
Transferring Foreign Currency Within Intragroup Lending Is Allowed

Summary

Capital Movements Circular (“Circular”) has recently been amended by the letter of Ministry of Treasury and Finance of the Republic of Turkey (“Ministry”) on 20 November 2018 and numbered 30275. By this amendment, Turkish resident companies in the same group are enabled to transfer the amounts, which are related to the intragroup lending transactions, in foreign currency as long as certain conditions are satisfied.

According to article 38 of the Circular regarding general principles of domestic loan utilization, Turkish residents can obtain foreign currency loans only from banks and financial institutions. Therefore, it is prohibited for companies to provide foreign currency loans to other companies. Furthermore, banks and financial institutions are obliged to report such companies to the Ministry in case they are detected to be providing bridge loans or conduct similar activities that result in breach of this prohibition.

Before the recent amendment on the Circular, there was not any exemption from the aforementioned restriction for intragroup loans. Accordingly, based on the aforementioned article, group companies had not been able to provide foreign currency loans to each other.

The article 38 of the Circular was criticized in the practice particularly because in a group/holding company structure, the purpose of transfer of the foreign currency loan obtained by a group company, which meets the conditions in the Circular due to its stronger financial position and credibility, to another group company is enabling the other company to borrow at lower costs.

With the amendment on 20.11.2018, it is made possible to transfer foreign currency equivalent of the amounts, which are related to an intragroup lending transaction between the companies within the same group or holding structure, to the relevant account in Turkey, providing that; a) the lending and its tracking will be in Turkish Lira and b) the transfer will be made further to the written declaration of the company.

Within this context, it is still prohibited for a Turkish resident company other than banks and financial institutions to provide foreign currency loan neither to an unrelated company (not in the same group or holding structure) nor a group company.

The amendment mentioned above eliminates the difficulties in foreign currency transfers related to the intragroup borrowing transactions in the practice, but it does not revoke the prohibition regarding foreign currency denominated intragroup lending transactions.

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