

DECREE NO 99-710 OF 3 AUGUST 1999 TAKEN IN APPLICATION OF TITLE IV OF THE SECOND PART OF ACT NO 99-532 OF 25 JUNE 1999 RELATING TO THE REFORM OF SOCIÉTÉS DE CRÉDIT FONCIER (MORTGAGE CREDIT COMPANIES).

The Prime Minister,

Further to the report from the Minister for the Economy, Finance and Industry,

Given Act No 84-46 of 24 January 1984 amended relating to the activity and supervision of credit institutions, in particular Article 15;

Given Act No 99-52 of 25 June 1999 relating to savings and financial security, in particular Articles 93 to 109;

Given decree No 67-236 of 23 March 1967, amended on trading companies, in particular Article 188;

The State Council (finance section) heard

Decrees:

Article 1. – When a contract is concluded with a view to obtaining resources benefiting from the preferential right defined in Article 98 of the aforementioned act of 25 June 1999, it is expressly mentioned herein that these benefit from this preferential right. Mention must also be made herein of the certificate provided for in Article 9, IV, of this decree.

Article 2. – The proportions provided for in Article 94, I, of the aforementioned act of 25 June 1999 are defined, when they are assessed when the loan contract is concluded, on the basis of the ratio between the capital due and the value of the property, when they are assessed when the claim is acquired if the loan has been granted by a third party, on the basis of the ratio between the capital outstanding and the value of the property.

They are set at 60% of the value of the property financed for secured loans or of the property provided as a guarantee for loans secured by a mortgage.

They may be increased to 80% of the value of the property if all the secured loans in the assets of the mortgage credit company have been granted to natural persons to finance the construction or the acquisition of housing or to finance both the acquisition of a building land and the cost of constructing housing. Work whose purpose is to create or convert a residential surface by extending or restoring it is placed in the same category as construction. For mortgage loans, the property provided as a guarantee must also be residential.

Article 3. – Secured loans accompanied by a real estate surety providing an equivalent guarantee within the meaning of Article 94, I, 1° of the aforementioned act of 25 June 1999 are loans accompanied by a surety which confers upon the creditor, irrespective of legal situation of the debtor, the right to sell the building encumbered by this surety, irrespective of the hands in which it is placed, and to be paid out of the selling price in preference to other creditors.

Article 4. – The loan-to-value ratio referred to in Article 94, I, 2° of the aforementioned act of 25 June 1999 may be exceeded:

- within the limit of 100% of the value of the property provided as a guarantee, for loans benefiting from the guarantee of the *Fonds de garantie de l'accession sociale* (FGAS) designed to assist access to ownership referred to in Article L. 312-1 of the construction and housing code or loans covered, for the part exceeding the fixed proportion, by a surety that fulfils the conditions laid down in Article 94, I of the aforementioned act of 25 June 1999 or by a guarantee from one or more of the public legal entities referred to in Article 94 II of the aforementioned act of 25 June 1999;

- within the limit of 80% of the value of the property provided as a guarantee, when the part of these loans exceeding the fixed proportion is financed by non-preferential resources. The mortgage credit companies calculate the amount of the excess on all the loans they hold at the time when this loan is granted or acquired. The arithmetical sum of the excesses calculated on all the loans must always remain lower than or equal to the amount outstanding on the non-preferential resources of the mortgage credit company.

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Article 5. – The personal contribution referred to in Article 94, I of the aforementioned law of 25 June 1999 may not be lower than:

- 20% of the purchase price of the real estate excluding costs and taxes if the property is intended for professional use;
- 10% of the purchase price of the real estate excluding costs and taxes if the property is intended for housing
- 5% of the purchase price of the real estate excluding costs and taxes if the property is intended for housing and if the contribution is made up of deposits on a contractual housing saving scheme.

The personal contribution may not consist of a loan.

Article 6. – As regards the application of Article 94, I, 2° of the aforementioned act of 25 June 1999, eligible secured loans in the assets of the mortgage credit company are loans for which a credit institution or insurance company holding own capital of at least 12 million euro is a joint and several guarantor.

The secured loan must be accompanied by a mortgage allocation promise on the financed property in favour of the lender benefiting from the surety.

The total amount of secured loans may not exceed 20% of the total amount of the assets of the mortgage credit company.

Article 7. – For the application of Article 94, IV, of the aforementioned act of 25 June 1999, stocks and debt securities which are sufficiently sure and liquid are assets eligible to be realised within the European System of Central Banks as well as amounts receivable within one year on credit institutions. The share of these sure and liquid assets may not exceed 20% of the total assets of mortgage credit companies. With the authorisation of the banking commission, this share may temporarily be increased to 30%.

Article 8. – When, in application of Article 15 of the aforementioned act of 24 January 1984, a company applies to the committee of credit institutions and investment companies for the approval necessary to obtain the capacity of mortgage credit company, it informs the committee of the name of the *contrôleur spécifique* (specific inspector) and the deputy specific inspector which it proposes to appoint. The committee of credit institutions and investment companies requests the opinion of the banking commission on these appointments, once the managers of the mortgage credit company have put their proposal to this commission.

If the opinion of the banking commission is unfavourable, the managers of the mortgage company must immediately put forward another name.

Article 9 – I. The duties of the specific inspector and the deputy specific inspector expire after the submission of the report and the certified statements adopted at the end of the fourth financial period following their appointment. Their mandate is renewable. If they wish to renew the mandate of said inspectors, the managers of the mortgage credit company send their proposal to the banking commission at least three months before the end of the fourth financial period following the appointment of these inspectors.

II. – The specific inspector appointed to replace the inspector whose duties have terminated before the end of the normal term shall complete the mandate of the inspector he replaces.

III. – The provisions of Article 188 of the aforementioned decree of 23 March 1967 apply to the specific inspector. The request to challenge the specific inspector is submitted by registered letter with a request for an acknowledgement of receipt when this comes from the banking commission.

IV. – The specific inspector bears witness to compliance with the rule laid down in Article 96 of the aforementioned act of 25 June 1999 on the basis of a quarterly programme for issuing resources benefiting from the preferential right referred to in Article 98 of the same act. It bears witness to compliance with this rule for all issues of resources benefiting from this preferential right and the unit value of which is higher than or equal to 500 million euros, or the equivalent in the monetary unit of the issue.

Article 10. – All mortgage credit companies keep an up-to-date specific statement of the loans they have granted or acquired. This statement also indicates the nature and value of the related guarantees and the nature and amount of preferential claims.

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Article 11. – The related costs referred to in the final paragraph of Article 98 of the aforementioned act of 25 June 1999 include the insurance and guarantee costs, the sums due to the *Fonds de garantie de l'accession sociale* (FGAS) designed to assist access to ownership referred to in Article L. 312-1 of the construction and housing code, the sums due to the depository of the issue and those relating to the expert appraisal on claims, the maintenance and repair of buildings which have become the property of the mortgage credit company further to the realisation of the sureties this had, as well as all other cost incurred to ensure the retention of the assets and guarantees received, and to preserve the rights of preferential creditors.

Article 12. – The minister for the economy, finance and industry is responsible for implementing this decree, which will be published in the Official Journal of the French Republic.