



REPUBLIC OF SAN MARINO

DELEGATED DECREE no. 111 of 31 August 2018

**We the Captains Regent
of the Most Serene Republic of San Marino**

*Having regard to Article 10 of Law no. 104 of 8 August 2018;
Having regard to Government Decision no. 5, adopted during its sitting of 30 August 2018;
Having regard to Article 5, paragraph 3 of Constitutional Law no. 185/2005 and to Articles 8
and 10, paragraph 2 of Qualified Law no. 186/2005;
Promulgate and order the publication of the following Delegated Decree:*

PROVISIONS ON FINALITY OF TRANSFER ORDERS IN A PAYMENT OR SECURITIES SETTLEMENT SYSTEM TRANSPOSING DIRECTIVE 98/26/EC

Art. 1 *(Purposes)*

1. This Delegated Decree, issued pursuant to Article 10 of Law no. 104 of 8 August 2018, as provided for by the Monetary Agreement between the European Union and the Republic of San Marino, shall implement Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, as amended by Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 and by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010.

This Delegated Decree shall regulate the finality of transfer orders in a payment or securities settlement system and collateral security arising in relation to a payment or securities settlement system. This Delegated Decree shall also apply to collateral security provided in relation to the transactions carried out by the Central Bank of the Republic of San Marino in connection with its functions as central bank.

These provisions shall promote maximum transparency and legal certainty of the transactions carried out, while at the same time reducing systemic risks, legal risks and risks of disruption resulting from the initiation of insolvency proceedings.

2. The provisions of this Delegated Decree shall apply in the context of payment and securities settlement systems, together with the collateral security arising in connection with such payment or securities settlement systems.

Art. 2
(Definitions)

1. For the purposes of this Delegated Decree, the following definitions shall apply:
 - a) **Settlement Agent:** an entity providing those participating in the system with settlement accounts and services through which transfer orders within such system are settled and, as the case may be, extending credit to said participants for settlement purposes;
 - b) **Central Banks:** the Central Bank of the Republic of San Marino, the European Central Bank and the National Central Banks of the States of the European Union;
 - c) **Clearing or Netting:** the conversion into one net claim or one net obligation of claims or obligations resulting from transfer orders which a participant or participants either issue to, or receive from, one or more other participants with the result that only a net claim can be demanded or a net obligation be owed;
 - d) **Settlement account:** an account at a central bank, a settlement agent or a central counterparty used to hold funds or securities and to settle transactions between participants in a system;
 - e) **Central Counterparty:** an entity which is interposed between the institutions in a system and which acts as the exclusive counterparty of these institutions with regard to their transfer orders;
 - f) **Institution:** one of the following entities which participates in a system and which is responsible for discharging the obligations arising from transfer orders within that system:
 - 1) a bank incorporated under San Marino law governed by Law no. 165 of 17 November 2005 and subsequent amendments;
 - 2) an investment firm and any other private entity incorporated under San Marino law subject to the supervision of the Central Bank of the Republic of San Marino which, in accordance and in compliance with the rules for the participation in and operation of the system, participates directly or indirectly in such system, assuming ownership of rights and obligations deriving from transfer orders;
 - 3) the Central Bank of the Republic of San Marino regulated by Law no. 96 of 29 June 2005 and subsequent amendments;
 - 4) any other San Marino public entity and publicly guaranteed undertakings which, in accordance and in compliance with the rules for the participation in and operation of the system, participates directly or indirectly in such system, assuming ownership of rights and obligations deriving from transfer orders;
 - 5) any other entity governed by foreign law carrying out activities similar to those of the institutions referred to in the preceding points and participating in a system;
 - g) **Collateral:** any right created for the purpose of securing the discharge of obligations arising from participation in a system or from operations related to central bank functions, including financial collateral arrangements, repurchase or similar agreements;
 - h) **Working day:** this includes both day and night settlement and all events that occur during the system's working cycle;
 - i) **Banking Law:** Law no. 165 of 17 November 2005 and subsequent amendments;
 - l) **System operator:** the entity or entities legally responsible for the management of the system. The system operator may also act as a settlement agent, central counterparty or clearing house;
 - m) **Transfer Order:** any instruction by a participant in a system to:
 - 1) place at the disposal of a recipient an amount of money by means of a book entry on the accounts of a participant, a central bank or a settlement agent, or any instruction which results in the assumption or discharge of a payment obligation as defined by the rules of the system;

- 2) transfer the title to, or interest in, a security or securities by means of a book entry on a register, or otherwise;
- n) Participant: an institution, a central counterparty, a settlement agent, a clearing house or a system operator. Under the rules of the system, the participant may act as a central counterparty, clearing house or settlement agent or perform all or some of these tasks.
The Central Bank of the Republic of San Marino may decide that an indirect participant may be considered a participant if such a decision is warranted on grounds of systemic risk. This decision shall not affect the responsibilities of the other participants in the system, which shall remain the same;
- o) Indirect participant: an institution, central counterparty, settlement agent, clearing house or system operator with a contractual relationship with a participant in the system which enables it to pass transfer orders through the system, provided that it is known to the system operator;
- p) Insolvency proceedings: any collective measure provided for by the legal system of the Republic of San Marino or by the law of a foreign State, if applicable, which involves the suspension or termination of the payment of liabilities or the suspension or termination of restitution of assets to third parties, or otherwise the imposition of limitations on the activity;
- q) Gross Settlement: the settlement of individual transfer orders within a system, on the basis of and in compliance with the rules of the system and outside of clearing;
- r) System: a set of contractual or authoritative arrangements for the execution, with common rules and standardised arrangements, of clearing, possibly through a central counterparty, or transfer orders between the participants, which is at the same time:
 - 1) applicable between three or more participants, without counting the system operator, a possible settlement agent, a possible central counterparty, a possible clearing house or a possible indirect participant; or between two participants, when this is warranted on grounds of systemic risk;
 - 2) governed by the law of a State in which at least one of the participants has its head office, chosen by the participants or provided for by the rules governing the system;
 - 3) designated as a system and notified to the European Securities and Markets Authority (ESMA) by the State whose law is applicable. In the case of San Marino systems, any communications shall be made in accordance with Art. 10, paragraph 3 of this Delegated Decree.

An arrangement between interoperable systems shall not be a system;

- s) Interoperable systems: two or more systems whose operators have entered into an arrangement covering the execution of transfer orders between systems;
- t) Clearing House: an entity responsible for the calculation of net positions and the exchange of contact details between participants in the system;
- u) Financial Instruments or Securities: all instruments defined in Annex 2 to Law no. 165 of 17 November 2005 and subsequent amendments.

Art. 3

(Finality of transfer orders)

- 1. Transfer orders, netting and the resulting payments and transfers, executed in accordance with the methods of gross or net settlement, including settlement executed in accordance with the terms of the systems set out in Annex A, shall be legally enforceable and binding on third parties even in the event of insolvency proceedings against a participant, provided that transfer orders were entered into the system before the moment of opening of such insolvency proceedings pursuant to Art. 5 of this Delegated Decree.

The same shall apply in the event of insolvency proceedings being opened against a system operator other than a participant. The same provisions shall apply also to interoperable systems.

2. Where transfer orders are entered into a system after the moment of opening of insolvency proceedings and are carried out on the working day of opening of such proceedings, as defined by the rules of the system in which the proceedings is opened, they shall be legally enforceable and binding on third parties only if the system operator can prove that, at the time when such transfer orders have become irrevocable, he was not aware, nor should have been aware, of the opening of such proceedings.

3. The moment of entry of a transfer order into a system shall be defined by the rules of the system in which the transfer order is entered. The Central Bank of the Republic of San Marino shall establish the moment in which a transfer order is entered in San Marino systems.

4. The finality of the transfer order, of the clearing and of the consequent payments and transfers referred to in paragraph 1 of this Article shall not be affected by any actions, including invalidity actions.

5. Insolvency proceedings shall not have retroactive effects on the rights and obligations of participants arising from, or in connection with, their participation in a system earlier than the moment of opening of such proceedings. This shall also apply to the rights and obligations of operators in a system other than participants. The same provisions shall apply also to interoperable systems.

6. A transfer order may not be revoked by a participant in a system, nor by a third party, from the moment defined by the rules of that system. In the case of interoperable systems, each system shall determine in its rules both the moment of entry into the system and the moment of irrevocability of the transfer order, to ensure coordination of the rules of the interoperable systems concerned. Unless expressly provided for in the rules of the systems which form part of the interoperable systems, the internal rules of a system concerning the moment of entry and irrevocability shall not be affected by the internal rules of the other systems with which it is interoperable.

Art. 4

(Revocation of transfer orders)

1. Transfer orders cannot be revoked after the moment of entry into the system, as established in paragraph 3 of Article 3 of this Delegated Decree.

Art. 5

(Opening of the insolvency proceedings)

1. For the purposes of this Delegated Decree, the moment of opening of insolvency proceedings in the Republic of San Marino shall be the day, hour and minute from which, according to the provisions applicable to the individual proceedings, the effects of the insolvency proceedings are produced, including the suspension or termination of payment of liabilities, the suspension or termination of the restitution of assets to third parties or, in any case, the imposition of limits on the activity.

2. If the insolvency proceedings are opened in a foreign State, the moment of opening of the insolvency proceedings shall be the moment when San Marino systems become aware of them.

3. The authorities responsible for the individual insolvency proceedings shall certify the day, hour and minute from which the insolvency proceedings are opened.
4. The bodies in charge of insolvency proceedings shall immediately notify the Central Bank of the Republic of San Marino, also by electronic means, of the opening of insolvency proceedings.
5. The Central Bank of the Republic of San Marino shall be notified, also by electronic means, by the competent national authorities of the opening of insolvency proceedings in the member States of the European Union against any participants in the system.
6. The Central Bank of the Republic of San Marino shall notify immediately, also by electronic means, to the competent national authorities of the member States of the European Union the opening of insolvency proceedings in San Marino against any participants in the system.
7. The Central Bank of the Republic of San Marino shall immediately inform the European Systemic Risk Board and the European Securities and Markets Authority (ESMA) of the opening of insolvency proceedings in San Marino against any participants in the system.

Art. 6

(Fulfilment of obligations within the system)

1. In order to meet the obligations of the insolvent participant relating to its participation in the system which arose before the insolvency proceedings were opened, the settlement agent may use, in the name and on behalf of the participant:
 - a) the funds and any financial instruments available on the settlement account of the participant;
 - b) collateralised credit facilities to the participant that are intended to meet the participant's obligations within the system.
2. The acts referred to in the preceding paragraph shall be subject to the provisions of Article 3.

Art. 7

(Law applicable in the event of insolvency of a participant in the system)

1. In the event of insolvency proceedings being opened against a participant in a system, the rights and obligations arising from, or in connection with, the participation of that participant shall be determined, within the meaning and for the purposes of this Delegated Decree, by the law governing that system.

Art. 8

(Enforcement of collateral security in insolvency proceedings)

1. Collateral security constituted before the moment of opening of insolvency proceedings with respect to claims arising from final transactions under Article 3 or pledged with central banks may be enforced only to the extent that the collateralised claims are satisfied. The same provision shall apply also to interoperable systems.
2. The rights of the system operator or participant in respect of the collateral security received either in a system or in an interoperable system and the rights of central banks in respect of collateral security provided to them shall not be affected by the opening of insolvency proceedings against:
 - a) a participant in the system or in an interoperable system;
 - b) an operator of an interoperable system other than a participant;
 - c) a counterparty of central banks;

d) any third party providing the collateral security.

The collateral security may be enforced in order to satisfy the collateralised claims.

3. No actions, including invalidity actions, may prejudice the enforcement of the collateral security referred to in paragraph 1 with respect to the system operator.

4. In an interoperable system, when a system operator provides a collateral security to the operator of another system, the rights related to the collateral security of the providing system operator shall not be affected by insolvency proceedings opened against the system operator receiving the collateral security.

Art. 9

(Law applicable to book-entry securities rights)

1. The rights of holders of collateral security, including rights in securities, shall be governed solely by the law of the State in which the register, account or centralised deposit system recording the collateral security is located.

Art. 10

(Designation of systems)

1. The Central Bank of the Republic of San Marino shall designate the systems for the execution of transfer orders, to which the provisions of this Delegated Decree shall apply.

2. The systems indicated in Annex A shall be considered San Marino systems within the meaning of this Delegated Decree.

3. The Central Bank of the Republic of San Marino shall be entitled, if requested, to notify the European Securities and Markets Authority (ESMA) of the San Marino systems designated in accordance with this Article and the respective system operators.

Art. 11

(Information on participation in the system)

1. The Central Bank of the Republic of San Marino shall determine the procedures according to which:

- a) each San Marino system operator communicates to the Central Bank of the Republic of San Marino the list of its participants and any subsequent changes, ensuring that this communication is promptly updated;
- b) each San Marino institution shall communicate to the Central Bank of the Republic of San Marino the systems in which it participates;
- c) anyone with a legitimate interest may request to a participant information on the systems in which it participates and information on the main rules governing the functioning of those systems.

Art. 12

(Technical provisions)

1. The Central Bank of the Republic of San Marino may adopt technical measures to facilitate the application of this Delegated Decree.

Art. 13
(Repeal)

1. Law no. 45 of 23 March 2007, and its corrigendum dated 4 April 2007, as well as any other rule or provision in contrast with this Delegate Decree shall be repealed.

Done at Our Residence, on 31 August 2018/1717 since the Foundation of the Republic

THE CAPTAINS REGENT
Stefano Palmieri – Matteo Ciacchi

THE MINISTER OF
INTERNAL AFFAIRS
Guerrino Zanolini

ANNEX A to Delegated Decree n.111 of 31 August 2018

1. The systems of the Republic of San Marino shall be:
 - a) the system of individual bank transfers settled on interbank accounts and transmitted via the interbank network;
 - b) the system of exchange of home addresses settled on interbank accounts;
 - c) the system of collections and payments of the overall Public Administration settled on accounts centralised with the Central Bank of the Republic of San Marino;
 - d) the system of daily clearing of the addresses settled on accounts centralised with the Central Bank of the Republic of San Marino and transmitted via the interbank network;
 - e) the system of direct debit of the overall Public Administration settled on accounts centralised with the Central Bank of the Republic of San Marino and transmitted via the interbank network.