

**REGULATION ON
THE MEDIATION GUARANTEE FUND**
year 2013 / number 03

(Consolidated text as at 01/01/2016 - Update I)

PART I

PROVISIONS GOVERNING THE MEDIATION GUARANTEE FUND

Article 1 – Definitions

1. For the purposes of this Regulation:

- a) "**Central Bank**" or "**CBSM**": the Central Bank of the Republic of San Marino;
- b) "**transferor banks**": foreign banks, affiliated with the Central Bank, that provide payment services on a contractual basis to transferee banks and their clients;
- c) "**transferee banks**": San Marino banks that use Italian and European payment systems for providing payment services to their clients;
- d) "**Fund**": the mediation guarantee fund;
- e) "**Law**": Law No. 200 of 22 December 2011.

2. In subsequent articles, the words that refer to these definitions are given in a small caps font.

Article 2 - Purposes

1. This Regulation, issued pursuant to article 66 of the LAW, is aimed at regulating the procedures for the creation, crediting and functioning of the FUND which receives the contributions of the banks that use the mediation services offered by foreign intermediaries subscribing to the Italian and European payment systems, –on a contract basis–.

Art. 3 – Initial amount and subsequent adjustments

1. The FUND has the nature of independent assets and is managed by the CENTRAL BANK upon appointment from the legislator.

2. The initial amount of the FUND is set at Euro 650 thousand. In compliance with the provisions of article 66 of the LAW, the CBSM with a specific measure may adjust the amount, also taking into account the conditions asked by the foreign intermediaries for the purpose of continuing the contractual mediation relationships.

Article 4 – Contribution procedures

1. All TRANSFEREE BANKS are required to participate in the FUND. The amount of the individual contribution is set by the CENTRAL BANK proportionally to the collection of saving of each TRANSFEREE BANK, notwithstanding a minimum share of Euro 25 thousand. In determining the collection of saving, the liability items of the balance sheet referred to "debts with customers" and "debts represented by securities" are taken into account, as evidenced in the quarterly

statements of account sent by the TRANSFEREE BANKS to the CENTRAL BANK based on the reporting models from time to time in force.

2. Should the capital of the FUND be used as provided for in this Regulation, within the month following its use the amount shall be restored by the TRANSFEREE BANKS proportionally to the amount of the collection of saving as referred to the end of the calendar quarter preceding that of the utilisation. The CENTRAL BANK notifies the participant banks of the amount due based on the data resulting from the latest quarterly statement of accounts.

3. The share of the contribution is returned to the banks that, following a change in their corporate purpose, the winding-up and subsequent voluntary liquidation or administrative compulsory liquidation, cease to be transferee banks. The shares of the endowment fund paid by banks that are subject to any concentration process (merger, merger by incorporation, transfer of the entire banking business unit, etc.), shall not be refunded and shall therefore be recognised to the bank resulting from the concentration transaction.

4. The banks incorporated after the entry into force of this Regulation are required to adjust the minimum contribution share of Euro 25 thousand after the lapse of six months from the start of the mediation relationships. The CBSM notifies the amount payable in proportion to the collection of saving resulting from the monthly supervision report of the newly incorporated bank, with reference to the sixth month period following the start of the mediation relationship.

5. The cash paid to fulfil the contribution requirement is deposited into an account open with the CENTRAL BANK, bearing interest at the rate provided for the term deposit for the purposes of the compulsory reserve. The individual contribution share, given its mutual purpose in support of the orderly functioning of the payment system, is recognised as a deduction from the compulsory reserve of each TRANSFEREE BANK.

6. Once the amount of the FUND has been determined, the CENTRAL BANK notifies the participating banks of the amount payable on a pro rata basis by each bank, and automatically charges such amounts to the accounts open with it, in compliance with the provisions of article 7 below.

Article 5 – Fund management procedures

1. The intervention of the FUND in favour of the TRANSFEROR BANK will occur upon the occurrence of the following conditions:

- a. formal default action against the TRANSFEREE BANK by the TRANSFEROR BANK, to be made within no more than 5 business days when there is a debit balance on the nostro account. The notice of default is transmitted in copy to the CENTRAL BANK and to the FUND, domiciled at the CENTRAL BANK itself;
- b. suspension of the mediation of the TRANSFEREE BANK in default;
- c. after the lapse of 85 days from when the debit position of the TRANSFEREE BANK in default has been ascertained, if the latter has not covered the debit position in excess of the individual guarantees given by each TRANSFEREE BANK to the TRANSFEROR BANK in compliance with the mediation agreements entered into.

2. In case of any default by TRANSFEREE BANK in settling the debit balances vis-a-vis the TRANSFEROR BANK with reference to the payment transactions mediated by the latter, the CENTRAL BANK arranges the off-site interventions and/or inspections against the TRANSFEREE BANK in default deemed necessary to ascertain the situation of illiquidity, if any.

3. For the purpose of limiting the capital risks to which TRANSFEROR BANKS and the FUND are exposed in case of defaults by TRANSFEREE BANKS, if this is in line with the contractual agreements entered into by the TRANSFEROR BANKS and by the TRANSFEREE BANKS, the CENTRAL BANK may request the suspension of the mediation services – in the name and for the account of the TRANSFEREE bank in default–. Such a request may be made by the CENTRAL BANK if the exposure of the TRANSFEREE BANK vis-a-vis the TRANSFEROR BANK is higher, in aggregate, than the entire amount of the individual guarantee given to the TRANSFEROR BANK and 75 percent of the share of the FUND held by the transferee bank in default.

4. The ordinary and extraordinary powers to manage the FUND, and the powers to decide on any intervention by the FUND, are the responsibility of the Supervision Committee. Within this context, the Supervision Committee decides on:

- a) the aggregate amount of the fund, initially set at Euro 650 thousand, and the criteria for its possible adjustment;
- b) the off-site interventions and/or inspections to be adopted against the transferee banks pursuant to paragraph 2 above;
- c) the request for the suspension of the mediation services referred to in paragraph 3 above;
- d) any action aimed at recovering the amounts payable to the FUND for an amount equal to the difference, if positive, between the amount of the intervention made by the FUND in favour of the TRANSFEROR BANK and the individual share of contribution of the bank in default.

5. The sums for whatever reason recovered by the CENTRAL BANK for the account of the FUND following previous interventions against the banks in default pursuant to paragraphs 2 and 3 above are recognised:

- first of all, for an aggregate amount equal to the difference, if positive, between the amount of the intervention made by the FUND in favour of the TRANSFEROR BANK and the individual contribution share of the bank in default, to the other banks participating to the FUND proportionally to the contribution shares of each one of them at the moment when the intervention was made. These amounts are credited on a pro-rata basis to the centralised account held with CBSM by the individual TRANSFEREE BANKS participating to the FUND, not later than five business days after the payment date;
- secondly, for the restoration of the individual contribution share of the bank in default when the latter intends to continue the mediation services, in compliance with the contractual agreements with the TRANSFEROR BANK.

6. In case of need and urgency, the Chairman of the Supervision Committee may take decisions that are reserved to the Supervisions Committee, provided that they must be subsequently ratified by a meeting of such collective body convened for this purpose.

7. The CENTRAL BANK, within the context of the Annual Report to the Great and General Council, reports on the activities of the Fund and, following the performance of any actions, to the Committee for Credit and Savings, through the Supervision Committee. Similar information is provided to the banks participating to the FUND.

PART II

AMENDMENTS TO THE CBSM REGULATION NO. 2009-03

Art. 6 – Amendments to the CBSM Regulation no. 2009-03

1. Article 4, paragraph 4 of the CBSM Regulation no. 2009-03 is replaced by the following:

"4. The Internal Auditing structure referred to in article VII.IX.6 of Regulation no. 2007-07, is required to ensure the overall reliability of the internal procedures for the execution of the activities mentioned in the second paragraph, the adequacy of the information technology systems used and the completeness of first- and second-level controls. The outcomes of the controls are notified quarterly to the CENTRAL BANK, by the end of the month following each calendar quarter. The following must be listed in the quarterly report:

- a) the method used for auditing controls on the process for the input and transmission of relevant data for the Data Bank pursuant to Decree Law no. 65 of 14.5.2009, specifying the metrics for assessment (articulated across at least three assessment levels) and any attention indicators used¹;
- b) summarised references on the procedures for selecting the sample of operations/processes subjected to quarterly auditing;
- c) hours/man allocated for these checks over the quarter;
- d) actual transactions analysed;
- e) the results of the checks, with a summarised opinion for each of the analysed profiles²;
- f) any initiatives proposed for the removal of the deficiencies found;
- g) follow-ups from previous audit work that ended with an assessment of non full adequacy.

2. The amendment referred to in the previous paragraph is effective as from the quarterly report referred to the third quarter 2013, to be transmitted not later than on 31 October 2013.

¹ In the description of the methods for analysis, disclosure is required of the procedures for conducting the audit activity carried out in accordance with CBSM Regulation no. 2009-03, specifying the organisational units involved, operational processes examined and the different types of risks considered. In this context, it is necessary to describe the criteria adopted to evaluate the efficiency and compliance of the operational processes with the requirements both of the regulatory source of reference for Data Banks (see Decree Law no. 65 of 14 May 2009 and CBSM Regulation no. 2009-03) and contractual agreements. In relation to the findings of the analysis, assessments must be articulated over three or more levels by using qualitative and quantitative ratings (for example, evaluations such as "adequate", "sufficient", "inadequate"). In view of the mass nature of the operations for the extraction, reprocessing and input of information flows, it is necessary to define a set of indicators aimed to detect, on one hand, recorded anomalies (for instance, discarded flows, requests from adjustments issued by CBSM or the TRANSFEROR BANK) and, on the other, potentially "critical" situations (for instance, transactions of large amounts or arranged for trusts, fiduciary companies or foreign anonymous companies) that require focused attention.

² Purely by way of example and not of limitation, the following profiles are considered:

- completeness of the master record data in the flows to be forwarded and their consistency with those entered in the company data banks;
- consistency of data with provisions of regulation no. 2009-03;
- procedures for the input of asymmetrical and master record flows;
- first – and second-level controls on the correctness of the data in asymmetric and master record flows forwarded to the CENTRAL BANK and the TRANSFEROR BANK;
- handling of *pending* flows;
- error handling and consequent filing procedures;
- presence of areas of manual entry in flow input;
- compliance with the contractual obligations towards the TRANSFEROR BANK;
- verification of proper allocation, update, and accounting of guarantees granted to the TRANSFEROR BANK;
- verification of the completeness and up-to-date status of data on clients and beneficial owners, especially in the presence of parties – including foreign parties – of the type such as fiduciary companies, trustees, anonymous companies;
- compliance with deadlines for the submission of flows;
- failure to use the TRANSFEROR BANK to carry out payment transactions in Euro to and from Italy.

PART III
FINAL PROVISIONS

Art. 7 – Initial contribution share and subsequent adjustments

1. For the year 2013, the contribution shares referred to in article 4, paragraph 1 above are calculated based on the collection of saving of the TRANSFEREE BANKS as at 31.03.2013 and notified to the CENTRAL BANK not later than on 31 July 2013 and debited on 30 August 2013.
2. The adjustment of the individual contribution share based on the dynamics of the collection of saving, is notified by the CENTRAL BANK not later than on 31 March of each year on the basis of the data resulting from the quarterly situation of the accounts as referred to the end of the previous year, with the differences from the individual share already paid being credited/debited on the last business day of the following month of April, guaranteeing, in any case, the minimum aggregate amount of the FUND which is equal to Euro 650 thousand.
3. Any amendments to the amount of the FUND, determined pursuant to art. 3, paragraph 2 of this Regulation, are notified by the CENTRAL BANK to the TRANSFEREE BANKS by means of a registered letter with acknowledgement of receipt, effective as from the end of the calendar month following the month of transmission of the notice. The notice includes the underlying reasons for the decision and specifies the criteria adopted for determining the new amount, as resolved by the Supervision Committee pursuant to article 5, paragraph 4, letter a) above.