
Nicaragua

Financial Assistance

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INTRODUCTION

The purpose of this practical guide is to provide an overview of the regulations dealing with the M&A transactions using financial assistance in Nicaragua under the current Nicaraguan Commercial Code and other laws.

GENERAL OVERVIEW

☐ Which are the origins of financial assistance in Nicaraguan law?

There are no general rules regarding financial assistance in Nicaragua since the Nicaraguan Commercial Code does not regulate these types of transactions. However, Article 57 of the General Law on Banks and other Financial Institutions explicitly prohibits banks to grant financial assistance, whether directly or indirectly, to acquire shares of the bank itself.

☐ What should be understood as financial assistance under Nicaraguan law?

There is no legal definition of this concept, but it may be understood that “Financial assistance” is any financial operation in which a company grants any advances or loans to a third party so that such third party acquires shares of the former.

☐ Is financial assistance accepted under Nicaraguan law?

As indicated before, financial assistance is not generally regulated in Nicaragua. However, according to the general principles of the Commercial Code financial assistance may be accepted in Nicaragua if the ability to perform such financial operation is contemplated in the company’s charter. Banks and other financial institutions are prohibited from carrying out these types of operations.

☐ Is there any exception under Nicaraguan law as regards the general prohibition of providing financial assistance to third parties?

The Commercial Code establishes that the bylaws of corporations (sociedades anónimas) may allow the company to acquire its own shares. Only banks are prohibited by law of providing financial assistance to third parties (for the acquisition of their own shares).

☐ Which are the consequences of providing financial assistance?

Such consequences are not regulated by law. If the conditions are met, a contract in which a corporation (sociedad anónima) provides financial assistance to a third party will be fully enforceable. However, contracts signed between banks and third parties in which the former provides financial assistance to the latter shall be null and void.

CONSEQUENCES OF PROVIDING FINANCIAL ASSISTANCE

☐ Civil penalties

Pursuant to the Nicaraguan Civil Code and the Banking law, financial assistance provided by banks, whether directly or indirectly, shall be null and void by operation of law.

☐ Liability of the administration body

If financial assistance is granted under conditions not allowed by law, directors of the respective corporation (including banks) will be personally, jointly and severally liable for the violation of the company's bylaws or the Law (in accordance with section 245 of the Commercial Code).

☐ Fines

There are no fines specified under Nicaraguan laws for providing financial assistance (with the exception of banks that do not comply with banking regulations).