

Circular nº 10/2017, of 4 September

**PROCEDURE APPLICABLE TO THE PLEDGES OF SECURITIES ACCOUNTS REGULATE
IN THE LAST PARAGRAPH OF SECTION 2.B) OF ADDITIONAL PROVISION SIX OF LAW
OF AUTONOMY OF THE BANCO DE ESPAÑA 13/1994, OF 1 JUNE**

Please note that only the Spanish version of this Circular produces legal effect. Any translation is provided for commercial purposes only.

The procedure applicable to the pledges of securities accounts regulated by the last paragraph of section 2.b) of additional provision six of the Law of Autonomy of the Banco de España 13/1994, of 1 June, is applicable to those pledges which have the purpose of guaranteeing the rights and obligations resulting from any present or future transaction carried out with Banco de España, the European Central Bank or any other national central bank of the European Union, and the pledges given to the Fund for Orderly Bank Restructuring (FROB) and the Deposit Guarantee Fund of Credit Institutions (FCI) in exercising their duties, by virtue of the final eighteenth provision of the Law 9/2012 of 14 November, on the restructuring and resolution of credit institutions. It may also be applied in other cases envisaged by the regulations.

The sixth additional provision of the Law of Autonomy of the Banco de España expressly establishes that, when a securities account is pledged, the provision of the collateral and the recording in writing or in a legally equivalent form of such provision required by section 2.a) of the above named law will be carried out through the recording of the pledge in the pledged account. Likewise it means that, from the moment of that record, the securities that are registered at any time in the pledged account, merely because of this registration, are irrevocable, and with no limit, subject to compliance in full with the obligations guaranteed, and that the guarantor, from the moment of registering the pledge, may also not order the transfer of the securities without the prior consent of the beneficiary of the pledge, unless the parties have agreed to the contrary.

The purpose of this Circular is to establish the procedure to be applied to the record of pledges arranged on proprietary or individual third-party accounts opened in the ARCO Settlement System (hereinafter, ARCO System) operated by Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A.Unipersonal (hereinafter IBERCLEAR).



Therefore, the Board of Directors of IBERCLEAR has approved the following:

Rule 1. Scope of application

1. The rules contained in this Circular shall be applied to the book-entry registration by IBERCLEAR of the pledges of securities accounts covered by the last paragraph of section 2.b) of sixth additional provision of Law of Autonomy of Banco de España 13/1994, of 1 June, which have the purpose of guaranteeing the rights and obligations resulting from any present or future transaction carried out with Banco de España, the European Central Bank or any other national central bank of the European Union, and the pledges given to the Fund for Orderly Bank Restructuring (FROB) and the Deposit Guarantee Fund of Credit Institutions (FCI) in exercising their duties (hereinafter, the beneficiaries).

2. This procedure shall be available to the holders of a proprietary or individual third-party account in the ARCO System.

Rule 2. Procedure.

1. All those who wish to arrange a pledge using this procedure must request to IBERCLEAR the opening of a specific new proprietary or individual third-party account in the ARCO System, which shall be the pledged account. The pledger must have a pledged account for each beneficiary.

2. IBERCLEAR will register the pledged on the account at the moment it is opened.

3. Securities transferred to the pledged account, merely by being registered in the account, are irrevocable, and with no limit, subject to the pledge and, therefore, subject to the compliance in full with the obligations guaranteed.

4. When requesting the opening of a pledged account, the participant irrevocably renounces its powers of disposal over the securities that are registered at any time in the pledged account in favour of the beneficiary of the pledge, who must authorise any transfers to and from the account, a power that may be delegated, and the closure of the pledged account.

In the case of an individual third-party account, the participant must obtain the consent of its client, the account holder, to the renouncing of its powers of disposal over the securities that are registered in the pledged account and its authorisation to IBERCLEAR to execute any transfers to and from this account as indicated by the beneficiary.



Consequently, the securities deposited in this account cannot be withdrawn without the prior consent of the beneficiary of the collateral.

5. The interest, dividends and other amounts that may derive from the securities registered in the pledged account, including those relating to their redemption, shall be paid to the account holder, unless the latter and the beneficiary agree otherwise, in which case a communication to this effect from the beneficiary to IBERCLEAR is sufficient.

Rule 3. Communications

The information resulting from the registration and settlement activities that IBERCLEAR regularly generates shall be sent both to the participant, acting either as the holder or the of the pledged account, or the manager of the pledged account, when this is an individual third-party account, and to the beneficiary. When requesting the opening of a pledged account, the participant shall expressly authorise IBERCLEAR to communicate to the beneficiary any information regarding the pledged account and the securities registered in it. In the case of an individual third-party account, the participant must have obtained the consent of its client to give this authorisation.

REPEALING PROVISION

Circular 2/2014, of 28 May, on the procedure applicable to the pledges of securities accounts regulated in the last paragraph of section 2.B) of sixth additional provision of Law of Autonomy of Banco de España 13/1994, of 1 June.

FINAL PROVISION

This Circular shall enter into force on the day following its publication.

Madrid, 4 September 2017

Jesús Benito Naveira
Consejero Delegado