

**Registration of foreign securities and functions of the entities involved.  
Modification of documentation for registration of securities.**

Circular no. 01/2023, of 31<sup>st</sup> of January

**Iberclear**

January 2023

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

## General description

This Circular simplifies the documentation and specifies the requirements that apply to issuers of foreign securities seeking access to Iberclear.

## Impact

The documentation to be submitted to the Spanish central securities depository by issuers of foreign securities seeking access to Iberclear will be simplified.

## Related publications

This Circular amends:

- Circular no. 03/2019, of 10<sup>th</sup> of September. Registration of foreign securities and functions of the entities involved.

## Effective date

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

## Contact

Should you have any questions, please contact the Entities department at [entidadesiberclear@grupobme.es](mailto:entidadesiberclear@grupobme.es).

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Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A.U., with registered office in Madrid, Plaza de la Lealtad 1, tax ID number A-82695677 and entered in the Commercial Register of Madrid in volume 15,611, folio 5, section 8, page no. M-262818.

After a few years of experience in the application of Regulation (EU) 909/2014 of 23<sup>rd</sup> July on improving securities settlement in the European Union and on central securities depositories (hereinafter, the "Central Securities Depositories Regulation") and specifically, of the provisions included in Article 49 thereof regarding the freedom of the issuer to designate a Central Securities Depository established in another EU state, it was decided that some adjustments should be made to the specificity of the Iberclear standards that apply to issuers of foreign securities.

The purpose of the amendments made to Circular 03/2019 on Registration of foreign securities and functions of the entities involved is to improve the processes for issuer access and registration of securities issued under non-Spanish legislation. To this end, the documentation has been simplified and the requirements that apply to issuers of foreign securities have been specified.

After the modifications introduced by this Circular, in order to ensure compliance with the provisions under corporate or similar law of the EU Member States referred to in said Article 49, Iberclear shall initially obtain an expert opinion or legal opinion that assesses the adequacy of the registration and settlement system in order to allow its users to comply with any provisions that apply to the foreign securities under a foreign legal system. This change to the documentation component simplifies and reduces the cost that issuers must incur to access Iberclear without affecting the process of identifying and assessing risks that Iberclear carries out in each case.

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

### **Sole rule. Amendment of Rule 3, "Rights and obligations of issuing entities", and of Rule 5, "Documentation for initial registration", under Circular 03/2019**

1. Rule 3 under Circular 03/2019 is amended to read as follows:

#### ***"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 this Circular. ~~in Circular 6/2017, concerning securities issuing entities.~~"*

2. Rule 5 under Circular 03/2019 shall be amended as follows:

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#### **“Rule 5. Documentation for initial registration**

1. *The issuer of foreign securities must submit the issue document and the Annex to this circular and complete the fields that apply based on the type and characteristics of the issuer and the securities that will access Iberclear’s registry.*

*In light of the structure of the issue and the legislation involved, Iberclear may request additional documentation from the issuer, including independent legal opinions regarding relevant aspects of the issue or the issuer, provided they are necessary to evaluate the risks involved in both the issuer’s access and the registration of the securities.*

2. *The issuer of foreign securities must inform Iberclear of 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.*
3. *If the foreign securities are represented by securities 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 of that Member State of the European Union in question. In this case, it will inform the requesting issuer in writing, in accordance with the provisions of article 49 of the Central Securities Depositories Regulations and the implementing regulations.”*

~~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;~~

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~~([https://www.esma.europa.eu/sites/default/files/library/provisionsofmemberstates/ aws\\_art\\_49csdr.pdf](https://www.esma.europa.eu/sites/default/files/library/provisionsofmemberstates/ aws_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 requesting issuer in writing, in accordance with the provisions of article 49 of the Central Securities Depository Regulations."~~

## Final provision

This circular shall enter into force the day following its publication.

Madrid, 31<sup>st</sup> of January 2023

Francisco Béjar  
Managing Director

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