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## **Guatemala**

Financial Assistance

IBA Corporate and M&A Law Committee 2022

### Contact

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## INTRODUCTION

This guide sets out an overview of the regulation dealing with the concept of financial assistance in Guatemala as currently regulated by the Congressional Decree 2-70 of the Guatemalan Congress, containing the Guatemalan Commercial Code in connection with all forms of Guatemalan commercial companies.

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## GENERAL OVERVIEW

- **Which are the origins of financial assistance in Guatemalan law?**

Financial assistance is regulated in Guatemala under section 114 of the Guatemalan Commercial Code, Congressional Decree 2-70, which took effect January 1<sup>st</sup> 1971 (the "**Commercial Code**"), specifically referring to "*Sociedad Anónima*" corporations. The Commercial Code regulates all commercial corporations permitted under Guatemalan law. Unlike other jurisdictions with more sophisticated Stock Markets, Guatemala does not have specific regulations for public companies.

- **What should be understood as financial assistance under Guatemalan law?**

Any advances or loans granted by a public limited company ("*Sociedad Anónima*") to third parties so that such third parties may acquire shares of the former.

- **Is financial assistance accepted under Guatemalan law?**

Section 114 unequivocally prohibits financial assistance in the context of a "*Sociedad Anónima*", whether it be publicly or privately held. However, financial assistance is not regulated for other types of commercial corporations such as limited liability entities.

- **Is there any exception under Guatemalan law as regards the general prohibition of providing financial assistance to third parties?**

There are no exceptions to the general rule as pertains to "*Sociedad Anónima*".

- **Which are the consequences of providing financial assistance?**

Under Guatemalan Law, financial assistance provided by a "*Sociedad Anónima*" shall be null and void.

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## CONSEQUENCES OF PROVIDING FINANCIAL ASSISTANCE

- **Civil penalties**

Pursuant to Section 1301 of the Guatemalan Civil Code, the financial assistance provided and any act derived from it will be considered an act contrary to mandatory and prohibited rules and shall be null and void by operation of law.

- **Liability of the administration body**

In accordance with sections 52, 171 and 172 of the Commercial Code directors of the “*Sociedad Anónima*” which approve or permit providing financial assistance can be held legally and personally liable for any damages suffered by the corporation as a result of having provided financial assistance. This action may be brought by the shareholders of the corporation or even by creditors based on section 176 of the Commercial Code.

Pursuant to section 182, managers of a “*Sociedad Anónima*” are also liable for the same causes directors can be held liable for.

- **Fines**

There are no fines specified under Guatemalan laws for providing financial assistance.