Asociación Hipotecaria Española

UPDATED LEGAL TEXTS OF THE MAIN LAWS REGULATING THE SPANISH MORTGAGE MARKET

Disclaimer:

The translation of all the laws and regulations included in this document only corresponds to those aspects related to the regulation of the mortgage market and other significant financial and tax regulations.

This is a private translation made by the Spanish Mortgage Association (AHE) and therefore, the only valid legal texts are those published in the Spanish Official Gazette.

Madrid, December 2007

Spanish Mortgage Association

Asociación Hipotecaria Española

Note from the AHE

The Spanish mortgage market has its origins in Law 2/1981, of 25th March, and in Royal Decree 685/1982, of 17th of March, which further developed it.

Since then, the initial legal framework has been partially and occasionally modified by several laws, which at the same time have been also modified by other subsequent legal texts.

The ***Law 41/2007, of 7th December,*** is the most profound and significant reform of the mortgage market modifying not only Law 2/1981, but also other legal texts, which most of them, have been also previously redraft.

Besides, because of the agenda of its parliamentary process, Law 41/2007 has been used by the Government as a vehicle for the discussion and the passing of other legal texts which have no relation with the mortgage activity, including the tax exemptions of the America's Cup; income tax reduction because of birth or adoption, Chattels Mortgage and Non-Transferable Collaterals, regulation and supervision of private insurances, Law on Civil Procedures, Law on Labour Procedures, etc..

The lack of an official rewritten text of so many and different regulations makes more difficult to get an accurately knowledge of the complete legal framework of the mortgage market.

Aware or this reality, the Spanish Mortgage Association (AHE) has updated for information purposes the in force legislation affecting the mortgages market. This updating is presented in a single document, which does not contain any of the regulations which do not affect the mortgage market.

The result is an unofficial document which facilitates the global view of the market regulation and the reference to the official legal texts.

We hope it is useful for our members and for their clients, users of mortgage credits, as well as for lawyers, analysts, researchers and reporters of the Spanish mortgage market, consumer's organizations and in general for all those who need direct information.

Simultaneously, we have prepared the English version of the document in order to facilitate its reading and understanding abroad.

We hope to have contributed one more time to enhance the transparency and efficiency of our markets.

Asociación Hipotecaria Española

INDEX OF LEGAL TEXTS

Notes:

- The texts in **Black** colour are the former regulations that remain in force.
- The texts in **Red** colour correspond to the modifications introduced by Law 41/2007.
- The texts in **Blue** colour are notes or explanations introduced by the Spanish Mortgage Association (AHE) in order to facilitate the legal document's understanding.

LAW 2/1981, OF 25th MARCH, REGULATING MORTGAGE MARKET

(Updated with Law 41/2007)

Preliminary regulation

Article 1

The financial institutions referred to in this Act can grant mortgage loans and issue the securities necessary to fund them in accordance with the requirements and objectives established in it, without prejudice to the fact that these institutions or others can issue and transfer obligations, secured or not, in accordance to the current legislation.

This Act, and its regulations, shall be applied to all securities regulated therein and issued in Spanish territory.

Section I. FINANCIAL INSTITUTIONS AND VALUATION COMPANIES

Article 2

The credit institutions which are detailed below can grant loans and credits and issue the securities regulated in this Act, under the conditions that are determined in the regulations:

a) Banks and, when permitted under their articles of association, official credit institutions,

b) The savings banks and the Spanish Confederation of Savings Banks (*Confederación Española de Cajas de Ahorros)*,

c) Credit cooperatives,

d) Financial credit establishments.

Article 3

1. The valuation companies and the valuation services of the lenders shall be subject to the prior approval, independence and secrecy requirements that are established in the regulations.

2. The valuation companies which provide their services to lenders of their same group, and the valuation companies which derive at least 25 percent of their total revenue, during the time period established in the regulations, from one lender or from all of the lenders in the same group, must, provided that any of these lenders has issued or has in circulation mortgage securities, have suitable mechanisms in place in order to favour the

independence of the valuation activity and to avoid conflicts of interest, particularly with the lender's managers or units which, without specific competence in the analysis or management of risks, are related to granting or marketing mortgage credits or loans.

These mechanisms shall at least include an internal code of conduct which establishes the incompatibilities of their managers and administrators and the other issues which are most adequate according to the institution's size, business type and other characteristics. The Bank of Spain shall check said mechanisms and can establish the minimum requirements that must be generally fulfilled and require the entities, in a well-reasoned manner, to adopt the additional measures which are deemed necessary in order to preserve their professional independence.

The obligation to have those mechanisms will also affect the lenders' own valuation services and those valuation companies controlled or, where there is a significant influence over its management, by shareholders with specific interests in the development or marketing of real estate, or in activities which, in Bank of Spain's view, are analogous in nature.

3. The credit institutions which have issued or have in circulation mortgage securities and have valuation services or entrust valuations to a valuation company in its own group, must set up a technical committee to verify the compliance with the independence requirements contained in the mechanisms mentioned in the previous paragraph. Said committee will prepare an annual report on the degree of compliance with the said requirements which must be sent to the institution's board of directors or equivalent body. The said annual report must also be sent to the Bank of Spain.

Article 3 bis

1. The valuation companies and the lenders which have their own valuation services must comply with the regulations applicable to estate valuations for the mortgage market or other financial purposes to accurately draft the certificates and reports that they issue and to perform at any times with professional diligence. Breach of any of the obligations will lead to the application of the sanctioning regime set out in this article.

2. The infringements are classified as very serious, serious and minor.

a) Very serious infringements are considered as:

1.ª The breach, for a period of over six months, of the minimum share capital requirement in order to perform the valuation activity set out in the mortgage market legislation, and, during the same period, the absence of the civil liability insurance, or for a lower cover limit than that established, as set out in the regulation.

2.ª The performance of activities other than the legally established corporate purpose,

unless it is merely occasional or a one-off.

3.ª Having deficiencies in the administrative organisation, be it technical or staff ones, including deficiencies in the minimum requirements for qualified administrators or professionals, or in the internal control procedures, when due to such deficiencies the institution's capacity to know the situation and conditions of the real estate market in which they operate, the uniform compliance with the applicable valuation regulations, their professional independence from shareholders' or clients, or the control of the secrecy obligations or incompatibilities affecting the professionals in their service is not ensured .

4.ª The breach by the signatories of the valuation reports of the professional qualification requirements set out in the regulations.

5.ª The issue of valuation certificates or reports which contain in a clear manner:

a) The lack of truth in the valuation and, in particular, the lack of consistency with the details and tests obtained in the valuation activity.

b) The lack of caution in the valuation when the issue of said document is to value assets eligible as guarantee for credits that are or will be part of the cover for mortgage securities, or for the cover of technical provisions of the insurance companies or for the real estate assets of the pension funds, or for any other purpose in which the principle of valuation caution is applicable.
In any event, the clear lack of truth or, if applicable, the clear lack of valuation caution will be assumed when, as a result of the valuations contained in any of said documents leads to a false appearance that a credit institution, an insurance company, a pension fund or any other financial institution complies with the financial guarantees required therein.

6.ª Resisting, refusing or obstructing inspection by the Bank of Spain, the National Stock Market Commission or the Directorate General for Insurance and Pension Funds within their respective competences, provided that there has been an explicit, written request.

7.ª The breach of the independence rules contained in the internal regulations envisaged in section 2 of article 3 of this Act.

8.ª Endangering the safe and cautious management of a valuation company through the owner of a significant interest exerting influence, in accordance with that set out in the regulations.

9.ª the serious infringements, when during the five years prior to their commission there was a firm sanction imposed for the same type of infringement.

b) Serious infringement is considered as:

1.ª The breach of the minimum capital requirement to perform the valuation activity set out in the mortgage market legislation, when it is not a very serious infringement, as well as the deficiencies that are appreciated in the civil liability insurance policy, unless they are merely occasional or isolated or involve exception exclusions for certain damages in accordance with normal insurance cover practice.

2.ª Presenting deficiencies in the administrative organisation be it technical or staff ones, including the minimum requirements for qualified administrators or professionals, in the internal control procedures, once the period granted by the competent authorities for their correction has expired and provided that it is not a very serious infringement.

3.ª The issue of valuation certificates which are not in accordance with the valuation report, unless it is merely occasional or isolated.

4.ª The issue of valuation certificates or reports which contain:

a) The lack of truth and, in particular, the lack of agreement with the details and tests obtained from the valuation activity, as well as the continuous breach of the valuation principles, procedures, checks and instructions set out in the applicable regulations.

b) The lack of caution in the valuation when the issue of said document is to value assets eligible as guarantee for credits that are or will be part of the cover for mortgage securities, or for the cover of technical provisions of the insurance companies or for the real estate assets of the pension funds, or for any other purpose in which the principle of valuation caution is applicable, unless said failure is occasional or isolated.
In both cases provided that the conduct does not constitute a very serious infringement.

5.ª Any other breach of the valuation rules which could cause financial damage to third parties or to the person to whom the service is provided.

6.ª The failure to send the details which must be provided to the Bank of Spain, the National Stock Market Commission or the Directorate General for Insurance and Pension Funds, or their lack of truth when this hinders the appreciation of the activity performed by the institution or its asset or organisational situation. For these purposes, it will be understood that there is a failure to send when it is not done within the period granted for such purpose by the competent body, when it the latter sends a written request for compliance with the obligation or the request is repeated.

7.ª The breaches of the duties of professional secrecy, independence and incompatibility in the performance of their functions which do not lead to very serious infringement, unless they are merely occasional or isolated.

8.ª The minor infringements when during two years prior to their commission there was a firm sanction imposed on the valuation services and companies for the same type of infringement.

c) Minor infringement shall be considered the other acts and omissions which breach the applicable regulations.

3. The valuation companies and the credit institutions which provide valuation services, as well as their administrators and managers, may be subject to the sanctions set out in Chapter III of Heading I of Law 26/1988, of 29th July, on Credit Institutions Discipline and Intervention, with the following modifications:

a) The sanction to revoke the authorisation shall be held replaced by the definitive loss of the authorisation to provide valuation services.

b) For very serious infringements the sanction of suspension of the authorisation to provide valuation services can also be imposed for between one and five years, and for serious infringements suspension of said authorisation for up to one year.

c) The disqualification sanctions set out in article 12 shall be understood as referring to both credit institutions and to valuation companies.

4. The sanctioning procedure applicable shall be regulated in Royal Decree 2119/1993, of 3rd December, on the sanctioning procedure applicable to the persons acting on the financial markets.

The sanctioning competence shall be as set out in article 18 of the Law 26/1988, of 29th July, on Credit Institutions Discipline and Intervention with the following modifications:

a) The Bank of Spain shall obligatorily instigate sanctioning proceedings when there is a reasoned communications with grounds from another administrative body or authority which states that the irregular provision of valuation services has had repercussions within their scope of administrative action.

b) In the case set out in the previous letter, before a sanction is imposed the competent administrative body or authority shall have to report.

5. In the other issues relating to the sanction regime, the set out in Law 26/1988, of 29th July, on Discipline and Intervention of the Credit Institutions shall be applied, with the adaptations established in the regulations will be applicable.

6. The Tenth Additional Regulation of the Law 26/1988, of 29th July, on Credit Institutions Discipline and Intervention, in accordance with its subsequent regulations, shall be applicable to those individuals or legal entities that, without being authorised to develop

valuation activities, provides these services to the public.

Article 3 bis I)

The credit institutions, even those with their own valuation services, must accept any valuation of a property provided by the client, provided that it is certified by a valuer approved in accordance with this Law and it has not legally expired, and without prejudice to that fact, the lender can carry out the checks that it deems relevant; under no circumstances can the cost thereof be passed on to the client which provides the certificate.

Article 3 ter

1. Every individual or legal entity that wishes to directly or indirectly acquire a significant shareholding in a valuation company must previously inform the Bank of Spain. Furthermore, the Bank of Spain must be informed, as soon as it becomes aware, of the acquisitions or transfers of interests in their capital which exceed the level indicated in section 2 of this article.

2. For the purposes of this Law significant shareholdings in a valuation company shall be understood as that which directly or indirectly reaches at least 15 percent of the capital or of the voting rights of the company.

They are also considered significant shareholdings those that, without reaching the indicated percentage, allow for the performance of a notable influence over the company

3. The Bank of Spain shall have a maximum period of three months counting from the date on which it was informed to, if applicable, deny the authority fort the acquisition. The denial can be based on the fact that the acquirer is not considered suitable. Amongst other factors, the suitability will be appreciated according to:

a) The commercial and professional honourableness of the shareholders. This honourableness shall be presumed when the shareholders are Public Administrations or entities depending on them.

b) The asset resources that the said shareholders use to cover their commitments.

c) The lack of transparency in the structure of the group that the company may possibly belong to, or the existence of serious difficulties in inspecting or obtaining the necessary information about the development of its activities.

If the Bank does not pronounce in the said period, it shall be understood that the plan is accepted.

4. When one of the acquisitions referred to in section 1 of this article is performed without having previously informed the Bank of Spain or, having informed it, the three month period has not passed as set out in the previous section, or if the Bank expressly opposes, the following effects will occur:

a) In all cases and automatically, the political rights corresponding to the irregularly acquired interest can not be performed. If however they are exercised, the corresponding votes will be null and the agreements can be challenged through the courts, as set out in section 2 of chapter V of legislative Royal Decree 1564/1989, of 22nd December, which passes the consolidated text of the Limited Liability Companies Law, for which the Bank of Spain has authorisation.

b) Furthermore, the sanction set out in article 3 bis of this Act can be imposed

SECTION II.-FINANCIAL ASSETS TRANSACTIONS.

Article 4

The objective of the loan operations referred to in this Law shall be to finance, with ordinary or maximum sum mortgage secured on real estate, the construction, renovation and acquisition of dwellings, urban development and public infrastructure work, construction of agricultural, tourism, industrial and commercial buildings and any other building work or activity as well as any other loans granted by the entities mentioned in article 2 and guaranteed by real estate mortgage under the conditions established in this Law, whatever their purpose.

The disposals of the loans, the mortgage collateral of which correspond to real estate under construction or renovation, can be fixed to a calendar agreed with the lender according to the execution of the building work or the investment and the evolution of the sales or allocations of the housing.

Article 5

The loans and credits referred to in this Law shall be in every case secured by real estate mortgage constituted with first range over the full ownership of the entire property. If over the same property there are other mortgages or it is affected by disposal prohibitions, resolutory condition or any other limitation over the ownership, one and other shall be cancelled or they must be placed over the mortgage which is constituted before the issuance of securities.

The loan or credit secured by this mortgage shall not exceed 60 per 100 of the valuation of the mortgaged asset. When the construction, renovation or acquisition of homes is financed, the loan or credit can amount to 80 per 100 of the valuation, notwithstanding

the exceptions envisaged in this Law.

If, for reasons related to the market or for any other circumstances, the value of the mortgaged asset decreases below the initial valuation more than 20 per 100, the financial institution can demand to extend the mortgage to other assets, unless the debtor opt to repay the loan in its totality or to pay the part of the loan exceeding the amount resulting from applying to the current valuation the percentage which determined originally the amount of the loan.

The loans and credits referred to in this article can include those others which are secured by real estate situated within the European Union through equivalent guarantees to those defined in this Law.

The following will be determined in the regulations:

1. The assets which can not be accepted as guarantee because they do not represent a sufficiently stable and lasting security. Under no circumstances can officially sponsored housing under public protection be excluded as mortgageable assets.

2. The cases in which the 60 per 100 is exceeded between the guaranteed loan or credit and the value of the mortgaged asset, with the maximum limit of 80 per 100, as well as in those where the Administration, depending on the characteristics of the mortgaged assets, may establish percentages lower than 60 per 100. The maximum limit of 80 per 100 will under all circumstances be applied to the loans and credits guaranteed with a mortgage over officially protected housing.

3. The issue conditions for the securities issued with mortgage guarantee over real estate under construction.

4. The conditions in which the 80 percent ratio between the guaranteed loan or credit and the value of the mortgaged dwelling can be exceeded, without exceeding 95 percent of that value, using additional guarantees provided by insurance companies or credit institutions.

5 The way in which the equivalence of the real guarantees over real estate in other Member States of the European Union will be appreciated as well as the conditions for the issue of securities which are issued taking them as guarantee.

Article 6

The financial institutions referred to in article 2º.1, can grant guarantees to cover the repayment of other borrower's loans when the borrower subscribes, as a counter-guarantee, in favour of the guarantor, a real state mortgage that meets all the requirements established in this Law. Those funds obtained by the guaranteed borrower

thereby shall be used for the purposes stated in article 4.

The amount of those guarantees shall not be considered by the guarantor in the calculation of the maximum limit to the issuance of securities referred to in article 16 and 17 and subsequent ones, even if in any case they shall be considered as risk capital.

Article 7

1. In order to mobilize a mortgage credit by issuing the securities regulated in this Law, the mortgaged assets must have been valued by the valuation services of the Institutions referred to in article 2, or, by other valuation services fulfilling the requirements to be established.

2. The Minister for Finance, after the Official Credit Institute has provided a report, shall regulate:

a) The general rules on valuation of the assets subject to be mortgaged. Both the valuation services of the credit institutions and the specialized institutions that may be constituted for this purpose shall be subject to these regulations.

b) The way in which the valuation shall be stated.

c) The rules governing the inspection of the aforementioned rules.

Article 8

The mortgaged assets shall be insured against damage for the valuation value, under the conditions stated by the rules.

Article 9

In concordance with the regulations, it shall be established the minimum percentage that shall represent the own resources of the financial institutions referred to in article 2, regarding the assets at risk under loans or guarantees secured by mortgage collateral.

Article 10

The mortgages registered in favour of the institutions referred to in article 2 can only be rescinded or contested under that set out in article 71 of the Bankruptcy Law 22/2003, of 9th July, by the bankruptcy administration which will have to prove the existence of fraud in the constitution of the burden. Third party rights in good faith will however survive.

SECCION III.-LIABILITY TRANSACTIONS

Article 11

The institutions referred to in article 2 which have mortgage loans or credits with the requirements established in the previous section can issue *cédulas hipotecarias* and mortgage bonds, in series or individually and with the financial characteristics desired in accordance with what it is stated in the following articles. In particular, the *cédulas hipotecarias* and mortgage bonds can include early repayment clauses as decided by the issuer according to that specified in the terms of issue. Always provided that the applicable regulation is Law 24/1988, of 28th July, on the Stock Market, these issues will be adapted to the regime envisaged thereof.

Article 12

The *cédulas hipotecarias* can be issued by all of the institutions referred to in article 2.

The capital and interests of the *cédulas hipotecarias* shall be particularly guaranteed, without the need for registry entry, by mortgage, particularly those which at any time are entered in favour of the issuing institution and are not serving as a collateral of mortgage bonds, without prejudice its universal asset liability and, if any, by the substitution assets included in section two of article 17 and by economic flows generated by the derivative financial instruments linked to each issue, under the conditions determined in the regulations.

The institution issuing the *cédulas hipotecarias* will keep a special accounting register of the loans and credits that serve as collateral of the issues of *cédulas hipotecarias* and, if any, of the substitute assets fixed that cover them, as well as the derivative financial instruments linked to each issue. This special accounting register must also identify, for the purposes of calculating the limit established in article 16, from the total registered loans and credits, those that fulfil the conditions required in the second section of this Law. The annual accounts of the issuing institution shall contain, as determined in the regulations, the essential details of said register.

The issues of *cédulas hipotecarias* will not be affected by chapter X of Legislative Royal Decree, of 22nd December, which passes the consolidated text of the Limited Liability Companies' Law. Nor shall they be entered in the Trade Register.

Article 13

The mortgage bonds can be issued by all of the institutions referred to in article 2.

The capital and interests of the bonds will be specially guaranteed, without the need for entry in the register, by mortgage over the mortgage loans and credits performed in public

deed, without prejudice to the universal asset liability of the issuing institution, and, if any, by the substitution assets covered in section two of article 17 performed in public deed and by the economic flows generated by the derivative financial instruments linked to each issue, under the conditions determined in the regulations.

All of the loans and credits affected by an issue of mortgage bonds must meet the requirements of section II of this Law.

The institution issuing the mortgage bonds will keep a special accounting register of the mortgage loans and credits affected by the issue and, if any, of the substitution assets included in the cover, as well as of the derivative financial instruments linked to the issue.

A syndicate of bondholders can be constituted when the bonds are issued in series, in which case the issuing institution shall designate a commissioner to attend the execution of the public deed mentioned in the second paragraph of this article on behalf of the future bondholders. Said person, whose appointment must be ratified by the bondholders' plenary, will be the syndicate's chairperson, and apart from the powers conferred in the said deed or attributed by the aforementioned plenary, will legally represent the syndicate, check that the institution maintains the percentage referred to in article 17.1 and perform the corresponding actions.

The chairperson, and the syndicate in everything relating to its composition, powers and competences, shall be governed by the rules in chapter X of Legislative Royal Decree, of 22nd December, which passes the consolidated text of the Limited Liability Companies' Law, insofar as they do not contradict the content of this Law.

Article 14

The *cédulas hipotecarias* and mortgage bonds incorporate their holder's credit right against the issuing institution, guaranteed as set out in articles 12 and 13, and shall entail execution in order to claim payment from the issuer, after they expire. The holders of the said securities shall be creditors with special preference, as indicated in number 3 of article 1923 of the Civil Code, over any other creditors as regards all of the mortgage loans and credits entered in favour of the issuer in case of *cédulas hipotecarias*, except for those that cover the mortgage bonds, and in relation to the mortgage loans and credits serving as a collateral in case of bonds and, in both cases, in relation to the substitution assets and the economic flows generated by the derivative instruments linked to the issues, if any. The bondholders of an issue shall have prevalence over the holders of *cédulas hipotecarias* over a loan or credit serving as collateral by said issue. All of the holders of *cédulas hipotecarias*, whatever their date of issue, shall have the same prevalence over the loans and credits that guarantee them, and, if any, over the substitution assets and over the economic flows generated by the derivative instruments linked to the issues.

In the event of the issuer's bankruptcy, the holders of *cédulas hipotecarias* and the

mortgage bond holders shall enjoy the special privilege established in number 1 of section 1 of article 90 of the Bankruptcy Law 22/2003, of 9th July.

Notwithstanding the above, in accordance with number 7 of section 2 of article 84 of the Bankruptcy Law 22/2003, of 9th July, during the bankruptcy, and as credits against the mass, there will be satisfied all the payments which correspond to the repayment of the capital and interest of the issued *cédulas hipotecarias* and mortgage bonds, which are pending on the date of the bankruptcy application up to the amounts received by the debtor from the mortgage loans and credits and, if any, from the substitution assets which backup the *cédulas hipotecarias* and mortgage bonds and the economic flows generated by the financial instruments linked to the issues.

In the event that, temporarily, the revenue received by the debtor is insufficient in order to meet the payments set out in the previous paragraph, the bankruptcy administration must pay them by liquidating the substitution assets serving as a collateral of the issue, and if these are insufficient, funding/financial operations must be performed in order to comply with the payment obligations to the holders of *cédulas hipotecarias* or bondholders, subrogating the financial backer in their position.

In the event that the procedure is to be followed according to that indicated in number 3 of article 155 of the Bankruptcy Law 22/2003, of 9th June, the payment to all of the owners of *cédulas hipotecarias* issued by the issuer shall be done proportionally, regardless of the issue date of their securities. If the same credit is affected by payment of *cédulas hipotecarias* and to an issue of bonds, the bond owners will be paid first.

Article 15

The institutions referred to in article 2 can offer third parties to participate in all, or a part of, one or several mortgage credits in their portfolio, through the issue of securities named *participaciones hipotecarias (*mortgage passthroughs).

Those mortgage credits serving as collateral for an issuance of mortgage bonds can not be subject to such *participaciones*.

Said participation can be done at the beginning or during the life of the granted loan. Nevertheless, the term of the participation can not be longer than the residual term of the mortgage loan and the interest can not be higher than the one established for the loan.

The mortgage participation's holder shall take enforcement procedures against the issuer, always provided that the non performance of its duties is not a consequence of the debtor's default, whose loan is subject to the *participación*. In the event of an execution process against said debtor, the holder of the *participaciones* will have equality of rights as the mortgage creditor, and shall received on a pro rata basis the proceeds of its *participación* in the transaction and notwithstanding that the issuer receives the possible

difference between the interest rate agreed in the loan and that assigned in the participation, in the event that this was lower. The holder of the *participación* can oblige the mortgage creditor to urge the execution.

If the mortgage creditor fails to urge the judicial execution in the 60 days after he is requested to do so, the participation's holder can subrogate in said execution, for the amount of its respective participation. The part of credits assigned as *participaciones hipotecarias* shall not be counted as capital at risk.

In the case of bankruptcy of the institution issuing the *participación*, the business of issuance of the participation can only be contested under the terms of article 10 and therefore the holder of that participation will enjoy an absolute right of separation/segregation.

Article 16

The institutions shall not issue *Cédulas hipotecarias* for an amount greater than 80 per 100 of the non-repaid mortgage loans and mortgage credits in their portfolios fulfilling the requirements stated in Section II, after the amount of those loans serving as a collateral of mortgage bonds has been deducted.

The *cédulas hipotecarias* can be backed up to a limit of 5 percent of the issued capital by the substitution assets listed in section two of article 17.

Article 17

One. The updated value of the mortgage bonds must be at least 2 percent less than the updated value of the affected mortgage loans and credits. The calculation method for the updated value will be determined in the regulations.

Two. The mortgage bonds can be backed up to a limit of 10 percent of the capital of each issue by the following substitution assets:

a) Fixed-income securities represented by notes on account issued by the State, other Member States of the European Union or the Spanish Official Credit Institute,

b) *Cédulas hipotecarias* listed on an official secondary market, or on an administered market, provided that said *cédulas hipotecarias* are not guaranteed by any loan or credit with mortgage collateral granted by the issuer of the bonds or by other institutions in its group,

c) Mortgage bonds listed in an official secondary market, or on an administered market, with a credit classification equivalent to that of the Kingdom of Spain, provided that said securities are not guaranteed by any loan or credit with mortgage

guarantee granted by the issuer of the bonds or by other institutions in its group

d) securities issued by Mortgage Securitisation Funds or Asset Securitisation Funds listed on an official secondary market or on an administered market, with a credit classification equivalent to that of the Kingdom of Spain, provided that said securities are not guaranteed by any loan or credit granted by the issuer of the mortgage bonds or by other institutions in its group,

e) other fixed-interest securities listed on an official secondary market or on an administered market, with a credit classification equivalent to that of the Kingdom of Spain, provided that said securities were not issued by the issuer of the mortgage bonds or by other institutions in its group,

f) Other low risk and high liquidity assets determined in the regulations

Article 18

One. The issuer is bound to maintain at all times the percentages referred to in the previous two articles.

Two. If due to the repayment of the loans and credits, the amount of the issued *cédulas hipotecarias* and bonds exceeds, respectively, the established limits, the institutions can opt to acquire their own mortgage bonds, *cédulas hipotecarias* or participaciones hipotecarias (mortgage passthroughs) until the proportion is re-established or, in the event that there is the cancellation of mortgages affected by an issue of bonds, to substitute them for others that meet the required conditions, through the corresponding public deed.

SECTION IV.-TAX, FINANCIAL AND ADMINSITRATIVE CONTROL REGIME

Article 19

1. The acquisitions of the mortgage securities referred to in article 11 herein that have been done during the administrative period required to achieve the minimum conditions of qualified price, shall be considered as investments to the effects of the deductions established in section 4, f) 2ª, of art. 29 of Law 44/1978, 8th September. Likewise, their subscription during the term indicated will also be considered as investment to the effects established in article 26.1, paragraph 1, of the Law 61/1978, of 27 December.

For the acquisitions or subscriptions of the aforementioned securities, when appropriate, made after such term, the aforementioned articles 29 and 26 shall be applicable in their own terms.

2. The issuance, transfer and cancellation of mortgage securities regulated by this Law, and their redemption, shall be exempted as established by the Law on the tax on capital

transfers and Stamp Duties (*Ley del Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados*)

Article 20

The mortgage securities regulated by this Law shall be admitted as investments of the reserve requirements for the companies, being equivalent to the securities listed on the Stock Market for these purposes.

Particularly, they shall be accepted listed for the following purposes: a) Investment of the technical reserve of the Insurance and Capitalization and Savings Companies. b) Investment of the company's resources and equity investment funds. c) Investment in funds of Social Security Entities.

Article 21

Notwithstanding the attributes of the Bank of Spain and the powers of other Government bodies in their respective matters, the Minister for Finance and Treasury shall be in charge of the control and inspection of the application of the regulations contained in this Law, specially of those referred to the incorporation and the functioning of mortgage credit companies and the conditions of the credit guarantees, the compliance with the valuation rules, the requirements for the issuance of cédulas, bonds and participaciones hipotecarias and the established proportions for the assets and liabilities entries, and the aspects relating the functioning of the secondary market.

(...)

(Rest of the article revoked by Law 26/1988)

SECTION V. SECONDARY MARKET

Article 22

Mortgage securities shall be transferred by any of the means recognized by law, and without the necessity for the intervention of neither a notary public nor the notification to the debtor. Should the securities be nominative, they shall be transferred by written statement in the security. If they are bearer securities, it shall be assumed that the securities' holder is the last to perceive the interests.

Article 23

Revoked by Law 26/1988

Article 24

1. The issuer has the capacity to negotiate, buy, sell and pledge its own mortgage securities, according to the limits to be established by the rules.

2. The commissions applied to these transactions and services shall be those established by the law on bank fees.

3. Mortgage Loans can not be granted to those persons holding capital of the Institutions or to their Directors, according to the terms to be established by the rules.

Article 25. Tacit abolition

Article 26

The credits or loans guaranteed with first chattel mortgage or first non-transferable collateral can be moved under the terms and with the requirements determined in the regulations.

Article 27

The same specialities that may be established in the regulations shall be applied to the secondary chattels market securities issued in accordance with that set out in articles 11 to 18 of this Law, although the references to the Land Register shall be understood as referring to the Registry of Personal Property.

Additional regulations

1.ª The Civil Code and the mortgage legislation shall be applicable to any issue not regulated by this Law, regarding the requirements for the creation, modification and extinction of mortgages.

2.ª Within six months the Government, at the suggestion of the Ministry of Justice and of the Treasury, in their respective spheres, shall dictate the complementary rules for the proper functioning of the mortgage market and, particularly, those rules concerning the execution of cédulas and bonds, the registry cancellation according to the principles established by this law, and the review and establishment of the limits to the Notary, Registrars and Intermediaries fees applied to the transactions regulated by this Law.

3.ª The Government shall regulate by Decree the concept of Credit Insurance with the purpose of guarantee and provide certainty to the transactions on mortgage loans.

EXTRACT FROM LAW 19/1992, OF 7TH JULY, ON REAL ESTATE INVESTMENT COMPANIES AND FUNDS AND ON MORTGAGE SECURITIZATION FUNDS

Article five. Mortgage Securitization Funds

1. In order to issue the securities referred to in this article, groups of *participaciones hipotecarias* (mortgage passthroughs) must be constituted which are called "Mortgage Securitization Funds".

The Funds will constitute separate and closed assets, lacking legal status, which without prejudice to that stated in number 7, shall be integrated, insofar as their assets, by the *participaciones hipotecarias* that they group and, as regards their liabilities, by securities issued in their amount and financial conditions so that the asset value of the Fund is zero.

2. The administration and legal representation of the Funds shall correspond to the management Companies which created them. The constitution of each Fund shall be formalised in public deed. Said deed will:

1. identify the *participaciones hipotecarias* grouped in the Fund and, if applicable, the substitution rules in the event of their early redemption.

2. Precisely define the content of the securities that are to be issued, or the content of each of the series, if there are various.

3. Establish the other rules applicable to the Fund, determining in particular the operations which in accordance with that established in number 7 are to be agreed on its behalf.

3. Once the Fund constitution deed is executed it can not be altered except under exceptional circumstances and with the conditions that are established in the regulations.

The constitution of Funds must be checked and registered by the National Stock Market Commission under the terms of Act 24/1988 for the issue of securities, with the adaptations that may be established in the regulations. Neither the Funds nor the securities which are issued charged to them can be entered in the Trade Registry, and neither shall they be subject to that stated in Act 211/1964, of 24th December, on issue of obligations by legal entities other than *sociedades anónimas* (approx. public limited companies).

The Funds shall in any event be extinguished on the full redemption of its *participaciones hipotecarias*. The deed of constitution can also, under exceptional circumstances, envisage its early liquidation when the amount of the *participaciones hipotecarias* pending

redemption is less than 10% of the initial amount, and the deed must determine the form in which the Fund's remaining assets shall be disposed.

4. The *participaciones hipotecarias* grouped in the Funds, apart from corresponding to loans that fulfil the requirements established in Section Two of the Act 2/1981, of 25th March, Regulating the Mortgage Market, must have an expiry date equal to the advanced loans.

5. The regulations can fix the minimum amount of the Funds at the time of their constitution.

6. The securities issued charged to Funds can differ as regards interest rates, which can be fixed or variable, term and form of redemption, early repayment regime in the event of prepayment of the *participaciones hipotecarias*, priority in the collection and other special advantages in the event of non-payment of the *participaciones hipotecarias*, or any other characteristics.

Notwithstanding the differences which may be established between the different series, the flows of capital and interests corresponding to all of the securities issued charged to the Fund must coincide with those of all of the *participaciones hipotecarias* grouped in it, without temporary differences or imbalances other than those deriving from the administration and management commissions and expenses, insurance premiums or other applicable concepts. Such concepts and temporary imbalances can be limited in the regulations.

7. Subject to that stated in the previous number and to that envisaged in the Fund's deed of constitution, the management companies can, in order to increase the security or regularity in the payment of the issued securities, neutralise the interest rate differences between participaciones hipotecarias grouped in the Fund and the securities issued charged to it or, in general, transform the financial characteristics of all or some of said securities, contract on behalf of the Fund swaps, insurance contracts, guaranteed interest rate reinvestment contracts or other financial operations for the above purpose. They can also, in order to cover the temporary imbalances between the mortgage bond holding's schedule of capital and interests flows and that of the issued securities, temporarily acquire financial assets of an equal or greater quality as the highest credit classified securities issued charged to the Fund.

8. The financial risk of the securities issued charged to each Fund must be assessed by a classification entity recognised as such by the National Stock Market Commission. The classification granted to the securities must feature in its issue prospectus.

The titleholders of the securities issued charged to the Fund shall bear the risk of the non-payment of the participaciones hipotecarias grouped in the Fund, subject, if applicable, to the regime of priority and special advantages established for the different series of securities in the Fund's deed of constitution. The titleholders of the securities shall have no

claim against the Fund's management company, except for breach of its functions and failure to comply with that stated in the deed of constitution.

9. The securities issued charged to the Funds shall be exclusively represented by accounting entries, the public deed indicated in number 2 above taking the effects as set out in article 6 of Act 24/1988, on the Stock Market.

The Funds' management companies must mention the admission to trading of the issued securities on an official or administered market established in Spain, with the exception that may be established in the regulations.

10. The Mortgage Securitization Funds shall be subject to Corporate Tax at the general rate. Their constitution shall be exempt from the Transfer Tax and Stamp Duty concept of "company operations".

The consideration paid to the titleholders of the securities which are issued charged to the Mortgage Securitization Funds shall, in any event, be considered as investment income, in accordance with that stated in article 1 of Act 14/1985, of 29th March, on the Tax Regime for Certain Financial Assets.

The administration of the Funds by the management companies shall be Value Added Tax exempt.

11. Special limitations can be established by the regulations on the acquisition by Collective Investment Institutions of securities acquired charged to the mortgage securitisation Funds administered by Companies belonging to the same group as the management companies of said Institutions.

Article six. Management companies of Mortgage Securitisation Funds.

1. The constitution of Mortgage Securitisation Funds shall be performed by specialised management companies, more specifically called "Mortgage Securitisation Fund Management Companies", which have this as their exclusive objective.

The Management Companies can be responsible for the administration and legal representation of one or more funds. Corresponding to them, as third party business managers, is the representation and defence of the interests of the titleholders of the securities issued charged to the Funds administered by them.

2. The creation of Management Companies shall require authorisation from the Minister for Finance and the Treasury which will be granted after a report from the National Stock Market Commission. Once authorised, they must be entered into a special register open for such purpose by the National Stock Market Commission.

The regulations can limit the maximum holding for a single person, entity or group of entities in the capital or in the voting rights of a Management Company, or the use of any other means of exercising effective control over it.

3. The Management Companies and the Mortgage Securitisation Funds that they administer shall be subject to the regime of supervision, inspection and, if applicable, sanction by the National Stock Market Commission.

That stated in Chapter V of Heading I of Act 46/1984, of 26th December, regulating the Collective Investment Institutions shall, insofar as relevant, be applicable to both. Apart from that stated therein, the following shall be considered as very serious infringements:

a. Investing the Fund's resources in assets, or contracting operations, which are not authorised in the Fund's deed of constitution or which are against that stated in this article and the previous one or in its rules of development.

b. Refusing or resisting inspection.

c. The failure to communicate the information that is requested by the National Stock Market Commission, when said failure is not considered a serious or minor infringement.

Additional Regulation

The Government is authorised to develop that stated in this Act through regulations.

In particular the Government can establish a specific name for the securities issued charged to the Mortgage Securitisation Funds, and reserve it exclusively for such securities.

Extract from Law 37/1998, of 16th November, of reform of the Law 24/1998, of 28th July, of the Stock Market

FOURTH ADDITIONAL REGULATION

1. Mortgage Securitisation Funds referred to in Law 19/1992, of 7th July, can be created, being integrated by participations of mortgage credits due for payment, always provided that such credits and their mortgage collaterals comply with those requirements set up in the regulation of the mortgage market and credit enhancement instruments or mechanisms are established.

2. In the supervision procedure of the constitution of said funds, the National Stock Market Commission can establish specific information and control requirements for the regular performing of funds.

Law 2/1994, of 30th March, on subrogation and modification of mortgage loans

(Updated with Law 36/2003, of 11th November, of measures of economic reform and Law 41/2007)

Article 1. Scope

1 The financial institutions referred to in article 2 of Law 2/1981 of March 25th about Mortgage Market, can be subrogated by the debtor in those mortgage loans granted by analogous institutions, in accordance with the provisions of such Law.

2 The subrogation referred to in point 1 above, shall apply to mortgage loan contracts, whichever the date the contracts are put into proper form and even though they do not contain the possibility of early repayment .

Article 2. Subrogation requirements

The debtor shall be able to subrogate with another financial institution than those mentioned in the previous article, without the creditor's consent, when, in order to pay the debt, he previously has borrowed the money from said financial institution, through a public deed, stating his intentions according to the provisions of article 1.211 of the Civil Code.

The institution ready to accept the subrogation shall submit a binding offer to the debtor in which the financial conditions of the new mortgage loan shall be stated. When there is more than one mortgage credit or loan over the property registered in favour of the same creditor, the new institution must be subrogated in all of them.

The debtor's acceptance of the offer will imply its authorisation so that the offering institution can notify, through a notary public, the creditor of its willingness to be subrogated, and can request it to deliver, in the maximum period of seven calendar days, the certification of the amount of the debtor's debit under the mortgage loan or loans in which it is to be subrogated.

Once the certification is delivered, the creditor will be entitled to enervate the subrogation if, in the period of fifteen calendar days, counting from the notification of the request and in response to it, it appears before the same notary public who made the notification referred to in the previous paragraph and gives a binding declaration to the effect that it is willing to formalise with the debtor a modification of the conditions of the loan which are equal to or improve the binding offer. The notification certificate will state this declaration.

Otherwise, in order for the subrogation to take effect it will be enough that the subrogated entity states in the same deed that it has paid to the creditor the amount proven by the latter of the pending capital and interest and commissions that are yielded but unpaid. A receipt of the bank operation performed for such purpose will be incorporated into the deed and it will expressly indicate that it was made for such purpose. The authorising notary public will check the existence of said bank document proving payment to the original creditor, and that there has been no enervation as referred to in the previous paragraph, for the purpose of which the subrogated entity must present a copy of the notarial certification of notification of the subrogation offer which shows that there has been no response at all with the effect of enervating the subrogation.

However, if the payment has still not been made because the creditor has not communicated the proven amount, or refuses for whatever reason to accept its payment, it will be sufficient that the subrogated entity calculates it, under its responsibility and accepting the consequences for its mistake, which can not be passed on to the debtor, and, after stating it, deposits said sum in the power of the notary public authorising the subrogation deed, at the disposal of the creditor entity. For such purpose, the notary public shall on its own initiative notify the creditor entity by sending an authorised copy of the subrogation deed, and the latter can plead mistake in the same way within the next eight days.

In this case, and without prejudice to the fact that the subrogation takes on all its effects, the judge who is competent to execute the enforcement process, on request by the creditor entity or the subrogated entity, will summons them, within eight days, to appear at court and after having heard them will admit the documents that they present and will agree, within three days, as he deems appropriate. The decision will be appealed to one effect.

Article 3. Early repayment commission

This article is revoked by Law 41/2007, of 7th December, for those mortgage loan and credit contracts subscribed after this law comes into effect (10th December 2007)

For these contracts, **Chapter IV** of the Law 41/2007 will be applied.

For the outstanding mortgage loans and credits subscribed before the passing of Law 41/2007, the following transitional regimes are applied:

Initial legal text (March 1994):

In accordance with article 1 of this Law, in the subrogation of mortgage loans at a variable interest rate, the amount to be received by the creditor as a commission for the early repayment of the loan, will be calculated taking into account the outstanding capital, according to the following rules:

1. When an early repayment is agreed without a commission having been fixed, there will not be any right to receive any amount for this matter.

2. If the commission agreed for early repayment is equal or less than 1 per cent, the commission to be received will be the one previously agreed.

3. In the other cases, the creditor will only be able to receive 1 per cent as a commission for early repayment, whichever the commission agreed. However, if the creditor should demonstrate the existence of an economical damage which would not only mean a profit loss, and proceeding directly from early repayment, said creditor would be able to claim such damage. The creditor's damage claim shall not stop the subrogation if circumstances covered by this Law are met, and it will only give place, in due time, to the indemnity of the amount relative to the damage caused.

This article was modified by Law 36/2006, in its First Additional Regulation, according to the following writing:

In the subrogations of mortgage loans at a variable interest rate subscribed after 23rd April 2003, in accordance with article 1.1 of Law 2/1994, of 30th March, on subrogation and modification of mortgage loans, and although the loans did not state the early repayment option, the amount to be received by the creditor as a commission for the early repayment of the loan, will be calculated taking into account the outstanding capital, according to the following rules:

1a. When an early repayment is agreed without a commission having been fixed, there will not be any right to receive any amount for this matter.

2b. If the commission agreed for early repayment is equal or less than 0.50 per cent, the commission to be received will be the one previously agreed.

3a. In the other cases, the creditor will only be able to receive 0.50 per cent as a commission for early repayment, whichever the commission agreed.

However, if the creditor should demonstrate the existence of an economical damage which would not only mean a profit loss, and proceeding directly from early repayment, said creditor would be able to claim such damage. The creditor's damage claim shall not stop the subrogation if circumstances covered by this Law are met, and it will only give place, in due time, to the indemnity of the amount relative to the damage caused.

Article 4. Public deed.

1 The subrogation deed can only agree the modification of the ordinary and delay interest rate conditions initially agreed or in force, as well as the alteration of the loan term, or both.

2 When the borrower is one of the institutions referred to in article 1 of this Law, the public deed of modification of mortgage loans can refer to one or various of the following circumstances:

i) Capital increase or decrease;
ii) the alteration of the loan term;
iii) The initially agreed or valid interest rate conditions;
iv) The repayment method or system and any of the loan's other financial conditions;
v) The provision or modification of the personal guarantees.

3. The modifications envisaged in the previous sections can not under any circumstances involve an alteration or loss of the rank of the registered mortgage except when they involve an increase in the amount of the mortgage liability or the extension of the term of the loan for this increase or extension[1]. In these cases there must be acceptance by the owners of the previously registered rights, in accordance with the current mortgage regulations, in order to maintain the rank. In both cases, they will be recorded in the Register by a note in the margin of the mortgage object of the modifying novation. Under no circumstances will this be possible when there is a request in the register for information about the amount pending in execution of subsequent charges.»

Article 5. Registry

The fact of subrogation will not have any effect on a third party unless it is established in the Registry by means of a marginal note where the following circumstances will be stated:

1. The legal person subrogated in the creditor's rights.
2. The conditions newly agreed on interest rate, on the term or both.
3. The deed with the marginal note, its date and the authorising Notary.
4. The date of presentation of the deed in the Registry, as well as the date of the marginal note.

5. The Registrant's signature which shall imply the note is in accordance with the deed where it was taken from.

So that the Registrar registers the subrogation, it will be enough for the deed to be in

[1] For those loans subscribed before **Law 41/2007**, of 7th December 2007, comes into effect, point 3 of the **Sole Transitional Regulation** will be applied.

agreement with everything provided in article 2 of this Law, even though the first creditor has not been notified yet. The mortgage loan registered clauses which are not to be modified shall not be subject to a new valuation. The Registrar shall not be allowed to request the loan agreement presentation.

Article 6. Enforcement

To enforce the deed, the subrogated institution, besides the first copy of the subrogation deed, shall have to present the loan agreement, made according to the requirements of Civil Procedure Law. If it is not possible to present the registered loan agreement, together with the copy of the subrogation deed, it will have to present a Registry certification supporting the registration and existence of the mortgage loan.

The execution of the mortgage loan shall adjust to the contents of the Civil Procedure Law and Mortgage Law.

Article 7. Tax benefits

The deed documenting the subrogation shall be exempt in the gradual mode of "*Actos Jurídicos Documentados*" or stamp duty on notarial documents.

Article 8. Notary and registry fees in the subrogation, modification and cancellation of mortgage credits and loans.

In order to calculate the notary fees for the subrogation, modification and cancellation deeds of the mortgage credits and loans, the tariffs shall be applied corresponding to the "Documents without quantum" established in number 1 of Royal Decree 1426/1989, of 17th November, which approves the notaries' tariffs.

In order to calculate the registry fees for the subrogation, modification and cancellation deeds of the mortgage credits and loans, the tariffs shall be applied corresponding to number 2, "Entries", of appendix I of Royal Decree 1427/1989, of 17th November, which approves the tariffs for the land registrars, taking as a base the amount of the capital outstanding, with a reduction of 90 percent.

Artículo 9. Tax benefits

The public deed documenting the modifying novation for a mortgage loan agreed by common consent between creditor and debtor shall be exempt in the gradual mode of "*Actos Jurídicos Documentados*" or stamp duty, provided that the creditor is one of the institutions contained in article 1 of this Law and the modification refers to the interest conditions modification with respect to conditions initially agreed or in force, or to the alteration of the loan term, or both.

Article 10. Commission for extension of the mortgage term

In the modifying novations referred to the extension of the loan term, the creditor will not be able to receive as a commission for such modification of conditions more than 0.1 per 100 of the outstanding mortgage loan.

ADDITIONAL REGULATIONS

FISRST ADDITIONAL REGULATION

This additional regulation is revoked by Law 41/2007 for those mortgage loan or credit contracts subscribed after this law comes into effect (10th December 2007).
For these contracts, **Chapter IV** of the Law 41/2007 will be applied.

For the outstanding mortgage loans and credits subscribed before the passing of Law 41/2007, the following transitional regime is applied:

In the mortgage loans at a variable interest rate, referred to in article 1 of this Law, the creditor shall not have to receive, as an early repayment commission for of a non-subrogated loan, more than 1 per 100 of the early-repaid capital, even though a bigger commission were agreed.

SECOND ADDITIONAL REGULATION

1. Law 26/1988, of July 29th, about Discipline and Intervention of Credit Institutions is modified, by the addition of the following paragraphs to article 48.2:

e) To publish, by them, or through the Bank of Spain, on a regular and official basis, certain reference interest rates or indexes, which could be applied by Credit Institutions to loans at a variable interest rate, especially mortgage loans,.

Without prejudice to the freedom to contract, the Ministry of Finance shall establish special requirements regarding the information contained in contracts clauses where interest rates are defined and regarding the information to be given to debtors about the applicable rate in each period, for those variable interest rate loans contracts where it is agreed to use reference interest rates or indexes different than the official ones included in the previous paragraph.

f) To extend the application scope of the preceding sections provisions to any contracts or transactions of the nature provided in them, even though the performing institution is not a credit institution.

2. The regulations provided in the preceding paragraphs of this additional provision, shall apply to loans and transactions arranged after they come into force.

THIRD ADDITIONAL REGULATION

A new paragraph is incorporated to article 45 I c) of Royal Decree Law 1/1993, of September 20th, by which the adapted text of "*Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados*" (Transfer Tax and stamp duty) is approved.
This paragraph states as follows:

< 23.ª Law 2/1994 of March 30th, about subrogation and modification of mortgage loans.>

FOURTH ADDITIONAL REGULATION

The Government is authorised to dictate as many Regulations as are necessary for the appropriate application of this Law.

SOLE FINAL REGULATION

This Law shall come into force the same day it is published in the Spanish Official Gazette.

EXTRACT FROM LAW 3/1994, OF 14TH APRIL, BY WHICH THE SPANISH LEGISLATION ON CREDIT INSTITUTIONS IS ADAPTED TO THE SECOND DIRECTIVE ON BANKING COORDINATION AND OTHER MODIFICATIONS TO THE FINANCIAL SYSTEM ARE INTRODUCED

(Updated with Law 41/2007)

FIFHT ADDITIONAL REGULATION

1. The securities issued by the Mortgage Securitization Funds regulated by Law 19/1992, of 7th July, on the Regime of Companies and Real Estate Investment Funds, shall be considered mortgage securities under Law 2/1981, of 25th March, on the regulation of the mortgage market.

2. The Government, previous report from the Securities and Exchange Commission (Comisión Nacional del Mercado de Valores) and from the Bank of Spain, shall extend the regime for the securitization of the mortgage pass-throughs (*participaciones*) established by articles 5 and 6 of Law 19/1992, of 7th July, on the Regime of Companies and Real Estate Investment Funds and on Mortgage Securitization Funds, subject to the adjustments and modifications that shall be deemed appropriate, to the securitization of other loans and credit rights, including those from leasing transactions and those related to the activities of small and medium companies.

Those fund recognized under the regulation to be established shall be designated Asset Securitization Funds *(Fondos de Titulización de Activos -FTA)*

«The institutions referred to in article 2 of Law 2/1981 of 25th March, Regulating the Mortgage Market, can make third parties participate in all or part of one or various mortgage loans or credits in their portfolio, even though these loans or credits do not fulfil the requirements established in Section 2 of said Law. These securities, called "mortgage transfer certificates" (*Certificados de transmission hipotecaria*) can be issued amongst qualified investors or be grouped in asset securitization funds. The regulations established for mortgage participation in Law 2/1981, of 25th March, shall be applicable to these certificates, except as set out in this section

Extract from Law 44/2002, of 22nd November, on Reform Measures for the Financial System

CHAPTER II
Promoting competitiveness of the financial industry

Article 13. *Cédulas territoriales* (Public cédulas).

First. The credit institutions can issue fixed yield securities with the exclusive name of «*Cédulas territoriales*», the capital and interest of which are specially guaranteed by the loans and credits granted by the issuer to the State, Autonomous Governments, Local Entities and to the public autonomous bodies and the public companies depending on them or to other similar entities in the European Economic Area.

Second. The territorial cédulas must not be entered in the Trade Register or governed by the rules contained in chapter X of the consolidated Limited Liability Companies Act (*Ley de Sociedades Anónimas*), passed by Legislative Royal Decree 1564/1989, of 22nd December, or those set out in Act 211/1964, of 24th December, regulating the issue of bonds by companies which are not limited liability companies, associations or other legal entities, and the constitution of the syndicate of bondholders.

Third. The total amount of the cédulas issued by a credit institution shall not be over 70 percent of the amount of the unredeemed loans and credits which are granted to the aforementioned public Authorities.

Notwithstanding that, if that limit is exceeded it must be recovered in a period of not more than three months, increasing its portfolio of loans and credits granted to the public entities, acquiring its own cédulas on the market or by the redemption of cédulas for the amount necessary in order to re-establish the balance and, meanwhile, the difference must be covered by depositing cash or public funds in the Bank of Spain.

Four. The bondholders will have a preferential right over the issuing institution's credit rights against the State, the Autonomous Regions, the Local Entities, the autonomous bodies and the public companies depending on them or other similar entities in the European Economic Area, in order to recover the rights deriving from their title over said securities, under the terms of article 1922 of the Civil Code.
Said title will be enforceable under the terms sets out in the Civil Procedure Act.

Five. The cédulas issued by a credit institution pending redemption will be treated like the *cédulas hipotecarias* for the purposes of Act 13/1985, of 25th May, on Investment Coefficients, Equity and Information Obligations on Financial Brokers and its rules of

development, as well as that stated in paragraph b) of section 1 of the article 4 of Act 46/1984, of 26th December, regulating the Collective Investment Institutions.

Six. The issued cédulas shall be represented by book entry and can be traded on the stock markets in accordance with that set out in the Stock Market Act 24/1988, of 28th July, and acquired by the entities.

Seven. **Added by the Bankruptcy Act 22/2003, of 9th July.**

In the event of bankruptcy, the holders of territorial cédulas will enjoy the special privilege established in article 90, section 1, number 1 of the Bankruptcy Act.

Notwithstanding the above, during the insolvency proceedings, in accordance with that set out in article 84, section 2, number 7 of the Bankruptcy Act, and as credits on the assets, the payments will be dealt with which correspond to the repayment of capital and interest on the territorial cédulas issued and pending redemption on the date of application for bankruptcy up to the amount of the income received by the bankrupt from the loans banking the cédulas.

TWELFTH ADDITIONAL REGULATION. Rounding up/down regime in certain credit operations.

In the credits and loans guaranteed by mortgage, security, pledge or other equivalent guarantee which, after this Act enters into force, are formalised at a variable interest rate, the rounding up/down of said rate can be agreed. In this case, the rounding up/down of the interest rate shall be performed at the end of the next agreed interval, without it exceeding an eighth of a point.

EXTRACT FROM LAW 36/2003, OF 11th NOVEMBER, ON ECONOMIC REFORM MEASURES

Article eighteenth. Notary and Registrar fees. Tacit revocation by Article 10 of Law 41/2007

Article nineteen. Interest rate risk coverage instruments for mortgage loans.

1. The credit institutions shall inform the mortgage debtors with whom they have signed variable interest rate loans about the instruments, products or systems available in order to cover the risk of interest rate increase. Contracting said coverage shall not imply modification of the original mortgage loan contract.

2. The entities referred to in the previous section shall offer those applying for variable interest rate mortgage loans at least one instrument, product or system to cover the risk of interest rate increase.

The characteristics of said coverage instrument, product or system shall be stated in the binding offers and in the other informative documents established in the organisation and disciplinary regulations relating to transparency of mortgage loans, pronounced under article 48.2 of Law 26/1988, of 29th July, on Credit Institutions Discipline and Intervention.
That stated in this section shall be applied to all of the binding offers envisaged in article 2 of Law 2/1994, of 30th March, on subrogation and modification of mortgage loans.

3. Revoked by article 7 of Legislation Royal Decree 3/2004, of 5th March, which passed the consolidated text of the Personal Income Tax Act.

Article 7. Exempt income.

The following income shall be exempt:

(....)

t. Those deriving from applying the coverage instruments when they exclusively cover the risk of increase of the variable interest rate of the mortgage loans for the purchase of the habitual abode, regulated in *article nineteen of Act 36/2003, of 11th November, on economic reform measures.*

LAW 41/2007, OF 7TH DECEMBER, OUTSTANDING TEXT NOT INCLUDED IN OTHER REGULATIONS

Preamble

I

The mortgage market is one of the segments in the financial system with great influence on macroeconomics and financial stability. On its operations depends housing finance, which represents about two thirds of the value of the total wealth of Spanish households and conditions their consumer and investment decisions. At the same time, mortgage credits account for a large proportion of lenders' balances and amount to over half of the entire credit of the resident private sector.

It must be remembered that the recent period of extraordinary acceleration in the activity has coincided with a notable stability in the regulation of the mortgage market. The basic rules of the legal framework relating to transparency, loans' mobilisation mechanisms and subrogation and novation have not substantially changed over recent years.

This stability contrasts with the intense increased production of regulation in the other areas of the financial system; and although the durability of the regulations is always desirable, over this time some fundamental factors have changed, the implications of which must be introduced into our legal code. In particular, over the last ten years there has been a phase of expansion of residential mortgage credits in Spain. This expansion is reflected in the growth of the Spanish *cédulas hipotecarias* market which has reached the top positions in Europe in terms of volume issued. The fast development of both markets has brought forward the need to take measures aimed at their correct operation in order, on the one hand, to consolidate the growth of the mortgage securities market and, on the other hand, to prevent regulatory discrimination between the different mortgage loan or credit options at the clients' disposal. Particularly, in the current situation of a moderate rise in the reference interest rates.

The scope of action that is sought by this Law relating to the mortgage market is mainly the elimination of the obstacles preventing the offer of new products, the modernisation of the protection regime by seeking a more effective transparency, which allows the borrowers to take their decision based on the actual risk of the products, and to improve the funding instruments.

II

Chapter I, relating to transparency in the subscription of mortgage credits and loans, establishes as its basic objective to modernise the protection regime by seeking a more effective transparency, which allows borrowers to make their decisions based on the actual risk of the products. Hence the Law modifies the authorisation which is currently attributed to the Minister for Finance and the Treasury to pass the regulations that guarantee that the contracts expressly and clearly contain the parties' undertakings and rights, extending this authorisation so that the Minister for Finance and the Treasury can regulate, in particular, the issues relating to the transparency of the financial conditions of the mortgage credits and loans.

Furthermore, an express reference is established to the pre-contractual information that the lenders must make available to their clients in order to ensure that, when it comes to contracting the different bank products, they have the most relevant details about their characteristics in order to form an informed opinion about them. Hence the Minister for Finance and the Treasury is authorised to determine the minimum information that lenders must provide to their clients prior to the signing of any contract. This pre-contractual information must permit the client to know the essential characteristics of the products that can be contracted and to assess whether said products are suitable to its requirements and its financial situation.

Both modifications are performed taking into account European regulations and practices in order to guarantee convergence on this matter.

III

The second area of modification which is dealt with in this Law corresponds to the lenders' refinance mechanisms through the issue of *cédulas hipotecarias* and mortgage bonds. The favourable situation of our mortgage and real estate market over recent years provides a great opportunity to consolidate our mortgage securities market. This challenge requires the improvement of the regulations and techniques which promote innovation and allow for a high degree of flexibility for the institutions issuing these securities. The technical improvements which are introduced focus on two lines of action: the first is to eliminate the administrative obstacles which weigh heavily on the concept of mortgage bonds and the second, which is more profound, consists of enabling more financial sophistication of the issuance of *cédulas hipotecarias* and mortgage bonds.

Firstly, the mortgage loans and credits portfolio, which is used to cover the cédulas, does not include those loans or credits which serve as a collateral of an issue of mortgage bonds or have been the object of *participaciones hipotecarias* (mortgage passthroughs). In order to facilitate the segregation of the credits and loans in the covered pool from the rest of the assets of the issuer, a special accounting registered is envisaged. Said register will

contain all of the mortgage loans and credits which cover the cédulas and it will also identify those which comply with the requirements of section II of Law 2/1981, of 25th March, Regulating the Mortgage Market as this is needed in order to calculate the limit established for the issue of bonds contained in article 16. Furthermore, this issuance limit is revised in order to guarantee that the high credit quality of the *cédulas hipotecarias* is maintained, establishing the abovementioned limit at 80% of the mortgage credits and loans which comply with the requirements of the aforementioned section II.

Secondly, some administrative obstacles are removed which have hindered the development of the mortgage bonds in order to achieve a neutral administrative treatment of the bonds vis-à-vis the *cédulas hipotecarias*. Hence the requirement to enter a margin note in the Land Register for each of the mortgages serving as collateral of an issue disappears and the previously compulsory constitution of a bondholders syndicate becomes optional. Furthermore, they receive the same existing treatment for the *cédulas hipotecarias*, by including the resort to the universal asset liability of the issuer in the case that the special guarantees do not cover the amount of the debt. Lastly, it is established that all of the mortgage loans and credits serving as collateral of an issue must comply with the requirements of section II of the Act, since the nature of this instrument is to permit institutions with greater refinance difficulties to issue high credit quality mortgage securities.

Thirdly, a series of improvements are included for both instruments, namely *cédulas hipotecarias* and mortgage bonds, which increases the possibility of financial sophistication of the issues. One of the most significant improvements is the possibility of including substitution liquid assets in the issue portfolio, which contributes towards covering the liquidity risk in an eventual situation of bankruptcy, and reinforcing the possibility of covering the interest rate risk through financial derivative contracts associated to an issue, which is produced by entering the economic flows generated by these instruments in favour of the entity in all of the segregated assets over which the mortgage security holder is a creditor with special privilege.

IV

Chapter III deals with three areas of action relating to the valuation companies, under the basic principle of maintaining and reinforcing their independence.

First of all, the enhancement of the independence principle for the valuation companies becomes a reality. The aim is to establish a conduct legal framework for the valuation companies which guarantees their independence and the absence of any conflicts of interest with the lenders who finally grant the mortgage loans, through two mechanisms: the first is general, an internal code of conduct to which other measures can be added, and the second, more specific, establishment of a Technical Committee in charge of checking compliance with the independence requirements established by the said regulations and, if applicable, by other mechanisms.

Secondly, modifications are made to the sanctions regime for valuation companies. On the one hand, new cases of infringement are classified deriving from the new obligations regime contained in the Law and the penalties chart is revised in general as a result of the experience obtained from the performance of the sanctioning authority. On the other hand, on grounds of legal and systematic security, the legal seat of the said regime is changed, up until now contained in the tenth additional article of Law 3/1994, of 14th April, which adapts the Spanish legislation on Lenders to the Second Banking Coordination Directive and other modifications are introduced relating to the financial system. Hence, this Law fully revises and updates the infringements and sanctions applicable to this type of entity.

Thirdly, a significant holdings regime is established similar to that for lenders which allows for the control of the stockholder composition.

V

One of the objectives of this Law is to achieve neutral regulatory treatment of the different types of mortgage credits and loans on the market. There is at present a regulation about the commission for early repayment in the case of subrogation of the mortgage loan which as it is not directly linked to the economic loss suffered by the lender when there is such subrogation, artificially discriminates between the different interest rate structures possible in a mortgage loan. The current regime is also unsatisfactory from the client protection point of view as it permits them having to pay a commission to the lender even when the repayment is in the benefit of the latter.

This Law changes first of all the name of the early repayment commission to compensation as the latter is more in line with its nature. Secondly, this compensation for early repayment is divided into the compensation made to the institution due to the rescission of the contract and due to generating losses because of the loan origination costs; and the compensation for the institution's interest rate risk when the early repayment is made in a situation of falling interest rates. Two elements are introduced so that this second compensation is related to the institutition's actual economic loss. The first is the establishment of a calculation base, which it more precisely reflects the institution's risk exposure. The second is the prohibition on collecting the compensation in those cases in which the repayment generates a capital gain for the lender, and it is not therefore financially motivated.

This new compensation regime for early repayments substitutes the previous commission regime for mortgage loans signed after this Law enters into force, so that both concepts can not be collected in any contract.

VI

Chapter V contains the actions relating to the calculation of the tariff costs relating to

the mortgage loans or credits. All of this with the general objective of reducing and encouraging the transparency of the transaction costs for mortgage market operations. Taking into account the regulation established in Law 36/2003, of 11th November, on economic reform measures, relating to the tariff costs on the deeds of modifying novation and subrogation of mortgage loan, greater transparency and the reduction of the said tariffs should be sought, as well as extending said discounts to the case of cancellations, which have not the subrogation as a purpose, and to the mortgage credits. Hence the tariffs of the notary public are determined taking as a base the fees envisaged in the «Documents without quantum» and the determination of the registry tariffs taking as a base the fees established for «Entries», with the maximum reduction established by Law 36/2003, of 11th November, on economic reform measures, of 90 percent for all types of operations.

VII

Chapter VI makes the mortgage market more flexible by regulating the maximum-sum mortgages, also referred doctrinally to as «floating». The accessoriness and determination, which governs the ordinary mortgages, excludes from our current legal code as ordinary or trade mortgages those mortgages in which there are various secured obligations or in which present and future obligations are mixed. That necessarily determines that mortgages should be constituted for every obligation that is sought to guarantee which, apart from making the operation more expensive, is not competitive in banking practice.

This reform seeks to generalise the possibility of securing with a maximum-sum mortgage other very diverse legal relations, although it is considered appropriate to limit it to credit institutions and not to any creditor given the special supervision regulations applicable to the former. The maximum-sum mortgage will allow for the acceptance of new mortgage products which were until now refused.

The need to advance and make more flexible the legal regime on mortgages, with legal requirements and concepts which cover the new demands, also binds all of the operators that take part in the contract process and the real guarantees, particularly the notaries and the land registrars, so that as legal operators, when it comes to drafting documents and making entries, understand their task as providing guidance and facilitating access to the Register to the authorised securities through the existing legal channels, in order to achieve that the ownership and real rights over them are covered by the preventative legal regime of publicity and security, and they enjoy their benefits in any event, in accordance with the legal and regulatory rules which determine the content of the registry entry, the requirements for their extension, and their effects.

Other measures aimed at promoting the mortgage loan market are to specify the content of the entry of the real mortgage right, avoiding conflicting registry classifications, which prevent uniformity of the rights' registry configuration which imposes their mass contracting. For such purpose, it is established that on entry of the real mortgage right the amount of the debt capital is expressed and, if applicable, the agreed interest, or the

maximum amount of the mortgage liability, identifying the guaranteed obligations whatever their nature and duration. The other financial clauses guaranteed by a mortgage, such as those relating to early cancellation, shall be recorded in the entry under the terms of the formalisation deed but always provided that the favourable registry classification has been obtained of the clauses with real content.

On the other hand, novation of the mortgage loans in the debtor's benefit is hindered by the restrictive interpretation of the concept of modifying novation (*novación modificativa*) made by Law 2/1994, of 30th March, on subrogation of mortgage loans. What is now adopted is a wider interpretation of when there is a modifying novation so that it will be considered that there has only been a modification and not a cancellation of the legal relationship and the constitution of a new one in the following cases: capital increase or decrease, the provision or modification of personal guarantees, alteration of the initially agreed or valid interest rate conditions; alteration of the term, of the repayment system or method and any of the loan's other financial conditions.

It is eliminated the legal uncertainty caused by the subsistence of references to regulations expressly derogated in others that remain in force following the entry into force of the Insolvency Law 22/2003, of 9th July.

An adequate framework is established which will allow for the possibility of mobilisation of credits or loans guaranteed with first chattels mortgage or non-transferable collateral.

VIII

As regards the new features that this Law introduces in its additional regulations, some relevant legislative backgrounds must be taken into account. First of all, Law 29/2006, of 14th December, on the Promotion of Personal Autonomy and Attention to Dependant Persons, the seventh additional regulation of which «Private Instruments to cover long-term care» states that the Government in the period of six years shall promote the legislative modifications in order to regulate the private cover of the situations of long-term care and that, in order to facilitate joint financing by the beneficiaries of the services established in the act, it will be promoted the regulation of the tax treatment of the private instruments covering long-term care .

Secondly and albeit not in chronological order, Law 35/2006, of 28th November, on Personal Income Tax and the partial modification of the corporate income tax, non-resident income tax and on net worth tax introduces a series of tax measures to promote the cover of the long-term care by private insurance and pension plans, modifying the substantive regulations of the latter.

Releasing the value of the home through financial products could contribute towards easing one of the biggest socioeconomic problems in Spain and most developed countries: satisfying the increased income requirements in the latter stages of people's

lives. The reverse mortgage regulated in this Law is defined as a mortgage loan or credit from which the owner of the property makes disposals, normally periodical, although the disposal may be in a lump sum, up to a maximum amount determined by a percentage of the valuation at the time it is constituted. When said percentage is reached, the elderly person or the dependant person stops disposing of the income and the debt continues generating interest. The recovery by the lender of the credit plus the interest normally takes place once the owner dies by the heirs cancelling the debt or enforcement of the mortgage guarantee by the lender.

There is therefore no doubt that the development of a reverse mortgage market, which allows elderly people to use part of their real estate assets in order to increase their income, offers plenty of potential to generate economic and social benefits. The possibility of enjoying savings accumulated in the home during one's lifetime would enormously increase the ability to temper the income and consumption profile throughout the lifecycle with the resulting positive effect on welfare.

In relation to the long-term care insurance, its content incorporates the regulation of private instruments for long-term care cover, which can be organised either through an insurance contract signed with insurance companies, including the provident societies, or through a pensions plan.

The long-term care cover performed through an insurance contract binds the insurance company, in the event that there is a situation of long-term care in accordance with the rules regulating the promotion of personal autonomy and attention to dependant persons and under the terms set out in the law and in the contract, to comply with the agreed benefit in order to partial or totally, directly or indirectly, deal with the detrimental consequences for the insured party deriving from said situation. These insurance policies can be contracted by the insurance companies with the compulsory administrative authorisation for the performance of life and health insurance activities. As regards the pension plans, which envisage cover for the risk of this contingency, they must expressly state as such in their specifications.

The Law ends with three final regulations as well as those relating to regulatory authorisation, the basic nature and competences and the entry into force, and covers the modification of other financial regulations in order to facilitate compliance with the rules contained in the main body of this Act.

CHAPTER I

Transparency in contracting mortgage loans and credits

Article 1. Modification of Law 26/1988, of 29th July, on Discipline and Intervention of the credit institutions.

1. Article 48, section 2, letter a) of Law 26/1988, of 29th July, on Discipline and Intervention of the credit institutions, will be drafted as follows:

«a) To establish that the corresponding contracts are formalised in writing and pronounce precise regulations in order to ensure that they expressly and sufficiently clearly reflect the undertakings contracted by the parties and their rights vis-à-vis the contingencies of each type of operation, and particularly the issues relating to the transparency of the financial conditions of the mortgage credits and loans. For such purpose, it can determine the issues and contingencies that the contracts relating to typical financial operations with their clientele must expressly state or envisage, require that the institutions establish forms for them and impose some type of administrative control over said forms. The information relating to transparency of the mortgage credits or loans, when it is a residential mortgage, must be supplied regardless of their amount.»

2 A new letter h) is inserted in section 2 of article 48.2 of Law 26/1988, of 29th July, on Discipline and Intervention of the credit institutions, as follows:

«h) To determine the minimum information that the lenders must provide to their clients with enough notice before they accept any contractual obligations with the institution or accept any contract or offer to contract, as well as the operations and bank contracts in which such pre-contractual information is required. Said information is aimed at informing the client of the essential characteristics of the proposed products and to assess whether they are suitable to their needs and, when it may be affected, to their financial situation».

CHAPTER II

Refinance Mechanisms

Article 2. Modification of Law 2/1981, of 25th March, Regulating the Mortgage Market

CHAPTER III

Valuation Entities

Article 3. Promotion of the independence of the valuation entities.
Article 4. Sanctioning regime
Article 5. **New article 3 bis of Law 2/1981, of 25th March, Regulating the Mortgage Market**
Article 6. Significant shareholdings' regimes.

They modified Law 2/1981, of 25th March, Regulating the Mortgage Market

CHAPTER IV

Early repayment compensation regime

Article 7. Scope of application.

This chapter will be applicable to the mortgage credit or loan contracts subscribed after the entry into force of this Law and even when they do not include the possibility of early repayment, when one of the following circumstances occurs:

1. It is a mortgage credit or loan and the mortgage is secured by a residential property and the borrower is an individual.

2. The borrower is a legal entity subject to the taxation system of reduced sized enterprises, under the Corporation Tax.

In this mortgage credit or loan contracts it can not be claimed a commission for total or partial early repayment.

In any case, the institution will be bound to issue the bank documentation which proves the payment of the loan without collecting any commission for it.

Article 8. Compensation for withdrawal.

1. In the total or partial subrogated and non-subrogated cancellations which occur in the mortgage credits or loans referred to in the previous article of this Law, the amount to receive by the creditor for compensation for withdrawal, can not exceed:

i) 0.5 percent of the early repaid capital when the early repayment is done within the first five years of the life of the credit or loan, or

ii) 0.25 percent of the early repaid capital when the early repayment is done at a time

after that indicated in previous point.

2. If compensation for withdrawal is agreed equal to or lower than that indicated in the previous section, the compensation to receive by the credit institution shall be as agreed.

Article 9. Compensation for interest rate risk.

1. In the total or partial subrogated and non-subrogated cancellations of the mortgage credit or loans that occur within an interest rate revision period whose agreed duration is equal to or less than twelve months, the credit institution will not be entitled to receive any amount by way of compensation of interest rate risk.

2. In the total or partial subrogated and non-subrogated cancellations of the other mortgage credits and loans, the compensation for interest rate risk shall be as agreed and shall depend on whether the cancellation generates a capital gain or loss to the institution. Capital gain due to exposure to interest rate risk shall be understood as the positive difference between the capital outstanding at the time of the early cancellation and the market value of the loan or credit. When said difference is negative it shall be held that there is a capital loss for the credit institution.

   The market value of the loan or credit shall be calculated as the sum of the current value of the instalments outstanding until the next interest rate revision and the current value of the capital outstanding which would remain at the time of the revision should the early cancellation not occur. The interest rate for the updating will be the market rate applicable to the remaining period up until the following revision. The loan contract shall specify the index or reference interest rate which will be used to calculate the market value from those determined by the Ministry of Finance and Treasury.

   In case of partial cancellation, the percentage of the capital outstanding that is being prepaid will be applied to the result of the previous formula.

3. The credit institution can not receive any compensation for interest rate risk in the event that the cancellation of the credit or loan generates a capital gain in its favour.

4. The contract must specify which of the following two methods for calculating the compensation for interest rate risk shall be applied:

— A fixed percentage established in the contract, which must be applied to the capital outstanding at the time of the cancellation.
— The total or partial loss that the cancellation generates to the institution, calculated in accordance with section two. In this case the contract shall anticipate that the institution compensates the borrower in a symmetric manner in the case that the cancellation generates a capital gain for the institution.

CHAPTER V

Tariff costs

Article 10. Calculation of the tariff costs.

Modification of Article 8 of Law 2/1994, of 30th March, on subrogation and modification of mortgage loans

CHAPTER VI

Improvement and relaxation of the mortgage market

Article 11. Modification of the Mortgage Law of 8th February 1946

1. Article 12 of the Mortgage Law of 8th February 1946 shall be drafted as follows:

   «The entry of the real mortgage right shall state the amount of the capital of the debt and, if applicable, the agreed interests, or the maximum amount of the mortgage liability (*responsabilidad hipotecaria*), identifying the guaranteed obligations whatever their nature and their duration.

   The early expiration clauses and the other financial clauses on the obligations guaranteed by mortgage in favour of the institutions referred to in article 2 of Law 2/1981, of 25th March, Regulating the Mortgage Market, in the case of favourable registry judgement of the clauses of a real state nature, shall be recorded in the entry under the terms resulting from the deed.»

2. Article 130 of the Mortgage Law of 8th February 1946, shall be drafted as follows:

   «The direct enforcement procedure against the mortgaged assets can only be exercised as a realization of a registered mortgage, on the basis of those issues contained in the title which are been stated in the respective entry».

3. The first paragraph of article 149 of the Mortgage Law of 8th February 1946, is drafted as follows:

   «The credit or loan guaranteed by mortgage can be completely or partially ceded in accordance with that stated in article 1526 of the Civil Code. The cession of the ownership of the mortgage that guarantees a credit or loan must be performed in a public deed and be entered in the Land Register».

4. A new Article 153 bis is introduced in the Mortgage Law, of 8th February 1946, according to the following terms:

"Article 153 bis.

Maximum sum mortgages may also be created:

a) in favour of the financial institutions referred to in article 2, Law 2/1981 of 25th March, regulating the mortgage market, as a collateral of one or several debts, of any nature, present and/or future, without the need for novation covenant of them.

b) in favour of public administrations holding a Tax or Social Security Credit, without the need for a novation covenant of them.

The statement of the following in the mortgage deed and in the registration deed will be sufficient: its denomination, and when required, the general description of the basic legal acts of which the secured debt come or may come from in the future; the maximum amount secured by the property; the mortgage term; and the calculating method of the liquid final secured balance.

It can be agreed in the title deed that the demanded amount in the event of an enforcement process is the resultant from the liquidation carried out by the creditor financial institution, in the way agreed by the parties in the deed.

Upon the expiration date agreed by the signatories, or any deferral, the mortgage action may be executed according to articles 129 and 153 of the Law hereof, and to concordant ones of the Spanish Civil Procedure Law.

Article 12. Modification of **Law 2/1981, of 25th March, Regulating the Mortgage Market**

Article 13. Modification of **Law 2/1994, of 30th March, on subrogation and modification of mortgage loans.**

FIRST ADDITIONAL REGULATION. Regulation relating to the reverse mortgage

1. For the purposes of this Law, reverse mortgage is held as the loan or credit guaranteed by mortgage over a real estate asset which is the applicant's habitual abode and provided that they comply with the following requirements:

a) that the applicant and the beneficiaries that the former may designate are persons who are 65 years old or older or affected by severe long-term care or great long-term care,

b) that the debtor disposes of the amount of the loan or credit through periodical or single disposals,

c) that the debt is only demandable by the creditor and the guarantee enforceable when the borrow dies or, if thus stipulated in the contract, when the last of the beneficiaries dies,

d) that the mortgaged property has been valued and insured against damage in accordance with the terms and requirements established in articles 7 and 8 of Law 2/1981, of 25th March, Regulating the Mortgage Market.

2. The mortgages referred to in this regulation can only be granted by the credit institutions and by the insurance companies authorised to operate in Spain, without prejudice to the limits, requirements or conditions that the sector regulations impose on the insurance companies.

3 The reverse mortgage transparency and marketing regime shall be established by the Minister for Finance and Treasury.

4 Within the framework of the clients transparency and protection regime, the entities established in section 2 which grant reverse mortgages must provide the applicant of this product with independent advice services, taking into account the applicant's financial situation and the economic risks arising from subscribing this product. Said independent advice must be performed through the mechanisms determined by the Minister for Finance and the Treasury. The Minister for Finance and the Treasury shall establish the conditions, form and requirements for the performance of these advisory functions.

5. On death of the mortgage debtor or if thus stated in the contract, on death of the last of the beneficiaries, the heirs can cancel the loan in the stipulated period, paying the mortgage creditor all of the due debt, with its interest, without the creditor being entitled to demand any compensation at all for the cancellation.
In the event that the mortgaged asset has been voluntarily transferred by the mortgage debtor, the creditor can declare the early termination of the guaranteed loan or credit, unless the guarantee is substituted sufficiently.

6. When the loan or credit regulated by this regulation is cancelled and the heirs of the mortgage debtor decide to not repay the due debts, with their interests, the creditor can only obtain recovery up to the amount of the inherited assets. For these purposes that stated in paragraph two of article 114 of the Mortgage Law shall not be applied.

7. The public deeds documenting constitution, subrogation, modifying novation and cancellation will be exempt from the gradual mode of "*Actos Juridicos Documentados*" or stamp duty on notarial documents.

8. In order to calculate the notary fees for the constitution, subrogation, modifying novation and cancellation deeds, the tariffs will be applied corresponding to the «Documents without quantum» envisaged in number 1 of Royal Decree 1426/1989, of 17th November, which passes the Notary tariffs.

9. In order to calculate the register fees for the constitution, subrogation, modifying novation and cancellation deeds, the tariffs will be applied corresponding to number 2, «Entries», in appendix I of Royal Decree 1427/1989, of 17th November, which passes the registrar's tariffs, taking as a base the amount of the capital pending repayment, reduced by 90 percent.

10. Likewise, reverse mortgages may be constituted against any other properties, other than the usual home of the applicant. The previous paragraphs of the provision herein shall not apply to these reverse mortgages.

11. For everything not envisaged in this regulation and the rules that develop it, the reverse mortgage will be governed by that set out in the applicable legislation in each case.

SECOND ADDITIONAL REGULATION. Regulation relating to long-term care insurance.

1. Long-term care cover can be instrumented either through an insurance contract signed with insurance companies, including the mutual social welfare companies, or through a pension plan.

2. The long-term care cover performed through an insurance contract binds the insurer, in the event that there becomes a situation of long-term care, in accordance with that set out in the regulations promoting personal autonomy and attention to persons in a situation of long-term care, and within the terms established in the law and in the contract, to comply with the agreed benefit in order to, totally or partially, directly or indirectly, deal with the detrimental consequence for the insured party as a result of said situation.

The long-term care insurance contract can be articulated either through individual or group policies.

If there is no express rule referring to long-term care insurance, the rules regulating insurance contracts and the regulation and supervision of private insurance shall be applied to it.

In accordance with that established in article 6 of the consolidated Private Insurance Regulation and Supervision Law, passed by Legislative Royal Decree 6/2004 of 29th October, the insurance companies must have the compulsory administrative authorisation and other requirements necessary in order to provide life or health insurance in Spain.

In order for the mutual social welfare companies to cover the long-term care contingency, which stated in articles 64, 65 and 66 of the consolidated Private Insurance Regulation and Supervision Law, passed by Legislative Royal Decree 6/2004 of 29th October, and the rules developing it, shall be applied.

3. The pension plans which envisage the long-term care contingency cover must be expressly stated as such in their specifications. For all not expressly envisaged the consolidated Pension Plans and Funds Regulation Law, passed by Legislative Royal Decree 1/2002, of 29th November, and the rules developing it, shall be applied.

THIRD ADDITIONAL REGULATION

Section 3 of article 693 of the Civil Procedure Law 1/2000, of 7th January, is modified as follows:

> «3. In the case referred to in the previous section, the creditor can request that, without prejudice to the fact that the enforcement affects the entire debt, the debtor is informed that, up until the day set for the auction, it can release the asset by paying into court the exact amount of the principle and interest due on the date the claim is presented, increased if applicable by the loan's due dates and the delay interest incurred during the proceedings and which are totally or partially unpaid. For these purposes, the creditor can request that the procedure follows that set out in section 2 of article 578.
>
> If the mortgages asset is a family home, the debtor can, even without the creditor's consent, release the asset by paying into court the amounts stated in the previous paragraph.
>
> Once an asset has been released for the first time, it can be release on more occasions provided that at least 5 years have passed between the date of release and the judicial or extrajudicial summons for payment made by the creditor.
>
> If the debtor makes the payment under the conditions set out in the previous sections, the costs shall be liquidated and once they are paid the court will pass judgment declaring the proceedings over. The same will be agreed when the payment is made by a third party with the executor's consent.»

FOURTH ADDITIONAL REGULATION. Assurance of future incomes by the constitution of a reverse mortgage.

The periodic disposals that the beneficiary may obtain as a result of the constitution of a reverse mortgage can be totally or partially used to contract a secure income plan, under the terms and conditions set out in section 3 of article 51 of the Personal Income Tax Law and the partial modification of the laws on Corporate Tax, Non-Residents Income Tax and Net Worth Tax. For these purposes, the survival of the holder after ten years have passed since the payment of the first premium of the said secure income plan will be the same as the retirement contingency set out in letter b) of section 3 of article 51 of said Law 35/2006.

The mathematical provision of the secure income plan can not be moved to another welfare instrument, and neither can the consolidated rights or the mathematical provision of other welfare systems be moved to it.

FIFTH ADDITIONAL REGULATION. Special rules for assessment of the patrimonial disposals, in order to determine the economic capacity of long-term care assistance applicants.

SIXTH ADDITIONAL REGULATION. Event *«33. º American's Cup»*

SEVENTH ADDITIONAL REGULATION. Fiscal Regime of the Event *«33. º American's Cup»*

SOLE TRANSITIONAL REGULATION. Transitional Regimes.

1. Until the subsequent regulation referred to in section one of article 17 of Law 2/1981, of 25th March, Regulating the Mortgage Market is developed, the entities can not issue mortgage bonds for over 90 percent of the non-repaid capital of the affected credits.

2. Until the subsequent regulation referred to in section two of article 9 of this Law is developed, the reference interest rate to be used in order to calculate whether there is a capital gain for the purposes of said section, regardless of the remaining term of the mortgage loan or credit, shall be the internal yield rate in force in the public debt secondary market with residual maturity of between 2 and 6 years, regulated by Decision of the General Treasury and Finance Policy Department of 5th December 1989.

3. Any capital increase, without alteration or subordination of the rank of the registered mortgage, according to article 13, section 2 of the Law hereof, amending article 4, Law 2/1994, of 30th March on subrogation and modification of mortgage loans, shall only apply to those mortgages constituted after the present Law comes in force.

DEROGATORY REGULATION

On this Law's entry into force the following are derogated:

a) The tenth additional regulation of Law 3/1994, of 14th April, which adapts the Spanish legislation on credit institutions to the Second Directive on banking coordination and introduces other modifications relating to the financial system;

b) The second paragraph of article 9 of Law 2/1994, of 30th March, on subrogation and modification of mortgage loans.

Also, all regulations of the same or lower level which go against that stated in this Law are derogated.

FIRST FINAL REGULATION. Modification of **Law 3/1994, of 14th April**, which adapts the Spanish legislation on credit institutions to the Second Directive on banking coordination

SECOND FINAL REGULATION. Modification in the Consolidated Private Insurance Regulation and Supervision, passed by Royal Decree 6/2004, of 29th October.

The following articles from the Consolidated Private Insurance Regulation and Supervision, passed by Royal Decree 6/2004, of 29th October, are modified as follows:

One. Section 2 of article 6.1.a) becomes drafted as follows:

«2. Illness (covering health assistance and long-term care).

The provisions in this branch can be in a lump sum, reparation and a mixture of both.»

Two. Section a) of article 6.2.A becomes drafted as follows:

«a) The life insurance, both for death and for survival, or both together, included in the survival annuity insurance; the life insurance with reinsurance; the "marital status" insurance, and the "birth" insurance. It also covers any of this insurance when they are linked with investment funds. It can also cover long-term care insurance.»

Three. Section d) of article 6.2.B becomes drafted as follows:

«d) When the complementary area is illness, it does not cover health care benefits or long-term care benefits.»

Four. The first paragraph of article 65.1 is modified and becomes drafted as follows:

«In personal risk provision, the contingencies that can be covered are death, widowhood, orphanage, retirement, and long-term care and they will guarantee economic benefits in the form of capital or income. They can also benefits for marriage, motherhood, children and death. And they can perform insurance operations for

accidents and disability to work, legal defence and assistance, and provide family benefits to subsidy requirements due to legal facts or acts which temporarily prevent performance of the professional activity.»

THIRD FINAL REGULATION. Modification of the Chattels Mortgage and Non-Transferable Collateral Law, of 16th December 1954**.**

1. Article 2 of the Chattel Mortgage and Non-Transferable Collateral Law, of 16th December 1954, is modified and shall become drafted as follows:

«1 (new). The agreement not to re-mortgage or re-pledge already mortgaged or pledged assets shall lack effect, and as such chattel mortgage and non-transferable collateral can be constituted over assets already mortgaged or pledged, albeit with an agreement not to re-mortgage or re-pledge.

Chattel mortgage or non-transferable collateral can also be constituted over the same mortgage or pledge right and over embargoed assets or whose acquisitions price has not been fully paid out.

This section does not have retroactive effect. »

2. A Paragraph 4 is introduced into article 8 Chattel Mortgage and Non-Transferable Collateral Law, of 16th December 1954, as follows:

«The credits guaranteed with chattel mortgage or non-transferable collateral can be used to cover the issues of securities on the secondary market».

3. Paragraphs 2 and 3 are introduced into article 54 of the Chattel Mortgage and Non-Transferable Collateral Law, of 16th December 1954, as follows:

«The credits and other rights corresponding to the holders of administrative contract, licences, awards or subsidies can be subject to non-transferable collateral provided that the Law or the corresponding constitution title authorises their transfer to a third party. Once the security is constituted, the Registrar shall on its own accord communicate this circumstance to the competent Public Administration by means of a certification issued for the purpose.

The credit rights, including future credits, provided that they are represented by securities and are not considered as financial instruments for the purposes of that set out in Royal Decree Law 5/2002, of 11th March, on urgent reforms to promote productivity and in order to improve public contracting, can also be subject to non-transferable collateral. In order to be properly constituted, they must be entered in the Personal Property Register».

FOURTH FINAL REGULATION. Modification of Law 35/2007, of 15th November, by which there is established the deduction of the income tax (*Impuesto sobre la Renta de las Personas Físicas)* and economic benefit of Social Security's unique payment in case of birth and adoption.

FIFTH FINAL REGULATION. Guarantee Fund of Alimony Payment.

SIXTH FINAL REGULATION. Modification of Law 1/2000, of 7th January, of Civil Procedure and Legislative Royal Decree 2/1995, of 7th April, by which the *Work Proceedings Law*'s rewritten text is approved.

SEVENTH FINAL REGULATION. Modification of Law 29/1987, of 18th December, on inheritance and donations Tax.

EIGHT FINAL REGULATION. Regulatory Authorisations.

Without prejudice to the authorisation contained in this Law, in particular relating to those of the Minister for Finance and the Treasury, the Government is authorised to develop, execute and comply with that set out in this Law.

NINTH FINAL REGULATION. Basic nature and conferring of competence

1. This is a Law of basic legislation in accordance with that stated in article 149.1.11.ª and 13.ª of the Constitution, with the exception of Chapter V which is exclusively pronounced under article 149.1.8.ª. of the Constitution.

2. Apart from the basic character established in the previous section, Chapters II, III and VI, the First Additional Regulation and the First, Second and Third Final Regulations, are also pronounced in accordance with that set out in article 149.1.6.ª and 149.1..8.ª of the Constitution.

TENTH FINAL REGULATION. Entry into Force.

This Law will enter into force on the day after it is published in the «Official State Gazette».