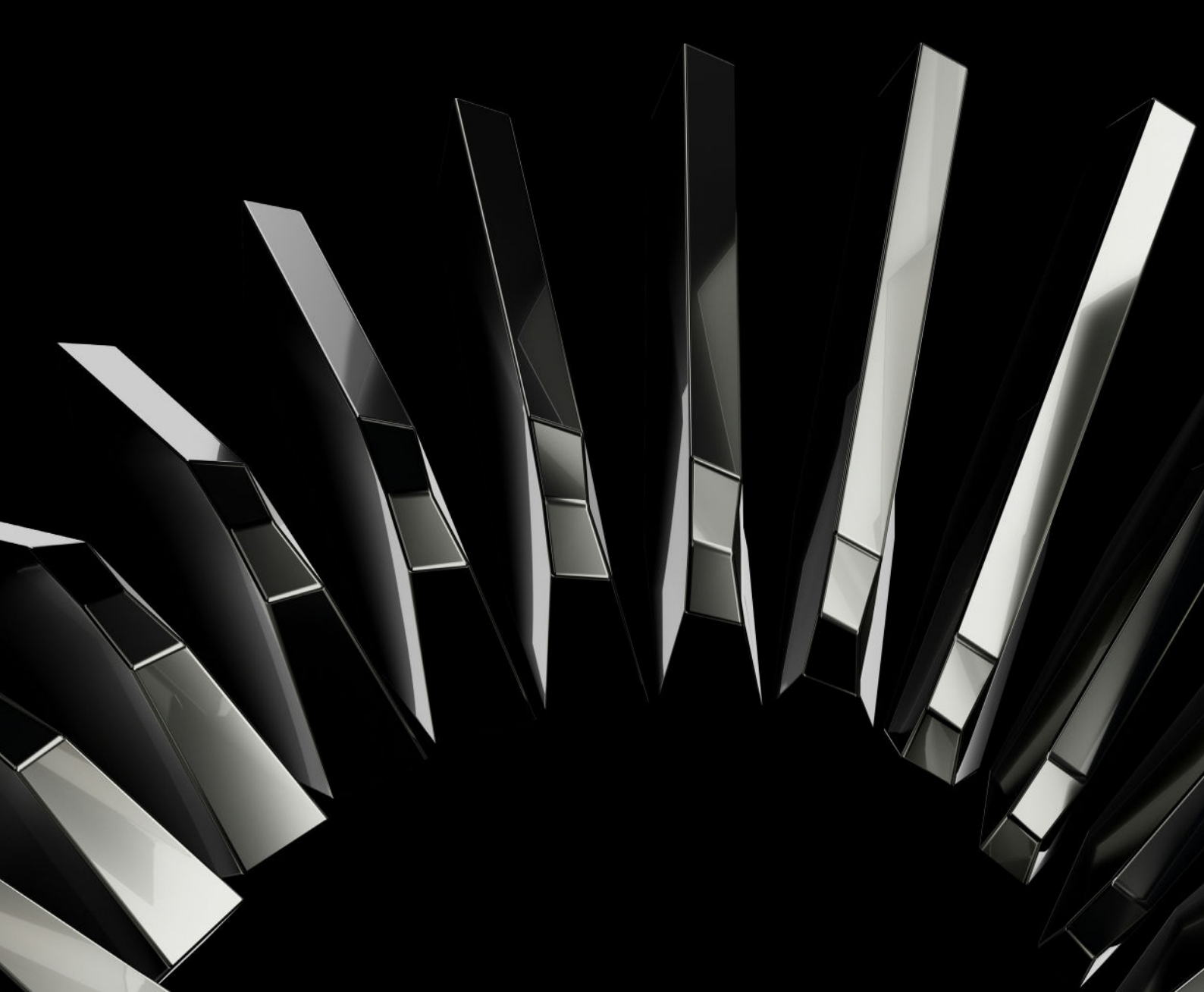


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Free in Principle, Strict in Practice:  
An Overview of Intra-Group Loans in  
Türkiye

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One of the most commonly used instruments for meeting financing needs among group companies is intra-group loans. Particularly in holding structures and multinational corporate groups, such borrowings provide operational flexibility and cost efficiency. However, in Türkiye, intra-group loans are not subject to a single set of rules; rather, they fall within the intersection of contract law, corporate law, banking law, tax law, and the capital movements regime.

This article examines the legal framework applicable to intra-group loans, with specific reference to the capital movements perspective, where the general rule is freedom, subject to certain limitations and exceptions.

## Contract Law and Freedom of Contract

Under the Turkish Code of Obligations, freedom of contract is the governing principle. Intra-group loan agreements therefore constitute valid and binding private law contracts. The parties are free to determine the interest rate, maturity, repayment schedule, and security structure.

However, the agreement must reflect a genuine debtor-creditor relationship, must not be sham (simulated), and must not be structured solely to achieve tax advantages. In addition, it should be borne in mind that the maturity and repayment schedule may trigger obligations under the Resource Utilization Support Fund (RUSF).

## Corporate Law: Capital Maintenance Principle and the Law of Corporate Groups

The Turkish Commercial Code adopts the protection of capital as a fundamental principle for capital companies. Intra-group loans may not be structured in a manner that results in:

- » hidden capital contributions,
- » disguised profit distributions, or
- » prohibited loans granted to shareholders.

In particular, financing provided by a subsidiary to its parent company on terms deviating from market conditions carries a risk of violating the capital maintenance principle.

Furthermore, under the law of corporate groups, if a subsidiary incurs losses as a result of instructions given by the controlling company, such losses must be compensated. Intra-group loans that create a disproportionate risk to the detriment of the subsidiary may give rise to legal liability.

## Banking Law

In Türkiye, lending activities are in principle conducted by banks. Nevertheless, intra-group loans are not considered banking activity provided that they remain incidental, limited in scope, and confined to intra-group needs.

However, if the activity becomes continuous or extends beyond the group, there is a risk of being deemed unauthorized banking activity. On a separate note, stamp tax exemptions applicable to loans obtained from banks, would not be available where the loan is obtained from a group company abroad.

## Foreign Exchange Rules

The companies resident in Türkiye may obtain foreign currency loans from abroad subject to certain conditions under the capital movements legislation. In this context, such companies are required to satisfy conditions such as having foreign currency income or exceeding the threshold of USD 15 million in total outstanding foreign currency loan balance. However, a specific exemption applies to intra-group loans. Accordingly, group companies that are resident in Türkiye and whose shares are wholly owned by companies resident abroad may obtain foreign currency loans from their group companies outside Türkiye without meeting other criteria.

On the other hand, where the loan is obtained from a group company resident in Türkiye, a company with surplus funds may provide financing to another company within the same holding or group that is in need of funds. In such transactions, for the sole purpose of internal financing and fund allocation, the foreign currency equivalent of the relevant amount may be transferred. In this case, provided that the borrowing and the monitoring of the debt are carried out in Turkish Lira, the transfer of the foreign currency equivalents of the amounts subject to the borrowing to the relevant domestic accounts is permitted based on the borrower company's written declaration.

Therefore, even where an intra-group loan is legally permissible in principle, the currency denomination, residency status of the parties, and purpose of the loan must strictly comply with capital movements legislation.

## Tax Law and Transfer Pricing

Tax law constitutes the area in which intra-group loans are subject to the most intensive scrutiny. Under the arm's length principle applicable to transactions between related parties:

- » interest rates must be consistent with market conditions,
- » excessive borrowing leading to thin capitalization must be avoided,
- » transfer pricing documentation obligations must be fulfilled.

Otherwise, interest expenses may be disallowed, and tax penalties may be imposed.

## Conclusion

As a general rule, intra-group loans are permitted under Turkish law. However, this freedom is significantly constrained by:

- » the capital maintenance principle,
- » the balance rules applicable to corporate groups,
- » banking legislation,
- » foreign currency restrictions under capital movements regulations,
- » tax law requirements.

Accordingly, intra-group loan transactions must be structured on the basis of a holistic legal assessment.

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