

REGARDING THE RESTRICTION ON COMMERCIAL CASH LOANS DENOMINATED IN TRY

Banking Regulation and Supervision Agency (“**BRSA**”), with its authority arising out of Article 93 of the Banking Law numbered 5411¹, imposed a restriction on TRY denominated commercial cash loans to be provided to certain companies with its Board Decision numbered 10250 (“**Decision**”) on June 24, 2022 in order to strengthen financial stability and ensure effective functioning of the credit system and ensure that loans are used in accordance with their purpose.

Following the publication of the Decision, a statement was published on the BRSA's website on June 26, 2022 in order to clarify some issues regarding the Decision.

The regulations included in the Decision are summarized below:

1) Which Companies Will Be Included in the Scope of the Decision?

- (i) Companies subject to independent audit pursuant to Decree Law numbered 660 and related regulations²,
- (ii) Companies whose foreign currency (“**FX**”) cash assets (effective foreign currency including gold and foreign currency deposits in banks) have a TRY equivalent of more than 15 million TRY as of the loan application date,
- (iii) Companies, whose TRY equivalent of FX cash assets exceed 10% of their total assets or net sales revenue for the last 1 year; whichever is greater.

In order for the company to be within the scope of the Decision that restricts the use of commercial cash loans in TRY, **all three conditions** above must be met.

Additionally, real persons and real person shareholders of companies are not included in the scope of said Decision.

Whether a company is within the scope of the Decision will be determined by confirming and documenting its total assets and net sales revenue for the last 1 year in accordance with the total FX cash assets of the company and the most up-to-date independently audited financial statements.

¹ Pursuant to Article 93 of the Banking Law, the BRSA is authorized to take and implement the necessary decisions and measures to ensure confidence and stability in financial markets, efficient functioning of the credit system, development of the financial sector, and protection of the rights and interests of depositors.

² Whether a company is subject to independent auditing is determined by the Decree Law numbered 660, the Decision of the Council of Ministers numbered 2018/11597 and other relevant legislation which was decided in accordance with Article 397 of the Turkish Commercial Code numbered 6102,.

For companies that are obliged to prepare consolidated financial statements, this assessment will be made on the consolidated balance sheet.

As stated above, companies whose FX cash assets do not exceed the equivalent of TRY 15 million are not included in the TRY denominated commercial cash loan restriction as per the Decision. However, the BRSA set conditions for these companies to meet the following as of the loan application date:

- The total assets and net sales revenue for the last 1 year should be determined by the independent audit company according to the current FX cash assets and the most up-to-date financial statements.
- It should be declared and undertaken that the TRY equivalent of FX cash assets during the term of the loan to be used will not exceed TRY 15 million, or even if it exceeds, it will not exceed 10% of the total assets or the net sales revenue of the last 1 year, whichever is greater.
- In order to ensure the efficiency of audit to be implemented by bank in respect of such undertaking, the current value of the FX cash assets, total assets and net sales revenue for the last 12 months according to the previous month-end balance sheet of the companies should be communicated to the bank within the first 10 working days of each month.

As of the loan application date to be made after the Decision date, companies whose total FX cash assets have not yet been determined by independent audit companies, or companies whose current financial statements audited by independent audit companies are not ready, or companies whose FX net position gap has not yet been determined by independent audit companies as of the 3-month period following the loan application date may receive a new cash commercial loan denominated in TRY and may not be included within the scope of the Decision following the respective evaluation process of bank provided that such companies certify that the independent audit process has been initiated and declare the current value of the total FX cash assets, the total assets, the last 12 months' net sales revenue as of the end of the previous month, and the FX net position gap as of the 3 months following the application date to the relevant bank.

In calculating the TRY equivalent of FX cash assets, the foreign exchange buying rate of the Central Bank of the Republic of Turkey will be used.

2) Exceptions to the Restriction

Upon satisfying certain conditions, companies that cannot use cash commercial loans denominated in TRY due to the Decision and FX loans in accordance with the related legislation and the Decision Numbered 32 on the Protection of the Value of Turkish Currency are exempted from the restriction on commercial cash loans denominated in TRY.

Accordingly, if companies provide banks with documents approved by the independent audit company which indicate that the company has a foreign currency net position gap within 3 months from the date of application for the loan, it would be possible for these companies to use cash commercial loans in TRY, **provided that it would be limited only to the position gap in the 3-month period following the application date.**

3) FX Cash Assets Covered by the Decision

In the Decision, it is stated that companies' effective foreign currency, including gold, and FX deposits in banks are included within the scope of FX cash assets.

The securities and stocks issued in FX by non-residents and other monetary assets of companies such as reverse repo transactions with non-residents will also be included in the calculation of FX cash assets.

4) FX Cash Assets Not Included in the Scope of the Decision

Other monetary assets of companies, consisting of securities issued in FX by residents and debt instruments such as Eurobonds, are not included in the scope of FX cash assets.

5) Types of Commercial Loans within the Scope of Restriction and Status of Existing Credit Limits

All kinds of cash commercial loans in TRY to be used after the Decision date are within the scope of the restriction.

No additional control is required for commercial loans denominated in TRY in spot nature and whose contract has been concluded before the date of the Decision but have not yet been disbursed and will only be made available within the week starting from 27 June 2022, and the relevant loans will not be affected by the Decision.

The loans restructured after the Decision date are not considered as new loan disbursements. However, loans that are not within the scope of restructuring and that are renewed by changing the contract conditions after the date of the Decision or that are extended to refinance existing loans partially or completely are considered as new loan disbursements and fall within the scope of the restriction imposed by the Decision.

Non-cash loans, such as the Direct Debit System, are not covered by the Decision unless they are converted into cash loans.

The balance increase calculation to be made at the end of each month for loan transactions such as revolving, overdraft accounts or corporate credit cards and cash commercial TRY loans will be considered as new disbursement. In case of an increase in the balance compared to the end of the month before the calculation date at the end of each month, the relevant commercial loan customer will have to submit the documents approved by the independent audit company to the bank until this calculation to be made as of the end of the month.

If there is a balance risk amount as of the end of each month in overnight loans, the necessary documents must be submitted to the bank in the same way.

If, as a result of the calculations, it is determined that they are within the scope of the relevant restriction, it will not be possible to extend a new cash loan in TRY to such customers in loan types such as revolving, overdraft accounts, corporate credit cards and overnight loans, even if there is a limit gap.

6) The Role Given to Banks in the Scope of the Decision

Within the scope of the Decision, some obligations and duties have been assigned to banks operating in Turkey. The banks within the scope of the Decision:

- will provide documents to the extent that it is appropriate to demand from the customers in order to follow up that the loans are used in accordance with their purpose,
- will receive a letter of undertaking from the customers that they will submit all kinds of information and documents to the bank, upon request, for the determination and follow-up of the use of the loan in accordance with its purpose, and/or update the agreements with the customers within this scope, and
- will streamline business processes.

7) Alternatives To Which the Companies Covered By The Decision May Direct Their Assets

At first glance, a company who falls within the scope of the Decision but wishes to maintain its ability to borrow commercial cash loans denominated in TRY may use the following instruments for its current FX cash assets:

- (i) Currency Protected Deposit (CPD) Account:** The relevant company can invest its assets over TRY 15 million by opening a CPD account in banks within the scope of CPD.
- (ii) Profit distribution:** Depending on the company's profit status and operational cash needs, the relevant company may distribute profits to shareholders (resident or non-resident).
- (iii) Eurobond investment:** Eurobonds issued by Turkish banks or the Treasury may be purchased (In such a case, it is theoretically possible that an increase in demand for

Eurobond may decrease the relevant Eurobond interest rates and therefore the rate of return may decrease).

(iv) Purchase of commodities: Companies whose fields of activity is closely related to supply of certain commodities may choose to protect their assets by purchasing commodities (raw materials, etc.) relevant to their business.

Conclusion

Pursuant to the Decision, the BRSA has restricted the use of commercial cash loans denominated in TRY on the grounds that some companies invest in foreign currencies using TRY denominated loans even though they do not have foreign currency debt or foreign currency liabilities and even have an excess foreign currency position. Furthermore, it is stated that these restrictions were introduced in order to prevent said companies from investing in foreign currencies by using TRY commercial cash loan resources and direct such loan resources for production, employment and investment.

On the other hand, it may take time to clarify the effects of these restrictions on commercial operations of the companies, balancing the country's foreign trade deficit and their efforts to keep their foreign currency reserves in the country's borders as well as the operations of banks (especially in terms of new obligations imposed on banks).

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

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Contact

Ece Güner Toprak
Managing Partner
eg@guner.av.tr

Ömer Erdoğan
Partner
oe@guner.av.tr

Sertaç Coşgun
Associate
sc@guner.av.tr

Güner Hukuk Bürosu
Levent Caddesi, Alt Zeren Sokak No.7
Levent 34330, İstanbul
T +90 212 282 4385
F +90 212 282 4305
info@guner.av.tr
www.guner.av.tr