

BANK LAW

Law no. 21 of February 12, 1986, and subsequent amendments

SECTION I GENERAL PROVISIONS

Art. 1

Scope of application

The provisions of this Law shall apply to banking activity conducted in any form or under any business name on the territory of the Republic.

Foreign banks opening branches on the territory of the Republic shall be accorded, also for licensing purposes, equal treatment as San Marino banks.

Art. 2

Definitions

For the purpose of this Law, except where otherwise stated:

- “bank” means a joint-stock company, including a co-operative company, or an institution usually conducting, both directly and through a branch, banking activities;
- “branch” means an office of a foreign bank, such office having its own assets but no legal personality, and carrying out banking activities autonomously on the territory of the Republic;
- “detached office” means a separate office of a bank or branch;
- “funds received from customers” means the funds received by a subject from a third party, generally in the form of deposits, which the receiver may administrate on its own behalf but with the obligation to give them back;
- “bank’s funds” means the capital stock of the credit institution, including any other element that can be assimilated to it according to the Office of Banking Supervision criteria referred to in Section IV of this Law;
- “means of payment” means any instrument allowing a person to transfer funds, irrespective of the technical procedure used;
- “authorisation” means the permission granted to a domestic bank or a foreign branch by the competent authority, under the terms of law, to exercise banking activity on the territory of the Republic.

Art. 3

Banking and related activities

Banks may conduct any transaction related to “banking activity” proper, that is the professional intermediation in the circulation of cash and other means of payment, performed through “banking transactions”, and consisting of savings collection from customers, lending and

borrowing, supply or management of means of payment on behalf of customers. To this end, banks may establish branches and detached offices on the territory of the Republic.

Banks may also conduct all the transactions - provided that these do not constitute its main activity - related to the exercise of the banking activity, in particular:

1. placement, subscription, purchase, management and sale of securities and any other financial product on their own behalf and/or on behalf of third parties;
2. assistance and consulting in asset management;
3. assistance and consulting in financial management and engineering, and in general the supply of services aiding the creation and development of businesses.

Compatibly with the international agreements in force, exchange transactions and transactions in gold and precious metals shall be a prerogative of the ICS (San Marino central bank) once it has been established under Section V of this Law, with the exceptions referred to in art. 4.

Art. 4

Prohibitions

Subjects other than banks shall be forbidden to exercise banking activities, except for the processing of and trading in gold and precious metals on the territory of the Republic within the limits fixed by the laws in force, and except for currency transactions involving the transfer of assets and non financial services rendered to non residents in relation to their presence in the Republic.

Art. 5

**(as amended by art. 1 of Law no. 33 of March 8, 1988
and as amended by art. 5 of Law no. 130 of November 29, 1995)**

Authorisation to exercise banking activity

- 1) The exercise of banking activities shall be allowed only to companies or institutions whose capital stock is made up of nominal shares and that have been granted the prior authorisation of the Congress of State (Government). The latter shall first hear the Office of Banking Supervision (OBS) established and entrusted with special supervision functions under this Law.
- 2) The Congress of State shall first hear also the Credit and Savings Committee (Committee), a restricted body composed of a minimum of three and a maximum of five people, appointed by the Congress of State, and entrusted with the functions set forth in this Law.
- 3) Anyone intending to establish new banks or branches on the territory of the Republic - without prejudice to the law on companies providing for legal recognition, art. 54 of Law no. 45 of December 22, 1942, on co-operatives, and Law no. 18 of June 8, 1965 governing the granting of licences - shall request the relevant authorisation to the Committee, who shall process such request. The authorisation shall be granted by decision of the Congress of State, having heard both the OBS and the Committee.
- 4) For the purpose of the authorisation, the requesting party shall:
 - a) attach to the request a plan of activities identifying the types of transactions to be conducted and the organisational structure of the institution;
 - b) with regard to the above-mentioned plan, demonstrate to the competent authority:
 - b.1) the existence of bank's funds amounting to at least ITL 15 billion. This shall not apply to banks set up in the form of co-operatives. The amount of such funds may be modified by a Regency Decree.

- b.2) the presence, within its management, of at least two persons with a clean police record, good professional reputation and adequate expertise, so as to guarantee the correct and effective management of the credit institution in line with its purposes.

At the granting of the authorisation, all the members of the Board of Directors shall receive the agreement of the licensing authority.

The members of the Board of Directors and the Board of Auditors of San Marino nationality shall receive such agreement *ex officio*, provided that there are no impediments of a civil or criminal nature¹. In the exercise of the banking activity, banks shall comply with the plan referred to in art. 4.a) and the plans authorised subsequently. Their compliance shall be supervised by the OBS.

In granting an authorisation, besides considering the territorial size and distinctive features of the Republic and pursuing the promotion and protection of savings security, the Congress of State shall also take into account the greatest possible efficiency of the local banking system.

5) To be authorised to perform banking activities, banks established in the form of co-operatives shall meet the following requirements:

- a) business name indicating “Limited Liability Co-operative Company”;
- b) a minimum number of 30 shareholders;
- c) each share having a minimum nominal value of ITL 100,000;
- d) each shareholder allowed to own no more than 5% of the capital stock;
- e) each shareholder having only one vote.

6) The draft memorandum and articles of association of the bank, as well as any other additional documentation that the Committee may deem useful to meet all the requirements, shall be attached to the request for authorisation.

7) In case of a request to locate a foreign bank branch on the territory of the Republic, the following shall be also submitted:

- a) the last two audited balance sheets of the parent company;
- b) the indication of the place on the territory of the Republic where to locate the permanent establishment;
- c) the indication of at least two persons who shall elect their domicile in the Republic, represent and act by proxy on behalf of the parent company. Such persons shall meet the same professional and expertise requirements as referred to in art. 4)b2) above, and be subject to the agreement of the licensing authority;
- d) a certified copy of the proxy referred to in par. c) above to be filed with the Court.

In the above-mentioned request, the foreign parent company shall expressly commit to guaranteeing the financial obligations and exposures taken by its branch in San Marino, by electing its domicile at the permanent establishment on the territory of the Republic, also for jurisdiction and notification purposes.

8) For the purpose of supervising both the activity of foreign banks operating in San Marino and of San Marino banks operating in a foreign state through their branches respectively, the competent authorities of both states shall agree, before granting the authorisation, the terms of their co-operation.

9) Without prejudice to and within the limits of what stipulated in Section IV of this Law, the San Marino authorities shall notify, on the basis of reciprocity, all the information concerning the direction, management and assets of such credit institutions that may facilitate both supervision and assessment of compliance with authorisation requirements, including all the information that may facilitate the control of liquidity and solvency.

¹ Cf. art. 5 of Law no. 130 of November 29, 1995 “Rules governing the modification of Banking Institutions and the incorporation of joint-stock companies, and other provisions on credit and company matters”.

10) Any reasoned denial of authorisation shall be notified to the requesting party within 4 months. The granting of the authorisation shall be notified to the requesting party and published in the Official Journal.

11) Having obtained the legal recognition and authorisation referred to in this article, the concerned party shall be duly licensed to operate under Law no. 18 of June 8, 1965.

Art. 6

(as amended by art. 2 of Law no. 33 of March 8, 1988)

Authorisation lapse and withdrawal

1) To maintain the authorisation, a bank shall previously notify in writing the Congress of State through the OBS, of:

- a) any change of location of the head office or permanent establishment in San Marino of the bank and branch respectively;
- b) any replacement of any or both of the persons designated under art. 5.4)b2) and 5.7)c) with other persons meeting the same requirements and having the agreement of the licensing authority;
- c) any modification to the articles of association.

The bank authorisation shall equally lapse if not used for twelve months, if expressly renounced by the same period, or in case the licensed bank has ceased its activity for more than six months.

2) The licensing authorities may withdraw the authorisation to perform banking activity granted to a bank under the preceding art. 5, when such bank:

- a) has obtained the authorisation by submitting false statements or using fraudulent means;
- b) no longer meets the requirements for authorisation;
- c) no longer owns sufficient funds or can no longer guarantee the fulfilment of obligations towards its creditors and, in particular, the security of the funds held by it;
- d) is undergoing bankruptcy or liquidation proceedings, or, in case of a branch located on the territory of the Republic, when the parent company is undergoing bankruptcy or liquidation proceedings, or when the competent authority of the State where the parent bank has its registered office has withdrawn the authorisation.

3) Moreover, the authorisation to perform banking activity under the preceding art. 5 shall be automatically revoked in the event of a withdrawal of the legal recognition granted under the law on companies and subsequent amendments.

4) In the event of a withdrawal of the authorisation due to any of the reasons referred to in par. 2)a), b) and c) of this article, the Congress of State, having heard the OBS, shall formally invite the bank to remove the cause for withdrawal within a period of four months at the maximum.

In case of failure, and without prejudice to the provisions set forth in the following articles 7 and 8, the Congress of State may order the special management of the bank under the following art. 18. Such order shall be notified to the bank and published in the Official Journal.

5) The withdrawal of the licence may be appealed against in Court.

Art. 7

(as amended by art. 3 of Law no. 33 of March 8, 1988)

Revocation of the Directors' agreement

In the event some of the Directors and Auditors fail to meet, during the fulfilment of their mandates, the requirements on the basis of which they were granted the agreement, the Congress of State, having heard the OBS and the Credit and Savings Committee, may immediately revoke such agreement and request the bank to convene a special Meeting to proceed with their replacement.

Art. 8

Agreement revocation with regard to a foreign bank branch

The provision set forth in art. 7 above shall apply to the bodies of a foreign bank branch appointed under the terms of the following art. 17.

SECTION II THE EXERCISE OF THE BANKING ACTIVITY

Art. 9

Operational autonomy of banks and branches

In performing banking activity on the territory of the Republic, both directly and through their branches, banks shall be fully free to operate in compliance with their articles of association, within the limits and under the terms of the relevant laws of the Republic, under the terms of this Law, and in accordance with the decisions of the Congress of State and the provisions issued by the OBS and the Committee.

In compliance with the above-mentioned laws, decisions and provisions and in particular with what set forth in the following articles of this Section, the convenience and reliability evaluation of bank transactions and investments shall be a prerogative of the bank itself.

Art 10²

(as amended by art. 3 bis of Law no. 33 of March 8, 1988)

Reserve requirement

1) Banks shall set aside a fixed deposit using part of the total funds collected from customers in the form of deposits on current accounts or deposit books resulting from quarterly accounts and excluding interbank accounts. The amount of such fixed deposit shall be assessed periodically in

² Cf. Regency Decree no. 62 of May 26, 1986, "Bank Reserve Requirement under art. 10 of Law no. 21 of February 12, 1986", p. 104

accordance with the criteria identified in the Regency Decree, on proposal of the Committee and having heard the OBS.

2) The fixed deposit may consist of cash or securities issued or guaranteed by sovereign entities indicated in a list drafted by the OBS annually.

In any case, the composition of such fixed deposit shall reflect proportionally the whole of the funds collected from customers.

3) The fixed deposit is made on special accounts with the ICS (Central Bank) referred to in the following Section VI of this Law, entitling depositing banks to earn interests calculated on the reserve value.

4) The OBS shall periodically determine the breakdown of the fixed deposit into cash and securities, or securities issued by the Republic and other securities.

5) For cash reasons, depositing banks may request advances on the legal bank reserve. The amount and duration of such advances shall be fixed by the ICS, having heard the OBS. Even in the case of a decrease in total deposits, banks may request and obtain from the OBS to be partially unbound from the reserve requirement.

Art. 11

(as amended by art. 4 of Law no. 33 of March 8, 1988)

Limits on credit operations

1) In order to safeguard the customers' savings, banks and branches shall respect a balanced ratio between bank's funds and uses, and between deposits and uses, in relation to their time limits in line with the criteria periodically indicated by the OBS.

2) A balanced ratio shall be maintained also between the bank's funds and the funds collected from customers in line with the criteria periodically indicated by the OBS.

Except for special provisions issued by the bank licensing authority, having heard the OBS, any imbalance assessed between bank's funds and funds collected from customers shall entail the obligation for the bank to redress such imbalance by increasing its own funds.

Unless specifically authorised by the Congress of State, any failure by the bank to redress such imbalance may entail the withdrawal of the agreement granted to its directors or even the withdrawal of the authorisation under the preceding articles 6, 7, and 8.

3) The OBS shall indicate the terms that the decision-making bodies of the banks shall observe as regards uses vis-à-vis their amount, both in general and in relation to each category of uses.

Art. 12

Investments

Without prejudice to what set forth in the articles of association on the purchase of property by companies or institutions, banks may carry out investments - both directly and indirectly, and according to their own funds -, in property located on the territory of the Republic, or in shareholding in companies established anywhere. Larger investments or investments in property located abroad, and in any case the shareholding of companies established anywhere require the prior and reasoned authorisation of the OBS. Any property investment linked to the transfer or opening of a new bank office shall be previously authorised by the OBS.

The above provisions shall not apply to the bank being the adjudicatee of property or shareholdings for credit protection reasons. Such award shall be immediately notified to the OBS, with which the adjudicatee bank shall agree the terms of the disinvestment.

Being compatible, such provisions shall also apply to branches.

Art. 13

Guarantees

For the purpose of what stipulated in art. 11 above, the guarantees given by banks shall be considered among risk positions.

Art. 14

(as amended by art. 5 of Law no. 33 of March 8, 1988)

Balance sheet drafting criteria

The balance sheet of both banks and branches shall be closed on December 31 of each year. It shall consist of the asset and liability statement and the profit and loss account and include the reports of the Board of Directors and Board of Auditors. The balance sheet shall be approved by the Meeting of the bank by April 30 of the following year, and within 30 days from its approval, it shall be deposited with the Court of San Marino and notified to the OBS.

Having heard the OBS, the balance sheet drafting criteria shall be specified by law, which the banks shall observe strictly in relation to their activity performed both directly and through branches.

Art. 15

Communications to the OBS and related sanctions

Banks and branches shall transmit their annual balance sheets, including consolidated ones, as well as the communications and their periodical business situations to the OBS, in accordance with this Law and the criteria fixed by the OBS itself under the preceding art. 14 and the following art. 19.

Moreover, banks and branches shall regularly supply the information and documents specifically requested by the OBS.

Banks shall transmit to the OBS the lists of shareholders owning more than 5% of the capital stock. The compilation of such lists and the reporting of beneficial owners to companies are preconditions for the exercise of the right to vote within the bank's Meeting³.

³ Cf. art. 1 of Law no. 63 of July 8, 1994 "Transparency of shareholding in financial and trust companies".

SECTION III

THE BANK ORGANISATION

Art. 16

**(as amended by art. 6 of Law no. 33 of March 8, 1988,
and as amended by art. 5 of Law no. 130 of November 29, 1995)**

Appointment of the bank bodies

The members of the Board of Directors, their President and the members of the Board of Auditors of banking institutions shall be appointed by the Meeting and obtain the agreement of the Credit and Savings Committee, having heard the opinion of the OBS.

Both the President and any of the Directors who are no longer in office shall remain responsible until the person appointed in their place by the Meeting has received the agreement from the Credit and Savings Committee.

In case of absence of one or more Directors during the trading year, the remaining ones or the Auditors shall immediately convene the Meeting to appoint their substitutes.

In case of absence of the majority of the Auditors, the Board of Directors shall immediately convene the Meeting.

For the purpose of the agreement referred to above in the first paragraph, the notification of the appointment of the Directors and Auditors shall be accompanied by the candidates' curricula vitae and professional qualifications.

The President and the members of the Board of Directors and Board of Auditors shall remain in office for three years and can be re-elected⁴.

Art. 17

(as amended by art. 7 of Law no. 33 of March 8, 1988)

Appointment of the bodies of a foreign bank branch

The bodies of a foreign bank branch located on the territory of the Republic shall consist of at least two persons having a proxy and the agreement under art. 5.7) and three auditors.

The Proxies shall meet the professional requirements related to their functions. Their office shall be understood as *sine die*. They shall remain responsible until their substitutes appointed by the bank have received the agreement.

The Auditors shall be appointed by the Great and General Council (Parliament). The proposal for appointment submitted to the Great and General Council shall be accompanied by the candidates' curricula vitae and the description of their professional qualifications.

⁴ Cf. art. 5 of Law no. 130 of November 29, 1995, "Rules governing the modification of banking institutions and the incorporation of joint-stock companies, and other provisions on credit and company matters".

SECTION IV

(as integrated by art. 8 of Law no. 33 of March 8, 1988)
SPECIAL MANAGEMENT

Art. 18

(as amended by art. 8 of Law no. 33 of March 8, 1988)
Special management

On proposal of the OBS and having heard the Committee, the Congress of State may decide the dismissal of the Board of Directors and Board of Auditors of a credit institution and order the special management for the purpose of recovering the business by eradicating the causes of mismanagement.

The prerequisites for resorting to such a measure are the following:

- a) severe anomalies in the management of the credit institution consisting in particular of inaccurate or false accountancy;
- b) serious violations of the legislative and regulatory rules governing the institution's activity, or any of the cases referred to in art. 6;
- c) serious infringement of the provisions issued by the OBS under this Law;
- d) severe property losses;
- e) severe and persisting lack of liquidity.

Moreover, the special management of the credit institution may be ordered by the Congress of State upon reasoned request of the Board of Directors through the OBS, which shall make its assessment as appropriate.

The special management order shall also entail the suspension of the Meeting.

Art. 18 bis

(as integrated by art. 8 of Law no. 33 of March 8, 1988)
Special management bodies

When ordering the special management, the Congress of State shall appoint at the same time the competent bodies, that is:

- a) two Commissioners making up the special management body;
- b) three members of the Control Commission, replacing the Board of Auditors and fulfilling all its functions and tasks.

The special management order shall be notified to the credit institution along with the relevant indications of mismanagement and may be appealed against in Court by summary procedure.

Art. 18 ter

(as integrated by art. 8 of Law no. 33 of March 8, 1988)
Tasks of the special Commissioners

The tasks of the special Commissioners referred to in art. 18 bis shall be the following:

- a) to take responsibility for the management of the business;
- b) to check the inventory drafted by the dismissed bodies;
- c) to start judicial proceedings in respect of the business debtors;

- d) having heard the Control Commission and with the prior opinion of the OBS, to start an action assessing the liability of the members of the Board of Directors and Board of Auditors; at the end of the special management, such action shall be continued by the business managing bodies replacing the Commissioners;
- e) under exceptional circumstances and for the purpose of protecting the creditors' interests, to request the Congress of State, through the OBS which shall express its opinion, that the payment of the institution's liabilities be suspended for a period not exceeding three months.

In the fulfilment of their tasks, the special Commissioners and the members of the Control Commission shall comply with the provisions issued by the OBS.

Art. 18 quater

(as integrated by art. 8 of Law no. 33 of March 8, 1988)

Decision-making in case of special management

The two Commissioners entrusted with the special management of the credit institution shall make decisions jointly. All the acts binding the credit institution shall be signed by both of them.

In ordering the dismissal of the institutional bodies, the Congress of State shall specify the duration of the special management. Under exceptional circumstances, such duration may be extended upon reasoned request by the Commissioners, having heard the Control Commission and with the agreement of the OBS.

In fulfilling their mandates, both the Commissioners and the members of the Control Commission, having heard the OBS, may request, either during or at the end of their office, the compulsory liquidation of the credit institution.

Art. 18 quinques

(as integrated by art. 8 of Law no. 33 of March 8, 1988)

End of special management

The special Commissioners shall cease their mandates with the appointment of the new institutional bodies by the Great and General Council, or when the conditions referred to in art. 16 materialise. The same applies when the new institutional bodies of a foreign bank branch are designated under art. 17.

SECTION V

(as integrated by art. 9 of Law no. 33 of March 8, 1988)

ESTABLISHMENT OF NEW BANK BRANCHES AND OFFICES

Art. 19

Establishment of new branches and offices

The establishment of new branches and offices on the territory of the Republic, or the dislocation of already licensed branches and offices on the territory of the Republic are subject to the special authorisation of the Committee. The request for such authorisation shall be submitted through the OBS, which shall express its opinion.

The establishment of branches and offices abroad - in compliance with the law in force in the interested country - by banks or branches operating on the territory of the Republic is subject to a special authorisation. Such authorisation shall be requested to the Committee through the OBS, which shall express its opinion.

SECTION VI

(as amended by art. 10 of Law no. 33 of March 8, 1988)

CONTROL AND SUPERVISION OF THE BANKING ACTIVITY

Art. 20

(as amended by art. 10 of Law no. 33 of March 8, 1988)

Controlling and supervising body

The control of any credit activity conducted in the Republic of San Marino is a responsibility of the State which, to this end, avails itself of the OBS.

By exercising its supervising function, the OBS shall safeguard both banking activity and savings, in the light of the significant social importance ascribed to them by the Republic.

Moreover, the OBS shall also be responsible for monitoring compliance with currency provisions in force. In this regard, it shall collaborate with the competent bodies of the State with a view to ensuring full respect for all relevant international treaties and any technical assistance banks and their branches may need to carry out the activities covered by such treaties in full autonomy and on an equal footing.

In the performance of their controlling and supervising functions, the OBS officials may audit the company's accounts by inspecting books, records and documents. The OBS may also request the submission of all documents and files it may deem convenient, including those concerning non banking activities carried out by the inspected bank. In addition, the OBS may hear directors and

managers, with regard to their fields of competence, in order to acquire additional information and clarification.

Art. 21

(as amended by art. 11 of Law no. 33 of March 8, 1988)

Structure of the OBS

The OBS established by this Law shall be composed of three Inspectors. They shall be appointed by the Great and General Council upon proposal of the Congress of State, which shall also provide the candidates' curricula vitae and proof of their high professional competence in respect of their mandate.

Voting by the Great and General Council shall be valid by two-third majority of the Council's members participating at the first three meetings and by absolute majority at the fourth and subsequent meetings.

Inspectors are appointed for a three-year renewable term.

The Congress of State shall choose the Co-ordinator of the OBS among the Inspectors appointed and establish their emoluments.

The position of Inspector cannot be held by:

- the Members of the Great and General Council;
- the Members of the Congress of State;
- the Judges;
- the Directors, Officials and Employees of the State, public bodies, banks and financial companies;
- the Officials and Employees of any foreign Ministry;
- anyone who cannot guarantee an impartial and independent fulfilment of his mandate, in compliance with domestic legislation and in the interest of the Republic.

Inspectors can neither establish business relations with any body under the control of the OBS, nor be shareholders of such companies, nor conduct any professional activity in San Marino.

Art. 22

(as amended by art. 12 of Law no. 33 of March 8, 1988)

Functions and powers of the Office

The following powers and functions fall within the competence of the OBS under art. 20 of this Law:

- a) to submit proposals and specify criteria in conformity with articles 10, 11, 12 and 14 of this Law and whenever the OBS deems it convenient to intervene in the light of the economic, financial and monetary situation, both nationally and internationally;
- b) to monitor compliance with the relevant laws and fulfilment of all related administrative obligations, and compliance with the rules set forth by the Articles of Association and regulations of the banks and branches;
- c) to promptly inform the Congress of State of all new financial instruments introduced in the banking activity and which might raise the suspicion not to be fully in compliance with the provisions of this Law whose main objective is the protection of savings;
- d) to specify the technical aspects of all communications that banks shall forward and of all information that banks intending to conduct currency transactions shall supply;
- e) to establish the record-keeping procedure for files being processed;

- f) to annually request banks and branches the submission of their balance sheets also on a consolidated basis;
- g) to periodically request banks and branches the submission of data concerning their management performance as well as the lists referred to in art. 15, last paragraph;
- h) to suggest domestic banks and foreign branches established on the territory of the Republic in the form of non-profit co-operative companies, how to use operating profits exceeding reserve requirements;
- i) to perform a technical function by monitoring and assessing credit activities and currency transactions and submit an annual report, containing aggregated data, to the Congress of State. The Congress shall use this report in the context of international relations and for a global political and economic evaluation of the credit activities;
- l) without prejudice to free contracting, to maintain an ad-hoc register containing the various forms of publicity, along with the general terms of bank contracts adopted by banks regarding operations to be advertised to the public at large on the basis of pre-defined forms;
- m) to monitor strict compliance with bank secrecy;
- n) to give, upon request of the Congress of State, technical advice on banking activity as a whole;
- o) to maintain technical relations with its foreign counterparts and fulfil technical obligations deriving from international agreements in currency matters;
- p) to propose to the Congress of State the revocation of the agreement accorded to directors or bodies of foreign bank branches under the circumstances envisaged by this Law;
- q) to perform the other functions assigned to it by law, including the commencement of any criminal proceedings.

Art. 23 ⁽⁵⁾

Professional secret

People acting on behalf of the OBS and its officials are bound by professional secret, also vis-à-vis the Public Administration. Information and data acquired by the OBS in its supervising activity and concerning serious anomalies shall be transmitted only to the Congress of State.

The records of any judicial proceedings shall be strictly confidential.

Art. 24

Bank secrecy

Information and data acquired in the performance of bank activities are subject to bank secrecy. All bank directors and employees, irrespective of their rank or title, shall be bound by bank secrecy.

Except in case of violations of criminal legislation, the receiving authority may use such information only to monitor bank access requirements, to facilitate the control of bank liquidity and solvency and the supervision of operating conditions, as well as to detect any infringement of this Law which may imply the revocation of the authorisation.

Bank secrecy is guaranteed by the last paragraph of article 23, also with regard to the content of the preceding paragraph.

⁽¹⁾ cf. art. 14, Law n. 41 of 25 April 1996, "Currency Provisions", pg. 139

Art. 25

Currency treaty limitation

With regard to non residents of the Republic, banks and branches cannot conduct any operation violating the currency limitations set forth by international treaties to which the Republic is a party.

Art. 26

(as amended by art. 13 of Law no. 33 of March 8, 1988)

Service costs

All control and supervision costs shall be borne by the State. By December 31 of each year, the Inspectors shall submit to the Congress of State an annual budget accompanied by a planning report specifying the terms of the supervising activity.

SECTION VII

(as amended by art. 14 of Law no. 33 of March 8, 1988)

ISTITUTO DI CREDITO SAMMARINESE - ICS⁽⁶⁾ (CENTRAL BANK)

Art. 27

(as amended by art. 14 of Law no. 33 of March 8, 1988)

Functions

By decision of the Great and General Council, the Istituto di Credito Sammarinese, a joint public and private company or body, is established. The functions of this Institution are:

- a) the exclusive management of monetary relations with foreign countries and, in particular, of exchange transactions. Having heard the opinion of the OBS, the ICS may authorise other banks or branches operating on the territory to perform such function;
- b) the exclusive management of operations in gold and precious metals, with the possibility of authorising other banks or branches operating on the territory to perform such function;
- c) the management of special credit.

This term refers to credit granted to finance, also with special inducements, projects and initiatives favouring some economic sectors such as industry, handicraft, commerce and tourism. Special credit is also granted to promote and support new technologies and research, to create new public facilities, utilities and amenities and, in general, to foster investments.

Special credit shall be regulated by law;

⁽²⁾ cf. Law n. 34 of 9 March 1988, "Articles of Association of the San Marino Credit Institute", pg. 88

- d) the participation in the subsidised credit provided for by the legislation in force;
- e) the issuing, duly authorised by law, of public securities on behalf of the State, and of stock, on its own behalf, as well as the carrying out of all relevant operations and the management of the liquidity so obtained, in conformity with the law or the directives of the Congress of State respectively;
- f) after having heard the OBS, the rediscounting of the bills and other securities of other banks operating in the Republic, except for direct discount and granting of advances on securities to the banks;
- g) the management of treasury and tax collection services on behalf of the State and public institutions, with the possibility of authorising other banks or branches operating on the territory to perform such function;
- h) the custody and management, on behalf of the State, of deposits in cash and securities as reverse requirement and of any time deposit as caution money, maintaining the corresponding liquidity guaranteed by the State;
- i) the establishment, outside the Republic, of one or more branches, or of one or more detached offices, in accordance with the legislation in force in the interested State;
- j) any other function entrusted to it by the laws of the Republic.

Art. 27. bis

(as integrated by art. 15 of Law no. 33 of March 8, 1988)

Short and long term operations

Any operation having a duration between 36 months and 1 day and 60 months shall be referred to as medium term operation.

Any operation having a duration of more than 60 months shall be referred to as long term operation.

Art. 27. ter

(as integrated by art. 15 of Law no. 33 of March 8, 1988)

Scope of the Institution's activity

In the performance of its functions, the Institution may conduct all medium and long term operations of collection and use, having a duration of at least 36 months.

Art. 28

(as amended by art. 16 of Law no. 33 of March 8, 1988)

Shareholders

The majority shareholders are the State and, subject to the approval of the Congress of State, the credit or insurance businesses, companies and corporations.

Art. 29

(as amended by art. 17 of Law no. 33 of March 8, 1988)

Bodies of the Institution

The bodies of the ICS are: the Meeting, the President, the Board of Directors, the Board of Auditors and the Manager.

The President shall be the legal representative of the Institution. He shall convene and preside over the Board of Directors, as well as implement the directors' decisions.

The Board of Directors shall be composed of 5 to 7 members. Its decisions concerning items put on the agenda by the President, ex officio or upon request of at least two of its members, shall be made by majority of its components.

On its own responsibility, the Board of Directors may authorise its members to individually perform some of its functions.

Art. 30

(as amended by art. 18 of Law no. 33 of March 8, 1988)

Appointments

The President shall be appointed by the Great and General Council upon proposal of the Congress of State which shall also provide the curricula of the candidates chosen among people having adequate and proven competence in this sector.

The appointment by the Great and General Council shall be take place by two thirds majority of its members participating at the first three meetings and by absolute majority at the fourth and subsequent meetings.

The President shall be appointed for a three-year term and may be re-elected only once.

The Board of Auditors shall include the President and two effective members. They shall be nominated by the Great and General Council upon proposal of the Congress of State, which shall also prove their competence as experts.

The Board of Auditors shall control the management of the Institution, examine balance sheets and budgets prepared by the Board of Directors and submit a report containing its opinion to the Meeting. The Auditors, appointed for a three-year term, may be re-elected only once and can participate in the meetings of the Board of Directors.

Art. 31

Incompatibility

The position of director or auditor cannot be held by the members of the Congress of State, or by directors, officials or employees of banks or credit institutions operating on the territory of the Republic.

All incompatibilities provided for by the law on companies shall apply to the above positions. The emoluments of directors and auditors shall be fixed by the Meeting.

Art. 32

(as amended by art. 19 of Law no. 33 of March 8, 1988)

Activity of the Institution. Suspension and renewal

As for all aspects not expressly covered by this Section, the ICS shall comply with all provisions on banks contained in this Law.

In case of well-founded suspicions of serious anomalies in the fulfilment of their duties, the Directors and Auditors of the Institution shall be suspended from their office by order of the Congress of State.

If the suspension order concerns the majority of the members of the Board of Directors and of the Board of Auditors, the provisions on special management contained in this Law shall apply.

The interested parties shall be informed of the suspension order by means of a notification of the anomalies ascribed to them.

The decision of the Congress of State can be appealed against in Court by a summary procedure.

Art. 33

(as amended by art. 20 of Law no. 33 of March 8, 1988)

Budget and prospective planning report

The trading year ends on December 31 of each year.

By December 31 of each year, the Board of Directors shall submit to the Congress of State and to the Meeting a prospective planning report relative to the following year.

By April 30 it shall submit to the above mentioned bodies the balance sheet of the preceding year along with a final report on any participation in other companies within two months since the last submission of such companies' balance sheets.

The balance sheet, accompanied by the reports of the Board of Directors and the Board of Auditors, shall be submitted to the Great and General Council for approval.

SECTION VIII

SPECIAL MEASURES ON SAVINGS COLLECTION

Art. 34

Free accounts and deposits in Italian lire

Anyone may open current accounts or hold bank books or securities in Italian lire in any bank or branch established on the territory of the Republic.

SECTION IX CRIMINAL SANCTIONS

Art. 35

Unauthorised bank activity

Anyone carrying out bank activities without the necessary prior authorisation shall be punished with second degree imprisonment and with a third degree fine in days.

Art. 36

(as amended by art. 21 of Law no. 33 of March 8, 1988)

Falsification of accounts and false communications

Directors, managers, proxies, liquidators and auditors not fulfilling the obligations referred to in articles 12, 13, 14 and 15 of this Law or providing false information shall be punished, without prejudice to the application of rules contemplating more serious crimes, with first degree imprisonment, a fine in money or a third degree fine in days.

Art. 37

(as amended by art. 22 of Law no. 33 of March 8, 1988)

Failure to collaborate in the inspections

The directors and the officials not fulfilling their duty to collaborate with the Inspectors and/or their assistants and hindering, by so doing, the supervising and controlling activity under art. 17 of this Law shall be punished with first degree imprisonment, second degree arrest or third degree fine in days.

Art. 38

Violation of professional secret, bank secrecy or aiding and abetting

Anyone violating professional secret (article 23) or bank secrecy (article 24) shall be punished with first degree imprisonment and third degree fine in days.

Anyone aiding and abetting, in the exercise of his functions, the commission of violations envisaged in the preceding article 22 of this Law shall be punished with first degree imprisonment and second degree fine in days.

SECTION X

INTERIM AND FINAL PROVISIONS

Art. 39

Adjustment of the articles of association of already operating banks

The banks already operating in the Republic, directly or through a branch, shall conform their articles of association to this Law within a year since its entry into force. They shall inform the Committee of the above by the same date and submit to the OBS a scheme of the proposed amendments.

Art. 40

(as amended by art. 23 of Law no. 33 of March 8, 1988)

Appointment of the institutional bodies of the "Cassa di Risparmio"

By way of derogation from art. 16 of this Law, the President of the *Cassa di Risparmio* shall be appointed by the Great and General Council.

All relations between the *Cassa di Risparmio* and the S.U.M.S. (Union and Mutual Aid Society) concerning the appointment of the Board of Directors and the Board of Auditors of the *Cassa di Risparmio* shall be governed by the articles of association of the two bodies presently in force⁽⁷⁾.

Art. 41

Progressive adjustment of the reserve requirement

With regard to banks already operating in the Republic on the date of entry into force of this Law the reserve requirement total amount referred to in art. 10 may be set aside, under the terms specified by the OBS, also at different subsequent stages and in any case within two years since the entry into force of this Law.

Art. 42

Compliance assessment

Within a year since the entry into force of this Law, the Committee shall draw up a list of complying banks.

The banks included in this list shall be considered authorised under art. 5 above.

The other banks shall have to submit an authorisation request under the terms prescribed by art. 5 within 60 days following the date of publication of the list referred to in the first paragraph of this article.

If the bank fails to submit such a request under the terms established, it shall have to end its activity and be liquidated.

⁽⁷⁾ Cf. art 6 of Law n. 130 of November 29, 1995 "*Rules governing the modification of Banking Institutions and the incorporation of joint-stock companies, and other provisions on credit and company matters*", page 112.

Art. 43

(as amended by art. 24 of Law no. 33 of March 8, 1988)

Starting of the activity of the Istituto di Credito Sammarinese

The starting of the activity of the Istituto di Credito Sammarinese shall be fixed by decision of the Great and General Council.

Art. 44

Repeal of previous laws

Any law provision not expressly mentioned in this Law and contrasting with any of its provisions shall be considered as repealed.

In particular, Law n. 10 of March 30, 1954, Law n. 17 of June 8, 1954 and Law n. 3 of February 27, 1958 are repealed.

Tax provisions contained in Law n. 39 of July 7, 1977 shall not apply to banks established in the form of co-operative companies.

Art. 45

Entry into force

This Law shall enter into force the fifteenth day following that of its legal publication.