
Uruguay

Financial Assistance

IBA Corporate and M&A Law Committee 2017

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INTRODUCTION

This guide sets out an overview of the regulation dealing with the concept of financial assistance in Uruguay in connection with companies in general.

GENERAL OVERVIEW

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

Financial assistance is not specifically regulated by Uruguayan statutes.

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

Although not specifically regulated, in general terms, financial assistance means the granting of a guarantee or the creation of a security over a company's own assets to secure obligations of a third party towards other entities and/or banks.

- **Is it accepted under Uruguayan law the financial assistance?**

Uruguayan law does not prohibit that an Uruguayan company ("**Company**") engages in financial assistance as long as said activity falls within the Company's corporate purpose. The law stresses that the board of a Company may not engage in any activities which notoriously falls away of the Company's corporate purpose.

Unless the granting of financial assistance is specifically included within the Company's corporate purpose stated in its by-laws, the determination of whether financial assistance falls within the corporate purpose is a business matter (the fact that such granting is notoriously away from the corporate purpose or not is an issue to evidence in the minutes of the board approving the granting of such security) and also depends on whether the Company receives a benefit out of the financial assistance being granted, or it implies performing indirectly its corporate purpose or being in the Company's best interest.

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

If the financial assistance does not imply the performance of the Company's corporate purpose by means of being regarded as notoriously alien to the Company's corporate purpose, the consequences are a debatable issue in Uruguayan doctrine.

Some scholars understand that the capacity of the Company as legal entity is defined and determined by its corporate purpose and hence any alien act to the same would call for such act to be deemed null and void due to the lack of capacity of the Company. Others (the majority doctrine) understand that the consequences are that the alien act would trigger the liability of the board but the act would be valid and enforceable against the Company.

Uruguayan Company Law 16.060 provides that all acts executed by a Company must not be notoriously alien to the corporate purpose of the company. If they were notoriously strange, consequences are debatable in doctrine, but may go from (a) considering the

financial assistance as null and void, and the Company not being bounded, to (b) the Company being bounded. In any event, the Company's representatives may be held liable for entering into financial assistance beyond the scope of the Company's corporate purpose.

CONSEQUENCES OF PROVIDING FINANCIAL ASSISTANCE

Financial assistance granted by a Company would be perfectly valid as long as it implies the performance of its corporate purpose. If this is not the case, the following should be taken into account:

- **Effects on the Company**

If the financial assistance is deemed to be notoriously strange to the Company's corporate purpose, consequences are debatable in doctrine, but may go from (a) considering the financial assistance as null and void and the Company not being bounded, to (b) the Company being bounded and the directors of the same being held liable.

- **Liability of the administration body**

Members of the Company's board may be held civilly liable for the Company having provided financial assistance, if the aforesaid financial assistance is ultimately deemed to be a notoriously strange act as regards the corporate purpose of the Company.