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Using Foreign Currency Loans from a Group Company as an Alternative Financing Source

The data of the Central Bank of the Republic of Turkey indicate that the private sector's loan debt from abroad and short-term loan debt in general, excluding commercial loans, have reached a level that will cause economic uneasiness.

Due to economic fluctuations and the following pandemic, the financing needs of companies are increasing day by day. Companies may need to increase their capital in order to meet these financing needs, to evaluate their idle resources and to manage their funds effectively, if any. However, in cases where this is not possible due to economic conditions, companies may temporarily meet their financing needs thanks to the loans extended within the group, provided that the conditions stipulated in the legislation are met.

Regulations on the use of foreign currency loans have actually entered into force with the Decision No. 32 on the Protection of the Value of the Turkish Currency ("Decision"). The procedures and principles regarding the implementation have been determined within the framework of the Communiqué No. 32 on the Protection of the Value of the Turkish Currency (Communiqué No: 2008-32/34) and the Capital Movements Circular dated 02.05.2018 published by the Central Bank of the Republic of Turkey pursuant to this communiqué ("Circular").

Although equity companies residing in Turkey are free to use Turkish lira-denominated loans from abroad through banks; these equity companies may only obtain foreign currency loans from abroad through banks and within the framework of the principles set forth in article 17 of the Decision.

In line with this, with the increase in foreign-sourced loans used by the private sector, the condition of obtaining foreign currency income for the use of foreign currency loans from domestic and abroad was introduced in accordance with the amendment made in the Decree in 2018. By taking into account the needs, the exceptions foreseen for this rule have been expanded with new regulations since 2018.

As a matter of fact, according to article 21/15-d of the Circular, legal entities established in Turkey, 100% of which are owned by foreign shareholders residing outside Turkey, will be able to use foreign currency loans from group companies with foreign capital by being exempted from foreign currency income criteria.

On the other hand, for companies with a foreign capital ratio below 100% and companies with domestic capital, it does not seem possible to benefit from the exemption regarding the use of foreign currency loans. However, in line with article 38/2 of the Circular, provided that the transaction is carried out within the same holding or within the group, and the debiting and follow-up is made in Turkish lira, it is possible to transfer the foreign currency equivalent of the debiting transactions to the relevant domestic accounts based on the company's written statement.

This regulation does not mean that foreign currency loans can be extended within the group in the country. There is no new regulation in the aforementioned article, only the practice that the payments regarding the Turkish lira loan transactions realized within the group can be made in foreign currency is reflected in the legislation.

In line with the explanations above, companies that want to meet their financing needs but do not increase their capital can evaluate whether they meet the aforementioned exceptions and use intra-group loans as a temporary alternative. However, it is extremely important to plan the legal and tax aspects of these temporary financing sources in advance to prevent later incompatibilities and possible sanctions.