

## **FIFTH CHAPTER**

### **Housing and Asset Finance and Mortgage Finance Corporations**

#### **Housing and asset finance**

**ARTICLE 57** – (1) Housing finance is extension of loans to consumers to acquire houses; leasing of houses to the consumers through financial leasing; extension of loans to consumers under the guarantee of the houses that the consumer owns and the extension of loans for the refinancing of these loans. The transactions performed by housing finance institutions, housing finance funds and mortgage finance corporations on the basis of these loans and receivables or under their guarantee are also in this scope.

(2) Housing finance institutions are banks that lend or lease directly to the consumer in the context of housing finance as well as leasing companies and finance companies which are deemed appropriate to operate in the housing finance activity by the Banking Regulation and Supervision Agency.

(3) It is compulsory that housing finance institutions determine the purpose of acquiring a house with adequate information and documents and that the granted loan or the financial leasing made be secured with mortgage or with guarantees deemed appropriate by the Board.

(4) Asset finance is the issue of asset-backed capital market instruments deemed appropriate by the Board, including those under housing finance.

(5) The Board may compel that valuation be made in the context of housing and asset finance at each phase by appraisal institutions meeting the qualifications determined by the Board.

(6) The Undersecretariat of Treasury is authorized to determine the principles and procedures regarding insurance contracts related to housing and asset finance while the Ministry of Customs and Trade is authorized to determine the principles and procedures regarding the refinance of loans extended to consumers or receivables within the context of housing and asset finance.

#### **Housing and asset finance funds**

**ARTICLE 58** – (1) The housing finance fund is a property established by means of the funds collected in return for mortgage-backed securities, on behalf of the mortgage-backed securities' holders, while the asset finance fund is a property established by means of the funds collected in return for asset-backed securities, on behalf of the asset-backed securities' holders; both funds are established in accordance with the principle of fiduciary ownership with the fund rules and do not have a legal identity. Mortgage-backed and asset-backed securities are capital market instruments issued by putting as contingency the assets taking place in the portfolios of the related funds or mortgage institutions.

(2) The assets of the funds mentioned in this article cannot be used as collateral or be pledged, except being used for taking credits, performing derivative instrument transactions, short selling transactions, or similar transactions realized as a party in the name of the fund, provided that they are on the account of the fund and that a provision exists in the fund rules. The assets of the fund are separate from the assets of the founder, the assets of those providing services to the fund and of those transferring their receivables or assets to the fund portfolio. Until mortgage or asset-backed securities have been redeemed; the fund assets cannot be disposed of with another purpose, even when the management or audit of the founder, of those carrying out services to the fund and of those who transferred their receivables and assets to the fund portfolio is transferred to public institutions, they cannot be attached even for the purpose of collecting the public receivables, they cannot be included in the bankruptcy estate and cannot be subject to a cautionary injunction.

(3) The fund board represents and manages the fund so as to protect the right of the mortgage-backed or asset-backed securities' holders. The fund board shall be responsible from the accuracy of records related to assets included in the fund portfolio as well as for the protection and keeping of these assets.

(4) In the event that no provision takes place in this Law, in the related legislation and in the fund rules, provisions of article 502 to 514 of the Law numbered 6098 shall be implemented by analogy to the relations between the fund board and the holders of mortgage-backed or asset-backed securities.

(5) In the event that an asset which is collateralized with mortgage is included in the fund portfolio, the fact that

this asset has been transferred to the fund shall be registered in the declaration section of the related registry. In this case, the Board may require that the mortgage of property be registered to the related registry in the name of the fund.

(6) The principles and procedures regarding the establishment of the fund, its founders, activity conditions, its management and termination as well as the principles and procedures concerning the issuance of mortgage-backed or asset-backed securities shall be determined by the Board.

(7) Mortgage finance corporations may issue mortgage-backed or asset-backed capital market instruments without establishing a housing or asset finance fund. The principles and procedures regarding these issuances shall be determined by the Board.

#### **Mortgage-backed and asset-backed securities**

**ARTICLE 59** – (1) Mortgage-backed and asset-backed securities are capital market instruments that are in the status of general obligation for issuers and are issued by putting up as contingency the collaterals.

(2) The issuers are obliged to follow-up the assets which are the collaterals of mortgage-backed or asset-backed securities apart from the other assets. The Board may require that the records of assets put up as collateral be also kept by a separate institution besides the issuer.

(3) Until mortgage or asset-backed securities have been redeemed; assets put as collateral cannot be disposed of with a purpose other than collateral, even when the management or audit of the issuer is transferred to public institutions, they cannot be pledged, put up as collateral, be attached even for the purpose of collecting the public receivables, they cannot be included in the bankruptcy estate and cannot be subject to a cautionary injunction.

(4) In the event that the issuer cannot meet its obligations arising from mortgage-backed or asset-backed securities in due time, its management or audit is transferred to public institutions, its activity licence is cancelled or in the event of its bankruptcy, the income generated from assets put as collateral shall be used primarily in the payment to be made to the holders of mortgage-backed and asset-backed securities and to the counter parties of contracts that have been made in order to protect the assets put as collateral from risks. In the event that the holders of mortgage-backed and asset-backed securities and the counter parties of contracts that have been made in order to protect the assets put as collateral from risks cannot meet their receivables with assets put as collateral, they may have recourse to the other assets of the issuer.

(5) The principles and procedures regarding the issuers of mortgage-backed and asset-backed securities, their issue, issue limit, issue conditions, types and qualities of assets put as collateral, collateral harmony between mortgage and asset-backed securities and assets put as collateral, keeping of records of assets put as collateral, qualities that the collateral responsible should have and his responsibilities, the principles and procedures regarding the calculation of the payment in case a payment is made from assets put as collateral to the ICM in return for its services as well as the other matters concerning mortgage-backed and asset-backed securities shall be determined by the Board.

#### **Mortgage finance corporations**

**ARTICLE 60** – (1) Mortgage finance corporations are joint stock corporations established in the context of housing and asset finance for the purpose of taking over the assets the types and qualities of which are determined by the Board, transferring them, managing the assets taken over and taking the assets as collateral as well as performing the other activities deemed appropriate by the Board.

(2) It is compulsory that the capital of mortgage finance corporations be paid in cash and free from all kinds of collusion, that it is not less than the amount determined by the Board; that the founders as well as the shareholders holding, directly or indirectly, 10 percent or more of their capital or their voting rights qualify for the requirements set for the banks' founder partners in the Law No. 5411.

(3) In the event that a resource has been procured from mortgage finance corporations by putting up as collateral the assets mentioned in the first paragraph, the assets put up as collateral cannot be disposed of for another purpose, be pledged, be put up as collateral, be attached by third persons even for the purpose of collecting public receivables, be subject to any cautionary injunction and be included in the bankruptcy estate, even when the management or audit of the

institution which has been provided with the resource is transferred to public institutions.

The Board may require that the records of assets put up as collateral be also kept by a separate institution.

(4) Assets taken as collateral in the context of the first paragraph may be accepted as the collateral of mortgage-backed or asset-backed securities to be issued under article 59. The structure of the issuance shall be established so as to let the mortgage-backed and asset-backed securities under the general obligation of the institution which has been provided with a resource.

(5) The principles and procedures concerning the establishment of mortgage finance corporations, their founders, partners, their management and organisation structure, their activity rules and principles, their issuance of mortgage-backed capital market instruments as well as the principles and procedures regarding the other obligations they would be subject to shall be determined by the Board.

#### **Lease certificates and asset leasing companies**

**ARTICLE 61** – (1) Lease certificates are capital market instruments the qualities of which are determined by the Board and issued by asset leasing companies for the purpose of providing the financing of all kinds of assets or rights and securing that their owners obtain a right from the generated incomes in proportion of their shares. The principles and procedures regarding the issuance and sale of lease certificates shall be determined by the Board.

(2) Asset leasing companies are joint stock corporations established exclusively for issuing lease certificates.

(3) The asset leasing company cannot deal with any other activity except the ones indicated in its articles of association which has been given assent by the Board and no real rights may be established in favor of third persons on the assets and rights it holds except those permitted in its articles of association and it cannot lease or transfer these assets and rights against the interests of lease certificate holders. Until lease certificates have been redeemed, the assets and rights taking place in the portfolio of the asset leasing company cannot be pledged other than for the purpose of collateral, cannot be put up as collateral, cannot be attached even for the purpose of collecting public receivables, cannot be included in the bankruptcy estate and cannot be subject to any cautionary injunction even when the management or audit of the issuer is transferred to public institutions.

(4) In the event that the issuer cannot fulfil its obligations arising from lease certificates in due time, its management or audit is transferred to public institutions, its permission of activity is cancelled or it goes bankrupt, the income generated from the assets in its portfolio shall be used primarily in the payments to be made to lease certificate holders. In this case, the Board is authorized to take all kinds of measures for the purpose of protecting the rights of lease certificate holders.

(5) The principles and procedures concerning the establishment of asset leasing companies, their articles of association, their activity principles, the types and qualities of the assets and rights they can take over, the keeping of the records related to them, their management principles, their liquidation and termination as well as the principles and procedures regarding the calculation of the payment in case when a payment is made to the ICM from the assets in the portfolio of the asset leasing company in return for its services shall be determined by the Board.