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## **Paraguay**

Financial Assistance

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## INTRODUCTION

This guide sets out an overview of the regulation dealing with the concept of financial assistance in Paraguay as currently regulated by the Paraguayan Civil Code of 1 January 1987, (the “**Civil Code**”), among other regulations that address this subject.

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## GENERAL OVERVIEW

### ■ Which are the origins of financial assistance in Paraguayan law?

Regulation of financial assistance in Paraguayan law has its origins in Article 343 of the Commerce Code (not in force) and Article 1686 of De Gasperi’s Draft Civil Code, and was firstly incorporated in the Civil Code, in its Article 1073.

Subsequently, a regulation of financial assistance was also included in Article 70 of the Banks, Financial Institutions and Other Credit Entities Act (“the **Banks Act**”).

### ■ What should be understood as financial assistance under Paraguayan law?

Financial assistance is not defined under Paraguayan law. However, this subject is addressed by several regulations that can be found in the Civil Code and the Banks Act.

In general terms, financial assistance can be understood as the direct or indirect advancement of funds by a target company to a third party for the purpose that the aforesaid third party acquires quotas or shares issued by the target company or by any other company in the group to which the target company belongs.

### ■ Is financial assistance accepted under Paraguayan law?

Paraguayan law does not allow, as a general rule, that corporations (whether public or privately held) provide financial assistance to third parties for the acquisition of its own quotas or shares. A similar prohibition is established when dealing with the acquisition of quotas or shares of corporations under its control or quotas or shares of any other bank and financial institution, as is the case with the Banks Act.

### ■ Is there any exception under Paraguayan law as regards the general prohibition of providing financial assistance to third parties?

The Civil Code does not provide any exceptions to the general prohibitions of providing financial assistance and neither does the Banks Act.

### ■ Which are the consequences of providing financial assistance?

- Civil penalties: the financial assistance provided and any derived act shall be considered null and void by operation of law.
- Fines: the infringement of the prohibition of providing financial assistance will be penalized by holding the administrators of the corporation jointly and severally liable

vis-à-vis shareholders and third parties that may be affected as a consequence of the performance of the illicit act.

Under Paraguayan law the prohibition to grant financial assistance is laid out in a general sense. That is, without making any distinction between public or privately held corporations. Thereupon both kinds of corporations are subject to the same prohibition.

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## PRIVATE AND PUBLIC CORPORATIONS

Article 1073 of the Civil Code regulates that stock corporations – without making any distinctions - may not advance loans to third parties for the acquisition of its own shares.

Additionally, Article 70, section b) of the Banks Act, establishes a broad prohibition applicable to banks and other financial entities to lend credits with the purpose to direct its product to, directly or indirectly, acquire shares of the lending bank or any other financial entity.

**Note:** Banks and other financial entities regulated under the Banks Act must, according to the law, be incorporated as stock corporations.

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## CONSEQUENCES OF PROVIDING FINANCIAL ASSISTANCE

### ■ Civil penalties

Article 357 section b) of the Civil Code will be applied. Therefore, the financial assistance provided and any act derived from it will be considered an act contrary to mandatory rules and shall be null and void by operation of law.

### ■ Liability of the administration body

Article 1111 of the Civil Code states that the administrators committing an infraction established by the law will be held responsible, answering jointly and severally with their assets, for the financial assistance provided. Therefore, the administrators will be liable to the corporation, the shareholders and the creditors for any damage caused as per the financial assistance provided. Nonetheless, it is worth noting that those administrators that voted against the decision of providing the financial assistance will be exempt from any liability.

For these purposes, managers or persons with powers to represent the company will be deemed to be administrators.

### ■ Fines for banks and financial institutions

The Banks Act provides that the infringement of the prohibitions established in the law may be subject to fines imposed by the Paraguayan Central Bank. The amount of those fines will be set according to the significance of the infraction as well as the damage caused to the company, its members and third parties.