

Consolidated text of Circular no. 13/2017. Partially amended by Circular 5/2022 and Circular 02/2024.

Access by a CSD to Iberclear's services: Establishment of links.



Iberclear

September 2024

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

Rule 1.- Access of central securities depositories to Iberclear services.

1. The access of a central securities depository requires a securities account to be opened in Iberclear.
2. The purpose of opening these accounts shall be the maintenance of securities and the settlement of transactions relating to them, according to the scope and reach determined in the agreement referred to in Rule 5 of this Circular.
3. In processing the access request, Iberclear shall regard considerations relating to opportunity and the general interests of the markets. Iberclear shall deny access in those cases which fail to comply with the established criteria, or when such access constitutes a threat to the correct and orderly working of the financial markets or may lead to systemic risk.

Rule 2.- Technical and functional requirements.

1. Prior to the establishment of the link and the subsequent opening of accounts, upon receipt of the access request and the documentation provided in Annex 2, Iberclear shall identify and evaluate the possible sources of risk stemming from it, and shall establish, where appropriate, suitable measures for monitoring and managing this risk.

For this purpose, Iberclear may request additional documentation to that received in the access request, if necessary, as well as periodically or punctually require the updating of the documentation provided in order to keep the entity's risk analysis up to date at all times.

The documentation foreseen in Annex 2 and other documentation in this respect shall be submitted to Iberclear in the manner to be established by Instruction.

2. Accounts cannot be opened until the applicant central securities depository has demonstrated it has adequate resources both to carry out the activity in the functional and technical scope of the agreement referred to in Rule 5 of this Circular, and to guarantee the correct and secure operation of a central depository or securities settlement system.
3. Iberclear may carry out the tests it deems appropriate to verify and ensure compliance with the criteria set out in the previous section.

Rule 3.- Registration of securities in accounts.

The registration of securities in accounts opened in accordance with this Circular, shall be subject to the provisions of Royal Decree ~~878/2015~~ 814/2023, of 8 November ~~2 October~~, and other applicable regulations.

Rule 4.- Cash accounts

The central securities depository must notify Iberclear of one or more dedicated cash accounts linked to each of the securities accounts it holds in the Central Register in which Iberclear shall order the credit and debit of payments resulting from settlement of transactions. To do this, the central securities depository may use its own dedicated cash accounts or have the credits/debits resulting from the settlement of the transactions debited against the cash account of another entity, that must be opened at the Bank of Spain, the European Central Bank or other Central Bank of another Member State of the European Union whose system is connected to that of the Bank of Spain through the European System of Central Banks. Furthermore, due authorisation to register such entries in the said account shall be provided to Iberclear.

These cash accounts must allow Iberclear to process cash credits and debits pursuant to its general procedures.

Rule 5.- Formalisation of account opening

1. The applicant central securities depository must sign an agreement as per the model included as an Appendix to this Circular. In particular, this agreement shall contain provisions in relation to its termination and the subsequent closure of the corresponding account, which cannot take place until all the securities registered in it have been transferred.

The Operational Section of this agreement shall be drafted by Iberclear and approved by the Board for each specific case according to the activities that the entity intends to carry out. Nevertheless, the minimum content that this Operational Section should have shall be the following:

- Categories of securities included in the agreement.
- Type of transactions that will be carried out with the central securities depository, detailing the operating procedures that are applicable in each of them.
- List of services that Iberclear shall provide in areas such as the exercise of economic and voting rights.
- The way in which it intends to operate when carrying out financial transactions in general.
- The communication solutions and the type of messages that are going to be exchanged between Iberclear and the central securities depository.
- Fees and their payment method.

~~— The information that the central securities depository must provide Iberclear with, for the purposes of the functions legally entrusted to it as the operator of the information, transmission and storage data System, and, as applicable, for this to be sent to the appropriate supervisory authority, and the procedure for obtaining and forwarding it.~~

- And any other aspects that may affect operational development between the two.

2. When the access request requires the establishment of mutual technical solutions for settlement (interoperable link), the agreement signed by Iberclear with the applicant central securities depository shall be adjusted for the special features that result from the link in connection with the necessary technical developments, the risk management models and the insolvency rules and procedures that must be established.

Rule 6.- Technical and operational services

1. Iberclear may offer, directly or through agreements with third parties, the entities with whom it has signed the agreement referred to in the previous Rule, those technical and operational services that, being related to the services of registration, clearing and settlement of securities, may be in the common interest of both parties.
2. To ensure the effective provision of these services, Iberclear shall regard considerations relating to opportunity and the general interests of the markets.
3. The terms and conditions of the provision of these services shall be those set out in the agreement signed by both parties that must, necessarily, consider the services included in the agreement, their governance by Spanish law unless, exceptionally, it is considered more appropriate that they be governed by a different legal system, and the liability regime applicable in the provision of these services, quantifying Iberclear's maximum economic liability for the damages and losses suffered that are directly attributable to its actions in the execution of the aforementioned agreement.

Rule 7.- Procedure

1. Once Iberclear has assessed the appropriateness of entering into the agreement referred to in Rule 5, it shall then proceed, taking into account the type of link to be made in accordance with the provisions of the Central Securities Depositories Regulation and Article 48 of Iberclear Regulation, to notify either its intention to establish a link or to request authorisation from the Spanish National Securities Market Commission (CNMV) to do so as the case may be.
2. Once the notification has been made or authorisation received from the CNMV, Iberclear shall sign the corresponding agreement, along with its operational section.

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BME
Plaza de la Lealtad,1
Palacio de la Bolsa
28014 Madrid

www.bolsasymercados.es

