

CLIENT ALERT

BANKING & FINANCE | TURKEY

JULY 2022

RESTRICTIONS FOR TURKISH COMPANIES REGARDING TURKISH LIRA LOANS

In its decision no. 10250 dated 24 June 2022 (the "**Decision**"), the Turkish Banking Regulation and Supervisory Authority (the "**BRSA**") imposed restrictions on cash commercial loans in Turkish Lira ("**TRY**") for those companies subject to an independent audit (the "**Company**") when they meet certain conditions.

STATUS OF COMPANIES SUBJECT TO THE DECISION

According to the press statement (the "**Statement**") published by the BRSA on its website on 26 June 2022, the cumulative existence of the three following conditions is required for companies to be included in the scope of the Decision:

- the company must be subject to an independent audit in accordance with Decree Law no. 660 and the relevant legislation;
- TRY equivalent of the Company's foreign exchange ("**FX**") cash assets (this includes gold and the effective foreign currency and FX deposits in the banks) exceeds TRY 15 million;
- TRY equivalent of the Company's FX cash assets exceeds either 10% of the Company's total assets or the net sales revenue of the last year, whichever is higher.

In addition, the BRSA indicates in the Statement that natural persons and natural person Company shareholders are not included in the scope of the Decision.

As per the Decision, the assessment of these conditions shall be made on the consolidated balance sheets for the Companies that must prepare consolidated financial statements within the framework of the accounting and reporting standards published by the Public Oversight and Accounting and Auditing Standards Authority.

Lastly, the exchange rate of the Central Bank of the Republic of Turkey at the calculation date shall be used for the calculation of the TRY equivalent of foreign cash assets.

FX assets within the framework of the Decision

In the Statement, the BRSA has identified the FX cash assets included in the scope of the Decision. Accordingly, the effective foreign currency of the Companies, including gold and FX deposits in banks, securities and the stocks issued by the Company's foreign residents and the other monetary assets that are made with foreign residents such as reverse repos, are included in the FX cash asset amount calculation.

However, those securities issued in FX by the domestic residents of the Companies and the monetary assets composed of debt instruments such as Eurobonds, are excluded from the scope of the FX cash assets.

Exceptions to the loan borrowing restriction

An exception is provided in the Decision for Companies that fall within the scope of loan borrowing restrictions due to the cumulative conditions, but which are not able to use loans in FX pursuant to the Decree No. 32 on the Protection of the Value of Turkish Currency and the relevant legislation.

If these Companies inform the bank that they have a FX net position deficit, approved by the independent audit institution, within a period of 3 months from the date of their loan application, it is possible for them to use cash commercial loans in TRY, the amount of which is limited to the position deficit in the three months following the application date.

STATUS OF COMPANIES NOT SUBJECT TO THE DECISION

The Companies whose FX cash assets' TRY equivalent does not exceed TRY 15 million are not included in the loan restriction determined by the Decision.

However, as of the loan application date of these Companies, it is necessary that:

- their total current FX cash assets, total assets as regards the current financial statements and sales revenue of the last year be determined by an independent auditing firm,
- they declare and undertake that the FX cash assets' TRY equivalent during the maturity of the loan to be used shall not exceed TRY 15 million. If it does, it shall not exceed 10% of the total assets or the net sales revenue of the last year (whichever is higher), and
- in order to ensure the control of the said declaration and commitment by the bank, the Companies must notify the bank within the first 10 working days of each month the current value of their FX cash assets, total assets and net sales revenue of the last 12 months as of the end of the previous month, according to the balance sheet of the previous month.

LIABILITY OF THE BANKS

The BRSA states that a standard form shall not be published by the BRSA for Company declarations. However, in order to monitor the proper use of the loan in question, it is the responsibility of the banks (i) to obtain documents from the loan customers to the extent possible; (ii) to obtain a commitment regarding *"submitting all kinds of information and documents upon request to the bank for determining and following up that the loan is used in accordance with its purpose"*; and/or (iii) to update the contracts within this scope and to adapt the business processes accordingly.



In compliance with Turkish bar regulations, opinions relating to Turkish law matters that are included in this client alert have been issued by Özdirekcan Dündar Şenocak Ak Avukatlık Ortaklığı, a Turkish law firm acting as correspondent firm of Gide Loyrette Nouel in Turkey.

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