

---

# Angola

## Financial Assistance

### IBA Corporate and M&A Law Committee 2022

#### [Contacts](#)

Sandra Saraiva

*ALC, Luanda (in association with MLGTS)*

[s.saraiva@alcadvogados.co](mailto:s.saraiva@alcadvogados.co)

Bruno Xavier de Pina

*MLGTS, Lisbon*

[bxpina@mlgts.pt](mailto:bxpina@mlgts.pt)

---

## Contents

	Page
INTRODUCTION	2
GENERAL OVERVIEW	2
QUOTA COMPANIES (PRIVATE LIMITED COMPANIES)	3
SA COMPANIES (JOINT STOCK COMPANIES)	3
CONSEQUENCES OF PROVIDING FINANCIAL ASSISTANCE	4

---

## INTRODUCTION

This guide sets out an overview of the regulation dealing with the concept of financial assistance in Angola, as currently regulated by the Companies Law and approved by means of Law no. 1/04 of 13 February 2004 (the Angolan Companies Law), in connection with:

- private limited companies (quota companies); and
  - joint stock companies (SA).
- 

## GENERAL OVERVIEW

### **What are the origins of financial assistance in Angolan law?**

The regulation of financial assistance in Angolan law has its genesis and inspiration – as do many other pieces of Angolan legislation – in the Portuguese Companies Code.

In fact, the Portuguese legal framework continued to be in force for several years after Angola's independence. It was not until 2004 that a systematic review of all issues regarding companies was made, and that the Angolan Companies Law was enacted. Even today, Portuguese legislation currently in force in Portugal (ie, enacted after independence) continues to be used as an inspiration for the approval of new regulation in Angola, given the similarities between the two legal frameworks and the shared history, culture and society.

The origin of this rule in Portuguese legislation is based on Article 23.1 of the Second Company Law Directive of 13 December 1976 (77/91/EEC). It was firstly incorporated in Law-Decree no 280/87 of 8 July 1987, and subsequently amended by Law-Decree no 257/96 of 31 December 1996.

### **What should be understood as financial assistance under Angolan law?**

Under Angolan law, the concept of financial assistance concept includes the concession of loans, the making available of funds or the granting of security by a company to a third party so that the aforesaid third party acquires own shares issued by the company.

The legal concept is not entirely clear as to whether financial assistance shall also apply in respect of acquisitions or guarantees for companies within the same group. From a systematic point of view, it seems that the same treatment shall be given to such situations, taking into consideration, *inter alia*, the consequences attributed to the infringement of financial assistance provisions.

### **Is financial assistance accepted under Angolan law?**

Angolan law does not allow, as a general rule, SA companies to provide financial assistance to third parties for the acquisition of their own shares. Unlike in Portugal, the prohibition arising from Angolan law appears to apply only to the company's own shares (ie, shares representing the share capital of a company which are held by said company).

Additionally, and similarly to what happens in Portugal, it is not entirely certain whether the financial assistance prohibition applies only to SA companies, or whether it applies also to quota companies. One of the strongest arguments in respect of the applicability of this legal provision only to SA companies rests on the fact that the prohibition is included in the joint stock companies chapter of the Angolan Companies Law, and that there is no reference to it being applicable to quota companies.

In any event, some Portuguese scholars consider this lack of provision to be due to a legislator's lapse, and that the SA regime on financial assistance should apply to quota companies as well.

## **Are there any exceptions under Angolan law as regards the general prohibition of providing financial assistance to third parties?**

Article 344.2 of the Angolan Companies Law regulates two specific exceptions to the general prohibition of providing financial assistance, whenever the aforesaid financial assistance is provided to:

- Employees, provided that the transaction's aim is the acquisition of shares in favour of or by employees. Such shares may be those of the employer's company or those of another group company within the employer's group.
- Banks and other credit institutions, provided that the relevant transaction is integrated in the banking or credit institution activities.

Finally, the applicability of any of these exceptions depends on the relevant transaction not resulting in the reduction of the company's net assets to an amount lower than the amount of the subscribed share capital, accrued of non-distributable reserves.

## **What are the consequences of providing financial assistance?**

### *Civil penalties*

The acts and agreements entered into in contravention with the financial assistance prohibition shall be null and void by operation of law.

### *Fines*

Directors of a company that intervenes in prohibited financial assistance transactions shall be subject to a fine, which will range from 90 to 120 days. This fine period represents a monetary fine of an amount between US\$2,250 and US\$3,000.

---

## **QUOTA COMPANIES (PRIVATE LIMITED COMPANIES)**

As mentioned above, the applicability of the legal prohibition regarding financial assistance to quota companies is not entirely clear. Although there is no significant Angolan scholars' opinion on this matter, it is our opinion that the financial assistance provisions do not apply to private limited companies.

---

## **SA COMPANIES (JOINT STOCK COMPANIES)**

### **General rules**

Article 344.1 of the Angolan Companies Law regulates that this type of company may not advance funds, grant loans nor provide guarantees for the acquisition of its own shares. Nevertheless, it is not entirely clear whether, under Angolan law, the financial assistance concept also applies in respect of acquisitions or guarantees for companies within the same group.

From a systematic point of view, it seems that the same treatment shall be given to such situations, taking into consideration, *inter alia*, the consequences attributed to the infringement of financial assistance provisions.

### **Exceptions to the applicability of the general rule as regards joint stock companies**

Section 2 of Article 344 of the Angolan Companies Law foresees two exceptions to the general rule of financial assistance prohibition:

- The general prohibition of financial assistance may not apply to transactions carried out for the purpose of employees of a joint stock company directly or indirectly acquiring shares in the company itself, or in any other company within the same group.

- The general prohibition of financial assistance may also not apply to transactions carried out by banks and other credit institutions, provided that the relevant transaction is integrated in the banking or credit institution activities.

The applicability of any of these exceptions depends on the relevant transaction not resulting in the reduction of the company's net assets to an amount lower than that of the subscribed share capital, accrued of non-distributable reserves.

---

## CONSEQUENCES OF PROVIDING FINANCIAL ASSISTANCE

### Civil penalties

Article 344.3 of the Angolan Companies Law regulates the civil consequences arising from the provision of financial assistance in contravention with the applicable legal provisions. In said cases, the acts and agreements carried out in contravention with said prohibition shall be null and void by operation of law.

It is unclear whether this only extends to the financing agreement entered between the third party and the company or whether it will apply to the share acquisition transaction – notwithstanding the existing divergence between the doctrine on the scope of the nullity foreseen in the terms of the law.

Without further and more detailed elaboration, we generally agree that both transactions can be seen as constituting a unitary business transaction, thus the nullity of the first should result in the nullity of the second.

### Liability of the administration body

Article 499.1 of the Angolan Companies Law states that the directors violating the relevant legal provision or, when applicable, those of the controlling company inducing such breach, will be held responsible for the financial assistance in accordance with the criteria set forth in Articles 77 and 84 of the Angolan Companies Law.

Therefore, the directors may be held liable before the company, its shareholders and its creditors for any damage caused as a consequence of the financial assistance actions provided.

For these purposes, and as per Article 85 of the Angolan Companies Law, the concept of directors shall include not only the actual directors of the company but also the attorneys with powers to represent the company.

### Fines

Article 499.1 of the Angolan Companies Law states that the violation of the financial assistance prohibition shall be subject to a fine, which will range from 90 to 120 days. This fine period represents a monetary fine of an amount between US\$2,250 and US\$3,000. These amounts could be increased if the offence was committed with a view to obtain a benefit.

In addition, fines shall also apply to directors that have the same conduct regarding subscription or acquisition of own shares within the group to which the company belongs.