BANCA CENTRALE
DELLA REPUBBLICA DI SAN MARINO

THE DIRECTOR GENERAL
OF THE CENTRAL BANK OF THE REPUBLIC OF SAN MARINO

IN VIEW of the interpretative questions transmitted to the Central Bank of the Republic of San Marino concerning certain provisions of the Regulation on the collection of savings and banking activity no. 2007-07, issued on 27 September 2007, that will enter into force on 1 January 2008 next;

IN VIEW of Article 40 of Law no. 165 of 17 November 2005, that assigns, inter alia, to the Supervisory Authority the power to issue recommendations aimed to provide interpretations on the provisions contained in the measures issued;

IN VIEW of the Statutes of the Central Bank of the Republic of San Marino approved by Law no. 96 of 29 June 2005 and in particular Article 30, paragraph 3 of the Statutes, based on which the Central Bank's acts on supervision, passed by the Supervision Committee, are issued by the Director General;

IN VIEW of the Supervision Committee resolution, with which approval was granted to the text of the Recommendation of the Central Bank of the Republic of San Marino on the interpretation of Regulation no. 2007-07,

ISSUES

the enclosed Recommendation 2007-01

San Marino, 21 December 2007

SIGNED: THE DIRECTOR GENERAL
Luca Papi

Recommendation no. 2007-01

INTERPRETATION OF THE PROVISIONS CONTAINED IN REGULATION NO. 2007-07

Definitions

For the purpose of this Recommendation, the expressions used herein have the meaning as expressed in Regulation no. 2007-07 and Law no. 165/2005.

Premise

Some of the provisions of the Regulation on the collection of savings and banking activity have innovative content involving for banks the adoption of complex implementation processes. In some cases, these measures, due to a need for synthesis, contain guidelines that need in turn, for their correct application, additional detailed interpretive indications, which the Central Bank has considered appropriate to provide, in view of the imminent entry into force of the Regulation, by using this instrument.

Purposes

Therefore, this Recommendation has the purpose to facilitate the understanding of the regulatory standards and their consequent implementation in the manners and terms required, providing for this purpose, where possible, indications of an operational type.

Structure and content

The Recommendation is structured for references to the Articles of the afore-mentioned Regulation no. 2007-07 that is being interpreted; the order of consideration therefore follows the progressive numbering of the above-mentioned articles, thus facilitating the use, in a consolidated form, of the two documents.

1) **Art. I.I.2 - point 9**: the definition of Head of the Executive Structure is such as it should be understood as excluded from other roles, although these could also potentially "deputise" the Director General, but hierarchically subordinate thereto or otherwise different from the role of "acting director" (for example, Deputy Director General) can be included therein with the consequent widening of the parameters for the identification of corporate officials.
2) **Art. I.I.2 - point 15:** long term agreements are understood as including all those agreements whose direct legal effects are extended over time, even when in relation to any predetermined deadlines such as, by way of example, subscriptions of certificates of deposit and bonds issued by the bank as well as repurchase agreements with retrocession obligation.
3) **Art. I.I.2 - point 47**: the provisions of Articles VII.IX.18 and VII.IX.19 on the organisational requirements of the OUTSOURCER, on dedicated resources and on the possibility of control by the Central Bank, limits the "parties " referred to in paragraph 47 only to "legal persons".
4) **Art. II.III.6 - paragraph 1**: reference to Art. VII.III.2 is to be understood as referring to Art.VII.III.10.
5) **Art. II.III.6 - paragraphs 3, 4, 5:** whereas, with reference to agreements for the subscription of "certificates of deposit", the "issuing request form" signed by the client, referred to in paragraph 4, coincides, fulfilling all its effects, with the "agreement" referred to in Part X, the

economic and regulatory terms must necessarily be reported therein when the client has expressed the option for a computerised C/D, in all other cases (C/D on paper)

the provisions of the agreement can be referred to the certificate itself. Only in the case of registered C/D printed on paper, if the rules are listed in the agreement, it is not necessary for them to be reported also on the certificate. For bearer C/D, by contrast, the certificate must necessarily contain them. In short, content obligations can be summarised as follows:

Conditions	On paper, registered	On paper in bearer form	Computerised
on contract	Alternative	Optional	Mandatory
on certificate	Alternative	Mandatory	-----

For the purposes of simplifying the contractual forms, emphasis is given to the possibility of adopting a procedure that, by indicating all the economic and regulatory terms, both on the agreement and on the certificate, allows the client to have the option, at the time of subscription, to choose among the three possible types (registered on paper, bearer on paper, computerised).
You are also invited to extend at the time of the implementation of contractual forms pursuant to Art. XI.VIII.3, what is indicated above for bearer certificates of deposit also to bearer account books, i.e. the repetition on the legitimation document (account book) of the terms of the agreement, in order to make them more easily enforceable for the possible bearer who is not the party who signed the agreement.

6) **Art. II.III.7 - paragraph 3**: reference to Art. VII.III.2 is to be understood as referring to Art.VII.III.10.
7) **Art. III.III.4 - paragraph 2:** contributions in kind must be understood as including all those contributions not in the form of money, and thus also credits.
8) **Art. VII.VI.1 - paragraph 1:** consistently with the provisions of Art. VII.V.4 paragraph 3, the holdings already deducted from the regulatory capital pursuant to Art. VII.II.4. shall be understood as not calculated.
9) **Art. VII.VI.2 - paragraph 1:** the exclusion of mortgage loans on residential property must be understood as including also mortgages for supported housing, since even in these feature the requirement of the direct residential use by the borrower, and the personal guarantee of the State is of the value equal to the mortgage guarantee on the property, also because it is in turn guaranteed by lien.
10) **Art. X.II.2 - paragraph 2:** the obligation to clarify the EAPR or the APR in the advertisements containing statements on the rates charged on financing transactions, is obviously to be understood as applicable only to financing transactions that, due to their technical form, allow you to calculate the above-mentioned actual rates in advance and in an abstract manner, such as, by way of example, mortgages, personal loans and consumer instalment credits.
11) **Art. X.IV.14 - paragraph 2:** the use of the instrument of the registered letter with acknowledgement of receipt is provided solely for the purpose of better ensuring the transmission of the communication and to have an instrument for checking on the progress of the deadlines for the exercise of the right of withdrawal; as a result, also a copy of the letter, signed and with a date handwritten by the client, by way of receipt (so-called "registered letter delivered by hand"), can be considered valid and equally effective, thus also if the document was not sent by mail.
12) **Art. X.IV.15 - paragraph 1:** taking into account the provisions of Art. XI.VIII.3 about the deadlines for the adoption of the summary document (30/06/2008), the standard, while being in force as of 01/01/08, limited to the part that concerns the obligation to submit the summary document in every case of economic change, does in fact apply only after the actual implementation of the document by the bank, according to the above-mentioned terms.
13) **Art. X.IV.15 - paragraph 1:** for long term agreements entered by the bank before the update and adaptation operations referred to in Articles XI.VIII.3 and XI.VIII.4, whose term is set on

30/06/2008, and for which no form of reporting was originally provided for and governed by the agreement, reporting requirements will ensue as indicated above, as a result of implementation unilateral changes made by the banks, within the term and will be governed in them, in terms of transmission and frequency procedures, in compliance with the terms established in the specific article.

14) **Art. X.IV.16 - paragraph 2:** the standard that provides for the obligation to dispatch correspondence uncollected for more than two years is understood as imperative, i.e. it cannot be waived by the parties, whose derogation powers are explicitly indicated as such in the first paragraph of the Article and in the first part of paragraph 2. Having said this, by reason of the standard's ratio, the client's statement, which is signed and dated in person at the bank, that it has reviewed the banking documentation under its responsibility up to the same date, is equivalent for its purposes to the dispatch to the address specified by the latter and holds the bank harmless from related obligations. Likewise, all reports for which the client can in actual fact access at any time the full knowledge of the information contained therein by using electronic keys (so-called web banking or remote banking) are excluded from the obligation to forward uncollected correspondence. Given the innovative scope of the standard as regards existing relationships, in order to ensure the concrete possibility for the client to indicate the address to which the bank must send letters by way of derogation from the preceding agreements concerning bank identification details, the term of 2 years is to be understood as starting from the date in which the domiciled client receives the information directly from the bank (first useful access) in the context of the general process of unilateral change referred to in Art. XI.VIII.4, for which, obviously, the client must provide appropriate evidence.
15) **Art. X.IV.19 - paragraph 4:** the unilateral general changes (in short, UGC) are understood as effective from the date listed in the authorisation of the Central Bank referred to in paragraph 3; this day shall be properly published on the web page and displayed at the branches. By virtue of the provisions of paragraph 2, in the cases of recourse to the "general" procedure, the communication to each individual client is understood as already occurred in an "impersonal" form; it follows that the "direct" communication, referred to at paragraph 4 only for the purposes of the expiry of the terms of withdrawal, is not subject to any burden of a modal type: therefore, delivery by hand at the earliest opportunity or delivery in the "ordinary" manner at the time of the periodical reports, is sufficient, without any obligation to use the instrument of the registered letter with acknowledgement of receipt. Unlike the recourse to the generalised procedure, there would be no valid reason for it to be required.
16) **Art. X.V.3 - paragraph 2:** in cases where the web sites of banks contain sections devoted to general information on the financial markets (with the exception of advertisements) including evaluations and projections of a discretionary or conjectural type, an update of the information may not be considered as "editing of pages" pursuant to and for the purposes of the paragraph in question, provided that point 4 of the Legal Disclaimer is clearly stated in the opening of the above-mentioned sections (so-called disclaimer). If the information is provided via links to the websites of accredited information providers or by indicating the third-party source from which they are elicited, the special disclaimer obligation does apply. The reserved area, if any, available to clients equipped with a password in relation to web banking services supporting agreements that have already been entered in the appropriate manner, is also to be considered excluded from the discipline referred to in the specific paragraph.
17) **Art. XI.II.3 - paragraph 2:** paragraphs 3 and 4 of article. II.III.6, anticipate in terms of content and purpose, with reference to the certificates of deposit, the transparency rules required by Part X, Titles III and IV; consequently, among the "provisions relating to collection by means of securities" shall be understood as excluding those referred to in the afore-mentioned paragraphs, whose terms of transposition are the different ones referred to in

Art. XI.VIII.3 (30/06/2008). The same applies to the corresponding provisions contained in paragraphs 5 and 7 of Art. II.III.7 as well as for the general transparency rules applicable to repurchase agreements with retrocession obligation.

18) **Art. XI.III.1 - paragraph 1:** taking into account the provisions and principles contained in the Regulation and in particular in Art. III.III.1 paragraph 2 and paragraph 3 of the Article in question, below we provide some operational suggestions and recommended texts in order to facilitate the adjustment procedures of the statutes.

Corporate purpose

It is suggested that the following formulation should be adopted, which reconciles the needs for clarity and completeness with those for immediate adaptability to present and future regulatory frameworks of reference:

"The company's purpose is to practice banking activities, as defined in Annex 1 of Law no. 165 of 17/11/2005 as the collection of savings with the public and the practice of credit activities, as well as all other reserved activities that are compatible with it, such as, by way of example, investment services, payment services, issuing electronic money, mediation activity in foreign exchange and any other ancillary activity that is instrumental or connected to the previous activities, in compliance with the applicable legal and supervisory provisions and subject to the authorisation of the Central Bank of the Republic of San Marino, where due. The company may also carry out insurance and reinsurance mediation pursuant to Article 26 of Law no. 165 of 17/11/2005".

Shareholders

In light of the new supervisory rules on the ownership structure, it is suggested that the Statutes should include an article that reads along the following lines:

"The shareholders undertake to respect the obligations that can be referred to them by virtue of the current supervisory provisions on the ownership structure of banks, also with reference to the constraints placed on the freedom of movement of the shares.

The shareholders also undertake to provide to the relevant corporate bodies all information and documentation required, even with reference to their connected parties, in order to allow the company to comply fully with the legal and supervisory provisions".

Meeting of the Shareholders

Among the duties of the meeting, it is recommended that the duty specified under letter h) of Art. III.III.1 paragraph 2, should be included, unless there is no intention to explain all the rules provided for therein, including the controls referred to in Art. VII.IX.3, under the Statutes, with the consequent effect of making it more "rigid". On this occasion, you are invited to eliminate any distinction between Ordinary Meeting and Extraordinary Meeting that is not reflected at all in the San Marino legal system, without prejudice, of course, to the possibility of providing for constituent and/or deliberative quorums diversified according to the topic being discussed.

With reference to resolutions for an amendment to the articles of association, it is necessary to require that the same *"shall nevertheless be validly assumed only after production in the Meeting, by the Chairman, of the compliant authorisation issued by the Supervisory Authority".*

There is also a need to provide for *"the minutes of the Meeting of the Shareholders must be submitted as a certified and integral copy to the Supervisory Authority within ten days from their filing at the Registry of the Court by the Chairman or the Notary appointed by the former".*

Board of Directors

In closing, after the list of duties, it is suggested that a residual closing formula along these lines should be introduced:

"The Board of Directors must also perform diligently all additional functions for which it is liable under the applicable provisions issued by the Supervisory Authority".

Board of Statutory Auditors

In closing, after the list of duties - that must contain control over observance of the supervisory provisions (jointly to those required by the law and the Statues)- it is recommended that a residual closing formula along these lines should be introduced:

"The Board of Statutory Auditors must also perform diligently all additional functions for which it is liable under the applicable provisions issued by the Supervisory Authority".

Auditing company

In closing, after the list of duties - that must contain the certification of financial statements and the exercise of the accounting control function - it is suggested that residual closing formula along these lines should be introduced:

"The Auditing Company and the auditors appointed by it must also carry out diligently all additional functions for which they are responsible pursuant to the provisions issued by the Supervisory Authority".

Head of Executive Structure
After identification of the person appointed to carry out this role, alongside the duties already assigned in his/her capacity as Director General or Director, it is suggested that a residual closing formula along these lines should be introduced:
"(The Director General/Chief Executive Officer), as Head of the Executive Structure, must also perform diligently all additional functions for which s/he is liable under the provisions in force issued by the Supervisory Authority. His/her appointment is under the responsibility of the (Board of Directors/Meeting of the Shareholders)".
The latter indication involves the same integration with the duties of the appointing body.

Corporate officials
Or within each article referable respectively to the Board of Directors, the Board of Statutory Auditors, the Director General, or within an article dedicated to the category of corporate officials that opens with the indication of those who compose it, it is suggested that you should introduce the following obligations:
g) give immediate communication to the Board of Directors in the event of the loss of one or more honourability and independence requirements;
b) send to the company the certifications and/or self-certifications required for legal and supervisory purposes in suitable times to enable the company to comply with the terms imposed;
c) be absent from the board meeting during the stages of discussion and deliberation of issues on which there is conflict of interest;
d) provide the competent business structures with all information and documentation required, even with reference to one's own connected parties, in order to enable the bank to fully comply with all legal and supervisory provisions;
by referring the identification of the honourability, professionalism and independence requirements to the legal and supervisory provisions in force and by eliminating any reference to the approval of the Committee for Credit and Savings.
Financial Statements
Taking into account the next issuance of the regulation referred to in Art. VI.II.5 concerning the balance sheets of banks, by reason of the general reference to the applicable legal and supervisory provision, it is suggested that the statutory provisions relating to financial statements should be limited to the following topics:
a) list of documents that make up the financial statements (balance sheet, profit and loss account and explanatory note) and the related accompanying reports by the Board of Directors, the Board of Statutory Auditors and the Auditing Company;
b) estimate of the certification requirement, entrusted to the same Auditing Company responsible for the accounting control function;
c) extent of the minimum allocation to the ordinary reserve (no less than 20% of net profits) and availability of sums allocated therein limited to cover losses or capital increase. **Supplementary sources**
In terms of compilation method, it is recommended that copying mandatory legal and supervisory rules should be limited, in order to contain the need to make later changes as a result of updates to the reference regulatory framework.
It is suggested that, alternatively, one should use a general reference formula in the closing section of the Statutes with a text along the following lines:
"For all matters that are not governed by the standards of these Statutes, reference is made to the application of the legal and supervisory provisions in force concerning banking activity and in particular Law no. 165 of 17.11.2005, Regulation no. 2007-07 and other implementing measures adopted by the Central Bank of the Republic of San Marino as well as, as a supplement, Law no. 47 of 23 February 2006, and their subsequent amendments and supplements".

19) **Art. XI.III.3 - paragraphs 2 and 3:** in the case of banks with legal persons, including San Marino fiduciary companies, among their members, the request to them, aimed to disclose the actual economic beneficiaries, should also be directed when the holdings ascribable to them are no greater than 2%; otherwise, the reporting bank may not be able to reconstruct whether there are more "shareholders" than those resulting from the Shareholder Register, due to the effect of the sum of holdings held in an indirect manner. Only with references to these (members with more than 2%) and except in the cases referred to in Art. V.II.5, the certification requirements referred to in paragraph 3 are applicable.

20) **Art. XI.VIII.4 - paragraph 1:** by virtue of what is provided for by Art. XI.VIII.3 about the terms for adapting contractual forms, the obligation for the unilateral change of long term agreements must be understood as naturally also extended to those agreements entered into after the entry into force of the Regulation but prior to the upgrade of contractual forms (during the so-called transitional period). In any case, the following are to be considered excluded from the adaptation obligations:

a) agreements concluded through a public deed, by reason of the fact that their compilation by a Public Notary excludes the banks' power to change them unilaterally;

b) long term agreements referred to in the previous point 2) of the Recommendation, by reason of the principle contained in the Art. XI.II.3 paragraph 2.

For long term agreements not subject to periodical reporting obligation pursuant to Art. X.IV.15 (safety deposit boxes and savings account books), as it is not possible to effectively adopt the UGC procedure with the relative right of withdrawal in the manner and within the terms provided for, the term of 30/06/2008 is to be understood as naturally extended up to the first useful opportunity (client access to the bank) for each report.

San Marino, 21 December 2007.