

Circular nº 3/2019, of 10th September

REGISTRATION OF FOREIGN SECURITIES AND FUNCTIONS OF THE ENTITIES INVOLVED

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

The inclusion and registration of foreign securities has been covered under IBERCLEAR regulations since 1999. Circular 6/1999, 15 September, on the inclusion of foreign securities and functions of the entities involved, established the formal and procedural requirements for anyone requesting the inclusion of foreign securities in the book-entry register. Since it came into force, this internal regulation has proven to be an appropriate legal and operational framework for this registration function, being in line with provisions on registration and settlement contained in article 35 of repealed Royal Decree 116/1992.

With the approval of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July on improving securities settlement in the European Union and on central securities depositories (hereinafter, "Central Securities Depositories Regulation"), and in particular, in light of the upcoming implementation of the requirements for the provision of registration services and the guarantee of the issuer's right to have their securities registered at any central securities depository authorised in the European Union, IBERCLEAR's regulations should be tailored to reflect the differentiation between the provision of the basic notary service and the auxiliary service of including foreign securities. Adapting the regulations in this way means that the procedure whereby issuers exercise their right to appoint IBERCLEAR as the entity in charge of the book-entry register for securities subject to non-Spanish legislation can be adjusted, therefore allowing compliance with the obligations established in said legislation.

In accordance with the provisions of article 49 of the Central Securities Depository Regulation, securities issuers may designate IBERCLEAR as the entity in charge of the book-entry register, so that it takes care of the initial registration of all of the securities comprising the issue. This activity constitutes IBERCLEAR's basic notary service. In addition, and notwithstanding the possibility of establishing links with other central securities depositories, at the issuer's request IBERCLEAR may also register foreign securities even if the issuer has designated another central securities depository for the initial registration in

accordance with the aforementioned article 49. In this case, the intervention of a link entity is necessary. This activity constitutes the auxiliary service of including foreign securities through a link entity.

The relationship between foreign securities issuers and IBERCLEAR must be subject to the same general rules that apply to issuers, so as to ensure open and non-discriminatory access for said issuers to IBERCLEAR's services, regardless of the law under which the securities have been issued.

For the purposes of this Circular, the concept of foreign security must be compatible with the general rules stipulated in the Corporate Enterprises Act, as well as with the content and purpose established in article 49 of the Central Securities Depository Regulations. In particular, with regard to issues of bonds or other securities that recognise or create debt, this Circular addresses the distinction between the following aspects: corporate (the issuer's ability to issue the securities), obligations (contractual) and exchange law (method of representation and proof of ownership and rules governing transfer). Thus, issues of bonds or other securities that recognise or create debt subject to Spanish law in terms of their method of representation and proof of ownership and rules governing transfer fall outside the scope of this Circular when the issuer's ability to apply Spanish legislation to the securities is proven.

This Circular is divided into three sections. The first contains the common provisions. The second section deals with regulating the formal and procedural requirements that apply to issuers of foreign securities who designate IBERCLEAR in accordance with article 49 of the Central Securities Depository Regulations. Lastly, the third section establishes the formal and procedural requirements for the provision of the auxiliary service of registering foreign securities, through which IBERCLEAR includes foreign securities via a link entity.

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



Section I. COMMON PROVISIONS

Rule 1. Foreign securities

For the purposes of this Circular, foreign securities are those issued under non-Spanish law

Rule 2. Designating IBERCLEAR

1. The issuing entities that request the initial registration or the inclusion of their securities with IBERCLEAR must expressly request approval of this designation, by presenting the documentation mentioned in this Circular as applicable.

2. As soon as IBERCLEAR receives the request, it will process it promptly and non-discriminately, sending a written response to the requesting issuing entity as soon as possible and, in any case, within a maximum period of three months after the issuer has submitted the complete documentation.

3. IBERCLEAR may refuse to provide the initial securities registration or inclusion service in the cases mentioned in section 4 of Rule 5 and section 3 of Rule 8, respectively.

Rule 3. Rights and obligations of issuing entities

Entities issuing foreign securities will be subject to the general rules governing rights and obligations established in Circular 6/2017, concerning securities issuing entities.

Section II. INITIAL REGISTRATION OF FOREIGN SECURITIES

Rule 4. Scope of application

This Section will apply to entities issuing foreign securities that designate IBERCLEAR as the entity in charge of the book-entry register for the initial registration of the securities, either in accordance with the provisions of article 49 of the Central Securities Depository Regulations or as per the legislation of a third non-EU member State.

Rule 5. Documentation for initial registration

1. The issuer of foreign securities must submit the issue document and other documentation established in Circular 6/2017, on securities issuing entities, to IBERCLEAR.

It must also submit:

- a) Expert opinion prepared by the legal representative of the issuing entity that identifies and describes the legal framework applicable to the securities issue and the holder's inherent rights and obligations.

If the issue is governed by the law of a EU Member State, said document should detail the mandatory content of the relevant provisions that the competent authority of the Member State in which the securities were issued reported to AIFM in accordance with the provisions of the third paragraph of the first section of Article 49 of the Central Securities Depositories Regulation:

(https://www.esma.europa.eu/sites/default/files/library/provisionsofmemberstate_sslaws_art_49csdr.pdf)
(<https://www.esma.europa.eu/regulation/post-trading/settlement>).

- b) Legal opinion, issued by an independent professional, on the issuer's existence and legality, validity and enforceability of the resolutions adopted by the appropriate corporate bodies and analysis of the position of the securities owner.

In light of the structure of the issue and the legislation involved, IBERCLEAR may request that the legal opinion include other relevant aspects of the issue, as well as request an extra legal opinion that expands upon the scope and clarifies the points it deems necessary to thoroughly evaluate the risks involved and ensure the proper provision of the securities registration service.

2. The issuer of foreign securities must inform IBERCLEAR of any significant changes to the legislation under which the securities were issued and which could have an impact on the ability of IBERCLEAR users to comply with the obligations established in said legislation. In this event, the issuing entity must keep the content of the aforementioned expert opinion up-to-date.

3. If the foreign securities are represented by bonds or certificates, these must be deposited and immobilised by IBERCLEAR before the issue is registered

4. Once the aforementioned information and documentation has been received, IBERCLEAR may refuse to provide the initial registration service based on a thorough risk analysis or in the event that IBERCLEAR does not provide the initial registration service for securities issued under the national legislation in question. In this case, it will inform the

4

requesting issuer in writing, in accordance with the provisions of article 49 of the Central Securities Depository Regulations.

Section III. INCLUSION OF FOREIGN SECURITIES THROUGH A LINK ENTITY

Rule 6. Scope of application

This Section will apply to requests for IBERCLEAR to include foreign securities in the registry system when these are initially registered with another central securities depository or with an entity based in a third country that provides a similar service to the basic settlement service and at least another of the two basic services, notary or central maintenance.

The request may be submitted by the issuing entity or a different person, which will be called the “*promotor*”.

Rule 7. Intervening entities and obligations

1. To include foreign securities, the “issuer or promotor” must involve a link entity and a custodian entity abroad.

2. The **Link entity** must be an IBERCLEAR participating entity. It will have the following obligations:

- a) In relation to IBERCLEAR, act as the issuer's representative, taking the necessary action on its behalf to comply with applicable Spanish regulations in accordance with article 2 of IBERCLEAR's Regulations.
- b) In relation to IBERCLEAR -and before the securities are included-, validate the general features of the issue, as well as any other relevant information and the expected flows, in particular those related to interest and dividend payments or other financial or corporate transactions of which there is knowledge at the time.
- c) With the foreign custodian entity, coordinate the necessary actions that allow the correct and timely inclusion and exclusion of the securities comprising the issue in the registry system operated by IBERCLEAR.
- d) In coordination with the foreign custodian entity, establish and fulfil the systems required to guarantee at all times and in all circumstances a proper and permanent

match between the balance of securities included and registered in the system administered by IBERCLEAR and the balance of the securities deposited or registered with the foreign custodian entity -including the immobilisation of securities with the foreign custodian entity- with responsibility for any losses caused by any alterations or discrepancies in this matching process.

To this end, IBERCLEAR will send information about the balance of securities included in IBERCLEAR's system to the link entity on a daily basis.

Once the necessary checks have been run, the link entity will send IBERCLEAR confirmation that the reported balance matches the number of securities immobilised and held in the foreign custodian entity's account.

e) In relation to IBERCLEAR, act as the agent to manage corporate actions and ensure that the owners of the securities recognised through IBERCLEAR's system exercise their political and economic rights at all times. Accordingly, on behalf of the issuer it must meet payment of the economic rights arising from the securities included in the system run by IBERCLEAR and its participants.

In cases where, as a result of a managed event, the balance of securities included in IBERCLEAR's system need to be changed, the link entity must firstly check that the balance of securities deposited or registered with the foreign custodian entity has effectively been changed.

f) Have the appropriate technical means to ensure the timely inclusion and exclusion of securities and any other type of operation, as well as to report any circumstance or information that affects the securities included in IBERCLEAR's system, including the obligation to immediately inform IBERCLEAR if settlement of the foreign security in the issuing Central Securities Depository is suspended.

g) Keep a record of daily communications with the foreign custodian entity, at the disposal of IBERCLEAR, in relation to checks that the securities balance matches the custodian entity's account and the immobilisation of said balance.

3. The **foreign custodian entity** must hold the status of registration system member, central securities depository or a similar entity that manages or has been entrusted with the securities deposit system in the country of origin or has been designated by the issuer for

the initial registration of the securities comprising the issue. Likewise, it must be legally authorised under the legislation in the country of origin to keep records or deposits on behalf of third parties, and be empowered to immobilise the securities. It will have the following obligations:

- a) The foreign custodian entity designated by the issuer will be in charge of guaranteeing that the securities that are going to be included in the system run by IBERCLEAR and its participants exist, are regular, immobilised and exclusively subject to said system.
- b) It must undertake not to notify the link entity of the inclusion of securities in the deposit exclusively subject to IBERCLEAR's registration system, except in the case of securities regularly acquired and free of any charge, encumbrance or limitation to the free trading and transferability thereof and which it also has recorded in its third-party accounts or to immobilise them for such purposes.
- c) In coordination with the link entity, it shall, at all times and under all circumstances, keep the balance of securities recognised in the appropriate account or deposit as securities subject to IBERCLEAR's registration system matched with the balance that the Link Entity keeps as securities included in said registration system.

Rule 8. Documentation for the inclusion of securities

1. The issuing entity or the “*promotor*” must submit the documentation envisaged in Rule 5 of this Circular to IBERCLEAR, as well as:

- a) Contract signed between the issuer and the link entity and a foreign custodian entity, in which said entities assume each of the obligations mentioned in Rule 7 of this Circular, according to their respective status as link entity or foreign custodian entity. IBERCLEAR may expressly consent to such contracts using the channel it deems most appropriate.
- b) Document written by the link entity that specifies the features of the issue.

If the securities are included by the “*promotor*”, the issue document will be replaced by a certificate drafted by the issuer stating that the securities exist and have been regularly issued in the country of origin of the issue.

2. Securities must be included and excluded exclusively through the link entity and comply with the formats, requirements and communication procedures set forth in IBERCLEAR's Procedures Manual.

3. Taking into account the documentation provided, circumstances, the capital solvency of the link entity and the validation of its available means and resources to fulfil the obligations specified in Rule 7 above, IBERCLEAR may refuse to include the values in its registration system.

Rule 9. Changing the conditions or entities involved

1. Any changes in the initial conditions of the issue that may affect the inclusion of the securities and how they are kept in the IBERCLEAR book-entry register, as well as any changes in the link entity or the foreign custodian entity, must be approved by IBERCLEAR in advance. IBERCLEAR may request that a review of the documentation deposited in IBERCLEAR as per Rule 8 be submitted.

2. In the event any of the contracts mentioned in Rule 8 is terminated or any of the entities cannot continue to perform their functions with respect to the issue, new contracts signed with other entities must be submitted to IBERCLEAR, to ensure that none of the functions assigned to each of the aforementioned entities are neglected. The contract will be terminated notwithstanding fulfilment of the functions and tasks assigned to the entities in question, as long as no other substitutes are appointed or the securities are not derecognised in the records of IBERCLEAR and its participants.

3. If the two preceding paragraphs are not fulfilled, IBERCLEAR will immediately report this to the National Securities Market Commission. It can also inform the issuer or the link entity that the issue is being de-recognised in IBERCLEAR's records, specifying the deadline to proceed accordingly.

REPEAL PROVISION

The following Circulars will be repealed:

- Circular 6/1999, dated 15 September, on the inclusion of foreign securities and functions of the entities involved;

- Circular 7/1999, dated 17 November, on the Latin American securities market. Book entry register of the securities and the clearing and settlement of trades; and
- Circular 1/2010, dated 25 March, on the inclusion of foreign securities at the initiative of an entity other than the issuer.

ADDITIONAL PROVISIONS

1. This Circular is applicable, from its date of entry into force, to foreign securities issues that were already included in IBERCLEAR, pursuant to Circulars 6/1999 and 7/1999.

The documentation related to these issues, deposited in IBERCLEAR in accordance with Circular 6/1999 and 7/1999, will remain valid.

Notwithstanding the foregoing, the settlement participants holding the status of link entity in said issues must transfer the foreign issuers or promoters and custodian entities to the new applicable regime deriving from this Circular and, where appropriate, incorporate the necessary modifications to ensure compliance in the contracts they have signed.

IBERCLEAR may request the update of the relevant documentation that it considers necessary for the adequate provision of the services in accordance with this Circular.

2. Lastly, the issues of foreign securities that were included in IBERCLEAR pursuant to Circular 6/1999 and in respect of which the issuer had designated IBERCLEAR as the originating depository system will be automatically regulated in accordance with Rule 8 of said Circular, and from the date of entry into force of this Circular, by the rules of Section II thereof, when IBERCLEAR provides the service of initial registration of foreign securities to these issuers.
3. Authorisation is issued for an Instruction to be established concerning any operational, procedural and documentary aspects necessary for the effective implementation of these provisions.



FINAL PROVISION

This Circular shall enter into force on the day following its publication, except for the obligations set forth in the third paragraph of section d) and section g) of Rule 7, whose entry into force shall be communicated by Instruction.

Madrid, 10th September 2019

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