

## PRIVATE TRANSLATION OF:

### ***ROYAL DECREE 716/2009, OF 24<sup>TH</sup> APRIL, WHICH DEVELOPS CERTAIN ASPECTS OF ACT 2/1981, OF 25<sup>TH</sup> MARCH, REGULATING THE MORTGAGE MARKET AND OTHER RULES OF THE MORTGAGE AND FINANCIAL SYSTEM***

### **MADE BY THE SPANISH MORTGAGE ASSOCIATION**

#### I

This royal decree comes into being to culminate the modernisation and improvement of the refinance mechanisms of the credit institutions in the mortgage market which were started with the passing of Act 41/2007 which modifies Act 2/1981, of 25<sup>th</sup> March, Regulating the Mortgage Market and other rules of the mortgage and financial system, regulating the reverse mortgages and long-term care insurance and which establishes certain tax regulations. With said objective, this royal decree develops Act 2/1981, of 25<sup>th</sup> March, Regulating the Mortgage Market and Act 2/1994, of 30<sup>th</sup> March, on Subrogation and Modification of Mortgage Loans, and completely substitutes Royal Decree 685/1982, of 17<sup>th</sup> March, which developed certain aspects of Act 2/1981, of 25<sup>th</sup> March, Regulating the Mortgage Market, which is repealed.

#### II

The first reform introduced in this royal decree clarifies the capacity, which was already de facto recognised, of credit institution branches in Spain authorised in another Member State of the European Union to issue mortgage participations over loans and credits granted by them, guaranteed by mortgage on real estate situated in Spain.

As regards lending operations, namely the conditions that the mortgage loans and credits must fulfil in order to be used as the base for the issue of mortgage market securities, various essential developments are introduced. First of all, the requirement of purpose is eliminated for the mortgage loans and credits which can guarantee the issues of *cédulas hipotecarias* and mortgage bonds, as article 4 of Act 2/1981, of 25<sup>th</sup> March, includes amongst the loans and credits admitted for the issue of mortgage market securities any which meet the conditions established by the law, guaranteed by real estate mortgage, and as such no regulatory development is necessary.

In second place, it is definitively clarified that the main purpose of Chapter II of the royal decree is to define the requirements which the mortgage loans and credits granted by credit institutions must fulfil in order to be eligible to cover the issues of mortgage bonds, to be object of mortgage participations or to be used to calculate the issue limit of the *cédulas hipotecarias*. Amongst these requirements, mention should be made first of all to the fact that the ratio between the loan or credit and the valuation required for the mortgage loans or credits is tightened, going from 70% to 60%. Secondly, the possibility is recognised for the credit institutions to use bank guarantees or mortgage credit insurance as an additional guarantee which allows them to raise the ratio between loan or credit and valuation to 95% for residential mortgage loans or credits, to include them in the coverage portfolio for mortgage bond issues, so as to be able to be object of mortgage participations or to be used to calculate the issue limit for the *cédulas hipotecarias*. The amount by which said ratio is raised between 80% and 95% will depend on the legal strength of the terms of the guarantee, and on the credit quality of the guarantor. The payment of this bank guarantee or mortgage loan insurance will only correspond to the credit institution and under no circumstances should it correspond direct or indirectly to the mortgage debtor. Finally, it establishes the conditions which must be fulfilled by the mortgages granted by Spanish credit institutions in other countries of the European Union so that they can be considered equivalent to the national mortgage guarantee regime and can be included in the guarantee portfolio of mortgage securities issued in the Spanish market.

Within this same chapter and continuing the objective of regulatory modernization, the mortgage regulations are adapted to the recent modifications in the legislation on land and urban development. Similarly, the necessary adjustments are introduced so as to achieve greater regulatory coherence, in line with the latest features introduced during 2007 and the beginning of 2008 in Order ECO/805/2003, on regulations for valuation of real estate and certain rights for specific financial purposes.

Finally, the mechanism to counteract the depreciation or drop of the mortgage guarantee is reformed, in order to achieve a greater degree of protection for the mortgage debtor when it is an individual.

### III

Chapter III of the royal decree deals with making the issue of mortgage market securities more flexible: *Cédulas hipotecarias* and mortgage bonds. It should be recalled, in the first place, the special bankruptcy protection enjoyed by the holders of these securities, as well as the universal asset liability of the issuer, as this constitutes one of its greatest advantages. To this basic characteristic, a series of improvements are added which reinforce the security for the investor in these securities and allows greater flexibility and agility for the credit institutions when it comes to designing the conditions for their issue.

The first one that stands out is the freedom to establish the financial conditions of the mortgage market securities. This royal decree recognises efficient mechanisms to manage the risks of these issues: Cover derivatives of the interest rate risk, substitute assets against liquidity risk, early repayment clauses against the risk of prepayment; all make it unnecessary to be as restrictive as in 1982 as regards the financial conditions for the issue of securities. Greater freedom is therefore allowed on this matter with the caution of requiring more restrictive issue limits and obliging the issuing credit institutions to adopt the measures necessary so that there are no imbalances between the flows deriving from the guarantee portfolio and those necessary in order to meet the payments to the cedulistas or mortgage bond holders.

Secondly, it is particularly relevant the disappearance of many of the administrative obstacles which affected these issues and which thanks to the development of our securities markets and its supervision methods had now become obsolete. On this matter, the obligation to publish the issues of securities in the Official State Gazette is eliminated. Likewise, the need to make margin notes in the Land Register is eliminated in order to encumber mortgage loans or credits to the bonds issues.

Thirdly, the mortgage participations system is also updated to a certain extent. It is definitively clear that through the issue of mortgage participations there is a real cession of part of the participated mortgage credit. The credit institution issuing mortgage participations transfers the entire risk over the part of the credit that is ceded. It is also clarified that each of the mortgage participation securities represents a participation in a specific credit, and not in a credit pool.

Fourthly, the special accounting register of the mortgage loans and credits and substitute assets that serve as collateral of *cédulas hipotecarias* and mortgage bonds is developed, as well as the derivative financial instruments linked to them. The main objectives of said register consist in increasing the legal security against bankruptcy, guaranteeing greater transparency over the quality of the securities and increasing the effectiveness of the supervision of this market. This register will be continuously updated, without this ever involving continuous revaluation of properties.

#### IV

Chapter IV of the royal decree details the minimum characteristics of the tax and financial system of the financial market securities, establishing them as securities suitable for investment by certain regulated investment institutions, as well as their treatment for the purposes of Stamp Duty.

Chapter V includes the special features for the circulation of the mortgage market securities on the secondary market. Of particular interest in this Chapter is the much more flexible possibility of dealing with own securities, although the transparency requirements have increased on this issue.

Chapter VI contains the supervision system of the mortgage securities market. A regulation has been introduced which, without changing the current competences over the market of the Bank of Spain and of the National Stock Market Commission, explains its content in each case so that there is no overlap in this area.

V

At the end, the additional regulations introduce, first of all, a necessary and widely demanded clarification about the system applicable to the mortgage transfer certificates regulated by the fifth additional regulation of Act 3/1994, of 14<sup>th</sup> April, which adapts the Spanish legislation on credit institutions to the Second Banking Coordination Directive. The mortgage transfer certificates are therefore set up as a credit cession just like the mortgage participations but do not enter within the strict definition of said mortgage market security as no minimum quality is guaranteed. Secondly, some necessary clarifications are made to the system for subrogating mortgage loans and the right to enervate such subrogation, in order to more effectively protect the mortgage debtor.

The single transitory regulation postpones certain obligations on the institutions relating to the special accounting Register to various times following its entry into force.

Finally, the first final regulation performs two modifications to Royal Decree 775/1997, of 30<sup>th</sup> May, on the Legal System for Authorising Valuation Services and Companies, in order to solve practical problems which have arisen in its application. The second, third and fourth final regulations contain, respectively, the competence under which the rule is pronounced, the authorisation for its regulatory development and the date for its entry into force.

This royal decree is pronounced under, amongst others, the authorisations contained in the second additional regulation of Act 2/1981, of 25<sup>th</sup> March, regulating the Mortgage Market and the eighth final regulation of Act 41/2007, of 7<sup>th</sup> December, which modifies Act 2/1981, of 25<sup>th</sup> March, regulating the Mortgage Market and other rules of the mortgage and financial system, regulating reverse mortgages and long-term care insurance and which established certain tax regulations.

By virtue of which, on proposal from the Minister of the Treasury and the Minister for Justice, in accordance with the Council of State and following deliberation of the Cabinet of Ministers at its meeting of 24<sup>th</sup> April 2009,

I HEREBY DECREE

Article 1. *Object of the Mortgage Market.*

The mortgage market, regulated by Act 2/1981, of 25<sup>th</sup> March, regulating the Mortgage

Market, has as its object the negotiation of the securities issued by the institutions referred to in the following article guaranteed by mortgage loans and credits granted by them, provided that they meet the conditions established in this royal decree.

## CHAPTER I **Issuers**

*Article 2. Institutions which can participate in the mortgage market.*

1. The credit institutions which can participate in the mortgage market are:
  - a) Banks and, when permitted under their articles of association, official credit institutions.
  - b) Savings banks and the Spanish Confederation of Savings Banks (*Confederación Española de Cajas de Ahorros*).
  - c) Credit cooperatives.
  - d) Financial credit establishments.
2. The branches in Spain of credit institutions authorised in another Member State of the European Union can let third parties participate in the loans and credits guaranteed by mortgage on properties situated in Spain granted by them by issuing mortgage participations, under the terms established in this royal decree.

## CHAPTER II **Assets transactions**

*Article 3. Eligible loans and credits.*

Eligible loans and credits to cover the issues of mortgage bonds, to be object of mortgage participations or to be used to calculate the issue limit of cédulas hipotecarias, are considered those mortgage loans and credits granted by the institutions referred to in Article 2 which comply with the requirements established in this Chapter.

*Article 4. The Mortgage.*

1. The mortgage loans and credits must under all circumstances be guaranteed by first mortgage over full ownership of the property.
2. The registration of the mortgaged property must be in force and without any contradiction, and not subject to limitations due to first inscription or due to inscriptions performed under article 298 of the Mortgage Regulations.
3. The issuing institutions cannot postpone the mortgages existing in their favour to guarantee loans or credits affected by the payment of mortgage bonds or which have been object of some mortgage participation, except with the consent of the Syndicate of

Bondholders or the bondholders when the former has not been constituted, or of all of the loan or credit participants, respectively.

In the event that the Syndicate of Bondholders has not been constituted, the mortgage bonds issue agreement will determine the form in which, when appropriate, the issuer will obtain the consent of the bondholders, which will only be subject to the requirements and restrictions necessary in order to guarantee the identification of the holders and the security in the communications. The consent will require an absolute majority of at least two thirds of the holders.

4. Nor can the issuing entities, without said consent:

- a) Voluntarily cancel said mortgages on grounds other than the payment of the guaranteed loan or credit.
- b) Renounce or settle them.
- c) Cancel/abate all or part of the guaranteed loan or credit.
- d) In general, perform any act which reduces the level, legal effect or the economic value of the mortgage or of the loan or credit.

5. The mortgages entered in favour of the entities which can participate in the mortgage market can only be rescinded or challenged under that set out in article 71 of the Bankruptcy Act 22/2003, of 9<sup>th</sup> 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.

Article 5. *Limits of the loan or credit.*

1. The guaranteed loan or credit shall not exceed 60% of the valuation of the mortgaged asset, except to finance the construction, renovation or acquisition of housing, in which case it can reach 80% of said value, without prejudice to the exceptions set out in the following section.

2. The 80% limit in the ratio between the guaranteed loan or credit and the value of the mortgaged home mentioned in the previous section can be exceeded, without under any circumstances exceeding 95%, if the mortgage loan or credit has a bank guarantee provided by a different credit institution to the creditor or is covered by credit insurance, under branch 14 of article 6.1 of Legislative Royal Decree 6/2004, of 29<sup>th</sup> October, which passes the Consolidated Act on the regulation and supervision of private insurance provided by insurance companies. Under all circumstances the cost of the bank guarantee shall be borne by the creditor credit institution or who figures as insurance policyholder and bears the cost. Under no circumstances can the cost of the bank guarantee or insurance be passed on to the mortgage debtor. The bank guarantee or insurance must fulfil all of the following conditions:

- a) the guarantee will be direct;

- b) the scope of the guarantee or insurance will be clearly defined and legally valid and effective;
- c) the guarantee or insurance will cover at least the amount of the guaranteed loan or credit which exceeds 80% of the valuation of the mortgaged asset;
- d) the guarantee or insurance agreement will not contain any clause the compliance of which is beyond the direct control of the creditor and which:
  - i) allows the provider of the guarantee or insurance to unilaterally cancel said guarantee or insurance; or,
  - ii) increases the effective cost of the guarantee or insurance as a result of the reduction of the credit quality of the guaranteed or insured loan or credit; or,
  - iii) allows the provider of the guarantee or insurance to reduce their expiry date;
- e) in the event of breach or non-payment by the original debtor and after a maximum period of 24 months from then, the creditor credit institution will be entitled to demand from the guarantor or insurer the pending payments deriving from the covered mortgage loan or credit;
- f) the payment by the guarantor or insurer can not under any circumstances be subordinated on the credit entity obtaining court judgment; in the case of insurance, mere breach of the terms established in the contract will be considered grounds for a claim;
- g) the guarantee or insurance will be an express obligation, documented in writing, accepted by the guarantor or insurer, respectively;
- h) the guarantee or insurance will cover at least the payment of the capital and the agreed interest deriving from the mortgage loan or credit that the debtor is bound to pay;
- i) the credit institution or insurance company providing the guarantee or insurance mentioned in this section can not belong to the same group, in accordance with that set out in article 42 of the Commercial Code, as the creditor institution of the guaranteed or insured mortgage loan or credit, and,
- j) the credit institution which provides the guarantee must have a minimum credit rating for long-term exposure of A1, A+ or similar of a risk rating agency recognised by the Bank of Spain; if an insurance, it will be sufficient that the insurance company has the corresponding administrative authorisation.

When the bank guarantee or the insurance covers all of the payments deriving from the mortgage loan or credit that the debtor is bound to make, is immediate and, in the case of bank guarantee, the guarantor enjoys a credit rating equal or greater to that in the Kingdom of Spain, the maximum ratio between the guaranteed loan and credit and the

value of the mortgaged home mentioned in the previous section will be 95%. In other cases, the Bank of Spain will determine the maximum percentage of said ratio, according to the characteristics of the guarantee and the credit quality of the guarantor.

3. The mortgage loans and credit which initially exceed these percentages will be eligible for the calculation of the issue limit of *cédulas hipotecarias*, to be used as cover for the issue of mortgage bonds and to be object of mortgage participations when, as a result of the repayment of its capital or the modification of the value of the assets on the market, following corresponding valuation, their amount does not exceed the limits established in this article in relation to the initial or revised valuation of the mortgaged asset.

*Article 6. Loans and credits guaranteed by properties situated in other countries of the European Union.*

1. The loans and credits which are guaranteed by properties situated in the European Union can be considered loans and credits eligible for the calculation of the issue limit of *cédulas hipotecarias* and to be used as cover for the issue of mortgage bonds provided that, in the opinion of the Bank of Spain, said guarantees are of an equivalent nature and characteristics as those envisaged in this royal decree.

2. The equivalence of the guarantees will be appreciated according to the following requirements to be fulfilled by said guarantee or by the legal system which regulates it:

a) that the mortgage or right given in guarantee is legally valid and effective in all relevant jurisdictions at the time of subscription of the loan and credit contract and has been documented in writing on time and in due form;

b) that the legal system which regulates the guarantee establishes the obligation of the prior valuation of the property which serves as a guarantee by a valuer independent of the lending credit institution, understood as a person who holds the qualifications, capacities and experience necessary in order to make a valuation and who is independent from the credit decision process;

c) that the guarantee agreement and the legal procedure on which it is based allow the creditor credit institution to liquidate the value of the guarantee itself within a reasonable period when faced with a situation of non-payment; and,

d) that the legal system regulating the guarantee contains sufficient mechanisms in order to guarantee a fair price being obtained from enforcing the guarantee.

In order to appreciate the equivalence of systems and corresponding guarantees, the Bank of Spain can request from the institutions all additional information and documentation that it deems appropriate, including sufficient legal reports, prepared independently by experts outside of the institutions, as well as proof of the treatment that said guarantees have received by the supervising authority of the affected country

as risk mitigation instrument, for the purposes of solvency requirements of the credit institutions.

3. Articles 3, 4.1, 4.2, 4.3, 4.4, 5, 7, 10, 11 and 12 of this Chapter and articles 4 to 9 of Act 2/1981, of 25<sup>th</sup> March, will be applied to the loans and credits guaranteed by properties situated within the European Union which are considered, in accordance with the previous section, to have equivalent guarantees to those set out in this royal decree, in order to determine whether they are eligible in order to calculate the issue limit of the cédulas hipotecarias and to be used as cover for the issue of mortgage bonds.

4. Under no circumstances shall the loans and credits regulated in this article be object of mortgage participations.

#### *Article 7. Ownership of the assets.*

1. The mortgages must be constituted on assets which are entirely and fully owned by the mortgagor. Said full ownership cannot be subject to conditions, disposal prohibitions, periods, substitutions, reservations, charges, burdens or limitations of any kind, unless they do not affect the mortgage, are postponed to it or are cancelled prior to the issue of securities.

For these purposes, affectations due to taxes due to the State, the Autonomous Administration or the Local Administration, or those responsibilities deriving from article 99 of the Public Protected Housing Regulations, passed by Decree 2114/1968, of 24<sup>th</sup> July, will not be considered as charges.

2. Notwithstanding that set out in section 1, the mortgaged property can belong to different persons in indivisible participations, or owning rights in the ownership, provided that the mortgage has been constituted over all of the participation or rights as a unit, in accordance with that set out in article 217 of the Mortgage Regulations, passed by Decree of 14<sup>th</sup> February 1947.

3. In buildings constituted under a regime of joint freehold:

a) If the mortgage corresponds to the building as a whole, it must be constituted and registered in the form set out in article of 218 the Mortgage Regulations, passed by Decree of 14<sup>th</sup> February 1947.

b) If the mortgage is on apartments or business premises, they must be registered in separate folios.

#### *Article 8. Prior valuation.*

1. The real estate on which there is the mortgage must have been valued prior to the issue of securities by the valuation services of the lending financial institution or

authorised entities, in accordance with that set out in this royal decree. Said valuation is aimed at suitably estimating the price which those assets may obtain so that their value constitutes the ultimate guarantee of the financial institutions and of those savers who participate in the market.

2. The valuation will be proved by certification from the corresponding services and if performed before the execution of the deed constituting the mortgage, it will be recorded in said deed and in its registration in the Land Register. In this case, the auction rate in the event that the mortgage is enforced must be at least said valuation.

3. The certification must be based on a valuation report which covers the legal and technical aspects which influence the valuation of the asset and which constitute the basic characteristics defining it, as well as all of the technical-economic calculations which lead to the final value of the valuation.

The technical valuation report, and the certificate in which it can be summarised, must be signed by an Architect, Quantity Surveyor or Technical Architect, Engineer or Technical Engineer of the corresponding speciality according to the professional competence regime established by the nature of the valued object. This report does not have to be endorsed by the respective Official Association and will expire three months after the date of signing.

4. The Minister for the Treasury can establish the valuation criteria, the minimum contents of the reports and the valuation certificates and any other regulations which are necessary for the purpose of valuing the assets which are to serve as a guarantee in the mortgage market.

#### *Article 9. Mortgage extension.*

If for market reasons or due to any other circumstance the value of the mortgaged asset drops below the initial valuation by more than 20%, and therefore exceeds, according to the capital pending repayment, the limits referred to in article 5.1, the creditor institution, following valuation performed by an independent authorised company, can demand from the debtor the extension of the mortgage to other assets sufficient in order to cover the required ratio between the value of the asset and the loan or credit that it guarantees.

In the event that the debtor is an individual, the drop referred to in the previous paragraph must have remained for a period of one year counting from the time when the creditor institution has recorded said drop in the accounting register referred to in article 21.

The debtor, after being requested to make the extension, can opt to refund the entire loan or credit or the part of it which exceeds the amount resulting from applying to the current valuation the percentage used to initially determine its amount.

If within the period of two months from the extension request, the debtor has neither done so nor refunded the part of the loan or credit referred to in the previous paragraph, it will be considered that they have opted to refund all of the loan or credit, which can be immediately demanded by the creditor institution.

Article 10. *Property Damage Insurance.*

1. The assets over which the mortgage guarantee is constituted must have suitable property damage insurance. The covered risks must be at least those included in insurance branches 8 and 9 of article 6.1 of Legislative Royal Decree 6/2004, of 29<sup>th</sup> October, which passes the Consolidated Act on the regulation and supervision of private insurance, with the exception of theft. The insured amount must coincide with the valuation value of the insured asset excluding the value of the uninsurable assets, in particular land.

2. The insurance policyholder shall notify the insurance company of the existence of the loan or credit burdening the insured asset, and the insurance company will send said notification to the creditor.

3. In the case of failure to pay the premium by the insurance policyholder, the insurance company will notify this to the creditor before the grace period for the premium payment has expired.

4. In the event of sinister, the insurance policyholder will notify the insurance company under the terms set out in the policy, and it will send the notification to the creditor.

Article 11. *Excluded assets.*

1. The assets that cannot be admitted to guarantee mortgage loans or credits considered eligible in accordance with article 3 as they do not represent a sufficiently stable and lasting value are the following:

a) The right of usufruct.

b) The administrative awards.

c) The surface rights whose duration, counting from the date envisaged for the end of the repayment period of the mortgage loan or credit, does not reach 20 years, pasture, water, wood and similar rights.

d) The buildings and installations situated outside of urban planning regulations and the land on which provisional works have been authorised, under the terms fixed for each case in the applicable legislation on land or urban planning, when such circumstance is recorded in the registers.

2. For the purposes of the mortgage market, the homes covered by any public protection system, whose requirements and benefits will be governed by that stated in the corresponding special regulations, will always be assets which can be mortgaged.

Article 12. *Excluded or restricted loans and credits.*

1. The following mortgage loans or credits cannot be eligible in accordance with article 3:

a) Those which are instrumented in nominative, negotiable or bearer credit instruments.

b) The totally due or partly due part of said loans or credits at the time they are affected as guarantee of the issue. That stated in this letter will not be applicable to the mortgage participations.

c) Those which are affected to another bond issue or those that have been object of mortgage participations in the participated portion.

d) Those guaranteed with mortgage which appears in the registered contradicted by claim note.

e) Those that are sub-mortgaged or lienee.

f) Those subject to condition precedent, until their compliance is recorded in the registers, and those guaranteed by security or maximum mortgage, by the part of them for which the corresponding debt is not recorded as effectively contracted in the special accounting register held by the institution issuing the cédulas hipotecarias or mortgage bonds, or in the special book mentioned in article 32.3 held by the issuing institution in the case of mortgage participations.

2. The loans or credits which are guaranteed by mortgage on buildings in construction or on individual properties under freehold regime which form part of them, can only be eligible in accordance with article 3 when they meet the following requirements:

a) That the loan or credit is destined to financing the construction of the mortgaged asset and the borrower is obliged to finish it.

b) That the mortgaged asset which will result at the end of the construction is susceptible to mortgage, according to this royal decree, to guarantee loans or credits which are eligible in accordance with article 3.

c) That the valuation certificate records the value that the mortgaged building or property will reach once its construction is completed.

3. Whatever the amount of the loan or credit covered in the previous section, for the

purposes of resulting eligible in accordance with article 3, the limit that will be established will be determined by the sum of the following amounts:

- a) 50% of the plot valuation value; and,
- b) 50% of the value of the work done, excluding the impact of the plot.

4. The amounts resulting from applying the above section can only be counted, for the purposes of being eligible in accordance with article 3, provided that the sum does not exceed 20% of the total amount of capital of the loan and credits affected to a bond issue or the portfolio which determines the limit of the issue of *cédulas*.

5. The loans or credits which are guaranteed with mortgage on land on which, in accordance with the applicable legislation on land or urban planning, building is possible, in order to be eligible in accordance with article 3, shall have a countable limit 50% of the valuation value of said land.

6. The loans or credits which are guaranteed with mortgage on properties constructed by virtue of a surface right can only be considered eligible, in accordance with article 3, when the building or construction has been performed within the period set out for such purpose in the title constituting the right, in accordance with the applicable legislation.

7. If for market reasons or any other circumstance, the value of the mortgaged asset drops below the initial valuation under the terms established in article 9 and this is not corrected via the methods described in said article, the mortgage loan or credit guaranteed by said asset shall cease to being eligible in accordance with article 3, unless it has already been affected to the issue of bonds or has been the object of mortgage participations.

8. The mortgage loans or credits which, due to having a bank guarantee or insurance as set out in article 5.2, exceed the limits established in article 5.1, can only be counted for the calculation of the issue limits of article 23 and 24 up to the percentage established in said article 5.1.

### CHAPTER III

#### **Liabilities transactions**

#### SECTION 1. MORTGAGE SECURITIES

Article 13. *Types of securities.*

1. Three classes of securities can be issued for the mortgage market: *Cédulas hipotecarias*, mortgage bonds (*bonos hipotecarios*) and mortgage participations (*participaciones hipotecarias*). These names are exclusive and are reserved for said securities.

2. The mortgage securities can be issued by all institutions referred to in article 2, provided that they comply with the conditions and requirements set out in this royal decree.

Article 14. *Cédulas Hipotecarias*

1. The *cédulas hipotecarias* shall contain at least the following details:

- a) Specific designation and indication of their regulating law.
- b) Stating whether they are nominative, negotiable or bearer and, if applicable, the name of the holder or the person on whose order they are issued. Failing express classification they will be considered issued to the bearer.
- c) Their nominal value and the premiums, if any.
- d) The period and form of capital repayment.
- e) The interest that is yielded and its due date.
- f) The option which, as regards the method of payment, is allowed by article 22 of this royal decree.
- g) The expression of whether the *cédula* is unique or whether it belongs to a series and, if this is case, the number of the security and the number or letter of the series, if there are various.
- h) The date of issue.
- i) The name and address of the issuing institution and, if applicable, the details of its entry in the Trade Register.
- j) The stamp of the issuing institution and the signature of at least one of its directors or representatives, which can be printed, complying with the legal requirements, when the *cédulas* are issued in series.
- k) The expression of whether the *cédula* includes or not an early repayment option in favour of the issuer and the circumstances under which it can be exercised.

2. When the *cédulas hipotecarias* are represented by notes on account they shall state under all circumstances in the document referred to in article 6 of the Securities Market Act 24/1988, of 28<sup>th</sup> July, the data mentioned in section 1 above which is compatible with such form of representation.

Article 15. *Mortgage bonds (Bonos Hipotecarios)*

The mortgage bonds shall contain the details established for the cédulas hipotecarias in article 14 and also the following:

- a) The name and residence of the notary public and the notary record number of the public deed by which the mortgage loans and credits are affected to the mortgage bond issue.
- b) The circumstance that the bonds are especially guaranteed by the mortgage loans and credits indicated in the public deed and, if any, by the substitution assets considered in article 17 of Act 2/1981, of 25<sup>th</sup> March, which are affected in public deed and by the economic flows generated by the derivative financial instruments linked to each issue.
- c) The circumstance that the affectation contained in letter b) above does not exclude the universal asset liability of the issuing institution.
- d) The domicile of the Syndicate of Bondholders, if it is an issue in series and if one has been constituted.
- e) The date of registration of the issue in the Trade Register.

SECTION 2. ISSUE CONDITIONS

Article 16. *General Rules.*

1. The issues of cédulas hipotecarias and mortgage bonds will be according, without prejudice to that set out in this royal decree, to the rules regulating the securities market, to the agreements, articles of association and regulations of the issuing entities, and to the agreements of its competent bodies, provided that they do not contradict that established thereof.
2. The cédulas and mortgage bonds can be issued with the financial characteristics that they wish in accordance with that established in article 11 of Act 2/1981, of 25<sup>th</sup> March.
3. The cédulas and mortgage bonds can include early repayment clauses as decided by the issuer according to that specified in the terms of issue.
4. Under no circumstances can the mortgage debtor be prejudiced by the issue of securities referred to in Act 2/1981, of 25<sup>th</sup> March.

Article 17. *Issue of cédulas hipotecarias.*

1. When the cédulas hipotecarias are not issued in series, their issue date must be irrefutably stated.

2. The securities issued in series shall be issued in voucher books with a master register, and shall be correlatively numbered. There can be various series within the same issue. The difference may consist in the nominal value, in the content of the rights, or in both at the same time. The securities of each series shall be of the same value and shall confer the same rights.
3. The issue of *cédulas hipotecarias* will involve the obligation on the issuing institution to keep a special accounting register with the content detailed in article 21.
4. The substitution assets which, in accordance with article 16 of Act 2/1981, of 25<sup>th</sup> March, serve as collateral of the issues of *cédulas hipotecarias*, will do so up to the limit established in said article and in relation to a specific issue of covered bonds made by the institution. The substitution assets must be linked to a specific issue of *cédulas hipotecarias* at the time that said issue is made and will be identified in the special accounting register in accordance with article 21.
5. For the purposes of calculating the limit established in the second paragraph of article 16 of Act 2/1981, of 25<sup>th</sup> March, the substitution assets linked to an issue of *cédulas hipotecarias* will be valued at their market value at the time they are linked to the issue of *cédulas hipotecarias*.
6. The issuers of *cédulas hipotecarias* shall adopt the measures necessary in order to avoid inappropriate imbalance between the flows from the cover portfolio and those deriving from the payments due for the *cédulas* that they issue.

Article 18. *Issue of mortgage bonds.*

1. The affectation of mortgage loans and credits to an issue of mortgage bonds will be stated, after the issue subscription period has ended and before the outlay by the bondholders, in public deed. In accordance with article 13 of Act 2/1981, of 25<sup>th</sup> March, only mortgage loans and credits which are eligible in accordance with article 3 can be affected by mortgage bonds.
2. Said deed, apart from meeting the requirements of the notarial legislation, shall contain at least the following:
  - a) Name, address and date of constitution of the issuing institution.
  - b) Name, surname and address of its administrators.
  - c) Amount and conditions of the issue.
  - d) Initial date and subscription period for the securities.
  - e) The type, class and characteristics of the securities, with reference to each series, if any, stating the nominal value of the securities, the premiums, of any, the capital repayment method and periods, the interest that they yield and their due dates.
  - f) The detailed list of the mortgage loans and credits which are affected by the payment

of the bonds, indicating their capital, updated value at the time of issue, the date of constitution of the mortgages and the details of their entry in the Land Register, as well as sufficient details in order to identify the substitution assets linked to the issue as referred to in article 17 of Act 2/1981, of 25<sup>th</sup> March.

g) The constitution of the Syndicate of Bondholders where they are issued in series and in the event that one is constituted.

3. The issue will be entered on the page of the Trade Register corresponding to the issuing institution when it is subject to entry in said Register. The issue of bonds will also be recorded in a special accounting register which will be kept by the issuing institution and will have the content detailed in article 21.

4. The substitution assets which, in accordance with section two of article 17 of Act 2/1981, of 25<sup>th</sup> March, serve as collateral of issues of mortgage bonds will do so up to the limit established in said article and in relation to a specific issue of mortgage bonds made by the institution. The substitution assets must be linked to a specific issue of mortgage bonds at the time that said issue is made and will be identified in the special accounting register in accordance with article 21.

5. For the purposes of calculating the limit established in the second paragraph of article 17 of Act 2/1981, of 25<sup>th</sup> March, the substitution assets linked to an issue of mortgage bonds will be valued at their market value at the time they are linked to the issue of mortgage bonds.

6. The issuers of mortgage bonds shall adopt the measures necessary in order to avoid inappropriate imbalance between the flows from the cover portfolio and those deriving from the payments due for the mortgage bonds that they issue.

#### Article 19. *Syndicate of Bondholders.*

1. In relation to the Syndicate of Bondholders, powers and authority of the Chairperson and the Assembly of Holders, it shall be as stated in Act 2/1981, of 25<sup>th</sup> March, in this royal decree and in Legislative Royal Decree 1564/1989, of 22<sup>nd</sup> December, which passes the consolidated Limited Liability Companies Act.

2. The Syndicate of Bondholders can perform the following functions, if thus agreed at the time of its constitution.

a) to allow the issuing institution to postpone the mortgages in its favour to guarantee loans or credits affected by the issue of mortgage bonds.

b) to allow, by agreement, the issuing institution to cancel said mortgages on grounds other than the payment of the guaranteed loan or credit.

c) to allow the issuing institution to renounce or settle them.

- d) to allow the issuing institution to renew/modify the guaranteed loan or credit, entirely or partially cancel it or extend it.
- e) in general, to prevent the issuing institution from performing any act which reduces the level, legal effect or the economic value of the mortgage or of the loan or credit.
- f) to intervene, through its chairperson, in the case of issues in series, in the public deed which affects the mortgage loans or credits to the issue of bonds, mentioned in article 19.1.
- g) in representation of the bondholders, to close with the issuing institution the agreement referred to in article 22.1.2.

### SECTION 3. SPECIAL ACCOUNTING REGISTER, DERIVATIVES, EXTINCTION OF THE AFFECTATION OF LOANS AND CREDITS AND PRESCRIPTION

#### Article 20. *Derivatives linked to the issue of cédulas and mortgage bonds.*

The derivative financial instruments linked to an issue of *cédulas* or mortgage bonds as referred to in articles 12 and 13 of Act 2/1981, of 25<sup>th</sup> March, must fulfil the following requirements:

- a) that they are interest rate or currency exchange/swap transactions, or other derivative financial instruments which are aimed at covering the interest rate or exchange rate risk incurred with the issue.
- b) the contracts must specify that the issuing credit institution's right to the positive value, if any, from the derivative financial instrument contract is not prejudiced in the event that said entity is declared bankrupt. Likewise, this requirement will be considered fulfilled when the bankruptcy of the issuing entity does not lead to the termination of the derivative financial instrument contract.
- c) the counterparty of the derivative contract must have a minimum credit rating of A1, A+ or similar from a specialist risk rating agency of recognised prestige.

#### Article 21. *Special accounting register.*

1. The institutions referred to in article 2 as issuers of *cédulas* or mortgage bonds shall keep a special accounting register of the mortgage loans and credits which are used to guarantee said issues, of the substitution assets backing them and the derivative financial instruments linked to each issue.
2. The special accounting register will be continuously updated and will have two differentiated parts.
3. The first part will record the list of all of the mortgage loans and credits which back the

*cédulas* issued by the institution, expressly indicating whether they are eligible in accordance with article 3 and with the content established in Appendix I, the list of the substitution assets which back each issue of *cédulas*, expressly indicating the issue to which they are linked and with the content established in Appendix II, and the list of the financial instruments linked to each issue, expressly indicating the issue to which they are linked and with the content established in Appendix III.

4. The second part will record the list of all of the mortgage loans and credits which back each of the issues of mortgage bonds made by the institution, with the content established in Appendix I, the list of the substitution assets which back each issue of mortgage bonds, with the content established in Appendix II, and the list of the financial instruments linked to each issue, the content established in Appendix III For these purposes, this second part will be subdivided as many times as there are ongoing issues of mortgage bonds by the institution.

5. The Bank of Spain can clarify the definitions of the concepts contained in Appendices I, II and III and introduce technical adaptations to the special accounting register regulated in the previous sections.

6. The Bank of Spain will determine the essential data of the register mentioned in this article which must be incorporated in the annual accounts of the issuing institution and which shall include at least:

a) The following aggregate values from the first part of the register:

1. The nominal value of all of the portfolio of pending mortgage loans and credits;
2. The nominal value of all of the pending mortgage loans and credits which are eligible in accordance with article 3; and,
3. The nominal value of the substitution assets affected by each of the issues of *cédulas* and their breakdown, according to their type.

b) the following aggregate values taken from the second part of the register and calculated for each of the institution's issues of mortgage bonds:

1. The nominal value and the updated value, calculated in accordance with article 23, of all of the portfolio of mortgage loans and credits which cover the issue of bonds;
2. The nominal value and the updated value, calculated in accordance with article 23, of all of the outstanding mortgage bonds of the issue; and,
3. The nominal value of all of the substitution assets affected by each of the issues of mortgage bonds and their breakdown, according to their type.

c) the aggregate nominal values of the ongoing mortgage market securities of each class issued by the institution, expressly indicating whether they have been made by public offer.

7. The institutions issuing *cédulas* or mortgage bonds must include a specific note in their annual activities report which refers to the details mentioned in the previous section. Said note will also include an express statement by the Board of Directors or equivalent body of the credit institution relating to the existence of express policies and procedures relating to its activities in the mortgage market and whereby said body takes responsibility for complying with the mortgage market regulations.

Article 22. *Extinction and prescription.*

1. The affection of mortgage loans and credits to guarantee an issue of bonds will be extinguished by:

1°. The total or partial repayment of the issued bonds.

2°. The agreement between the issuing institution and the bondholders or the single bondholder to extinguish the guarantee or to substitute one or various loans or credits for another or others of equal or greater current value which meet the requirements set out in this royal decree. For these purposes, the bondholders can be represented by the Syndicate of Bondholders if thus agreed at the time of constitution of said syndicate.

3°. The cancellation on any grounds of the mortgage which guarantees the affected loan or credit.

2. From the day of their normal expiry the securities referred to in article 13 will stop yielding interest whether presented for encashment or not.

In accordance with that stated in article 950 of the Commercial Code, the refund of the securities, as well as the payment of their interest and premiums, will stop being demandable three years after their expiry.

#### SECTION 4. ISSUE LIMITS

Article 23. *Of the Mortgage bonds.*

1. The updated value of the mortgage bonds, understood as the sum of all of the cash flows discounted from the present value using the relevant market's interest rate curve, must be at least 2% less than the updated value of the mortgage loans and credits affected to the issue.

2. For the purposes of calculating the updated values mentioned in the previous section the euro swap curve will be used. If there are loans and credits affected by the issue of mortgage bonds stated in currencies other than the euros, their updated value will be calculated using the swap curve in the currency in which they are stated. The updated values calculated in currencies other than the euro will be converted into euros using the exchange rate at the time of calculation.

3. The average expiry of the mortgage bonds cannot be greater than that of the affected loans and credits.

Article 24. Of the *cédulas*.

1. The volume of *cédulas* issued by an institution and not due cannot exceed 80% of a base calculation made up of the sum of the capital not repaid of all of the mortgage loans and credits of the institution's portfolio which are eligible in accordance with article 3. Counted as such loans and credits will be capital of the mortgage participations acquired by the institution that are in its portfolio and are also eligible.

2. If the entity has issued mortgage bonds or mortgage participations, the full amount of any loan or credit affected by bonds and the participated portion of the participation will be excluded from the calculation base mentioned in the previous section.

Article 25. *Restoring the proportion*.

1. The limit percentage for the issue of *cédulas* and mortgage bonds cannot be exceeded at any time.

2. However, if the limit is passed due to increases in the repayments of the affected loans or credits, or for any other unforeseeable cause, the issuing institution must restore the balance by the following actions:

a) Deposit in cash or public funds into the Bank of Spain.

b) Acquisition of the own institution's bonds on the corresponding market.

c) Granting new mortgage loans or credits or acquiring mortgage participations eligible for calculating the *cédulas* issue limit in accordance with article 3. Likewise, bank guarantees or credit insurance can be subscribed, under the terms set out in article 5.2, so that the loans or credits which have lost their condition of being eligible for the said *cédulas* issue limit calculation can recover said condition.

d) Affectation to the payment of the mortgage bonds, by a new public deed, of new mortgage loans or credits eligible to be used as their cover in accordance with article 3.

e) Affectation to the payment of the *cédulas* or mortgage bonds of new substitution assets, of those mentioned in article 17.2 of Act 2/1981, of 25<sup>th</sup> March, provided that this will not involve exceeding the limits established in the second paragraph of article 16 for the *cédulas* and in article 17.1 of Act 2/1981, of 25<sup>th</sup> March, for the mortgage bonds.

f) Repayment of *cédulas* and bonds by the amount necessary in order to restore the balance. If necessary, this repayment will be early.

3. The deposit in cash or public funds must be made in a maximum period of ten working days following that after the day on which the imbalance occurs, provided that it has not been restored during said period.

In any event, in a maximum period of four months, the proportions referred to in articles 23 and 24 must be restored by any of the actions contained in sections c), d), e) and f) of the previous section.

4. The deposit of cash or public funds referred to in letter a) of section 2 shall be especially affected by operation of law, as surety, to the refund of the capital of the *cédulas* and bonds, deducting the amount of the premiums of whatever type. If interest or results are yielded, their global amount will also be affected by the payment of interest on said *cédulas* and bonds and, if there is a surplus, on the refund premiums.

The institution issuing the *cédulas* and bonds will not have said deposit, or its interest or results, disposable for a period of four months from constitution. The disposal will be exclusively for early refund of *cédulas* and bonds, granting new loans or credits eligible according to article 3, acquiring mortgage participation or paying when due the interest or capital of the *cédulas* and bonds in circulation when due during said period.

5. The *cédulas* and bonds acquired on the market in application of that set out in the previous sections can be put into circulation again within the limits set out in this royal decree.

In the event of bankruptcy, the *cédulas* and bonds acquired on the market will be automatically repaid.

6. The Bank of Spain can, as an exception, authorise the variation of the transitory periods necessary in order to adjust to the issue limits, or to the disposal of the deposited funds.

## SECTION 5. MORTGAGE PARTICIPATIONS

Article 26. *Issue.*

1. The entities referred to in article 2 can allow third parties to participate in the mortgage loans and credits in their portfolio by issuing mortgage participations represented by nominative titles or by notes on account.

2. Under all circumstances, each value will refer to one participation in a specific mortgage loan or credit.

The issue of various participations for a single loan or credit can be made simultaneously or successively, and in both cases at the start or during the period that the loan or credit is in force.

3. The participation grants its owner the rights established in the law and those set out in said participation.

The issuer will keep the custody and administration of the mortgage loan or credit, and, if applicable, the partial ownership over it and will be bound to perform all acts which are necessary for its effectiveness and due performance, paying the participants, even in the case of early payment, the percentage which corresponds to them from that received from the mortgage debtor for capital and interest according to the issue conditions.

4. When the owner of the participation is one of the institutions mentioned in article 2, the portion of the mortgage loan or credit incorporated in the participation will be included in the calculation base referred to in article 24.1, provided that the participation is not countable as a risk asset by the issuing institution in accordance with article 27.3 and that the loan or credit object of the participation is eligible in accordance with article 3.

*Article 27. Prohibitions.*

1. The mortgage loans and credits which guarantee the issue of mortgage bonds cannot be object of mortgage participations.

2. The entities mentioned in article 2 cannot allow participation in the mortgage loans and credits in their portfolio, or transfer participations that they have acquired, or affect loans or credits to the issue of mortgage bonds, when these actions result in exceeding the limits established in article 24.

3. When the participation is made for all of the period remaining until the final expiry of the contract and there is not repurchase agreement, the participated portion of the loan or credit will not be counted as risk asset of the issuing institution. In this case the issuer cannot accept any responsibility in directly or indirectly guaranteeing the successful conclusion of the operation or advancing funds to the participants without having received them from the debtor.

4. Mortgage participations cannot be issued over the part of the mortgage loans or credits not provided.

*Article 28. Content.*

1. The participation incorporates a percentage of the capital of the participated loan or credit, and said percentage will at all times be applicable for determining the economic scope of the holder's right.

2. The capital value of the mortgage participation can be freely agreed between the parties at any time during the life of the loan or credit, although the period for which the participation is issued and its interest rate cannot be greater than the period and interest

rate of the participating mortgage loans and credits.

3. In the event that the participated loan or credit is repaid in advance, the issuing institution must refund the participation.

Article 29. *Title.*

1. The titles of the mortgage participations will be nominative and will include at least:

a) Their specific designation and indication of their regulating law, as well as any possible limitations on their circulation.

b) The initial capital of the participated loan or credit, its period and form of repayment, the interests it yields and its due dates, as well as the details of its entry in the Land Register.

c) The percentage that the participation incorporates out of the mortgage loan or credit, the period and form of its refund, the interests that it yields, its due dates, delay interest, if applicable, agreed and the other conditions of the participation.

d) The personal circumstances and the address of the participant or participants.

e) The obligation, charged to the successive holders of the participation, to notify their acquisition to the issuing institution, as well as their address.

f) The details identifying the issuing institution, its stamp, and the signature of at least one of the representatives with power of disposal over immovable assets.

When the subscription and holding of the participations is not limited to professional investors, as defined in article 78 bis of the Securities Market Act 24/1988, and can be subscribed or acquired by non-specialist members of the public, they will be issued in public deed and a note will be left in the Land Register, in the margin of the entry for the corresponding mortgage. After the margin note has been done, the third parties who acquire any right over the mortgage loan or credit shall do so charged to the payment of the participation and its interest.

2. When the mortgage participations are represented by notes on account they shall state under all circumstances in the document referred to in article 6 of the Securities Market Act 24/1988, of 28<sup>th</sup> July, the data mentioned in section 1 above which are compatible with such form of representation.

Article 30. *Enforcement proceedings.*

1. The enforcement of the participated mortgage loan or credit corresponds to the issuing institution and to the owner of the participation under the terms established in article 31.

2. Notwithstanding that stated in the previous section, the owner of the mortgage participation may bring enforcement proceedings against the issuing institution in order to make effective the due capital and interest, according to the participation percentage and that established in the issue, provided that the breach of said obligation is not as a result of the debtor's failure to pay the participated mortgage loan or credit.

*Article 31. Powers of the titleholder.*

If the breach is as a result of the debtor's failure to pay, the owner or owners of the participation will have the following powers:

- a) To compel the issuing institution to start foreclosure proceedings.
- b) To take part with the same rights as the issuer in the enforcement proceedings started against the debtor, appearing in court for such purpose in any enforcement proceedings started against the debtor, and participate in the result of the auction in proportion to its respective percentage in the foreclosed loan or credit and without prejudice to the issuing institution receiving the possible difference between the interest agreed in the loan or credit and that agreed in the participation, when the latter is lower.
- c) If it does not start proceedings within sixty working days from the procedure made via notary public requesting payment of the debt, the owner of the participation will be legitimated to exercise, by subrogation, the enforcement proceedings for the participated loan or credit in the amount corresponding to the percentage of its participation, for both capital and interest.

In this case the part of the non-participated loan or credit and the unenforced participation will remain in force as preferential charges, and it is understood that the highest bidder accepts them and is subrogated in their responsibility, without the auction price being allocated to their payment and extinguish.

- d) In the event that proceedings brought by the issuing institution are stopped, the participant can subrogate it in its position and continue the proceedings.

In those case set out in letters c) and d), the owner of the participation can apply to the competent judge to initiate or continue the corresponding mortgage enforcement proceedings, accompanying to its claim the original title of the participation, of the notarial request set out in section c) above and of the registry certification of the entry and survival of the mortgage. When this certification is issued it will be recorded in the registry, by margin note, that the registry certificate has been issued and its date will be indicated together with the identity of the applicant. These circumstances will be recorded in the issued certification.

*Article 32. Transfer.*

- 1. The mortgage participations can be transferred by written declaration in the title itself

and, in general, by any of the legally accepted methods. The transfer of the participation and address of the new owner must be notified by the acquiring party to the issuing institution.

When the subscription and holding of the participations is not limited to professional investors, as defined in article 78 bis of the Securities Market Act 24/1988, and can be subscribed or acquired by non-specialist members of the public, the transfer will be formalised in public deed and a note will be left in the Land Register, in the margin of the entry for the corresponding mortgage.

2. The transferring party will not be liable for the solvency of the issuing institution or for the solvency of the debtor of the participated loan or credit, or for the sufficiency of the mortgage which guarantees it.

3. The issuing institution shall keep a special book in which it will note the participations issued over each loan or credit, as well as their transfers which are notified to it. The changes of address which have been notified by the owners of the participations shall be noted in the book.

The book will also be used to record the following details:

a) Date on which the loan or credit was opened and when it is due, its initial amount and the method of liquidation.

b) The mortgage's registry details.

4. No responsibility will be attributed to the issuing institution which performs the notifications for which it is responsible to the person who figures in its books as the last owner of the participation and to the address of said owner as contained therein.

#### Article 33. *Cancellation.*

1. After the participated mortgage loan or credit has been cancelled, the owner of the participations will retain a claim against the issuer until its obligations have been fulfilled, when it will be redeemed. The mortgage participations can be cancelled by repayment or by disablement of those which by any ground are in the legitimate power and possession of the issuing institution.

2. If applicable, when the entry is made cancelling the participated mortgage loan or credit, for which payment to the mortgage creditor or any other legal ground will be sufficient, the margin note of the issue of participations will be officially cancelled.

The notarial act of repayment or disabling the participation title in the power of the issuing institution will be title for the cancellation of the affectation either totally or partially for that which is repaid or disabled.

Article 34. *Insurance.*

The institutions participating in the mortgage market can also insure the payment of the capital and interest of the participation by contracting insurance in favour of the participant in order to cover the capital and interest, and charged to the issuing institution.

CHAPTER IV  
**Tax and Financial System**

Article 35. *Asset transfers.*

The acts of issue, transfer, refund and cancellation of the *cédulas*, mortgage bonds and mortgage participations will enjoy the exemption established in the Stamp Duty Act (*Ley del Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados*).

Article 36. *Investments.*

1. The *cédulas*, mortgage bonds and mortgage participations will be listed under the same conditions as the securities listed in official secondary markets to compose the investments constituting the special reserve funds, attached to destination of the companies.

In particular they will be listed:

- a) In the constitution of investments of the technical provisions of the insurance companies.
- b) In the investment of the pension fund resources.
- c) For the investment of any reserve funds of financial and non-financial institutions which must comply with the administrative investment obligations in fixed-income securities listed on official secondary markets.

2. In order for those assets cited in the previous section to be the object of investment by the institutions set out in Collective Investment Institutions Act 35/2003, of 4<sup>th</sup> November, they must fulfil the requirements of said Act and the regulations which develop it.

CHAPTER V  
**The secondary market**

Article 37. *Transfer methods.*

Mortgage securities can be transferred by any of the legally accepted methods and without the need for the intervention of a notary public or having to notify the debtor. When nominative they can be transferred by written declaration on the title itself.

Article 38. *Listing on regulated markets or on multilateral trading systems.*

The trading of the mortgage securities issued under Act 2/1981, of 25<sup>th</sup> March, and in this royal decree, on regulated markets or on multilateral trading systems will be in accordance with the Securities Market Act 24/1988, of 28<sup>th</sup> July.

Article 39. *Operations over own mortgage securities.*

1. The issuing institutions referred to in article 2 can negotiate their own mortgage securities and for such purpose purchase, sell and pledge them as security in order to regulate the proper functioning of their liquidity and listing on the market and for the purposes mentioned in article 25. They can also repay said securities in advance provided that they are in the legitimate power and possession of the issuing institution for whatever reason.

2. The issuing institutions referred to in article 2 can also have their own mortgage securities portfolio which, in the case of issues which are distributed amongst the general public, cannot exceed 50 percent of said issue. When the issuing institution makes acquisitions for this purpose, it must inform the market prior to the planned purchase. Said information will be considered as relevant information for the purposes of article 82 of the Securities Market Act 24/1988, of 28<sup>th</sup> July.

The Minister of the Treasury can modify the above limit when it is advisable due to the evolution of the financial markets.

Article 40. *Personal limitations.*

The persons who hold offices of Chairperson, Director or Administrator, General Manager or similar in the institutions which participate on the mortgage market, cannot obtain loans or credits subject to Act 2/1981, of 25<sup>th</sup> March, except under market conditions and following agreement of the institution's Board of Directors, at a meeting at which the interested party cannot participate.

Likewise, neither can those persons who own capital in the said institutions in a percentage of over 5% of the share capital obtain mortgage loans or credits subject to

Act 2/1981, of 25<sup>th</sup> March, without the requirement mentioned in the previous paragraph.

## CHAPTER VI Supervision

Article 41. *Supervision competences.*

For the purposes of that set out in article 43 bis. 6 of Act 26/1988, of 29<sup>th</sup> July, on the discipline and intervention of the credit institutions, and taking in to account the competences of the National Stock Market Commission, in accordance with the Securities Market Act 24/1988, of 28<sup>th</sup> July:

a) It will correspond to the Bank of Spain to control and make inspections of the conditions required of the mortgage credits and loans, and their guarantees, and the other assets which may be used to cover the issue of mortgage securities, including the control and inspection of the accounting register in which they must be recorded and compliance with the valuation rules which affect them. If the Bank of Spain detects any breach of the proportions established in Act 2/1981 and in this royal decree between the asset and liability entries of the issuers of mortgage securities, it shall immediately communicate it to the National Stock Market Commission for the corresponding purposes. It will also correspond to the Bank of Spain to control and inspect the conditions required for the issue of *cédulas hipotecarias singulares* and for the issue of mortgage participations and mortgage transfer certificates *singulares*.

b) It will correspond to the National Stock Market Commission to supervise the requirements, in accordance with Heading III of said Securities Market Act 24/1988, of 28<sup>th</sup> July, for the public offers of mortgage securities, as well as, in accordance with its Heading IV, the aspects relating to the secondary market of those securities which are negotiated on official markets; all of this without prejudice to the competences attributed to the Commission by the regulations regulating the securitisation of all kinds of assets.

**First additional regulation.** *Mortgage transfer certificates (Certificados de transmisión hipotecaria)*

1. In accordance with the fifth additional regulation of Act 3/1994, of 14<sup>th</sup> April, which adapts the Spanish credit institution legislation to the Second Banking Coordination Directive, the institutions referred to in article 2 of Act 2/1981, of 25<sup>th</sup> March, can allow third parties to totally or partially participate in one or various mortgage loans or credits in their portfolio, although these loans or credits do not meet the requirements established in Section 2 of said Act. These securities will be called "mortgage transfer certificates" (*Certificados de transmisión hipotecaria*).

The branches in Spain of credit institutions authorised in another Member State of the European Union can let third parties participate in the loans and credits guaranteed by

mortgage on properties situated in Spain granted by them by issuing mortgage transfer certificates, under the terms established in this additional regulation.

2. The certificates can be issued exclusively for investment amongst professional investors, as defined in article 78 bis 3 of the Securities Market Act 24/1988, of 28<sup>th</sup> July, or to be pooled in asset securitisation funds.

3. Third parties cannot participate through mortgage transfer certificates in the mortgage loans and credits which are eligible in accordance with article 3.

4. Third parties cannot participate through mortgage transfer certificates in the mortgage loans and credits guaranteed by properties situated in other countries of the European Union regulated in article 6.

5. Third parties cannot participate through mortgage transfer certificates in the mortgage loans and credits covered by letters a, c), d) and f) of article 12.1.

6. Under no circumstances can the mortgage debtor be prejudiced by the issue of mortgage transfer certificates.

7. The regulations established for mortgage participation in Act 2/1981, of 25<sup>th</sup> March, and in this royal decree, shall be applicable to these certificates, except as set out in this additional regulation.

**Second additional regulation.** *Exercise of the subrogation and the right to enervate.*

1. The financial institution prepared to subrogate itself under the terms set out in article 2 of Act 2/1994, of 30<sup>th</sup> March, on the subrogation and modification of mortgage loans, must include the binding offer accepted by the debtor in the notification of its willingness to subrogate itself which it has to make to the creditor institution, under the terms set out in the Order of 5<sup>th</sup> May 1994, on transparency of the financial conditions of mortgage loans or credits.

2. The creditor institution which exercises its right to enervate the subrogation in the cases where the debtor subrogates another financial institution, in accordance with article 2 of Act 2/1994, of 30<sup>th</sup> March, on subrogation and modification of mortgage loans or credits, must appear through its representative before the notary public who made the notification referred to in said article, making a binding declaration of its willingness to formalise with the debtor a modification of the loan or credit conditions which equal or improve the binding offer. For such purposes, the credit institution must transfer in writing to the debtor, in the period of 10 working days, a binding offer under the terms of the Order of 5<sup>th</sup> May 1994, on the transparency of the financial conditions of the mortgage loans and credits, in which it either equals in its terms the financial conditions of the other institution, or improves the conditions of the other institution's binding offer.

**Sole Temporary Regulation.** *Special accounting registers of the mortgage operations, substitution assets of the mortgage market and derivative financial instruments, and other binding operations on the mortgage market.*

Notwithstanding that set out in article 21, the institutions shall not be bound to reflect in the special accounting registers referred to in that article, the mortgage operations, the mortgage market substitution assets and the derivative financial instruments and other operations linked to the mortgage market that were cancelled from an economic point of view at 31<sup>st</sup> December 2008.

The details of the mortgage operations which are subscribed from the entry into force of this royal decree must be incorporated into the registry before six months have passed from its entry into force; the details of the mortgage operations which are already in force at the time of the entry into force must be incorporated into said registry within the period of one year following said event.

**Sole Derogatory Regulation.** *Regulatory Derogation.*

On the date on which this royal decree enters into force, all of the equal or lower level regulations which oppose its content shall be derogated and in particular Royal Decree 685/1982, of 17<sup>th</sup> March, which develops certain aspects of Act 2/1981, of 25<sup>th</sup> March.

**First Final Regulation.** *Modification of the Royal Decree 775/1997, of 30<sup>th</sup> May, on the Legal System for Authorising Valuation Services and Companies.*

1. Letter f) of article 3.1 of Royal Decree 775/1997, of 30<sup>th</sup> May, on the Legal System for Authorising Valuation Services and Companies is modified and becomes drafted as follows:

“f) Be insured against third parties for civil liability, which may derive due to fault or negligence in its valuation activity, by an insurance policy signed with an insurance company legally authorised to operate in Spain for civil liability insurance for an amount not less than 600,000 euros plus 0.5% of the value of the assets valued during the previous year, up to the maximum amount of 2,400,000 Euros. The policy must be signed exclusively for the valuation activity and will cover all of the company’s valuation activity, even when the damages come from errors or negligence committed by the professionals performing the valuations. The policy can cover the exceptional exclusions of the normal insurance practice in that area.”

2. A new third final regulation is introduced into Royal Decree 775/1997, of 30<sup>th</sup> May, on the Legal System for Authorising Valuation Services and Companies.

**“Third Final Regulation.** *Developing article 3 of Act 2/1981, of 25<sup>th</sup> March, Regulating the Mortgage Market.*

1. The total revenue on which the 25% percentage will be calculated as referred to in article 3.2 of Act 2/1981, of 25<sup>th</sup> March, regulating the mortgage market will be that corresponding to the average over the previous three financial years or, if the percentage is greater, or if referring to the revenue obtained during the first two years of activity, that of the last financial year. Financial revenues will be taken into account for said calculation.

2. The Bank of Spain can determine the minimum content of the annual report referred to in article 3.3 of Act 2/1981, of 25<sup>th</sup> March, as well as specifying the scope of the verification of the requirements of independence which must be performed by the technical commission mentioned in the same section.

**Second Final Regulation.** *Competence.*

This royal decree is pronounced under that set out in article 149.1.6<sup>a</sup>, 8<sup>a</sup>, 11<sup>a</sup> and 13<sup>a</sup> of the Spanish Constitution.

**Third Final Regulation.** *Authorisation for the regulatory development.*

The Minister for Justice and the Minister of the Treasury are authorised, within the scope of their respective competences, to pass the complementary rules and the development regulations for this royal decree.

**Fourth Final Regulation.** *Entry into Force.*

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

Pronounced in Madrid, on 24<sup>th</sup> of April 2009

JUAN CARLOS R.

The first vice president of the Spanish Government and Ministry of Presidency,  
MARÍA TERESA FERNÁNDEZ DE LA VEGA SANZ

## **Appendix I**

Model of the Special Accounting Register for Mortgage Loans and Credits.

**Code of the operation (institution, branch, account number).**

**Details of the operation.**

- Origin of the operation (started by the institution, subrogated from another operation of the institution, subrogated from another institution, acquired mortgage participations, acquired mortgage transfer certificates, other acquisitions).
- Type of instrument (loan, credit account, others: For example reverse mortgages, risks linked to maximum mortgages).
- Currency.
- Situation (normal, arrears, doubtful, failed).
  
- Amounts according to contract:
  - Limit. At the origin of the operation.
  - Used. Pending due date.
  - Used. Due capital pending.
  - Used. Due interest pending.
  - Available.
  
- Dates:
  - Formalisation of the operation.
  - Due date of the operation (except reverse mortgages).
  - Economic cancellation.
  - Novations/Modifications (only if any clause containing details included in the register referring to the start of the operation is modified).
    - Number (1, ....., n).
    - Date.
  
- Interest rate:
  - Interest rate of the operation (fixed, variable, mixed).
  - APRC at origin.
  - Current nominal rate.
  - If variable:
    - Current reference variable rate (EURIBOR, RPH (Mortgage Loan Reference Indexes, etc.))
    - Current margin on the reference interest rate.
    - Number of months between each revision.
  
- Initial interest rate below the market rate for the same period:
  - Interest rate.
  - Number of months.

- Loan repayment plan (constant instalments, increasing instalments, others).
- Periodicity of the loan instalments (number of months).
- Special home finance plans (plan).
- Special clauses included in the loan contracts.
  - Option to increase the term of the operation (yes, no).
  - Option to have a grace period for the capital, interest or both during the life of the loan (yes, no).
  - Loan recharge option (yes, no).
  - Option to defer all or part of the capital on the loan due date (yes, no).
  - Initial grace period (number of months).

#### **Purpose of the operation.**

- Individuals and legal entities who use it for their business activity (own use of the mortgaged asset, lease of the mortgaged asset to third parties, promotion for sale, other).
- Homes (home acquisition, home restoration, reunification of debts with the institution, other debt reunifications, reverse mortgages, other finance).

#### **Mortgage guarantee.**

- Mortgaged asset number (1, ....., n).
- Type of property guarantee (urbanised land, other land, first residence residential buildings, second residence, residential buildings, office buildings, commercial buildings, other buildings, first residence homes, second residence homes, offices, commercial premises, other elements).
- State of the assets (finished, in construction).
- Legal regime of the homes (free, public-subsided/protected).
- Location of the guarantee (country and post code).
- Asset covered by property damage insurance (yes, no).
- Owner of the guarantee other than the debtor (yes, no).

#### **Details of the mortgage deed.**

- Date of the deed.
- Date of registration in the Land Register.
- Date of the mortgage registry cancellation.
- Type of mortgage (ordinary, maximum).
- Order of the mortgage (first, others).
- Amount of the mortgage liability fixed in the deed (when there are various properties, the sum of all of them).

#### **Details of the valuations.**

- Number of the valuation (original, latest).
- Last valuation date.
- Valuer (valuation service, valuation company, others).
- Valuation according to the Mortgage Market Act (yes, no).
- Valuation amount (when there are various properties, the sum of all of them).

#### **Personal guarantees which fulfil the requirements of the mortgage market.**

- Guarantor's activity (credit institution, insurance company).
- Identification Code (NIF – tax number – or code assigned by the Risk Information Centre).
- Name.
- Country of residence.
- Risk order accepted by the guarantor (first, last, pro rata, other).
- Maximum amount covered.

#### **Link with mortgage market.**

- Type of link (mortgage participation, mortgage bond, mortgage transfer certificate, suitable for the issue of cédulas hipotecarias, unsuitable).
- Eligible under article 3 (yes, no).
- Issue date.
- Date of registration of the issue in the Trade Register (only mortgage bonds)
- Date of expiry (only mortgage participations).
- Interest rate (only mortgage participations).
  - Reference interest rate (fixed, EURIBOR, others).
  - Current margin on the reference interest rate.
- Issue identification (ISIN code of the issued securities).

#### **Types of transfer.**

- Type of transfer (not transferred, entirely withdrawn from the balance due to transfer to another Spanish credit institution, entirely withdrawn from the balance due to other transfers, partially withdrawn from the balance due to transfer to another Spanish credit institution, partially withdrawn from the balance due to other transfers).

## **Appendix II**

Model Special Accounting Register of Substitute Assets.

### **Code of the operation (ISIN code).**

#### **Details of the issuers.**

- Identification Code (NIF – tax number – or code assigned by the Risk Information Centre).
- Name.
- Country of residence.

#### **Details of the operation.**

- Type of assets (cédulas hipotecarias, mortgage bonds, securities issued by mortgage securitisation funds, securities issued by asset securitisation funds, other securities representing debt, other financial assets).
- Currency.
- Amount.
- Dates:
  - Consideration as substitution asset.
  - Exclusion as substitution asset.

#### **Link with mortgage market.**

- Type of link (mortgage bonds, covered bonds).
- Issue date.
- Identification of mortgage market securities issue to which the substitution assets are linked (ISIN code).

## **Appendix III**

Model Special Accounting Register of Derivative Financial Instruments.

### **Code of the operation.**

#### **Details of the counterparty.**

- Identification Code (NIF – tax number – or code assigned by the Risk Information Centre).
- Name.
- Country of residence.

**Details of the operation.**

- Type of risk (interest rate risk derivatives, exchange risk derivatives, credit risk derivatives).
- Type of instrument (swaps, FRA, financial futures, options, other products).
- Market (organised, not organised).
- Currency.
- Amounts (notional).
- Dates:
  - Start link with mortgage market.
  - End link with mortgage market.

**Link with mortgage market.**

- Type of link (mortgage bonds, cédulas hipotecarias).
- Issue date.
- Identification of mortgage market securities issue to which the derivate financial instruments are linked (ISIN code).