



## **TURKEY: THE BANKING REGULATION AND SUPERVISION AGENCY ANNOUNCES RESTRICTION ON COMMERCIAL TURKISH LIRA LOANS FOR CORPORATE BORROWERS**

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### **I. Introduction**

The board of the Banking Regulation and Supervision Agency (“**the Board**”) has announced macro-prudential measures over the course of this weekend, consisting of (i) the Board Decision regarding prohibition of commercial Turkish Lira loans to corporate borrowers subject to independent audit dated June 24, 2022 (“**Board Decision**”) and (ii) press release determining the scope and implementation of the Board Decision dated June 26, 2022 (“**Press Release**”). Accordingly, until a new decision to the contrary is introduced by the Board or the Central Bank, corporate borrowers being subject to independent audit and holding foreign currencies above certain thresholds will no longer be allowed to borrow commercial cash loans in Turkish Lira.

The Board stated that the foregoing macro-prudential measures were intended to ensure effective use of the credit systems, to prevent companies from purchasing foreign currency solely to preserve their foreign exchange position and to reduce and stabilize the fluctuations on the foreign exchange rates. That being said, the wide scope and long-winded wording of the Board Decision eventually required concise specification once the financial interpretations were of mixed and contradicting nature. Thus, the Press Release was announced on June 26, 2022, in order to eliminate the practical uncertainties.

### **II. Target of the Board Decision**

Companies meeting each and all of the below stated criteria will be subject to the restriction and therefore will be prohibited from borrowing commercial Turkish Lira cash loans:

- (i) Being subject to independent financial audit as per the Decree numbered 660 and other applicable regulations,
- (ii) Holding foreign exchange assets (including gold, foreign currency cash and foreign exchange deposits) exceeding the amount corresponding to TRY 15,000,000 (approximately \$900,000 as of June 28, 2022) and
- (iii) Holding foreign exchange assets equivalent of which in TRY currency exceeds, whichever is greater, 10% of their total assets or annual net sales revenue.

Companies within the scope of restriction are not allowed to get commercial cash loans in Turkish Lira as of June 24, 2022 (“**Date of the Board Decision**”).

### **III. Exclusions and Exemptions**

Companies that do not meet either one of the foregoing criteria, real persons and real person shareholders of companies (regardless of the company's status) are excluded from the restriction therefore are free to borrow cash loans in Turkish Lira.

Non-cash loans such as direct debit systems are deemed outside the scope of the restriction provided that they are not converted into cash loans.

Additionally, the companies that are prohibited from using foreign currency loans, as per the Presidential Decree No.32 on the Protection of the Value of Turkish Currency and other related regulations, may exceptionally borrow commercial cash loans in Turkish Lira limited to the amount of their three (3) months position deficit, although they meet each and all the foregoing criteria. For this, they should submit an independent audit company certifying a foreign exchange position deficit, where debts and liabilities in foreign currency are more than foreign exchange assets, within any three (3) months period following their loan application.

On a separate note, despite the fact that gold, effective foreign exchange and foreign exchange bank deposit should be considered as part of foreign exchange assets of companies; foreign currency denominated securities, debt instruments such as Eurobond and other financial assets issued by Turkish residents are not taken into consideration for calculation of foreign exchange assets. For the avoidance of doubt, instruments and share certificates issued by entities residing abroad or monetary assets such as reverse repo with the ones residing abroad are included in calculation of foreign exchange assets of companies.

### **IV. Enforcement and Execution of the Restriction**

#### **(i) Necessary Supporting Documentation and Information To Make Assessments by Independent Audit Companies**

The status of the companies will be determined based on total foreign exchange assets and figures of the audited "up-to-date financial statements". For those obligated to prepare consolidated financial statements, such assessment is made through the consolidated financial statements. According to the Press Release, "up-to-date financial statements" refer to the financial statements that have been prepared per requirements of the Public Oversight, Accounting and Auditing Standards Authority.

#### **(ii) Continuous Notification Requirement**

Companies that are not subject to the restriction on borrowing commercial cash loans in Turkish Lira in accordance with the restriction criteria and thresholds should (i) have independent audit companies assessed their current foreign exchange assets in cash, total assets as per their up-to-date financial statements and net sales revenue of the last fiscal year, (ii) declare and undertake that their foreign exchange assets in cash are not going to exceed TRY 15,000,000 (approximately \$900,000 as of June 28, 2022) during the term of the borrowed loan or in the event that such threshold is exceeded, the foreign exchange assets will not exceed, whichever is greater, 10% of their total assets or annual net sales revenue, and (iii) submit the information and data as to foreign exchange assets in cash, total assets and their net sales revenue of the last 12 (twelve) months as of the end of the

previous month following the previous month-end balance sheet to ensure the efficient monitoring of the creditor financial institution within 10 (ten) business days of each month, as of the date of application to the commercial cash loan in Turkish Lira. In this regard, banks may request all types of documents as they deem necessary from their commercial customers to ensure that financial positions of their customers are not contrary to the restriction.

As the foregoing requires assessments of independent audit companies, it might be inferred that the continuous notification requirement should be applicable to only the companies which are subject to independent audit but have not exceed the introduced thresholds.

### **(iii) Types of Commercial Loans Falls Under the Restriction and Status of Current Loan Limits**

All types of commercial cash loan disbursements, renewals of the existing loans or granting additional balance in Turkish Lira for the companies meeting the each and all criteria as explained above via various credit transactions such as revolving loans, overdraft accounts or corporate credit cards as explained above, following the Date of the Board Decision will fall under the restriction.

Spot commercial cash loans in Turkish Lira that have yet to be disbursed until the Date of the Board Decision but will be disbursed within the week of June 27, 2022, are exempted from any form of monitoring provided that the loan agreements have already been executed.

## **V. Implications of the Restriction and Conclusion**

The Board Decision has made tremendous impact in Turkish financial markets as it was not an expected step and measure. On the other hand, the Board gives signals that such position will be maintained for the sake of economic stability and effectiveness. Accordingly, additional measures may be introduced unless the Central Bank and Turkish Government decide to change economic policy of Turkey.

Certain companies falling under the scope of the restriction that are in need of liquidity might opt for alterations on their financial statements in a fraudulent manner. Taking into consideration such tendency, the Board requires banks to warn their customers in advance, to monitor transactions of the customers and keep informed the Banking Regulation and Supervision Agency in case of suspicious and fraudulent transactions. It is also important to note that these conducts may lead to the crime of aggravated fraud per Article 158/(j) of the Turkish Criminal Code No 5237 in terms of the board of directors and other relevant executives of companies.

In light of the above, all companies being subject to independent audit should scrutinize their financial position, investment plans, existing debts and liabilities as well as short-term and long-term fund needs as the restriction may limit their flexibility and opportunity to reach new loans and monetary resources, and should act as a prudent merchant in line with the applicable regulations.

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