

### NEW RESTRICTIONS ON FX TRANSACTIONS

**Pursuant to the new resolution published by the Banking Regulation and Supervision Agency, commercial cash loans in Turkish Lira extended to certain Turkish companies are restricted as a measure to restrict the deposits of local companies on FX cash or investments on FX originated foreign securities**

#### 1. Introduction

Banking Regulation and Supervision Agency has published the Resolution No. 10250 (the “**Resolution**”)<sup>1</sup> on June 24, 2022, which brought certain restrictions on certain commercial cash loans in Turkish Lira (the “**Loans**”) and published a press release clarifying the Resolution (the “**Press Release**”)<sup>2</sup> on June 26, 2022 in order to prevent the purchase of foreign exchange through the borrowing Loans.

According to the Resolution, Turkish companies who meet the criteria below (the “**Restricted Companies**”) shall not borrow Loans:

- a) The company is subject to independent audit and is not a bank or financial institution;

<sup>1</sup> An English translation is attached as Annex-1 to this Legal Alert.

<sup>2</sup> A partial English translation is attached as Annex-2 to this Legal Alert.

- b) Turkish Lira equivalent of the company's foreign exchange assets exceeds 15 million Turkish Liras; and
- c) Turkish Lira equivalent of the company's foreign exchange assets exceeds 10% (ten percent) of the higher of company's net assets and the company's net sales revenue in the last financial year as per its most recent financial statements<sup>3</sup>.

Pursuant to the Press Release, foreign exchange assets include gold, foreign currency cash, foreign exchange deposits, foreign currency denominated securities and shares issued by foreign issuers and other foreign currency monetary assets such as reverse repo transactions with foreign counterparties in the calculations made for the items (b) and (c) above.

The required calculations and the initial oversight of the application of the restrictions, as well as any suspicious transactions which may be conducted for breaching the restrictions, will be made by the Turkish banks and reported to Banking Regulation and Supervision Agency as necessary.

## **2. Scope of Loans**

The Press Release further clarified the types of Loans which cannot be granted to the Restricted Companies after the date of the Resolution. Accordingly,

- a) As the general rule, commercial cash loans in Turkish Lira cannot be granted;
- b) An increase in the Turkish Lira balance of loan transactions at the end of a month compared to the previous month, through revolving loans, overdraft accounts or corporate credit cards, will be

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<sup>3</sup> For companies which are required to prepare consolidated financial statements, the calculation will be made based on their consolidated financial statements.

considered as a new disbursement of loan and may be subject to restrictions based on the criteria mentioned in Section 1 above;

- c) Outstanding balance risks by overnight loans at the end of the month are also considered to be within the scope of the Resolution and may be subject to restrictions based on the criteria mentioned in Section 1 above;
- d) Spot commercial cash loans for which the agreement is already executed but not yet utilized are not subject to restrictions provided that the loan is utilized between June 27, 2022 and July 1, 2022;
- e) Non-cash commercial loans such as direct debit systems are not restricted unless they are converted into cash loans;
- f) Restructuring of current loans under the applicable regulations are not restricted, however the renewal of loan by way of amending the agreements or the loans granted for the partial or complete refinancing of current loans will be considered as a new disbursement of loan and may be subject to restrictions based on the criteria mentioned in Section 1 above.

### **3. Exceptions to the Restriction**

The companies which do not meet all three (3) of the criteria described in Section 1 are entitled to borrow Loans. However, the companies which meet criteria (a) described in Section 1 shall provide an undertaking stating that their foreign exchange assets will not exceed 15 million Turkish liras or in case such threshold is exceeded, their foreign exchange assets will not exceed 10% (ten percent) of the higher of company's net assets and the company's net sales revenue in the last financial year, during the term of the loan.

A Restricted Company which is not entitled to borrow foreign currency loans as per the Decree No. 32 on Protection of the Value of Turkish Currency, may borrow Loans provided that it has a net position deficit in foreign currency. However, in such case, the Loan will be limited to the position deficit of three-months period after their application to the loan.

## Resolution of the Banking Regulation and Supervision Agency

**Resolution Number: 10250**

**Resolution Date: 24.06.2022**

In consequence of examination of the letter, dated 24.06.2022 and numbered E-24049440-010.99[4/5]-54316, and the appendices thereto during the meeting, held on 24.06.2022, of the Board, it is hereby resolved that;

Until the adoption of an resolution otherwise by the Board, for the purpose of being implemented following the date of adoption of this Resolution as part of the coordinated macro-prudential steps to be taken for the purpose of strengthening financial stability and ensuring effective functioning of the loan system by making use of the resources more efficiently as based on Section 93 of the Banking Law Nr.5411;

- In the event that the equivalent amount of the foreign currency (FX) cash assets (including gold, and effective foreign exchange and the FX deposits held at the banks) of any company other than banks and financial institutions and which is subject to independent auditing as per the Decree Law Nr.660 and the applicable regulations thereto (the "Company"), in Turkish Lira is in excess of 15 million TRY as of the date of submission of a loan application by such Company, then no new commercial cash loan shall be extended to any such Company if and when the amount of the FX assets of such Company is in excess of 10 percent of its total assets or its net sale proceeds for the last 1 year as indicated in their most recent financial statements, whichever is higher, and also that such assessment for any Company, which is obliged to draw up consolidated financial statements in accordance with the accounting and financial reporting standards as issued by the Public Oversight, Accounting and Auditing Standards Authority, shall be conducted on the basis of the consolidated balance sheets, and also that;

- As an exception to such rule and to be limited to the Companies which may not utilize any loan in FX as per the applicable regulations and provided that any such Company shall have caused, on the basis of the examination to be carried out on the basis of their most recent financial statements, that it is

determined by an independent auditing firm, authorized by the Public Oversight, Accounting and Auditing Standards Authority (independent auditing firm), that they have a foreign exchange net position deficit within a period of 3 months following the date of submission of a loan application to a bank by such Company, and also that any such Company shall have submitted an application to a bank together with the documentation as approved by any such auditing firm; commercial cash loans in TRY may be extended to any such Company to be limited only to such determined position deficit within the period of 3 months following the date of submission of such application; and also that;

- Any Company, the equivalent amount of its FX cash assets, in Turkish Lira, of which is not excess of 15 million TRY, shall be exempted from this practice provided that such Company shall have had its total assets and the net sale proceeds for the last 1 year, as indicated in its most recent financial statements, determined by an independent auditing firm as of the date of submission of a loan application, and also that it shall have represented and warranted that the equivalent amount of its FX cash assets in TRY will not be in excess of 15 million TRY during the maturity period of the loan it will utilize, and also that it shall have informed the bank about the current value of its FX cash assets, total assets and the net sale proceeds for the last 12 months as of the end of the previous month as based on the balance sheet for the end of the previous month, within the first 10 business days of each month for the purpose of ensuring that such representation and warranty will have been checked by the bank; and also that;

- The buying rate of exchange, as announced by the Central Bank of the Republic of Turkey on the date of calculation, shall be used for the calculation of the equivalent amount of the FX cash assets in TRY as part of this practice; and also that;

- This Resolution be announced to the Organization Associations and be issued on the website of the Agency.

## PRESS RELEASE

*(by Banking Regulation and Supervision Agency)*

**June 26, 2022**

As is known, our Agency has previously instructed the banks to exercise utmost care for preventing the utilization of any loan for the purpose of executing any transaction that is not expedient to the purpose of extension of such loan. However, it was observed that some companies purchased foreign currency by utilizing loans in TRY despite they had no debt in any foreign currency or any foreign exchange liability and even they had foreign exchange position surplus, and also that they kept foreign exchange positions. In other words, the TRY commercial loan sources with favorable terms, which should be directed to production, employment and investment, remain to be utilized for the purpose of purchasing foreign currency by some companies despite the non-existence of an actual requirement.

In this respect, the Board Resolution, dated 24.06.2002 and numbered 10250 (the "Resolution"), has been adopted as a macro-prudential measure that is deemed required for the purpose of strengthening financial stability and ensuring the effective functioning of the loan system by making use of the resources in more efficient and productive areas and also ensuring that the loans are utilized expedient to their purpose.

**Accordingly, we are of the opinion that it would be beneficial to make the following statements for the purpose of avoiding any doubt that might be encountered with respect to the implementation of the Resolution:**

### **Conditions For Being In Scope of the Resolution, and the Excluded Circumstances:**

- **1. Being a company which is subject to independent auditing as per the Decree Law Nr.660 and the applicable regulations thereto (the “Company”),**

- 2. **If and when the equivalent amount of the FX cash assets (including gold, and effective foreign exchange and the FX deposits held at the banks) of any such Company, in TRY is in excess of 15 million TRY,**
- 3. **If and when the equivalent amount of the FX cash assets of any such Company, in TRY, is in excess of 10 percent of the total assets or the net sale proceeds for the last 1 year, whichever is higher.**

In order for being in scope of this Resolution, any company **must meet all of such 3 conditions.**

In the event that the 1st condition is not met, **i.e. if and when a company does not have the status of a Company that is subject to independent auditing as per the applicable regulations, then such company shall not be in scope of the said Resolution.**

In the event that the 2nd condition is not met despite the 1st condition is met, **i.e. if and when the equivalent amount of the FX cash assets of a Company, in TRY, is not in excess of 15 million TRY ,then there shall be no restriction with respect to extension of a loan.**

**In the event that the equivalent amount of the FX cash assets of a Company, in TRY, is not in excess of 10 percent of the total assets or the sale proceeds for the last 1 year (whichever is higher) of such Company, despite the 1st condition and the 2nd condition are met, then there shall be no restriction with respect to extension of a loan.**

In other words, all of the 3 conditions as given herein above must be met for being subject to such restriction, as noted herein above.

**On the other hand, any real person and also any real person shareholder of a Company shall not be in the scope of the said Resolution.**

**The chart, showing the flow with respect to such practice, is also given herein below.**

**The Circumstances Exempted From the Restriction For Extension of Loans:** If and when any company, which is in scope of the restriction for extension of a loan due to the fact that it meets all of the

3 conditions given herein above but **which may not utilize a loan in FX** as per the Decree Nr.32 on Protection of the Value of Turkish Currency and the applicable regulations thereto, submits its application to the bank upon having caused to be determined that it has a foreign exchange net position deficit as certified by an independent auditing firm within a period of 3 months following the date of submission of a loan application, then such Company may also utilize cash commercial loan in TRY, provided that such utilization shall be limited only to the position deficit within the period of 3 months following the date of submission of the loan application.

The criteria to be taken into account for any such Company that would benefit from such exemption is the fact that it has any foreign exchange position deficit, i.e. the amount of its liabilities (obligations) in foreign currency is higher than its foreign exchange assets within any next period of 3 months. In case of any such circumstance, cash commercial loan in TRY may be extended to any such Company up to the amount for which its FX obligations are higher than its FX assets.

**The chart, showing the flow with respect to such practice, is also given herein below.**

**FX cash assets which are in and out of the scope of the Resolution:** As indicated in the Resolution, the effective foreign exchange and the FX deposits held at the banks, including gold, of the Companies are in the scope of the FX cash assets, and such other monetary assets, consisting of the deb instruments such as the securities issued in FX by the resident parties and Eurobonds, of the Companies are not included in the scope of FX cash assets as indicated in the Resolution. **However, such other monetary assets such as the securities and equities issued in FX by the non-resident parties and reverse repo transactions, executed by non-resident parties, of the Companies, shall also be included in the calculation of the amount of the FX cash assets as covered by the Resolution.**

\* \* \* \* \*

*(to continue..)*



*ERYUREKLI :*

*Flow chart covering further details on following issues are also defined under the Press Release, but not included in this translation:*

- a) Information and documents to be used for determining whether a company is within the scope of the restrictions;*
- b) Status of the companies which are not subject to the restrictions;*
- c) Commercial loan types within the scope of the restriction and the status of current loan limits;*
- d) Independent audit status of companies;*
- e) Description of the term “most recent financial statements”;*
- f) The case where the documents that need to be authenticated by independent auditors, are not present;*
- g) Currency rates to be used in calculations;*
- h) Reporting to be made by banks to Banking Regulation and Supervision Agency;*
- i) Other matters of attention for banks and companies.*

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## ABOUT THIS PUBLICATION

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