
Peru

Financial Assistance

IBA Corporate and M&A Law Committee 2022

Contact

Emil Ruppert

Rubio Leguía Normand, Lima

eruppert@rubio.pe

Contents

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

INTRODUCTION

This guide sets out an overview of the regulations dealing with the concept of financial assistance in Peru as currently regulated by Law No. 26887, General Companies Law (the Companies Law).

GENERAL OVERVIEW

■ What are the origins of financial assistance in Peruvian law?

The regulation of financial assistance in Peruvian law originated with Article 118 of the Law No. 16123, Law of Mercantile Companies of 1966. It is currently regulated by Article 106 of the Companies Law, enacted on 5 December 1997.

■ What should be understood as financial assistance under Peruvian law?

In general terms, it means the granting of loans or guarantees by a target company to a shareholder (or any third party) for the purpose of the acquisition of shares issued by the target company.

■ Is financial assistance allowed under Peruvian law?

As a general rule, Peruvian law does not allow corporations (*sociedades anónimas*) to provide, directly or indirectly:

- financial assistance (granting loans or guarantees) to third parties for the acquisition of their own shares, regardless of whether their own shares are used as collateral; or
- loans or guarantees with their own shares as collateral.

This prohibition applies to all types of corporations.

■ Are there any exceptions under Peruvian law from the general prohibition against providing financial assistance to third parties?

There are no exceptions under Peruvian law from the general prohibition against providing financial assistance (as understood by Peruvian law).

■ What are the consequences of providing financial assistance?

Board of directors responsibility: according to Articles 106 and 177 of the Companies Law, directors are jointly and unlimitedly liable for any losses caused to the corporation resulting from the provision of financial assistance.

CORPORATIONS

Article 106 of Peruvian Companies Law regulates, with respect to all types of corporations, *that they shall not grant loans or guarantees in any case with their own shares as collateral* – even in case of the acquisition of its own shares – under the liability of the board of directors.

In summary, this prohibition provides that any corporation cannot:

- grant loans with its own shares as collateral;
- grant any guarantees with its own shares as collateral; and,
- grant any loan or guarantee for the acquisition of its own shares, regardless of whether its own shares are used as collateral.

CONSEQUENCES OF PROVIDING FINANCIAL ASSISTANCE

■ **Liability of the board of directors**

Article 106 of the Companies Law provides that the members of the board of directors will be held responsible for the financial assistance. Therefore, the directors will be liable to the company, the shareholders, third parties and creditors for any damage caused as per the financial assistance provided.

For these purposes, the individuals appointed as directors of the corporations at the time of the financial assistance will be liable.

■ **Stock market infraction**

If the corporation is listed on the stock market, the infringement of the prohibition of providing financial assistance is treated as a very serious infraction. A general clause is included in the relevant regulations, which states that performing any operations or activities prohibited by the applicable rules is categorised as an infraction.

The main applicable sanctions for this type of infraction are as follows:

- A fine of between 50 tax units (PEN230,000) to 700 tax units (PEN3,220,000); and
- cancellation of the company's registration.