



Procedures for the resolution of central counterparties and the preventive resolution of investment firms (P18)

TABLE OF CONTENTS

1. Scope.....	3
2. Applicable rules	3
3. Competent departments and units	4
4. Preventive resolution functions of investment firms (IFs) and consolidated groups	5
5. Resolution functions of Central Counterparties (CCPs)	6
6. Functional separation with the areas of supervision and duty of collaboration.....	8
7. Resolution plans	8
8. Requests and applications for information or data.....	9
9. Duty of secrecy and confidentiality	9
10. Procedural manuals.....	9
11. Application	10

1. SCOPE

This internal procedure is developed in accordance with the provisions of Article 42 of the Internal Regulation of the Comisión Nacional de Mercado de Valores (Spain's National Securities Market Commission, hereinafter CNMV, from its Spanish initials), and shall be applicable to the actions carried out by the CNMV in the exercise of its resolution powers in relation to the following entities:

- a) Investment firms (IFs) established in Spain which fall within the scope of Law 11/2015, of 18 June, on the recovery and resolution of credit institutions and investment firms.
- b) The consolidated groups of investment firms established in Spain that fall within the scope of Law 11/2015, of 18 June, on the recovery and resolution of credit institutions and investment firms.
- c) Central counterparties (CCPs) domiciled in Spain.

2. APPLICABLE RULES

The rules applicable to this procedure are laid down, inter alia, in the following provisions:

1. Preventive resolution of IFs:

- Law 11/2015, of 18 June, on the recovery and resolution of credit institutions and investment firms.
- Royal Decree 1012/2015, of 6 November, implementing Law 11/2015, of 18 June, on the recovery and resolution of credit institutions and investment firms and amending Royal Decree 2606/1996, of 20 December, on deposit guarantee funds of credit institutions.
- Regulation (EU) No. 2019/2033 of the European Parliament and of the Council, of 27 November 2019, on the prudential requirements of investment firms and amending Regulation (EU) No. 1093/2010, Regulation (EU) No. 575/2013, Regulation (EU) No. 600/2014 and Regulation (EU) No. 806/2014.
- Law 6/2023, of March 17, on securities markets and investment services.
- Law 16/2022, of September 5, amending the recast text of the Insolvency Law, approved by Royal Legislative Decree 1/2020, of 5 May, for the transposition of Directive (EU) 2019/1023 of the European Parliament and of the Council, of 20 June 2019, on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 of the European Parliament and of the Council on certain aspects of company law (Directive on restructuring and insolvency).

2. CCP resolution:

- Law 6/2023, of 17 March, on securities markets and investment services.

- Regulation (EU) 2021/23 of the European Parliament and of the Council, of 16 December 2020, on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No. 1095/2010, (EU) No. 648/2012, (EU) No. 600/2014, (EU) No. 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132.
 - Regulation (EU) No. 648/2012, of the European Parliament and of the Council, of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR).
3. All European regulations that are published and applicable to the companies falling within the scope of this procedure in the actions carried out by the CNMV in the exercise of its resolution powers are included in this procedure.
 4. Any guidelines and recommendations issued by the European Securities and Markets Authority (ESMA) in accordance with Article 16 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council, of 24 November 2010, establishing said European Supervisory Authority, and by the European Banking Authority (EBA) in accordance with Article 16 of Regulation (EU) No. 1093/2010 of the European Parliament and of the Council, of 24 November 2010, establishing said European Supervisory Authority shall also be included in this procedure, provided that the CNMV has confirmed that their compliance or their intended compliance with the provisions of paragraph 3 of the aforementioned Article of both Regulations.
 5. The following also apply to this procedure:
 - Law 39/2015, of 1 October, on the common administrative procedure of public administrations.
 - The Internal Regulation of the CNMV, approved by Resolution of 19 December 2019, of the Board of the CNMV.
 - The Agreement of the Board of the CNMV on the delegation of powers in force at any given time.

3. COMPETENT DEPARTMENTS AND UNITS

1. The unit provided for in Article 30.4.o) of the Internal Regulation, which reports to the Strategic Policy and International Affairs Directorate-General, will be responsible for the internal coordination, analysis, reporting and proposals within the scope of the CNMV's functions as an authority for the preventive resolution of IFs and the authority for the resolution of CCPs.
2. The Investment Firm and Credit and Savings Institutions Supervision Department, which reports to the Entities Directorate-General, is responsible for the functions of the CNMV as the authority responsible for the supervision of IFs, in accordance with Article 30.2.e) of the Internal Regulation.

3. The Secondary Markets Department, which reports to the Markets Directorate-General, is responsible for the functions of the CNMV as the competent supervisory authority of the CCP, in accordance with Article 30.3.e) of the Internal Regulation.

4. PREVENTIVE RESOLUTION FUNCTIONS OF INVESTMENT FIRMS (IFS) AND CONSOLIDATED GROUPS

1. The CNMV will have all the resolution powers necessary for the exercise of its functions, whether directly or in collaboration with other national or foreign authorities. The resolution powers are set forth in Law 11/2015, of 18 June, on the recovery and resolution of credit institutions and investment firms and in Law 6/2023, of 17 March, on securities markets and investment services and implementing regulations and will be applied in the manner and with the limitations established in the legal system.
2. As a preventive resolution authority, the CNMV must have internal regulations to avoid conflicts of interest between the functional areas of resolution and supervision, as well as rules on professional secrecy and the exchange of information between the various functional areas.
3. As the preventive resolution authority, the CNMV must draw up and approve resolution plans for IFs. This is a crucial component of planning at individual or group level, which describes the strategy and measures to be taken if the IF encounters a situation where it may not be viable or likely to be non-viable.
 - 3.1. The resolution plan identifies the best resolution strategy – the application of resolution tools or liquidation by ordinary bankruptcy proceedings – that does not put at risk any of the resolution objectives.
 - 3.2. The resolution plan shall include an assessment of the resolvability of the IFs in accordance with the resolution objectives. The resolvability assessment analyses various elements, such as the identification of critical functions or the analysis of the credibility and feasibility of the resolution strategy, and identifies potential impediments to resolution and analyses how they affect the resolvability assessment in order to require appropriate action to eliminate them, if necessary.
 - 3.3. The resolution plan refers to the minimum requirement for own funds and eligible liabilities (MREL) established by the CNMV, which must be met by each IF. Its purpose is to ensure the financial continuity of the institution in order to absorb the losses existing at the time of non-viability and, in the event of resolution, to carry out a recapitalisation that allows the operational continuity of the institution.
 - 3.4. The resolution plan, prior to its approval, must be reviewed by the Entities Directorate-General, as the unit that internally performs the functions of the competent supervisory authority of the CNMV, and by the Spanish Executive Resolution Authority (hereinafter, FROB).
 - 3.5. Resolution plans shall be updated at least annually and in the other cases provided for in the applicable legislation. The CNMV may set a lower update frequency if it applies

simplified requirements when drawing up such plans. This decision is set out in the criteria and technical guidelines issued by the CNMV in this regard.

4. In its role as preventive resolution authority for IFs, the CNMV must, at the request of the Entities Directorate-General, also report on the recovery plans drawn up by the IFs and submit proposals for amendments if the plan could impair the resolvability of the institution.
5. The resolution plan is drawn up on the basis of the information that the CNMV receives regularly or on an ongoing basis from the market and its related persons and entities, as well as on the basis of the information that the CNMV may require in the exercise of its preventive resolution functions.
6. The employees of the CNMV in charge of the preventive resolution function of the IFs may request the files, reports, data, records and documents – regardless of their material medium – of the natural or legal persons who are the subject to the drawing up of the resolution plan, or request the documents available to the Entities Directorate-General, in accordance with the provisions of the applicable regulations.
7. In order to better fulfil its resolution tasks, the CNMV may call on the assistance of auditors, consultants or other independent experts in accordance with the applicable regulations and in the event of a duly justified need.
8. In addition to the applicable legal provisions, preventive resolution measures must comply with the provisions contained in the manuals and guidelines for measures or amendments thereto.

5. RESOLUTION FUNCTIONS OF CENTRAL COUNTERPARTIES (CCPS)

1. The CNMV will have all the resolution powers necessary for the exercise of its functions, whether directly or in collaboration with other national or foreign authorities. The resolution powers are set forth in Regulation (EU) 2021/23 of the European Parliament and of the Council, of 16 December 2020, on a framework for the recovery and resolution of central counterparties, and in Law 6/2023, of 17 March, on securities markets and investment services and implementing legislation and shall be applied in the manner and within the limits set out in the law.
2. The CNMV, as CCP resolution authority, assumes the resolution powers contained in Regulation (EU) 2021/23, as well as the sanctioning powers related to these tasks, which includes, inter alia, the exercise of the following functions:
 - 2.1. Drawing up, where appropriate in conjunction with other areas of the CNMV, internal rules and regulations to avoid conflicts of interest between the functional areas of resolution and supervision, as well as rules on professional secrecy and the exchange of information between the various functional areas.
 - 2.2. Establishing and chairing a resolution authorities college, responsible for deciding on the resolution plan drawn up by the CNMV and ensuring cooperation and coordination

with the authorities that are members of the college and, where appropriate, with the authorities of third countries.

- 2.3. Defining a list of potential valuers who fulfil the specified independence requirements to ensure that a sufficient number of qualified individuals or firms are available to perform the required valuations in the event of a resolution and to facilitate their availability and recruitment in times of stress.
- 2.4. Drawing up a resolution plan as a crucial component of planning.
 - 2.4.1. The resolution plan shall describe, for the different scenarios of default, non-default or a combination of both and for the different types of non-default scenarios, the strategy and actions to be taken if the CCP enters into a situation of non-viability or probable non-viability in a manner that does not jeopardise any of the resolution objectives and, in particular, ensures the continuity of the CCP's critical functions, takes into account the impact on the market, clearing members and the wider financial system, and protects public funds.
 - 2.4.2. The resolution plan shall include, inter alia, an assessment of the resolvability of the CCP in accordance with the resolution objectives, which requires the CNMV, in consultation with the resolution authorities college, to assess whether the resolution of the CCP is credible and feasible for the continuity of its essential functions, and to identify potential impediments to its resolvability and, if necessary, require appropriate measures to eliminate them.
 - 2.4.3. The resolution plan must be reviewed by the Entities Directorate-General, as the unit that internally performs the functions of the CNMV as competent supervisory for the oversight of the CPP, and coordinated by the resolution college.
- 2.5. Ensuring the effective resolution of the CCP through the application of resolution tools – write-down and conversion tools, loss and position allocation tools, sale of business, transfer to a bridge CCP or alternative financing – in a manner that ensures that the shareholders and creditor counterparties of the failing CCP bear the appropriate losses and costs resulting from the CCP's failure.
- 2.6. Taking appropriate measures in terms of form and timing – liquidity injections or the use of public stabilisation instruments – in the event that a non-viable CCP encounters a systemic crisis.
3. In its role as resolution authority for CCPs of the CNMV, the resolution authority must, at the request of the Markets Directorate-General, which is responsible for the exercise of the CNMV's functions as competent supervisory authority, also review the recovery plan drawn up by the CCP in order to determine whether it contains measures that could have a negative impact on the CCP's resolvability and, where appropriate, make recommendations on how to address the negative impact of these measures on the CCP's resolvability within two months from the date of submission of each recovery plan.
4. The resolution plan is drawn up on the basis of the information that the CNMV receives regularly or on an ongoing basis from the market and its related persons and entities, as well

as on the basis of the information that the CNMV may require in the exercise of its resolution functions.

5. The employees of the CNMV in charge of the resolution function may request the files, reports, data, records and documents – regardless of their material medium – of the natural or legal persons who are the subject to the drawing up of the resolution plan, in accordance with the provisions of the applicable regulations.
6. In order to better fulfil its resolution tasks, the CNMV may call on the assistance of auditors, consultants or other independent experts in accordance with the applicable regulations and in the event of a duly justified need.
7. In addition to the applicable legal provisions, resolution measures must comply with the provisions contained in the manuals and guidelines for measures or amendments thereto referred to in Section 10 of this procedure.

6. FUNCTIONAL SEPARATION WITH THE AREAS OF SUPERVISION AND DUTY OF COLLABORATION

A general principle of resolution regulation is the necessary separation between supervisory and resolution functions with the aim of eliminating the conflict of interest that the supervisory authority could face if it were to simultaneously exercise resolution powers.

In accordance with this principle, and in compliance with the provisions of the First Additional Provision of Law 11/2015, on the recovery and resolution of credit institutions and investment firms and Article 3 of Regulation (EU) 2021/23 of the European Parliament and of the Council, of 16 December 2020, on a framework for the recovery and resolution of central counterparties, appropriate structural arrangements have been adopted – ensuring effective operational independence, including the separation of staff, reporting lines and decision-making process – in order to avoid conflicts of interest between the functions entrusted to the resolution authority and all other functions entrusted to said authority and to establish the criteria for action, to ensure collaboration and exchange of information in the exercise of the supervisory and resolution functions.

7. RESOLUTION PLANS

1. The resolution plans must be reviewed and signed by the head of the unit that is assigned the resolution functions that correspond to the CNMV and by the General Director for Strategic Policy and International Affairs.
2. Once the resolution plan has been drawn up or updated, and the mandatory reports (from the supervisor, the legal advice department and the FROB or the resolution college, where applicable) have been received, the General Director for Strategic Policy and International Affairs will submit it to the Executive Committee or the Chairperson's Office for approval.

3. The approval of the resolution plan shall be notified to the IF or the CCP together with a summary of the main elements of the plan. In this notification, the IF or CCP shall be invited to comment on the content of the plan so that it can be included in the resolution plan at the next update.

8. REQUESTS AND APPLICATIONS FOR INFORMATION OR DATA

1. The Strategic Policy and International Affairs Directorate-General, in the exercise of its resolution functions, may request from the companies, bodies, entities or persons listed in Section 1 any information it deems necessary or appropriate for the performance of its activities.
2. The requests and applications for information made under this procedure must be made, in general, in accordance with the provisions contained in the *Procedure for the issue of demands and requests for data or reports to persons and firms operating in the securities market*.

9. DUTY OF SECRECY AND CONFIDENTIALITY

1. The authorities and employees of the CNMV are subject to the obligation of professional secrecy in the exercise of their resolution functions.
2. Confidential or reserved information or data obtained in the course of the resolution measures is subject to the obligation of professional secrecy pursuant to Article 233 of the Spanish Securities Markets and Investment Services Act (LMVSI), Article 59 of Law 11/2015 and Article 73 of Regulation (EU) 2021/23, with the exceptions provided for in these articles.
3. Failure to comply with the duty of confidentiality will result in the criminal, civil and disciplinary liabilities established by law.

10. PROCEDURAL MANUALS

1. The General Director for Strategic Policy and International Affairs shall approve, within the scope of his competences, the “Procedural Manuals” necessary for the compliance and practical application of the provisions contained in this procedure.
2. The criteria or guidelines included in the “Procedural Manuals” constitute basic guidelines and specific operating rules for the most appropriate and efficient development of the work.
3. The “Procedural Manuals” contain the controls that are considered necessary within the CNMV’s Risk Management System to ensure effective compliance with legal provisions and this procedure.
4. The criteria or guidelines issued by ESMA and, where applicable, EBA to promote common resolution practices, in accordance with Article 29.2 of Regulation (EU) No. 1095/2010 and any guidance published by the CNMV in relation to this procedure shall be taken into account when drawing up the “Procedural Manuals”.

11. APPLICATION

This procedure will apply from 23 December 2023 and will be reviewed annually and whenever there is a change to the regulations that has a material impact on its content.