exemptions Communiqué, only service agreements regarding electronic communications that start in Turkey and end abroad, or vice versa were exempted.
  6. Construction agreements involving costs in foreign currency;
    - Under the First Exemptions Communiqué, only construction agreements executed for the construction, repair and maintenance of ships were exempted.
  7. Sale and lease agreements for engineering vehicles;
    - Under the First Exemptions Communiqué, sale and lease agreements for engineering vehicles were excluded from the exemption regarding the foreign currency payment prohibitions. As the Second Exemptions Communiqué omits such exclusion, sale and lease agreements for engineering vehicles shall be exempted from the foreign currency payment prohibitions.
  8. Agreements executed between (i) constructors or appointed companies or persons entering into an agreement with such constructors or companies, and (ii) third parties; on the condition that such agreements are executed for the performance of tenders, agreements and international

agreements which public institutions are party to and are in foreign currency or indexed to foreign currency (other than immovable sale and employment agreements);

- Under the First Exemptions Communiqué, only the agreements executed between constructors and third parties were exempted (other than immovable sale, immovable lease and employment agreements).
9. Agreements executed regarding the transactions carried out in accordance with the Law on Regulating Public Finance and Debt Management No. 4749 (the “**Law No. 4749**”);
- Under the First Exemptions Communiqué, only agreements executed by banks in accordance with the Law No. 4749 were exempted. The Second Exemptions Communiqué broadens the scope of such exemption to cover all agreements, either by banks and third parties, under the Law No. 4749.
10. Employment and service agreements executed by branches, representative offices, offices and liaison offices of a person residing abroad; or companies in which a person residing abroad has directly or indirectly 50% or more shareholding or joint control and/or holds control; or companies in free trade zones, only for their activities in the free trade zone; (as an employer or service provider),
- With the Second Exemptions Communiqué, the existing exemption regarding the employment and service agreements has been extended to include the companies in which a person residing abroad has **joint control** and/or **control**. Also, the Second Exemptions Communiqué also clarifies that this exemption shall be applicable only in cases where such entities act as employer or service-receiver.

## II. Other Principles

The Second Exemptions Communiqué also provides the following principles in respect of the foreign currency payment prohibitions and the relevant exemptions:

- Negotiable instruments which have been issued and circulated prior to 13 September 2018 and which include an amount denominated in foreign currency are not required to be converted into Turkish Lira.
- Financial lease agreements for movable and immovable assets which have been executed prior to 13 September 2018 and which include an amount denominated in foreign currency are not required to be converted into Turkish Lira.
- The prices of service agreements in respect of transportation activities can be indexed to fuel-oil prices.
- Agreements for the sale of commercial vehicles for passenger transportation which have been executed prior to 13 September 2018 and which include an amount denominated in foreign currency are not required to be converted into Turkish Lira.
- Security deposits paid in foreign currency under lease agreements for immovable are not required to be converted into Turkish Lira.

- In case the relevant agreement is performed abroad, branches, representative offices, offices and liaison offices incorporated abroad by persons residing in Turkey, funds operated or managed by those persons in foreign markets; and companies incorporated abroad where those persons directly or indirectly have 50% and more shareholding, shall not be considered as resident in Turkey and therefore, they shall not be subject to the foreign currency payment prohibitions.
- In cases where there is an exemption introduced for a party of the agreement and the exempted party is not willing to benefit from the exemption (so, it requests the agreement amount to be converted into TRY), the counterparty is not obliged to comply with such request and can continue to pay or be paid in foreign currency. Under the First Exemptions Communiqué, the exempted party were entitled to request the agreements to be converted into TRY.

\* \* \*

Should you have any queries, please do not hesitate to contact us.

*Güner Law Office was established in 1996 and has since grown into one of the major corporate, M&A, banking, litigation, energy, TMT and capital markets practices in Turkey.*

#### **Contact**

*Ece Güner  
Güner Law Office...  
Levent Caddesi Alt Zeren Sokak No.7  
Levent Istanbul 34330 Turkey  
T +90 212 282 4385  
F +90 212 282 4305  
[eg@guner.av.tr](mailto:eg@guner.av.tr)  
[www.guner.av.tr](http://www.guner.av.tr)*