



**CIRCULAR NUMBER: 2022/138eng.**

**July 8, 2022**

## **ADDITIONAL REGULATIONS MADE REGARDING BRSA DECISION IMPOSING LIMITATIONS ON THE USE OF BANK LOANS BY COMPANIES SUBJECT TO INDEPENDENT AUDIT**

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 circulars [No. 2022/116 of June 25, 2022](#) and [No. 2022/117 of June 28, 2022](#) provided information on this regulation. However, due to the fact that said decision has led to certain practice problems, it was decided to apply the Board Decision No. 10265 of July 7, 2022 published by the BRSA and the Board Decision No. 10250 of June 24, 2022, effective from the date of the aforementioned Decision, as stated in the annex of our circular until a contrary Board Decision is taken.

Sincerely,

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

**APPENDIX**

BRSA decision No. 10265 of July 7, 2022.

(\*) The remarks in our circulars are for information purposes only. We recommend that the opinion and support of a qualified counsellor be sought before taking final action on 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, please contact our experts below.

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## **Decision of the Banking Regulation and Supervision Board**

**Decision No: 10265**

**Decision date : July 7, 2022**

Upon examining the letter no. E-24049440-010.03[4/2]-55799 of July 7, 2022 and its annexes at the meeting of the Board on July 7, 2022, the following has been decided:

Based on Article 93 of the Banking Law No. 5411, the Board Decision No. 10250 of June 24, 2022, which was issued as part of the coordinated macroprudential steps to strengthen financial stability and to ensure an effective operation of the loan system through an efficient use of resources, will be implemented as follows, effective from the date of the said Decision, until a Board Decision to the contrary is taken. Accordingly,

1) Companies other than banks and financial institutions, **which are subject to independent audit** pursuant to the Decree Law No. 660 and related regulations, **shall not extend** any new TL-denominated cash commercial loans to Companies which:

- have foreign currency (FX) cash assets worth more than TL 15 million as of the date of their loan application,
- have FX cash assets exceeding 10% of the greater of total assets or net sales revenue for the last year according to the most recent financial statements **(including temporary tax periods)** prepared in accordance with the Tax Procedure Law (TPL) and related regulations and submitted to the tax office.

2) Companies'

- Effective currency, including gold,
- FX deposits in banks,
- Assets consisting of securities/stocks issued in FX by residents or non-residents, **other than Eurobonds issued by the Republic of Turkey,**
- Participation shares of gold- or FX-indexed, exchange-traded funds or their relevant tracking indices,
- FX reverse repo transactions with non-residents,
- FX assets given in foreign currency (including gold) to banks to obtain TL on spot under swap transactions with banks,

shall be included in the Companies' FX cash assets for the implementation of this Decision.

3) For the purposes of the swap transactions executed by the companies with banks, the amounts borrowed in TL and lent in foreign currency on spot (including gold) shall

be treated as TL cash commercial loans extended to the Company by the relevant bank within the scope of the implementation of this Decision.

4) For **Companies required to issue consolidated financial statements** as per the accounting and financial reporting standards by the Public Oversight Authority (POA),

- The assessment to be made pursuant to Article 1 shall be based on the most recent consolidated financial statements prepared in accordance with the accounting and financial reporting standards issued by the POA and audited by independent auditors (independent audit firm) authorized by the POA, **without including the Company's foreign subsidiaries and affiliates,**
- The FX cash assets of the **consolidated domestic subsidiaries and affiliates of these Companies** other than banks and financial institutions shall also be included in the calculation of total FX cash assets under this Decision,
- Accordingly, if a company (parent company) is found to be ineligible for TL loans under this Decision based on its consolidated financial statements, the credit rationing under this Decision shall be applied only to the parent company. For loans to be extended to other subsidiaries and affiliates of the parent company subject to consolidation, the provisions of this Decision shall be considered separately for each subsidiary and affiliate, and it shall be determined whether or not they are subject to the credit rationing,

5) **As an exception to credit rationing** under this Decision, within the 3-month period starting from the date of the loan application of these companies to the bank, for companies that are not allowed to utilize FX loans in accordance with the legislation in question, **TL-denominated cash commercial loans can be extended,**

- provided that they declare that they have an FX net position gap and the amount of said position gap,
- only to be limited to the declared position gap in the 3-month period following the application date.

The accuracy of the aforementioned statement indicating the position deficit shall be approved and confirmed by independent audit organizations or certified public accountants (CPAs) licensed in accordance with the Law No. 3568 of June 1, 1989 on Certified Public Accountants and Sworn-in Certified Public Accountants (Law No. 3568) in accordance with the procedures and principles set out in Article 7 and documented to the bank.

6) In the calculation of the loan amount to be extended to the Companies through overdraft accounts (ODA) and other revolving loans and cash withdrawals from corporate credit cards or intraday and overnight loans for the implementation of this Decision, the total loan balance extended to the Companies **as of June 30, 2022** for these loan types shall be accepted as the starting point, and

- At the end of each month, the amount of increase in this total cash loan balance compared to the end of the previous month shall be considered new disbursements,

- If there is an increase in the balance according to this calculation to be made at the end of each month, it shall be deemed to be a new loan disbursement. In relation to this balance increase, the banks shall perform the controls regarding the credit utilization limitations within the scope of this Decision, and the necessary information and documents shall be provided.

7) FX cash assets shall be documented before the relevant bank, and for companies that are obliged to prepare consolidated financial statements, such documentation and assessments shall be made by independent auditors, provided that:

- Their TL equivalent does not exceed TL 15 million,
- Even if their TL equivalents exceed TL 15 million, it does not exceed 10% of the greater of total assets or net sales revenue of the last year according to the financial statements specified in Articles 1 and 4,
- Even if these restrictions apply, provided that it is not possible to utilize only FX loans and limited only by the FX net position deficit in the 3-month period following the loan application date.

**Provided that the Companies wishing to be extended the credit declare and undertake - as of the date of utilization of the credit or as of the date it is determined that a new credit is deemed to have been extended as specified in Article 6 for revolving, ODA, cash withdrawal from credit card, intraday and overnight loans – that:**

- The TL equivalent of FX cash assets shall not exceed TL 15 million,
- Even if the TL equivalent of FX cash assets exceeds TL 15 million, it does not exceed 10 percent of the greater of total assets or net sales revenue for the last 1 year,
- Even if these limitations apply, since it is not possible to use only FX loans, it will only be able to use new loans limited to the FX net position gap in the 3-month period following the loan application date,

**to be valid as of June 30, 2022 (including June 30, 2022), and that it will be certified by CPAs or independent audit firms that:**

- Within the said quarterly periods,
  - The TL equivalent of FX cash assets does not exceed TL 15 million or
  - Even if the TL equivalent of FX cash assets exceeds TL 15 million, it does not exceed 10% of the greater of the total assets or the net sales revenue of the last year according to the most recent financial statements (or, for companies that are required to issue consolidated financial statements, the most recent consolidated financial statements audited by independent auditors, not including the Company's foreign subsidiaries and affiliates) (including temporary tax periods) prepared in accordance with the Tax Procedure Law and related regulations and submitted to the tax office, or
  - If the Company was extended a loan as of the dates these restrictions were applied to it,

- The sum of all TL-denominated commercial cash loans extended as such does not exceed the FX net position gap in the 3-month period following the disbursement dates of the related loans, and
- It is not possible for the Company that has used such a loan to use FX loans in the period in question,

to ensure that the said declaration and undertaking (**Annex 1**) is controlled by the bank **until the evening of the last business day of the month following the end of each 3-month calendar period following this date.**

8) Companies that are subject to independent audit but **whose audit obligation will commence for the first time at the end of 2022 will be exempted from the scope of this Decision.**

9) In the event that a company applying for a loan declares and undertakes (**Annex 2**) that it is not subject to independent audit or that, although it is subject to independent audit, it is exempt from the scope of this Decision because it is included in the scope of Article 8, but the relevant bank is hesitant about this issue, banks shall give the relevant company **1 month** as of the loan disbursement date, to certify that it is not subject to independent audit or that even if it is subject to independent audit, the audit obligation will commence for the first time at the end of 2022, certified by Independent Accountant and Financial Advisors, Certified Public Accountants (CPAs) or independent audit institutions licensed in accordance with Law No. 3568, and the applicant company shall be extended the loan on the basis of its declaration.

10) If a company:

- does not submit to the bank the information and documents required to be submitted to the bank approved by an independent audit firm or a CPA within the periods specified in Articles 7 and 9, or
- if, according to the information and documents submitted within this period, it is understood by the banks that contrary to the Company's declaration, it should be included in credit rationing within the scope of this Decision,
  - The relevant bank shall not extend any **new TL cash commercial loans** to this Company within the scope of **this Decree**,
  - **A risk weight of 500% shall be applied** regardless of the approach used to calculate the amount subject to credit risk (standardized approach or internal rating-based approaches), without taking into account credit risk mitigation techniques, credit ratings and real estate mortgages, in the calculation of the capital adequacy ratio in accordance with the *"Regulation on Measurement and Assessment of Capital Adequacy of Banks"* for all **TL-denominated commercial cash loans** (whether exempted from the scope of this Decision or not) extended to these companies **as of June 30, 2022**, within notifications to be made by the relevant bank according to the procedures and principles to be set by our Agency regarding the said situation and

## Company information.

11)

- Loans extended through corporate credit cards (excluding cash withdrawals),
- Loans converted into cash through the Direct Debit System (DBS),
- Other loans that are considered irrevocable limit commitments and where banks provide payment guarantees to third parties other than the Company, which is the loan client, and supplier financing loans where payments are made to suppliers by crediting the Company as a buyer
- Amounts of compensated non-cash loans converted into TL denominated cash loans,
- Loans restructured or extended for restructurings in accordance with the Regulation on Procedures and Principles Regarding the Classification of Loans and Provisions to be Set Aside for These Loans or in accordance with the Provisional Article 32 of the Banking Law No. 5411, not including loans that are not within the scope of restructuring and renewed by changing the terms of the contract or extended for partial or complete refinancing of existing loans shall not be included within the scope of this Decision.

12) The provisions of this Decision shall also apply in the event that banks extend loans that are not exempted from the scope of this Decision to resident companies through their foreign branches.

13) For **financial leasing, factoring and financing institutions** subject to the Law No. 6361 on Financial Leasing, Factoring, Financing and Savings Financing Companies,

- **TL-denominated commercial cash loans to be extended to customers as of August 1, 2022 shall also be included in the scope of this Decision ,**
- The obligations imposed for banks in this Decision shall also apply to financial leasing, factoring and financing institutions,
- The declaration and undertaking obligations of the commercial customers of these organizations shall be applied as specified in Articles 7 and 9, **effective from this date (including August 1, 2022).**

14) As part of this Decision, the FX buying rate of the Central Bank of the Republic of Turkey on the date of calculation shall be employed for calculating the TL equivalent of foreign currency cash assets.

15) For the declarations and undertakings required to be obtained from the Companies pursuant to Articles 7 and 9,

- The forms in Annex 1 and Annex 2 shall be used by banks,
- The forms in Annex 1 and Annex 2 shall be adapted and used by financial leasing, factoring and financing institutions.

16) This Decision shall be notified to Unions of Institutions and published on the website of the Agency.

(Sample Letter of Declaration and Undertaking to be Submitted Pursuant to the Decision of the Banking Regulation and Supervision Board No. 10265 of July 7, 2022 for Companies Subject to Independent Audit)<sup>1</sup>

..... Bankası A.Ş. ....Branch (or another appropriate addressee)

We hereby declare and undertake that pursuant to the Decision of the Banking Regulation and Supervision Agency No. 10265 of July 7, 2022 (Decision), all Turkish Lira (TL)-denominated commercial cash loans that we will use through your bank, **effective as of June 30,2022 (including June 30, 2022)**,

- As of the dates on which we utilized such loans or as of the dates on which it was determined that we were deemed to have been extended loans as specified in the Decision for revolving, ODA, cash withdrawal from credit card, intraday and overnight loans,

- The TL equivalent of our Foreign Exchange (FX) cash assets specified in the Decision shall not exceed TL 15 million, or
- Even if the TL equivalent of our FX cash assets specified in the Decision exceeds TL 15 million, the greater of our total assets or our net sales revenue for the last year according to our most recent financial statements specified in the Decision shall not exceed 10% of our total assets or net sales revenue for the last year, or
- Even if these limitations apply, since it is not possible for us to use only FX loans, we shall only use our new loans limited to our FX net position gap in the 3-month period following our application date for the loan in question.
- We will submit the necessary information and documents to your Bank **by the evening of the last business day of the month following the end of each 3-month calendar period after June 30, 2022**, so as to confirm that we comply with these matters in accordance with the procedures and principles set out in the Decision, to be approved by independent audit institutions authorized by the Public Oversight, Accounting and Auditing Standards Authority or certified public accountants (CPAs) licensed in accordance with the Law on Certified Public Accountants and Sworn-in Certified Public Accountants No. 3568 of June 1, 1989.

Company Trade Name:

Company Mailing Address:

Company Contact Information:

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Name and Surname of the Company Official

Republic of Turkey ID No./Passport No.

(signature)

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<sup>1</sup>For the commercial customers of financial leasing, factoring and financing institutions, the date "June 30, 2022" in this sample text shall be applied as "August 1, 2022".



(Sample Letter of Declaration and Undertaking to be Submitted Pursuant to the Decision of the Banking Regulation and Supervision Board No. 10265 of July 7, 2022 for Companies that are not Subject to Independent Audit or whose Independent Audit Obligation will Commence for the First Time at the End of 2022)

..... **Bankası A.Ş.** ..... **Branch (or another appropriate addressee)**

We hereby declare and undertake as of the date of this declaration that pursuant to the Decree-Law No. 660 and related regulations, we are not subject to independent audit / our independent audit obligations will commence for the first time at the end of the year 2022 and that we will submit the necessary information and documents to your Bank **within 1 month** following the disbursement of our loan subject to the application, to confirm the accuracy of this statement by being approved by independent audit institutions authorized by the Public Oversight, Accounting and Auditing Standards Authority or certified public accountants (CPAs) or independent accountant and financial advisors licensed in accordance with the Law on Certified Public Accountants and Sworn-in Certified Public Accountants No. 3568 of June 1, 1989.

Company Trade Name:

Company Mailing Address:

Company Contact Information:

.... /.... / 20...

Name and Surname of the Company Official

Republic of Turkey ID No./Passport No.

(signature)