



REPUBBLICA DI SAN MARINO

DELEGATED DECREE no. 111 of 23 June 2021
(*Ratifying Delegated Decree no. 87 of 10 May 2021*)

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

Having regard to Delegated Decree no. 87 of 10 May 2021 - Provisions on virtual asset custody services - which has been promulgated:

Having regard to Article 21, paragraph 1 of Law no. 71 of 27 June 2013, as amended by Article 54 of Law no. 173 of 24 December 2018;

Having regard to Congress of State Decision no. 44 adopted in its sitting of 26 April 2021;

Having regard to the amendment made by the Great and General Council to the above-mentioned Decree-Law when ratifying it in its sittings of 19 and 16 May 2021;

Having regard to Decision no. 10 of the Great and General Council adopted on 16 June 2021;

Having regard to Article 5, paragraph 3 of Constitutional Law no. 185/2005 and to Article 8, paragraph 3, and Article 10, paragraph 2 of Qualified Law no. 186/2005, as well as to Article 33, paragraph 6 of Qualified Law no. 3/2018;

Promulgate and order the publication of the final text of Delegated Decree no. 87 of 10 May 2021, as results from the amendment approved by the Great and General Council when ratifying it:

PROVISIONS ON VIRTUAL ASSET CUSTODY SERVICES

Art. 1

(Subject matter and scope)

1. This Delegated Decree shall regulate the provision of custody and/or administration services of virtual asset or tools that allow having control over virtual assets in the Republic of San Marino.

Art. 2

(Definitions)

1. For the purpose of this Delegated Decree:

- a) "Virtual asset" means asset as referred to in Article 1, paragraph 1, letter b bis) of Law no. 92 of 17 June 2008 and subsequent amendments;
- b) "Central Bank" means the Central Bank of the Republic of San Marino, as referred to in Law no. 96 of 29 June 2005 and subsequent amendments;
- c) "San Marino Innovation" means the Istituto per l'Innovazione della Repubblica di San Marino referred to in Delegated Decree no. 23 of 7 March 2018;

- d) “Virtual asset service providers” means service providers as referred to in Article 1, paragraph 1, letter b bis) of Law no. 92 of 17 June 2008 and subsequent amendments;
- e) “Virtual asset custody services” means the provision of custody and/or administration services of virtual asset or tools that allow having control over virtual assets on behalf of third parties.

Art. 3

(Central Bank authorisation)

1. The provision of virtual asset custody services in the Republic of San Marino shall be reserved to authorised banks pursuant to Law no. 165 of 17 November 2005 and subsequent amendments, having obtained a specific authorisation to provide such service on an ancillary basis, issued by the Central Bank pursuant to this Delegated Decree and to the implementing Regulation referred to in Article 10 below.
2. The Central Bank shall notify the applicant bank in writing within 30 days of receipt of the application whether the authorisation has been granted or refused.
3. If the application is incomplete, the time limit referred to in paragraph 2 shall be suspended and shall begin again in full from the time the Central Bank receives the information or documents requested. In any event, the decision to grant or refuse authorisation shall be taken within 12 months of receipt of the application.
4. The Central Bank shall regulate the contents and procedures for submitting authorisation applications, the relevant authorisation procedure and the cases of suspension of the time limit referred to in paragraph 2 in its implementing Regulation referred to in Article 10.

Art. 4

(Revocation of authorisation)

1. The Central Bank may revoke the authorisation to provide virtual asset custody services when banks:
 - a) do not make use of the authorisation within 18 months of the date of its issue;
 - b) have ceased to provide the authorised services for more than 12 months;
 - c) have obtained the authorisation by submitting false statements or by any other irregular means;
 - d) no longer meet the requirements for authorisation and have not taken the corrective actions requested by the Central Bank within 6 months or do not inform the Central Bank of significant changes in these requirements;
 - e) have seriously and systematically violated the provisions of this Delegated Decree or of the relevant implementing Regulation or the relevant provisions on the prevention and combating of money laundering and terrorist financing;
 - f) have had their authorisation revoked to carry out reserved activities pursuant to Law no. 165 of 17 November 2005.

Art. 5

(Waiver of authorisation)

1. Banks authorised to provide virtual asset custody services may expressly waive their authorisation at any time.

Art. 6

(Register of banks authorised to provide virtual asset custody services)

1. The Register of banks authorised to provide virtual asset custody services shall be established at the Central Bank.
2. The register shall be kept in computerised form and made available to the public.
3. The establishment and the content of the register, the rules governing registration and deregistration, as well as any other aspects relating to its keeping, shall be regulated by the Central Bank in the implementing Regulation referred to in Article 10 of this Delegated Decree.

Art. 7

(Insurance cover)

1. Banks wishing to provide ancillary custody of virtual assets shall have adequate risk insurance cover in place at all times.
2. The Central Bank shall regulate the characteristics and the minimum amount of the insurance cover referred to in paragraph 1 in the specific implementing Regulation referred to in Article 10 of this Delegated Decree.
3. To maintain their authorisation to provide virtual asset custody services, banks shall submit a copy of the insurance policy to the Central Bank by 31 March each year.

Art. 8

(Technical requirements and powers of the San Marino Innovation)

1. Banks wishing to apply to the Central Bank for authorisation to provide ancillary virtual asset custody services shall submit a certificate of technical adequacy issued by San Marino Innovation, which also includes the assessment of any outsourcing of operational functions.
2. Without prejudice to paragraph 1 and to compliance with the provisions on the organisational requirements contained in Law No. 165 of 17 November 2005 and subsequent amendments and the relevant regulations issued by the Central Bank, the administrative body of the bank wishing to provide virtual asset custody services shall:
 - a) appoint a service manager who has the necessary skills, knowledge and experience to adequately provide the custody service;
 - b) set operating systems and procedures to safeguard the security, integrity and confidentiality of the information on the provision of the service;
 - c) set operating systems and procedures to safeguard and keep data and records relating to the custody service and ancillary and/or instrumental activities;
 - d) define a business continuity policy and related measures, as well as disaster recovery plans aimed at ensuring the retention of data and the regularity of service, or, if this is not possible, the timely recovery of such data and the timely resumption of service;
 - e) establish a plan for internal controls and periodic reviews of the systems and procedures put in place to comply with the requirements of this Delegated Decree and its implementing Regulation and take appropriate measures to address any deficiencies.
3. To issue the certificate of technical adequacy referred to in paragraph 1, San Marino Innovation shall also assess banks' compliance with the requirements referred to in the preceding paragraphs and may issue, after consulting the Central Bank, specific regulations to define rules on technical requirements applicable to the virtual asset custody service, also in the event of outsourcing, as governed by Article 9 of this Delegated Decree.

4. To maintain the authorisation to provide virtual asset custody services, banks shall submit to the Central Bank an updated certificate of technical adequacy issued by San Marino Innovation whenever there are significant changes, but no later than two years after the previous submission.

Art. 9
(Outsourcing)

1. Banks providing virtual asset custody services and outsourcing some operating functions shall take all necessary steps to ensure effective monitoring of additional operating risks; they shall remain fully responsible for meeting the obligations under this Delegated Decree and implementing Regulation, and shall ensure at all times that the following conditions are met:

- a) outsourcing does not result in exemption from or limitation of the bank's liability;
- b) outsourcing does not affect the relationship between the bank and its customers or the obligations arising from that relationship;
- c) the bank retains the necessary expertise and resources to evaluate the quality of the services provided, to effectively supervise the outsourced services and manage the risks associated with the outsourcing on an ongoing basis;
- d) the bank has access to relevant information concerning the outsourced services;
- e) the bank ensures that outsourcers, in addition to complying with the technical standards referred to in Article 8, paragraph 2, letters (b), (c) and (d), meet the standards set out in the relevant legislation on data protection and banking secrecy referred to in Article 36 of Law No. 165 of 17 November 2005.

2. Banks providing virtual asset custody services that use outsourcers shall have an outsourcing policy, including contingency plans and exit strategies, approved by the board of directors.

3. Banks shall confer the task to outsourcers on the basis of a written contract that:

- a) specifies the rights and obligations of both parties;
- b) complies with the conditions in paragraph 2;
- c) leaves banks free to unilaterally terminate the contract.

4. For all matters not expressly provided for in the preceding paragraphs, the provisions laid down in the regulations in force issued by the Central Bank on the outsourcing by banks of activities and corporate functions in sectors other than their core business shall apply.

Art. 10
(Implementing Regulation of the Central Bank)

1. The Central Bank shall establish, by specific Regulation:

- a) how and when to verify the requirements;
- b) the rules on the authorisation procedure, including the cases of suspension of the time limit referred to in Article 3, paragraph 2 of this Delegated Decree;
- c) potential causes of suspension of the authorisation and related procedures;
- d) contents and procedures for keeping and updating the register referred to in Article 6;
- e) features and minimum amount of the insurance cover referred to in Article 7;
- f) computer incident reporting procedures.

Art. 11

(Provision of virtual asset custody services)

1. Banks shall provide virtual asset custody services under asset separation in accordance with Article 72 of Law No. 165 of 17 November 2005 and subsequent amendments and shall adopt adequate procedures to safeguard customers' ownership rights.
2. Banks shall provide virtual asset custody services based on a contract signed with customers, which specifies their duties and responsibilities. Such a contract shall include at least:
 - a) the identity of the parties to the agreement;
 - b) the kind of service provided and a description thereof;
 - c) the means of communication between the bank and the customer, including the customer authentication system;
 - d) the fees charged by the bank for providing the service.
3. Banks providing virtual asset custody services shall:
 - a) keep a register of open positions on account of each customer, corresponding to the rights of each customer over the virtual assets, and record therein all movements as soon as possible, including for the purposes of paragraph 1. Banks' internal procedures shall ensure that any movement affecting the recording of virtual assets is supported by a transaction duly recorded in the customer's position register;
 - b) establish a policy for the custody of virtual assets, with internal rules and procedures to ensure their custody or control to prevent fraud or cyber threats;
 - c) facilitate the possible exercise by customers of any rights attached to virtual assets. Any event that may create or change the customer's rights shall be recorded as soon as possible in the customer's position register;
 - d) provide customers as soon as possible with all information on transactions in virtual assets that require a response from the customers and in any case, at least quarterly, with a statement of the virtual assets registered in the name of each customer in a durable medium;
 - e) ensure that virtual assets or related cryptographic keys held on behalf of customers are returned as soon as possible if requested by them;
 - f) be liable to their customers for losses resulting from malfunctions of information systems or cyber-attacks.

Art. 12

(Powers of the Central Bank)

1. The Central Bank shall exercise over banks authorised to provide virtual asset custody services, as well as over their outsourcers, if any, the supervisory powers provided for by Law No. 165 of 17 November 2005 and subsequent amendments, Law No. 96 of 29 June 2005 and subsequent amendments, and the relevant implementing regulations issued by the Central Bank.

Art. 13

(Sanctions)

1. Unless the fact constitutes an offence, the violation of the provisions of this Delegated Decree shall be punished with a pecuniary administrative sanction ranging from €1,000.00 (one thousand/00) to €30,000.00 (thirty thousand/00).
2. As regards the rules on administrative sanctions, the provisions of Articles 31 and 32 of Law no. 96 of 29 June 2005, Article 141 of Law no. 165 of 17 November 2005 and Decree no. 76 of 30 May 2006 and subsequent amendments shall apply.

Art. 14

(Final and transitional provisions)

1. Subject to the reservations referred to in Article 3, paragraph 1 of this Delegated Decree, economic operators based in San Marino wishing to provide the services referred to in Article 1, paragraph 1 letter s bis) points (i), (ii), (iii), (iv) and (v) of Law no. 92 of 17 June 2008 and subsequent amendments shall obtain a licence in accordance with Law no. 40 of 31 March 2014 and subsequent amendments, containing the relevant ATECO codes broken down by type of activity.
2. Economic operators based in San Marino and already providing the services indicated in paragraph 1 shall adapt their licence within 3 months from the entry into force of this Delegated Decree, by introducing the relevant ATECO codes. After that period, the services referred to in paragraph 1 may not be provided unless the licence is adapted and the relevant ATECO codes are obtained, failing which the licence will be suspended.
3. Violations of the provisions referred to in the preceding paragraphs shall be sanctioned in accordance with Law No. 40 of 31 March 2014 and subsequent amendments. The assessment may be initiated by any public administration, public body or authority of the Republic of San Marino at their own initiative or following a reporting.
4. The obligation for the operators referred to in the preceding paragraphs to enrol in the register of non-financial persons referred to in Article 17, paragraph 5) of Law no. 92 of 17 June 2008 and subsequent amendments shall remain unchanged, in accordance with the regulations issued by the Financial Intelligence Agency.
- 4 bis. The operators referred to in paragraphs 1 and 2 may not operate until the FIA, in collaboration with San Marino Innovation, has issued the specific regulations referred to in paragraph 4 above, failing which the licence shall be revoked.

Done at Our Residence, on 23 June 2021/1720 since the Foundation of the Republic.

THE CAPTAINS REGENT
Gian Carlo Venturini – Marco Nicolini

THE MINISTER OF
INTERNAL AFFAIRS
Elena Tonnini