



## **INSTRUCTION B05/2014**

**Requirements for Registration  
Agents**

10.April.2019

## **Versions Index**

### **14.Jul.2014**

Initial Version

### **13.May.2016**

Modification of the Service provided by OMIClear from “MIBEL Derivatives Market” to “Service on Power Derivatives Contracts”

### **24.Nov.2017**

Instruction update following the inclusion of Service on Natural Gas Derivatives Contracts registered in OMIClear through OMIP Derivatives Market.

### **17.Apr.2018**

Update of the Instruction following the extension of the Service on Natural Gas Derivatives Contracts to MIBGAS Derivatives Market.

## **DISCLAIMER**

The English language text below is not an official translation and is provided for information purposes only. The original text of this document is in the Portuguese language (available in [www.omiclear.pt](http://www.omiclear.pt)) and it was registered by the Portuguese Securities Market Commission (Comissão do Mercado de Valores Mobiliários). In the event of any discrepancies between the English translation and the Portuguese original, the Portuguese original shall prevail. Whilst every effort has been made to provide an accurate translation we are not liable for the proper and complete translation of the Portuguese original and we do not accept any liability for the use of, or reliance on, the English translation or for any errors or misunderstandings that may derive from the translation.

This document is available in [www.omiclear.pt](http://www.omiclear.pt)

Pursuant to articles 21 and 22 of its Rulebook, OMIClear approves this Instruction, which sets the requirements for the admission and maintenance of Registration Agents wanting to operate in the Service on Power Derivatives Contracts and the Service on Natural Gas Derivatives Contracts.

### Requirements for Registration Agents

1. The qualification as a Registration Agent for its own account will be granted by OMIClear to an Entity that cumulatively meet the following requirements:
  - a) Is legal person legally authorised to operate in the respective OMIClear's Service;
  - b) Has clearing capacity, on grounds that it acts as Clearing Member or, alternatively, that it has entered into a Clearing Agreement with a Clearing Member;
  - c) If its intention is to trade Contracts with physical delivery, it has physical settlement capacity, on grounds that it acts as Physical Settlement Agent in the Service concerned or, alternatively, that it has entered into a Physical Settlement Agreement in the Service concerned;
  - d) Has at its disposal suitable human resources and technical and operational conditions to register Transactions in accordance with the OMIClear rules;
  - e) Registers, in accordance with the specifications in the Members Corner on the Website, relevant contacts for operational issues that may arise in connection with the registration of Transactions;
  - f) Ensures that at least one of the contacts referred to in the preceding paragraph will be available throughout the Transaction registration process;
  - g) Has entered into an Admission Agreement of Registration Agent in the Service concerned with OMIClear, as provided in the model in appendix.
2. The qualification as a Registration Agent on behalf of third parties or for their own account and on behalf of third parties will be granted to Entities that, in addition to meeting the requirements referred to in the preceding paragraph, are entities legally authorised to operate on behalf of third parties, including those who have the status of representative on the Spot Market for such third parties.
3. Failure to present the Clearing Agreement will not prevent a candidate from being admitted as a Registration Agent, but its status will be suspended until the said Agreement is submitted.
4. A Registration Agent may, at all times, replace the members referred to in paragraph (1)(e); however, the replacement will take effect only after a specific form is completed in the Members Corner on the Website.

### Admission Procedures for Registration Agents

5. To qualify as Registration Agents, candidates will prove that they comply with the admission requirements by submitting the documents below, in addition to those set out in the Rulebook:
  - a) A letter with the application for admission, identifying the person responsible for the process and its contacts;
  - b) An updated copy of the articles of association;
  - c) Excerpt of the Commercial Register;
  - d) The identity of shareholders directly or indirectly representing more than 10% of the share capital;
  - e) Documents guaranteeing that it satisfies the requirements set out in paragraphs (1)(b)(c) or paragraph (2), as appropriate, including the representation agreements;

- f) Documents describing the human resources and technical and operational conditions for the performance of Registration Agent functions, or, alternatively, a statement under which the candidate declares, where necessary, having these resources and conditions suited to perform the functions;
  - g) The registration of its relevant contacts for operational matters;
  - h) Return the Registration Agent Admission Agreement duly signed by whoever has the powers for that purpose.
- 6. Having regard to the interconnection agreements established between OMIClear and the Markets, the Registration Agents' applicants can benefit from a simplified admission process based on the information provided by the Market Operators to OMIClear.
- 7. To conclude the admission process, the fees set out in the Price List in force must be paid.

### Termination of the function of Registration Agent

- 8. The capacity of being a Registration Agent may terminate at the initiative of OMIClear as set out in the OMIClear Rules even if the Registration Agent is not in default.
- 9. The capacity of being a Registration Agent may terminate at the initiative of the interest party when it does not have outstanding responsibilities on the market, and provided that the request is submitted to OMIClear, in writing, within at least 10 (ten) Clearing Days in relation to the termination date of the status.
- 10. Regarding the Registration Agents which have signed a clearing agreement with a General Clearing Member, the termination request mentioned in the previous paragraph must be preceded by a termination request of such agreement with a minimum pre-notice of 30 (thirty) Clearing Days.
- 11. Once a request for termination has been received, as set out in paragraphs (8) and (9):
  - a) OMIClear will promptly notify the Participants that have existing Clearing and Settlement Agreements or Physical Settlement Agreements with the Registration Agent concerned;
  - b) The Registration Agent will no longer be able to submit Transactions for registration, either for its own account or on behalf of clients.
- 12. Following the request for termination by OMIClear or the Registration Agent, all amounts that may be due by the Agent to OMIClear will immediately be demandable and fully paid. The amount paid in that capacity will not be reimbursed.

### Operational Manager

- 13. Registration Agent candidates will appoint at least one Operational Manager, who will ensure the operational representation of the Agent with OMIClear and other Participants regarding the registered Positions.
- 14. More than one Operational Manager may be registered, each having equal individual acting capacity.
- 15. Registration Agents may replace the Operational Manager, but the replacement only takes effect after OMIClear is notified in writing and approves it.
- 16. Any alteration in the names and professional addresses of an Operational Manager only takes effect after a specific form is completed in the Members Corner on the Website.
- 17. The Registration Agent will ensure that an Operational Manager is available during and until the end of clearing and settlement procedures of the Clearing Day.

18. Notwithstanding any specific terms that may be set by OMIClear, if an Operational Manager is accepted, it will be assumed that it is fit and proper to fulfil its functions.
19. OMIClear may, at any time, suspend the registration of an Operational Manager for a period of no more than six months, or terminate such registration in the following conditions:
  - a) Non-compliance of conditions required for its registration;
  - b) Violation of its responsibilities as set in the OMIClear Rules;
  - c) At a written request submitted by the Registration Agent;
  - d) Following a written request submitted by the Supervisory Entity pursuant to National Regulations.

### Operators

20. Registration Agent candidates will appoint at least one person to operate as an Operator, and will inform OMIClear, in writing, their identity, professional qualifications and contacts.
21. Registration Agents will keep the information referred to in the preceding paragraph constantly updated, informing OMIClear in writing, sufficiently in advance, of the termination of functions of the Operators and the appointment of new Operators.
22. OMIClear reserves the right to refuse the assignment of Operator capacity to any person appointed to that effect, informing, in writing, the candidate or the Registration Agents its decision and the reasons thereof.
23. Registration Agents may, at any time, replace its Operators; however, the replacement will take effect only after a specific form is completed in the Members Corner on the Website.

### Integration with other Markets

24. Entities wishing to access the role of Trading Member in a Market Operator with which OMIClear has signed an interconnection agreement, in order to get the capacity to trade and/or register Transactions to be registered, cleared and settled in OMIClear must, simultaneously with the admission process, conduct an admission process as Registration Agent with OMIClear.
25. Having regard to the informative interconnection agreement established between the Market Operator and OMIClear, and there being no express objection by the candidate:
  - a) The Registration Agents' applicants can benefit from a simplified admission process based on the information provided by such Market Operator to OMIClear.
  - b) Notwithstanding the provisions in this Instruction, namely regarding the possibility to specifically change the persons appointed as representatives or operational responsables with OMIClear, the persons appointed by the applicant near the Market Operator to assume the representation function and operational functions, assume the identical functions before OMIClear.

### Entry into Effect

26. This Instruction has been registered with CMVM on March 19<sup>th</sup>, 2019 and enters into effect on April 10<sup>th</sup>, 2019.

*The Board of Directors*

## Appendix I

### Model C34

#### Registration Agent Admission Agreement

Between:

OMIClear, C.C., S.A., represented by \_\_\_\_\_ (name(s)), \_\_\_\_\_ (position), hereinafter FIRST PARTY.

and

(...), with head office at \_\_\_\_\_, and a share capital of \_\_\_\_\_, legal taxpayer number \_\_\_\_\_, registered in the \_\_\_\_\_ Commercial Registry Office under the number \_\_\_\_\_, represented in this act by \_\_\_\_\_ (name), \_\_\_\_\_ (position), hereinafter SECOND PARTY

Whereas:

1. The FIRST PARTY is the managing entity acting as Clearing House and Central Counterparty of Positions registered with it;
2. The SECOND PARTY meets all the requirements imposed by the OMIClear Rules in order to perform the functions of Registration Agent.

This Agreement is made and entered into and is governed by the following clauses:

#### FIRST CLAUSE

The SECOND PARTY has the right to operate as Registration Agent with the FIRST PARTY within the scope of the Service on Power Derivatives Contracts and Natural Gas Derivatives Contracts provided by the FIRST PARTY, performing the functions and taking on the responsibilities laid down in the OMIClear Rules and in this Agreement.

#### SECOND CLAUSE

1. The SECOND PARTY declares and guarantees the FIRST PARTY:
  - a) That it is established in accordance with the law of [Nationality];
  - b) Their representatives are legal and statutorily empowered to grant this Agreement and may therefore, assume the same obligations that derive from the same to the SECOND PARTY;
  - c) There is no legal, administrative, statutory limitation or of any other nature that prevents the full conclusion of this Agreement or that the same are being exceeded as a result of this Agreement;
  - d) The assumed obligations and the guarantees referred to in this Agreement are valid and binding, and there are no restrictions affecting its full and timely compliance and practicability;

- e) The conclusion and execution of this Agreement does not violate any law, rule, regulation, statute or directive that the SECOND PARTY is subject to, nor constitutes a breach of any other agreement or contract in which the SECOND PARTY is a party or to which it is bound;
  - f) There was not nor does it verify any fact or circumstance that constitutes or may constitute a breach of this Agreement.
2. The SECOND PARTY still declares that it is aware of and expressly accepts with no reservations the provisions in National Regulations and in OMIClear Rules, consisting of the Rulebook and Instructions, applicable to the Positions registered with the FIRST PARTY, including:
- a) The responsibility with the Clearing Members for complying with all obligations resulting from the Positions it has registered;
  - b) The procedures and consequences for situations of non-compliance, for the performance of the FIRST PARTY in exceptional cases, for the closing of Services and call of Guarantees as set in the applicable OMIClear Rules and National Regulations.

### THIRD CLAUSE

The SECOND PARTY authorises the FIRST PARTY to:

- a) Monitor, by whatever means it deems more appropriate, the full compliance with its responsibilities, undertaking to adopt the measures and provide all the elements necessary for that purpose.
- b) Request from the Supervisory Entities the information that it deems necessary to check the requirements on the basis of which its admission and maintenance as Registration Agent depend, and to provide to such Entities its own details as they may require;
- c) Adopt the procedures laid down in the National Regulations and in OMIClear Rules in case the SECOND PARTY or one of its clients fail to comply;
- d) Record all telephone communications, including instructions and requests conveyed, and use those recordings to prove that they were made, as well as for supervisory purposes by the FIRST PARTY or competent Entities.
- e) Carry out the computer processing of information it has provided at the time of admission or the exercise of Agent functions, especially personal data contained therein, particularly with a view to the implementation of this Admission Agreement, the exercise of powers of the FIRST PARTY or for statistical purposes, without prejudice to the duty of confidentiality to which the FIRST PARTY is bound, and the SECOND PARTY will have the right to access information contained in those databases and to require the updating thereof.

### FOURTH CLAUSE

The SECOND PARTY declares that it is aware of and expressly accepts without reservations that the FIRST PARTY will not be responsible for any losses it may incur:

- a) Arising from the implementation of provisions in the OMIClear Rules;
- b) Resulting of technical faults, power failures, damages caused by fire or water, or any other events beyond the control of the FIRST PARTY.

#### FIFTH CLAUSE

1. The SECOND PARTY will use the data and information provided by the FIRST PARTY solely for the registration of Transactions, in accordance with the OMIClear Rules.
2. The SECOND PARTY will bear the costs relating to the supply, installation and connection to the information systems provided by the FIRST PARTY, as well as to the provision of any other services related to the use thereof.

#### SIXTH CLAUSE

The FIRST PARTY will not be responsible for the communication network infrastructure and the computer resources (hardware and software) to access the information systems that it provides.

#### SEVENTH CLAUSE

1. This Agreement will take effect from the date it is signed, will be valid for an indefinite period of time and ceases:
  - a) By termination of any of the PARTIES, in writing, with a prior notice as from the termination date pursuant to the OMIClear Rules;
  - b) By termination of the SECOND PARTY'S role as Registration Agent, pursuant to the OMIClear Rules;
2. The termination, for whatever reason, of this Agreement does not preclude the duty to comply with all responsibilities arising from the performance of the SECOND PARTY as Registration Agent.

#### EIGHTH CLAUSE

This Agreement will be governed by Portuguese law, and the words used herein will have the meaning defined in the OMIClear Rules, unless stated otherwise.

#### NINTH CLAUSE

For the resolution of any disputes concerning the validity, interpretation or application of this Agreement, the PARTIES expressly waive any other jurisdiction and agree to submit them to the Civil Court of Lisbon.

This Agreement is done in two copies and signed by both PARTIES in acceptance thereof.

Lisbon, \_\_\_\_

The FIRST PARTY

The SECOND PARTY

---

OMIClear, C.C., S.A.

---

(identification of the SECOND PARTY)