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Section I. Page 49192

I. GENERAL PROVISIONS

HEAD OF STATE

9111 *Act 4/2012, of the 6th July, on contracts for rotational enjoyment of property for tourist use, purchase of long-term holiday products, resale and exchange contracts and taxation rules.*

JUAN CARLOS I

KING OF SPAIN

To all to whom these presents shall come
Now it is hereby witnessed: That the Parliament has approved and I hereby sanction the following Act.

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RATIONALE

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~~The transposition of EU Directives within the approved timescale, particularly those concerning the domestic market, is one of the current priorities established by the European Council. The European Committee submits to the Competitiveness Council periodic reports to which a high political value is ascribed inasmuch as they serve to measure the efficiency and credibility of Member States in implementing the domestic market.~~

~~Fulfilling this objective is even more of a priority today given the new scenario designed by the Lisbon Treaty, whereby the European Union Treaty and the Treaty Establishing the European Community are amended with regard to any failure to meet the transposition deadlines, in which case the Committee may request from the Court of Justice of the European Union the speedy imposition of considerable economic sanctions (article 260.3 of the Treaty on the functioning of the European Union — TFEU).~~

~~As regards the use of the royal decree law as a transposition instrument, it is worth noting that the Constitutional Court, in its Judgement 23/1993 of the 21st January, pointed out that the decree law is a constitutionally licit instrument to face troublesome economic climates and, in its Judgement 1/2012 of the 13th January, endorsed the presence of the authorising prerequisite of extraordinary and urgent need provided for by article 86.1 of the Constitution where an «evident delay in the transposition» and the existence of «non-compliance proceedings against the Kingdom of Spain» concur.~~

~~On the other hand, it is not the first time that this legal instrument has to be used in order to avoid an actual and impending risk of economic sanctions being imposed as a result of breach of the Law of the European Union. Thus, the passing of Royal Decree law 23/1992 of the 30th July on Private Security was justified by reason of the «existence of an authorising prerequisite, referred to in Case Law of the Constitutional Court, where the need for the creation of the regulation is of such nature that it cannot be fulfilled by means of the emergency legislative procedure due to the immediacy required». A prerequisite which is also present in Directive 2008/122/EC of the 14th January 2009 concerning consumer protection in respect of certain aspects of the rotational enjoyment of property for tourist use, acquisition of long-term holiday products, resale and exchange.~~

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The economic and juridical relationships resulting from the development of tourism have led this sector to constitute a universal phenomenon where citizens and operators throughout the world are now the recipients or providers of tourist services. The provision of such services has been characterized by its dynamism, constant evolution and adaptation to market circumstances, by its international dimension and by the concurrence or conflict of interests between the economic operators providing the services and the consumers who enjoy them.

In regard to multiple ownership, worthy of note is the regulation included in **Directive 1994/47/CE** of the European Parliament and of the Council, dated 26th October 1994, concerning protection to purchasers with regard to certain aspects of the contracts for acquisition of the right to use real property on a timeshare basis, which exclusively contemplated the contract directly or indirectly aimed at the acquisition of a right to use one or more immovable properties on a timeshare basis. The purpose behind this regulation was the harmonisation of rights in the Member States by the establishment of minimum standards for common rules in order to improve the protection of the purchasers, which took the form of the information requirements, minimum contents of the contract, language of the contract, right of withdrawal and prohibition of advance payments during the withdrawal period and unenforceability of certain financing loans.

Directive **1994/47/EC** was repealed by Directive **2008/122/EC of the European Parliament and of the Council** dated 14th January 2009 on consumer protection with regard to certain aspects of **the contracts for** rotational enjoyment of property for tourist use, acquisition of long-term holiday products, resale and exchange. The new Directive is based on the appearance of new holiday products which it accurately defines; it fills up gaps, increases the harmonisation of the States' Domestic Legislations, reinforces the information provided to the consumer, regulates more accurately the timescale for the right of withdrawal to be exercised,

stresses and extends the prohibition of making advance payments during the withdrawal period, demands a payment schedule for long duration contracts and lays down the invalidity of certain financing loans in the event of withdrawal.

The Directive also obligates the States to organise the judicial and administrative redress of the consumers' rights, promote the drafting of codes of conduct, make possible the creation and development of adequate and effective out-of-court procedures for the solution of consumer-related disputes and establish a system of effective, proportional and deterrent sanctions in the event of failure by the traders to comply with the national provisions whereby the Directive is implemented.

~~It is worth noting that the circumstances of extraordinary and urgent need which by virtue of article 86.1 of the Constitution allow the Government to take measures by royal decree-law are determined by the need to honour the obligations arising from our membership in the European Union. Account must be taken of the fact that the deadline for incorporation of Directive 2008/122/EC expired on the 23rd February 2011 and the European Commission has since taken the required steps to impose a considerable fine on Spain. The approval of this royal decree-law, consequently, intends to avoid the negative consequences which would arise from the imposition of a fine by the European Union and, at the same time, bring forward the coming into force of a regulation which improves the protection of consumers on the one hand and, on the other, serves to give a boost to an important sector of the Spanish economy.~~

II

The transposition of Directive 1994/47/EC into our legal system was implemented by Act 42/1998 of the 15th December on rights of rotational enjoyment of immovable property for tourist use and taxation rules. Such was the name given to the Act while «multiple ownership» was deemed inadequate and therefore rejected. The legislator then considered whether several institutional forms should be regulated or such regulation should be confined to only one, all the others being left out of the Act; an intermediate solution was adopted which consisted of the detailed regulation of a new right *in rem* while allowing, nonetheless, the configuration of the right as a variation of the seasonal lease. Act 42/1998 of the 15th December, on the other hand, was not merely a strict transposition of the Directive but was also intended to provide full regulation to the institution.

At a later stage, the peculiar scheme of constitution of rotational enjoyment of immovable property provided for by Act 42/1998 of the 15th December advised against the inclusion thereof in the consolidated text of the Act on General Defence of Consumers and Users and other supplementary rules which was approved by Royal Legislative Decree 1/2007 of the 16th November. A peculiarity which, in addition, had an unquestionable influence on the registration and fiscal spheres, foreign to the basic core of consumer protection. However, the central regulatory core of the said consolidated text is applicable to the matter.

III

Based on the foregoing background, in making this new regulation it was decided to draw up a unified text which would comprise both the transposition of Directive 2008/122/EC – in Title I – and the incorporation of Act 42/1998 – in Titles II and III –, with the adaptation that the said Directive requires. The adopted criterion was the same as that followed in drawing up Act 42/1998, which not only included the transposition rules of the Directive 1994/47/EC but also those of Spanish Law. This solution is intended to avoid a multiplicity of rules and possible antinomies.

Title I addresses the transposition of the Directive throughout seven chapters.

Chapter I contains the provisions which are intended to delimit the scope of application of the regulation. The objective scope provides a definition of the four contractual modalities, i.e. contracts for rotational enjoyment of property for tourist use, contracts for acquisition of long-term holiday products, resale contracts and exchange contracts, regulated on the same terms as the Directive.

The definition of contract for enjoyment of property for tourist use covers not only contracts concerning immovable property but also those related to accommodation in vessels

and caravans, for example. However, it does not include other contracts which do not relate to an accommodation unit, such as the rental of land for caravans; nor does it include formulas such as multi-annual reservations of a hotel room, inasmuch as these are not contracts but reservations which are not binding upon the consumer.

The contracts for long-term holiday products basically involve the acquisition by the consumer of the right to obtain discounts or other advantages related to the accommodation unit, alone or in combination with travels or other services. Consequently, this right is obtained for a consideration and it includes discount holiday clubs and similar products. It does not cover loyalty programmes whereby discounts are offered on future stays in establishments of a hotel chain, discounts offered during a period shorter than one year or one-off discounts. It fails to include the contracts whose main purpose is not the offer of discounts or rebates.

The resale contract encompasses any brokerage contracts concluded between a resales agent and a consumer who wishes to sell or purchase a right of rotational enjoyment of a property for tourist use or a long-term holiday product, in exchange for a brokerage or commission. Where a trader does not act as a broker but purchases a right of rotational enjoyment or a long-term holiday product and then resells it to a consumer, the contract is a contract of sale of such right or product and falls within articles 2 and 3 respectively inasmuch as the said **precepts** are not confined to first-hand sales.

The definition of exchange covers the contracts concluded for participation in an exchange system.

~~As regards the subjective scope of the regulation, the terminology is unified in the words «trader» and «consumer».~~ Of especial note is the different delimitation of the subjective scope in terms of the fact that Title I, similarly as the Directive, applies to contracts between traders and consumers while Title II, as happened with Act 42/1998, applies to contracts between traders, namely owners, promoters or any physical or legal person whose professional activity involves the transfer of rights of enjoyment of immovable property, and the purchasers thereof.

Chapter II transposes the rules of the Directive concerning publicity and pre-contractual information, with particular reference to the consumer's right of withdrawal and the prohibition of making advance payments during the withdrawal period. Regarding the ways of providing the pre-contractual information, the European rule seeks to introduce a total harmonisation by demanding the use of certain standard forms which, in the form of schedules, have been attached to this regulation.

Chapter III transposes the Directive in regard to form, in writing on paper or on other durable medium, specifying the language or languages and the contents of the contract in which the pre-contractual information is to be included.

Chapter IV regulates withdrawal as a right of a unique nature «ad nutum» (at will), without specifying any reasons; which applies both if the trader provided the pre-contractual information correctly and if they failed to include it or the information provided was insufficient. This does not involve two rights of a different nature but of the same nature; and the only difference between the two is the way the period for the right to be exercised is calculated. The criterion of Directive **2008/47/EC**, which in its French and English versions used the terms «se retracter» and «withdraw» respectively, is thus adopted. Which eliminates the duality of the Directive **2008/47/EC** where the said terms were used for «ad nutum» withdrawal where the trader has correctly provided the information while, in the case of incorrect pre-contractual information or lack thereof, the terms «résiliation» and «cancellation» were used in the French and English versions respectively. Such unitary treatment eliminates the confusion caused by the Spanish translation of Directive **2008/47/EC** where the word «resolución» had been used, which reflected upon **Act 42/1998 of the 15th December** inasmuch as it provided for a dual system of «desistimiento» (withdrawal) in the case of correct information and «resolución» (termination) in cases of incorrect pre-contractual information or lack thereof.

Also a transposition of the Directive are the rules on prohibition of advance payments or account payments by the consumer during the period established for the right of withdrawal to

be exercised, as well as the invalidity of ancillary contracts – inclusive of loans – in the event of withdrawal and the need to arrange a staged payment schedule for contracts concerning long-term holiday products.

Chapter V, under the heading «legal framework», sets forth the mandatory nature of the provisions contained in this Title, which shows in the nullity of any waiver by the consumer of the rights conferred on them by the regulation **and of those acts which constitute *fraude de ley*** (contravention of law) **in accordance with** article 6 of the Civil Code.

The rules of Private International Law are also reflected in this Chapter. As a general principle, the law applicable to the contracts included in Title I is determined by Regulation (EC) no. 593/2008 of the European Parliament and of the Council dated 17th June 2008 on the law applicable to contractual obligations (Rome I) which, in article 6, lays down the criteria related to the law applicable to international consumer contracts. However, in light of the fact that the law of a third country may by virtue of the said Regulation apply – specifically, where the traders address the consumers while the latter are in a country other than their country of residence –, the Directive contains an additional safeguard provision where a jurisdictional body of the Member States has jurisdiction over the contract in order to ensure that the consumer will not be deprived of the protection provided by this European law; a safeguard provision which has been incorporated into our legal system.

Chapter VI contains provisions concerning the information – general and regarding the eventual existence of codes of conduct – which the traders have to furnish to the consumers and regulates the possibility of submitting to arbitration conflicts arising between the trader and the consumers.

Chapter VII, under the heading «judicial and administrative protection», regulates actions for an injunction and the penalty system, with referral to general legislation and to specific legislation relating to consumers and users.

Under the heading «special rules concerning the rotational enjoyment of immovable property for tourist use», Title II incorporates Act 42/1998 with the required adaptation thereof to the demands of the Directive. In addition, as demanded by EU Regulations – particularly the Rome I Regulation –, the intermediate path established in the said law of regulating in detail the right *in rem* of rotational enjoyment and allowing the configuration of such a right as a variation of the seasonal lease, is now open to include any other contractual modality of constitution of a right of a personal nature or an associative right whose purpose is the use of one or several accommodation units for overnight stay during more than one occupation period, to which the provisions of this Act and of the general legislation concerning consumer protection will apply.

Finally, Title III updates the taxation rules applicable to the rights regulated under Title I. ~~respecting the case law of the Supreme Court in relation to the admissibility of a royal decree-law to regulate this taxation matter given the ‘continuist’ nature of the said rules with regard to those contained in Act 42/1998 and the fact that they reduce the relevance of this regulation with respect to the taxation system as a whole and the impact on the economic capacity of those who have the obligation to contribute.~~

~~By virtue thereof, exercising the authority contained in article 86 of the Spanish Constitution, at the proposal of the Minister of Justice and the Minister of Health, Social Services and Equality and following deliberation by the Council of Ministers at their meeting of the 16th March 2012,~~

~~I HEREBY DECREE:~~

TITLE I

General rules

CHAPTER I

Scope of application

Article 1. *Scope of application.*

1. Contracts of marketing, sale and resale of rights of rotational enjoyment of property for tourist use and long-term holiday products, as well as exchange contracts, are governed by the provisions of this Act where concluded between a trader and a consumer.

2. Trader means any physical or legal person acting for purposes related to their economic activity, business, trade or profession and any person acting on behalf or for the account of a trader.

3. Consumer means any physical or legal person acting for purposes unrelated to their economic activity, business, trade or profession.

Article 2. *Contract for rotational enjoyment of property for tourist use.*

A contract for rotational enjoyment of property for tourist use is a contract with a duration of more than one year by virtue of which a consumer acquires, for valuable consideration, the right to occupy one or several accommodation units for overnight stay during more than one occupation period.

Article 3. *Long-term holiday product contract.*

A long-term holiday product contract is a contract with a duration of more than one year by virtue of which a consumer acquires, for valuable consideration, essentially the right to obtain discounts and other advantages in respect of their accommodation unit, alone or in combination with travels or other services.

Article 4. *Calculating the duration of a contract.*

Any provision allowing renewal or tacit extension of the contracts defined in articles 2 and 3 above shall be taken into consideration in calculating their duration.

Article 5. *Resale contract.*

A resale contract is a contract by virtue of which a trader, for valuable consideration, assists a consumer in the purchase or sale of rights of rotational enjoyment of property for tourist use or a long-term holiday product.

Article 6. *Exchange contract.*

An exchange contract is a contract by virtue of which a consumer affiliates, for valuable consideration, to an exchange system which allows them to enjoy an accommodation unit or other services in exchange for granting to other persons a temporary enjoyment of the benefits entailed in the rights arising from the consumer's contract for rotational enjoyment of property for tourist use.

CHAPTER II

Publicity and pre-contractual information

Article 7. *Publicity.*

1. Specific mention of where the pre-contractual information envisaged under this Act can be obtained shall be made in any advertisements and offers exhibited in establishments open to the public as well as commercial communications and other publicity concerning contracts for acquisition of rights of rotational enjoyment of property for tourist use or long term holiday products or for the resale or exchange thereof.

2. The commercial purpose and nature of any promotional event or sales event where any of the contracts regulated under this Act will be directly offered to a consumer shall be clearly indicated in any invitation to such an event.

The pre-contractual information envisaged under this Act shall be available to the consumer at all times during the promotional event.

3. No right of rotational enjoyment of property for tourist use or long term holiday product may be marketed or sold as an investment.

Article 8. *Disclosure requirements.*

Any disclosure information which is to be provided to the consumer pursuant to this Act either prior to or upon entering into the contract as well as during the term thereof shall be recorded on paper or on any other durable medium. Durable medium means any instrument which allows the consumer or the trader to store the information personally addressed to them in such a way that may be consulted in the future **for as long as may be necessary depending on the purposes** of the said information and which allows the stored information to be reproduced without alterations.

Failure to comply with the provisions of the preceding subparagraph will provide the consumer the right to rescind the contractual relationship by giving formal written and conclusive notice to the trader specifying in that notice the lack of information which the consumer regards as not being provided or which was insufficient, which then places on the trader the burden of proof of the actual existence and sufficiency of the information. All of the foregoing is without prejudice to the right of withdrawal regulated in this Act and to the sanctions which could be imposed on the trader pursuant to Article 22 hereunder.

Article 9. *Pre-contractual information.*

1. The trader shall sufficiently in advance of the consumer's giving consent to any offer concerning the contracts referred to in this Title provide the consumer with accurate and sufficient information in a clear, understandable manner as follows:

- a) For contracts of rotational enjoyment of property for tourist use, by the standard information form contained in schedule I to this Act and the information envisaged in section 3 thereof.
- b) For long-term holiday product contracts, by the standard information form contained in schedule II to this Act and the information envisaged in section 3 thereof.
- c) For resale contracts, by the standard information form contained in schedule III to this Act and the information envisaged in section 3 thereof.
- d) For exchange contracts, by the standard information form contained in schedule IV to this Act and the information envisaged in section 3 thereof.

2. The information referred to in paragraph 1 **of this Article** shall be provided by the trader, at no charge, on paper or on any other durable medium which is easily accessible by the consumer.

3. The said information shall be drawn up in the language or one of the languages of the Member State in which the consumer is a resident or of which they are a national, at the consumer's choice, provided that it is an official EU language. **If the consumer is resident in Spain or if the trader carries out their activities in Spain then the contract shall also be drawn up in Spanish and it may also, where applicable, at the request of any of the parties, be drawn up in any other Spanish language which is an official language in the place of execution of the contract.**

4. The trader may publish the pre-contractual information in full on the company's website or on the website of a professional or business association of the trader's choice and shall in that case be responsible to keep the information updated and to maintain the website in operation for as long as the rights to which the information relates are being marketed.

Article 10. *Note on the right of withdrawal and prohibition of advance payments.*

The trader shall before the conclusion of the contract and in the form provided for in the last preceding article expressly inform the consumer of the existence of the right of withdrawal and the time period during which it may be exercised, as well as of the prohibition contemplated in article 13 of making advance payments during the said period.

CHAPTER III

Formalisation of the contract

Article 11. *Form and content of the contract.*

1. Contracts for rotational enjoyment of property for tourist use, long-term holiday contracts, resale contracts and exchange contracts shall be executed in written form, on paper or another durable medium, and shall be drawn up, using appropriate and easily legible font size and printing contrast, in the language or one of the languages of the Member State in which the consumer is a resident or of which they are a national, at the consumer's choice, provided that it is an official EU language. **If the consumer is resident in Spain or if the trader carries out their activities in Spain then the contract shall also be drawn up in Spanish and it may also, where applicable, at the request of any of the parties, be drawn up in any other Spanish language which is an official language in the place of execution of the contract.**

2. The pre-contractual information provided to the consumer, duly signed by the latter, shall be an integral part of the contract and may not be altered unless otherwise expressly agreed by the parties or where the changes are due to circumstances which are unusual, unforeseeable and beyond the trader's control and the consequences thereof could not be prevented despite the diligence employed. Such changes shall before the conclusion of the contract be reported to the consumer, on paper or another durable medium easily accessible by the consumer, and they shall be explicitly mentioned in the contract.

3. In addition, each party's identity, domicile and signature and the date and place of execution of the contract shall be reflected therein.

4. The contractual clauses relating to the right of withdrawal and to the prohibition of advance payments shall be separately signed by the consumer.

The contract shall also include a standard withdrawal form in a separate document as shown in schedule V.

5. The consumer shall upon the conclusion of the contract receive at least one copy thereof with its schedules.

CHAPTER IV

Right of withdrawal, prohibition of advance payments, long-term holiday product contracts and ancillary contracts

Article 12. *Right of withdrawal.*

1. The consumer may withdraw from the contracts regulated under this Act without having to justify such withdrawal.

In default of the provisions of this Act, the right of withdrawal shall be governed by the consolidated text of the General Defence of Consumers and Users Act and other ancillary laws approved by Royal Legislative Decree 1/2007 of the 16th November.

2. The right of withdrawal may be exercised within fourteen calendar days of:

- a) the date of conclusion of the contract or of any other preliminary binding contract where the consumer has upon the conclusion thereof been furnished with the contractual document or, otherwise, such later date on which the said document is received by the consumer.
- b) where the trader has failed to complete and hand over to the consumer the document envisaged in article 11.4, the withdrawal period shall be counted from the furnishing to the consumer of the duly completed withdrawal form and shall in any event expire upon the lapse of one year and fourteen calendar days from the conclusion of the contract or of any preliminary binding contract or from **such later date of** receipt of the contractual document.
- c) Where the trader has not furnished the consumer with the pre-contractual information mentioned in article 9, forms included, the withdrawal period shall be counted from the furnishing of such information and shall expire upon the lapse of three months and fourteen calendar days from the conclusion of the contract or of any preliminary binding contract where the consumer received the document on or before such conclusion or, otherwise, from the later receipt of the said document.

3. Where the exchange contract is offered to the consumer together with, and at the same time as, the contract for rotational enjoyment of property for tourist use, one only withdrawal period shall apply to both contracts in accordance with the same rules set forth in the preceding paragraphs.

4. The consumer shall by a means whereby evidence of receipt is obtained notify their withdrawal to the trader in written form, on paper or another durable medium, and may to such end use the form provided in schedule V. Such a notification shall be issued or sent within the legally established period and shall take effect irrespective of the date of receipt thereof by the trader.

5. The exercise of the right of withdrawal by the consumer shall render the contract ineffective.

6. A consumer who exercises the right of withdrawal shall not bear any costs whatsoever or pay any consideration for any services which may have been rendered before the date on which the right of withdrawal has been exercised.

7. The provisions of this article do not preclude the exercise of the actions for nullity, legal or contractual termination as may be applicable by Law in accordance with the provisions of article 78 of the consolidated text of the General Defence of Consumers and Users Act and other ancillary laws approved by Royal Legislative Decree 1/2007 of the 16th November

Article 13. *Prohibition of advance payments.*

1. Any advance payments, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt or any consideration to the trader or to any third party by the consumer before the end of the withdrawal period is prohibited in relation to rotational enjoyment of property for tourist use, long term holiday products and exchange contracts.

2. The same prohibitions are hereby established in relation to resale contracts before the sale has actually taken place or the contract has been otherwise terminated.

3. Any act performed in contravention of such prohibition is null and void and the consumer may claim twice the amounts paid or guaranteed by reason thereof.

Article 14. *Specific provisions on long-term holiday product contracts.*

1. Payment of the price of long-term holiday product contracts shall be made in accordance with a staged payment schedule. Advance payment of the price specified in the contract or any other form of payment not according to the staged payment schedule is prohibited.

2. The payments, including the eventual affiliation fees, shall be divided into annual instalments of the same amount.

3. The trader shall serve written payment requests, on paper or another durable medium, at least fourteen days before the due date of each payment.

4. The consumer may after the second instalment terminate the contract without incurring any penalty whatsoever by serving notice on the trader within fourteen calendar days of receipt of each such payment request.

5. The provisions of this article shall be understood without prejudice to any other rights conferred by Law for termination of the contract.

Article 15. *Unenforceability of ancillary contracts.*

1. If the consumer exercises their right of withdrawal from a rotational use of property for tourist use or a long-term holiday product contract then the ancillary contracts shall automatically become unenforceable, including the exchange and resale contracts, at no cost to the consumer.

An ancillary contract is any contract by virtue of which the consumer acquires services related to one of the contracts listed in the last preceding paragraph where such services are provided by the trader or by a third party pursuant to an agreement between the trader and the said third party.

2. Where the price has been fully or partially covered through a loan granted to the consumer by the trader or by a third party pursuant to an agreement between the said third party and the trader, the loan contract shall become ineffective at no cost to the consumer if the latter exercises their right to withdraw from a rotational use of property for tourist use, long-term holiday product, resale or exchange contract.

3. The loans may not contain any clause whereby a sanction or a penalty is to be imposed on the consumer in the event of withdrawal. Where the consumer has subrogated to a loan granted to the transferor, such subrogation shall become ineffective upon the right of withdrawal being exercised.

4. For annulment of an ancillary contract, it shall be the consumer's responsibility to prove that they have exercised the right of withdrawal from the associated rotational use of property for tourist use or long-term holiday product contract.

5. The annulment action may be exercised within two years of the date on which the right of withdrawal from the contract mentioned in the last preceding paragraph was exercised.

6. The consumer may also, within the same period, take out-of-court action to exercise their right of annulment by the service on the trader who is a party to the ancillary contract of notice with evidence of receipt specifying the date on which they exercised the right of withdrawal from the associated contract for rotational use of property for tourist use or long-term holiday product.

7. The ancillary contract having been annulled, the contracting parties shall mutually restore the benefits received by virtue of same. Where an in-kind restoration is not possible, the value thereof shall be reimbursed.

Until such time as a contracting party has returned that which it is their duty to return, the other party may not be obligated to honour their part of the deal.

The consumer has no obligation to reimburse any sum whatsoever for any decrease in the value of the asset which is a consequence of the use thereof according to the conditions agreed upon or to its own nature.

CHAPTER V

Legal framework

Article 16. *Mandatory nature.*

1. The consumers may not waive the rights granted to them by this Act.
2. Waiver of the rights hereby granted to the consumers shall be null and void and so shall any acts performed by *fraude de ley* (contravention of law) as provided for by article 6 of the Civil Code.

Article 17. *Rules of International Private Law.*

Where the law applicable to the contract between a trader and a consumer purchasing rights of rotational enjoyment of property for tourist use, long-term holiday products, resale or exchange is, pursuant to Regulation (EC) 593/2008 of the European Parliament and of the Council of the 17th June 2008 on the law applicable to contractual obligations (Rome I), the law of a State which is not a member of the European Economic Area, the consumer may invoke the legal protection provided by this Act in any of the following instances:

- a) Any of the relevant immovable properties is located in the territory of a State which is a member of the European Economic Area.
- b) **The contract does not directly relate to an immovable property but it relates to activities in which the trader has engaged in a member State or which shall take effect in a member State.**

CHAPTER VI

Information to the consumer and out-of-court claims

Article 18. *Information to the consumer.*

The trader shall, in accordance with consumer legislation where applicable, inform the consumer as to how the latter can gratuitously apply for general information on the provisions contained in this Act and on the rights to which the consumer is entitled, from the following bodies and official professional associations: tourist offices, the National Consumer Affairs Institute, competent bodies of the Autonomous Communities with regard to tourist and consumer affairs, municipal consumer offices, property registrars and notaries. Such information shall include the address and telephone number of the bodies and professionals closer to the place where the property for tourist use which is the subject of the contract of rotational enjoyment, resale or exchange, is located.

The foregoing is to be understood without prejudice to the information which may be provided by official associations of professional architects, real estate agents, property administrators and lawyers.

Article 19. *Codes of conduct.*

1. The traders shall inform the consumers with whom they conclude a rotational enjoyment of property for tourist use, long-term holiday product, resale or exchange contract of any codes of conduct entered into by the trader to facilitate the consumers' exercise of their rights.
2. The professional trading associations shall urge their affiliates to promote codes of conduct and shall inform the consumers who so request it of such codes.

Article 20. *Out-of court claims.*

The trader and the consumer may submit any conflict to consumer arbitration by the trader's adherence to the consumer arbitration system or to any other system of out-of-court resolution of conflicts listed on the European Committee's list of alternative systems for resolution of conflicts with consumers which abides by the principles established by current consumer regulations.

CHAPTER VII

Judicial and administrative protection

Article 21. *Action for an injunction.*

Action for an injunction may be exercised in the form and on the conditions laid down by the Civil Procedure Act 1/2000 of the 7th January and the consolidated text of the General Consumer and User Protection Act and other supplementary laws approved by Royal Decree-Law 1/2007 of the 16th November, against any conducts which contravene the provisions of this Act and are detrimental to the interests of the consumers.

Article 22. *Penalty system.*

Breach by the companies of the provisions of this Title shall be punishable as a violation of consumer regulations by application of that provided for under the general penalty system of title IV of the first book of the consolidated text of the Consumer and User Protection Act and other supplementary rules and any applicable regulations of the autonomous communities.

Failure by the trader to honour the information requirements laid down by this Act before the expiry of the withdrawal period shall be deemed a serious infringement or even a major infringement, where applicable, on the basis of the criteria envisaged in article 50 of the said consolidated text.

TITLE II

Special rules concerning the rotational enjoyment of immovable property for tourist use

CHAPTER I

General provisions

Article 23. *Objective and subjective scope.*

1. The subject of this title is regulating the creation, exercise, transfer and expiry of rights of rotational enjoyment of immovable property for tourist use.

The right of rotational enjoyment of immovable property confers upon its holder the authority to enjoy, on an exclusive basis and during a specific period each year, whether consecutive or alternate, an accommodation unit capable of being used independently as a result of having its own exit onto a public thoroughfare or a communal element of the building of which it is a part and which is permanently equipped with the appropriate furniture to such end, as well as the right to the provision of ancillary services. The right of enjoyment does not include any alteration to the accommodation unit or to its furniture. The right of rotational enjoyment may be formally created as a limited right *in rem* of a binding nature in accordance with the provisions of this article.

2. The rotational enjoyment scheme may only be set up in respect of a building, a building complex or an architectonically differentiated part thereof. All the independent accommodation units which form a part of it shall, with the necessary exception of business premises, be subject to the said scheme. There shall not be fewer than ten accommodation units. However, the same building complex may be simultaneously subject to a rotational enjoyment scheme and to another kind of tourist operation provided that the rights of rotational enjoyment relate to specific units and specific periods. **In this case, the building, building complex or architectonically differentiated part thereof shall abide by both the regulations governing the rotational enjoyment scheme and the regulations governing the relevant type of tourist operation.**

3. The annual period of enjoyment may not be shorter than seven consecutive days and the occupation periods may within the same scheme have the same duration. In addition, a period of time not shorter than seven consecutive days shall be reserved for each

accommodation unit operated under the scheme for repairs, cleaning or other communal purposes.

4. The right *in rem* of rotational enjoyment may under no circumstance be related to an undivided share of ownership and it may not be called multiple ownership or any other name containing the word ownership.

Any other name may be used for the purposes of publicity, marketing and transfer of rights of rotational enjoyment provided that such a name does not lead the final purchasers to confusion and it clearly conveys the nature, characteristics and legal and economic conditions of the right of enjoyment.

Each right of rotational enjoyment shall encumber, as a whole, the full ownership of the accommodation unit or of the immovable property depending on whether a 'horizontal division' has been previously formalised in relation to it. The fact that the same person holds title to an *in rem* right of rotational enjoyment and to ownership – or to an ownership share – does not entail the termination of the limited right *in rem*, which shall subsist during the whole lifetime of the scheme.

The owner of the immovable property may without prejudice to the limitations arising from the scheme and the faculties of the holders of rotational enjoyment rights freely dispose of all or part of their ownership right in accordance with the rules of Private Law.

5. The provisions of this Title shall apply to the owner, to the promoter and to any physical or legal person who professionally engages in the transfer or marketing of rotational enjoyment rights.

6. Any contract concluded for the seasonal lease of holiday immovable property which refers to more than one season, whether or not payment of the rent due for some or all of the contracted seasons is made in advance, and any other type of contract with a duration of more than one year which without the creation of a right *in rem* relates to the use of one or several accommodation units for overnight stay for more than one period of occupation, shall be subject to the provisions of this title, without prejudice to that provided for in Act 29/1994 of the 24th November on the Lease of Urban Property and the general consumer protection legislation. This may not be called multiple ownership or any other name containing the word ownership.

7. A contract by virtue of which any other *in rem* or personal right is created or transferred for a period of more than one year in relation to the use of one or more immovable properties during a determined or determinable period of the year and which does not fall within the scope of this Title shall, with the sole exception of that provided for in the next following paragraph, be null and void and any rent or consideration paid by the purchaser or assignee shall be reimbursed to them in addition to a compensation for damages.

8. The provisions of this title do not preclude the validity of any other type of contract whereby a right of a personal or an associative nature is created whose subject is the use of one or several accommodation units for overnight stay during more than one period of occupation and which has been created under, and on the terms of, the rules of the European Union, particularly Regulation (EC) no. 593/2008 of the European Parliament and of the Council of the 17th June 2008 on the law applicable to contractual obligations (Rome I) and the international conventions to which Spain is a party. The provisions of Title I of this Act shall be applicable to all such types of contracts.

For the purposes of facilitating the publicity and improving the general knowledge of the aforesaid schemes and the rules and regulations thereof, such binding schemes created under international legislation and the rules and regulations thereof may, if its registered owner deems it appropriate, be publicly registered with the Land Registry of the place where the immovable property is located.

Such public registration, which shall involve the registration of the existing scheme in accordance with the rules contained in this Act, shall be done by public deed executed by the owner of the immovable property where the characteristics of the existing scheme and the rules and regulations thereof shall be noted.

It shall be presumed, to all legal intents and purposes, that the publicly registered rules are in force until such time as an amendment thereof is publicly registered. Any amendment of the scheme or of its rules and regulations shall be publicly registered in the same manner, the owner being responsible for any detriment to third parties which may be caused as a result of the rules and regulations of the scheme not being duly updated, unless evidence is provided of the relevant third party's awareness of such amendments.

Article 24. *Lifetime.*

1. The lifetime of the scheme will be more than one year and not more than fifty years, to be counted from registration of the scheme or from registration of the completion of construction works where the scheme has been created in respect of a property under construction.

2. The holders of rights will not be entitled to any compensation whatsoever after the termination of the scheme owing to the expiry of its lifetime.

CHAPTER II

Legal system

Section 1. Establishment.

Article 25. *Establishment of the scheme.*

1. The rotational enjoyment scheme must be established by the registered owner of the immovable property. To do this, the registered owner must first:

- a) Have registered completion of construction with the Land Registry and incorporated it to the Cadastre Office. Where the construction is in progress, they must have registered the declaration of new construction.
- b) Meet the established requirements to operate the tourist activity and have obtained the opening licences, habitability licences of the accommodation units, communal areas and ancillary services which may be necessary for the intended use. In the event that the construction works are in progress, having obtained planning permission and the licence required to carry out tourist activities will suffice.

The latter, whether the construction works are in progress or have been completed, will only be required in those Autonomous Communities where the marketing of rights which involve entitlement to enjoy the use of an accommodation unit during a period of time in the year is, according to their own legislation, classified as a tourist activity subject to licence.

- c) Have concluded, in accordance with the provisions of this Act, a contract with a services company which meets the requirements applicable to such companies unless the owner, meeting the same requirements, has decided to take direct responsibility for the services.

Services companies may not be domiciled in tax havens and must have at least a branch domiciled in an EU Member State.

- d) Have arranged the insurances or guarantees referred to in Article 28 as well as, where applicable, the guarantees covering material damage as a result of construction faults or defects envisaged under Act 38/1999 of the 5th November on Building Regulations where the registered owner is the builder or promoter of the property or otherwise have provided information on the same to the holders of rotational enjoyment rights.

2. An owner who establishes a scheme for a property under construction must also provide future purchasers of rotational enjoyment rights with a bank guarantee arranged with one of the institutions registered with the *Banco de España* or an insurance bond with an authorised company to operate in the sector in any EU Member State to guarantee the

reimbursement of sums paid on account for acquisition of the right, updated in accordance with the Retail Price Index, if the construction work is not completed by the date set or if the furniture described in the regulatory deed has not been installed when the purchaser of the right decides to terminate the contract. The sums so received will be independent of those payable by the owner or promoter as compensation for loss and damages caused by the non-fulfilment of their obligations.

The guarantees on the sums paid on account for the purchase of the rotational enjoyment right will be governed, in all matters where it is applicable, by Act 57/1968 of the 27th July on the receipt of advance sums in the construction and sale of dwellings and its implementing regulations.

Under no circumstance may the guarantee so provided be released or the insurance contract be terminated until such time as the notarised certification of completion of construction works has been registered.

3. The rotational enjoyment scheme over immovable property shall be established by formalisation thereof in a public deed and shall be registered with the Land Registry. The company which has taken on the administration and provision of services must be a party to the said deed unless the owner shall expressly undertake directly to assume responsibility for the services.

Contracts by virtue of which rotational enjoyment rights are created or conveyed before the scheme is lawfully established shall be subject to the provisions of Article 23.7.

4. Notaries may not authorise a deed regulating a rotational enjoyment scheme and Registrars may not record it unless they have been shown evidence that the requirements of items 1 and 2 of this Article have been satisfied.

Article 26. *Regulatory Deed.*

1. The public instrument which regulates the rotational enjoyment scheme must contain at least the following information:

1st. A description of the property in respect of which the rotational enjoyment scheme is being established and of the building or buildings contained within it, stating the communal services to which the holders of enjoyment rights are entitled. If the construction work is still in progress, the deadline for completion thereof shall be mentioned.

2nd. A description of each of the accommodation units comprised in each building, which shall be consecutively numbered in relation to the property. If the property is to be used for commercial tourist activities and at the same time subject to a scheme of rotational enjoyment rights, those accommodation units which qualify for subjection to rotational enjoyment rights, and for which periods each year, shall be identified.

3rd. Specific mention shall be made for each accommodation unit intended for rotational enjoyment of the number of periods of occupation, their duration, the starting and finishing dates and times, their coefficient in relation to the accommodation unit where the 'horizontal division' has already been executed or in relation to the whole property if it has not, the furniture allocated to it and value thereof and the days of the year not classified as periods of rotational enjoyment because they have been reserved for repair and maintenance of that accommodation unit. Each period of occupation shall also be consecutively numbered in respect of each accommodation unit.

4th. Reference to the services to be provided and which are inherent in the rotational enjoyment rights, stating whether they will be provided directly by the owner or by a services company.

5th. The statutes to which the scheme of rotational enjoyment rights is subject if they have been established. No obligation or limitation which is contrary to the provisions of this Title shall be thereby imposed on the holders of rotational enjoyment rights.

6th. Registration details, cadastral information, town planning situation and, where applicable, status for tourism purposes of the property. This is to be accompanied by graphic and descriptive certificates from the Cadastre Office and a layout drawing showing the various accommodation units on the respective floor.

7th. Payment for the services and community expenses where applicable.

8th. Lifetime of the scheme.

2. The contract concluded with the services company and the insurance contracts referred to in Article 28 shall be incorporated into the deed, either as originals or as notarised copies. A certified copy of the said contracts shall be attached for the filing thereof with the Land Registry.

If the property is under construction, a document providing evidence of the creation of the guarantee or insurance bond referred to in Article 25.2 shall be incorporated.

The individual or individuals executing the deed shall be responsible for the truthfulness of the contracts thus incorporated into the deed.

3. Where the scheme has been registered in respect of a property under construction, completion of the construction works shall be recorded with the Land Registry within three months of such completion. Evidence of completion shall be provided by submitting the licences referred to in Article 25.1, paragraph b) which were not submitted at the time of having the new construction registered.

Having registered completion of the construction works, the owner or promoter shall notify it to those purchasers who acquired rotational enjoyment rights in the property in question whilst it was under construction.

Article 27. *Registration of the scheme and amendment thereof.*

1. The Property Registrar shall after the regulatory deed has been filed for registration with the Land Registry withhold entry of any sections or Articles of the statutes whereby any obligation or limitation which is contrary to the provisions of this Act is imposed on the holders of rotational enjoyment rights.

If upon registration of the Scheme with the Land Registry by the filing of its regulatory deed the various accommodation units intended for rotational enjoyment are not shown as separate properties for registration then the Registrar shall start a folio for them even if no 'horizontal division' of the property is contained in the regulatory deed. In doing so, the periods of occupation and remaining circumstances mentioned in paragraph 1, sub-paragraph 3, of the last preceding Article shall be recorded for each such unit.

Subrogation to the proportional part of the mortgage on the whole property may upon registration of the first acquisition of a rotational enjoyment right also be registered without the mortgagee's consent if so agreed in the public deed or in the contract incorporated into a public instrument provided that an objective system for distribution of the mortgage liability among all the rotational enjoyment rights resulting from the establishment of the scheme was agreed upon when the mortgage was created.

2. The Registrar shall after registration of the regulatory deed and before returning the document to the person who filed it file a copy of any contracts incorporated into the deed and shall note such fact on the record of the scheme and on any other public records created in respect of the property and in respect of the rotational enjoyment rights. A copy of such contracts shall be attached to any certificates issued by the Registrar in relation to the property for which the scheme was registered where so specifically requested in the application for such a certificate.

3. If a new contract with a services company where the owner does not wish to continue to provide the services or the services contract has expired or it has been terminated, a certified statement by the owner assuming responsibility for the provision of services or the information document referred to in Article 9 were after the scheme has been established lodged with the Registry for registration then the Registrar shall file a copy thereof and shall

note the fact in the margin against the scheme entry making specific mention of the bundle in which they have been filed. The Registrar shall withhold the filing if express acceptance of the conditions of the preceding contract is not acknowledged by the owner in the certified statement or by the services company in the new contract as the case may be where the contract was executed before the establishment of the scheme or if the **pre-contractual documentation** does not contain the references stipulated in **Article 9**. The Registrar shall also withhold the filing of any contracts bearing signatures which have not been duly notarised.

Any modification which is made to the above contracts and **documents**, provided that such a modification is permitted by this Title, will only be valid after it has been noted on the records of the Land Registry in accordance with the provisions of the last preceding paragraph.

4. The scheme may only be modified by the registered owner, with consent from the services company and from the Community of Titleholders, in accordance with the provisions of **Article 33.4**, and any such modification must be recorded in a public deed and filed with the Land Registry in accordance with the terms of Article 25.3.

Article 28. *Insurance.*

The owner shall before the establishment of the scheme of rotational enjoyment rights take out and maintain in force an insurance policy or equivalent guarantee to cover, for the whole duration of the promotion and until all the rotational enjoyment rights have been transferred, the risk that an obligation shall be created on the part of the owner to indemnify third parties for any loss and damages caused by the owner or by any of the owner's subordinates until the said transfer has been completed.

Such a contract may be entered into for annual periods and shall be renewed during the continuance of the scheme. The insured sum shall not be less than the proportional part of the value ascribed to the whole which corresponds to the part which has not been marketed at the beginning of the contracting period thereof.

The owner shall also take out and maintain in force an insurance policy to cover the civil liability which may be incurred by the occupants of the accommodation units as a result of the use thereof as well as insurance to cover fire and other general damage to the building or to any of its facilities and equipment. The owner or promoter shall be the holder of the aforesaid insurance policies and may come to an agreement with the services company for the latter to bear the cost of the premiums.

Section 2. Conditions for promotion and transfer.

Article 29. *General provisions.*

1. As provided for by Article 23.4, rotational enjoyment rights may not be transferred under the name *multipliedad* (multiple ownership) or any other name containing the word *propiedad* (ownership).

2. The promotion and transfer of rotational enjoyment rights shall be governed by the provisions of Title I hereof with the specifications set out in this section.

Article 30. *Form and minimum content of the contract.*

1. In addition to that envisaged under Article 11, a contract executed by any physical or legal person within the scope of its professional activity which relates to rights of rotational enjoyment of immovable property shall contain at least the following points:

1st. Information on the regulatory deed of the scheme stating the date on which it was executed, the authorising Notary and Protocol number and the registration details recorded at the Land Registry.

2nd. Express reference to the *in rem* nature or the personal nature of the right conveyed, stating the date on which the scheme will expire in accordance with the provisions of this Title.

3rd. Identification of the immovable property by its cadastral reference, a precise description of the building, its location and the accommodation unit to which the right relates, with express reference to its registration details and to the occupation period which is the subject of the contract stating the starting and ending dates and times thereof.

4th. A mention of whether construction is complete or still in progress. In the latter case, the following must be stated:

- a) The current stage of construction.
- b) The deadline for completion of the property.
- c) Reference to the construction licence and specification and address of the Town Council which issued it.
- d) Current stage of the communal services which enable the building to be used.
- e) Address given by the purchaser for the service of notice confirming registration of the completion of construction and the starting date from which the lifetime of the scheme is to be counted.
- f) Building specifications of the accommodation unit which is the subject of the contract.
- g) A detailed list of the furniture and fittings with which the accommodation unit is to be equipped as well as the value ascribed to them for the purposes of the guarantee or the insurance referred to in Article 25.2.
- h) Express reference to the said guarantee or insurance, specifying the entity providing it or with which it has been arranged and the fact that it may be drawn or claimed on by the purchaser if construction is not complete by the deadline set for the purpose or if the agreed furniture is not installed in the accommodation unit.

5th. The price to be paid by the purchaser and the sum which, in accordance with the regulatory deed, the purchaser must after purchasing the right remit annually to the services company or to the owner if the latter has in the regulatory deed assumed responsibility for the services, stating that it will be updated in accordance with the Retail Price Index published by the '*Instituto Nacional de Estadística*' [National Statistics Institute] unless the parties shall agree on some other updating system, which cannot be at the discretion of one only party, stating, by way of guidance, the average change in this index during the last 5 years. Mention shall also be made of any taxes which, as provided for by this Act, are associated with the purchase, as well as a summary of the fees payable to notaries and Land Registry if the contract is formalised as a public deed and filed with the Land Registry.

6th. Communal services and facilities that the purchaser is entitled to use and, if relevant, the conditions for such use.

7th. Whether or not there is a possibility to participate in an enjoyment periods exchange programme. Where this possibility does exist, the potential costs shall be stated.

8th. Mention of the name or trading name, with details of registration with Companies Registry where companies are concerned, and the address of:

- a) the owner or promoter.
- b) the transferor, stating its precise legal relationship with the owner or promoter at the time the contract is executed.
- c) the purchaser.
- d) the services company.

- e) the third party providing the exchange programme, where applicable. If this third party is a legal person, it must have opened and registered a branch in Spain.

9th. The lifetime of the scheme, with reference to the regulatory deed and the date of registration thereof. If the property is under construction, reference to the deadline set for registration of the certificate of completion of construction.

10th. Mention of the purchaser's right to:

- a) Check the ownership of, and charges on, the property by requesting the information from the relevant Registrar, whose address and fax number must be expressly stated.
- b) Demand the execution of a public deed.
- c) Have their purchase entered in the Property Register.

11th. The address or electronic address specifically designated by the contracting parties for the service of any kind of summons and notices. Each party may after the conclusion of the contract change their address or electronic address provided that such change is notified to the other party by any means whereby evidence of receipt is obtained.

12th. The place of execution of the contract and signature.

13th. Whether or not the possibility exists to participate in an organised system for assignment to a third party of the right the subject of the contract. Where that possibility does exist, the eventual costs – at least approximately – which such a system will entail for the purchaser shall be noted.

2. The inventory and, where relevant, general conditions not included in the contract, as well as the registered statutes, shall be attached as an inseparable schedule signed by the parties.

3. The contract and the **pre-contractual information** stipulated in this Title shall be drawn up in the language or in one of the languages, to be chosen by the purchaser, of the Member State of the European Union in which the purchaser resides or of which they are a national provided that it is an official EU language. **If the consumer is resident in Spain or if the trader carries out their activities in Spain then the contract shall also be drawn up in Spanish and it may also, where applicable, at the request of any of the parties, be drawn up in any other Spanish language which is an official language in the place of execution of the contract.** The transferor shall also provide the purchaser with a sworn translation of the contract into the official language or one of the official languages of the EU Member State in which the property is located provided that it is an official EU language.

Foreign purchasers who are neither citizens of, nor resident in, a Member State of the European Union, may require that a translation of the contract and the remaining documents into the language of a Member State of the European Union of their choice be provided to them.

Owners, promoters or any physical or legal persons who are professionally engaged in the conveyance of rotational enjoyment rights must keep and make available to the consumer organisations and, where applicable, to the tourism authorities, the translations of the documents which they must deliver to any purchaser and of any clauses which have the status of general conditions.

Without prejudice to any liabilities which may arise, in the event of any discrepancy between the different versions that which is most favourable to the purchaser shall apply.

4. Where applicable, the energy efficiency certificate of the building or of the acquired part thereof, as the case may be, shall be provided to the purchaser together with the contract.

Article 31. Notarisation and public registration of the contract.

1. The acquisition and transfer of rotational enjoyment rights may be registered with the Land Registry provided that the contract has been entered into or formalised as a public deed and that the Registrar shall start a folio for the period of occupation whose enjoyment right is the subject of the transfer, always without prejudice to the provisions of the Mortgage Act.

The Registrar shall upon registration of the first transfer of a rotational enjoyment right enter a marginal note specifying that the said right bears an *in rem* charge to answer for the last two fees from the filing of a court claim or a notarised claim during the whole lifetime of the scheme. In order for the guarantee to be fulfilled, the service provider shall have resort to any of the enforcement proceedings envisaged under the *Ley de Propiedad Horizontal* (Condominium Act) 46/1960 of the 21st July for a community of property owners to claim payment of service charges and to the out-of-court proceeding of mortgage foreclosure.

2. Where the contract has been entered into before a Notary, the latter shall note the right of withdrawal conferred on the purchaser by Article 12 – which may be exercised in the form of a notarised statement – and the remaining rights recognised by this Act.

3. The Notary may not authorise the public deed and the Registrar may not register the right if the contract does not contain the information demanded by Article 25.

Article 32.- *Termination as a result of non-payment of fees.*

1. Unless otherwise agreed, the owner will be entitled to terminate the contract if the purchaser holding title to the rotational enjoyment right shall after being called upon to do so fail to pay the fees due for the services provided during not less than one year.

The owner may at the request of the services company exercise such right of termination after serving a payment claim on the debtor, by a means whereby evidence of receipt is obtained, at the address noted in the register or, failing the latter, the address reflected in the contract to such end, warning the said debtor that the contract will be terminated if the sums thereby claimed fail to be paid in full within thirty calendar days thereof.

2. In order to terminate the contract, the owner shall lodge, for the benefit of the holder of the right, such portion of the price which is proportional to the time period remaining until its expiry.

However, a penalty clause may be agreed on whereby all or part of the sums which in accordance with the last preceding paragraph may be due to the holder of the terminated right will be forfeited. All of this is without prejudice to the moderating powers of the courts provided for by Article 1154 of the Civil Code.

3. If the owner exercises the termination faculty regulated by this Article then the owner shall settle any debts owed by the holder of the rotational enjoyment right to the services company unless otherwise agreed with the latter.

Article 33. *Rights of the holder of rotational enjoyment rights.*

1. The holder of a rotational enjoyment right may freely dispose of their right without any limitations other than those laid down by Law, and the conveyance thereof will not affect the obligations arising from the scheme.

2. A holder of rotational enjoyment rights who engages in professional activities involving the conveyance or marketing of rights *in rem* created in respect of same shall be subject to the provisions of this Title. The purchasers of these rights shall become subrogated to the rights to which the holder of the rotational enjoyment right is entitled in accordance with this Act and, particularly, the rights to which they are entitled against the owner of the property.

3. In the circumstances described in the last preceding paragraph, if the rotational enjoyment right is not registered in the name of the transferor of the right *in rem* or the assignor of the personal right then the purchaser or assignee may request that the rotational enjoyment right be registered in the name of the transferor or assignor by means of the procedure regulated by Article 312 of the Mortgage Regulations.

4. The regulatory deed of the rotational enjoyment scheme must provide for the creation of a Community of Titleholders. The Community of Titleholders shall be governed by the statutes specified in the regulatory deed or by those which may be freely adopted by the holders of title to the rights, and their agreements shall be subject to the following rules:

1st. Any agreements intended to modify the established scheme must be passed by a two-third majority of the titleholders.

2nd. Any other agreements will only require a simple majority of the holders of title to rotational enjoyment rights.

3rd. Each person will have as many votes as the number of rights they hold title to.

4th. If there is no majority, or if the agreement of the majority is seriously prejudicial to the interested parties, the Judge will issue a ruling at the request of the party concerned.

5th. The rules of the *Ley de Propiedad Horizontal 46/1960* (Condominium Act) of the 21st July which govern the operation of communities of property owners shall be applicable on a supplementary and subsidiary basis to these rules.

CHAPTER III

Non-performance of services

Article 34. *Non-performance of services.*

The owner or promoter is responsible to the holders of rotational enjoyment rights for the actual provision of the services. If the services company fails to comply with its obligations then the owner or promoter shall terminate the contract and demand compensation for loss and damages. The right to terminate the contract lies with the owner or promoter. However, any holder of rotational enjoyment rights may demand from the owner an effective provision of the services and the applicable indemnification if they are not provided. Having terminated the contract with the services company which has breached it, the owner or promoter shall either take direct responsibility for providing the service or enter into a contract with another services company. Under no circumstance may any change to the contract be detrimental to the holders of rotational enjoyment rights.

TITLE III

Taxation rules

Article 35. *Scope of application.*

The taxation rules envisaged under this Title shall apply to the rights regulated under Title II, without prejudice to the provisions of any international Treaties and Conventions to which Spain is a party.

Where no provision is made under this Title, the general taxation provisions shall apply.

Article 36. *Impuesto sobre el Patrimonio (Wealth Tax).*

The rights contemplated under Title II, whatever their nature, shall in accordance with the provisions of article 10.3.b) of Act 19/1991 of the 6th June on Wealth Tax be valued on the basis of their acquisition price.

Article 37. *Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados (Transfer Tax and Stamp Duty).*

Transfers between private individuals which are not subject to Value Added Tax or to the Canaries' General Indirect Tax of the rights contemplated under this Act, whatever their nature, shall bear 4 percent Transfer Tax and Stamp Duty **without prejudice to the jurisdiction of the Autonomous Communities on the matter.**

Sole temporary provision. *Pre-existing contracts.*

1. This Act shall not apply to the contracts between traders and consumers, whatever their name, referred to in articles 1 and 23 which have been entered into before, and continue to be in force upon, its coming into force unless the contracting parties shall agree to adapt them to any of the modalities acknowledged by this Act.

2. The form and content of the adaptation acts shall be those provided for in this Act for the respective legal transactions.

3. All pre-existing schemes shall have a maximum duration of 50 years which, in the case of those formalised before the coming into force of Act 42/1998 of the 15th December, shall be calculated from the said formalisation date unless they have a shorter lifetime or their continuance has by Deed of Adaptation been expressly confirmed for an indefinite or a specific period of time.

4. The rotational enjoyment schemes of a contractual or an associative nature relating to immovable property located in Spain to which article 23, paragraph 8, refers and which have been formally created before the coming into force of this Act may by registration with the Land Registry of the place where the immovable property is located gain public status as provided for in the said paragraph 8.

Sole repealing provision. *Regulatory repeal.*

Royal Decree-Law 8/2012 of the 16th March on contracts concerning the rotational enjoyment of immovable property for tourist use, acquisition of long-term holiday products, resale and exchange is hereby repealed.

First final provision. *Jurisdiction.*

1. This Act has been made by virtue of the State's jurisdiction concerning legislation of commercial, procedural and civil law as provided for by article 149.1.6th and 8th of the Spanish Constitution, without prejudice to preservation, amendment and development by the Autonomous Communities of civil, local or special rights where they exist.

2. Title III has been made by virtue of article 149.1.14th of the Spanish Constitution whereby jurisdiction is vested in the State with regard to the general treasury.

Second final provision. *Incorporation of EU Legislation.*

Directive 2008/122/EC of the European Parliament and of the Council, dated 14th January 2008, on consumer protection with regard to certain aspects of the contracts related to the rotational enjoyment of property for tourist use, acquisition of long-term holiday products, resale and exchange, is hereby incorporated into the Spanish legal system.

Third final provision. *Amendment of Act 37/1992, dated 28th December, on Value Added Tax.*

A new subparagraph no. 18 is hereby added to paragraph one.2 of article 91 of Act 37/1992, dated 28th December, on Value Added Tax, with the following wording:

«18th The assignment of rights of rotational enjoyment of buildings, real estate complexes or architectonically differentiated parts thereof where the property has, at least, ten accommodation units, in accordance with that provided for in the rules which govern these services».

Fourth final provision. *Coming into force.*

This Act shall come into force on the day following its publication in the «Boletín Oficial del Estado» (Official Gazette).

Now therefore,
I command all Spanish individuals and authorities to observe and cause to be observed this Act.

Madrid, on this 6th day of July of 2012.

KING JUAN CARLOS

President of the Government,
MARIANO RAJOY BREY

SCHEDULE I

Standard Information form for contracts of rotational enjoyment of property for tourist use

Part 1:

Identity, domicile and legal statute of the trader(s) who will be a party to the contract:

Brief description of the product (e.g. a description of the immovable property):

Exact nature and content of the right(s):

Exact period during which the right the subject of the contract may be exercised and, if necessary, its duration:

Date from which the consumer may exercise the right the subject of the contract:

Where the contract refers to a specific property which is under construction, date on which the accommodation unit and the services/facilities will be finished/available:

Price to be paid by the consumer for the acquisition of the right(s):

Specification of any additional costs required to be met by virtue of the contract; type of costs and respective amounts thereof (e.g. annual contributions, other recurring contributions, special taxes, local taxes):

Summary of the main services available to the consumer (e.g. electricity, water supply, maintenance, refuse collection) and amounts to be paid by the consumer for the said services:

Summary of the facilities which the consumer can enjoy (e.g. swimming-pool or sauna):

Are they included in the costs mentioned above?

If they are not, specify what is included and what must be paid separately:

Is it possible to affiliate to an exchange system?

If it is, name of the exchange system:

Indication of the costs arising from the affiliation or the exchange:

Has the trader adhered to one or several codes of conduct and, if so, where can such code(s) be found?

Part 2:

General information:

– The consumer may withdraw from this contract without any justification within fourteen calendar days of the date of execution of the contract or of any preliminary binding contract or of the date of receipt of the said contracts if this happens on a later date.

– Advance payments by the consumer are prohibited during the said withdrawal period. Such prohibition extends to any consideration including payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt, etc. This includes not only payments to the trader but also to third parties.

– The consumer will not bear any costs or obligations other than those specified in the contract.

– In accordance with International Private Law, the contract may be governed by the law of a country other than the Member State in which the consumer has their residence or habitual domicile and any possible litigation may be referred to jurisdictional bodies other than those of the Member State in which the consumer has their residence or habitual domicile.

Signature of the consumer:

Part 3:

Additional information to which the consumer is entitled and specific place where it can be obtained (e.g. the relevant section of a general leaflet) if the said information is not provided below:

1) INFORMATION ON THE ACQUIRED RIGHTS

– conditions governing the exercise of the right the subject of the contract in the territory of the Member State or Member States in which the relevant property or properties are located and information on whether such conditions have been met or, otherwise, which conditions are yet to be met,

– where the contract envisages rights of occupation over an accommodation unit selected from among a group of accommodation units, information concerning the restrictions on the consumer's capacity to use any one of such accommodation units at any time.

2) INFORMATION ON THE PROPERTIES

– where the contract relates to a specific immovable property, a precise and detailed description of the said property and its location; where the contract relates to several properties (tourist complexes), an appropriate description of the said properties and their location; where the contract relates to an accommodation unit which is not an immovable property, an appropriate description of the unit and of its facilities,

– the services (e.g. electricity, water supply, maintenance, refuse collection) which the consumer is or will be entitled to enjoy and the conditions for such enjoyment,

– where applicable, the communal facilities such as swimming-pools, saunas, etc to which the consumer has or may in due course have access and the conditions for such access.

3) ADDITIONAL REQUIREMENTS FOR ACCOMMODATION UNITS UNDER CONSTRUCTION (where applicable)

– state of completion of the unit and the services which allow it to be in full operation (gas, electricity, water and telephone connections) and any facilities which the consumer will be entitled to enjoy,

– deadline for completion of the unit and the services which allow it to be in full operation (gas, electricity, water and telephone connections) and a reasonable estimation of the date of completion of any facilities which the consumer will be entitled to enjoy,

– construction licence number and name and full address of the competent authority or authorities,

– a guarantee concerning the completion of the unit or a guarantee concerning the reimbursement of any payment made in the event that the unit is not completed and, where applicable, the conditions governing the operation of such guarantees.

4) INFORMATION ON COSTS

– a precise and adequate description of all the costs associated with the contract for rotational enjoyment of property for tourist use; system of allocation of costs to the consumers and how and when the said costs may be increased; method to calculate the sum total of the charges relating to the occupation of the property, the mandatory legal charges (e.g. taxes and contributions) and the general expenses of an administrative nature (e.g. management, maintenance and repairs),

– where applicable, information concerning the existence of charges, mortgages, liens or any notes on the register which encumber the right to the accommodation unit.

5) INFORMATION ON TERMINATION OF THE CONTRACT

– where applicable, information on the different ways of terminating ancillary contracts and consequences of such termination,

– conditions for termination of the contract, consequences thereof and information on the consumer's liability for any cost which may arise from such termination.

6) ADDITIONAL INFORMATION

– information as to how maintenance and repairs of the units are organised as well as the administration and management thereof, including the possibility that the consumer may have an influence on, and participate in, the decisions on such matters and the forms of participation,

– information as to whether or not it is possible to affiliate to a system of resale of the contractual rights, information on the relevant system and indication of the costs related to a resale by such a system,

– indication of the language or languages which may be used to communicate with the trader regarding the contract, e.g. in relation to management decisions, cost increase and the processing of information requests and claims,

– where applicable, the possibility to resort to an out-of-court means of resolution of conflicts.

Acknowledgement of receipt of the information:

Signature of the consumer:

SCHEDULE II

Standard Information form for long-term holiday product contracts

Part 1:

Identity, domicile and legal statute of the trader(s) who will be a party to the contract:

Brief description of the product:

Exact nature and content of the right(s):

Exact period during which the right the subject of the contract may be exercised and, if necessary, its duration:

Date from which the consumer may exercise the right the subject of the contract:

Where the contract refers to a specific property which is under construction, date on which the accommodation unit and the services/facilities will be finished/available:

Price to be paid by the consumer for the acquisition of the right(s), including any recurring cost foreseen to be borne by the consumer as a consequence of their right to enjoy the accommodation unit, the travelling and any associated products or services which shall be specified :

After the first year, the subsequent amounts may be adjusted to ensure that the actual value of the instalments is preserved, e.g. to take inflation into account.

Staged payment schedule in which instalments of the same amount are set for each year of duration of the contract and dates on which they will be due for payment.

Specification of any additional costs required to be met by virtue of the contract; type of costs and respective amounts thereof (e.g. annual contributions):

Summary of the main services available to the consumer (e.g. hotel stays and discount flights):

Are they included in the costs mentioned above?

If they are not, specify what is included and what must be paid separately (e.g.: three-night stay included in the annual contribution, any other unit must be paid separately):

Has the trader adhered to one or several codes of conduct and, if so, where can such code(s) be found?

Part 2:

General information:

– The consumer may withdraw from this contract without any justification within fourteen calendar days of the date of execution of the contract or of any preliminary binding contract or of the date of receipt of the said contracts if this happens on a later date.

– Advance payments by the consumer are prohibited during the said withdrawal period. Such prohibition extends to any consideration including payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt, etc. This includes not only payments to the trader but also to third parties.

– The consumer has the right to terminate the contract without incurring any penalty whatsoever by serving notice on the trader within fourteen calendar days of receipt of the payment notice for each annual period.

– The consumer will not bear any costs or obligations other than those specified in the contract.

– In accordance with International Private Law, the contract may be governed by the law of a country other than the Member State in which the consumer has their residence or habitual domicile and any possible litigation may be referred to jurisdictional bodies other than those of the Member State in which the consumer has their residence or habitual domicile.

Signature of the consumer:

Part 3:

Additional information to which the consumer is entitled and specific place where it can be obtained (e.g. the relevant section of a general leaflet) if the said information is not provided below:

1) INFORMATION ON THE ACQUIRED RIGHTS

- an adequate and correct description of the existing discounts on future reservations illustrated with a number of examples of recent offers,
- information on any restrictions on the consumer's capacity to use the rights, such as a limited availability of the offers awarded to the first client or time limits on the validity of special discounts or those related to specific promotions.

2) INFORMATION ON TERMINATION OF THE CONTRACT

- where applicable, information on the different ways of terminating ancillary contracts and consequences of such termination,
- conditions for termination of the contract, consequences thereof and information on the consumer's liability for any cost which may arise from such termination.

3) ADDITIONAL INFORMATION

- indication of the language or languages which may be used to communicate with the trader regarding the contract, e.g. in relation to the processing of information requests and claims,
- where applicable, the possibility to resort to an out-of-court means of resolution of conflicts.

Acknowledgement of receipt of the information:

Signature of the consumer:

SCHEDULE III

Standard Information form for resale contracts

Part 1:

Identity, domicile and legal statute of the trader(s) who will be a party to the contract:

Brief description of the services (e.g., marketing):

Duration of the contract:

Price to be paid by the consumer for the acquisition of the right(s):

After the first year, the subsequent amounts may be adjusted to ensure that the actual value of the instalments is preserved, e.g. to take inflation into account.

Specification of any additional costs required to be met by virtue of the contract; type of costs and respective amounts thereof (e.g. local taxes, notary's fees, public registration costs):

Has the trader adhered to one or several codes of conduct and, if so, where can such code(s) be found?

Part 2:

General information:

– The consumer may withdraw from this contract without any justification within fourteen calendar days of the date of execution of the contract or of any preliminary binding contract or of the date of receipt of the said contracts if this happens on a later date.

– Advance payments by the consumer are prohibited during the said withdrawal period. Such prohibition extends to any consideration including payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt, etc. This includes not only payments to the trader but also to third parties.

– The consumer will not bear any costs or obligations other than those specified in the contract.

– In accordance with International Private Law, the contract may be governed by the law of a country other than the Member State in which the consumer has their residence or habitual domicile and any possible litigation may be referred to jurisdictional bodies other than those of the Member State in which the consumer has their residence or habitual domicile.

Signature of the consumer:

Part 3:

Additional information to which the consumer is entitled and specific place where it can be obtained (e.g. the relevant section of a general leaflet) if the said information is not provided below:

– conditions for termination of the contract, consequences thereof and information on the consumer's liability for any cost which may arise from such termination.

– indication of the language or languages which may be used to communicate with the trader regarding the contract, e.g. in relation to the processing of information requests and claims,

– where applicable, the possibility to resort to an out-of-court means of resolution of conflicts.

Acknowledgement of receipt of the information:

Signature of the consumer:

SCHEDULE IV

Standard Information form for exchange contracts

Part 1:

Identity, domicile and legal statute of the trader(s) who will be a party to the contract:

Brief description of the product:

Exact nature and content of the right(s):

Exact period during which the right the subject of the contract may be exercised and, if necessary, its duration:

Date from which the consumer may exercise the right the subject of the contract:

Price to be paid by the consumer for the contributions to the exchange system:

Specification of any additional costs required to be met by virtue of the contract; type of costs and respective amounts thereof (e.g. renewal fees, other contributions, special taxes, local taxes):

Summary of the main services which the consumer can enjoy:

Are they included in the costs mentioned above?

If they are not, specify what is included and what must be paid separately (type of costs and specification of the respective amounts; e.g., an estimation of the price to be paid for each exchange transaction inclusive of any additional costs):

Has the trader adhered to one or several codes of conduct and, if so, where can such code(s) be found?

Part 2:

General information:

– The consumer may withdraw from this contract without any justification within fourteen calendar days of the date of execution of the contract or of any preliminary binding contract or of the date of receipt of the said contracts if this happens on a later date. Where the exchange contract is offered together with and at the same time as the contract for rotational enjoyment of property for tourist use, the same withdrawal period shall apply to both contracts.

– Advance payments by the consumer are prohibited during the said withdrawal period. Such prohibition extends to any consideration including payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt, etc. This includes not only payments to the trader but also to third parties.

– The consumer will not bear any costs or obligations other than those specified in the contract.

– In accordance with International Private Law, the contract may be governed by the law of a country other than the Member State in which the consumer has their residence or habitual domicile and any possible litigation may be referred to jurisdictional bodies other than those of the Member State in which the consumer has their residence or habitual domicile.

Signature of the consumer:

Part 3:

Additional information to which the consumer is entitled and specific place where it can be obtained (e.g. the relevant section of a general leaflet) if the said information is not provided below:

1) INFORMATION ON THE ACQUIRED RIGHTS

– an explanation of how the exchange system works; the possibilities and modalities of the exchange; specification of the value ascribed to the rotational enjoyment of property for

tourist use which corresponds to the consumer within the exchange system and examples of specific exchange possibilities,

– specification of the number of tourist resorts available and the number of participants in the exchange system, mentioning any limitation on the availability of certain accommodation units selected by the consumer, e.g. higher demand periods, possible need to reserve a long time in advance and any other restriction on the choice related to the rights of rotational enjoyment contributed by the consumer to the exchange system.

2) INFORMATION ON THE PROPERTIES

– brief and appropriate description of the properties and their location; where the contract refers to an accommodation unit which is not an immovable property, an appropriate description of the unit and of the facilities; description of the place in which the consumer can obtain further information.

3) INFORMATION ON COSTS

– information concerning the trader's obligation to provide, before an exchange is agreed upon, information on each proposed exchange and on any additional cost to be borne by the consumer in relation to the exchange.

4) INFORMATION ON TERMINATION OF THE CONTRACT

– where applicable, information on the different ways of terminating ancillary contracts and consequences of such termination,

– conditions for termination of the contract, consequences thereof and information on the consumer's liability for any cost which may arise from such termination.

5) ADDITIONAL INFORMATION

– indication of the language or languages which may be used to communicate with the trader regarding the contract, e.g. in relation to the processing of information requests and claims,

– where applicable, the possibility to resort to an out-of-court means of resolution of conflicts.

Acknowledgement of receipt of the information:

Signature of the consumer:

SCHEDULE V

Standard withdrawal form in a separate document for the purpose of facilitating the exercise of the right of withdrawal

Right of withdrawal

The consumer has the right to withdraw from this contract without any justification within fourteen calendar days.

The withdrawal period starts on (to be completed by the trader before furnishing the form to the consumer).

If the consumer has not received this form, the withdrawal period will start upon receipt of the form by the consumer but it will in any case expire upon the lapse of one year and fourteen calendar days.

If the consumer has not received all the information required then the withdrawal period will start upon receipt by the consumer of the said information but it will in any case expire upon the passing of three months and fourteen calendar days.

In order to exercise the right of withdrawal, the consumer shall serve notice on the trader on a durable medium (e.g., a letter sent by post or an e-mail) addressed to the name and address mentioned below. The consumer may use this form to such end but this is not an obligation.

No cost whatsoever may be charged to the consumer if they decide to exercise their right of withdrawal.

Prohibition of advance payments

Advance payments by the consumer are prohibited during the withdrawal period. Such prohibition extends to any consideration including payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt, etc. This includes not only payments to the trader but also to third parties

Notice of withdrawal

- Recipient (name and address of the trader) (*):
- I/we hereby inform you (**) that I/we have decided (**) to withdraw from the contract.
- Date of conclusion of the contract (*):
- Name of the consumer or consumers (***):
- Address of the consumer or consumers (***):
- Signature of the consumer or consumers (only if this form is delivered on paper) (***):
- Date (***):

(*) To be completed by the trader before furnishing the form to the consumer.

(**) Write off whatever does not apply.

(***) To be completed by the consumer or consumers in case of withdrawal by this form.

Acknowledgement of receipt of the information:

Signature of the consumer: