
Honduras

Financial Assistance

IBA Corporate and M&A Law Committee 2022

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Contents

	Page
INTRODUCTION	2
GENERAL OVERVIEW	2-3
CONSEQUENCES OF PROVIDING FINANCIAL ASSISTANCE	3

INTRODUCTION

This guide sets out an overview of the regulation dealing with the concept of financial assistance in Honduras as currently regulated by the Decree 73, named the Honduran Commercial Code (the “**Honduran Commercial Code**”).

GENERAL OVERVIEW

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

The Honduran Commercial Code distinguishes between five types of legal entities, two of which are most commonly used in practice: stock corporations and partnerships. Private limited liability companies (*Sociedad de Responsabilidad Limitada*) are considered partnerships, whereas public limited companies (*Sociedades Anónimas*) are deemed stock corporations or simply corporations.

Article 123 of the Honduran Commercial Code regulates the prohibition of financial assistance for corporations, stating that corporations cannot provide any type of credit or loans, nor any type of advanced payment to any individual or entity, in order to acquire the company's shares.

There is no express prohibition in the Honduran Commercial Code regarding financial assistance in the case of partnerships.

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

The prohibition of financial assistance under Honduran law refers to the inability for any corporation to grant any kind of loan or credit or an advanced payment, to any third party, in order for this third party to purchase the shares that said corporation is issuing or has already issued.

- **Does Honduran law accept the financial assistance?**

The Honduran Commercial Code expressly prohibits corporations to provide financial assistance to third parties for the acquisition of the corporations' own shares.

There is no express prohibition in the Honduran Commercial Code regarding financial assistance in the case of partnerships.

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

No, the Honduran Commercial Code does not regulate any exceptions for corporations to provide financial assistance to third parties when acquiring its shares.

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

Civil penalties: the Honduran Civil Code establishes that any act that is contrary to the imperative provisions of the Commerce Code is considered null and void.

Liability of the administration body: The administration 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.

CONSEQUENCES OF PROVIDING FINANCIAL ASSISTANCE

- **Civil penalties for the corporation**

The Honduran Commercial Code does not foresee any specific penalties for the corporation itself or damages, in the event that it infringes Article 123 of the Honduran Commercial Code. The amount of damages resulting from the infringement of article 123 would therefore have to be argued and proven in a civil court.

- **Liability of the administration body**

Article 224 of the Honduran Commercial Code establishes that the administration body of the corporation, whether sole administrator or board of directors, will be personally and solely liable for their administration. This may include any damages which may be caused to the corporation or to the corporations' creditors, for the infringement of the prohibition of financial assistance.

- **Administrative Fines**

There is no Superintendence for corporations and partnerships that may impose an administrative fine for infringement of article 123 of the Honduran Commercial Code. Financial institutions (corporations) that are supervised by the National Banking and Insurance Commission may be subject to an administrative fine for violations of the Regulation of Corporate Governance and the Certificate of Incorporation of the corporation. Nevertheless, as far as we have knowledge, there is no precedent.
