
Portfolio assignees to be registered in entity register under Act on Credit Agreements relating to Immovable Property. Interpretation by Bank of Spain.

Legal flash

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- Under Act 5/2019, of March 15, regulating credit agreements relating to immovable property ("LCCI"), credit intermediaries and their appointed representatives, and lenders of credit agreements relating to immovable property ("LIPs") must be registered in a special register.
 - The LCCI also includes a new supervisory regime by the Bank of Spain for the mentioned entities.
 - The Bank of Spain considers that, due to their role as lenders, both institutions providing credit agreements and the buyers (assignees) of loan portfolios must register in the special register. Foreign institutions operating in Spain through a branch or under the regime of free service provision must also register.
 - LIPs and credit intermediaries (and their appointed representatives) carrying out these activities when the LCCI came into force must apply for registration by December 16, 2019.
 - The Bank of Spain's interpretation is explained in a *document of frequent questions regarding applications for registration as credit intermediaries and LIPs, published by the Bank of Spain on September 4* (the "Guide").



Foreword

The LCCI applies to loan and credit agreements granted by individuals and companies carrying out that activity professionally, when the borrower and the guarantor are individuals and the purpose of the agreement is:

- The granting of loans with a mortgage guarantee or other in rem right on residential immovable property, or
- The granting of loans whose purpose is to acquire or preserve the property rights on land and buildings constructed or to be constructed, provided the borrower and guarantor are consumers.

An important development under the LCCI is that LIPs, credit intermediaries and their appointed representatives must register in one of the registers established in the LCCI. The regulations regarding this obligation to register are developed in *Royal Decree 309/2019, of April 26, partially implementing Act 5/2019, of March 15, regulating credit agreements relating to immovable property and adopting other financial measures*.

The Bank of Spain will manage the register in cases in which (i) LIPs, credit intermediaries and their appointed representatives operate or will operate with borrowers with registered office in more than one autonomous region, and (ii) the credit intermediaries operate in Spain through a branch or under the regime of free service provision, regardless of the geographic area where they will engage in their activity. However, LIPs, credit intermediaries and their appointed representatives operating exclusively in an autonomous region must register in the register established in *Act 2/2009, of March 31, on the contracting of mortgage loans and credits with consumers and the brokering of loan and credit agreements* (excluding foreign intermediaries operating in Spain through a branch or under the regime of free service provision, which must be registered in the Bank of Spain's register).

The Bank of Spain's Guide resolves questions to facilitate and make the process for registration applications more agile, but it will also be useful for any entities that must register in the registries of the autonomous regions.



Bank of Spain clarifications on portfolio assignees' registration obligation

The Guide establishes that legal entities professionally carrying out the activity of assigning and managing loans in the scope of application of the LCCI must register in the register of LIPs.

According to the Bank of Spain, this includes the assignees of loan portfolios because the buyers, as the new lenders, are responsible for compliance with the obligations concerning the borrower established under the LCCI, regardless of whether the assignees delegate management (compliance) of those obligations to a third party or it is decided that the initial lender will continue to manage those obligations.

In the Guide, the Bank of Spain also clarifies that if LIPs do not register, this will affect the efficiency of the guarantees for immovable property loans, as the property registrar will deny registration of any mortgage-backed loans granted by unregistered LIPs.

The Bank of Spain highlights that credit institutions (i.e., those specified under *Directive 2013/36/EU, on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms*) and the branches in Spain of foreign credit institutions or that operate under the regime of free service provision, and financial credit establishments (regulated under *Act 5/2015, of April 27, on promoting business financing*) are exempt from the registration obligation as they are already registered in the corresponding administrative registries.

The Bank of Spain repeats that, as established in the Second Transitory Provision of the LCCI, LIPs and credit intermediaries (and their appointed representatives) that were carrying out the activities mentioned in Act 5/2019 when it came into force, will have six months to apply for recognition. The deadline is December 16, 2019.

For additional information, please contact Cuatrecasas.

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