Provisions on administrative sanctions applied by the Central Bank of the Republic of San Marino and the Financial Intelligence Agency and on liabilities of corporate bodies

Delegated Decree no. 77 of 19 May 2014

as amended by Law 146 of 19 September 2014.

CHAPTER I
General rules

Art. 1
(Preamble and purpose)

1. This Delegated Decree, in implementation of Article 41, paragraph 2, of Law no. 150 of 21 December 2012, reforms the system of pecuniary administrative sanctions applied by the Central Bank of the Republic of San Marino (Central Bank) and the Financial Intelligence Agency (Agency), laid down in Law no. 96 of 29 June 2005 and subsequent amendments, in Law no. 165 of 17 November 2005 and subsequent amendments, in Law no. 92 of 17 June 2008 and subsequent amendments and in Decree no. 76 of 30 May 2006 and subsequent amendments, in order to:

a) apply sanctions more gradually with respect to the seriousness of violations;
b) redefine the system of appeals;
c) establish the principles concerning liability of corporate bodies.

CHAPTER II
Sanctions imposed by the Central Bank

SECTION I
Amendments to Law no. 96 of 29 June 2005

Art. 2
(Amendments to Article 31 of Law no. 96/2005)

1. Article 31 of Law no. 96 of 29 June 2005 is replaced by the following:

"Art. 31
(Sanctions)

1. Without prejudice to criminal sanctions, where applicable, anyone violating the provisions of this Law, those specifically regulating any function assigned to the Central Bank, as well as the provisions in implementing decrees and regulatory measures referred to in Article 30 above, shall be punished with a pecuniary administrative sanction.

2. After having heard the Credit and Savings Committee, upon proposal of the Central Bank, an ad-hoc decree shall identify the following:

a) the provisions the violation of which is punished;
b) those responsible for the violations;
c) a minimum and maximum amount of each pecuniary administrative sanction, provided that the minimum amount is not less than € 50.00 and the maximum amount does not exceed € 50,000.00, to ensure that sanctions are adequately effective, proportionate and dissuasive;
d) the sanction procedure in its various stages, with special rules concerning the manner and time-limits for notification to the parties concerned.

3. The amount of each sanction shall be established by the Central Bank according to the principle of proportionality. In other words, it shall be fixed in accordance with the limits specified above and based on the seriousness of the violation, having also regard to the following:

a) the duration of the violation;
b) the dimensions of the legal person and the group to which it belongs;
c) the effects, even potential, of the violation on the technical, organisational and management situation of the supervised party and of the group to which it belongs, as well as the possible imposition of prohibitory measures, specific or extraordinary measures on supervised parties;
d) reliability of the description concerning the business' situation provided to the Central Bank;
e) cases where several provisions are violated or the same provision is violated repeatedly through a single action or failure;
f) cases of repeated violation;
g) the impact, even potential, on customers, other qualified stakeholders or, in general, on the stability and reputation of the national financial system;
h) any active repentance, that is to say the activity carried out by responsible persons or by the supervised entity to which they belong to eliminate or lessen the consequences of the infringement;
i) the level of personal liability of the parties subject to sanctions, in relation to the information available, such as the structure of powers, the conducts concretely held and the duration of the term of office.

4. Only a sanction shall be applied in case of a single action or failure, also when several provisions are violated or the same provision is violated more than once, without prejudice to the application of the criterion of proportionality referred to in letter e) of paragraph 3 above.

5. Those specific actions or failures already analysed by the Central Bank during inspections, which were not considered as violations, shall not be subject to sanctions, without prejudice to the subsequent acquisition of new documents or new information referring to the actions or omissions mentioned above. The following persons, if not at fault, shall not be subject to sanctions:

a) the director or the auditor who has identified the violation deriving from a collective decision, provided that the findings are included in the corporate books or records and an official and timely report is made to the Central Bank;

b) the auditing firm, the external auditor or the actuary who, having identified the violation, has notified such findings in the form envisaged by law and has submitted a formal and timely report to the Central Bank;

c) other persons who may be subject to the sanction procedure in accordance with the delegated decree mentioned in paragraph 2 above, who, having identified the violation in the exercise of their functions, have submitted a formal and timely report to the Central Bank.

6. The sanction procedure shall:

a) be initiated by the Central Bank within 9 months following the establishment of the violations by means of a notice of the alleged violations to the persons concerned, in which reference is made to the inspection, the supervisory activity, the unmet deadline or the documents acquired from which the alleged violations have arisen;

b) terminate - considering any possible counter-argument presented by the persons concerned within a period of 30 days that might be extended upon provision by the Central Bank - within 60 days following the initial of the procedure itself, i.e. the notification of the alleged violations referred to above by filing the case or applying the administrative sanction by means of a reasoned provision

containing the order for payment. Where an extension for the presentation of counter-arguments is granted, the aforesaid time limit of 60 days shall be extended by the number of days of extension granted.
7. The administrative sanction shall cease to apply when the person sanctioned pays the relevant amount to the Central Bank within 60 days of the notification of the sanction.
8. The legal persons to which those having committed the violations belong shall be jointly and severally liable with them for the payment of the sanction imposed under an obligation to seek reimbursement from those having committed the violations.
9. The option of terminating the sanction through voluntary settlement shall be exercised by the violator by paying an amount equivalent to half the sanction applied.
10. A judicial appeal against the sanction measure may be lodged before the Administrative Judge in the manner and according to the time-limits referred to in Title II of Law no. 68 of 28 June 1989, without prejudice to the possibility for the Judge of derogating from Article 18, paragraph 4 of the same Law in the context of appeals against sanctions imposed by the Central Bank.
11. The lodging of a judicial appeal within the meaning of preceding paragraph 10 shall suspend the sanction which, therefore, becomes effective and enforceable when the judgement dismissing the appeal becomes res judicata.
12. If neither the sanctioned person nor the jointly and severally liable legal person has paid the sanction which has become unchallengeable, the Central Bank shall resort to the compulsory collection procedure under Law no. 70 of 25 May 2004 to collect the amounts. Pecuniary administrative sanctions shall be collected in accordance with the same procedure envisaged for the collection of taxes, duties, charges, sanctions and any other revenue due to the State (Ecc.ma Camera), Public Entities and the Autonomous State Corporations.
13. The Central Bank shall transfer to the State the amounts collected as payments of sanctions, excluding any lawyers' fees incurred to contest the appeals referred to in paragraph 10 above. Such amounts shall be allocated to a specific chapter of the State Budget, "Banking, Financial and Insurance system interventions".
14. Pecuniary administrative violations defined in this Law and in the Delegated Decree referred to in paragraph 2 shall be included in the list annually proposed by the Administrative Judge of Appeal under Article 32 of Law no. 68 of 28 June 1989".

Art. 3

(Amendments to Article 32 of Law no. 96/2005)

1. Article 32 of Law no. 96 of 29 June 2005 is replaced by the following:

"Art. 32

(Publicity of sanctions)

1. In the cases and in the manner deemed most appropriate, the Central Bank may publish the pecuniary sanction measure and the names of those to whom the sanction applies, only in the event of an unchallengeable measure".

SECTION II
AMENDMENTS TO LAW NO. 165 OF 17 NOVEMBER 2005

Art. 4
(Amendments to Article 141 of Law no. 165/2005)

1. Article 141 of Law no. 165 of 17 November 2005 is replaced by the following:

"Art. 141

(Sanctions)

1. Pecuniary administrative sanctions imposed by the Central Bank in the exercise of the functions referred to in this Law shall be regulated by Article 31 of Law no. 96 of 29 June 2005 and by the relevant implementing delegated decree".

Art. 5
(Repeal of Article 146 of Law no. 165/2005)

1. Article 146 of Law no. 165 of 17 November 2005 is repealed.

SECTION III
Amendment to Decree No. 76 of 30 May 2006

Art. 6
(Amendment of the title of Decree no. 76/2006)

1. Decree no. 76 of 30 May 2006 is re-named as follows: "Punishable conducts relating to the provisions of Law no. 96 of 29 June 2005 and the measures issued by the Central Bank of the Republic of San Marino".

Art. 7
(Amendment to Article 19 of Decree no. 76/2006)

1. Article 19 of Decree no. 76 of 30 May 2006 is replaced by the following:

"Art. 19

(Rules on the prevention and combating of money laundering and terrorist financing)

1. Failure to comply with the instructions issued by the Financial Intelligence Agency under Law no. 92 of 17 June 2008 and subsequent amendments shall be punished by means of an administrative sanction applied by the Financial Intelligence Agency in accordance with aforesaid Law no. 92/2008."

Art. 8
(Amendment to Article 22 of Decree no. 76/2006)

1. Article 22 of Decree no. 76 of 30 May 2006 is replaced by the following:

Art. 22

(Subjects responsible for the violations)

1. The provisions referred to in this Delegated Decree, without prejudice to the violations which can be punished by other authorities, shall target all parties subject to the sanctioning power of the Central Bank in the exercise of the public functions assigned to it by laws and decrees, in particular:

a) supervised parties, including the Postal Corporation (Ente Poste) for the financial services provided;
b) holding companies covered by the definition of parent companies under Article 54 of the LISF;
c) offerors and issuers referred to in Part III of the LISF;
d) holders of significant interests referred to in Part I, Title IV of the LISF;
e) parties having obligations vis-à-vis the Office of the Trust Register under Law no. 42 of 1 March

2010 and subsequent amendments;

f) cash handlers pursuant to Law no. 101 of 29 July 2013;

g) undertakings authorised to purchase raw gold under Law no. 41 of 25 April 1996.

2. In case of legal persons, in the event of intent or negligence, including omission, a sanctioning procedure shall apply to:

to) those performing management, direction or control functions;

b) employees who, within the undertaking, are responsible for specific operational or internal audit functions, provided that the persons against whom the violation is alleged are held liable for such omissions or actions;

c) anyone operating on the basis of relationships, including those other than employment relationships, on account of which the person concerned is introduced into the organisational structure, provided that the person against whom the violation is alleged is held liable for such omissions or actions;

d) those entrusted with audit activities, for violations of their own responsibilities, for failure to inform the Central Bank of actions or facts, identified in the exercise of their duties, which may constitute serious violations of existing rules or undermine the continuity of businesses or entail an adverse audit opinion, a qualified audit opinion or a disclaimer of audit opinion, as well as for failure to transmit to the Central Bank any other data or document requested.

3. When the pecuniary sanction is applied to individuals, it shall be dependent on personal fault. However, legal persons to which the perpetrators of the violations belong shall be jointly and severally liable for the payment of the sanction pursuant to Article 31, paragraph 8 of Law no. 96 of 29 June 2005 and subsequent amendments.".

Art. 9

(Amendment to Article 23 of Decree no. 76/2006)

1. Article 23 of Decree no. 76 of 30 May 2006 is replaced by the following:

"Art. 23

(Principles, criteria and procedures)

1. The sanction activity shall be:

a) dissuasive in order to discourage the violation of rules and the repetition of the unusual conduct;

b) proportional so that the extent of sanctions depends on the seriousness of violations;

c) objective to ensure consistent judgements when assessing different cases;

d) transparent vis-à-vis the sanctioned party, whose possible counter-arguments may supplement the knowledge base, thus being complementary to the elements acquired through on-site and off-site inspections.

2. In compliance with the procedure described in the paragraphs hereunder, the Central Bank shall establish the violations, carry out the investigation and apply sanctions, or it shall inform the parties concerned that it did not continue the sanction procedure initiated against them.

3. The Central Bank's sanction procedure shall involve the following steps:

a) notification of violations identified;

b) presentation of counter-arguments and possible personal hearing;

c) evaluation of overall evidence;

d) proposal made by the responsible organisational unit to the competent statutory body for applying the sanction or closing the case;

e) adoption of the sanction measure or closure of the case by the competent statutory body;

f) notification of the sanction measure;

g) possible publication of the sanction measure.

4. In order for the time limit referred to in Article 31, paragraph 6, letter a) of the Statutes of the Central Bank to begin running, the establishment of the violations shall correspond to the date on which:

a) the deadlines for the transmission, filing and provision to the Central Bank of information, documents, communications or reports, including regular/statistical ones, expire without success;
b) the deadlines for the submission to the Central Bank of the considerations on the outcomes of the inspection reports delivered to the parties concerned expire;
c) hard copy documents evidencing the infringement are received, even on a non-regular basis, by the Central Bank.

5. The alleged violations shall be notified in accordance with Article 17 of Law no. 100 of 29 July 2013.

6. In addition to the formal elements suited to qualifying it as the document instituting the administrative sanction procedure, the notice of the violations shall include:

a) reference to the inspection, supervising activity, the unmet deadline or the documents acquired from which the alleged violation has arisen;
b) the date on which the violation assessment terminated under paragraph 4 above;
c) description of the violating action or omission, specifying the time in which it was allegedly made in relation to the position and the period covered in that post;
d) indication of the provisions violated and relevant sanction rules;
e) the invitation made to the parties charged with the violations and the legal person held jointly and severally liable to transmit to the above-mentioned organisational unit responsible for the procedure any counter-argument within 30 calendar days following the notification;
f) indication of the possibility for the parties accused to request a personal hearing within the same time limit, whether original or extended under following paragraph 7, envisaged for the presentation of counter-arguments;
g) the time limit for the conclusion of the administrative proceedings under Article 31, paragraph 6, letter b) of the Statutes of the Central Bank.

7. Anyone subject to a sanction, including legal persons held jointly and severally liable, shall be entitled to present counter-arguments, in line with the principle of defence referred to in Article 15 of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order. This right may be exercised within 30 days of notification of alleged violations. The parties concerned may request, by submitting and signing a duly motivated request, an extension not exceeding 30 days, which may be granted, according to proportionality criteria, also in relation to the operational characteristics and dimensions of the intermediary and the complexity of the allegations. Failure to submit documents for defence purposes shall not prejudice the subsequent stages of the sanction procedure. Counter-arguments may be submitted individually or be signed by all parties concerned, including the legal representative of the legal person to which the individual belongs, or by some of them. The parties concerned may also specify in the counter-arguments the address to which subsequent communications concerning the sanction procedure may be sent. In order to ensure cost-effectiveness of the administrative action, counter-arguments shall be essential and concise, reflecting the order of the alleged violations and enclosing only the documents:

a) which are relevant to the alleged facts and to the arguments in defence;
b) of which the Central Bank is unaware;
c) which are filed in an orderly manner and are supported by a list.

8. The investigation shall consist in the evaluation of the elements available so as to propose to the competent statutory body to impose a sanction or to close the case. The organisational unit which is responsible for the investigation shall:

a) maintain all acts and documents used during the sanction procedure;
b) verify the correct establishment of the adversarial procedure involving the parties accused and ensure that the latter can take part in the administrative proceedings in the form and manner required by law;
c) analyse all evidence placed on the file of the sanction proceedings. On the basis of the arguments submitted by the parties concerned, the party documents and all information collected, the unit shall also carefully assess the alleged violations , the seriousness thereof and the personal liability, in accordance with the criteria set forth in Article 31, paragraph 3 of the Statutes of the Central Bank, including active repentance;
d) submit a reasoned proposal to the competent statutory body for the application of a sanction or the closure of the case.

9. The Governing Council of the Central Bank shall be responsible for the adoption of the sanction or the closure of the case, except for the sanction proceedings referred to in Title I of this Decree, which fall within the competence of the Supervision Committee of the Central Bank, since they relate to the management of the independent supervisory function mentioned in the LISF. The measure shall be adopted within 30 days of the expiry of the time limit, whether original or extended, for the presentation of counter-arguments by the party notified of the alleged violations.

10. Also the closure of the case shall be notified to the parties concerned.

11. The sanction measure shall indicate:

a) the notice of the alleged violation referred to in preceding paragraph 6, which shall be enclosed therewith;
b) the reasons for the measure, also by expressly indicating the assessments concerning possible counter-arguments presented by the parties targeted by the measure;
c) the amount of the sanction to pay and relevant termination of the penalty payment;
d) the criteria adopted for the determination of the applicable sanction under Article 31, paragraph 3 of the Statutes of the Central Bank;
e) the possibility of paying a lower amount under Article 31, paragraph 9 of the Statutes of the Central Bank;
f) the time limit for appeal and the competent Authority before which the appeal shall be lodged.

12. The sanction measure shall be notified in compliance with paragraph 5 above regarding alleged violations.

13. After notification the measure may be published under Article 32 of the Statutes of the Central Bank, including in the ad-hoc section of the website and in the Official Bulletin - Administrative Part and Insertions. A specific provision contained in the measure itself shall indicate whether to publish the measure or not.

14. In case of voluntary settlement a reduced amount may be paid if paid within the time limit referred to in Article 31, paragraph 7, of Law no. 96/2005. The registration referred to in Article 31, paragraph 12 of the Statutes of the Central Bank shall be made no earlier than six months from the notification of the sanction for twice the amount of the sanction. In case of administrative appeals, the six-month time limit shall run from the date of the conclusion of the judicial proceedings.

CHAPTER III
Sanctions imposed by the Financial Intelligence Agency

Art. 10
(Amendment to Article 70 of Law no. 92/2008)

1. Article 70, paragraph 2 of Law no. 92 of 17 June 2008 is amended as follows:

"2. If the violation is committed by the representative, the members of the Board of Directors or of the Board of Auditors, a consultant performing outsourced control activities with expertise in anti-money laundering, a collaborator or an employee of a legal person or entity without legal personality, of a sole proprietor or professional in the exercise of their own functions or duties, the legal person, entity, entrepreneur or professional shall be held jointly and severally liable with the perpetrator of the violation for the payment of the amount owed by the latter."

Art. 11
(Amendments to Article 72 of Law no. 92/2008)

1. Article 72 of Law no. 92 of 17 June 2008 is amended as follows:

"Art. 72

(Criteria for the application of pecuniary administrative sanctions and sanction procedure)

1. Each sanction shall be established by the Agency according to the principle of proportionality. In other words, it shall fix the sum to be paid, ranging from the minimum to the maximum amount, on account of the seriousness of the violation, i.e. also on the basis of the following elements:

a) the duration of the violation;
b) the dimensions of the obliged party and, for financial parties, the group to which they belong;
c) cases where several provisions are violated or the same provision is violated repeatedly through a single action or failure;
d) cases of repeated violation;
e) the impact on the stability and reputation of the national financial system;
f) any active repentance that is to say the activity carried out by responsible persons or by the obliged entity to which they belong to eliminate or lessen the consequences of the infringement;
g) the level of personal liability of the parties subject to sanctions, in relation to the information available, such as the structure of the powers of financial parties, the conducts concretely held and the duration of the term of office.

2. The following persons, if not at fault, shall not be subject to sanctions:

a) the director or the auditor who has identified the violation deriving from a collective decision, provided that the findings are included in the corporate books or records and an official and timely report is made to the Agency;
b) other persons who may be subject to the sanction procedure, who, having identified the violation in the exercise of their functions, have submitted a formal and timely report to the Agency.

3. Those specific actions or failures already analysed by the Agency during previous inspections , which were not considered as violations, shall not be subject to sanctions, without prejudice to the subsequent acquisition of new documents or new information referring to the actions or omissions mentioned above.

4. The sanction procedure shall:

a) be initiated by the Agency within 9 months following the identification of the violations by means of a notice of the alleged violations to the persons concerned, in which reference is made to the inspection, the supervisory activity, the unmet deadline or the documents acquired from which the alleged violations have arisen;
b) terminate - considering any possible counter-argument presented by the persons concerned within a period of 30 days that might be extended upon provision by the Agency - within 90 days following the initial of the procedure itself, i.e. the notification of the notice above by filing the case or applying the administrative sanction by means of a reasoned provision containing the order for payment. Where an extension for the presentation of counter-arguments is granted, the aforesaid time limit of 90 days shall be extended by the number of days of extension granted.

5. The administrative sanction shall cease to apply when the person sanctioned pays the relevant amount to the Agency within 60 days of the notification of the sanction.
6. The option of terminating the sanction through voluntary settlement shall be exercised by the violator by paying an amount equivalent to half the sanction applied.
7. A judicial appeal against the sanction measure may be lodged before the Administrative Judge in the manner and according to the terms referred to in Title II of Law no. 68 of 28 June 1989, without prejudice to the possibility for the Judge to derogate from Article 18, paragraph 4 of the same Law in the context of appeals against sanctions imposed by the Agency.
8. The lodging of a judicial appeal within the meaning of preceding paragraph 7 shall suspend the sanction which, therefore, becomes effective and enforceable when the judgement dismissing the appeal becomes res judicata.
9. After the expiry of the payment deadline, if neither the sanctioned person nor the jointly and severally liable legal person has paid the sanction, the Agency shall resort to the compulsory collection procedure Law no. 70 of 25 May 2004 to collect the amounts. Pecuniary administrative sanctions shall be collected in accordance with the same procedure envisaged for the collection of taxes, duties, charges, sanctions and any other revenue due to the State (Ecc.ma Camera), Public Entities and the Autonomous State Corporations.
10. The Agency shall transfer to the State the amounts collected as payments of sanctions, excluding any lawyers' fees incurred to contest the appeals referred to in paragraph 7 above. Such amounts shall be allocated to a specific chapter of the State Budget.
11. Pecuniary administrative violations defined in this Law shall be included in the list annually proposed by the Administrative Judge of Appeal under Article 32 of Law no. 68 of 28 June 1989".

Art. 12

(Amendments to Article 73 of Law no. 92/2008)

1. Article 73 of Law no. 92 of 17 June 2008 is amended as follows:

"Art. 73

(Publication of sanctions)

1. In the cases and in the manner deemed most appropriate, the Agency may publish the pecuniary sanction measure and the names of those to whom the sanction applies, only in the event of an unchallengeable measure."

Art. 13

(Amendment to Article 74 of Law no. 92/2008)

1. Article 74 of Law no. 92 of 17 June 2008 is amended as follows:

"Art. 74

(Application of sanctions)

1. The Agency shall detect the administrative violations and apply the sanctions set forth in this Law according to the criteria and procedures described hereunder.

2. The sanction activity shall be:

a) dissuasive in order to discourage the violation of rules and the repetition of the unusual conduct;
b) proportional so that the extent of sanctions depends on the seriousness of violations;
c) objective to ensure consistent judgements when assessing different cases;
d) transparent vis-à-vis the sanctioned party, whose possible counter-arguments may supplement the knowledge base, thus being complementary to the elements acquired through on-site and off-site inspections.

3. In compliance with the procedure described in the paragraphs hereunder, the Agency shall establish the violations, carry out the investigation and apply sanctions or it shall inform the parties concerned that it did not continue the sanction procedure initiated against them.

4. The Agency's sanction procedure shall involve the following steps:

a) notice of the violations identified;
b) presentation of counter-arguments and possible personal hearing;
c) evaluation of overall evidence;
d) proposal by the Agency's Director or Deputy Director to impose the sanction or to close the case;
e) adoption of the sanction or closure of the case by the Agency's Director or Deputy Director;
f) notification of the sanction measure;
g) possible publication of the sanction measure.

5. In order for the time limit referred to in Article 72, paragraph 4, letter a) above to begin running, the establishment of the violations shall correspond to the date on which:

a) the obliged parties are notified of the inspection findings by hand delivery to the parties concerned or by sending the relevant report;
b) the Agency receives the documents, whether hard-copy or electronic, indicating the violation.

6. The alleged violations shall be notified in accordance with Article 17 of Law no. 100 of 29 July 2013.

7. In addition to the formal elements suited to qualifying it as the document instituting the administrative sanction procedure, the notice of the alleged violations shall include:

a) reference to the inspection, supervising activity, the unmet deadline or the documents acquired from which the alleged violation has arisen;
b) the date on which the violation assessment terminated under paragraph 5 above;
c) description of the violating action or omission, specifying the time in which was allegedly made in relation to the role and the period covered in that post;
d) indication of the provisions violated and relevant sanction rules;
e) the invitation made to the parties charged with the violations and the legal person held jointly and severally liable to transmit to the Agency any counter-argument within 30 calendar days following the notification;
f) indication of the possibility for the parties accused to request a personal hearing within the same time limit, whether original or extended under subsequent paragraph 9, envisaged for the presentation of counter-arguments;
g) the time limit for the conclusion of the administrative proceedings under preceding Article 72, paragraph 4, letter b).

8. The notice of the alleged violations, as described and notified above, may be an integral part of the

inspection report by means of which the alleged violations are identified.

9. Anyone subject to a sanction, including legal persons held jointly and severally liable, shall be entitled to present counter-arguments, in line with the principle of defence referred to in Article 15 of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order. This right may be exercised within 30 days of notification of alleged violations. The parties concerned may request, by submitting and signing a duly motivated request, an extension not exceeding 30 days, which may be granted, according to proportionality criteria, also in relation to the operational characteristics and dimensions of the obliged party and the complexity of the allegations. Failure to submit documents for defence purposes shall not prejudice the subsequent stages of the sanction procedure. Counter-arguments may be submitted individually or be signed by all parties concerned, including the legal representative of the legal person to which the individual belongs, or by some of them. The parties concerned may also specify in the counter-arguments the address to which subsequent communications concerning the sanction procedure may be sent. In order to ensure cost-effectiveness of the administrative action, counter-arguments shall be essential and concise, reflecting the order of the alleged violations and enclosing only the documents:

a) which are relevant to the alleged facts and to the arguments in defence;
b) of which the Agency is unaware;
c) which are filed in an orderly manner and are supported by a list.

10. The investigation shall consist in the evaluation of the elements available so as to propose to the Director or Deputy Director to impose a sanction or to close the case. The Agency shall:

a) maintain all acts and documents used during the sanction procedure;
b) verify the correct establishment of the adversarial procedure involving the parties accused and ensure that the latter can take part in the administrative proceedings in the form and manner required by law;
c) analyse all evidence placed on the file of the sanction proceedings. On the basis of the arguments submitted by the parties concerned, the party documents and all information collected, the unit shall also carefully assess the alleged violations, the seriousness thereof and the personal liability, in accordance with the criteria set forth in preceding Article 72, paragraph 1, including active repentance;

11. Following a proposal by those who, within the Agency, conducted the investigation, the Director or the Deputy Director shall adopt the sanction or close the case. The measure shall be adopted within 60 days of expiry of the time limit, whether original or extended, for the presentation of counter-arguments by the party notified of the alleged violations.

12. Also the closure of the case shall be notified to the parties concerned.

13. The sanction measure shall indicate:

a) the notice of the alleged violation referred to in preceding paragraph 7, which shall be enclosed therewith;
b) the reasons for the measure, also by expressly indicating the assessments concerning possible counter-arguments presented by the parties targeted by the measure;
c) the amount of the sanction to pay and relevant termination of the penalty payment;
d) the criteria adopted for the determination of the applicable sanction under preceding Article 72, paragraph 1;
e) the time limit for appeal and the competent Authority before which the appeal shall be lodged.

14. The sanction measure shall be notified in compliance with paragraph 6 above regarding notice of

the alleged violations.
15. After notification, the measure may be published under preceding Article 73, including in the ad-hoc section of the website and in the Official Bulletin - Administrative Part and Insertions. A specific provision contained in the measure itself shall indicate whether to publish the measure or not.
16. In case of voluntary settlement a reduced amount may be paid if paid within the time limit referred to in Article 72, paragraph 5. The registration referred to in Article72, paragraph 9 above shall be made no earlier than six months from the notification of the sanction for twice the amount of the sanction. In case of administrative appeals, the six-month time limit shall run from the date of the conclusion of the judicial proceedings.
17. Where the violation of Article 31 and of the rules set forth in Delegated Decree no. 74 of 19 June 2009 and subsequent amendments is identified, the Agency shall directly adopt a sanction within its responsibility, that is to say without previously notifying the alleged violations and the relevant period for the submission of counter-arguments, specifying in the sanction measure any information relating to the non-notification of the alleged violations and without prejudice to any administrative judicial appeal under Article 72, paragraph 7.

CHAPTER IV
RULES ON LIABILITY ACTIONS

Art. 14
(Requirements and types of liability actions)

1. This Chapter establishes provisions on liability actions against dissolved administrative and supervisory bodies, managers, auditing firms, external auditor and actuary of authorised parties placed under special administration or subject to compulsory administrative liquidation, pursuant to Law no. 165/2005 and subsequent amendments.
2. The liability actions referred to in paragraph 1 shall be subject to general rules with the clarifications contained in the subsequent Articles of this Chapter. They may be carried out by the special administrators only where the conduct of the parties mentioned in the preceding paragraph resulted in an actual damage for the authorised party and solely with respect to such damage.
3. The liability action may also be carried out by partners or third party creditors within the limits of the damage caused to them.

Art. 15
(Continuation of the action)

1. The administrative bodies succeeding the special administrators shall continue the liability actions initiated by the latter. In any case, they may decide to discontinue and/or to settle such actions.
2. To this end, the new directors may convene the general meeting after their appointment by including the item in the meeting's agenda in order to decide to discontinue and/or to settle the liability actions when the continuation thereof is no longer considered favourable for the company.
3. The new directors shall inform the Central Bank of their decision to discontinue the liability actions in accordance with paragraph 2 above, thus stressing the consistency of the aforesaid decision with the principle of sound and prudent management.
4. Where the State was involved, directly or indirectly, by providing financial support to authorised parties placed under special administration or subject to compulsory administrative liquidation, the

decision on discontinuation of the liability actions may be made by the new directors subject to prior favourable opinion of the Committee for Credit and Savings.
5. The special administrators referred to in Article 79, paragraph 1, letter a) and in Article 86, paragraph 1, letter a), of Law no. 165/2005 may, following the initiation of the liability actions within the meaning of Article 80, paragraph 5, of Law no. 165/2005 and of Article 88, paragraph 5 of the same Law no. 165/2005 respectively, discontinue and/or settle such actions as deemed no longer suitable and/or appropriate for the company, after consultation with the Oversight Committee and approval by the Supervisory Authority."

Art. 16

(Liability of management, auditing firm, external auditor and actuary)

1. The management, auditing firm, as well as the auditor and actuary of the authorised parties shall be held liable only in case of violation of their duties imposed by specific law or regulatory provisions, instructions or circulars.
2. Exemption from liability shall apply to the management, auditing firm, external auditor and the actuary who, not at fault, detected the violation or the irregularity, as well as recorded such violation or irregularity in corporate books or communications and formally and timely reported it to the competent Authorities.
3. The members of the Board of Auditors shall not be held liable for violations of audit rules for which the auditing firm and the external auditor shall be responsible.
4. Liability action may be performed in respect of the management, the auditing firm, the external auditor and the actuary only by specifying the actions or omissions giving rise to such liability and only in relation to the damage caused by said actions or omissions.
5. The action shall clearly indicate the conduct attributable to the party held liable. It shall describe in detail the facts or omissions committed and specify the reasons why the party concerned may have participated in the violation with others despite having a different role. The role of each person involved shall be assessed taking into account the positions held on the basis of powers of attorney, senior positions in the company, any other position covered as official besides corporate offices, of individual representatives and the period covered in such positions.

Art. 17

(Liability of special administrators and members of the Oversight Committee)

1. Without prejudice to further liabilities attributable to the position as public official held by special administrators, special administrators and members of the Oversight Committee shall be subject to the same liabilities envisaged for directors and auditors of authorised parties, respectively.
2. Paragraph 9 of Article 80 of Law no. 165 of 17 November 2005 is repealed.
3. Paragraph 6 of Article 88 of Law no. 165 of 17 November 2005 is replaced by the following:
"6. Paragraphs 7 and 8 of Article 80 of this Law shall apply to liquidators and the Oversight Committee.".

Art. 17bis

(Appointment of special administrators and members of the Oversight Committee)

1. Article 79, paragraph 6 of Law no. 165 of 17 November 2005 is amended as follows:

"6. The Supervisory Authority shall define the requirements to hold the position of special administrator or member of the Oversight Committee. The Supervisory Authority shall appoint as special administrator or member of the Oversight Committee professionals registered with the Association of Lawyers and Notaries Public of the Republic of San Marino and/or with the Association of Accountants of the Republic of San Marino.".
2. The following paragraph 5 is added to Article 86 of Law no. 165 of 17 November 2005:
"5. Professionals registered with the Association of Lawyers and Notaries Public of the Republic of San Marino and/or with the Association of Accountants of the Republic of San Marino shall be appointed as liquidator or member of the Oversight Committee.".

Art. 18

(Statute of limitations for liability action)

1. The statute of limitations for liability action against the management, the auditing firm, the external auditor and the actuary of authorised parties shall be regulated by Article 117 of Law no. 47 of 23 February 2006 and subsequent amendments.
2. Objections concerning the statute of limitations for liability action shall be decided by the Judge as objections not reserved for final judgements.
3. The special administration and compulsory administrative liquidation of authorised parties shall not constitute bankruptcy proceedings pursuant to the provisions of Article 117, paragraph 5, of Law no. 47 of 23 February 2006 and subsequent amendments and additions, unless a state of insolvency of the authorised party has already been declared under Article 98 of Law no. 165 of 17 November 2005.

Art. 19

(Extension of the rules referred to in this Chapter)

1. The rules contained in this Chapter IV and, above all, the principles that might be inferred therefrom shall also apply, insofar as compatible, to the liability actions against directors, auditors, auditing firms and external auditors of companies not falling within the category of authorised parties under Law no. 165 of 17 November 2005.

CHAPTER V
Final and transitional provisions

Art. 20

(Access to corporate documents)

1. The legal person held jointly and severally liable for the violations shall provide the parties notified of the alleged violations with a copy of the documents and information requested by the latter, if relevant and useful to ensure an effective right of defence for the protection of their individual legal situations.
2. The issuance of information and documents under the preceding paragraph and within the limits laid down therein shall not constitute a violation of secrecy requirements, even if information and documents are issued to persons that no longer hold the positions or perform the functions in relation to which the violations have been alleged.
3. The provisions referred to in the paragraphs above shall also apply in relation to access to corporate documents by parties subject to liability actions in accordance with preceding Chapter IV to allow the latter to effectively exercise their right of defence.

Art. 21

(Publication of sanctions in the Official Bulletin)

1. The following letters are added after letter h) of Article 2 of Delegated Decree no. 192 of 10 December 2010:

"i) the sanctions referred to in Article 32 of Law no. 96 of 29 June 2005, published in compliance with the provisions laid down by the Central Bank of the Republic of San Marino (CBSM) in the measure itself".

l) the sanctions referred to in Law no. 92 of 17 June 2008, published in compliance with the provisions laid down by the Financial Intelligence Agency in the measure itself".

Art. 22

(Transitional and final provisions)

1. The provisions referred to in Chapters II and III above shall also apply to infringements already identified, in compliance with the new Article 23, paragraph 4 of Decree no. 76/2006 and Article 74, paragraph 5 of Law no. 92/2008, in respect of which, on the date of entry into force of this Delegated Decree, the notice of the alleged violations or sanction measure has not yet been issued by the Central Bank or FIA, respectively.

2. For all violations referred to in the preceding paragraph and identified prior to the entry into force of this Delegated Decree, the deadline for the notification of the notice of alleged violations, by way of derogation from new Article 31, paragraph 6, letter a) of Law no. 96/2005 and Article 72, paragraph 4, letter a) of Law no. 92/2008 and, thus, regardless of the deadline established therein, shall be 30 April 2014.

3. In relation to the sanction measures already issued by the Central Bank and by the Agency on the date of entry into force of this Delegated Decree, which have not yet been settled through the payment of the sanction and/or have been the subject of a ruling under Title IV of Law no. 69 of 28 June 1989, the offender may make a voluntary settlement by paying half the sanction imposed. This option shall be recognised on an exceptional basis and shall be exercised within the mandatory time-limit of 60 days of promulgation of this decree.

4. The inspection reports of the Central Bank and of the Agency, which are a requirement for possible sanctions, shall be notified by the Central Bank to the legal person concerned and by the Agency to the obliged party no later than sixty days from the date of termination of the inspections notified to those concerned by the supervisory activity.

Art. 23

(Pending judicial appeals)

1. Administrative judicial appeals pending before the Court against the administrative sanctions regulated by this Delegated Decree and not yet defined shall be deemed lodged as judicial appeals under Title II of Law no. 68 of 28 June 1989.

2. The time-limits referred to in Article 16, paragraph 3 of Law no. 68 of 28 June 1989 shall start running from the date on which this decree is promulgated.

3. The parties which have lodged the judicial appeals referred to in paragraph 1 shall pay, under penalty of revocation of the appeals, the judicial tax before the hearing.

Art. 24

(Repeal)

1. Any provision contrary to this decree shall be repealed.