

Ministerio de Justicia



**ACT 28/1998 OF 13 JULY
ON INSTALMENT SALES OF
MOVEABLE ASSETS**

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**ACT 28/1998 OF 13 JULY ON INSTALMENT
SALES OF MOVEABLE ASSETS**

**LEY 28/1998, DE 13 DE JULIO, DE VENTA
A PLAZOS DE BIENES MUEBLES**

Colección: Traducciones del Derecho Español

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ACT 28/1998 OF 13 JULY ON INSTALMENT SALES OF MOVEABLE ASSETS

JUAN CARLOS I

KING OF SPAIN,

To all whom this Act shall be seen and understood, be it known that:

The Spanish Parliament has approved this Act and I do enact the same as follows:

PREAMBLE

Act 50/1965 of 17 July on Instalment Sales of Moveable Assets was a crucial precedent with regards to the legislation upholding consumers' rights, without excluding individuals purchasing capital goods required in productive processes. By way of the deferral system of payments and loan payments aimed at facilitating the purchase of assets, the goal was to regulate a series of operations supporting access to assets by granting significant guarantees to the seller.

Modern legislation, and particularly any legislation incorporating the directives issued within the European Union into national law, is increasingly enhancing the protection of consumers of any kind of goods and services. In fact, this Act has been issued as per Act 7/1995 of 23 March on Consumer Credit, the goal of which was to incorporate the Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, which was subsequently modified by the Council Directive 90/88/EEC of 22 February 1990. The aforementioned Act on Consumer Credit protects consumers taking up a credit in order to cover their personal needs through provisions requiring the creditor to inform the former about all features and terms of the credit agreement as established by law as well as to maintain the offer for a certain period of time. Furthermore, provided that the requirements laid down in Article 15 of Act 7/1995 of 23 of March on Consumer Credit are met, it allows consumers to raise defences against the person with whom they took up the credit and against any person who is somehow connected with the credit being granted. According to that act, it is also unlawful to require payment to consumers in the event that the expected credit is not obtained. Further provisions that are also of interest to consumers are those defining terms such as "total cost of the credit" and "annual percentage rate of charge"



or providing information regarding credits granted in the form of an overdraft facility or funds exceeding the agreed limit in the consumer's current account.

The need for the amendment of Act 50/1965 is determined by the fact that it partly overlaps with or superposes on the Act on Consumer Credit, the Article 1 of which refers to the granting of "a credit in the form of deferred payment, loan". Such superposition led to the Act on Consumer Credit taking into account the text that is being currently revised. So much so that, according to its third final provision, compliance with which is required by this Act, the Government has a period of six months to submit a bill modifying Act 50/1965 on Instalment Sales of Moveable Assets.

Particularly important was the second final provision of the Act on Consumer Credit. Its first paragraph stated that such Act should prevail over Act 50/1965 in the event that their scope of application was the same, being the latter of a supplementary nature. In addition, the second paragraph stated that all agreements concluded under the Act 50/1965 were subject to certain precepts of the Act on Consumer Credit. Given this situation, the current Act is based on the basic criterion of applying the measures enhancing the protection of consumers to the Act on Consumer Credit and of limiting the regulation of moveable assets sales agreements to the Act on Instalment Sales of Moveable Assets. This way, a new precept expressly referring to the preferential and supplementary application system of these acts has been added to the articles of the new Act, the content of the mandatorily applicable articles contained in the Act on Consumer Credit has been incorporated herein and its second final provision has been repealed.

The present Act on Instalment Sales of Moveable Assets has largely respected the structure of the text and the wording of the articles of Act 50/1965, which are also subject to be repealed. With regard to the amendments made in the present Act, it should be noted first that the number of precepts has been reduced for cases in which the defence of the consumer is deferrable to a third party, and several articles the content of which was no longer significant have been removed either due to the current administrative set-up or to economic practices in instalment sales based on new payment methods. Secondly, some of the most important amendments have maintained the scope of application of the former Act and specify that only agreements regarding identifiable moveable good may be registered as prescribed by law as well as benefit from the corresponding registration guarantees; they have also eliminated the initial payment as a mandatory requirement for concluding the agreement and facilitated the charging procedure with regard to credits originating from contracts registered in the Registry through certain mechanisms such as setting the rate of the first auction as far as the selling price is concerned, provided that the parties have not previously established a different one in the agreement.

Thirdly, it includes many references to the Act on Consumer Credit, both by making express reference to it or by mentioning the content of the provisions regarding protection of customers and that have been declared as mandatory applicable to instalment sales. Contracts subject to the new Act must obligatorily include a reference to the annual percentage rate of charge and to the modification thereof pursuant to the

Act on Consumer Credit; to the penalty system applicable to the omission or inaccuracy of mandatory clauses; to the publication regime regarding the price of items sold by instalment and to the deduction regime applied to sellers or creditors who, in the event of default by the buyer, decide to terminate the agreement. Lastly, and unless other minor clarifications are made, the provisions of the former Act regarding the following aspects have been maintained: the definition of credit agreements, the buyer's right of withdrawal, the registration of retention of title and prohibition of disposal of property, the legal jurisdiction and moderator role of Judges and Courts as well as the ineffectiveness of agreements, clauses and terms the aim of which is to elude law enforcement. Furthermore, the current Act establishes the registration of finance lease, highlighting the special and legal nature thereof, which is different to that of instalment sales; the preventive annotation of property claim and seizure; and the incorporation of the Registry regulated by Article 15 into the future Moveable Estate Registry.

Finally, since it regulates the system of conclusion, entry into force and execution of instalment sale agreements, the present Act has been issued pursuant to the provisions contained in articles 149.1, 6.^a, 8.^a and 11.^a of the Spanish Constitution, except for those aspects constituting rules on the publicity and information to consumers.



SECTION 1

Definitions and scope of application

Article 1. *Scope of application.*

1. The present law has the aim of regulating instalment sales of non-consumable identifiable moveable tangible goods, credit contracts signed in order to facilitate the purchase thereof and the sureties established in order to ensure compliance with the obligations arising from them.

2. For the purpose of this Act, identifiable goods will be considered as any good featuring the trademark and serial/fabrication number –either indelibly or inseparably –on one or several main parts thereof, or that possesses some distinctive feature excluding the possibility of mistaking it for other goods.

Article 2. *Supplementary application of the Act.*

Contracts subject to this Act and that also fall under the scope of application of the Act on Consumer Credit Contracts will be governed by the precepts contained in the latter.

This Act will be applied in a supplementary manner to the contracts referred to in the previous paragraph.

Article 3. *Definition of instalment sale agreement.*

According to this Act, instalment sale agreements refer to contracts in which one of the parties transfers a moveable tangible good to another party and the latter undertakes to pay for it by instalments either in full or in part later than three months since conclusion thereof.

This Act also covers acts or contracts – regardless of their legal form or name of the undersigned – by virtue of which the parties are after the same economic purpose as through instalment sale.

Article 4. *Credit contracts for instalment sales.*

1. Credits referred to in Article 1 and the aim of which is to facilitate the acquisition of goods may be granted to provide either the seller or the buyer with funds.

2. The following types of contract are to be regarded as a seller's credit contract:

- a) Contracts by virtue of which the seller grants or subrogates in favour of a funder the credit he has taken up with the buyer upon conclusion of an instalment sale agreement subject to the retention of right of legal ownership (or not).
- b) Contracts by virtue of which the seller and a funder agree to deliver the item to the buyer upon receipt of the selling price thereof after a period of 3 months or more.

3. A buyer' credit contract may be any contract concluded between the seller and the buyer that is subject to the sale requirements under this Act and by virtue of which a third party provides the buyer at the most with the purchase price of the good referred to in this Act, maintaining his right to apply the corresponding guarantees and being

the buyer liable for the refund of the credit amount in one or several instalments subject to a 3-month or longer basis.

Article 5. *Excluded contracts.*

This Act excludes the following contracts:

1. Instalment sale agreements regarding moveable goods that, with or without the subsequent transformation or manipulation thereof, are resold to the public as well as credits the aim of which is to fund such operations.
2. Non-profit occasional sales and credits.
3. Credits and sales secured by a mortgage or a non-possessory pledge with regard to the tangible goods referred to in the contract.
4. Instalment sale agreements or credits for the financing thereof and the amount of which is smaller than that established by law.
5. Finance lease contracts.



SECTION 2

Applicable regime

Article 6. *Form and effectiveness.*

1. Contracts must be concluded in written for them to be valid under the current Act. As many copies thereof must be issued as parties are involved, and a duly signed copy must be handed to each one of them.

2. The effectiveness of instalment sale contracts in which it is expressly established that the operation is linked to the granting of a credit is subject to the actual granting of such credit.

3. Agreements contained in a contract requiring the buyer to pay in cash or via any other payment method will be regarded as void in the event that the expected credit is not granted.

Clauses whereby the seller requires that the credit may only be granted by a certain creditor will be considered null and void.

Article 7. *Content of the contract.*

Apart from the agreements and clauses freely stipulated by the parties involved, the contracts subjects to this Act must mandatorily include the following details:

1. Place and date of conclusion of the contract.
2. Name, surnames, corporate name and address of the parties and, as for credit contracts, the name or corporate name of the creditor and his address. They must also include the tax identification number/code of the undersigned.
3. Description of the good being sold, specifying all necessary features for identification purposes.
4. The selling price, the amount of the initial payment (where applicable), the amount being deferred and, if applicable, the amount funded by third parties. Credit contracts must also include the sum of the borrowed capital.
5. In the case of operations subject to a fixed or variable borrowing rate, the contracts must also include the sum, quantity and frequency of payments to be made by the buyer and, where appropriate, the date in which payments must be made by him for the purpose of reimbursing the instalments or credit. They must also include information regarding the payment of interest rates and other expenses and, if possible, the total amount of such payments.
6. The nominal interest rate. The formula for the calculation of the nominal interest rate must be accordingly established in the event of variable rate operations.
7. The annual percentage rate of charge referred to in Article 32 of the Act on Consumer Credit Contracts.
8. A list of the elements making up the total cost of the credit, except for those related to the non-compliance with the contractual obligations, specifying which one of them has been considered for the calculation of the annual percentage rate of charge.

9. Where agreed, the transfer of the seller's rights to the buyer and subrogation in favour of a third party, specifying the name or corporate name and address of the latter; or the retention of the right to transfer them to someone else who is yet to be determined (if so agreed by the parties).
10. The clause regarding the retention of right of legal ownership (where agreed), as well as the right to transfer such retention or any other surety regulated by the legal system.
11. The prohibition to alienate or carry out any other act of disposal as long as the price has not been entirely paid or the credit has not been paid back, without the previous written authorisation of the seller or, if applicable, of the funder.
12. The place agreed upon by the parties for notification purposes. If no place is indicated, notifications will be sent to the domicile of each one of the parties involved. An address for the verification of the payment must also be provided.
13. An appraisal of the good to serve as the auction rate, where appropriate. A reference table or index may also be included in order to calculate the value of the good for the purposes referred to in Article 16.
14. The right of withdrawal established in Article 9.

Article 8. Penalties for omission or inaccuracy of mandatory clauses.

1. The omission of some of the imperative circumstances listed in points 4 and 5 of the previous article that is not attributable to the buyer or the borrower limits his obligation to simply pay for the selling price or the par value of the credit within the agreed deadlines, excluding surcharges of any kind.

In the event of omission or inaccurate deadlines, the buyer may not be required to make the payment before the agreement ends.

2. The omission of the circumstances referred to in points 6 and 7 of the previous article limits the buyer's obligation to simply pay the legal interest rate within the agreed deadlines.

3. The omission of the list referred to in Point 8 of the previous article implies that the buyer may not be required to pay for the expenses that are not included in the contract. The same applies to the constitution or renewal of sureties.

4. In the event that the content mentioned in the two previous points is inaccurate, the consequences of their omission will be determined according to the inconveniences caused to the buyer as a result of such inaccuracy.

5. The omission or inaccuracy of the remaining circumstances referred to in the previous article may limit the buyer's obligation to simply pay the selling price or the par value of the credit. Such limitation is subject to the approval of a Judge provided that the buyer demonstrates that he has been somehow affected by the omission or inaccuracy.



Article 9. Right of withdrawal.

1. The consumer shall have a period of 7 calendar days from delivery of the good in which to withdraw from the agreement. He shall give notice to the seller and, if applicable, to the funder, of his intention to withdraw either through a registered letter or any other reliable means, as long as he complies with all the requirements stated below:

- a) Not having used the good acquired apart from simply examining or testing it.
- b) To return it within the time stated above to the place and in the form and state in which he received it, being the seller not liable for any expense derived from the return.

The good may be returned even if the packaging was damaged in order for the consumer to access the item.

- c) Where agreed, to compensate the seller as set out in the contract for the possible devaluation of the market value of the good.

Compensation cannot be higher than the fifth part of the selling price. Therefore, initial payment may apply if so required.

- d) To repay the credit granted by virtue of some of the contracts referred to in Article 4.3 and according to the terms established therein with regard to withdrawal.

2. The right of withdrawal is unalienable. The non-inclusion of the withdrawal clause in the contract does not prevent the buyer from exercising his right of withdrawal.

If the instalment sale contract is terminated as a result of the exercise of the right of withdrawal, the seller's credit contract will also be terminated. In that case, the funder may only claim payment to the seller.

3. The effects deriving from the contract will apply following expiry of the deadline to exercise the right of withdrawal. Nevertheless, at any time while the contract is in effect, the buyer may either pay in advance the total or partial price that is still pending or repay the credit obtained early, being on no account accountable for the payment of unearned interests. In this case, the buyer is solely responsible for paying the compensation agreed upon for such cases as an early payment or reimbursement. Compensation may not be higher than 1.5% of the deferred price or the capital reimbursed in advance for contracts subject to a variable interest rate, or higher than 3% for contracts subject to a fixed interest rate. Unless otherwise agreed by the parties, partial early payments may not be smaller than 20% of the price.

4. In the case of acquisition of motor vehicles subject to registration, the right of withdrawal may either be excluded from the contract upon mutual agreement or regulated in a different manner than laid down in this Act.

Article 10. Buyer's default.

1. In the event of two late instalment payments or late payment of the last instalment by the buyer, without prejudice to the provisions contained in the following article, the seller reserves the right to either require the payment of all instalments due or to terminate the contract.

Should the seller choose to terminate the contract, the payments made by each one of the parties shall be returned to the other party. The seller or creditor has the right to deduct:

a) 10% of the amount of the instalments paid in compensation for the possession of items by the buyer.

b) An amount equal to the initial outlay, if applicable, for the devaluation of the market value of the item. In the event of no initial outlay or where the outlay is higher than the fifth part of the selling price, the amount will be deducted from the latter.

In case of deterioration of the item sold, the seller may also claim compensation as provided for by law.

2. The non-payment of two instalments or the last instalment entitles the third party who financed the acquisition under the terms established in Article 4 to require the payment of all instalments due, without prejudice to the rights he may hold as assignee and to the provisions contained in the following article.

Article 11. *Moderator role of Judges and Courts.*

By way of exception and for just causes assessed on a discretionary basis such as family misfortunes, unemployment, accidents at the workplace, long diseases or any other misfortune, Judges and Courts may set new deadlines or modify the agreed deadlines by stating, when applicable, the additional cost that the new payment deferrals imply.

Likewise, they may also act as moderators with regard to the penalty clauses agreed upon with regard to advance payments or non-compliance by the buyer.

Article 12. *Legal jurisdiction.*

(Repealed)

Article 13. *Publicity.*

Publicity with regard to the price of the goods subject to instalment sales must indicate the purchase price and the total price to be paid by instalments. In the event that a variable interest rate has been fixed, the estimated total price will be set according to the rate that is in effect at the time of conclusion of the contract, expressly stating that it has been calculated this way.

Communications, ads and promotions displayed at business premises offering a credit or intermediation services for the conclusion of a credit contract subject to this Act must always indicate the interest rate as well as the annual percentage rate of charge by means of a representative example.

Article 14. *Ineffective clauses.*

The agreements, clauses and conditions contained in the contracts that fall under this Act and that are contrary to its precepts or that may hinder its enforcement will be regarded as null and void.



SECTION 3

Other provisions

Article 15. *Registry of Instalment Sales of Moveable assets.*

1. For retentions of titles and prohibitions of disposal of property established in the contracts under this Act to be effective against third parties, they must be previously entered in the Registry referred to in the following paragraph. Registration will take place without necessarily requiring contracts to include an administrative note regarding tax situation.

The Registry of Instalment Sales of Moveable Assets will be managed by the property and mercantile registrars and will be subject to the rules issued by the Ministry of Justice.

2. For all legal purposes, the rights entered in the Registry will be deemed to exist and belong to their holder as determined in their corresponding entry.

Likewise, registered contracts will be regarded as effective unless proven otherwise.

As a result of the previous provisions, no action against property of moveable assets or rights registered in the name of a specific individual or company may be initiated without previously or simultaneously filing a claim for nullity or cancellation of the corresponding entry. If the action opposing property is filed against the registered holder, the before mentioned action will be regarded as implicit.

3. In the event of a preventive seizure or compulsory enforcement with regard to moveable goods, any compulsory procedure with regard to such goods or their receipts or income will be dismissed as soon as a record subject to the issuance of a certificate by the registrar specifies that rights over the corresponding assets have been registered in favour of a person different from the one against whom seizure was ordered or the procedure was initiated, unless action is started against this person as the heir of the individual registered as the holder. The creditor reserves the right to initiate legal action during the course of the same proceedings with regard to other goods of the debtor as well as to openly discuss any right he may have over the goods leading to the suspension of the proceeding.

Any party acquiring goods at auction that are subject to registered prohibition of disposal pursuant to this Act shall acquire them in compliance with the payment obligation that has been guaranteed through such prohibition, being jointly and severally liable for the payment together with the original debtor up to its expiry date.

Article 16. *Debtor's default.*

1. The creditor may require compliance with the obligations deriving from the contracts regulated by this Act by taking the corresponding actions with regard to ordinary declaration procedure, injunction procedure or enforcement procedure pursuant to the Civil Procedure Act.

Instalment sale contracts of moveable assets referred to in some of the documents listed in points 4 and 5 of Section 2 of Article 517 of the Civil Procedure Act are the only ones to be regarded as legally sufficient for the justification of the action to be taken.

2. In the event of a breach of a contract registered in the Registry of Instalment Sales of Moveable Assets and concluded through the official form established for that purpose, the creditor may directly and exclusively initiate actions to recover the goods acquired by instalment in accordance with the following procedure:

a) The creditor may require the debtor to pay through a certifying officer with sufficient powers to act in the place where the assets are located, where the payment is to be made or where the debtor's place of abode is located. The creditor shall state the total amount claimed and the cause of maturity of the debt. Furthermore, in the event that the debtor fails to pay for his debt, the creditor may also warn the debtor of his intention to recover the goods acquired by instalment as established in this Article.

Unless otherwise agreed by the parties, the net amount payable in case of enforcement will be that set in the certificate issued by the creditor, provided that an officer previously certifies the actual settlement as agreed by the parties in the contract and that the amount coincides with that shown in the debtor's open account.

b) The debtor shall either pay the amount required or hand over the property of the goods to the creditor or the person appointed by the latter in the notification within 3 working days after being asked to do so.

c) In the event that the debtor fails to pay but he voluntarily delivers the goods acquired by instalments, the assets will be transferred by way of a public auction with the assistance of a Notary Public or a Business Broker depending on their respective powers.

The auction is subject to the rules established in Article 1872 of the Spanish Civil Code, where applicable, as well as to other additional provisions and rules governing the professional activity of notaries public and business brokers. The rate used at the first auction will correspond to the value established by the parties in the contract for that purpose.

Notwithstanding the foregoing, the creditor is entitled to opt for the delivery of the assets in order to settle the debt without having to go to public auction. In that case, the provision contained in Point e) herein will apply.

d) In the event that the debtor fails to pay for the claimed amount and to deliver the goods in order to transfer them at auction as mentioned in the previous point, the creditor shall request the competent court to grant him the safeguarding of the right by initiating the actions established in points 10 and 11 of Section 1 of Article 250 of the Civil Procedure Act.

e) The creditor's acquisition of the good delivered by the debtor does not constitute a bar to the claim of the corresponding sums between the parties, provided that the value of the good at the time of submission by the debtor is smaller or higher than the debt according to the reference devaluation tables or indexes established in the contract.



In the event that no procedure has been determined for the calculation of the devaluation of the asset, the creditor shall certify devaluation through the corresponding declaratory procedure.

f) The acquisition of auctioned goods does not prevent the corresponding amounts from being claimed, provided that the value of the asset obtained at auction is smaller or higher than the debt.

3. Where the good sold by virtue of an agreement for retention of title or prohibition of disposal of property is entered in the Registry of Instalment Sales of Moveable Assets and is in the hands of someone other than the buyer, this person will be required by a certifying officer either to pay for the amount claimed or to transfer the good within 3 working days.

In the event of payment, this person will subrogate to the creditor's position vis-à-vis the buyer. In the event of transfer of the good, all formalities of the enforcement procedure – either before a certifying officer or in court proceedings – will be initiated, being this person entitled to receive any surplus that may result upon payment to the plaintiff.

If the holder of the good rejects payment or transfer, the provisions contained in letter d) et seq. of the previous section will apply.

4. The notifications referred to in the previous sections will be sent to the address that the owner indicated for that purpose in the initial contract. The address may be later modified as long as the owner informs the seller or creditor and the new address is registered in the Registry of Instalment Sales of Moveable Assets.

5. For the collection of the credits linked to the contracts concluded by virtue of a public deed or a policy signed before a registered business broker or credits linked to contracts concluded through the official form established for that purpose and registered in the Registry of Instalment Sales of Moveable Assets, the creditor shall enjoy the preference and priority rights established in articles 1922.2º and 1926.1ª of the Spanish Civil Code.

Provided that the contracts meet these formal requirements and the agreed retention of title has been duly registered, in the event of bankruptcy or insolvency proceedings, the bankruptcy estate is not required to include the goods acquired by instalments as long as the guaranteed credit has not been paid, without prejudice to the transfer of the surplus obtained at auction to such estate. In the event of suspension of payments, the creditor shall have the status of secured creditor, being therefore entitled to the abstention rights referred to in articles 15 and 22 of Suspension of Payments Act.

First Additional Provision. *Finance lease.*

1. Finance lease contracts provided for in the seventh additional provision of Act 26/1988 of 29 July on Discipline and Intervention of Credit Institutions referring to moveable assets meeting the requirements stipulated in Article 1 may be entered in the Registry set in Article 15 herein.

2. The finance lessor may require compliance with the obligations deriving from the contracts regulated by this Act by taking the corresponding actions with regard to ordinary declaration processes, injunction procedure or enforcement procedure pursuant to the Civil Procedure Act.

Finance lease contracts referred to in some of the documents listed in points 4 and 5 of Section 2 of Article 517 of the Civil Procedure Act are the only documents that are legally sufficient for the justification of the action to be taken with regard to the debtor's property.

3. In the event of a breach of a finance lease contract referred to in some of the documents listed in points 4 and 5 of Section 2 of Article 517 of the Civil Procedure Act or a finance lease contract registered in the Registry of Instalment Sales of Moveable Assets and concluded through the official form established for that purpose, the lessor may try to recover the good by following the procedure below:

a) The lessor may require the lessee to pay through a certifying officer with sufficient powers to act in the place where the assets are located, where the payment is to be made or where the debtor's place of abode is located. The lessor shall state the total amount claimed and the cause of maturity of the debt.

Furthermore, in the event that the debtor fails to pay for his debt, the lessor may warn the lessee of his intention to recover the goods in the manner provided for in this provision.

b) The lessee shall either pay the amount required or hand over the property of the goods to the lessor or the person appointed by the latter in the notification within 3 working days after being asked to do so.

c) In the event that the debtor fails to pay for the claimed amount and to hand the goods over to the lessor, the latter shall request the competent court to order immediate recovery of the goods granted by finance lease by way of the actions established in Point 11 of Section 1 of Article 250 of the Civil Procedure Act.

d) The Judge shall immediately order the delivery of the good to the lessor in the place indicated in the contract. All this is without prejudice to the right of either party to lodge other claims with regard to the finance lease contract via the corresponding declaration procedure.

The lodging of an appeal against the court's decision will not in any case prevent the good from being recovered and handed over.

4. The notifications referred to in the previous sections will be sent to the address that the lessee indicated for that purpose in the initial contract.

The address may be later modified as long as the lessee informs the lessor and the new address is registered in the Registry of Instalment Sales of Moveable Assets.



5. The lessor reserves the right to abstain from taking part in the creditors' agreement provided for in Article 22 of the Suspension of Payments Act, being entitled to individually exercise the rights established by law.

In the event of bankruptcy or insolvency proceedings, the bankruptcy estate is not required to include the goods granted by finance lease, which must be handed over to the lessor upon preliminary judicial assessment of his right thereto.

The provisions contained in the previous paragraphs are without prejudice to the lessor's right to the collection of the debt at the time of declaration of the legal status of suspension of payments, bankruptcy, insolvency proceedings, stay of payment or discharge of finance lease as laid down herein in such cases.

6. Finance lease contracts must be registered in a special section of the Registry of Instalment Sales of Moveable Assets.

7. The provisions of points 2, 3, 4 and 5 apply to moveable assets lease contracts.

Second Additional Provision. *Preventive note with regards to property claim and seizure.*

In the event that the writ orders the entry of a preventive note with regard to seizure or, if applicable, to a property claim over a non-registered moveable asset, within the scope of the same procedure, the creditor or plaintiff may ask the Judge to require the debtor or defendant to previously carry out registration as well as the bailment or seizure of the good, warning that said annotation will otherwise lead to the opening of a record in the Registry of Instalment Sales of Moveable Assets with the purpose of ensuring the enforcement of the court's decision.

The annotation will remain in force for four years, after which it will be cancelled ex officio or upon request of any interested party in the event that no extension has been indicated during registration.

The same rules apply to compulsory administrative procedures according to their own nature.

Third Additional Provision. *Moveable Estate Registry.*

The Registry of Instalment Sales of Moveable Assets will be incorporated into the future Moveable Estate Registry that falls under the jurisdiction of the property and mercantile registrars as established in the regulations thereof.

Fourth Additional Provision. *Section of audiovisual works and recordings.*

An additional section has been added to the Moveable Estate Registry for the effective registration against third parties of audiovisual works and recordings, the exploitation rights thereof and, if applicable, of annotations of property claim, seizure, encumbrances, disposal restrictions, mortgages and other rights in rem over them as set forth in the regulations.

Single Transitional Provision.

Instalment sale contracts of moveable assets concluded under Act 50/1965 of 17 July will be governed by the provisions thereof. However, contracts registered in the Registry and that have been concluded under Act 50/1965 will be governed by this Act as long as the latter is not contrary to the provisions established in the former.

For the implementation of the procedure provided for in Article 16.2 of this Act with regard to these contracts, the selling price determined in such contracts will be regarded as the rate for the first auction.

Single Repealing Provision.

1. Act 50/1965 of 17 July on Instalment Sales of Moveable Assets is hereby repealed.
2. The second final provision of Act 7/1995 of 23 March on Consumer Credit is hereby repealed.
3. Decree 1193/1966 of 12 May enacting additional provisions of Act 50/1965 on Instalment Sales of Moveable Assets is hereby repealed.
4. Order of 15 November 1985 approving the Ordinance with regard to the Registry of Instalment Sales of Moveable Assets will remain effective in all cases where it is not proven contrary to this Act.
5. Any rule of equal or lower rank that opposes the provisions of the present Act will be considered null and void.

First Final Provision. Powers of the Government.

On the basis of a joint proposal from the Ministry of Justice and the Ministry of Economy and Finance, the Government may issue the provisions required for the development and enforcement of this Act.

Second Final Provision. Powers of the Ministry of Justice.

The Ministry of Justice may issue the provisions on the organisation and operation of the Registry of Instalment Sales of Moveable Assets.

Third Final Provision. Entry into force.

This Act shall enter into force sixty days following its publication in the Official State Journal.

Therefore, I hereby order all Spaniards, private individuals and authorities to abide by and enforce this Act.

Madrid, 13 July 1998.

KING JUAN CARLOS

Prime Minister

JOSÉ MARÍA AZNAR LÓPEZ

