

CASES LIABLE FOR SANCTIONS CONCERNING THE PROVISIONS OF LAW NO. 96 OF 29 JUNE 2005 AND PROVISIONS ISSUED BY THE CENTRAL BANK OF THE REPUBLIC OF SAN MARINO

Art. 1 *(Definitions)*

1. For the purposes of this Decree, the following definitions shall apply:
- a) "insurance activities": activities referred to under letter G) of Annex 1 of LISF;
 - b) "banking activity": activities referred to under letter A) of Annex 1 of LISF;
 - c) "loan granting activities": activities referred to under letter B) of Annex 1 of LISF;
 - d) "fiduciary activities": activities referred to under letter C) of Annex 1 of LISF;
 - e) "reinsurance activities": activities referred to under letter H) of Annex 1 of LISF;
 - f) "reserved activities": activities referred to under Annex 1 of LISF;
 - g) "bank": company authorised to exercise the activities referred to under letter A) of Annex 1 of LISF;
 - h) "Central Bank": Central Bank of the Republic of San Marino;
 - i) "Supervision Committee": Governing Body of the Central Bank referred to in Article 15 of the Central Bank Statutes;
 - j) "insurance undertaking": company authorised to exercise the activities referred to under letter G) of Annex 1 of LISF;
 - k) "investment company": company authorised to exercise the activities referred to under letter D) of Annex 1 of LISF;
 - l) "reinsurance undertaking": company authorised to exercise the activities referred to under letter H) of Annex 1 of LISF;
 - m) "insurance intermediary": person who exercises professionally the insurance mediation activities referred to in Article 26 of LISF;
 - n) "reinsurance intermediary": person who exercises professionally the reinsurance mediation activities referred to in Article 26 of LISF;
 - o) "LISF": Law no. 165 of 17 November 2005;
 - p) "financial promoter": person who exercises professionally the cold-calling activities referred to in Article 24 of LISF;
 - q) "investment services": activities referred to under letter D) of Annex 1 of LISF;
 - r) "collective investment services": activities referred to under letter E) of Annex 1 of LISF;
 - s) "non-traditional collective investment services": activities referred to under letter F) of Annex 1 of LISF;
 - t) "management company": company authorised to conduct the activities referred to under letter E) and/or F) of Annex 1 of LISF;

- u) "fiduciary company": company authorised to exercise the activities referred to under letter C) of Annex 1 of LISF;
- v) "financial company": company authorised to exercise the activities referred to under letter B) of Annex 1 of LISF;
- w) "authorised parties": parties authorised, pursuant to Law no. 165 of 17 November 2005 to exercise one or more reserved activities;
- x) "supervised entities": authorised parties and any other party subjected, in accordance with the law, to the Central Bank's supervision;
- y) "Central Bank Statutes": Law no. 96 of 29 June 2005 as subsequently amended.

Part I

Administrative sanctions

Title I

Sanctions concerning Law no. 165 of 17 November 2005

Art. 2

(Passing off)

1. The use, in the name or in any distinctive sign or communication addressed to the public, of words or expressions, even in a foreign language, likely to be misleading in terms of legitimacy to conduct one or more reserved activities, is forbidden to parties who have not obtained the authorisation for the conduct of these confidential activities pursuant to Part I, Title II of LISF or pursuant to Article 156, first paragraph, of LISF.
2. The words or expressions referred to in para 1 also include:
 - a) "bank", "credit", "savings" for the banking activity;
 - b) "fiduciary company" for fiduciary activities;
 - c) "financial company", "financing company" for the loan granting activities;
 - d) "investment company", "real estate brokerage company", "investment company" for investment services;
 - e) "management company", "investment company" for collective investment services and/or non-traditional collective investment services;
 - f) "insurance undertaking" for insurance activities;
 - g) "reinsurance undertaking" for reinsurance activities.
3. Designations such as "mutual investment fund", "mutual fund" or "collective investment undertaking" can be used only to designate the mutual investment funds and undertakings for collective investment referred to in Article 1, paragraph 1, letters p) and bb), of LISF.
4. Unless the deed constitutes a crime, anyone who violates the prohibition provided for by this Article shall be punished with the administrative monetary sanction ranging between of €2,000.00 and €20,000.00 .

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Art. 3

(False indication of being subject to supervision)

1. Unless the deed constitutes a crime, anyone who, through information and communications in any forms, induces other parties to falsely believe that the former is subject supervision of the Central Bank, shall be punished with the administrative monetary sanction ranging between €2,000.00 and €10,000.00.

Art. 4

(Practice of activities beyond the limits of the authorisation or in the absence of a licence)

1. Unless the deed constitutes a crime, the authorised parties who, outside the scope of the cases provided for by Article 4, third and fourth paragraph, of LISF, exercise activities other than those authorised, are punished with the administrative monetary sanction ranging between €1,000.00 and €30,000.00.
2. The same sanction referred to in the first paragraph shall apply should the authorised party start to operate without a license to commence operations, if provided by measures issued by the Central Bank pursuant to Article 9 of LISF.

Art. 5

(Ownership structures)

1. The omission of the communications referred to in Article 23 of LISF or communications provided for by the measures issued by the Central Bank in implementing the provisions of Articles 16, 17, 19 and 20 of LISF, is punished with the administrative monetary sanction ranging between € 5,000.00 and € 50,000.00.
2. The violation of the provisions laid down in Article 21, first paragraph, of LISF is punished with the administrative monetary sanction ranging between of €10,000.00 and €50,000.00 .
3. The same sanction referred to in the second paragraph shall apply to the non-disposal of the holdings referred to in Article 22 of LISF.

Art. 6

(Requirements of company member)

1. The omission to declare, on the part of the authorised party's Board of Directors, the removal from office of company members, as provided for in the second paragraph of Article 15 of LISF, is punished with the administrative monetary sanction ranging between €1,000.00 and €25,000.00.
2. The same sanction referred to in the first paragraph shall apply to the omitted declaration on the part of the authorised party's Board of Directors, of the suspension from office of company

members in the cases established by the Central Bank according to the powers granted by Article 15, third paragraph, of LISF.

Art. 7

(Duties of the Board of statutory auditors, auditors and actuaries)

1. The administrative monetary sanction ranging between €1,000.00 and €25,000.00 is applied to the members of an authorised party's Board of statutory auditors who omit the communications provided for by Article 41, third paragraph, of LISF.
2. The same sanction referred to in the first paragraph shall also apply to auditors and actuaries, instructed by an authorised party, who omit the communications provided for by Article 41, fourth paragraph, of LISF.

Art. 8

(Appointment of auditors or actuaries in infringement of rules)

1. The violation of the obligation referred to in Article 33, first paragraph, of LISF is punished with the administrative monetary sanction ranging between €5,000.00 and €50,000.00. The appointment of an auditor, auditing company or actuary in infringement of the terms of the measures issued by the Central Bank is punished with the same sanction pursuant to Article 33, second paragraph, of LISF.
2. Unless the deed constitutes a crime, the administrative monetary sanction ranging between €1,000.00 and €20,000.00 is applied to the auditors and actuaries who do not comply with the provisions issued by the Central Bank pursuant to Article 34, first paragraph, letter b) of LISF.

Art. 9

(Offer of instruments for the collection of savings and insurance contracts in breach of the law)

1. Anyone who does not fulfil the notification requirements established by the Central Bank according to the powers granted by Article 76, second paragraph, of LISF, or anyone who offers financial instruments, other instruments for the collection of savings and foreign insurance contracts in breach of the provisions referred to in Article 76, third paragraph and related implementing rules is punished with the administrative monetary sanction ranging between €5,000.00 and €25,000.00.

Art. 10

(Insurance and reinsurance intermediaries)

1. Unless the deed constitutes a crime, insurance or reinsurance undertakings that use intermediaries who are not registered in the register referred to in Article 27, first paragraph, of LISF are punished with the administrative monetary sanction ranging between €2,500.00 and €25,000.00.
2. Insurance intermediaries who do not comply with the provisions referred to in Part II, Title I, Chapter IV of LISF or the provisions contained in implementing measures adopted by the Central Bank, are punished with the administrative monetary sanction ranging between €500.00 and €15,000.00.

Art. 11

(Financial promoters)

1. Unless the deed constitutes a crime, banks, investment companies, management company or other parties who employ parties who are not registered in the Register referred to in Article 25, shall be punished with the administrative sanction ranging between €2,500.00 and €25,000.00.
2. The financial promoters who do not comply with the provisions referred to in Part II, Title I, Chapter IV of LISF or the provisions contained in implementing measures issued by the Central Bank, are punished with the administrative monetary sanction ranging between €500.00 € 15,000.00.

Art. 12

(Advertisements)

1. Failure to comply with the provisions of Article 63 of LISF or their implementing provisions, or Article 113 first, second and third paragraph, of LISF or their implementing provisions, is punished with the administrative monetary sanction ranging between €2,000.00 and €20,000.00.
2. The dissemination of advertisements in violation of precautionary and interdictive measures adopted pursuant to the second or third paragraph of Article 63 of LISF, or pursuant to the fourth paragraph of Article 113, is punished with the administrative monetary sanction ranging between €10,000.00 and €30,000.00.
3. The violation of interdictive measures adopted pursuant to Article 63, fourth paragraph, of LISF, is punished with the administrative monetary sanction ranging between €30,000.00 and €50,000.00.

Art. 13

(Transparency of contractual conditions and rules of conduct)

1. Non-compliance with the provisions of the regulations issued by the Central Bank implementing Article 61 of LISF is punished with the administrative monetary sanction ranging between €500.00 and €15,000.00.
2. Omitting to deliver information documents, in the cases provided for by the Central Bank according to the powers granted by Article 62, first, second and third paragraph, of LISF before

the closure of the contract is punished with the administrative monetary sanction ranging between €500.00 and €15,000.00.

3. In cases where one or more informative documents are subject to the authorisation of the Central Bank pursuant to Article 62, fourth paragraph, of LISF, the delivery of information documents whose content or templates are different from those authorised, or the offer of the contract to which the information documents pertain, before obtaining the authorisation referred to in Article 62, fourth paragraph, of LISF, is punished with the administrative monetary sanction ranging between €500.00 and €15,000.00.
4. Failure to comply with the provisions referred to in Article 66 of LISF or the implementing rules, or the provisions issued by the Central Bank according to the powers granted by Articles 67 and 70, first paragraph, letter e), of LISF, is punished with the administrative monetary sanction ranging between €500.00 and €15,000.00.

Art. 14

(Soliciting investment)

1. Anyone who solicits investment in violation of the provisions of Articles 107, 108, 109, 110, third paragraph, 113 of LISF and related implementing provisions, is punished with the administrative sanction ranging between €5,000.00 and €25,000.00.
2. Omitting to communicate the information requested by the Central Bank pursuant to Article 110, first and second paragraph, is punished with the same sanction referred to in paragraph 1.
3. Unless the deed constitutes a crime, anyone who solicits investment in violation of the interdictive measures adopted pursuant to Article 112 of LISF is punished with the administrative sanction ranging between €10,000.00 and €50,000.00.

Art. 15

(Activities abroad)

1. The violation of the provisions contained in Article 74 of LISF and its implementing provisions, is punished with the administrative sanction ranging between €1,000.00 and €10,000.00.

Art. 16

(Guarantee systems)

1. The violation of the provisions contained in Article 100 of LISF and its implementing provisions, is punished with the administrative sanction ranging between €1,000.00 and €30,000.00.

Art. 17

(Compulsory Reserve)

1. Failure to comply with the provisions contained in Article 142 of LISF and its implementing provisions is punished with an administrative monetary sanction ranging between €1,000.00 and

€30,000.00.

Art. 18
*(Other
sanctions)*

1. Except if the deed constitutes a crime, it is punished by an administrative sanction ranging between €500.00 and €50,000.00:
 - a) the violation of the provisions contained in the regulations issued by the Central Bank according to the powers granted by Articles 39, first paragraph, 44, 45, 46, 70, first paragraph, letters from a) to m) except the e), 71, first paragraph of LISF;
 - b) omission or delay in communicating data and information or the transmission of the documents referred to in Article 41, first and second paragraph, 48, first paragraph, 50, second paragraph, 51 of LISF and related implementing rules;
 - c) carrying out acts or transactions in the absence of the necessary authorisation provided for by Articles 43, second paragraph, 47, first paragraph, 48, second paragraph, 49, first paragraph letter b), 52, second paragraph of LISF and related implementing rules;
 - d) the breach of the provisions relating to financial leasing referred to under no. 2 of Article 148 of LISF.
2. The sanctions provided for in the first paragraph shall also apply to cases of breach of the provisions referred to in Art. 157, paragraph 4, of LISF.

Title II
Sanctions concerning the prevention of financial crime

Art. 19
*(Legislation concerning the prevention of and fight against
money-laundering and terrorism financing)*

1. Failure to comply with instructions issued by the Financial Intelligence Agency according to Law no. 92 of 17 June 2008 as subsequently amended, is punished with an administrative sanction imposed by the Financial Intelligence Agency as provided for by Law no. 92/2008.

Title III
Sanctions concerning Law no. 96 of 29 June 2005

Art. 20
(Supervision costs)

Decree no. 76 dated 30 May 2006

consolidated text including the amendments introduced by: Delegated Decree no. 29 of 14 February 2008, Delegated Decree no. 116 of 8 August 2013, Delegated Decree no. 24 of 4 March 2014, Delegated Decree no. 77 of 19 May 2014, Law no. 146 of 19 September 2014

1. Supervised entities are required to pay the contributions due by them pursuant to Article 21 of the Central Bank Statutes and established in the decree issued pursuant to Article 21, paragraph 2, of the same law.
2. Failure to pay or delay in the payment on the part of the supervised entities of the contributions referred to in paragraph 1 shall be punished with an administrative monetary sanction ranging between €50.00 and €15,000.00.

**Title IV Other
sanctions**

Art. 21
*(Other
sanctions)*

1. This is without prejudice to the application of the administrative sanctions provided for in Articles 10, 12 and 13 of Law no. 41 of 25 April 1996 as subsequently amended, by Article 31 of Law no. 101 of 29 July 2013 as subsequently amended, Articles 7, 8 and 13 of Law no. 42 of 1st March 2010 as subsequently amended, as well as any administrative sanctions that can be issued by the Central Bank pursuant to any other provision of the law.

**Part II Parties responsible
and Procedure**

Art. 22
*(Parties responsible for the
breaches)*

1. The provisions of this delegated decree, without prejudice to the breaches for which any party may be punished, are applied to all parties subject to the sanctioning power of the Central Bank in exercising public functions assigned to it by laws and decrees, and in particular:
 - a) to supervised parties, including Ente Poste, for financial services provided;
 - b) to holding companies classified as parent companies pursuant to Article 54 of LISF;
 - c) to offering and issuing parties in Part III of LISF;
 - d) to holders of significant shareholdings referred to in Part I, Title IV, of LISF;
 - e) to parties with obligations towards the Trust Register Office pursuant to Law no. 42 of 1 March 2010 as subsequently amended;
 - f) to cash handlers pursuant to Law no. 101 of 29 July 2013;
 - g) to companies authorised to purchase raw gold under Law no. 41 of 25 April 1996.
2. As regards legal persons, in cases of a grossly negligent act or omission, the following are subject to a sanctioning procedure:

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- a) those performing administrative, managing or controlling functions;
 - b) employees who are entrusted, in the context of the corporate structure, with responsibility for specific business operational or internal control functions - provided that facts are related to responsibilities by act or omission of parties against whom the breach is alleged;
 - c) those operating on the basis of relations, including relations other than subordinate employment, that determine their inclusion into the organisational structure, provided that facts are related to responsibilities by act or omission of parties against whom the breach is alleged;
 - d) parties in charge of auditing, for a breach of any of their responsibilities, for failure to communicate to the Central Bank any acts or facts discovered in the course of their appointment, which can constitute a serious breach of current regulation or may affect the continuity of the company, or lead to an adverse opinion, a qualified opinion or a statement on the impossibility of expressing an audit opinion on the financial statements, as well as for failure to forward to the Central Bank any other data or document required.
3. The monetary sanction, when it is directed to natural persons, is of a personal nature. However, the legal persons to which those responsible for the breaches belong, shall be jointly and severally responsible for payment of the sanction as provided for in Article 31, paragraph 8 of Law no. 96 of 29 June 2005 as subsequently amended.

Art. 23

(Principles, criteria and procedures)

1. Sanctioning activities are inspired by an approach:
 - a) of a deterrent nature, such as to discourage a breach of the rules and repetition of the anomalous behaviour;
 - b) of a proportional nature, in order to adjust the sanctioning measure according to the gravity of the breaches;
 - c) of an objective nature, to ensure homogeneous opinions in the practical evaluation of different cases;
 - d) of a transparent nature, towards the sanctioned parties whose possible counter-claims may integrate overall knowledge, completing the elements acquired in the course of the documentary and monitoring review.
2. The Central Bank, in accordance with the procedure described in the following paragraphs, shall ascertain the breaches, lead the investigation, impose sanctions or notify the parties concerned that it interrupted the sanctioning procedure initiated against them.
3. The Central Bank's sanctioning procedure is divided into the following stages:
 - a) notification of alleged breaches;
 - b) submission of counter-claims and possible personal hearing;
 - c) evaluation of all investigative elements;
 - d) a proposal on the part of the organisational unit responsible for the statutory body in charge of imposing the sanction or dismissing the proceeding;

- e) adoption of the sanctioning measure or suspension of the procedure by the competent statutory body;
 - f) notification of the sanctioning measure;
 - g) any publication of the sanctioning measure.
4. For the purposes of the expiry of the terms referred to in Article 31, paragraph 6, letter a) of the Central Bank Statutes, detection of breaches shall coincide with the date in which:
- a) the deadline for submitting, filing with or delivering to the Central Bank any information, documents, communications or notifications, that may also be periodic or statistical in nature, has expired unsuccessfully;
 - b) expiry of the deadlines for the submission to the Central Bank of considerations on the findings of auditing reports delivered to the parties concerned;
 - c) the documents from which the breach transpired are received by the Central Bank, in certified form, even non periodically.
5. The notification of breaches is communicated as provided for in Article 17, paragraphs 1 and 2, of Law no. 100 of 29 July 2013. For parties residing abroad, the notification is intended as validly communicated at the address that party who is not a resident on the territory is obliged to elect in the Republic of San Marino at the time of taking up his/her appointment, with prompt notification to the Supervisory Authority.
6. The notification of sanction, in addition to the formal elements suitable to qualify it as an preliminary statement of the sanctioning administrative procedure, shall contain:
- a) reference to the follow-up inspection, supervisory activity, defaulted expiry or acquired documentation from which the breach transpired;
 - b) the date on which detection of the breach was made pursuant to paragraph 4 above;
 - c) the description of the breach by act or omission with indication of the period in which it was allegedly committed in relation to the role and permanence in the appointment;
 - d) indication of the breached provisions and related sanctioning rules;
 - e) the invitation to parties whose breaches are contested and to the legal person jointly and severally responsible, to submit to the above-referred organisational unit in charge of the procedure, any counter-claims within 30 calendar days following notification;
 - f) indication of the right of parties who are recipients of the notifications to request a personal hearing within the same term, as originally set or extended according to the following paragraph 7, provided for the submission of counter-claims;
 - g) the term for concluding the administrative procedure, pursuant to the provisions of the above mentioned Article 31, paragraph 6, letter b) of the Central Bank Statutes.
7. Submission of counter-claims, in keeping with the principle of defence referred to in Article 15 of the Declaration of the Citizens' Rights and Fundamental Principles of the San Marino Constitutional Order, is a right for each recipient of the sanctioning procedure, including jointly and severally obliged legal persons, which can be exercised within 30 days from the date of submission of the notification of sanction. The parties concerned can request through a specific application, duly justified and signed by them, an extension not exceeding 30 days, which may be granted, according to criteria of proportionality, also in relation to the characteristics in terms of

operations and size of the intermediary and the complexity of the debits. Non-submission of defence documents shall not affect the follow-up of the sanctioning procedure. Counter-claims can be of an individual nature or be subscribed to by all parties concerned, including the legal representative of the specific legal person, or by some of them. The parties concerned may also indicate in the counter-claims the address to which subsequent communications relating to the sanctioning procedure should be sent. In order to ensure the affordability of the administrative action, counter-claims must be carried out in an essential and synthetic manner, reflecting the order of the notifications and attaching only documentation that is:

- a) relevant to the alleged facts and defence arguments carried out;
 - b) not already known to the Central Bank
 - c) ordered and accompanied by a list.
8. The investigation is the evaluation of all the elements available for the purposes of the proposal to the statutory body responsible for the imposition of the sanction or its dismissal. The organisational unit responsible for the investigation stage:
- a) is in charge of keeping all deeds and documents used in the course of the sanctioning procedure;
 - b) verifies that information was correctly exchanged with all recipients of the notifications, and that the possibility for the latter to appeal against the administrative procedure is safeguarded, in the forms and within the limits provided for by law;
 - c) analyses all investigative elements filed in the sanctioning procedure's records and carries out, in the light of the defences briefs held by the parties concerned, of the documents of part of and of the entire information collected, a thorough review of the notified debit transactions, the significance of breaches and personal responsibility, according to the criteria predetermined in Article 31, paragraph 3 of the Central Bank Statutes, including the voluntary correction of tax returns;
 - d) submits a justified proposal to the statutory body responsible for imposing or dismissing the sanction.
9. The adoption of the sanctioning measure or its closure is the responsibility of the Governing Council of the Central Bank, with the exception of the sanctioning procedures referred to in Title I of this decree that, as relevant to the management of the autonomous supervisory function referred to in LISF, refer to the Supervision Committee of the Central Bank as statutory body in charge. The procedure must be adopted within 30 days from the date of expiry of the term, be this the original or extended date, for the submission of counter-claims by the party that received the notification.
10. The closure of the procedure is also notified to the parties concerned.
11. The sanctioning measure must indicate:
- a) the notification of sanction referred to in above paragraph 6, annexed;
 - b) justification for this measure also through an explanation of the evaluations concerning any counter-claims submitted by the recipients of the measure;
 - c) determination of the amount of the sanction to be paid and the methods of settlement;
 - e) description of the criteria adopted to determine the sanction deemed as applicable pursuant to the provisions of Article 31, paragraph 3, of the Central Bank Statutes;

Decree no. 76 dated 30 May 2006

consolidated text including the amendments introduced by: Delegated Decree no. 29 of 14 February 2008, Delegated Decree no. 116 of 8 August 2013, Delegated Decree no. 24 of 4 March 2014, Delegated Decree no. 77 of 19 May 2014, Law no. 146 of 19 September 2014

- e) the right to settle in a limited amount pursuant to Article 31, paragraph 9 of the Central Bank;
- f) indication of the appeal period and the competent Authority to apply with.
- 12. Notification of the sanctioning measure takes place in accordance with the terms of paragraph 5 above for the notification of breaches.
- 13. The notification may be followed by publication of the measure pursuant to Article 32 of the Central Bank Statutes, including publication on the relevant website page and in the Official Bulletin – Administrative Section and Advertisements. The publication, or lack thereof, of the sanctioning measure is covered by a specific provision within the measure itself.
- 14. Payment of the sanction may be carried out in the reduced amount provided for the voluntary settlement if it is carried out by the time limit referred to in Article 31, paragraph 7, of Law no. 96/2005. The entry referred to in Article 31, paragraph 12 of the Central Bank Statutes shall take place no earlier than six months from the date of notification of the sanctioning measure for twice the amount of the sanction. In case of a proposed administrative appeal, the six months shall start from the date of conclusion of the judicial proceedings.

Part III Final and transitional provisions

Art. 24

(List of administrative sanctions)

- 1. The administrative monetary breaches as defined by this law and by this decree must be included in the list of administrative sanctions that the Administrative Court of Appeal presents annually, pursuant to Article 32 of Law no. 68 of 28 June 1989.

Art. 25

(Entry into force)

- 1. This decree shall enter into force on the fifth day following its legal publication.

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