



## **INSTRUCTION A07/2014**

**Guarantees issued by Credit  
Institutions**

21.April.2023

## **Versions Index**

### **01.Jul.2014**

Initial Version

### **14.Mar.2016**

This Instruction has been removed from the OMIClear list of rules following the removal of bank guarantees and credit lines from the list of assets accepted as collateral by OMIClear (given the "fully-collateralised" requirement imposed by EMIR regulation).

### **21.Apr.2023**

This Instruction is included again in the list of OMIClear rules, following the elimination of the "fully-collateralised" requirement (imposed by EMIR regulation since March 2016) under RTS 2022/231 of 21 October, which amends RTS 153/2013 as regards temporary emergency measures on collateral requirements.

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Pursuant to article 50 of its Rulebook and of the Instruction A06/2014 - Management and Evaluation of Guarantees, OMIClear approves this Instruction, which defines the conditions for the provision of Guarantees by Participants, namely Clearing Members (CM) which are non-financial counterparties, represented by various types of guarantees provided by a credit institution, in particular bank guarantees and credit lines, hereinafter generally referred to as CIG.

Unless provided otherwise, the provisions of the Instruction apply to all Services, in accordance with the OMIClear Rulebook.

### General Provisions

1. CIGs are provided by an authorised credit institution, as defined in Directive 2006/48/EC, or authorised by the competent authorities of the OECD countries, approved by OMIClear, hereinafter referred to as Guarantor.
2. CIGs may be of the following type:
  - a) Bank Guarantee (BG);
  - b) Credit Line (CL).
3. CIGs are issued in euros to ensure the responsibilities of a Participant with OMIClear, hereinafter referred to as Collateral-taker.

### Contents of the CIG

4. OMIClear provides draft minutes for each type of CIG accepted at each moment, including draft minutes of the Bank Guarantee and draft minutes of the statement to be issued by the Credit Institution granting the Credit Line.
5. Notwithstanding the preceding paragraph the content of the CIG shall include the following provisions:
  - a) The application of the Portuguese law and the jurisdiction of the District Courts of Lisbon, expressly waiving any other; any exception to these two provisions requires the prior approval of OMIClear.
  - b) The indication that the CIG is granted by the Guarantor to the Collateral-taker, to meet, exclusively and unconditionally, the responsibilities assumed by the latter with OMIClear, as a Participant, for the set of Services provided by OMIClear, or for a subset of those Services, if defined in its Rules or in the CIG.
  - c) The indication that the CIG grants to the Beneficiary the exclusive, unconditional and irrevocable right to activate it, on first demand, during its lifetime and up to the limit of its value, as part of the responsibilities assumed by the Collateral-taker with OMIClear. The Guarantor cannot oppose the mobilisation of the CIG by the Beneficiary, in whole or in part, in particular through any reservations, invoking any exceptions or opposing any means of defence, judicial or extra-judicial, whether its own or that the Collateral-taker could possibly oppose to the mobilisation of the CIG, namely by alleging the need for a preliminary survey of any facts, or compatibility with the law of the reason or the grounds given for the claim presented by the Beneficiary.
  - d) The autonomous and “on first demand” nature of the CIG as a credit facility acting as a guarantee.

6. The exercise of rights underlying the CIG, by the Beneficiary, only presupposes its communication to the Guarantor, and the latter cannot demand:
  - a) Any consent by the Collateral-taker;
  - b) Any type of validation or quantification of responsibilities of the Collateral-taker vis-à-vis the Beneficiary or itself, by the Guarantor;
  - c) That it is accompanied by a copy of the original of the CIG.
7. Without prejudice to the provision in paragraph 5, the text of the CIG which deviates from the draft minute provided by OMIClear shall not affect the contents of the draft minute, including the provisions in the two preceding paragraphs, and may be cause for OMIClear to reject the CIG.

### Conditions for Accepting CIGs

8. OMIClear does not accept CIGs to cover the responsibilities of a Collateral-taker that is a financial counterparty as defined in Article 2 of EMIR.
9. CIGs whose Guarantor is in a control relationship with the Collateral-taker or is part of the same corporate group shall also not be accepted.
10. In addition to meeting the principles established in paragraphs 4 to 7, the CIG shall be signed by persons with powers of representation, bearing proof thereof and must be duly authenticated in accordance with the Portuguese Code of Civil Procedure ("Código de Processo Civil"), for the recognition as enforcement title ("título executivo").
11. Only Guarantors with a low credit risk shall be accepted, not being accepted those to whom, on the scale of 1 to 8 established in the credit risk management policy of OMIClear, they have been assigned a Risk Level higher than 5.
12. Based on its credit risk management policy, OMIClear:
  - a) Evaluates internally and on a regular basis the credit risk of Guarantors;
  - b) May aggregate the overall amount of CIGs provided by a Guarantor or a group of Guarantors belonging to the same Group in favour of OMIClear;
  - c) Defines exposure limits of each Guarantor taking into account not only the CIGs issued, but also the profile of the respective Collateral-takers and other responsibilities assumed with OMIClear;
  - d) Pursuant to the preceding subparagraph, may impose specific limits to the number of CIGs issued by a Guarantor or group of Guarantors belonging to the same corporate group;
  - e) May determine the use of measures to mitigate the Guarantor's risk;
  - f) Informs the Guarantor of the obtained results.
13. A worsening of the financial capacity or of the credit risk, namely measured by the Rating assigned by an external agency, of a Guarantor, which may involve the changing of the acceptance conditions established by OMIClear pursuant to preceding paragraph:
  - a) Should be communicated directly by the Guarantor or by a Collateral-taker of his, to OMIClear within three (3) Clearing Days on the occurrence of the change;
  - b) OMIClear assesses the impact of the change and notifies the Guarantor, and may also notify the respective Collateral-takers;
  - c) If applicable, the Guarantor has two (2) Clearing Days after the notification referred to in the preceding paragraph to indicate OMIClear directly or through the respective Collateral-taker, the CIGs that are allocated.

14. In the absence of communication under paragraph 13 (c) above, and in case the responsibilities assumed by a Guarantor, as an issuer of CIGs, determine the overtaking of the exposure limits established under paragraph 12 (c), OMIClear will no longer consider, in whole or in part until they meet the acceptance conditions, the CIGs in descending order of value; in the event that the number of GICs should be equal, it shall first affect those with the earliest maturity date.
15. The application of what is provisioned in the preceding paragraph is preceded by a notification by OMIClear to the affected Collateral-takers, to which it gives a period of 20 (twenty) Clearing Days to replace the respective CIGs.
16. If a CIG provided by a Guarantor causes the limits mentioned in paragraph 12 (c) to be exceeded, for the purpose of valuing the Guarantees, only the portion of the CIG value that allows the limits to be respected shall be considered, such values being communicated by OMIClear.

### Concentration Limits

17. In addition to the limits established under its credit risk management policy, particularly in paragraph 12, the acceptance of a CIG is subject to concentration limits defined in Instruction A06/2014 - Management and Evaluation of Guarantees.
18. Where exposure with the Guarantor draws near the limits applicable at all times, OMIClear shall inform the Guarantor and its Collateral-taker with a view to replace the Guarantee provided as CIG, and the provisions in paragraphs 13 to 16 shall apply, *mutatis mutandis*.

### Procedures

19. The Collateral-taker is responsible for sending to OMIClear the original Bank Guarantee or confirmation statement of Credit Line, as applicable, duly signed, meeting the requirements established in this Instruction, as well as proof of the powers of representation of the CIG signees on behalf of the Guarantor.
20. For the purposes of complying with the obligations for the constitution of Guarantees with OMIClear, the CIG shall take effect:
  - a) From the Clearing Day following the day on which OMIClear notifies the Collateral-taker that the CIG is accepted;
  - b) Until the 5<sup>th</sup> (fifth) Clearing Day prior to the date of expiration of the CIG, but all rights and powers of OMIClear shall be in force until that date of expiration.
21. The CIG may be amended, extended or cancelled, and the Collateral-taker shall inform OMIClear of this; nonetheless, any such change shall only:
  - a) Be effective 20 (twenty) Clearing Days after the Collateral-taker communication is received, or when its acceptance is notified by OMIClear, if this occurs within that period;
  - b) Be considered, for the purposes of provision of Guarantees, when accepted in writing by OMIClear.
22. The commitments assumed by the parties in the CIG, including the right to call the CIG by the Beneficiary, shall remain in effect for the period of 20 (twenty) Clearing Days referred to in the preceding paragraph.
23. Any change to the CIG that is not timely communicated to OMIClear shall be considered null by OMIClear and shall be grounds for non-compliance by the Collateral-taker.
24. As regards the communication between the Guarantor and OMIClear:

- a) Those relating to the call of the CIG are, by default, done through SWIFT MT799 messages, conforming to the model in Annex I, using OMIClear's BIC Code: OMICPTPLXXX;
- b) Operational matters shall be sent to the clearing department of OMIClear;
- c) Notwithstanding the two preceding paragraphs, other communication shall be sent to the Board of Directors of OMIClear. OMIClear's contacts are as follows:

Recipient: Board of Directors of OMIClear, C.C., S.A.

Telephone: +351 210 006 020 (with call recording)

Fax: +351 210 006 021

E-mail: clearing@omiclear.pt

BIC Code: OMICPTPLXXX

- 25. The Guarantor shall inform OMIClear its most appropriate contacts. Any change to these contacts shall be immediately reported to OMIClear, and shall not take effect until OMIClear acknowledges the receipt of the alteration thereof.
- 26. OMIClear regularly tests the Guarantor in order to validate the enforcement conditions of the CIG.

#### Costs and Charges of CIGs

- 27. The Collateral-taker shall bear all costs and charges relating to the availability and mobilisation of the CIG.
- 28. The constitution of Guarantees through CIGs may be subject to the payment of management fees, as laid down in OMIClear's Price List.

#### Entry into Effect

- 29. This Instruction has been communicated to CMVM on February 21<sup>st</sup>, 2023 and enters into effect on April 21<sup>st</sup>, 2023.

*The Board of Directors*

## ANNEX I

### SWIFT MT799 Draft Message to be issued by the Beneficiary to the Guarantor, for the purpose of mobilising the CIG

Field no.	Field Contents
MF20 <i>Transaction No.</i>	Mobilisation of (...) [ <i>specify: Bank Guarantee / Credit Line</i> ] with reference to (...).
MF79 <i>Description</i>	<p>(...) [<i>Beneficiary</i>] notifies (...) [<i>Guarantor</i>] that on this date a default of the (...) Collateral-taker was reported.</p> <p>Considering the contents of the (...) contract [<i>specify: Bank Guarantee / Credit Line</i>] with the reference (...),guaranteed by (...) [<i>Guarantor</i>], of which (...) [<i>Beneficiary</i>] is the beneficiary, the following credit is hereby requested:</p> <ul style="list-style-type: none"> <li>○ Of (...) Euros;</li> <li>○ For the account (...)</li> <li>○ By HH:MM of DD/MM/YYYY</li> </ul>