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June 28, 2022

PRESS RELEASE REGARDING THE IMPLEMENTATION OF THE BRSA DECISION IMPOSING LIMITATIONS ON THE USE OF BANK LOANS BY COMPANIES SUBJECT TO INDEPENDENT AUDIT HAS BEEN PUBLISHED

As it is known, with the BRSA decision dated June 24, 2022 and numbered 10250, regulations restricting the use of TL denominated cash commercial loans by companies which are subject to independent audit in accordance with the Decree Law No. 660 and related regulations, other than banks and financial institutions, were introduced. ([Our circular No. 2022/116](#)).

You can find the press release published by the BRSA regarding said regulation annexed to our circular.

Sincerely,

**DENGE İSTANBUL YEMİNLİ
MALİ MÜŞAVİRLİK A.Ş.**

APPENDIX

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(*) The remarks in our circulars are for information purposes only. We recommend that the opinion and support of a qualified counsellor be received before establishing final transactions on the questionable matters. Our company shall not be held responsible for any damages to be incurred as a result of transactions to be made solely on the basis of the statements in our circular.

(**) For opinions, criticism and questions about our circulars, you can contact our specialists below.

Erkan YETKİNER

Certified Public Accountant

Mazars Denge, Partner

eyetkiner@mazarsdenge.com.tr

Güray ÖĞREDİK

Independent Accountant and Financial Advisor

Mazars Denge, Director

gogredik@mazarsdenge.com.tr



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June 26, 2022

As it is known, our Agency had previously given instructions to banks to attach utmost importance to preventing the use of loans in the realization of transactions that are not suitable for their intended purpose. However, it has been observed that some companies purchase foreign exchange using TL loans and hold foreign exchange positions, even though they do not have foreign exchange debt or foreign exchange liabilities and even have an excess foreign exchange position. In other words, TL commercial credit resources with favorable conditions, which should be allocated to production, employment and investment, continue to be used by certain companies to buy foreign exchange even though there is no actual need.

In this respect, the Board Decision (Decision) dated June 24, 2022 and No. 10250 was taken as a macro-precautionary measure deemed necessary in order to strengthen financial stability and to ensure that the credit system operates effectively by using resources in more efficient and productive areas and that loans are used in a meaningful manner.

Accordingly, it is beneficial to make the following explanations in order to eliminate any reservations about the implementation of the Decision:

Conditions of Inclusion in the Scope of the Decision and Cases Not Included in the Scope:

- **1. Being a company (Company) subject to independent audit pursuant to the Decree Law No. 660 and related regulations,**
- **2. The TL equivalent of the company's FX cash assets (including gold, effective foreign exchange and FX deposits in banks) being over TL 15 million,**
- **3. TL equivalent of the company's FX cash assets exceeding 10% of the higher of total assets or net sales revenue for the last 1 year.**

In order for any company to fall within the scope of this Decision, **all 3 conditions above must be met.**

If condition 1 is not met, **that is, if a company is not in the status of a company subject to independent audit pursuant to the relevant legislation, said company will not be included in the scope of this Decision.**



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Even if condition 1 is met, if the condition 2 is not met, that is, **TL equivalent of the company's FX cash assets (including gold, effective foreign exchange and FX deposits in banks) does not exceed TL 15 million, there will be no restriction on loan disbursement**

Even if conditions 1 and 2 are met, **if the TL equivalent of the Company's FX cash assets does not exceed 10% of the Company's total assets or the last 1-year sales revenue (the larger one will be taken as basis), there will be no restriction on loan disbursement.**

In other words, as stated above, all 3 conditions above must be met together in order to be subject to this restriction.

On the other hand, real persons and real person Company partners are not included within the scope of this Decision.

The diagram showing the flow of the application is also given below.

Conditions to be Exempted from Credit Extension Restriction: In the event that the companies, which fall within the scope of the restriction on credit utilization by fulfilling all 3 conditions listed above, **but which are not allowed to use FX denominated loans** in accordance with the Decree No. 32 on the Protection of the Value of the Turkish Currency and the relevant legislation, submit to the bank a determination approved by an independent audit institution that they have a foreign exchange net position deficit within the 3-month period following the date of application for credit; it is possible for these companies to use cash commercial loans in TL, provided that it is limited only to the position deficit in the 3-month period following the application date.

The criterion to be considered for the companies to benefit from this exemption is the presence of a foreign exchange position deficit, that is, if their foreign exchange debts (liabilities) are higher than their foreign exchange assets in any upcoming 3 months period. If this is the case, these companies will be able to extend cash commercial loans in TL as much as the amount their FX liabilities exceed their FX assets.

The diagram showing the flow of the application is also given below.

FX cash assets included or not included within the scope of the decision: As stated in the Decree, FX cash assets includes the companies' foreign exchange, including gold, and FX deposits in banks, but the other monetary assets of the companies consisting of debt instruments such as debt securities and Eurobonds issued in FX by domestic residents are not included in the scope of FX cash assets stated in the Decree. **However, securities and shares issued in FX by non-residents and other monetary assets of companies such as reverse repos with non-residents will also be included in the calculation of FX cash assets under the Decree.**



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Information and Documents to be Used in Determining the Scope: Whether a Company is within the scope of the Decision will be determined by certifying the total FX cash assets of the Company and its total assets and net sales revenue for the last 1 year in accordance with the most recent financial statements that have been independently audited and certified by an independent audit firm. For companies that are obliged to prepare consolidated financial statements, this assessment will be made on the consolidated balance sheet.

Status of Companies Excluded from the Decision: Companies whose TL equivalent of FX cash assets does not exceed TL 15 million will not be included in the loan restriction under the Decision. However, as of the loan application date, these Companies need to:

- Have their current FX cash assets and total assets according to the most recent financial statements and net sales revenue for the last 1 year determined by an independent audit company,
- Declare and undertake that the TL equivalent of their FX cash assets will not exceed TL 15 million during the maturity period of the loan they will use, and that even if it does, it will not exceed 10% of the greater of their total assets or net sales revenue of the last 1 year,
- Submit to the bank the current value of their FX cash assets, total assets and net sales revenue for the last 12 months as of the end of the previous month according to the balance sheet as of the end of the previous month within the first 10 working days of each month in order to ensure the control of the said declaration and commitment by the bank.

In this regard, a standard form will not be submitted by our Agency at this stage for the declarations and commitments to be received from the companies, and as stated in our instruction letter dated June 15, 2022 and numbered 53262, the responsibility to obtain documents from the loan clients to the extent possible for the follow-up of the use of the loan for its intended purpose, to obtain a commitment "to submit all kinds of information and documents to the bank upon request for the determination and follow-up of the use of the loan for its intended purpose" and/or to update the contracts in this context and to make the business processes in accordance with this lay with the bank.

Types of Commercial Loans within the Scope of Restriction and the Status of Existing Credit Limits: For companies that meet all three conditions set out in the Decree and above, all kinds of TL-denominated cash commercial loans to be extended after the date of the Decree fall within the scope of the restriction.



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For cash commercial TL credit disbursements to be realized through credit transactions such as revolving, overdraft or corporate credit cards as of the date of the Decree, the balance increase calculation to be made at the end of each month will be considered as a new disbursement, and if there is an increase in the balance at the end of each month compared to the end of the previous month, the relevant commercial loan client will be required to provide the bank with the documents approved by the independent audit institution specified in the Decree until this calculation to be made at the end of the month. In the case of overnight loans, if there is an outstanding risk amount as of the calculation date to be made at the end of each month, the relevant commercial loan client must provide the bank with the documents approved by the independent audit institution specified in the Decision until this calculation to be made as of the end of the month. At the end of the month, in the event that the client has an increase in the balance for revolving, overdraft or corporate credit cards and an increase in the risk amount for overnight loans, and the event that it is determined that the client falls within the scope of the relevant restriction within the framework of the documents provided, no new cash commercial loans in TL in the above-mentioned types (such as revolving, overdraft, corporate credit card, overnight loans) should be extended to such clients even if there is a limit gap.

Accordingly, the implementation for revolving loans, overdrafts, corporate credit cards and overnight loans to be extended in line with the limits allocated to clients before the date of the Decree will be as stated above. Therefore, for such loans that will mature and be renewed in the week beginning on June 27, 2022, clients are required to complete the necessary documentation until the calculation to be made at the end of this month and only if there has been an increase in the balance sheet compared to the end of the previous month. For TL-denominated spot cash commercial loans that have been applied for and contracted before the date of the Decree but have not yet been disbursed and will be disbursed only in the week starting from June 27, 2022, there is no need to make any additional checks. The related loans will not be affected by the Decree.

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

On the other hand, loans restructured after the date of the Regulation on Procedures and Principles Regarding the Classification of Loans and Provisions to be Set Aside for These Loans or pursuant to the Provisional Article 32 of the Banking Law No. 5411 will not be considered as new disbursements.



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However, loans that are not within the scope of restructuring and that are renewed after the date of the Decree by changing the terms of the contract or loans extended for partial or full refinancing of existing loans should be considered as new disbursements.

The Issue of Companies Being Subject to Independent Audit or Not Whether a company is subject to independent audit is determined in accordance with the Decree-Law No. 660, the Decree of the Council of Ministers No. 2018/11597, which was agreed upon in accordance with Article 397 of the Turkish Commercial Code No. 6102, and other relevant legislation. Pursuant to Article 9 of the Regulation on Banks' Credit Transactions titled "documents to be accepted as account status", banks determine whether a company is subject to independent audit within the framework of the said legislation, and in accordance with this provision, whether a company is subject to independent audit will continue to be determined by banks in the same manner as it has been until today.

The “Most Recent Financial Statements” Specified in the Decision: The term "most recent financial statements" in the Decision refers to consolidated financial statements for companies that are obliged to prepare consolidated financial statements in accordance with the accounting and financial reporting standards published by the Public Oversight, Accounting and Auditing Standards Authority, and non-consolidated financial statements for companies that are not obliged to prepare consolidated financial statements, prepared in accordance with the same standards and **audited by independent auditing firms** authorized by the Public Oversight, Accounting and Auditing Standards Authority.

The Documentation Required to be Approved by Independent Audit Firms Not Being Available: Provided that companies whose total FX cash assets have not yet been determined by independent audit institutions as of the date of loan application to be made after the date of the Decree, or whose current financial statements audited by independent audit institutions are not available, or whose FX net position deficit has not yet been determined by independent audit institutions as of the 3-month period following the date of loan application, certify to the relevant bank that the independent audit process has been initiated and declare to the relevant bank the current value of the total FX cash assets, total assets, net sales revenue for the last 12 months as of the end of the previous month and the current value of the FX net position deficit as of the 3-month period following the application date, and provided that the said company does not fall within the credit utilization restriction under the Decree within the framework of the evaluation to be made according to this declaration, new cash commercial loans can be allocated to said banks in TL.



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In the event that the aforementioned Companies declare to the relevant bank that the independent audit process has been initiated, but do not submit to the bank the current financial statements audited by independent audit institutions and other information and documents that must be approved and determined by the independent audit institution within 1 month after the credit allocation, or if it is understood that the Company should be included in the credit restriction under the Decree according to the information and documents submitted, **no new cash commercial loans in TL should be extended to these Companies by the relevant bank and this situation should be notified to our Agency immediately.**

Exchange Rate to be Used in Calculations The CBRT foreign exchange buying rate of the calculation date will be used in the calculation of the TL equivalent of FX cash assets.

Reporting to the Institution by Banks: The required reporting form and format for the reporting to be made to our Agency within the scope of the Decision will be announced to the banks by our Agency as soon as possible.

Other Matters to be Considered by Banks and Companies: In order to prevent companies from engaging in practices to work around the Decree by creating debt records through fictitious transactions or other collusive transactions before requesting TL loans, banks are required to warn their clients and each bank is required to check whether their clients are transferring FX assets for such fraudulent purposes and to inform the Agency immediately in case of such a detection. On the other hand, it is also natural that necessary legal actions may be taken against those who, by carrying out such misleading and collusive transactions aimed at working around or neutralizing the Decision, enable banks to extend a loan that should not be extended.

In addition, in order to ensure the control of the declarations and commitments to be submitted by the companies to the banks prior to credit extension by the banks; the banks should promptly notify agency about Companies that are, according to the information and documents to be submitted to the banks within the first 10 working days of each month or according to the information and documents that must be approved by an independent audit firm and submitted to the bank within 1 month after the loan allocation due to not being available as of the loan application date, found to be in non-compliance with the decision or not submitting the information and documents required to be approved and determined by the independent audit institution to the bank within 1 month after the credit allocation.



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Banks are required to exercise due diligence for the effective implementation of the Decision and, even though it is not explicitly stated in the Decision, they are required to notify the Agency if they determine the carrying out of transactions not in compliance with the spirit of the Decision and to ensure that the reports to be requested by the Agency within the scope of the Decision are drafted accurately and timely.

We wish to offer this information publicly and convey our kind regards.



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Flow Chart for the Implementation of the Decision dated June 24, 2022 and No. 10250

