

# **EL SALVADOR**

## Financial Assistance

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

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## INTRODUCTION

This guide sets out an overview of the regulations dealing with the concept of financial assistance in El Salvador, as currently regulated by Decree 671 (the Salvadoran Commercial Code).

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## GENERAL OVERVIEW

### What are the origins of financial assistance in Salvadoran law?

The Salvadoran Commercial Code distinguishes between two types of legal entities: stock corporations and partnerships. The most common type of entities used are:

- private limited liability companies (*Sociedad de Responsabilidad Limitada*), also known as partnerships; and
- corporations (*Sociedades Anónimas*).

Article 142 of the Salvadoran Commercial Code regulates the prohibition of financial assistance for corporations only, not for partnerships. It states that corporations cannot provide any type of credit or loan agreements, nor any type of advanced payment, to any individual or entity for them to acquire the company's shares.

### What should be understood as financial assistance under Salvadoran law?

Financial assistance can be understood as the assistance given by an entity to grant any kind of loan or advance payment for the purchase of shares or units

### Does Salvadoran law allow financial assistance?

The Salvadoran Commercial Code expressly prohibits corporations from providing financial assistance to third parties for the acquisition of the corporations' own shares.

The prohibition of financial assistance under Salvadoran law makes it impossible for any corporation to grant any kind of loan or credit agreement or an advanced payment to any third party, in order for the third party to purchase the shares that said corporation is issuing (or has already issued).

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

No, there are no exceptions in the Salvadoran Commercial Code for corporations to provide financial assistance to third parties when acquiring its shares.

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

*Civil penalties*

The Salvadoran Civil Code establishes that any act contrary to the law is considered null and void. Any corporation that provides financial assistance infringes the Salvadoran Commercial Code. Consequently, such act must be deemed null and void.

#### *Liability of the administrative body*

The administrative body of the corporation will be personally and solely liable for any damages that may be caused to the corporation, or to the corporation's creditors, for the infringement of the prohibition of financial assistance.

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## **CONSEQUENCES OF PROVIDING FINANCIAL ASSISTANCE**

### **Civil penalties for the corporation**

The Salvadoran Commercial Code does not mandate any penalties for the corporation for providing financial assistance. In accordance with Article 1 of the Salvadoran Commercial Code, the Salvadoran Civil Code applies instead.

Article 10 of the Salvadoran Civil Code establishes that any act prohibited by law is null and void. Furthermore, Article 1551 of the Salvadoran Civil Code establishes that any act that does not comply with the requirements established by law is also null and void.

Because financial assistance is an act contrary to Article 142 of the Salvadoran Commercial Code, the act is null and void. Article 1553 of the Salvadoran Civil Code establishes that the annulment must be declared by a competent judge; it can be requested by any interested party, except the party that has celebrated such act.

### **Liability of the administrative body**

Article 143 of the Salvadoran Commercial Code establishes that the administrative body of the corporation, whether a sole administrator or board of directors, will be personally and solely liable for any damages that may be caused to the corporation or to the corporations' creditors.

The administrative body will be liable before the corporation and before any creditor, and will have to compensate them and respond to any damage that may have been caused to them.

### **Fines**

The Salvadoran Commercial Code does not expressly regulate any fines for the corporation for the infringement of the prohibition of financial assistance.