SCHEDULE 2

SPAIN

COUNTRY ANALYSIS

Draft – September 2000

1. General

1.1 Pledge – General Characteristics

- Securities which can be pledged in Spain are shares listed in the Stock Exchange; public debt fixed income securities, traded in the Debt Market of the Bank of Spain and private debt fixed income securities, traded in AIAF market. Securities in Spain may be represented in general by either book entry or the traditional categories of registered or bearer securities. Securities must be represented by book entry accounts in order to be listed in the stock exchanges.

- With respect to shares, the execution of the pledge will be done as a public document, either a public deed executed before a notary or a “poliza intervenida” (“policy”) signed in front of an official stockbroker, which will make it enforceable against third parties. For shares evidenced by certificates, the shares must be delivered to the pledgee and also they need to be endorsed with the details of the pledge. For shares evidenced by book entry the creation must be noted against the entry; perfection is effected as soon as the pledge has been filed with the book entry account related to the pledged securities, or the execution date has been stated in the corresponding public deed. Likewise, the pledge must be filed with the relevant company's share registry book in order to exercise the shareholder's rights, as applicable. All the rights attaching to the shares, including voting rights, remain with the pledgor. When the debt secured by the pledge becomes due and payable then the pledgee has the right to request the sale of the pledged shares, but the pledgee does not take immediate possession and ownership of the shares. Notification is not required to perfect security but to facilitate enforcement and must be made by the pledgor to the Company whose shares are pledged. As regards enforcement, in the case of listed shares there is a special procedure under the Commercial Code; in the case of unlisted shares, at the choice of the beneficiary, the enforcement is done by either a judicial or extra judicial procedure; the latter is much faster, but the possibility of using it has become doubtful due to a recent ruling of the Supreme Court.

- A pledge of listed securities requires a notice to the Managing Entity "Sociedad Rectora" of the relevant Stock Exchange and to the National securities Market Commission "Comision Nacional del Mercado de Valores". Those notices must be given within 10 days following the execution of the public document. For bearer securities, transfer is done by transfer of title. For registered securities, transfer requires endorsement and in the case of securities represented by book entry, the transfer will take place by registration at the account held with the relevant registry where the securities are registered.

- In the case of collateral which has been required for general obligations on any securities exchange, for market transactions or a clearing house, the pledge may be created by means of a private document and subsequent filing with the entity in charge of the book entry accounts as long as the consent of the owner and the beneficiary are evidenced by means of a statement made by the owner. It should be noted that a pledge created by means of a private document shall not have the effects corresponding to an execution by means of a public deed, particularly in respect of priority issues.

- No stamp duty or equivalent documentary tax is applicable to pledges.

- Substitution of assets will destroy the pledge. The pledge of additional collateral, both as a result of substitutions and "top up" collateral is considered to be a new security interest under Spanish law.

- There is no possibility of pledge over fluctuating pool of assets.

- Floating charges do not generally exist. A charge such as a pledge needs to be taken over assets that are clearly and individually identified. A pledge may not be taken over future assets or over a pool of assets that can be replaced at any time. This principle entails that if the assets subject to the security interest were to be substituted, a new security would have to be created. Likewise, adjustments to the type or number of the securities subject to a pledge mean that the relevant pledge agreement (which is notarised) needs to be according amended.

  (There is an exception to this principle where a floating pledge over fungible assets such as securities may be created under Catalan law, if the assets are located in Catalonia and the application of Catalan law has not been artificially sought).

- One of the requisites for a pledge to be considered an in rem right is that the pledgor must own the collateral for creating the security interest. Hence, the pledge of yet to be delivered securities to the pledgor would be inadmissible under Spanish law. Such securities could only be pledged once the pledgor acquires the property of the collateral. Before acquiring their ownership the pledgor would leave only assumed an undertaking to create a security interest.

- The pledgee is prohibited from either transferring, pledging, rehypothecating or in any other manner disposing of the pledged assets.

1.2 Transfer of Title – General Characteristics

Transfer has been recognised by Spanish case law (Supreme Court decision dated June 6, 1995, September 6, 1992 and May 2, 1992) and by Art. 466 of the Civil Code provisions applicable exclusively to the Autonomous Community of Navaria.

Spanish case law defines this as a temporary transfer of ownership on certain assets made, for the purpose of securing a debt owed by the transferor to the transferee. The transferee is obliged to give the assets transferred back to the transferor once the debt has been duly satisfied.

There is no specific rule regarding transfer of title and this is an institution which can be legally built by contract under the provisions of the Spanish Civil Code in connection with the principle of freedom of contract.

There is no need for any filing or perfection when securities are in bearer form since transmission is made by traditio. If securities are in registered form or in book-entry form it is necessary to comply with legal requirements in connection with this collateral arrangement.

As regards substitution, the exchange of securities must be made as a new transfer;

Set-off rights are not available in Spanish insolvency laws for policy reasons since they are considered prejudicial general creditors.

Recharacterisation risk will not exist provided that the transfer is well documented. The risk itself exists and in practice the risk might be lower if the collateral arrangement is part of a single agreement for derivative transactions and one of the parties to the single agreement is either a financial institution or an investment services company.

If the arrangement is recharacterised by the relevant court, the court will find that the transferee has no proprietary interest in the collateral transferred, so in the event of the transferor's insolvency, the collateral provided should be returned to the transferor upon the receiver's request.

When the agreement is governed by a foreign system of law that does not recharacterise, the risk will be still present under domestic law. For instance, if the transferred securities are located in a foreign jurisdiction, a third party creditor could contest such arrangements on the grounds that they are contrary to the Spanish "public order" by the unenforceability of transfer of title as a fundamental principle of Spanish law which cannot be avoided by a Spanish party by choosing a foreign law.

Under regarding peculiarities of this mechanism in relation to the Spanish insolvency law, the transferee achieves no priority over the rest of unsecured creditors in case of the transferor's insolvency and the transferee will be obliged to give the securities back to the transferor in order to include such securities within the total assets of the transferor before applying such assets to payment of unsecured debts.

2. Private International Law and Domestic Law Aspects of Collateral

Validity of the Contract/Attachment

Spanish private international law:

- The applicable law as to the formation of the agreements is the law in the country in which the agreements are signed. Notwithstanding the foregoing, the laws applicable to the content of the agreement shall also be valid, as well as the national law of the executing parties.

- The creation of a pledge or of any other security interest will be governed by the law of the country where the securities or rights are located ("lex rei sitae").

- A security interest created abroad is more likely to be recognised in Spain when:

  - such security interest created abroad has a direct equivalent with a security interest provided under Spanish law.

  - there exists a similarity between the formalities required by the foreign law and those required by Spanish law (notarial deed).

Spanish domestic law:

- In principle, in order to constitute a pledge in Spain, a written contract is needed as well as the delivery of the possession ("traditio") of the assets. In the case of securities represented by book entries the registration of the pledge is needed.

- The general provisions applicable to the validity of the pledge agreement are set forth in the Spanish Civil Code and state that:

  - the pledge must be created in order to ensure fulfilment of a principal obligation;

  - the object of the pledge must belong to the pledgee;

  - the pledgee must have no restrictions in order to enter into a pledge agreement or must be duly authorised; and

  - the object of the pledge must be entrusted to the pledgor or a third person by mutual consent between the pledgor and the pledgee.

- Regarding securities held by book entry accounts, this requirement shall be met by filing the pledge with the book entry account.

Perfection:

Spanish private international law:

- The relevant law is for determining perfection is the *lex rei sitae*.

Spanish domestic law:

- A security interest is created and perfected when a collateral agreement is entered into and certain formalities and legal requirements are met. The formalities are the delivery of possession to the pledgee or an agreed third party and the execution of a Notarial Deed evidencing the pledge or at least the transfer of possession (this requirement will be essential in order for the peldgee to benefit from the right of separation from the bankruptcy estate in case of the pledgor's bankruptcy).

- The Sixth Additional Provision of the Law 37/1998 the Amendment of Law 24//1988 of 28 of July of the Securities Act states that when a pledge is taken over negotiable securities in a Secondary Market and represented by book entry, for the purpose of securing general obligations arising from any Secondary Market and its liquidity and clearing systems or obligations arising from any transaction arranged in these Markets, such pledge can be constituted by intervened policy by stock broker or public document**.** Likewise the pledge can also be constituted following the wording of the Art. 10 of the Securities Act. by:

  - private document, if the institution in charge of the account register carries out the registration when it gets evidence of consent from the

holder in that register and the institution in favour of which the pledge has been provided;

- unilateral declaration by the holder in the account register, in which case the acceptance by the pledgee will be considered as taken from the moment in which the institution in charge of the account register is aware of the unilateral declaration, whenever this acceptance had been envisaged in the Market regulations or in settlement and clearing systems, or it had been previously and expressly stipulated by the parties involved.

The institution in charge of the account register will inform the pledgee not only of the registration of the pledge, but also of any incidences and circumstances surrounding the pledge which may take place.

The pledge will only be valid against third parties from the date that appears on the account register.

- On this basis, it could be argued that pledges, constituted for the purposes above referred in a document without the intervention of a notary or of a special public stock broker are enforceable vis-à-vis third parties.

  This interpretation is reinforced by the Art. 14.5 of the law 41/1999, that foresees the possibility of execution of pledge without the intervention of the above mentioned notario and public stock broker.

Priorities:

Spanish private international law:

- Priority will be determined by the “lex rei sitae”.

Spanish domestic law:

- Priority aspects will be determined by execution before a Notary Public or Official Stockbroker; filing with the book entry registry and execution date.

- In the case of “suspension of payment” , we have to clarify that wages and salaries of the last 30 days would prevail over any credit, including pledge credits, so regarding these wages we have to consider:

  - wage credits are preferred over any other credit other than securities such as a mortgage or pledge;

  - the wages for the last 30 days worked and for a quantity that cannot be greater than double the minimum interprofessional wage are preferred over any other credit including those guaranteed by pledge or mortgage; and

  - the worker's credits over the goods which they manufactured have preference;

- the severance pay derived from the termination of the workers' jobs is considered as another wage, so it will have preference.

Enforcement:

Spanish private international law:

- As a general rule enforcement is effected in accordance with the laws of the place in which the securities are held. (*lex rei sitae*).

Spanish domestic law:

- Under Spanish law, the enforcement of the security interest must be performed pursuant to a procedure (judicial or extrajudicial) including the sale of assets at a public auction.

- The basic regulation of pledge in Spain is contained in Arts. 1863 to 1874 of the Spanish Civil Code. The execution of pledges is regulated in Art. 1872, according to which, a public auction before Public Notary is required.

- However, Arts. 320 to 324 of the Spanish Commercial Code foresee a much more simplified procedure in the case of pledges on securities quoted in organised markets, that guarantees obligations vis-à-vis credit institutions.

  In this case, the creditor benefiting of a pledge, unless otherwise agreed and with no need to call upon the debtor, will be authorised to ask for the sale of the pledged securities. In order to do so, the creditor will have to hand to the Secondary Market's managing bodies the following documents:

  - Original pledge contract in public deed or "poliza" form and subsequent modifications to it.

  - Certificates of registration ("certificado de inmovilización" for Public Debt in book-entry from, in the CADE or "certificado de legitimación" or "de inscripción de prenda" for securities generally in book entry form), or securities pledged, or the relevant "certificates of deposit" (only for physical securities).

  - A certification issued by the creditor benefiting of the pledge and intervened by the same public notary or the special public stock broker which intervened the original pledge public deed. This certification must include the amount of money liquid, due and enforceable by the creditor of the pledge against the debtor.

  - A certification issued by public notary or the special public stock broker that intervened the original pledge contract.

  Once the managing body of the market has completed all the appropriate verifications, it will adopt the necessary measures to sell the securities on the same day or if not possible the following day in which it receives the secured creditor's communication, through a member of the particular Secondary Market. Then, it will credit the value of the securities sold as instructed by the realising entity.

Once securities are sold and the relevant amount due is paid out, the proceedings in excess shall be returned to the pledgor.

[A reference to Art. 14 of the law 41/1999 should be added.]

- According to the 10th additional provision of law 37/1998, of November 16, on reform of the securities market law ("Law 37/1998") financial transactions related to swaps, forward rate agreements, options and futures, FX contracts or any combination of the above, as well as any similar derivative transaction made within the framework of a netting agreement are exempt from the general insolvency rules, provided that:

- at least one of the parties to the Netting Agreement is a credit institution or an investment services company or a non-resident entity authorised to carry on activities reserved under Spanish law to such institutions or companies;

- the Netting Agreement provides for the creation of a single legal obligation, which amalgamates all financial transactions included therein and by virtue of which, in the event of early termination, the parties will only have the right to demand the net amount of the terminated transactions, calculated in accordance with the procedure established in the Netting Agreement.

If these requirements are met, the 10th Additional Provision states that:

(i) the declaration of early termination or an equivalent declaration relating to the financial transactions included in the Netting Agreement cannot be limited, restricted or affected in any way by a request for or state of bankruptcy or suspension of payments, liquidation, administration, intervention or creditors netting which affects any of the parties of the Netting Agreement, its subsidiaries or branches;

(ii) if one of the aforementioned insolvency situations affects one of the parties to the Netting Agreement, only the net amount of the financial transaction included in the Netting Agreement, calculated according to the rules established therein, would be included as a credit or debt in the bankruptcy's estate; and

(iii) the financial transactions or the Netting Agreement which regulates said transactions may only be contested pursuant to the Art. 878, paragraph 2 of the Commercial Code which provides for the retroaction period, in an action brought by the receivers of the bankruptcy proceeding where the existence of fraud in entering into such agreements is demonstrated.

In short, under this 10th additional provision of Law 37/1998, most derivatives transactions will be valid in the preference period if the derivatives transactions are created under a Netting Agreement and with the terms and conditions described above. Credit derivatives in the nature of guarantees and commodity related derivatives do not qualify for the exemption. Other transactions, such as margin loans, similarly do not benefit from the exemption.

With respect to a suspension of payments, collateral arrangements would not be subject to absolute retroaction risk, in this case the pledges perfected by insolvent counterparties before suspension is declared by the Court could allow the secured party to effect a separate enforcement of the pledge and to collect its credit against the Spanish insolvent counterparty with the proceeds obtained from such enforcement. However, if insolvency were declared definitive the provision on bankruptcy would apply (see Insolvency section).

Insolvency:

Spanish private international law:

- The law of the country where the insolvent entity is domiciled will govern the bankruptcy or suspension of payments proceedings. In exceptional cases, where the insolvent debtor domiciled abroad has a branch, a permanent establishment or, at least, certain assets located in Spain, the proceedings may also be initiated in the Spanish courts.

- The insolvency procedures affecting a Spanish company shall be carried out before the relevant court located at the domicile of the Spanish company.

Spanish domestic law:

- The Bankruptcy laws in Spain confer special protection to the pledgor e.g. S918 of the Commercial Code generally exempts the pledgor from the obligation to return the pledged securities to the bankruptcy estate. The authorised representatives of the bankruptcy estate shall repay in full the credit or collateralised loan by the pledge.

- On the other hand the Civil Code in its S1926 grants special treatment in favour of the pledgor's rights; those rights need to be valid, effective and binding as long as the pledge is executed before a Notary Public or Official Stockbroker.

- In the case of reorganisation of an insolvent debtor, the pledgee shall have an abstention voting right in the creditors' meeting, which basically means that the result of the agreement reached by the creditor's meeting shall not affect its rights, unless the reorganisation officers decide to repay the existing debt in order to collect the pledged securities.

- In the event of custodian/intermediary's bankruptcy, securities represented by book-entry accounts shall be automatically transferred at no charge by the relevant clearing house to a creditworthy custodian or to the third party accounts of Bank of Spain.

- The pledgee's rights may not be challenged unless the relevant agreements fall within the period of retroactivity, judicially declared.

- SS 879 to 882 of the Commercial Code set forth different rules under which certain transactions made by the bankruptcy entity before the bankruptcy is effective, may be held invalid.

- Without prejudice of the rules referred before, Art. 14 of the law 41/1999, of 12 November 1999, on payment and securities settlement systems (implementing Directive 98/26/EC of May 1998 on settlement finality) stipulate the following:

  "Effect on security

  1. When insolvency proceedings are commenced against a participant of a system, its administration body or paying agent and, when applicable, the remaining participant of said system, will enjoy an absolute separation of assets right (i.e., a "in rem" right to claim over the securities) with regard to security constituted in their favour by said participant or by a third party.

  2. This right to administer their own assets will also assist the Bank of Spain with regard to security constituted in its favour by any entity which is its counterpart or its guarantor in monetary policy transactions, or association with settlement of the systems.

  3. The separation of assets rights referred to in the preceding paragraph will also benefit the following with regard to security constituted in their favour in Spain in the context of similar operations which they carry out: the European Central Bank, any other central bank of a member State of the European Union, and the administrators or paying agents of systems which already exist within the European Union and which are notified according to the provisions of the preceding article 6 and article 10 of the Directive 98/26/CE.

  4. In particular, neither the constitution, the acceptance of security referred to in the preceding paragraphs nor the balance of accounts or registers in which they are recorded, may be impugned in event of retroactive measures associated with insolvency proceedings. Neither will security be subject to claims under the terms of article 324 of the Commercial Code on pledged securities.

  5. Cash and securities representing security may be used for the settlement of secured obligations, inclusive of cases when insolvency proceedings have been initiated, the systems' and central banks' administrators or paying agents having the facility, in the case of securities, of implementing the disposal procedure provided for under article 322 of the Commercial Code.

     All that will be required for the disposal of securities will be the delivery to the leading body for the relevant secondary market of the public or private security document, together with the certificate issued by the central bank or by the system's administration body or paying agent, confirming the amounts due, net and payable which are involved, accompanied by the securities themselves, or a certificate proving their entry in the appropriate register. The date on which the security is constituted and which is shown in the books or register of the central bank system, together with the balance, shall constitute proof to the body itself and to third parties.

  6. Without prejudice to the preceding statements, any surplus arising from the settlement of the relevant obligations charged against the aforementioned

security will be included in the total assets of the member subject to the insolvency proceedings".

Spanish law on insolvency proceedings provides that all acts of the debtor performed within the absolute preference period may be declared null and void. Also, all debtor's transactions which are found to be fraudulent or gratuitous may be cancelled.

- Pledges where there is a substitution of the collateral are deemed to be created on the date the substitution occurred. If that date falls within the preference period, the existing pledge would have been cancelled (the exception to this rule is Art. 12 of the Catalonic Law 22/1991).

3. Miscellaneous

3.1 Cross-border transactions in multi-tiered holding systems

Spain is one of the jurisdictions which has followed traditional categories of legal rights.

The Spanish laws deal clearly with the nature of a participant's interest in a holding of fungible securities so long as they are governed by Spanish law and represented by book-entry form and both the relevant book-entry register and the clearing system are located in Spain. Here the interest of the register holder will be characterised as an absolute interest.

The Spanish legislation does not clearly deal with the legal nature where: the law governing the fungible securities are cleared through a clearing system located outside Spain, if the securities are represented in book-entry form but the relevant book-entry register for these securities is located outside Spain or the fungible securities are represented by global note, deposited with a central securities depositary.

Regarding how would the location of fungible securities be determined under Spanish laws, if the securities are represented by book-entry form "dematerialised securities", the location will be deemed the country where the book-entry register is held.

3.2 Implementation of the Settlement Finality Directive

The Ministry of Finance, in collaboration with other national and supervisory financial bodies, was responsible for implementing legislation. Spain's initial position was to restrict the implementation to the narrowest possible view, thereby confining Art. 9 (2) only to cases involving bankruptcy. As market awareness increased, the bankruptcy-only restriction was dropped; however the proposed legislation still remained narrow in scope. Despite reports of a groundswell of support for the broad view in the public and private sectors, the legislation in its narrow form was passed by the Spanish Parliament and came into force on November 1999 (the above referred law 41/1999, of 12th November).