

**Recommendation no. 2006-01**

## **SUCCESSION OF APPLICABLE RULES**

### **Definitions**

For the purpose of this Recommendation, the expressions used herein have the following meaning:

LISF: Law no. 165 of 17/11/2005;

direct reference: reference to the regulatory power of the Supervisory Authority expressly contained in the article of the law; direct references may be formal or substantial, depending on the referred content, optional or compulsory, depending on the need for regulatory integration;

indirect reference: use of an expression or concepts that govern other articles of law containing direct references;

formal reference: reference to the regulatory power of the Supervisory Authority for the definition of non-prejudicial aspects for the purposes of the application of the rule;

substantial reference: reference to the regulatory power of the Supervisory Authority for the definition of the entire discipline or for the prejudicial aspects for the purposes of the application of the rule;

optional reference: attribution to the Supervisory Authority of the right to introduce supplementary rules to the legislative discipline, which is already complete by itself;

compulsory reference: allocation to the Supervisory Authority of the obligation to introduce regulations implementing the legislative discipline, incomplete by itself.

### **Premise**

LISF has significantly changed San Marino regulations on banking, financial and insurance undertakings and services, by repealing the previous measures in legislative provisions on the introduction of new principles, rules, procedures and legal instruments.

Some of these innovations have been introduced in full i.e. through a legislative discipline that is sufficiently detailed, suitable to allow for their immediate application; other provisions, by contrast, are merely limited to stating basic rules giving the Supervisory Authority the power and task of translating them into precise rules and referring, consequently, to the implementing measures issued by it.

This distinction between provisions for immediate application and provisions for deferred application limits the scope of Art. 157 paragraph 5 of LISF solely to the provisions of the second group, which are the only ones requiring implementing measures by the Supervisory Authority.

### **Purposes**

This Recommendation will facilitate the main recipients of LISF in understanding what provisions apply immediately and those whose application is deferred, even it is not an authentic interpretation.

### **Legal sources**

This Recommendation interprets Art. 157 of LISF pursuant to the provisions of Art. 40 of the same law.

**Provisions for immediate application**

Given the foregoing, all the provisions contained in LISF that meet one of the following requirements are therefore to be regarded as immediately applicable:

- a) they do not contain direct or indirect references;
- b) they contain only formal references;
- c) they contain only optional references.

The following are, in numbered order, the articles of LISF that fall in the above prediction with the indication of the corresponding letter that identifies the requirement.

No.	Description	Let.
19	Communication of voting agreements	a)
23	Request of information on holdings	a)
29	Company's financial statements and consolidated financial statements	c)
31	General principles of preparation criteria	b)
32	General principles of assessment criteria	a)
33	Appointment of auditors or actuaries	c)
34	Rules for auditors and actuaries	b)
35	Responsibilities of actuaries	a)
36	Banking secrecy obligation	a)
37	Purposes of supervision	a)
38	Principles and general criteria for the exercise of the supervisory function	a)
39	Regulatory powers	a)
40	Recommendations	a)
41	Powers to request information or information requirements	a)
42	Powers of investigation	a)
43	Powers of authorisation	c)
44	Specific provisions	a)
45	Subject-matter of prudential rules	a)
46	Powers of intervention	a)
47	Amendments to the articles of association	c)
66	Rules of conduct	c)
68	Reports of the Supervisory Authority	b)
74	Activities abroad of San Marino authorised parties	a)
77	Recipients of extraordinary proceedings	a)
78	Extraordinary administration	a)
79	Entities in charge of the extraordinary administration proceedings	b)
80	Powers and functioning of the bodies in charge of extraordinary administration	a)
81	Initial obligations	a)
82	Suspension of payments	a)
83	Final obligations	a)
84	Suspension of administrative bodies	a)
85	Administrative compulsory liquidation	a)
86	Proceedings' entities	a)
87	Effects of declaratory resolution of the administrative compulsory liquidation proceedings	a)
88	Powers and functioning of the bodies in charge of the proceedings	c)
89	Initial obligations	a)

90	Assessment of liabilities	c)
91	Opposition to the statement of balance sheet liabilities	a)
92	Liquidation of assets	a)
93	Treatment of credits arising from insurance contracts	a)
94	Treatment of credits arising from reinsurance contracts	a)
95	Refunds and allocations	a)
96	Final obligations	a)
97	Branches of foreign persons	a)
98	State of insolvency	a)
99	Ordinary liquidation	a)
101	Relationships with the CCR	a)
102	Relationships with the State Congress	a)
103	Relationships with foreign supervisory authorities	a)
104	Relationships with the Supervisory Authority	a)
105	Relations with the State Secretariat for Industry	a)
114	Insurance contract for damage	a)
115	Civil liability insurance	a)
116	Life insurance contract	a)
117	Capitalisation	a)
118	Reinsurance contract	a)
119	Proof of contract	a)
120	Policies 'to order' and in bearer form	a)
121	Non-existence of risk	a)
123	Interest on insurance	a)
124	Limits of compensation	a)
125	Insurance for amount exceeding the value of property	a)
126	Co-insurance	a)
127	Subrogation right of the insurer	a)
128	Transfer of insured property	a)
129	Own or third party life insurance	a)
130	Insurance in favour of a third party	a)
131	Revocation from the benefit	a)
132	Rights of the creditors and heirs	a)
136	Inseparability of assets	a)
138	Falsification in the reports or in the communications of the auditing company	a)
139	Breach of bank secrecy	a)
140	Obstacles to the exercise of the supervisory functions	a)
141	Monetary administrative sanctions	a)
143	Financial companies	a)
144	Taxation treatment of the financial instruments under a fiduciary mandate	a)
146	Coordination with the Central Bank Statutes	a)
147	Coordination with the Companies Law	a)
148	Coordination with the Law on Financial Leasing	a)
149	Coordination with the general rules on the limitation of rights	a)
150	Coordination with the rules on issues of anti-terrorism and anti-money laundering of money of illicit origin	a)
151	Coordination with the Trust Act	a)
152	Coordination with the laws on Intellectual Property	a)

153	Coordination with the rules concerning licenses to exercise the business	a)
154	Public Administration	a)
155	Appointment of the Chairman of the Cassa di Risparmio foundation	a)
156	Transitional Rules	a)

Pursuant to Art. 157 paragraph 5 of LISF, only the rules contained in the abrogated legislative provisions that do not conflict with the above-mentioned LISF articles of immediate application continue to find application until entry into force of the necessary supervisory implementing measures.

### **Provisions for deferred application**

With the exception of the first two and the last two articles of LISF, having a purely technical and final nature, all the other articles of the law is not reported in the previous list, despite being in force, will become applicable only in conjunction with the entry into force of the necessary implementing measures issued by the Supervisory Authority, for the reasons explained in the following summary.

However, it is nevertheless evident that, in the best interest for the effective pursuit of the purposes referred to in Art. 37 of LISF, the Supervisory Authority, before even having given full implementation to the references contained in the above-mentioned law with general measures, can exercise the powers and responsibilities granted to it by the new legislative text in force within the context of measures of a particular nature, i.e. intended for individual authorised parties and/or their corporate officials, members, auditors, commissioners and liquidators, in compliance with the general principles and criteria established by Art. 38 of LISF.

With reference to the First Part of LISF:

- the articles of Titles I, II and III contain direct or indirect references but always of a substantial nature, therefore they will be implemented in the regulations that the Supervisory Authority will issue with reference to the different reserved activities;
- the articles of Title IV, with the exception of no. 19 and no. 23, assume the definition of substantial participation, delegated to the Supervisory Authority;
- the articles of Title V delegate to the Supervisory Authority the definition of the requirements for the exercise of financial promotion and insurance mediation activities as well as for the registration in the appropriate records and registers to be set up;
- the articles of Title VI, with the exception of art. 30 that contains a substantial reference to supervisory measure, report provisions and general principles that are already applicable as from the financial statements concerning the current year;
- article of Title VII is of immediate application, as it does not contain any reference.

With reference to the Second Part, Title I, of LISF:

- the articles of Chapter I are all of immediate implementation;
- the articles of Chapter II, except for the first three, are all of deferred application as they contain direct and substantial references;
- the articles of Chapter III are all of deferred application as they refer indirectly to the definition of group delegated to the Supervisory Authority in the first paragraph of Art. 53;
- the articles of Chapter IV, with the exception of no. 66 and no. 68, are all of deferred application as they delegate to the Supervisory Authority the definition of the obligations of transparency and correctness of conduct in the relationships with clients;
- the articles of Chapter V are all of deferred application as they contain substantial, direct or indirect references;

- the articles of Chapter VI, with the exception of no. 74 , are both of deferred application: no. 75 contains a compulsory reference while no. 76 has an optional reference, but both references are substantial.

With reference to Part II, Title II, of LISF, the only article with deferred application is no. 100 as it contains, in the third paragraph, a substantial and compulsory reference; Title III of the same part is immediately applicable, as it does not contain any reference.

The entire third Part of LISF concerning solicitation of investment is of deferred application as it contains direct and indirect references, but still substantial.

The fourth Part, with the exception of Art. 122, does not contain references, therefore it is of immediate application; however, from a practical point of view, in the absence of a previous San Marino legislative discipline on insurance and reinsurance companies, the rules, while complete, governing the related contracts will not find actual application while there are no parties authorised to exercise the activities marked by letters G and H of Annex 1, subject to issuance of the regulations on the same activities.

With reference to Part five of LISF, concerning sanctions, many articles contain indirect references to the regulatory powers of the Supervisory Authority as the cases that are considered as breaches presuppose the definition of aspects required of the Supervisory Authority; it follows that de facto they are not applicable until this definition is made available. There are, however, five articles (136, 138, 139, 140, 141) that identify the cases already completely defined by LISF or by previous legislative provisions that, by virtue of Art. 157 paragraph 5, may continue to be applied.

San Marino, 24 April 2006.