

Cash pooling in Turkey – an end to prohibition

Slowly but surely, financial law in Turkey is moving toward global standards. Turkish banks are currently in the midst of implementing new cash pooling policies, following amendments passed last year to the foreign exchange regulations. In line with the newly legalised practice of physical pooling, Turkish companies are now able to transfer via banks cash funds abroad for investments or to conduct commercial activities through a newco, partnership or branch, allowing for the reciprocal flow of funds.

What is cash pooling?

Cash pooling is a cash management technique enabling companies to maximise benefits from current credit and debit positions. It is used to help companies avoid costly bank fees and reduce reputation risk due to negative balances. The two main methods are notional and physical pooling (also known as cash concentration).

Cash pooling in Turkey pre-2008

Prior to 2008 the distinction between notional and physical pooling was significant for Turkish resident corporations. Physical pooling (the transferring of physical funds to cross-border cash pools) was considered as extending credit abroad and was strictly prohibited under Decree 32 Regarding the Protection of the Value of Turkish Currency.

However, this legislation did not prevent notional cash pooling, where there is no physical movement of funds and the account balance of each participating company remains the same. Accordingly, cross-stream guarantees granted by Turkish companies incorporated in Turkey were valid, binding and enforceable under Turkish law.

New legislation

28 February 2008 brought a decision on unified legislation for cash pooling following the amendments to the foreign exchange regulations.

Physical pooling is being diversified - there are now two types of physical pooling "one way pooling" and "two-way pooling". Under both types a company can transfer its day-end balances from its account in Turkey to the header account. The difference is under two-way pooling after the day-end balance is moved from the account in Turkey to the header account the balance of the account in Turkey is restored by the start of the following business day to the day-end balance of the previous day. Under one-way pooling it may take several days for the balance of the account in Turkey to be restored by the header account after the day-end balance is moved.

In this respect, apart from cases where transfers from the header account take place on a short-term, tentative or operational basis, as in two-way pooling where the funds transferred to the header account remain for a long period of time, it is likely that this option may be considered as the utilisation of a loan from the perspective of the company, thus making it subject to 3% Resource Utilisation Support Fund (the "**RUSF**"). Therefore, the diversification of physical pooling arrangements in the banking and finance sectors seems to be leading to a dual application of RUSF within the same type of cash pooling arrangement.

With respect to notional pooling, it should also be noted that if the average repayment term of a loan from a header account to a Turkish company is less than one year, the principle loan amount or the interest thereon will still be subject to RUSF regardless of whether the loan is in foreign currency or Turkish lira.

Overall the change is welcome in Turkey. Companies now have access to a much more efficient cash management alternative, which is already widely in use throughout Europe.

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