



**Instructions for completing the application form
for declaration of no objection to the acquisition
of or increase in qualifying non-controlling
holdings in Spanish market infrastructures**

DIRECTORATE-GENERAL OF STRATEGIC POLICY AND INTERNATIONAL AFFAIRS
DEPARTMENT OF STRATEGY AND INSTITUTIONAL RELATIONS
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1. Introduction

These instructions are designed to be used as guidance for legal or natural persons applying for a declaration of no objection for the acquisition of or increase in a qualifying non-controlling holding in Spanish market infrastructures¹, as a follow-up to the provisions of the [“Procedure for the authorisation of organisational, corporate, economic and financial aspects of Spanish market infrastructures \(P14\)”](#) by the Spanish National Securities Commission (Comisión Nacional del Mercado de Valores; hereinafter, “CNMV”).

This procedure describes the applicable regulations, in particular the following aspects related to the calculation of capital contribution in Spanish market infrastructures:

- a) Article 82 of Royal Decree 217/2008 of 15 February on the legal status of investment firms and other companies providing investment services, partially amending the Regulations of Law 35/2003 of 4 November on Collective Investment Undertakings, approved by Royal Decree 1309/2005 of 4 November².
- b) When the holder has control of the intermediary company, indirect holdings shall be calculated at their value; otherwise, at the value resulting from applying the percentage of holding in the intermediary company, in accordance with Royal Decree 361/2007 of 16 March.

The application form is designed for all those proposed acquirers meeting or exceeding one of the holding thresholds that do not produce changes of control, in accordance with such Procedure.

Once completed, this form and the accompanying documents shall be submitted to the CNMV, either by such electronic means as described at the CNMV On-Line Register (<https://sede.cnmv.gob.es/sedecnmv/SedeElectronica.aspx?lang=en>) or on paper at the CNMV General Registry.

The application form must be duly signed by an authorised person before submission. The details of the application form for declaration of no objection shall be sent only to the CNMV and must not be made publicly available.

For any further clarification on completing the application form for declaration of no objection, you may contact the Department of Strategy and Institutional Relations of the CNMV at 34 91 585 15 00.

The sections mentioned in these instructions for completion are those included in the application form.

2. Instructions for completion

The application form has three parts and should be completed in a cumulative manner, in such a way that acquirers applying for the declaration of no objection for a percentage of 5% or more should complete, unless otherwise stated, Parts I and II, while acquirers

¹ To that end, Spanish market infrastructures include supervisory bodies of official secondary markets, central securities depositories and central counterparties, as well as undertakings owning the entire capital or a stake allowing direct or indirect control of all or some of the undertakings governing securities record-keeping, clearing and settlement systems and Spanish secondary markets.

² Articles 48.1 and 99 of the Securities Markets Act (consolidated text), approved by Royal Legislative Decree 4/2015 (TRLMV), and Articles 1.1 and 3.1 of Royal Decree 361/2007 of 16 March refer to the system of holdings envisaged in Chapter IV of Title V of TRLMV for investment firms.

applying for the declaration of no objection for a percentage of 10% or more should complete all three parts.

PART I. INFORMATION FOR QUALIFYING HOLDINGS OF 1% OR MORE

1. Information on the proposed acquirer

(1) Identification data

Where the proposed acquirer is a legal person, the form shall state the natural person representing it. Evidence of such representation should be submitted to the CNMV through an explicit declaration by the signatory and a sufficient power of representation.

Foreign legal persons shall also submit the following information as attached documentation:

- i) Details of their nationality, form of company or legal personality and public credentials. Namely, such details should include information on whether the shares are registered or bearer, whether the share capital is fixed or variable, whether there are any legal or statutory provisions or shareholder agreements stipulating that voting rights shall not be exercised by shareholders in proportion to their number of shares, as well as any other relevant information concerning the social or statutory system of the foreign company whose exercise is markedly different from what is usual in Spanish companies of a similar nature.
- ii) Details of a joint and several representative resident in Spanish territory. To that end, applicants should complete the form "Representation Agreement" (which can be downloaded at: <https://www.cnmv.es/Portal/quees/Tasas/NoResidentes.aspx>).

(5) Board of Directors or equivalent body and senior management

For qualifying holdings of 5% or more, it will not be necessary to complete this section, as this information is included in Section (2) of Part II.

2. Additional information on the proposed acquirer

(12) Group of companies

If a proposed acquirer belongs to a group of companies (as its parent or subsidiary), it shall provide detailed information on the structure of the group (organisational chart). It shall also provide information on the following aspects:

- i) Interest in share capital and voting rights of shareholders with qualifying holdings in the companies of the group.
- ii) Activities conducted by the group.
- iii) Group undertakings subject to supervision and name of the supervisor in the country of origin.

(13) Annual financial statements

Irrespective of the size of the company, applicants shall submit the annual financial statements for the most recent financial year as required by the applicable legislation, as well as the audit report, if any, of the proposed acquirer and of its group for consolidation if it is part of a group of companies and, where appropriate, of the final acquirer, including:

- i) Balance sheet
- ii) Profit and loss account
- iii) Statement of changes in equity
- iv) Cash flow statement
- v) Annual accounts and management report

Those proposed acquirers with shares admitted to trading in regulated markets or multilateral trading facilities who are required to publish and disclose regular reports shall be exempt from this requirement, provided they state how and where such information can be accessed and as long as such access is proven to be feasible.

(15) Declaration attesting absence of sanctions

For qualifying holdings of 5% or more, it will not be necessary to complete this section, as in this case the relevant reputation assessment forms should be attached instead, in accordance with Section (2) of Part II.

3. Additional information on the acquisition

(17) Number and type of instruments

Applicants shall specify the number and type of shares of the undertaking in which the acquisition is proposed. They shall also specify any call or put options and any instruments convertible into portfolio shares, as well as the likelihood of those options being exercised and of the instruments becoming portfolio shares. They shall also specify the percentage of those shares in the total capital.

Moreover, applicants shall also provide details of the instruments they intend to acquire, the estimated amount in euros of the direct cost of the operation, the intended method of payment and the percentage of voting rights required to exercise.

4. Information on the financing of the acquisition

(24) Own capital. When using own capital, please state the amount of each source.

(25) Borrowed capital. When using borrowed capital, please state the amount of each source.

PART II. ADDITIONAL INFORMATION FOR QUALIFYING HOLDINGS OF 5% OR MORE

(1) Intended strategy

For qualifying holdings of 10% or more, it will not be necessary to complete this section, as in this case the strategy report should be attached instead, in accordance with Section (1) of Part III.

(2) Board of Directors or equivalent body and senior management

Applicants shall attach a curriculum vitae (CV) of all the members of the Board of Directors or equivalent body (including senior management), with details of their academic background, professional history (with special reference to current professional activities)

and any other information on their experience. CVs shall be dated and signed on all pages. Where the director is a legal person, please attach also the CV of the natural person representing it.

The reputation assessment form (CH) shall also be submitted (using the attached form) for the proposed acquirer, for the undertaking(s) controlling it, if any, and for any person who effectively directs or controls its activities, including all the members of the Board of Directors or equivalent body and senior management.

Members of Boards of Directors, equivalent bodies or senior management in a financial undertaking subject to supervision by an authority supervising Spanish or EU financial undertakings do not need to provide their CVs or CHs, but they shall state the name of such supervisory authority.

A certificate of criminal record issued by the Spanish Ministry of Justice and/or its equivalent in the country of origin shall also be enclosed, for the purpose of assessing any convictions for crimes or offences as well as any sanctions for administrative infringements.

PART III. ADDITIONAL INFORMATION FOR QUALIFYING HOLDINGS OF 10% OR MORE

(1) Strategy report

For holdings below 20%, the strategy report shall include information on the following aspects:

- i) The policy of the proposed acquirer regarding the acquisition, with information on:
 - a. The period for which it intends to hold its holding in the undertaking after the acquisition.
 - b. Any intention to increase or reduce the level of holding in the near future.
- ii) An indication of the intention of the proposed acquirer towards the undertaking in which the acquisition is sought and in particular whether it intends or not to act as an active minority shareholder, and the rationale for that action (for example, ways to access or intervene at the Board of Directors and/or its dependent Committees).
- iii) Information on its capacity (financial position) and willingness to recapitalise the undertaking in which the acquisition is sought, if it is needed to conduct its business or in case of financial difficulty.

For holdings between 20% and 50%, the strategy report shall contain more detailed information:

- Details on the influence that the proposed acquirer intends to exercise on the financial position (including dividend policy) of the undertaking in which the acquisition is sought, its strategic development and allocation of resources.
- Position or opinion of the proposed acquirer on the business managing policies and operational policies, and current financial policies of the group (both parent and subsidiaries), indicating the most relevant aspects of such policies on which the proposed acquirer could or intends to exercise an influence during the period in which it holds a qualifying holding on the group.

3. Criteria adopted

3.1. Validity of the declaration of no objection

For authorised acquisitions of qualifying holdings of at least 1% and below 5%, it is possible to fall below the 1% threshold and then acquire a further percentage in that range without having to apply again for a declaration of no objection, provided this is done within the next 12 months after the date of declaration of no objection by the CNMV.

After that period, if the undertaking falls below 1% and then it intends to exceed that percentage again, it should apply again for a declaration of no objection to the acquisition of a qualifying holding.

3.2. Assessment of the proposed acquirer within the previous two years

If the proposed acquirer has been assessed by the CNMV within the previous two years about the acquisition of a qualifying holding in Spanish market infrastructures, notifications of subsequent acquisitions only need to include the information that has changed. In that case, the proposed acquirer shall include a declaration stating that any information not included remains unchanged from the previous assessment.

3.3. Underwriting: Application of the exemption provided for in Article 175.2 of TRLMV

In order to apply the exemption from calculation of the voting rights mentioned in Article 175.2 of the Securities Markets Act (consolidated text), approved by Royal Legislative Decree 4/2015 of 23 October, the proposed acquirer shall state and explain in writing the circumstances in which, where applicable, the acquisition would take place in the event of a potential agreement for the underwriting or placement of financial instruments, and the terms and conditions and treatment that it would apply to the shares that would eventually have to be acquired, specifically the non-exercise of any voting rights attached to such shares and the sale thereof within one year of their acquisition.