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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COMMITTEE OF EXPERTS ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES AND THE FINANCING OF TERRORISM

(MONEYVAL)

Third Round Detailed Assessment Report on San Marino[1]

COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM

Memorandum
prepared by the Secretariat
Directorate General of Human Rights and Legal Affairs

[1] As adopted by MONEYVAL at its 26th Plenary Meeting (Strasbourg, 31 March – 4 April 2008).

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I. PREFACE

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of the Republic of San Marino (hereinafter San Marino) was based on the *Forty Recommendations 2003* and the *Nine Special Recommendations on Terrorist Financing 2001* of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004[2]. The evaluation was based on the laws, regulations and other materials supplied by San Marino, and information obtained by the evaluation team during its on-site visit to San Marino from 4 to 10 March 2007, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant San Marino government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

2. The evaluation was conducted by an assessment team, which consisted of members of the MONEYVAL Secretariat and MONEYVAL and FATF experts in criminal law, law enforcement and regulatory issues: Mr Vakhtang MACHAVARIANI, Deputy Head, Financial Monitoring Service, Georgia (legal expert); Ms Romana Giovanna PISCITELLI, Lawyer, Ministry of Economy and Finance, Italy (FATF legal expert); Mr Daniel GATT, Financial Analyst, Financial Intelligence Analysis Unit, Malta (law enforcement expert)); Ms Aleksandra CARGO, Head of Department for Prevention and Supervision, Ministry of Finance, Office for the Prevention of Money Laundering, Slovenia (financial expert); and Ms Elaine BYRNE, Deputy Registrar of Credit Unions, Financial Regulator, Ireland (FATF financial expert) and Ms Livia STOICA-BECHT of the MONEYVAL Secretariat.

3. This report provides a summary of the AML/CFT measures in place in San Marino as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out San Marino's levels of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

[2] As updated in June 2006.

II. SUMMARY OF THE REPORT

1. Background information

1. This report provides a summary of the AML/CFT measures in place in San Marino as at the date of the on-site visit which was undertaken from 4 to 10 March 2007, or immediately thereafter. It describes and analyses the measures in place, and provides recommendations on how certain aspects of the system could be strengthened. It also sets out San Marino's levels of compliance with the FATF 40 + 9 Recommendations.

2. San Marino is a parliamentary republic headed two Captains Regents. The legislative power resides in the Great and General Council, a unicameral legislature which has 60 members elected for a term of 5 years, under a proportional representation system in all the administrative districts. The Government - the Congress of State (*Congresso di Stato*), is politically answerable to the Great and General Council, and is composed of 10 Secretaries. (ministers), appointed by the Great and General Council from among its members.

3. By reason of its geographical location, San Marino maintains close bilateral relations and co-operation with Italy, notably through a friendship and good neighbourliness agreement (concluded in 1939 and subsequently amended) and a currency and customs union, subsequently followed by the 1991 co-operation and customs agreement with the European Community. Under the 1991 Financial and Currency Agreement between San Marino and Italy, there is free movement of capital and mutual recognition of financial products and means of payment between the two countries.

4. The authorities indicated that the money laundering situation had remained virtually unchanged and that laundering in San Marino almost always related to transactions conducted by non-residents who attempted to use the national financial system to launder proceeds obtained from crimes perpetrated outside San Marino. Some forms of micro-criminality originating from abroad have been experienced more frequently in the past years, but no evidence was found of criminal groups or organisations located in San Marino and involved in money laundering operations. Since 2003, there were four investigations and one conviction for money laundering. No terrorist financing activities have so far been recorded in San Marino.

5. Since the last evaluation visit in April 2003, a number of important legislative and institutional changes have occurred. On the legislative side, several relevant laws were adopted (such as in 2004 the Law No. 28 on anti-terrorism, anti-money laundering and insider trading; in 2005 new legislation on trusts and new legislation on companies and banking, financial and insurance services, in 2006 a new corporate law), some of which aimed at strengthening the domestic banking and financial system, including the anti-money laundering legal framework, and increasing transparency of companies and trusts. Institutionally, the Central Bank of San Marino (CBSM) was established through the merger between the former San Marino Credit Institute (which was vested with similar functions to those of a Central Bank) and the former Office of Banking Supervision (OBS).

2. Legal systems and related institutional measures

6. The money laundering (ML) offence is criminalized under article 199bis of the Criminal Code, as amended in 2004 and is based on an all crimes approach. The provision appears to be basically in line with international standards. The physical and material elements of the offence broadly cover the requirements of the United Nations Convention against Illicit traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the United Nations Convention against Transnational Organised Crime (the Palermo Convention). Under paragraph 1 of article 199bis the actions of concealing, substituting and transferring money knowing that

such money is proceeds are incriminated. Also, under 199bis (2) the use of money knowing that such money is proceeds is incriminated. The simple acquisition and possession of property known to be proceeds do not appear to be explicitly covered by article 199bis and the authorities advised that this would be covered by article 199 (Sale of stolen property) covers the simple acquisition or possession for cases when the offender acted for the purpose of making profit. In addition article 362 (abetting) covers cases where a person assists someone "to elude the authorities or to keep the product or profit of the crime" (with the exception of ascendants, descendants and spouse). The offence does not explicitly provides that both direct and indirect proceeds of crime are covered. All designated categories of offences listed in the FATF Glossary are included in the Criminal Code with only two exceptions (piracy, smuggling in persons).

7. The offence of money laundering is a wilful offence. In the 1998 version of the offence, the mental element was "*knowing or should have known that such money is proceeds*". This is no longer the case in the 2004 amended version, which now refers only to the "knowledge". Self laundering or negligent money laundering are not covered.

8. The intentional element of the offence of ML is in practice inferred from objective factual circumstances. The case-law has established that "*criminal intent (dolus) may not be grounded on presumption, yet evidence thereof (inherent to a mental or psychic element) is in most cases and by its very nature corroborated by forms of manifestation, materialization – so to speak – elements or objective circumstances that denote such intent*" (Judge of Appeal, 8 April 1999, in criminal proceeding No. 164 of 1997; Id. 15 June 1998, in proceeding No. 585 of 1997).

9. Legal persons cannot be held criminally liable for money laundering, nor are legal entities subject to civil or administrative sanctions.

10. As regards criminal sanctions for natural persons, the punishment is imprisonment of second degree (6 months to 3 years) and a second degree fine "by the day" (10 to 40 days), the amount to be paid being determined by the judge on the basis of what the person can afford (see article 85 of the Criminal Code). The sanction can also entail a 3rd degree disqualification (1 to 3 years) from public offices and political rights. The sentence can be reduced by one degree (imprisonment from 3 months to 1 year) and a fine (1 to 20 days) depending on the amount of money and nature of transactions or increased by one degree (imprisonment from 2 to 6 years and a fine by the day of 20 to 60 days) if the offence was committed in the exercise of a economic or professional activity which is subject to licensing by the competent public authorities or if the offender is a usurer. Where penalties for the predicate offence are lower than for money laundering, the launderer is imposed the lower penalty (i.e. of the predicate offence).

11. The 2004 ML offence has been tested successfully for the first time in 2005, and three defendants were convicted for money laundering, with sanctions ranging from 3 months to 1 year imprisonment.

12. The evaluators formulated a number of recommendations to improve the present incrimination of money laundering and also to enhance the effectiveness of its prosecution. On the basis of statistics provided, they considered that the implementation aspect appeared to be quite unsatisfactory and this needed to be addressed by the San Marino authorities through a firm prosecution policy. They also recommended to review the legislation to ensure that natural and legal persons are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions for money laundering and to consider increasing the level of sanctions.

13. The Law No. 28/2004 on provisions on anti-terrorism, anti-money laundering and anti-insider trading introduced in the Criminal Code a new article 337 bis entitled "Associations for the purpose of terrorism or subversion of the constitutional order" under Chapter IV – Offences against the State. This provision has never been applied in practice. The evaluators considered

that this provision does not cover the requirements of Special Recommendation II. It is thus recommended that an autonomous offence be introduced in the Criminal Code which would cover the financing of terrorism, terrorist acts and terrorist organisations in line with the requirements of the International Convention for the Suppression of the Financing of Terrorism. Also criminal liability for financing of terrorism (FT) should be extended to legal persons and such persons should be subject to effective, proportionate and dissuasive criminal sanctions for FT.

14. As regards provisional measures and confiscation, the system in place in San Marino seems to enable sufficient actions even though the following amendments to the legislation should be considered by the authorities. Equivalent value confiscation should be considered also for offences other than ML or crimes committed for the purpose of terrorism or subversion of the constitutional order . The legal powers of competent authorities to identify and trace proceeds need reviewing, in particular those of the financial intelligence unit (FIU), so as to enable it to block or freeze assets other than those held or maintained within banks or financial intermediaries. The possibility to void contracts or other similar actions should be provided for in the legislation. The authorities reported that in 2003, in a single money laundering case, property seized amounted to € 1 892 700 and in 2005, subsequent to conviction, the whole amount was confiscated. In 2007, property seized amounted to around €11 million in one case. Despite this significant confiscation, the evaluators have not received sufficient data on which to base a judgment on the effectiveness of confiscation generally in proceeds generating offences. In the absence of supporting data, the evaluators are concerned that in such proceeds generating cases there could be a lack of financial investigations into proceeds, such as would lead to confiscation orders.

15. San Marino has taken steps to ensure compliance with the United Nations Security Council Resolutions, however the legal framework for the implementation of UN sanctions remains incomplete and needs to be reviewed. There is no designating authority for 1373. The Supervision Department 1 of the Central Bank circulates the lists and informs of any updates. No guidance, of which the evaluators were aware, was provided to the banking and financial institutions on their obligations to take actions under freezing mechanisms and the procedures to be followed. The authorities should also ensure that the mechanism applies to all targeted funds or other assets as described in the UN resolutions of individuals, groups and legal entities. Financial institutions are checking the lists but it remained unclear when this is actually taking place. The evaluators recommended also that the supervisory authority should be actively checking compliance with SR.III and that the legal framework for imposing administrative sanctions should be reviewed to adequately enable it to sanction failure to comply with the obligations. Also clear and publicly known procedure for de-listing and unfreezing requests; and appropriate procedures authorizing access to frozen funds for necessary basic expenses, payment of certain fees, service charges or extraordinary expenses should be established.

16. As regards the FIU, evaluators of the previous two evaluation rounds had considered that the multiplicity of functions of the former Office for Banking Supervision prevented it from playing effectively its role as an FIU and they had recommended that a separate structure be created to deal exclusively with FIU issues or that its resources be strengthened with regard to its anti-money laundering functions. The institutional changes which were initiated in 2003 and finalised in 2005 (ie. the reorganisation of the Central Bank, the adoption of its administrative organisational structure) addressed some of the concerns raised previously. However, the evaluation team considered that an important number of improvements are necessary in order to meet the requirements of Recommendation 26.

17. The evaluators considered that there is no comprehensive legal text indicating the powers and duties of the financial intelligence unit. The authorities advised that all the functions, powers and prerogatives previously assigned by law to the Supervision Division, the former Office for Banking Supervision and *Instituto di Credito Sammarinese* were assigned to the Central Bank

(article 49 of the Statutes of the Central Bank) which is the financial intelligence unit. Operationally speaking, the FIU's functions on daily administrative matters were carried out by the *Servizio Antiriciclaggio* (the Anti-Money Laundering Service), an administrative unit within the Supervision Department 1 of the Central Bank. The current situation raised several concerns in the view of the evaluation team, which led them to recommend that the current institutional set up of the FIU be revisited and that specific legislation should be adopted which clearly states and defines the functions, responsibilities, powers of the FIU as an independent agency, irrespective of whether it is established as an independent governmental authority or within another entity. Another improvement to be made concerns the number of FIU staff and their functions. Additional concerns related to the absence of a mandatory reporting obligation of suspicious transactions related to FT (with the exception of lists of designated or suspected terrorists), the insufficiently detailed and precise guidance issued on procedures to be followed and information to be provided for STRs purposes, some issued regarding access to information held by all reporting entities, the risk of FIU related information and correspondence being accessible to unauthorised persons, the absence of public period reports containing information regarding its activities, information on typologies and trends in ML and FT.

18. San Marino has designated authorities to investigate ML and FT offences and equipped them with necessary powers. However the evaluators are reserved on the effectiveness and efficiency of the framework for the investigation and prosecution of offences, and more specifically ML offences. It is strongly advised that the San Marino law enforcement authorities start playing a more active role in AML/CFT efforts. The successful outcome of the investigation in 2007 demonstrates the importance of coordinated actions at national level and such promising efforts should be further pursued. A more pro-active approach should be adopted in investigating and prosecuting money laundering, putting focus more on the financial aspects of major proceeds generating crimes as a routine part of the investigation.

19. Though there are measures in place to provide competent authorities with a basis for the use of a wide range of investigative techniques when conducting ML or FT investigations, it is surprising to note that the authorities did not have the opportunity yet to make use of such tools. The law enforcement and judicial authorities' competencies in AML/CFT should definitely be strengthened, in particular through training developed and/or continued, placing an emphasis on the systematic recourse to financial investigations, the use of existing tools and investigative techniques, analysis and use of computer techniques.

20. The evaluators also believe that there needs to be a more in-depth analysis of the phenomenon of and trends in money laundering and terrorism financing.

21. San Marino is an enclave in Italy. It has no airport or railway station, the only access is possible by road through Italy. Given the historical context and the existing treaty provisions between Italy and San Marino, there was never a physical border with customs officers between the two States. Under the Treaty of 1939 with Italy (Article 44-52), San Marino is considered as part of the Italian customs area. The 1939 treaty provides for the freedom of movement of goods and products of any kind (including cash, securities and other monetary instruments) between the two countries, as such San Marino and Italian residents do not have any declaration obligation. Any foreign citizen travelling to San Marino via Italy have first to comply with the Italian laws and regulations and declare the physical transportation of cash, securities and other monetary instruments (above €12.500). There are no measures in place in San Marino which would enable to detect the physical cross-border transportation of currency and bearer negotiable instruments, to stop and restrain it in case of suspicion of ML or FT and to apply appropriate sanctions. Furthermore, the authorities did not seem to have undertaken any analysis or consideration of potential measures which could to be taken, either at national level or in co-operation with the Italian authorities, to comply with SR. IX.

3. Preventive measures – financial institutions

22. The preventive AML/CFT legal framework is covered by the AML Law No. 123/1998 as supplemented by Law No. 28/2004 together with Law No. 165/2005 on companies and banking, financial and insurance services and Decree no. 71/1996 on AML provisions . Also a number of circulars and standard letters on AML/CFT preventive requirements were issued by the former Office for Banking Supervision (until 2003) and by the Central Bank of San Marino (CBSM).

23. The San-Marino AML/CFT system currently in place has not been based on a risk assessment of the financial sector by the authorities, as envisaged in the revised FATF 40 Recommendations.

24. On the basis of the definition of activities conducted by a financial institution within the meaning of the 40 FATF Recommendations, the financial institutions operating in the Republic of San Marino are the following: banks; financial companies; Post Offices (which are State-owned); credit recovery on behalf of third parties; financial promoters and insurance promoters; and agencies of Italian insurance companies and insurance brokers selling solely insurance policies based on Italian law.

25. The FATF Recommendation defines the basis on which AML/CFT measures are to be set out in law, regulation or other enforceable means. In assessing the requirements in San Marino for customer due diligence (CDD), the evaluators have considered that the laws, decrees and Congress of State Decisions qualify as "law or regulation" as provided by the Methodology, and any other regulations, circulars, instructions, standard letters of the supervisory authority (previously the Office for Banking Supervision followed by the Central Bank) qualify as "other enforceable means". Such documents are binding and include general provisions which implement and supplement the provisions of the law and its implementing decrees.

26. The evaluators found that a number of the basic obligations of Recommendation 5, which need to be implemented by law or regulation were not provided for in legislation or regulations issued or authorised by a legislative body. In particular, while banks and financial companies are required to undertake identification measures in number of specified situations, there is no obligation in the law to carry out identification when there is a suspicion of money laundering or terrorist financing or when the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data. Furthermore the other elements of CDD are not required by law (e.g. beneficial ownership, and where necessary the source of funds). Additionally, the threshold applied to transactions is €15,500 rather than €15,000 limit referred to in FATF Recommendations.

27. As regards bearer passbooks, while there is regular identification of the bearer upon issuance, conduct of transactions and closure of passbooks, the facility to transfer such passbooks anonymously poses a significant challenge for banks to ensure that they conduct ongoing due diligence on these passbooks throughout the business relationship with the person presenting themselves as the bearer.

28. The following requirements to verify customers' identity are not in the current legislation and should be provided for:
    - use reliable, independent source documents, data or information;
    - verify that any person purporting to act on behalf of the customer (for customers that are legal persons or legal arrangements) is so authorised, and identify and verify the identity of that person;
    - identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the financial institution is satisfied that it knows who the beneficial owner is;

- determine whether the customer is acting on behalf of another person, and then take reasonable steps to obtain sufficient identification data to verify the identity of that other person;
- conduct ongoing due diligence on the business relationship, which includes scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds.

However, some of the above requirements are currently included in circulars which have been issued by the Central Bank.

29. At the time of the evaluation visit, the provisions on customer identification, record maintenance and reporting requirements for post offices, credit recovery on behalf of third parties, financial promoters and insurance promoters and agencies of Italian insurance companies and insurance brokers had not been implemented, as no provisions were issued by the CBSM as required in the law.

30. A comprehensive definition of beneficial owner, as provided for in the Glossary to the FATF Recommendations, incorporating the concept of identifying the natural persons who ultimately own or control the customer needs to be included in relevant legislation.

31. There are no specific requirements in San Marino AML laws or regulations with regard to politically exposed persons. San Marino has not implemented Recommendation 7 through enforceable means. Also San Marino AML legislation and regulations do not include enforceable requirements on non-face to face business relationships or transactions nor do they require financial institutions to have policies in place to prevent the misuse of technological developments for ML/FT purposes, and to have policies in place to address specific risks associated with non face to face transactions.

32. Currently the AML Law does not provide for third party reliance in the performance of customer identification or for introduced business but neither does it prohibit it, even though in practice this situation does not occur.

33. Banking secrecy is an important component of San Marino's financial services business. The evaluators recommended that the AML Law should clearly lift bank secrecy, not only for STRs in respect of money laundering, but also in particular in the context of the ability of competent authorities to access information required in the performance of their AML/CFT functions and of the sharing of information between competent authorities, either domestically or internationally.

34. Under the AML Law No. 123/1998, financial institutions are required to record and keep for 5 years customer identification data and transaction data. The obligation that records of the identification data, account files and business correspondence should be kept for at least five years after the closure of the account or termination of the business relationship will have to be included in law or regulation. There are no provisions in the AML law that require financial institutions to ensure that customer and transaction records and information are available on a timely basis to the competent authorities. Such provisions should be included in law or regulation.

35. The provisions of SR.VII on wire-transfers are not directly addressed in law or regulation. While in practice some measures are taken that cover certain limited elements of SR.VII, requirements need to be introduced to ensure that complete originator information is included in outgoing wire transfers and that beneficiary financial institutions adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by account number and address information. Also measures should be introduced to effectively monitor

compliance with any requirements introduced in relation to wire transfers and there should be specific sanctions in relation to obligations under SR.VII.

36. There are no explicit provisions that impose a direct obligation on financial institutions to pay special attention to all complex, unusual large transactions or unusual patterns of transactions. The circulars issued to date focus on the listing of indicators of and examples of unusual transactions. Under former OBS Circulars No. 26 & 16/F of 27 January 1999, banks and financial companies are required to analyse critically and periodically all transactions made by their customers by establishing closer relations with them for the purpose of detecting any laundering whenever such transactions are deemed to be suspicious and under former OBS Circular No. 33 of 12 February 2003, banks and financial companies are obliged to report any transaction suspected of money laundering, analysed on the basis of objective features of the transaction (such as type, amount and nature), of the customers' profile (economic capacity or background and business activity) and of any other information or circumstance they may have knowledge of because of their activity. However, there is no specific requirement in law, regulation or other enforceable means to examine as far as possible the background and purpose of such transactions and to set forth findings in writing.

37. The circular of 12 February 2003 sets out lists of indicators of unusual transactions which indicate objective criteria for institutions to use to identify unusual transactions and, together with other information in their possession, to carry out further investigation to assess the true nature of the operation. One of the items listed under the category '*Indicators of unusual transactions concerning all categories of transactions'* is transactions with counterparts established in geographical areas considered off-shore centres included in the list of NCCTs published by FATF or located in drug-trafficking and smuggling areas when such transactions are not justified by the customers business activities or by other circumstances. However, mechanisms should be put in place to facilitate financial institutions being made aware of the different degree of compliance by other jurisdictions with respect to the FATF standards.

38. The evaluators considered that the system put in place for the reporting of suspicious transactions needs reviewing to ensure that it meets all the requirements set out in Recommendation 13. The AML law should require financial institutions to report promptly to the FIU. Attempted transactions are not dealt with explicitly in the AML legislation. Circular No. 33/2003 indicates that even if a transaction has not taken place, but an intermediary has acquired sufficient elements of suspicion, reporting is in all cases mandatory. There is no standard form to report an STR. There is no obligation in legislation to make an STR where there are reasonable grounds to suspect or they are suspected to be linked or related to or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism.

39. STRs/ UTRs were received mainly from banks and a very few from financial institutions and statistics surprisingly indicate a decrease over time. Overall, the evaluation team considered that both the number of suspicious and unusual transaction reports received so far since the second evaluation round from the banks, and particularly from the financial companies, is low. The conversion rate from STRs to cases sent to the Court (1 or 2 out of maximum 15) suggests that the quality of reports must be rather poor. No STRs were reported on suspicions of FT. The evaluators questioned the awareness among reporting entities of their reporting obligations and their ability to recognise and report suspicious activities.

40. The situation as regards implementation of requirements of Recommendation 14 highlights issues which were already of concern in the first and second evaluation rounds and for which no changes have occurred. The San Marino authorities should ensure that legislation provides for an explicit legal prohibition of tipping-off. Such provision should cover financial institutions and their directors, officers and employees (permanent and temporary) and should prohibit from disclosing the fact that a STR is being reported or provided to the FIU. Legal protection of reporting entities for disclosures in good faith should be extended to cover reporting of

suspicions of financing of terrorism. There should be a clear legal provision excluding any kind of liability for breach of any restriction on disclosure of information imposed by contractual, legislative, regulatory or administrative provisions for persons reporting suspicions of financing of terrorism

41. The authorities advised that there has been no analysis undertaken regarding the feasibility and utility of a system where banks and other financial institutions would report all domestic and international currency transactions above a fixed amount to a national central agency.

42. No adequate and appropriate feedback is provided to reporting entities.

43. The requirements of Recommendation 15 were partially addressed by Circular of 12 February 2003. However there are no detailed requirements for financial institutions to establish internal procedures to prevent AML/CFT are contained in a law, regulation or other enforceable obligation. In particular there should be requirements to ensure that compliance officers and other appropriate staff have timely access to customer identification data and other CDD information, that financial institutions maintain an adequately resourced and independent audit function to test compliance and that there are screening procedures to ensure high standards when hiring employees.

44. While there are currently no financial institutions that have established operations abroad, provisions on AML/CFT requirements in respect of subsidiaries, branches or representative offices abroad should be included in future legislation or other enforceable means.

45. There is no explicit reference to shell banks in the law. The authorities advised that, arising from the legislation that is in place on establishing banks, they are not permitted and that there are no shell banks in San Marino. There are no specific provisions that prohibit banks or financial companies to enter into or maintain business relationships with shell banks. At the time of the on-site visit, there was no requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

46. In accordance with Law No. 96/2005 (Statutes of the CBSM) and Law No. 165/2005 (LISF), the "on-site inspection service", within the Supervision Department 2 of the Central Bank, is in charge of carrying out on-site visits. AML/CFT requirements (identification, registration, reporting requirements and internal auditing) are included in the issues dealt with by this service. In addition, the AML Service conducts on-site inspections on its own or jointly with the On-Site Inspection Service. The evaluators were concerned by the low level of on-site inspections carried out. Out of 12 banks and 42 financial companies, in 2005, 2 inspections (1 Bank, 1 Financial Company) and 2006 , 5 inspections (2 Banks, 3 Financial Companies) were carried out[3]. There were no inspections undertaken during 2003 and 2004 due to the work that was being undertaken during that period on the new CBSM structure. This important problem impacts on the assessment of the effectiveness of the preventive mechanism in the financial sector.

47. Powers to monitor and ensure compliance by financial institutions with AML/CFT requirements are vested in the CBSM under AML Law No. 123/1998 as supplemented by Law No. 28/2004, Law No. 96/2005 (Statutes of the CBSM) and Law No. 165/2005 (LISF). Such powers are set out in Article 34 of the CBSM Statutes (and are not limited to AML/CFT requirements), and Articles 39 - 44 of the LISF cover the areas of regulatory powers. While the Central Bank has adequate powers to monitor and inspect financial institutions, the effectiveness of these powers

[3] The authorities advised after the visit that in 2007, the On-Site Inspection Service carried out 4 inspections concerning supervision issues, including on AML/CFT matters (3 banks and 1 financial company) and 6 specific AML/CFT inspections (3 banks and 3 financial companies).

has not been fully tested to date due to the low level of inspections. Also, the effectiveness of the sanctions in place has not been fully tested in practice.

48. There is no comprehensive and updated guidance to assist financial institutions to implement and comply with AML/CFT requirements.

49. Overall, while the CBSM appears to be adequately structured and provided with sufficient technical resources, the level of staff resources assigned to the inspections area is not considered adequate, particularly for on-site inspection work.

50. In respect of AML requirements connected to the provision of MVT services, San Marino post offices comply with the rules applicable to the Italian postal service. Domestic AML/CFT implementing provisions legislation should be adopted as soon as possible in order to meet the requirements of Special Recommendation VI, criteria 1 to 6.

4. Preventive measures – designated non-financial businesses and professions

51. Most of the FATF designated Non-Financial Businesses and Professions (DNFBPs) currently operate in San Marino: real estate agencies, dealers in precious metals and stones, lawyers, notaries, accountants, auditors and trust and company service providers.

52. San Marino has brought a long list of DNFBPs within the remit of the AML legislation. The core obligations for both DNFBP and financial institutions are based on the same law (AML Law No. 123/1998 as amended by Law No. 28/2004)). However the AML/CFT preventive measures as described for financial institutions do not apply to DNFBPs, since the Central Bank has not issued the relevant implementing regulations yet. As a consequence, San Marino does not comply with the requirements of Recommendations 12, 16, 24, 25.

53. As regards supervision of DNFBPs, for the time being no regulation has yet been devised for the implementation of AML/CFT supervision over the new categories of obliged entities and persons. Consequently they are not supervised and monitored by designated competent authorities or self-regulatory organisations (SROs). Also sector specific guidance on suspicious transaction reporting needs to be developed and provided to DNFBPs required to make suspicious transaction reports.

54. San Marino has taken steps to extend AML/CFT requirements to some other categories of professions and activities. Regardless of the restrictions on the use of cash in amounts over €15.500 it is recommended that the San Marino authorities extend the AML/CFT framework in accordance to Article 2a(6) of the second EU Directive to all dealers in high value goods not only to antiques shops, dealers in precious metals and precious stones.

5. Legal persons and arrangements and non profit organisations

55. The main types of private legal persons in San Marino *are associazioni non commerciali riconosciute* (recognised non-commercial associations), *fondazioni* (foundations) and *società di capitali* (share capital companies). Both recognised non-commercial associations and foundations are part of the non profit sector. Under Law No. 130/1995, the non-profit sector also includes 2 non-profit credit organizations or undertakings which establish joint stock companies operating in the credit sector (*fondazioni bancarie*). Recognized non-profit associations and foundations are listed in a special record of private bodies corporate kept with the Court's Register. They are controlled and supervised by the Council of Twelve, which may if necessary appoint a special commissioner.

56. According to article 2 of the new Company Law No. 47/2006, companies must be established in one of the following forms: a) partnerships or b) companies limited by shares (anonymous

companies; joint stock companies; limited liability companies). In addition, under article 2(5) of the new Company Law, other corporate forms (hereinafter atypical companies) may be licensed when certain conditions are fulfilled. The acquisition of legal personality for companies is based on the registration in the Company Register, a public register held by the Court Registrar.

57. The San Marino legislation also provides for "partnerships among professionals" and cooperatives are specifically regulated under Law No. 149/1991, and more generally under the Company Law.

58. The evaluators considered that the San Marino legislation does not clearly provide for transparency on information on beneficial ownership and control of companies and have made a number of recommendations aimed at increasing transparency. Concerns arise in particular given the fact that in anonymous companies all shares can be bearer shares and that, in such a case, real owners of anonymous companies are not known when bearer shares are transferred. Information on natural persons holding bearer shares, which are transferred by consignment, do not appear in the Register.

59. The San Marino legislation also provides for legal arrangements such as fiduciaries and trusts.

60. Under article 1 of the new Company Law and article 3 of the LISF, a fiduciary is a company, authorized by the Central Bank of San Marino, holding "title to the assets of third parties in execution of a mandate without representation".

61. A trust legislation was enacted 2 years ago providing for the creation of trusts under the law of San Marino, namely Law No. 37 of 17 March 2005 on the trust institution as well as Law No. 38 on the tax treatment of trusts based on San Marino legislation. Further provisions were issued subsequently, which include Decree No. 83 of 8 June 2005 on record keeping requirements concerning the administration of trust assets, and Decree No. 86 of 10 June 2005 stipulating on registration in, maintenance and consultation of the Trust Register and certification of the Book of Events of trusts.

62. Only banking and financial institutions or fiduciaries may be authorised to act as trustee. Such trustees have to be authorised by the Supervisory Authority (the Central Bank) and are subject to supervision by the same. Nevertheless, if the trust has more than one trustee and at least one of them is an authorized trustee, the trustee office may also be held by natural persons. In such a case, the trustees act unanimously.

63. The legislation provides that a Trust Register is kept in the Office of the Trust Register (at the Industry Office) under the supervision of a judge delegated by the Executive Magistrate (article 9(1) of the Law on Trust). The evaluators noted that the magistrate responsible for the Trust Register was only appointed on 1st January 2007. The Register, though formally established by Law No. 37/2005, did not seem to be physically in place at the time of the on-site visit. Also it remained unclear when the five trusts established in 2005 under the new Trust Law were actually registered.

64. Additional steps need to be taken to ensure that legislation on trusts requires additional information on the beneficial ownership and control of trusts and other legal arrangements. In particular, there is no clear definition of beneficial ownership provided in the legislation, and information accessible in the Trust Register did not include details on settlors, administrators, and trustees.

65. The NPO sector primarily consists of associations (233), foundations (50) and non-profit credit institutions (2) all operating domestically. Furthermore, there are also 50 ecclesiastic entities and 7 trade unions or workers' associations, subject to the same registration requirements applicable to associations and foundations. These are under the supervision of the Council of

Twelve, which also authorises their purchasing of real estate and accepting of gifts, inheritances or legacies. A number of measures have been taken, as a matter of practice and by analogy to the existing requirements for companies, which led to the collection of certain information on registered entities, though there is no legal requirement in legislation for this purpose. No review of the adequacy of laws and regulations related to NPOs has been undertaken by the San Marino authorities nor any review of the sector's potential vulnerabilities to terrorist activities. There has been no outreach to the NPO sector.

6. National and international co-operation

66. The evaluators noted with satisfaction the close co-operation and co-ordination that existed between the judiciary and the law enforcement forces as well as the consultation process between the Central Bank and banking and financial institutions. Operational co-operation between the Judiciary and the AML Service appeared to take place at a working level in specific cases under investigation. However, the evaluators were concerned as there appeared to be a lack of policy co-operation across all relevant competent authorities. No mechanism facilitating a regular and joint review or the AML/CFT system and its effectiveness by competent authorities was put in place and the absence of such a mechanism wass considered to be a serious weakness in the system.

67. As regards international co-operation, the evaluation team noted that some key international instruments signed several years ago are still not ratified (Palermo convention and additional protocols, European Convention on Extradition, European Convention on Mutual Assistance in Criminal Matters, etc).

68. San Marino ratified the 1988 the Vienna Convention, the 1999 Terrorist Financing Convention and the International Convention for the Suppression of Terrorist Bombings. San Marino signed the United Nations Convention against Transnational Organised Crime ("Palermo Convention"), and its two Protocols (New York, 2000), on 14 December 2000 but it has not ratified them yet. It has implemented, with some shortcomings as noted previously, the Vienna and the Terrorist Financing conventions and the provisions of S/RES/1267(1999) and S/RES/1373(2001).

69. San Marino has signed the European Convention on Mutual Assistance in Criminal Matters on 29 September 2000, but has not ratified it. It has ratified the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS 141), with a number of reservations and declarations. Two bilateral agreements have been signed with Italy on criminal, civil and administrative matters (31 March 1939) and with France on criminal and civil matters (14 January 1954). The authorities indicated that most requests are submitted and responded under the 1939 agreement with Italy.

70. Legal assistance is provided by the judicial authorities of San Marino, usually through the services of the investigative judge, in response to a letter rogatory from a foreign country. In the context of CETS No. 141, the competent central authority is the Secretary of State for Foreign Affairs and for urgent cases, direct communication is possible in application of article 24 of the Convention. In the absence of a treaty, the processing of the letter by the judicial authorities requires the approval of the political authority on the basis of a legal assessment of the admissibility of the request undertaken by the judicial authorities. Such assistance may cover the production, search and seizure of information, documents, and evidence in general from banking and financial institutions, or other legal and natural persons; the taking of statements; obtaining evidence. Assistance may also be given where the state is seeking the identification, freezing, seizure and confiscation of property or proceeds laundered or intended to be laundered. The dual criminality requirement must be met as a precondition for granting mutual legal assistance or certain forms of such assistance

71. Certain shortcomings were identified which may render requests for assistance vein. As regards money laundering, it is likely that legal assistance is provided only where the offence of money laundering in the requesting state is based on actual knowledge and /or inferences drawn from objective circumstances but not if the offence is based on a "should have known" or negligence criterion". Moreover, certain cases of tax evasion (in-direct tax evasion) or self money laundering are not regarded as a criminal offence therefore San Marino can refuse mutual legal assistance in these cases. The existing domestic financing of terrorism offence appears insufficiently wide to render assistance for all types of financing of terrorism where dual criminality is required. In all cases, the predicate offence must also be an offence in San Marino. These issues have not been tested, and in these circumstances the evaluators had reservations as to how far all types of mutual legal assistance could be applied in particular cases of FT. The shortcomings identified in the context of the mechanism for freezing, seizing and confiscating are also relevant in the context of mutual legal assistance.

72. As regards extradition, San Marino has acceded to very few extradition agreements. San Marino signed the European Convention on Extradition on 29 September 2000, but has not ratified yet. It has concluded only 7 bilateral treaties on extradition with the following countries: Belgium (15 June 1903), France (30 April 1926), Italy (1939), the United Kingdom (10 October 1899), the Netherlands (7 November 1902), the US (10 January 1906), and Lesotho (5 October 1971). In the absence of a treaty, the authorities advised that a person may be extradited to the requesting country subject to the necessary political authority to proceed following a legal assessment of the request by the judicial authorities within the limits laid down by article 8 of the Criminal Code. The extradition of nationals is prohibited unless it is otherwise agreed by treaty.

73. The evaluation team was reserved about the extent to which extradition request could be enforced where dual criminality is invoked particularly in respect of ML for instance on the basis of tax offences, self money laundering and certain aspects of financing of terrorism not covered in domestic provisions. They also considered that extradition proceedings may incur undue delays.

74. As regards other forms of co-operation, they recommended that the AML/CFT legislation be reviewed in order to eliminate any uncertainties related to the scope of co-operation of the FIU with foreign counterparts. No co-operation has been taking place between police agencies internationally. No data or information were provided regarding requests made by the supervisory authority or received from foreign supervisory authorities in order to assess the effectiveness of such co-operation.

7. Resources and statistics

75. Competent authorities, in particular the AML Service and the CBSM should review their staff numbers so as to ensure that they are adequately resourced to effectively perform their functions, as this appears to seriously impact on their capacities to carry out fully their functions.

76. In general, the San Marino authorities have certain statistics, however they appear to be insufficiently detailed to draw up a comprehensive picture of the effectiveness and efficiency of the AML/CFT system.

III. MUTUAL EVALUATION REPORT

1.1 General information on San Marino

1. The Republic of San Marino is a landlocked country, geographically located within in the northeastern part of Italy, between the provinces of Rimini (Emilia-Romagna) and Pesaro - Urbino (Marche)**.** Its territory covers an area of 61.19 square km on the slopes of Mount Titano and has a perimeter of 39.03 km. It is divided into nine administrative districts, known as *Castelli* – "castles" (Città di San Marino, Borgo Maggiore, Serravalle, Acquaviva, Chiesanuova, Domagnano, Faetano, Fiorentino and Montegiardino).

2. The population of San Marino is comprised of native Sammarinese and foreign citizens, a majority of which are Italian citizens. San Marino has one of the highest population density in the world (496 persons per sq km). As of 31 December 2006, the population on the territory of the republic was equal to 30.368 out of which 26.432 San Marino citizens and 3963 foreign citizens (3.476 Italian citizens and 460 citizens of other countries). Italian is the official language.

3. San Marino is a member of the Council of Europe since 1988. It is also a member of several other international organisations, such as the OSCE (since 1973), the United Nations (since 1992), the International Monetary Fund (1992), the World Bank (2000), and Interpol (2006). It is not a member of the European Union but has official relations with it since February 1983 and has signed in 1991 a Co-operation and Customs Union Agreement (in force on 01/04/2002), an agreement on monetary relations (concluded in 2000 with the Italian Republic, on behalf of the European Community) which entitles it to use the euro as its official currency since 1 January 2002 and an agreement on savings taxation (in force on 01/06/2005).

4. By reason of its geographical location, San Marino maintains close bilateral relations and cooperation with Italy, notably through a friendship and good neighbourliness agreement (concluded in 1939) and a currency and customs union, subsequently followed by the 1991 co-operation and customs agreement with the European Community. Under the 1991 Financial and Currency Agreement between San Marino and Italy, there is free movement of capital and mutual recognition of financial products and means of payment between the two countries.

Economy

5. The driving sectors of the economy of San Marino are primarily tourism, the manufacturing and export of certain products (ceramics, tiles, furniture, clothing, paints, fabrics, spirits/wines, etc.) and the banking and financial sector industry. Generally lower income tax rates, more favourable contribution rates (e.g. higher take-home wages) than in the surrounding Italian regions have promoted job creation, attracted cross-border commuters (around 5,000 workers), and business. According to the Office of Economic Planning, Data Processing and Statistics, San Marino's gross domestic product (GDP) in 2005 was € 1.106 million and in 2006 was € 1.171 million. The data of the trade flows for 2006 are as follows: Exports € 2.037,00 Million; Imports € 2.076,00 Million; main exporting and importing sectors are manufacturing and services.

System of government

6. San Marino is a parliamentary republic. The constitutional order of the Republic of San Marino is set forth in articles 2 , 3 and 3 bis of the 1974 Declaration on the Rights of Citizens and Fundamental Principles of the San Marino Constitutional Order (hereinafter the "Declaration on Citizens' Rights"). Article 2 stipulates that the Republic's sovereignty is vested in its people.The original government structure was composed of a self-governed assembly known as the Arengo, which consisted of the heads of each family. In 1243, the positions of Captains Regent (*Capitani Reggenti*) were established to be joint heads of State. Article 3 of the Declaration on Citizens Rights establishes that the Captains Regents are the heads of State and prescribes the joint nature of this office. They serve a six-month term and their investiture takes place on April 1 and October 1 every year. The Captains Regent are elected by the Great and General Council from among its own members, who are citizens by origin, they cannot be re-elected unless three years have passed since the last mandate. In their capacity as heads of State, the Captains Regent represent the national unity and co-ordinate, preside over and oversee the activities of the most important bodies of the State. The Captains Regent convene and preside over the Great and General Council, establishing the agenda together with the Bureau (*Ufficio di Presidenza*), and issue decrees on particularly urgent matters, with the agreement of the Congress of State. They preside over and co-ordinate the activity of the Congress of State and, with regard to the judicial bodies, they also chair the Council of the XII and the Parliamentary Commission for Justice. In cases of emergency, the Captains Regent may, after seeking the opinion of the Congress of State, adopt decrees having force of law, which shall be submitted to the Great and General Council for ratification within three months, failing which they shall become void.

7. The legislative power resides in the Great and General Council[4] (*Consiglio Grande e Generale*). The Council is a unicameral legislature which has 60 members elected for a term of 5 years under a proportional representation system in all the administrative districts. It is divided into five different Advising Commissions (*Commissioni Consiliari*) consisting of 15 councillors which examine, propose, and discuss the implementation of new laws which are on being submitted to the Great and General Council. Besides general legislation, the Great and General Council approves the budget. The Council elects the Captains Regent, the Congress of State, the Council of Twelve (*Consiglio dei XII*) and the *Sindaci di Governo* (authorities dealing with acts and deeds involving the State). The Parliament is also competent for treaties with other countries and by virtue of its legislative power, the Council approves new bills.

8. The Government - the Congress of State (*Congresso di Stato*) - is politically answerable to the Great and General Council. It is composed of 10 Secretaries[5] (ministers), appointed by the Great and General Council from among its members. The meetings of the Government are convened and coordinated by the Captains Regent. The Congress of State determines the Government's general policy, in compliance with the political guidelines of the Great and General Council, it also establishes the policy to be adopted in international as well as administrative matters, exercises the power of legislative initiative and gives opinions on the urgency decrees issued by

[4] For more information: www.consigliograndeegenerale.sm/new/index.php3

[5] Secretary of State for Foreign Affairs, Political Affairs and Economic Planning, Secretary of State for Internal Affairs, Civil Protection and Government Plan Implementation, Secretary of State for Finance and the Budget, Posts and Relations with the Philatelic and Numismatic State Corporation, Secretary of State for Education and Culture, University and Social Affairs, Secretary of State for Health and Social Security, National Insurance and Gender Equality, Secretary of State for Territory and Environment, Agriculture and Relations with the Public Works State Corporation, Secretary of State for Labour, Cooperation and Youth Policies, Secretary of State for Industry, Handicraft, Trade, Research and Relations with the Public Utilities State Corporation, Secretary of State for Justice, Relations with Local Authorities, Information and Peace, Secretary of State for Tourism, Sport, Telecommunications, Transports and Economic Cooperation.

the Captains Regent, and approves the budgets and balance sheets of the State and of the autonomous public companies. Besides the collegial responsibility of this body, each Secretary of State is politically responsible for the administrative sector entrusted to him/her and, in his/her actions, he/she has the duty to comply with the principles of legality, impartiality and efficiency. Each member is civilly liable for any damage caused to the Republic in the fulfilment of his/her functions as a consequence of deceit or gross negligence.

Legal system and hierarchy of laws

9. The institutional organisation of the Republic of San Marino is based on Law No. 59 of 8 July 1974 (Declaration on Citizens' Rights), as amended by Law No. 95 of 19 September 2000 (Amendment to Article 4 of Law No. 59 of 8 July 1974) and Law No. 36 of 26 February 2002 (Review of Law No. 59 of 8 July 1974). This declaration is the highest law stipulating the country's institutional framework and sanctioning the fundamental civil, political and social rights recognized by the Republic of San Marino and is considered equal to a constitutional charter. It may be amended only by a law approved by a 2/3 majority of the members of Parliament or by an absolute majority subsequently confirmed by a referendum held within 90 days from the approval of the amending law.

10. San Marino has a civil law system with Italian law influences. There are different kinds of laws: Ordinary Laws (*Leggi*), Qualified Laws (*Leggi Qualificate*) and Constitutional Laws (*Leggi Costituzionali*), and different kinds of Decrees too (*Decreto, Decreto Reggenziale* or *Decreto Delegato*). Constitutional Laws enforce the fundamental principles of the Declaration on the Citizens' Rights, they are approved with a two-thirds majority by the members of the Great and General Council and a positive result of a referendum. Qualified Laws are those which enforce the functioning of the constitutional bodies and institutions, they are approved with the absolute majority by the members of the Great and General Council. The Ordinary Laws are approved with a simple majority of the Great and General Council and with the same majority are approved the Decrees. In the hierarchy of laws there are also, at the lower level of hierarchy the "ius commune" and the customary law. The table below sets out the hierarchy of norms in San Marino:

Hierarchy of relevant norms in San Marino	**Status (according to the Methodology)**
International treaties and conventions	Law or regulation
Constitutional laws	Law or regulation
Qualified and ordinary laws	Law or regulation
Decrees (*Decreto, Decreto Consigliare, Decreto Delegato)*	Law or regulation
Congress of State decisions	Law or regulation
Regulations, circulars, , instructions, standard letters of the supervisory authority (Central Bank)	Other enforceable means

11. The judicial organisation of the Republic of San Marino was reformed in 2003[6] and new provisions on the institution, definition and responsibilities of judges were adopted. Article 1 of Law No. 144/2003 stipulates that the Judiciary is exclusively subject to the law, and judges must strictly interpret and apply the existing laws.

[6] Law No. 144 of 30 October 2003 and Law No. 145 of 30 October 2003.

12. The Single Court has ordinary and administrative jurisdiction (Article 1, Law No. 145/2003). It consists of two specialised sections, administrative and ordinary, the latter being subdivided into civil, criminal, juvenile and family. The organisation and supervision of its activities are entrusted to a Chief Magistrate, appointed for a 5 year term by the Judicial Council from among the Law Commissioners (judges) having served for at least 10 years. The ordinary jurisdiction is entrusted to: the Highest Judge of Appeal (*Giudice di Terza Istanza*), the Judge of Appeal, the Law Commissioner, the Conciliating Judge, and the Clerk (Article 2 of Law No. 144/2003). The *Procuratore del Fisco* and the *Pro-Fiscale* are prosecuting magistrates[7].

13. The Law Commissioner performs jurisdictional functions in the court of first instance, both in civil and criminal matters (penalties not exceeding a 3 year sentence). With regard to criminal matters, the Law Commissioner is vested with investigating functions and makes decisions in the first instance. The Law Commissioner's *uditore giudiziario*[8] assists the Law Commissioner in his activities and may be entrusted with preliminary investigation functions both in civil and criminal matters.

14. The Civil and Criminal Judge of Appeal and the Administrative Judge of Appeal decide on any appeal against the decisions made by the Law Commissioners in civil and criminal matters, by the Conciliating Judge(only in case of judgements in civil proceedings concerning movables exceeding €12,500 of value) and by the Administrative Judge respectively.

15. The final court of review is the judge of the last appeal. In civil matters, this judge confirms or overrules either the lower court judgment or an appellate decision; in criminal matters, he judges on the legitimacy of detention measures and on the enforcement of a judgment.

16. The Council of Twelve (*Consiglio dei XII*) is an original body of the system of San Marino which served as a jurisdictional body that also acted as a third instance Court of Appeals until 2003. It is chaired by the Captains Regent.

17. The Constitutional Court (*Collegio Garante della costituzionalità delle norme*) was established on 28 April 2005 in San Marino. It is composed of three standing judges and three alternate judges, appointed by the Great and General Council at a 2/3 majority for a four-year term. The Court verifies that laws, acts, and provisions that are given the force of law are consistent with the constitutional principles; it verifies the admissibility of any referendum, decides in case of conflicts between constitutional institutions and controls the activity of the Captains Regent.

Transparency, good governance, ethics and measures against corruption

18. San Marino is one of the 35 jurisdictions committed to improving transparency and establishing effective exchange of information in tax matters within the Organisation for Economic Co-operation and Development (OECD)[9].

19. San Marino has not signed nor ratified the United Nations Convention against Corruption or the Council of Europe Civil Law Convention on Corruption. Though it has signed on 15 May 2003 the Council of Europe Criminal Law Convention on Corruption, it has still not ratified it. The authorities advised that they are considering ratifying the UN convention and becoming a Party to GRECO and that they are currently looking into the necessary implementing measures before doing so. National measures to prevent and combat corruption appear to be very limited. The

[7] However, it must be noted that their appointment and functions are being reconsidered in the context of the reform of the Code of Criminal Procedure, according to which, the Procuratore del Fisco and the Pro-Fiscale will become a real and proper Public Prosecutor according to the accusatory model.
[8] Legal professional who has succeeded the selection process by the Judicial Council.
[9] See http://www.oecd.org/dataoecd/12/51/1903601.pdf

authorities referred in this context to the existing provisions in the Criminal Code which criminalise several forms of conduct that constitute corruption (e.g. corruption of public officials and public employees). There appears to be no body established or appointed with specific powers or responsibilities in this area, nor is there an anti-corruption policy or programme. No data is available on cases of corruption officially reported, investigated or prosecuted.

20. The Judicial Council, mainly composed of magistrates, is competent for the appointment, assignment of magistrates and the application of disciplinary sanctions to them[10]. Highest judges of appeal, judges of extraordinary remedies and judges for civil liability action are appointed by the Judicial Council, in plenary session, for a 5 year term which may be renewed. Judges of appeal, Law Commissioners, administrative judges in the first instance, clerks are subject to a 3 year trial period, after which, the Judicial Council, having assessed the competence acquired, decides whether to terminate or confirm the appointment on a permanent basis. Magistrates are liable for the actions conducted while performing their functions and are answerable through the disciplinary -control action of the Judicial Council and through any action introduced by a citizen seeking redress.

21. Staff of police forces is recruited through competition. Whoever has been convicted for an offence committed wilfully is barred from participation in a competition. The Civil Police agents are subject to ethical and professional requirements for civil servants. The agents of the Gendarmerie and Guardia di Rocca are subject to disciplinary regulations for militaries and the Military Congress is responsible for assessing and investigating disciplinary violations.

1.2 General situation of money laundering and financing of terrorism

Money Laundering

22. The authorities reported that since the second onsite visit, no significant changes or new trend in criminal activities have been observed. Major sources of illegal profits are still considered to be fraud, theft, smuggling, mark counterfeiting, drug trafficking, extortion. The rate of criminality is rather low compared to other countries. Some forms of micro criminality (e.g. burglary and thefts) have been experienced more frequently over the last few years, which basically originate from abroad.

23. The authorities indicated that in their view, the money laundering situation had remained virtually unchanged and trends and typologies were not expected to vary in the foreseeable future. According to previous reports, laundering in San Marino almost always related to transactions conducted by non-residents who attempted to use the national financial system to launder proceeds obtained from crimes perpetrated abroad. Investigations in such cases proved difficult, both due to the need to rely on co-operation with foreign authorities and the fact that a connection between the money deposited in San Marino and the predicate offence committed abroad was difficult to establish.

[10] The judicial system required until the reform introduced by the Law No. 145 of 30 October 2003 that the country's lower court judges be non-citizens, so as to ensure impartiality. Hence, these were non-sammarinese judges serving under contract with the Government. According to the new legislation, the *Procuratore del Fisco* and the *Pro-Fiscale* are selected by means of public competition from among attorneys above 30 years old or professors of law who are employed in an university subsequent to a public competition. Highest judges of appeal and judges of extraordinary remedies are appointed by the Judicial Council in plenary session (2/3 majority) and are chose from among legal experts of repute who meet the minimum requirements for magistrates of appeal. Judges of appeal are appointed subsequent to a written and oral examination. Law commissioners are chosen among magistrates, professors of law (tenured or law professors working in a faculty subsequent to a public competition) or attorneys with at least 6 years practice or conciliating judges and clerks having served for at least 4 years.

24. The law enforcement authorities have not found any evidence of criminal groups or organisations located in San Marino and involved in money laundering operations.

25. Since the last evaluation and until the end of 2006, there were four investigations and one conviction for money laundering. In one case, the legal action brought by an attorney was closed because the money laundering offence was committed entirely abroad. Another case; originating from a report of the Central Bank, is still under investigation. Based on the evidence collected so far, the alleged offences do not amount to money laundering but rather to misappropriation of company money perpetrated by its directors. Fraud to the detriment of the Italian inland revenue perpetrated by means of indirect tax (VAT) evasion formed the object of a criminal action initiated subsequent to a police investigation ordered by the judiciary. This was the result of a police investigation ordered by the San Marino judiciary against people under investigation for offences of fraud and association to commit offences. In this case, one of the persons investigated, holder of a current account, had delegated his father to withdraw some of the money deposited in the same account. Being immediately informed, the Judicial Authority ordered the seizure of the money which was proceeds of fraud to the detriment of the Italian Inland Revenue. Investigations were conducted also through international co-operation, in San Marino and Italy, thanks to a direct and steady contact between magistrates in order to carry out simultaneous searches and seizures. The persons' cars and houses were searched and the safety box was opened. All the money was seized. Three persons were convicted of money laundering. They have appealed against the sentence of first degree. Another investigation – still underway at the time of the visit – was started in response to a rogatory commission on a fraud case.

Proceedings initiated for ML

2003	2004	2005	2006
2	1	1	3

Proceedings pending until 31 December 2006 for ML

2003	2004	2005	2006
1	-	-	3

Judgements pronounced for ML

2003	2004	2005	2006
-	-	1	-

26. Though no statistics are maintained specifically on property frozen, seized and confiscated, in 2003 property seized amounted to € 1,892,700. In 2005, subsequent to conviction the whole amount was confiscated.

27. The AML Service of the Central Bank also forwarded three other suspicious transaction reports (STRs) to the Court. Two reports, however, eventually resulted to constitute offences other than

money laundering (respectively use of forged documents and fraud), whereas the third report is still under examination by the Court.

Terrorist financing

28. The authorities indicated that in their view the size of the territory does not allow as such to exploit San Marino either as a hideout or as a place where terrorist or terrorist organisations could plan their attacks. No terrorist financing activities have so far been recorded in San Marino.

1.3 Overview of the financial sector and designated non-financial businesses and professions

29. The financial sector is a significant contributor to San Marino's budget revenues and the authorities recognise that the further development of this sector is essential for the future of the country's economy.

30. The table below indicates what types of financial institutions in San Marino carry out the financial activities that are specified in the Glossary of the FATF 40 recommendations.

TYPES OF FINANCIAL INSTITUTION TO CARRY OUT FINANCIAL ACTIVITIES IN THE GLOSSARY OF THE FATF 40 RECOMMENDATIONS	
Type of financial activity (See the Glossary of the 40 Recommendations)	Type of financial institution that is authorised to perform this activity in San Marino
Acceptance of deposits and other repayable funds from the public (including private banking)	***Banks***
Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfaiting)	***Banks, Financial Companies (Forfaiting is executed mainly by banks***)
Financial leasing (other than financial leasing arrangements in relation to consumer products)	***Banks, Financial Companies***
The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds)	***Banks, Post offices***
Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	***Banks***
Financial guarantees and commitments	***Banks, Financial Companies***
Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading	***Banks***
Participation in securities issues and the provision of financial services related to such	***Banks, Financial Companies***

issues	
Individual and collective portfolio management	***Banks, Financial Companies***
Safekeeping and administration of cash or liquid securities on behalf of other persons	***Banks, Financial Companies***
Otherwise investing, administering or managing funds or money on behalf of other persons	***Banks, Financial Companies***
Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers))	***Banks, Financial Companies, insurance agents***
Money and currency changing	***Banks***

a) Overview of the financial sector

31. The banking and financial sector comprises 12 banks and 42 financial companies (Central Bank Report, 2005). Banks and financial companies used to be licensed under Banking Law No. 21 of 12 February 1986 and Law No. 24 of 25 February 1986. Both laws were superseded in 2005 by a new Law on banking, financial and insurance businesses and services (Law No. 165 of 17 November 2005, hereinafter LISF), to include, among other things, new areas of business where licensed institutions may operate (e.g. collective investments, insurance and re-insurance). Also, under the Trust Law No. 37/2005, banks and financial companies may be licensed by the Central Bank to act as trustees. Until December 2005, such trustees included 4 banks and 6 financial companies.

32. Besides conducting typical banking business (deposit taking, lending, asset management), banks also engage in activities such as leasing and bond issuing.

33. Data for the banking sector show that the San Marino banking system continues to grow in terms of total assets, total deposits and number of employees. At end 2006**,** total assets registered € 8.9 billion, total deposits amounted to € 6.9 billion. Based on national accounts data, the size of the banking system (measured in total assets) is estimated to equate to 6.8 times GDP. Between 2005 and 2006 the number of banking employees increased by 42 , thus reaching a total of 559 persons (3 % of all domestic employees).

34. Of the 12 banks operating in San Marino, 4 have been operating for many years, carrying out traditional banking services (2 San Marino banking foundations – 1 public and 1 private foundation -owned and 2 owned by Italian commercial banks). In addition, since 1999, 8 banks have been licensed, which are mostly owned by foreign individuals or companies from countries including Italy, Switzerland and Luxembourg.

35. The business of taking deposits from non-residents is a very important aspect of the banking business in San Marino with deposits from non-residents (mainly Italians) estimated to account for 60% of total deposits**.** The Central Bank and banking industry representatives advised that the main reasons for non-resident deposits in San Marino were the stricter banking secrecy provisions and the differential tax rates on deposits (although following implementation of the EU Savings Tax Directive[11] this is not as significant now).

36. Financial companies are defined by Law No. 24 of 25 February 1986 as a company or entity operating in the sector of financing, financial and fiduciary services, intermediation services of

[11] Deposit Interest for Residents of EU Member States subject to 15% withholding tax in first 3 years following introduction of Directive, 20% in next 3 years, increasing to 35% thereafter.

securities and financial products, financial leasing and any other operation that can be assimilated to the above-mentioned ones. Fiduciary services are provided by those companies or entities dealing with fiduciary management or administration of third parties' assets. In San Marino, financial companies mainly conduct financial leasing, real estate leasing, administration, management, and custody of financial products and assets. Financial companies are not allowed to take deposits.

37. At end 2006 there were 45 such institutions, employing 168 staff (0.9 % of all domestic employees). Their overall size increased by 14.8% in 2004-2005, reaching € 983 million total assets. Total financial instruments/products administered or under management amounted to € 3,17 billion in December 2006, showing an increase by 12,3% from 2005.

38. Post offices: San Marino post offices are entirely state-owned and form part of the Public Administration, under the responsibility of the Ministry of Posts and Telecommunications. Certain post offices may offer services similar to MVT services, (only few services may be provided however), under the relevant governmental agreements between Italy and San Marino which date back to early 1900s. These services are now rendered on behalf of Poste Italiane S.p.A as if under an "agency contract". Out of 10 post offices operating domestically, only 5 are "equipped" to actually provide these services. In respect of AML requirements connected to the provision of such services, since they are fully integrated in the Italian postal system, San Marino post offices comply with the rules applicable to the Italian postal service. MVT service providers like, Moneygram or Western Union, are not licensed and hence do not exist in San Marino.

39. Insurance sector: though covered by the new Banking Law No. 165/2005 (LISF), it comprises exclusively agencies of Italian insurance companies operating domestically and some insurance brokers selling solely insurance policies based on Italian law. The San Marino authorities advised that these agencies are subject to Italian regulatory and AML supervision. The opening of an agency selling insurance products is subject to San Marino laws and authorisations applicable also to other commercial activities. At the time of the on-site visit, the evaluators were informed that the Central Bank was preparing a new regulation on insurance and re-insurance and that consultations were concluded in mid January 2007.

40. Collective investments: the Central Bank issued a regulation (Regulation 2006-03) which entered into force on 15 November 2006. At the time of the visit, no investment undertakings had commenced operating.

41. All banking and financial institutions are subject to supervision by the Central Bank (prudential, off-site, on-site) and also with respect to the AML requirements set forth by the Law No. 123/1998 as amended and supplemented by Law No. 28/2004 .

b) Overview of DNFBP

42. The following FATF designated non financial businesses and professions (DNFBP) operate in San Marino: real estate agencies; dealers in precious metals and stones, lawyers, notaries, accountants, auditors and trust and company service providers.

Casinos

43. There is no casino (including internet casinos) operating in the Republic of San Marino. The only games allowed in San Marino are covered by the Law No. 67 of 25 July 2000 and include, *inter alia*, games of chance and skill/ability, lotteries, lotto, betting/bookmakers. Gambling is forbidden by Law No. 67.

44. Such activities have to be licensed by a Control and Supervision Committee appointed by the Government. Applications for license have to be accompanied by the set of documents required under the law, and under the company legislation where appropriate.

45. At the time of the on-site visit, the only games allowed included: bingos and similar games, lotteries, lotto, betting and game machines other than slot-machines and roulettes. Currently only one authorized bingo facility and one authorized betting house were operating domestically, which employed 94 and respectively 115 persons.

Real Estate Agents

46. The San Marino real estate market has been very strictly controlled. It is almost impossible for a foreign natural person to buy an estate on the territory of San Marino. Foreign legal entities and physical persons may purchase real estate only if they are granted authorization by the Council of Twelve. At the time of the on-site visit, there were 21 real estate agencies operating in San Marino.

Lawyers, notaries, accountants, auditors

47. All these professions may be carried on subject to authorization and membership in the relevant professional category or association. Each association is governed by internal statutory provisions, and are legally recognized under relevant Decrees:
- Decree No. 56 of 26 April 1995 "Legal recognition of the bar association" (including both lawyers and notaries)
- Decree No. 57 of 26 April 1995 "Legal recognition of the accountants' association" (holding a university degree - *Dottori commercialisti*)
- Decree No. 58 of 26 April 1995 "Legal recognition of the accountants' association" (holding a high-school certificate - *Ragionieri commercialisti*).

48. These decrees have been modified with the course of time in respect of mandatory training (from 2 to 3 years, as the case may be) and examinations to pass to be allowed operating as an independent professional. The statutory provisions of each association set forth criteria for membership, circumstances under which a member may be suspended or barred from the exercise of the profession.

49. Currently there are 92 lawyers and notaries, 51 accountants (*dottori commercialisti)*, and 65 accountants (*ragionieri commercialisti).*

50. According to the information provided by representatives of the Bar Association, the following activities as listed in the Law No. 28/2004 (article 8) are carried out by lawyers and notaries:

a) assisting in the planning or execution of transactions for their client concerning the:
   - buying and selling of real property of business, industrial and service entities;
   - managing of client money, securities or other assets: *they indicated that this type of service is not usually provided as other professions provide these services, they may be holding some securities for their clients;*
   - opening or management of bank accounts, bearer securities and securities accounts: *this was not considered to be a usual activity as fiduciary companies provide these services;*
   - organisation of contributions necessary for the creation, operation or management of companies: *they may advise but do not play an active role;*

- creation of companies, operation or management of companies, trusts or similar structures: *this is not forbidden by law but the association recommends not to undertake such activities*

b) acting on behalf of and in name of their client in any financial or real estate transaction : *lawyers do it on an occasional basis but this is not part of the usual functions of legal professionals.*

51. According to the information provided by representatives of accountants both their professional categories (*Dottori commercialisti* and *Ragionieri commercialisti)* plan to merge in one accountants' association. Accountants may provide their services only in San Marino; among other services they may advise a client on certain transactions but are not allowed to open a bank account or execute transactions on behalf of that client.

52. As far as auditors and auditing companies are concerned, there is a special register established under Law No. 146 of 27 October 2004. Subsequently, two regulations were approved with a Government Decision (No. 31 of 3 October 2005) providing for ongoing professional training and for a code of conduct applicable to auditors. Being entered in such Register is a requirement for auditors of the Central Bank (under Article 16 of Law No. 96/2005), while auditing companies under said Law No. 146/2004 are subject to supervision of the Central Bank in co-operation with the Ministry of Industry (Article 105 of Law No. 165/2005). At the time of the on-site visit, the Register contained:
- 125 auditors (natural persons)
- 8 auditing companies based in San Marino
- 6 auditing companies with their registered office outside San Marino, having being allowed a transition period because they already operated in San Marino prior to the entry into force of Law No. 146/2004.

Dealers in gold and dealers in precious stones and metals

53. The Law No. 41 of 25 April 1996 regulates the trade in unrefined gold. It provides that San Marino operators intending to purchase such gold for the production of goods in the Republic are required to obtain the prior authorisation of the Central Bank (formerly of the Institute of Credito Sammarinese), which also supervises the use and destination of imported unrefined gold. No applications for authorisations to purchase unrefined gold have been received by the Central Bank.

54. Central Bank Regulation 2006-04 on trade in bar gold (in force since 1 November 2006) sets forth the requirements to be met or satisfied by applicant dealers, be they individuals or legal entities, the mandatory documents to produce, disclosure obligations, circumstances under which a license to deal may be suspended or withdrawn. This regulation was issued by the Central Bank in its capacity as Currency Authority (Currency Law No. 41 of 25 April 1996, and in accordance with Article 30 of Law No. 96/2005 on the Central Bank Statute), and in line with the relevant applicable provisions under the Company Law No. 47 of 23 February 2006.

Trust and company service providers (TCSPs)

55. Legislation on trusts was enacted in 2005, 5 trusts were operating in San Marino at the time of the on-site visit.

56. San Marino AML/CFT regulations make no mention of TCSPs. However, several fiduciary companies operate in San Marino, providing asset management and a range of company formation advice services. As advised by the Central Bank, fiduciary companies are currently regulated as a part of the "group" of financial companies, but according to the Central bank's

plans separate regulations will be issued for (i) banks (already in effect), (ii) financial institutions and (iii) fiduciary companies in the near future.

1.4 Overview of commercial laws and arrangements governing legal persons and arrangements

57. The main types of private legal persons in San Marino are:
- *associazioni non commerciali riconosciute* (recognised non-commercial associations), these are regulated by article 4[12] of former Company Law No. 68/1990 of 13 June 1990;
- *fondazioni* (foundations), regulated by article 4 of former Company Law n. 68/1990;
- *società di capitali* (share capital companies), regulated by the new Company Law No. 47/2006 of 23 February 2006.

Non profit sector

58. Both recognised non-commercial associations and foundations are part of the non profit sector. Under Article 4 of Company Law No. 68/1990 several persons the majority of whom are San Marino residents may form a non-commercial, non-profit association. Where a non-profit association pursues broader objectives than the personal interest of the associates and has a memorandum of association and bylaws similar to those of a partnership, it may obtain legal recognition.

59. A disposition of assets, even by will, may have the purpose of forming a foundation. The foundation act may be withdrawn until the foundation is granted legal recognition. When such recognition is obtained, foundations acquire legal personality and may operate. Even if recognized as legal entities, foundations and non-profit associations are not allowed to purchase real estate or accept gifts or inheritances without the authorization of the Council of Twelve.

60. The memorandum establishing a non-profit association or foundation must indicate the name, purpose, assets or wealth and registered office of the entity, as well as its management and operating criteria.

61. Recognized non-profit associations and foundations are listed in a special record of private bodies corporate kept with the Court's Register. They are controlled and supervised by the Council of Twelve, which may if necessary appoint a special commissioner.

62. Under Law No. 130/1995, the non-profit sector also includes 2 non-profit credit organizations or undertakings which establish joint stock companies operating in the credit sector. According to article 1 paragraph 2, where a joint stock company has been established, the banking activity is directly attributed to the subsidiary joint stock company, while the shares are directly assigned to the holding company. Under article 3, the holder of the shares maintains its non-profit nature. Foreign anonymous companies cannot acquire shares that grant the right to vote in the General Assembly of the bank (article 2.3), while trusts or fiduciaries holding nominee shares in their name, must notify the personal data of grantors otherwise the could not vote in the General Assembly (article 2.6). Until April 2006, the shares of the subsidiary bank could be negotiated in cash only (article 7)[13]. There are currently 2 non-profit credit institutions in San Marino which are legal persons though excluded from the application of article 4 of the former company law requiring registration.

[12] Though this law was abrogated by the new Company Law No. 47/2006, article 4 is still in force.

[13] Article 7 of Law No. 130/1995 has been abrogated by article 157(1) of the LISF (Law No. 165 of 17 November 2005, in force in April 2006)

Profit sector

63. In accordance with article 2 of the new Company Law No. 47/2006, companies must be established in one of the following forms:

a) partnerships:
- general partnership;

b) companies limited by shares:
- anonymous companies ;
- joint stock companies ;
- limited liability company.

64. Under article 13 of the new Company Law, the minimum capital of companies changes according to their classification, as follows :
    - limited liability companies: €25 000 ;
    - joint stock companies: €77 000;
    - anonymous companies: €256 000.

65. The acquisition of legal personality for companies is based on the registration in the Company Register, a public register held by the Court Registrar. Under article 20(4) of the new Company Law, the registrar checks only the formal regularity of the documents submitted.

66. With regard to companies limited by shares, members may include both individuals and legal entities. Under article 7 of Delegate Decree No. 130 of 11 December 2006, companies limited by shares may have a single member upon formation, or subsequently due to the assignment of all shares to a single member. As regards companies limited by shares, where all shares end up to be held by a single member, this does not entail the company dissolution. The single member has the powers and rights attributed to the members or the General Meeting under the law or the articles of association. The single member of a company not having issued bearer shares must be entered in the Company Register. As regards partnerships, failure to restore at least two partners within three months entails the dissolution of the partnership.

67. In addition, under article 2(5) of the new Company Law, other corporate forms (hereinafter atypical companies) may be licensed when the following three conditions are fulfilled: 1) the particular company form has to be better suited to achieve company purposes; 2) the company aim shall be to accomplish interests worth being safeguarded; and “3 it isnot contrary to public order.

68. The San Marino legislation also provides for “partnerships among professionals”. Under Article 3 of Company Law No. 47/2006 independent professionals under Law No. 28 of 20 February 1991, as subsequently amended and supplemented, may associate in partnerships to: provide jointly the professional services they are qualified to perform; coordinate intellectual services relevant to different independent professions; and provide goods and services connected with or merely auxiliary to the profession of each partner, with no need to obtain a license. Partnerships among professionals are subject to the rules applying to general partnerships and to norms regulating intellectual professions in general, and single professions inasmuch as they are consistent. They may be formed by a number of partners not exceeding one fifteenth of the members listed in the partners’ professional association. For inter-professional partnerships, such calculation is made with respect to all professional associations concerned. Partnerships among professionals are not allowed to carry on commercial or entrepreneurial activities. They may invest in securities and own the real property and registered movable goods directly used to carry on business. Capital good contracts entered by an independent professional may be transferred to a partnership within one year from joining or forming the partnership by sending a

communication by registered mail to the transferor, who may not oppose rejection. Partnerships among professionals are subject to book keeping requirements.

69. Cooperatives are specifically regulated under Law No. 149/1991, and more generally under the Company Law. The main features of cooperatives include a variable capital; anda "self-help" purpose, that is they operate for the benefit of their member-owners. The capital varies depending on the joining of new member-owners, withdrawal, death or exclusion of members, capital losses or increases. The purpose is fulfilled by supplying goods and services to members-owner or providing them with more favourable working conditions. Cooperatives are formed by public act in the presence of a notary, who must deposit certified copy of the bylaws and memorandum of association within 30 days with the Register of Cooperatives kept with the Court Registrar. Within 30 days from deposit the judge grants legal recognition and orders entering the cooperative in the Register, with publication in the Official Journal. The capital stock is equal to the shares of member-owners. Cooperatives have the same corporate bodies of companies: a general meeting, a board of directors and a board of auditors.

70. Foreign legal entities may purchase real estate in San Marino only if they are granted authorization by the Council of Twelve. They may hold shares, parcels of shares or stakes of San Marino companies, or conclude fiduciary contracts with San Marino companies. They may open and hold bank accounts in San Marino

How companies are created or established

71. Formation of a company limited by shares and of a partnership requires the following conditions to be met: 1) a fully underwritten capital; 2) compliance with formal requirements set forth by relevant legislation in case of companies with a special corporate purpose; 3) observance of law provisions concerning contributions of capital; and 4) that company members who are physical persons are not "unfit persons".

72. To form an anonymous company, or an atypical company under article 2(5) of new Company Law No. 47/2006, or a company expressly regulated under special legislation, or a company whose business activities or sectors are listed in a delegate decree issued under exceptional circumstances (e.g. to prevent distortions in the domestic economy), requires the prior authorization by the Congress of State. Any such company may change its corporate purpose only subject to the prior authorization of the Congress of State - except if such change is in accordance with Article 9 of Company Law No. 47/2006 - to be requested on the basis of a business plan evidencing its accuracy and consistency with the economic and social needs of the country. The Congress of State may impose limitations and conditions.

73. Under Article 14 of Delegate Decree No. 130/2006 the notary who received the memorandum of association forming a company, being satisfied that all law requirements have been met, has to deposit certified copy thereof within 30 days with the Court's Company Register, together with appropriate evidence of compliance with all law requirements. Registration in the Company Register is requested upon deposit of the memorandum of association. The registration notified by the Court's Registrar to the Office of Industry, Handicraft and Trade within the following 15 days. The Company Register is public and may be seen by anyone.

74. Under Company Law No. 47/2006 and Delegate Decree No. 130/2006, the company becomes a legal person upon entry in the Company Register and exists as such until termination, e.g. dissolution. With regard to any transactions carried out prior to entry in the Company Register, their authors are deemed unlimitedly, jointly and severally liable. Any issue or transfer of shares or stakes prior to entry in the Company Register is null and void. The acquisition of legal personality allows neither to buy real estate on the territory of San Marino, nor to accept gifts, inheritances or legacies without the prior authorization of the Council of Twelve.

Legal arrangements

75. San Marino legislation also provides for legal arrangements such as fiduciaries and trusts. Under article 1 of the new Company Law and article 3 of the LISF, a fiduciary is a company, authorized by the Central Bank of San Marino, holding "title to the assets of third parties in execution of a mandate without representation".

76. A trust legislation was enacted 2 years ago providing for the creation of trusts under the law of San Marino, namely Law No. 37 of 17 March 2005 on the trust institution as well as Law No. 38 on the tax treatment of trusts based on San Marino legislation. The enactment of such legislation followed the adoption of the Decree No. 119 of 20 September 2004 on the "Accession to the Convention on the Law Applicable to Trusts and on their Recognition". Further provisions were issued subsequently, which include Decree No. 83 of 8 June 2005 on record keeping requirements concerning the administration of trust assets, and Decree No. 86 of 10 June 2005 stipulating on registration in, maintenance and consultation of the Trust Register and certification of the Book of Events of trusts.

77. Article 19 (licensed trustees and qualified trustees) of Law No. 37/2005 - as specified in greater detail by Article 151 of the new Banking Law No. 165/2005 (LISF) - clearly indicates that only banking and financial institutions or fiduciaties may be authorised to act as trustee. Such trustees have to be authorised by the Supervisory Authority (the Central Bank) and are subject to supervision by the same. To this end the Central Bank issued, on 25 Oct. 2005, Circulars No. 44 and 29/F whereby the trustee licensing criteria were set forth and a Record of Licensed Trustees was established for the purpose of publicity. Nevertheless, under article 19(5) of Law No. 37/2005, if the trust encompasses more than one trustee and at least one of them is an authorised trustee, the trustee office may also be held by natural persons with no requirement to be previously authorised.

78. Moreover, article 9 provides for a Trust Register, which may be accessed to by any interested party. Under Article 58 foreign trusts are entered in a special section of the Trust Register. Foreign law trusts administered in San Marino are nonetheless subject to the publicity requirements in force domestically. The Trust Register is kept in the Office of the Trust Register (at the Industry Office) under the supervision of a judge delegated by the Executive Magistrate (article 9(1) of the Law on Trust).

1.5 Overview of the strategy to prevent money laundering and terrorist financing

a. The AML/CFT strategies and priorities

79. Since the second evaluation round in 2003, San Marino's priorities in the field of preventing money laundering and terrorism financing are said to be:

- further improvement of the legislative framework and harmonisation with international requirements (adoption of the Law No. 28/2004 laying down provisions on anti-terrorism, anti-money laundering and insider trading; reform of the Criminal Procedure Code)
- strengthening the domestic banking and financial system, including the AML regime (process of restructuring which led to the establishment of the Central Bank of San Marino and re-organisation of AML/CFT functions and responsibilities within the Central Bank, adoption of the Banking Law No. 165/2005)
- preparation of further implementing norms pursuant to AML/CFT legislation in particular as regards the implementation of customer identification, record keeping and suspicious transaction reporting requirements to DNFBPs);

- implementation of new legislation adopted to strengthen the legal framework and mechanisms governing legal entities (eg. Law on trusts No. 37 of 17 March 2005, new Company Law No. 47 of 23 February 2006);
- harmonisation of domestic legislation with international conventions which have been signed and/or ratified (eg. CETS No. 198) and
- enhancing international legal assistance.

b. The institutional framework for combating money laundering and terrorist financing

(i) Ministries and co-ordinating committees

The Secretariat of State for Finance and Budget, Post and relations with the Philatelic and Numismatic State Corporation (*Segreteria di Stato per le Finanze e il Bilancio, le Poste e i raporti con l'AASFN*)

80. The Secretariat of State for Finance and Budget, Posts and Relations with the Philatelic and Numismatic State Corporation is responsible for the promotion of the banking system, the tax regime and the budget policies of the Republic of San Marino. The Secretary of State for Finance and Budget is responsible for submitting the draft law on the adoption of the annual and multi-year budget of the State and the Entities of the Enlarged Public Sector, as well as for the preparation of the political and economic planning report on the Budget. He chairs the Credit and Savings Committee (article 48 of Law No. 96 of 29 June 2005).

81. Furthermore, the Secretary of State for Finance and Budget proposes to the Congress of State to submit to the Great and General Council a draft law on the variation to the annual budget and he is responsible for the preparation of the Economic Programme, a document which establishes the actions and the objectives of the economic and financial policy that the Government intends to pursue in the short and middle term, by setting out the priorities.

Credit and Savings Committee (*Comitato per il Credito e il Risparmio*)

82. This Committee is an administrative body chaired by the Secretary of State for Finance and Budget, composed of two to four members nominated by the Congress of State among its own members. The Director General of the Central Bank and representatives of the Supervisory Department can participate in its sittings but without the right to vote. The functions of this committee are to protect the credit, insurance and savings sectors and to provide the political guidelines in supervisory matters.

The Secretariat of State for Foreign and Political Affairs (*Segreteria di Stato per gli Affari Esteri e Politici*)

83. This secretariat, which is headed by a Secretary of State, is responsible for international affairs, international cooperation in economical matters and diplomatic and consular relations. It has competence for signing international treaties, both bilateral and multilateral. It also acts as the competent central authority in relation to international co-operation under the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS No.141). It receives the international rogatory letters sent via the diplomatic channel and advises courts about the desirability of providing assistance to foreign jurisdictions in the absence of an applicable bilateral or multilateral treaty (e.g. in the light of established reciprocity). It also advises the Government of the position taken by international organisations on various matters.

(ii) Criminal justice and operational agencies

84. There are 9 criminal judges: 2 investigating judges, 2 deciding judges, 2 judges of appeal, 1 judge of third degree, 1 judge for extraordinary remedies (competent for review) and the Procuratore del Fisco (prosecuting authority).

85. The Council of Twelve (*Consiglio dei XII*) is an original body of the system of San Marino. Its members are elected from the members of the Great and General Council for a 5 year term - in any case for the period of office of the legislator - (4 of them are replaced every 2 years), it is chaired by the Captains Regent. It acts as an administrative body and until 2003 it also acted as the third instance Court of Appeals. It also supervises associations, foundations and non-profit credit institutions.

86. There are 3 law enforcement agencies in San Marino: the Civil Police (66 agents), the Gendarmerie (88 agents) and the Guardia di Rocca (34 agents). The Civil Police is responsible for domestic security, traffic and civil defense. It deals inter alia with economic crime. The National Interpol Office is composed by members of all three law enforcement agencies.

87. The Gendarmerie, a military police corps, is responsible for internal security and public order. The Gendarmerie is the competent law enforcement authority for investigations related to terrorism offences and also for co-operation with foreign law enforcement authorities (Interpol related contacts).

88. The Guardia di Rocca**,** which is also a military corps, is responsible for customs and border control functions.

89. Investigations in money laundering maters are a prerogative of the Inter-Force Group. This Group was set up in 1998 and at the time of the on-site visit, it was composed of 6 agents: 3 from the Civil Police, 1 from the Gendarmerie and 2 from the Guardia di Rocca.

(iii) Financial sector bodies and associations

90. The Central Bank of San Marino (hereinafter CBSM) was established though the functional merger between the San Marino Credit Institute (*Istituto di Credito Sammarinese* – which was vested with similar functions to those of a Central Bank) and the former Office of Banking Supervision (*Ispettorato per il Credito e le valute*). This merger was initiated in June 2003, shortly after the second mutual evaluation. In the first stage, the integration was partial. The newly established Central Bank was composed of two divisions: the Bank Division (formerly the San Marino Credit Institute) and the Supervision Division (formerly the Office of Banking Supervision). The competencies of the former Office of Banking Supervision were transferred to the Supervision Division. The merger was finalised in December 2005, with the approval of the new statutes of the Central Bank, and with the new structure of the organs. Besides having the typical functions of a central bank, the new statutes (Law No.96 of 29 June 2005, as amended by Law No.179 of 13 December 2005) designate the Central Bank as the currency authority, the tax collecting agency on behalf of the State, and the supervisory authority over the whole financial system in respect of banking, financial, and insurance services. On the basis of the AML legislation, the CBSM is the authority issuing regulatory provisions on reporting obligations. According to article 33 (e) of the Statute, the Central Bank is assigned the function of anti-money laundering unit. The Central Bank is a private and public participated body subject to private law, whose shareholders are the State (70% of capital) and 4 commercial banks (30% of capital). The Central Bank became a member of the Egmont Group in June 2005. It comprises 55 persons actually present.

91. The Supervision Committee, which is one of the 6 main organs of the Central Bank, is the technical body responsible for supervision of the banking, financial and insurance sectors. According to article 15 (2) of the Statute, it is assigned the authority as an anti-money laundering unit. It also has regulatory powers for the implementation of AML/CFT requirements by reporting entities. It consists of the Director General of the Central Bank, who chairs it, and two Central Bank Inspectors. At the time of the on-site visit, the Head of the anti-money laundering service was also a member of this Committee.

92. The Servizio Antiriciclaggio (the Anti-Money Laundering Service) within the Supervision Department 1 of the Central Bank is an administrative unit which is in practice responsible for day to day operational AML/CFT functions. The AML Service acts under the aegis of the Supervision Department 1. It is composed of 2 persons and relies on staff resources of the On-Site Inspection Service and the administrative staff of the Central Bank. On-site supervision on AML/CFT matters is performed by the On-site Inspection Service and /or the AML Service.

(iv) DNFBP and other matters

93. The Control and Supervision Committee, appointed by the Government, was the competent authority for licensing gaming activities (permitted under Law No. 67 of 25 July 2000) until the adoption of new legislation in December 2006 which abolished it. Law No. 143 of 27 December 2006 established a public institution for gaming activities which operates under the control and supervision of the Great and General Council and the Congress of State. This new institution is responsible for the control and surveillance of the running of gaming activities as listed in the laws, the preparation of any draft laws and regulations concerning the running of At the time of the visit, it had no staff and comprised 5 members and 2 inspectors. However, it has no powers with regard to AML/CFT compliance.

94. The Association of Lawyers and Notaries is a non profit legal entity which is competent for coordinating and enforcing the ethical rules of the legal profession, supervising the practice of the professions, facilitating and promoting professional courses, etc. The association can initiate an action against registered lawyers and notaries and where appropriate sanction them. It counts around 130 professionals.

95. The Accountants Association (*Ordine dei dottori commercialisti*), which counted at the time of the on-site visit 63 members, has a range of tasks and duties aimed at ensuring the protection of the profession and the professional conduct of its members, organising examinations, keeping the register of its members, conducting inspections and verifications, initiating disciplinary actions and sanctioning

96. The National Commission of Independent Professionals regroups the presidents of various professional organisations. It counts 510 members.

Other competent bodies

97. Under the 1991 Agreement on Customs Union and Co-operation between San Marino and the European Community, San Marino authorised the Community, acting on behalf of and for San Marino to carry out customs clearance formalities. In practice, these are carried out by a number of designated Italian customs offices.

c. Approach concerning risk

98. The San-Marino AML/CFT system currently in place has not adopted a risk based approach. Some examples of types of situation that require special attention by financial institutions were provided in the circulars adopted by the Central Bank.

d. Progress since the last mutual evaluation

99. San Marino was the 15th country to be evaluated by MONEYVAL in the second evaluation round. The last evaluation visit was conducted in April 2003 and the mutual evaluation report was adopted in January 2005. The specific recommendations formulated in the second evaluation report for the San Marino's system were as follows, with progress indicated since that time.

Legal issues

100. Recommendation: The Money Laundering Offence - "to put without any doubts that "money" so *indirectly* obtained would fall within the terms of the definition either by making specific legislative change, (which would be timely taking into account that the draft law on "Provisions on Anti-Terrorism, Anti-Money laundering and Anti-Insider Trading" has been prepared), or by attaining judicial decision on these issues".

101. Measure(s) taken: Law No. 28 of 26 February 2004 added an additional paragraph to Article 147 of the Criminal Code: in case of conviction, the confiscation of the instrumentalities that served or were destined to commit money laundering and of the things being the price, product or profit thereof shall always be mandatory.

102. Recommendation: "As far as self laundering is concerned, San Marino authorities should be urged to adopt, as soon as possible, the draft law on "Provisions on Anti-Terrorism, Anti-Money laundering and Anti-Insider Trading", which would clearly take into account the recommendation made in first evaluation report concerning the need for criminalisation of self-laundering".

103. Measure(s) taken: legal modifications introduced since the last evaluation visit do not include self laundering as a punishable offence.

104. Recommendation: "A recommendation was also made in the first evaluation report to make it clear that the purpose of obstructing the identification of the source of the proceeds, may also be inferred from objective circumstances. This is also re-iterated, because there were no legislative changes since the first evaluation report nor any court decision pronounced."

105. Measure(s) taken: no measures reported.

106. Recommendation: "Should the San Marino authorities consider that the introduction of negligent money laundering would enhance the efficiency of the anti-money laundering system, they should consider establishing criminal liability for negligent money laundering, since some jurisdictions have found it useful."

107. Measure(s) taken: the offence under article 199bis cannot be committed through negligence. The changes to article 199bis have not taken this issue into consideration.

108. Recommendation: Corporate liability – "The evaluators consider that a review should be conducted at an appropriately senior level, to determine whether the administrative sanctions of Article 9 of the AML Law are sufficiently effective, proportionate and dissuasive".

109. Measure(s) taken: the powers to impose pecuniary sanctions have been supplemented by article 9 of Law No. 28/2004. Powers to impose pecuniary administrative penalties more generally have been set out in the Statute of the CBSM and the news banking law (LISF). The evaluation team was not informed whether a review was conducted at an appropriate senior level and in any case, the effectiveness of the sanctions in place has not been fully tested in practice.

110. Recommendation: Failing to report knowledge or suspicions of money laundering – "While failure to report is liable to administrative sanctions, the first report recommended that consideration should be given to criminalising failure to report suspicions of money laundering. No progress on this has been made. The recommendation made in the first report is re-iterated. Given that violating bank secrecy has been made a criminal offence, consideration should be given to criminal sanctions for failure to report."

111. Measure(s) taken: the system in place has not changed since the last evaluation visit.

112. Recommendation: Tipping Off – "San Marino authorities should ensure that those provisions are comprehensive enough so as to be able to cover all circumstances in which the "tipping off"(in all its forms) of a suspect could occur."

113. Measure(s) taken: no changes have occurred since the last evaluation visit.

114. Recommendation: "Moreover, since it is envisaged in the draft law on "Provisions on Anti-Terrorism, Anti-Money laundering and Anti-Insider Trading" to include under the anti-money laundering regime also other professions in line with the Second EU Directive, it should be ensured that "tipping off" provisions are also applied to them."

115. Measure(s) taken: all DNFBPs are within the scope of the AML Law No. 28/2004, therefore the tipping off provisions also applies. However, the practical impact of these provisions is extremely limited due to the absence of implementing regulatory provisions, DNFBPs are currently not considered to be subject to any reporting requirements.

116. Recommendation: Time limits for reporting suspicions of money laundering – "The evaluators therefore recommend that the obligation to report suspicious transactions be in line with Article 7 of the second EC Directive (2001/97/EC)."

117. Measure(s) taken: the assessment of compliance with article 7 of the second EC directive has identified a number of gaps which have not been addressed since the last evaluation round (see annex 3 of this report).

118. Recommendation: Confiscation and Provisional Measures – "The recommendations made in the first evaluation report are reiterated, namely to consider introducing a civil procedure of the nature of an action " in rem", so as to ensure the confiscation of the illicit proceeds of crime in all circumstances. It was also suggested in the first report that such a procedure might include a lower level or event the reversal of the onus of proof regarding the lawful origin of alleged proceeds".

119. Measure(s) taken: The judges informed the evaluation team that prosecutors have the power to reverse the burden of evidence, requiring third parties to demonstrate the lawful origin of alleged proceeds.

120. Recommendation: It would be useful for the San Marino authorities, therefore, to consider defining "proceeds", on the lines of those found in the Strasbourg Convention for the purpose of confiscation under Article 3, in order to eliminate all doubt on this issue.

121. Measure(s) taken: no changes have occurred since the last evaluation visit as regards the definition of "proceeds", however the issue was clarified by practice.

122. Recommendation: "Since the first evaluation, there has not yet been any experience in the application of the existing "seizure" provisions to money laundering cases. It is thus difficult to make an assessment of their potential as provisional measures within this relatively new context. It is suggested that the authorities of San Marino should continue to monitor the

situation and any developing case law in this field, so as to be able to intervene legislatively to correct any problems that might arise."

123. Measure(s) taken: the data provided to the evaluation team (property seized in 2003 in a single money laundering case amounted to € 1 892 700) is insufficient to base a judgment on the effectiveness of provisional measures.

Financial Issues

124. Recommendation: Entities with anti-money laundering obligations – "in the view of the evaluators, the prevention and fight against money laundering urgently needs to be made more effective by bringing the professions and entities liable to suspicious transaction reporting and the other anti-money laundering obligations into line with the 2nd EC Directive. Also as recommended by the first examination team, the anti-money laundering legislation should be revised to include within its scope all insurance companies established in San Marino."

125. Measure(s) taken: the Law No. 28 on "Provisions on Anti-Terrorism, Anti-Money Laundering and Anti-Insider Trading" of 26 February 2004 extended the list of obligated entities and made clear that customer identification, record maintenance and reporting requirements apply to all of them. The list includes at present, in addition to banks and credit institutions: post offices, credit recovery activities, financial and insurance promoters, insurance agencies, real estate agencies, gambling houses and casinos, traders in art and high value goods (including precious metals and stones), auction houses, auditors, external accountants, tax advisors, notaries, attorneys and other independent legal and commercial professionals involved in real estate operations, transactions with securities or other assets, the management of monies etc.

126. Recommendation: The role of the OBS – "The evaluators of the first evaluation considered that the OBS's multiple functions prevent it from playing effectively its role as an FIU, and either a separate FIU should be set up, or the OBS's powers and resources should be strengthened with regard to its anti-money laundering functions. Therefore, the evaluators recommend creating a special unit at the OBS to deal exclusively with FIU issues".

127. Measure(s) taken: The OBS does not longer exist as it was integrated into the newly established Central Bank which was assigned the function of anti-money laundering unit (see section 2.5 of the report).

128. Recommendation: "The evaluators recommend that all "authorised intermediaries" be subject to regular, i.e. yearly, supervision by the OBS (or the Central Bank when roles are separated) regarding their implementation of anti-laundering provisions."

129. Measure(s) taken: There were no inspections carried out during 2003-2004 due to work undertaken during that period on the new Central Bank structure. The evaluators did not receive any details of the inspection plan which would enable to assess whether all authorised intermediaries are subject to regular (yearly) supervision and in any case, data provided indicated that the level of on-site inspections is low.

130. Recommendation: "In accordance with FATF Recommendation 22, e.g. without impeding in any way the freedom of capital movements, San Marino should consider to apply similar controls with regard to the cross-border transportation of cash and bearer negotiable instruments".

131. Measure(s) taken: no changes occurred since the last evaluation visit.

132. Recommendation: Compliance officers – "The evaluators welcome the clarifications, introduced by Circular N°33 of 2003, as regards the role and the various tasks of compliance officers. This

new text was adopted shortly before the evaluation visit, a factor which could explain the lack of awareness and unanimity among the interlocutors met on site as to the whether the reporting decisions are still vested in the Director of the organisation, who takes a decision as to whether or not the information is well-grounded. Because of this, it is advisable that further measures (e.g. awareness raising) be taken to accelerate the implementation of the Circular".

133. Measure(s) taken: the evaluation team was informed during the visit that the rime of compliance officer had recently been formalised and expanded, and that in 2006 a circular was issued by one banking association to its members on this issue. The Central Bank was in the process of arranging a training course.

134. Recommendation Record Keeping – "The evaluators recommend that it is made clear by the OBS circular that the time required for keeping customer identification records is five years after closing the account or after otherwise terminating the business relationship with the customer."

135. Measure(s) taken: Standard Letter No. 111 (August 2005) specified that records of customer identification data have to be maintained for at least 5 years after the closure of the account or termination of the business relationship.

136. Recommendation: Bearer passbooks and anonymous joint stock companies – "The evaluators were concerned that no action had been taken on the previous recommendation and repeat it in this report. The evaluators recommend to phase out bearer passbooks from San Marino's savings practice and transform the underlying accounts into current accounts."

137. Measure(s) taken: No changes have occurred since the last evaluation. The proposed draft law presented to the evaluation team will not result in the elimination of bearer passbooks.

138. Recommendation: "Furthermore, San Marino may wish to consider amending the Company Law, in order to oblige holders of share capital in anonymous joint-stock companies to register with the OBS and/or the register of companies, and in default to be subject to sanctions, any changes in or transfers of shareholding that represent a significant or a controlling interest. Alternatively, San Marino may wish to consider transforming such anonymous joint stock companies into nominative companies."

139. Measure(s) taken: A number of additional measures have been taken to increase transparency. However, there are still a number of concerns which are analysed in Section 5 of the present report.

International co-operation

140. Recommendation: "Since the first evaluation, San Marino has made significant progress in the area of international co-operation. Several important international conventions have now been ratified. San Marino has acceded to the following international instruments, namely: Single Convention on Narcotic Drugs; Convention on Psychotropic Substances (Vienna, 1971); Protocol amending the Single Convention on Narcotic Drugs; United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime; European Convention on the International Validity of Criminal Judgements; European Convention on the Suppression of Terrorism; International Convention for the Suppression of Terrorist Bombings; International Convention for the Suppression of the Financing of Terrorism. In this regard, it should be recommended that San Marino authorities ensure the efficient application and implementation of the mentioned international instruments."

141. Measure(s) taken: a number of measures have been taken by the San Marino authorities to ensure the implementation of the above-mentioned conventions. Further efforts are required in this regard, as detailed in the present report.

142. Recommendation: "Moreover, the authorities of San Marino are advised to ratify the remaining important international instruments, which have been signed (European Convention on Extradition (Strasbourg, 1957); European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 1959); UN Convention Against Transnational Organised Crime and its three Protocols (New York, 2000)., as soon as possible and to prepare themselves for their implementation."

143. Measure(s) taken: San Marino has still not ratified the European Convention on Mutual Assistance in Criminal Matters or the European Convention on extradition.

144. Recommendation: "Since the extradition of a national under most treaties with San Marino is discretionary and the Courts of San Marino do not have jurisdiction to try a national in San Marino for an offence committed abroad, in cases extradition of nationals is refused it is therefore advisable that the San Marino Courts should be enabled with jurisdiction to try a national in such circumstances."

145. Measure(s) taken: prosecution of nationals is mandatory in the absence of extradition in some bilateral treaties. No changes have occurred otherwise since the last evaluation visit.

146. Recommendation: "Although evaluators were assured that absence of an MOU does not prevent co-operation at FIU's level, the San Marino authorities are advised to ensure, by legislative provision if necessary, that the OBS is in a position to co-operate internationally with FIUs of all types."

147. Measure(s) taken: the situation has changed, since the OBS no longer exists. The evaluation team has made a new recommendation in this respect (see section 6 of this report).

Operational aspects

148. Recommendation: Operative measures – "The evaluators encourage the San Marino authorities to speed up the adoption of this draft law and recommend that the law enforcement bodies should be able to apply, under judicial scrutiny, special investigative tools, such as the interception of communications, search of computers, controlled deliveries and undercover operations. These investigative powers should also be actionable upon a request from abroad."

149. Measure(s) taken: Law N°28 on "Provisions on Anti-Terrorism, Anti-Money Laundering and Anti-Insider Trading" was adopted on 26 February 2004. It provides – in relation with possible money laundering offences under Article 199bis - for the use of special investigative techniques. Under Article 15, the judge (Law Commissioner) may authorise special agents of the Police Forces to conduct undercover operations, intervene in intermediation activities, simulate the purchasing of goods, materials and things liable to generate illicit proceeds, and take part in any initiative aimed at suppressing crimes. With regard to wire interceptions and phone tapping, the Congress of State (Government) will have to submit – within twelve months from the entry into force of this Law – an appropriate bill regulating such investigative techniques and providing for relevant procedures.

150. Recommendation: "the evaluators consider that the role of law enforcement agencies in San Marino is much too passive and not pro-active enough in the area of money laundering. Therefore, higher priority should be given to the investigation of money laundering mainly:
    - There should be one law enforcement body (unit) dealing with the investigation of economic crimes, money laundering and detection and freezing of assets.

- High attention should be paid to train members of such body in methods for detection and prevention of money laundering as well as methods used for the transfer, concealment or disguise of proceeds and property derived from crime, and also support them with adequate technical equipment."

151. Measure(s) taken: The evaluation team is reserved on progress regarding this recommendation and has strongly advised (see section 2.7 of the report) that law enforcement authorities start playing a more active role in AML/CFT efforts.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and regulations

2.1 Criminalisation of money laundering (R.1 & R.2)

2.1.1 Description and analysis

Recommendation 1

152. San Marino has ratified the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1998) (the Vienna Convention) which is in force since 8 January 2001. It has signed but not yet ratified the United Nations Convention against Transnational Organised Crime (Palermo Convention) and its two protocols.

153. The money laundering offence was criminalised through the adoption of the Law No. 123 of 15 December 1998 which introduced a new article (article 199bis - Money laundering) in Chapter V – Offences against Property – Wrongful Acts (*Misfatti*) of the Criminal Code (hereinafter CC). This provision was modified by article 7 of the Law No. 28 of 26 February 2004, which slightly amended the previous money laundering offence, and reads as follows:

"Article 199 bis
Money laundering

(1)Apart from cases of participation in the commission of the offence, anyone who - for the purpose of concealing its true origin – conceals, substitutes or transfers money, or cooperates or intervenes in causing it to be concealed, substituted or transferred, knowing that such money is proceeds of a felony, commits a money laundering felony.

(2)Also anyone who uses money, or cooperates or intervenes in causing it to be used in economic or financial activities, knowing that such money is proceeds of a felony, commits a money laundering felony.

(3) The provisions of this article shall also apply when the felon from whom the proceeds were received is not indictable or punishable, or failing any of the conditions for the predicate felony to be proceeded against. Where the predicate felony was committed abroad, it shall be punishable also under the San Marino criminal laws and procedures.

(4)Any property, as well as legal documents, acts or instruments evidencing title to or interest in such property shall be considered equivalent to money".

154. The physical and material elements of the offence broadly cover article 3(b) (i) and (ii) of the Vienna Convention and Article 6(a) (i) and (ii) of the Palermo Convention. Under paragraph 1 of article 199bis the actions of concealing, substituting and transferring money knowing that such money is proceeds are incriminated. Also, under paragraph 2 of article 199bis the use of money knowing that such money is proceeds is incriminated. The interpretation of the term "substitute" is assumed that it would cover the term "conversion" as used in the Palermo and Vienna Conventions.

155. However the simple acquisition and possession of property known to be proceeds do not appear to be explicitly covered by article 199bis. The authorities advised in this context that the article 199 (Sale of stolen property) covers the simple acquisition or possession, however this provision is limited to cases when the offender acted for the purpose of making profit.

Furthermore they referred to article 362 (abetting) which covers cases where a person assists someone "to elude the authorities or to keep the product or profit of the crime" (with the exception of ascendants, descendants and spouse). They consider that this is also covered in 199bis given that, in their view, concealment is acquisition and possession of a property for the purpose of hiding the origin of that property.

156. For the offence under paragraph 1 of article 199bis, the law also requires that the material conduct constituting the offence must be done with the purpose of obstructing the identification of the source of money, while this specific purpose is not expressly mentioned in paragraph 2, though it seems to be implied. According to article 199bis (1), the purpose of concealment explicitly refers only to concealing the true origin of property. The authorities advised that concealment covers both the legal and physical acts taken to conceal property. The evaluators are not convinced that concealment of true origin covers also concealment of location as required by the Vienna and Palermo conventions.

157. The judge whom the evaluators met explained that Article 199 bis arguably covers both direct and indirect proceeds of crime, though it is not expressly provided for. Paragraph 4 provides that other patrimonial assets and legal documents, instruments and titles evidencing rights on immovable property or assets are made equivalent to "money". The wording seems broad enough, though as there is no legal definition of "property" in the legislation, there are still some concerns if all kinds of assets and funds are covered. The San Marino authorities believe that all kinds of assets and funds are covered.

158. The wording of the offence which refers to "o*btained […]° through a wrongful act* (misfatto)" could leave some doubts as to whether money indirectly obtained would be covered by the definition of money laundering. In the proceedings which led to a final conviction (2005), and other subsequent decisions (2007), the judicial authority secured the seizure and confiscation of all the money in a current account, including the interests earned through investments in securities which had been sold and credited to the account.

159. The evaluation team was informed, that in a money laundering case, when establishing that property is the proceeds of crime, a prior conviction of a person for a predicate crime is not needed and this also applies to the case, when the predicate offence has been committed abroad. The predicate offence and property derived therefrom may be proved during the proceedings related to money laundering.

160. The predicate offences consists in all criminal offences which have been wilfully committed, thus the definition has an open list of predicate offences (all crimes approach). For most categories listed in the FATF Glossary (see annex 4), the San Marino legislation provides for a range of offences. Offences such as smuggling in persons or piracy are not covered.

161. The evaluators were advised that fiscal offences are also predicate offences for money laundering if the fiscal dues and relative administrative fines have not been previously paid because such a payment would extinguish the application of penalties for the offence.

162. No threshold approach is applied.

163. The money laundering offence is punishable when the predicate offence is committed in a foreign country, provided that the fact constituting the predicate offence in criminally punishable under the law of San Marino (dual criminality).

164. Paragraph 3 of article 199 bis provides that the offence subsists even if the author of the predicate offence cannot be held criminally responsible or is not punishable or when some essential condition for the exercise of the criminal action with respect to the predicate offence is missing.

165. The offence does not apply to persons who committed the predicate offence. Also, the laundering of proceeds of one's own criminal activity does not amount to money laundering. The authorities advised that this is based on the general principle under which a person cannot be prosecuted twice for the same conduct. Under San Marino criminal law, the use and concealment of illicit proceeds by the same person who perpetrated the underlying, profit-generating offence constitute a non punishable post-factum. Such use and concealment - as direct and obvious results of profit-generating offences - are considered as part of the predicate offence. This reasoning appears to negate the autonomous nature of money laundering. The evaluation team was not convinced that there is a fundamental principle, according to FATF standards, which prevented the criminalisation of self-laundering.

166. Conspiracy to commit the offence is punishable with respect to any form of activity by imprisonment of third degree and 4th degree disqualification from political rights and public offices. The San Marino Criminal Code defines conspiracy as " the association of three or more persons" to carry out a plan of criminal activity" (article 287 CC – see annex 5, item 15.4). Any form of participation is also punishable (article 73 CC). Attempt is also covered (article 26 CC – "the acting person wilfully and unequivocally undertakes to commit an offence with suitable means but fails to carry out the intended action"), penalties can be reduced by 1 or 2 degrees. Failed attempt is also covered and penalties can be reduced by 1 degree. The offence also covers actions such as "cooperation" and "intervention" to conceal. The authorities advised also that the case law related to article 73 includes both material and psychological aiding and abetting.

Additional element

167. The authorities advised that if the conduct that occurred abroad and generated the proceeds of crime is not an offence under that country's legislation, the laundering of proceeds in San Marino is not punishable, even if the profit generating conduct would constitute an offence domestically.

Recommendation 2

168. The offence of money laundering is a wilful offence. In the 1998 version of the offence, the mental element was "*knowing or should have known that such money is proceeds*". This is no longer the case in the amended version, which now refers only to the "knowledge". Thus, money laundering can no longer be prosecuted on the basis of a "should have known"..

169. The judicial authorities indicated that the intentional element of the offence can be inferred from objective factual circumstances. Although the law does not specify how to acquire evidence of intent with respect to wilful offences, the evaluators were informed, that the intentional element of the offence of ML is in practice inferred from objective factual circumstances. The case-law has established that "*criminal intent (dolus) may not be grounded on presumption, yet evidence thereof (inherent to a mental or psychic element) is in most cases and by its very nature corroborated by forms of manifestation, materialization – so to speak –elements or objective circumstances that denote such intent*" (Judge of Appeal, 8 April 1999, in criminal proceeding No. 164 of 1997; Id. 15 June 1998, in proceeding No. 585 of 1997).

170. Legal persons cannot be held criminally liable for the offence under article 199bis. Nor are legal entities subject to civil and administrative sanctions for money laundering. It appears though that there are no fundamental principles of domestic law which would render impossible the introduction of criminal liability.

171. The evaluators were advised that companies may face administrative measures for violation of legislation. Thus the legal entity could see its business license suspended or withdrawn by the Congress of State if it carried out activities which are of prejudice to the prestige and interest of

the country. Also, the Congress of State could request to the Court to withdraw the legal person's legal recognition and order the dissolution and winding up of the company whose operations are not in compliance with the interests of the State or its international agreements and treaties. No information was received on practice in applying such measures.

172. As regards criminal sanctions, these have remained unchanged. Article 4 of Law No. 123/1998 provides that the offence of money laundering is liable to the same punishments as the offence of Receiving (article 199 - *ricetazzione*), imprisonment and a fine (*multa)* "by the day" of the second degree. The punishment of imprisonment of second degree is from 6 months to 3 years and a second degree fine "by the day" is from 10 to 40 days, the amount to be paid being determined by the judge on the basis of what the person can afford (see article 85 of the Criminal Code). The sanction can also entail a 3rd degree disqualification (1 to 3 years) from public offices and political rights.

173. The sentence can be reduced by one degree, i.e. imprisonment from 3 months to 1 year and a fine from 1 to 20 days depending on the amount of money and nature of transactions. Where penalties for the predicate offence are lower than for money laundering, the launderer is imposed the lower penalty (i.e. of the predicate offence). The evaluators are concerned as such measures would entail reducing the dissuasiveness and effectiveness of such penalties. It was also specified that the penalties may be increased by one degree (imprisonment from 2 to 6 years and a fine by the day of 20 to 60 days) if the offence was committed in the exercise of a economic or professional activity which is subject to licensing by the competent public authorities or if the offender is a usurer (article 4(2) of Law No. 123/1998).

174. By comparison, the sanctions applicable to other offences are 2nd degree imprisonment for fraud, illegal production, trading and prescription of narcotic drugs; 3rd degree imprisonment for bribery, extortion, robbery with use of violence or threat; 4th degree imprisonment for corruption of a public official, 6th degree imprisonment for trafficking and trade in slaves, terrorism, etc.

175. Any form of participation in the offence is punishable in the same way (article 73 CC). Conspiracy to commit the offence is also punishable, as conspiracy is punishable with respect to any criminal activity (article 287 CC).

176. The 2004 ML offence has been tested successfully for the first time in 2005, and the penalties applied in this case to the three convicted persons were of: (1) 1 year imprisonment, 1000 Euros fine and 18 months disqualification from public offices and political rights; (2) 1 year imprisonment, 600 Euros fine and 18 months disqualification from public offices and political rights and (3) 3 months imprisonment, 100 Euros fine and 9 months disqualification from public offices. This case related to an investigation initiated by the police regarding fraud to the detriment of the Italian inland revenue perpetrated by means of indirect tax (VAT) evasion. For one of the defendants, the sentence was reduced by one degree, in the context of spontaneous and useful collaboration (article 90(2) of the CC).

177. The authorities advised that in their view, these sanctions are effective, proportionate and dissuasive in the context of San Marino. However evaluators have serious concerns on this issue. The evaluators are unable to comment on the possible application of the penalties, as only one conviction has been handed down.

Statistics and effectiveness

178. The following statistics were provided:

Proceedings initiated for money laundering

2003	2004	2005	2006
2	1	1	3

Proceedings pending until 31 December 2006 for money laundering

2003	2004	2005	2006
1	-	-	3

Judgements pronounced for money laundering

2003	2004	2005	2006
-	-	1	-

179. In the case of 3 discontinued proceedings, the predicate offences were: corporate crimes (perpetrated by the same person having committed money laundering), tax evasion (non punishable for failure of prosecution) and fraud to the detriment of private persons (when the proceedings for money laundering was dismissed, the competent authorities carried out the seizure only for the predicate offence, upon the request of the Italian judicial authority).

Additional elements

180. No statistics are maintained on criminal sanctions applied to persons convicted of ML offences. However these were provided to the evaluators for the convictions achieved in 2005.

2.1.2 Recommendations and comments

181. In the light of the above, the evaluators conclude that there are a number of issues which need addressing to improve the present incrimination of money laundering and also to enhance the effectiveness of its prosecution.

182. The physical and material elements of the Article 199 *bis* offence of Criminal Code basically cover concealment, disguise and transfer. It would be helpful to cover explicitly in legislation the acquisition and possession of property known to be proceeds, as envisaged in article 6.1.c of the Strasbourg Convention and in article 3.1.c of the Vienna Convention.

183. Also, according to article 199 *bis*, the material conduct is done with the purpose of concealing the true origin of money. The evaluators recommend widening this aspect, to cover also the concealment of the true location and disposition, as provided for by the Vienna and the Palermo Conventions.

184. The authorities should clarify in the legislation that the offence of ML extends to any type of property that directly or indirectly represents the proceeds of crime, in particular “money” indirectly obtained. Thus the language of the offence should be reviewed in order to explicitly provide for a definition of assets (“property”) which includes indirect proceeds of crime.

185. Legislative amendments are also required to ensure, that all designated categories of offences indicated in the Glossary to the FATF Recommendations are covered by San Marino Criminal Code.

186. The authorities of San Marino are invited to revisit the definition of the laundering offence in order to extend it to the laundering of proceeds from one's own criminal activity. This is a trend which has been initiated in countries with similar legal systems to include self-laundering as a punishable offence. This could also be seen as having an additional deterrent effect and would certainly assist the work of the law enforcement agencies.

187. The offence under article 199bis cannot be committed through negligence. Despite the explanations provided by the authorities, the evaluators would like to recall the second round recommendation that consideration be given to criminally punishing the conduct laid down in article 199bis when committed negligently. In some jurisdictions a clearer subjective mental element of suspicion that property is proceeds (with appropriately lesser sentences than for an offence based on direct intention) has been useful and, if this would not be contrary to any fundamental legal principles in San Marino, it could be considered.

188. Criminal liability of legal persons should be clearly provided by law as there is no fundamental principle of law prohibiting it.

189. The statistics provided make it difficult to assess effectiveness. There has been just one case for which convictions were achieved and in this case, the sentence and fines appeared to be low. The implementation aspect appears though to be quite unsatisfactory and needs to be addressed by the San Marino authorities through a firm prosecution policy. Furthermore, the evaluation team suggests that San Marino should review the effectiveness of the current legislation. In particular, the authorities should review their legislation to ensure that natural and legal persons should be subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions for ML and consider increasing the level of sanctions.

190. More comprehensive statistics in relation to money laundering cases should be kept, which include for instance information on whether confiscation was ordered, information on the underlying predicate offences and information as to whether the ML offence was prosecuted autonomously or together with the predicate offence. This would assist future analysis of the effectiveness of the money laundering criminalisation.

2.1.3 Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating
R.1	**LC**	• Concealment of the location and disposition not covered • Concerns if all kinds of assets and funds are covered, in particular assets indirectly obtained • At the time of the assessment, doubts as to whether all designated categories of offences (such as migrant smuggling) are covered • Self laundering not covered
R.2	**PC**	• No criminal, civil or administrative liability of legal persons • Serious concerns about the sanctions applicable to money laundering in the absence of an established case law on money laundering

2.2 Criminalisation of terrorist financing (SR.II)

2.2.1 Description and analysis

191. The Law No. 28/2004 on provisions on anti-terrorism, anti-money laundering and anti-insider trading added to the Criminal Code a new article 337 bis entitled "Associations for the purpose of terrorism or subversion of the constitutional order" under Chapter IV – Offences against the State.

"*Article 337 bis*
Associations for the purpose of terrorism or subversion of the constitutional order

(1) Anyone promoting, establishing, organising, directing or financing associations that aim at perpetrating violent acts for the purpose of terrorism or subversion of the constitutional order against public or private institutions or bodies either of the Republic, or of a foreign State or international, shall be punished by terms of sixth-degree imprisonment and fourth-degree disqualification from public offices and political rights.

(2) Anyone participating in such associations shall be punished by terms of fourth-degree imprisonment and third-degree disqualification from public offices and political rights.

(3) Except for cases of participation and support, anyone providing participants in the associations referred to in the preceding paragraphs with assistance or aid in any form shall be punished by terms of second degree imprisonment and second-degree disqualification from public offices and political rights.

(4) The person committing the fact referred to in paragraph 3 above in favour of a close relative shall not be punishable."

192. The above-mentioned provision punishes by 10 to 20 years of imprisonment (6^{th} degree) and 2-5 years disqualification from public offices and political rights (4^{th} degree) anyone who promotes, establishes, organises, directs or finances associations which aim at perpetrating violent acts for the purpose of terrorism or subversion of the constitutional order. There is no provision on terrorism in the Criminal Code, nor any definition of the offence of terrorism and of subversion of the constitutional order, of "terrorist" or "terrorist act".

193. There is no autonomous provision on financing of terrorism in the Criminal Code. The definition of the offence as provided for by article 337bis is not fully consistent with article 2 of the Terrorist Financing Convention:

- the provision refers only to "associations" and as such it does not cover the financing of terrorist acts by individual terrorists;

- the provisions refers to financing associations that aim at perpetrating violent acts for the purpose of terrorism, however it remains uncertain that the offence covers fully the terrorist acts which are defined in the 9 treaties listed in the annex to the Convention;

- the concept of "financing associations" is not defined and raises concerns as to whether it would include for instance the fact of collecting funds or of transferring or concealing assets;

194. There is no definition of funds. The authorities indicated that the concept of financing should be viewed as sufficiently broad to include any funds, whether from a legitimate or illegitimate source.

195. The offence does not require that the funds have actually been used for the purpose of carrying out a terrorist act, nor that such terrorist acts have actually been committed. It is sufficient that financing occurred to the benefit of the association pursuing the perpetration of terrorist acts.

196. The offence does not explicitly cover the attempt to commit the offence of terrorist financing. The authorities indicated that any preparatory acts carried out prior to the actual transfer of funds to an association is punished as attempted or failed offence on the basis of the general provision on attempt in articles 26 and 27 of the Criminal Code.

197. Complicity in FT is covered through article 73 of the CC. article

198. Terrorist financing is a predicate offence to money laundering as article 199bis follows an "all crimes approach".

199. Under article 6 of the CC, the provision extends to cases where a person would finance from outside the territory of San Marino terrorist organisations based or planning terrorist acts in San Marino.

200. The terrorist financing offence implies a knowledge element: in this case, there must be a willingness to finance an association that aims to carry out a terrorist act, knowing that such association pursues this aim. Although the law does not specify how to acquire evidence of intent with respect to wilful offences, the evaluators were informed, that as in ML cases, the intentional element of the offence of FT will in practice be inferred from objective factual circumstances.

201. Only natural persons are subject to criminal liability for the terrorist financing offence. Criminal liability of legal persons is not possible, though it seems there would not be any contradiction with fundamental principles of San Marino legal system. There is also no civil or administrative liability of legal entities for FT.

202. No proceedings have been initiated for terrorism or terrorist related acts.

2.2.2 Recommendations and comments

203. The present incrimination of financing of terrorism does not appear wide enough to clearly sanction criminally both individuals and legal persons. The evaluators recommend that terrorist financing should be criminalised as an autonomous offence in the Criminal Code.

204. The authorities should ensure that this offence is reconciled with all the aspects of the United Nations International Convention for the Suppression of the Financing of Terrorism and explicitly covers all the essential criteria in SR. II and the requirements of the Interpretative Note. In particular:

- the definition should expressly include the financing of individual terrorists and all offences defined as terrorist offences in the Annex to the TF convention and not be limited to the financing of terrorist associations;
- it is recommended to define the terms "terrorism", "terrorist act", "terrorist", in the legislation of San Marino;
- there should also be a definition of the concept of financing, including with regard to the type of funds and assets which can serve the purpose of financing terrorism;
- criminal liability for FT should extend to legal persons and such persons should be subject to effective, proportionate and dissuasive criminal sanctions for FT.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**PC**	• The FT offence does not cover all offences defined as terrorist offences in the annex to the TF convention • Concerns regarding whether the concept of "financing "would include for instance the fact of collecting funds or of transferring or concealing assets as well as whether all types of funds and assets which can serve the purpose of financing terrorism are covered; • Criminal, civil or administrative liability of legal persons for FT is not provided for, • Legal persons are not subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions for FT

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1 Description and analysis

Confiscation

205. Confiscation in general is provided for in article 147 of the Criminal Code as amended by article 5 of the Law n. 28/2004. Confiscation is a consequence of conviction for the offence (article 147(1)) and operates on the instrumentalities that served or were destined to commit the offence which belong to the offender. It also operates on things which represent the price, the product or the profit of the offence, only when owned by the offender.

206. Paragraph 2 of article 147 provides for a mandatory confiscation, regardless of a previous conviction, whereby the offence consists in the illicit manufacture, use, carriage, possession, transfer or trade in property even over things which are not the property of the offender.

207. Special confiscation provisions apply with respect to money laundering offences for the purpose of terrorism or subversion of the constitutional order, which are in part property based and in part value based. These provisions were introduced in Law No. 28/2004, which repealed the special confiscation provisions introduced by Law No. 123/1998. Article 5 of the Law No. 28/2004 modified paragraphs 3 and 4 of article 147.

208. Under article 147, paragraph 3, the confiscation of instrumentalities used in or intended for use within an offence or of the items being the price (remuneration for committing the offence), product (asset obtained after laundering) or profit (advantage arising from the offence, eg. interest earned on invested capital) of an offence referred to in articles 199bis CC (money-laundering) or 337bis CC (terrorism or subversion of the constitutional order) is always mandatory, in case of conviction. Paragraph 3 also provides for a value-based confiscation stating that where confiscation is not possible (eg. when the property is owned or held by a third party), the judge shall impose the payment of a sum of money equal to the value of the above-mentioned instrumentalities and things .

209. If such property is owned by bona fide third parties, it cannot be confiscated. In such case, where there is a money laundering conviction, article 147(3) providing for value based confiscation is applied to the convicted person.

210. As regards money laundering, confiscation is not possible in cases of self-laundering but is possible for proceeds deriving from predicate offences. Also, article 147 paragraph 3 suffers from the same limitations of article 337bis mentioned previously..

211. Under article 147, paragraph 4, confiscated properties or equivalent sums are allocated to the State budget or, where appropriate, destroyed. The evaluators were advised during the visit that confiscated assets may also be allocated to the victim of the predicate offence even when the victim was not a party to criminal proceedings.

Provisional measures

212. In accordance with articles 78 and 58 of the Criminal Procedure Code, the seizure of assets prior to the confiscation can be ordered at any moment during the investigative process mainly in two cases:

a) preventive seizure: when such assets are property subject to confiscation (corpus delicti - being the instrumentalities used or destined to commit the offence or the items representing the price, product or profit of the offence, or any other relevant items);
b) probatory seizure: when such items are necessary for evidentiary purposes.

213. Moreover, under article 16 of the Law No. 28/2004, during investigations specifically aimed at identifying, acquiring evidence and suppressing ML, usury, terrorism or subversion of the constitutional order, the (former) Supervision Division (in practice now the AML Service) of the Central Bank may, in the case of serious and converging circumstantial evidence, temporarily block or freeze the capital or other financial resources or assets, as well as any account or business relationship only when held or maintained within the San Marino banking and financial intermediaries. Such measures shall be notified within the following 48 hours to the Law Commissioner, who shall either lift the provisional measure or order seizure as a precautionary measure, within the following 96 hours.

214. The Judiciary explained that the powers of the (former) Supervision Division refer both to criminal and financial investigations respectively carried out by the Police Forces and the FIU and confirmed that all the provisional measures described above (blocking and freezing by the Central Bank under article 16 and seizure by the law enforcement under article 78 CPC) are generally executed without prior notice to the party concerned.

215. According to the law, provisional measures taken by law enforcement authorities (article 78 CPC) or the AML Service of the Central Bank (article 16 Law No. 28/ 2004) shall be notified within 48 hours to the Judiciary. The Law Commissioner has 96 hours to confirm the above measures although article 15 (4) of Law No. 28 provides the judge with the possibility to postpone the validation of a seizure until the conclusion of the investigations.

Adequacy of legal powers to identify or trace assets

216. The Code of Criminal Procedure and the Law No. 28/2004 provide law enforcement agencies and the Central Bank a wide range of powers.

217. In particular, article 78 CPC requires law enforcement agents, in conducting searches, to "exercise all cautions consistent with the fulfilment of their duties" explicitly permitting them to seize the *corpus delicti* or any other relevant item.

218. With more specific regard to AML/CFT legislation, article 15, paragraph 1 of Law No. 28/2004 enables the Judiciary to authorise Police Forces to use special investigative powers, including undercover operations, intervention in intermediation activities, simulating the purchasing of goods and "taking part in any initiative" aimed at suppressing the offences under articles 199bis (money-laundering), 207 (usury) and 337bis (terrorism or subversion of the constitutional order) of the CC.

219. With regard to the FIU functions, identification powers are exercised in the framework of the analysis of an STR by the AML Service. The Central Bank has direct access to the information held within the banking and financial sector and may be granted access to information held by Public Authorities upon request. It is not clear whether there is any legal obligation for the requested Public Authorities to provide the relevant information to the FIU or in which cases can information be denied. The AML Service shall conduct financial investigations also with the cooperation of the Police Forces, subject to a prior judicial authorization.

220. There does not seem to be any specific provision to void actions, dealings, transfers or any other disposal of assets, whereby the individuals involved at the moment of performing such activities knew or should have known that it would be more difficult to recover property subject to confiscation as a result of such actions.

Additional elements

221. The law does not provide for civil forfeiture at present .

222. The law places the burden of proving the illicit origin of a property subject to confiscation on the prosecutor.

Effectiveness

223. No statistics are maintained relating to the number of cases and amounts of property frozen, seized, confiscated related to ML, FT, criminal proceeds or underlying predicate offences. The authorities reported that in 2003, in a single money laundering case, property seized amounted to € 1 892 700 and in 2005, subsequent to conviction, the whole amount was confiscated. In 2007, property seized amounted to around € 11 million in one case.

224. Despite this significant confiscation, the evaluators have not received sufficient data on which to base a judgment on the effectiveness of confiscation generally in proceeds generating offences. In the absence of supporting data, the evaluators are concerned that in such proceeds generating cases there could be a lack of financial investigations into proceeds, such as would lead to confiscation orders.

2.3.2 Recommendations and comments

225. There are a number of shortcomings which need addressing:

- Equivalent value confiscation should be considered also for offences other than ML or FT;
- The legal powers of competent authorities to identify and trace proceeds should be reviewed, in particular those of the FIU, so as to enable it to block or freeze assets other than those held or maintained within banks or financial intermediaries; also the FIU should have direct access to public available information held within public administrations.
- There should be legal provisions to void actions, both contractual and non, whose effects consist in prejudice to the possibility to confiscate property or assets.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**PC**	• Gaps identified in relation to confiscation in Article 147: paragraph 1 exclusively permits confiscation when property subject to confiscation belongs to the defendant.

		• Article 147 does not provide for value-based confiscation for offences other than ML or FT. • In accordance with article 16 of Law No. 28/2004, the FIU powers to block or freeze only apply to money, assets or business relationships existing within the financial or banking sectors. • There is no measure that would allow for the voiding of contracts or actions • Lack of data raises concerns as to the effective application of the current seizure and confiscation provisions

2.4 Freezing of funds used for terrorist financing (SR.III)

2.4.1 Description and analysis

226. The implementation of SR III was explained as being covered by the Decision No. 1 regarding provisions to monitor and counter the financing of international terrorism adopted by the Congress of State at its sitting of 5 November 2001 (Annex 5, Item 15.6) as well as by Law No. 28 of 26 February 2004.

Freezing and where appropriate seizing under the relevant UN resolutions

227. The procedure for implementing S/RES/1267 (1999) appears to be identical to the procedure for implementing S/RES/1373 (2001) and third country lists.

228. The Congress of State decision No. 1 refers explicitly to the UN Security Council (UNSC) resolutions 1267/1999, 1333/2000 and 1373/2001. The decision invites the Office of Banking Supervision (now the Central Bank, the Supervision Department) to continue to transmit to all banking and financial institutions the lists containing the names of individuals and organisations suspected of international terrorism which have been issued by foreign authorities ("supervisory or police bodies of other countries") or by international organisations.

229. In practice, the designations are received by the Ministry of Foreign Affairs and are passed to the Central Bank for circulation to banking and financial institutions. Also a member of the Supervision department checks the relevant websites on a regular basis and in case of changes prepares the relevant communication, which enables a rapid dissemination. The Central Bank does not provide any consolidated information on designations in a more user friendly form than they are received from the United Nations or third countries (such as alphabetically or by date of designation, as suggested in the Best Practice Paper).

230. As reported by San Marino to the UNSC, since 26 September 2001, the Office of Banking Supervision had issued a mandatory Circular Letter which invited banking and financial institutions to forward names of natural and legal persons, both resident and non resident, suspected of being linked to terrorist organisations and to monitor all transactions conducted by legal persons having business relations of any type with residents in high-risk Arab countries and report back to the Office where appropriate. Lists from foreign countries started being circulated as from 4 October 2001.

231. The evaluators received copies of some of the communications issued by the Central Bank (the Supervision department) to credit institutions and financial companies informing them that the lists have been modified and including a reference to the UN website from where these lists can be downloaded. An abstract of the UN communication is attached to these communications. The evaluators have also received a copy of a communication which provides a reference to the EU

list and the link to the relevant website. The Central Bank's website contains also the links to the relevant webpages which include the consolidated list established and maintained by the 1267 Committee, the consolidated list of persons, groups and entities subject to EU sanctions as well as the EU and OFAC lists.

232. Under Decision No.1, banking and financial institutions are obliged to immediately freeze the capital and any other resources or assets deposited with them, as well as block any transactions suspected of being directly or indirectly linked to the individuals appearing in the above-mentioned lists. This has to be report promptly to the Central Bank ("the former Office of Banking Supervision").

233. It remained unclear whether effective laws and procedures to examine and give effect to actions initiated under the freezing mechanisms of other jurisdictions. Evaluators were informed of the possibility, for the Judiciary, to examine and give effect to foreign freezing or seizing actions whereby a preliminary proceeding is in place, even abroad.

234. The procedure in Decision No. 1 refers to "capitals and any other resources or assets deposited as well as any other "transaction" suspected of being directly or indirectly linked to the individuals appearing on the lists. It is worth pointing out that this part of the decision only refers to freezing capital and assets and blocking transactions which are linked to suspected listed "individuals", there is no reference to listed legal entities in this context. Also the procedure does not cover other assets held outside banking and financial institutions (eg. house). Furthermore, the evaluators have doubts that the procedure extends to funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorist or terrorist organisations.

235. As mentioned earlier, the dissemination of updated lists is carried out by means of ordinary correspondence.

236. The evaluators were not informed of any clear guidance to financial institutions or other persons or entities possibly holding targeted funds concerning their obligation to take actions under the freezing mechanism and related practical implementation issues. The correspondence related to the dissemination of lists includes general reminders to perform checks and report immediately the presence of any positive findings.

237. No clear and publicly known procedures for considering de-listing requests and for unfreezing funds or assets of persons or entities inadvertently affected were noted or traced.

238. No appropriate procedures for authorising access to funds or other assets that were frozen in connection with basic expenses, payments of certain types of fees, and subsistence were provided for.

239. It was argued that these are in place since a person or entity can file a request to the Court of Appeal under the general procedural rules about such frozen assets and can also contest the freezing order confirmed by the investigating Judge by applying to the Court of Appeal for un-freezing and gaining access to the funds for subsistence. This however entails in using the services of a lawyer and the time factor involved in it is not known.

240. The current procedure does not make any reference to the necessity of giving prior notice to a designated person.

Freezing, seizing and confiscation in other circumstances

241. Freezing, seizing and confiscating procedures under article 147 of the CC and 16 of Law No. 28/2004 also apply to terrorist related funds.

242. In the context of operations of an investigative nature in relation to suspicions of article 337bis offence of the Criminal Code, the Supervision department of the Central Bank may, in case of serious and converging circumstantial evidence, temporarily block or freeze the capitals or other financial resources or assets, as well as any account or business relationship held or maintained with the San Marino banking and financial institutions in application of article 16 of the Law No. 28/2004 on provisions on anti-terrorism, anti-money laundering and anti-insider trading. The narrow width of the offences which might be applied to cover terrorist financing has been commented upon earlier.

243. When applying article 16, the Central Bank has to inform the Law Commissioner within 48 hours of freezing assets, funds etc, who either confirms the freezing by seizing the funds, accounts etc, or else releases them. Central Bank updates credit and financial institutions periodically about the list issued. However, the legal provision indicated above applies only to credit and financial institutions. Assets that may be held with other entities apart from credit and financial institutions are not covered using the provisions quoted above. Notification of the measure by which the Law Commissioner confirms or lifts the freezing measure is given at a subsequent stage.

244. Terrorist funds can also be targeted and seized by the investigating judge assisted by the various law enforcement authorities during an investigation.

245. Article 147(3) of the Criminal Code also provides for the mandatory confiscation of the instrumentalities that served or were destined to commit an offence and of the things being the price, product or profit thereof.

General provisions

246. The evaluators were advised that if the property liable to confiscation belongs to bona fide third parties, then the judge will impose to the convicted person an obligation to pay an amount of money equal to the value of the property which could not be confiscated.

247. The decision mandates the Central Bank to issue all implementing provisions that it may deem necessary and to apply, where appropriate, the administrative sanctions set fort in article 9 of Law No. 123/1998. Thus, the authorities advised that in cases of non compliance with the obligation set out in Decision No. 1 they can impose the administrative sanctions as set forth in article 9, that is up to one third of the amount of each separate transaction. This has never been used. The reference to a "transaction" brings some uncertainty as to how such sanctions would be applied in practice. The gaps identified as far as supervision in general is concerned raise questions as to how often and effectively the monitoring of this obligation is happening in practice.

248. A report was made in 2002 which proved to be a coincidence of names.

Additional elements

249. Turning to the issues covered in the Best Practices Paper, the authorities did not provide any information as to whether these issues have been seriously addressed at the time of the on-site visit. Consolidated lists in user friendly form are not provided and contact points and support mechanisms are not in place. There has been no real outreach beyond the banks and financial institutions on this issue.

2.4.2 Recommendations and comments

250. San Marino has taken rapidly steps to ensure a measure of compliance with the UN Security Council Resolutions. However the legal framework for the implementation of UN sanctions remains incomplete. Financial institutions are checking the lists but it remained unclear when this is actually taking place. There is no designating authority for 1373. The Supervision department circulates the lists and informs of any updates. No guidance, of which the evaluators were aware, was provided to the banking and financial institutions on their obligations to take actions under freezing mechanisms and the procedures to be followed. Also non-financial institutions, DNFBP and the general public should receive guidance as to the obligations and procedures in the context of implementation of SR III.

251. The authorities should clarify the framework for the conversion into San Marino law of designations under UNSCR 1267 and in the context of UNSCR 1377 and designate a national authority to consider requests for designations under UNSCR 1373. It should also be clarified that once the Supervision Department has communicated designations, immediate checks should be performed.

252. The authorities should also ensure that the mechanism applies to all targeted funds or other assets as described in the UN resolutions of individuals, groups and legal entities. Given the gaps in the incrimination of the offence of financing of terrorism, the court based system for freezing appears to be of limited assistance for the effectiveness of the system.

253. They should establish a clear and publicly known procedure for de-listing and unfreezing requests; and appropriate procedures authorizing access to frozen funds for necessary basic expenses, payment of certain fees, service charges or extraordinary expenses.

254. The supervisory authority should be actively checking compliance with SR III and the legal framework for imposing administrative sanctions should be reviewed to adequately enable it to sanction failure to comply with the obligations.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**PC**	▪ No designating authority for UNSCR 1373 ▪ Absence of guidance on obligations and procedures ▪ There are no clear publicly known provisions for considering de-listing and unfreezing ▪ There is no appropriate procedure authorizing access to frozen funds for necessary basic expenses, payment of certain fees, service charges or extraordinary expenses. ▪ The legal framework for imposing administrative sanctions should be reviewed ▪ Checks of compliance should be made

Authorities

2.5 The Financial Intelligence Unit and its functions (R.26)

2.5.1 Description and analysis

Recommendation 26

255. During the second evaluation round, the main authority responsible for the anti-money laundering measures was the Office of Banking Supervision (hereinafter OBS). This institution was responsible primarily for supervising the banking and financial system and had also regulatory functions. It had also several devolved powers and duties to prevent and combat money laundering, the most important of which were:
- to issue implementing provisions (circulars) on various related issues such as customer identification, recording of cash transfers and reporting of suspicious transactions (eg. in 1990, 1996, 1999 and 2003).
- to receive suspicious transaction reports from banks and other financial institutions designated as "financial intermediaries" in the anti-money laundering legislation, to conduct preliminary investigations of a financial nature and, when the report was well-founded to notify the judicial authorities.
- to act as the main supervisory authority responsible for the implementation of the AML Law: as such it carried out general or sectoral inspections in all banking and financial institutions, including inspections related to the implementation of anti-money laundering regulations, and where necessary, to impose administrative fines intermediaries for violations of anti-money laundering provisions;
- to carry out co-operation with the "supervising authorities" of other States to mutually facilitate the prevention of and the fight against money laundering.

Its staff comprised nine persons out of which in practice three persons were specifically responsible for anti-money laundering matters.

256. In March 2003, the Government started the parliamentary procedure for the functional and organisational integration of the OBS and the San Marino Credit Institute (previously the central bank and currency authority in San Marino, which did not have any anti-money laundering functions). The functional integration of these two institutions (Law No. 86 of 27 June 2003) led to the establishment of the Central Bank which was, at that time, made up of two autonomous divisions: the Supervision Division and the Bank Division. The Supervision Division kept the prerogatives, functional relations, competencies, functions and powers of the OBS.The Statutes of the newly established Central Bank were adopted in June 2005 (Law No. 96 of 29 June 2005) and amended shortly thereafter (Law No. 179 of 13 December 2005)

257. The new structure of the Central Bank (see annex 5, item 5.12) has 3 levels of organisational units: departments, services and offices. The departments are the operating units responsible for the main tasks envisaged by the articles of association (Supervision 1, Supervision 2, Treasury, Tax Collection and Payment system) or, in the case of the Department of Internal Resources, for the tasks that support the operating activities (General affairs, Finance, Human resources, Organization and Logistics).

258. Under the statutes, the Supervision Committee -which is one of the main organs of the Central Bank - is vested with supervision powers over the banking, financial and insurance sector and also with competences in anti-money laundering matters ("anti-money laundering unit", article 15 of the Statute).

259. The Servizio Antiriciclaggio (the Anti-Money Laundering Service) within the Supervision Department 1 of the Central Bank is an administrative unit which is in practice responsible for day to day operational AML/CFT functions. The AML Service acts under the aegis of the Supervision Department 1 and implements the decisions taken

260. The replies to the questionnaire indicated that the AML Service was the financial intelligence unit, and this was confirmed to the evaluation team during the on-site visit. This was also indicated in brackets in the organigramme contained in the 2006 report of the Central Bank. However, after the visit, the authorities advised that it is the Central Bank which is legally the financial intelligence unit and that operationally speaking, the FIU's functions on daily administrative matters were carried out by the AML Service.

261. There is no comprehensive legal text indicating the powers and duties of the financial intelligence unit. These have to be deduced through references to the former Office of Banking Supervision as well as to the former Central Bank's Supervision Division included in the legislation (CBSM statute, Law No. 86/2003), in implementing regulations and circulars as well as in the decision of the Congress of State . These functions are:

- to regulate for the implementation of AML/CFT requirements by reporting entities: such functions are undertaken by the Supervision Committee, and regulations are subsequently issued by the Central Bank;
- to receive and analyse reports from "authorised subjects" (Law No. 123/1998 and Law No. 28/2004) on suspicious transactions concerning money laundering activities : such reports, as with any other correspondence, are received at the Secretariat of Internal Resources Department of the Central Bank which refers all the AML related correspondence to the AML Service for analysis;
- to disseminate the international lists of terrorists and terrorist organisation and to receive and analyse reports from banking and financial institutions on transactions suspected of being directly or indirectly linked to individuals and organisations suspected of international terrorism which have been listed by supervisory or police bodies of other countries or international organisations (Decision No. 1 of the Congress of State of 5 November 2001): this was previously vested in the former Office of Banking Supervision (later with the Supervision division) and is now the function of the Supervision Committee;
- to disseminate to the Court any facts which constitute a crime under the AML legislation: the decision on dissemination of results of analysis of STRs to the Court is taken by the Supervision Committee and the AML Service executes the decision;
- to temporarily block or freeze the capital or other financial resources or assets as well as accounts in case of serious and converging circumstantial evidence (Law No. 28/2004): this power was entrusted to the former Supervision Division of the Central Bank and is now vested with the Supervision Committee;
- to supervise all reporting entities and impose sanctions in cases of non compliance with the AML legislation: supervision is carried out by the on-site Inspection Service (Supervision Department 2) and/or the AML Service (Supervision Department 1);
- to co-operate with other foreign counterparts: co-operation is carried out through the AML Service as authorised by the Supervision Committee.

262. Article 8 of the AML Law No. 123/1998 as amended requires reporting entities to report suspicious transactions in relation to money laundering only, thus there is no requirement to report STRs related to terrorist financing. The AML Service receives and analyses information from credit and financial institutions. Following the amendments introduced in 2004 to the above-mentioned law, it should also receive information and STRs from a larger number of

reporting entities. However, as no implementing regulations have been issued, currently only credit and financial institutions are sending reports.

STR processing

263. As the circulars indicate, the reports should be made in writing. Acknowledgment of receipt is also provided in writing.

264. As mentioned earlier, reporting entities send their reports to the Central Bank. Secretariat of the Internal Resources Department is the focal point for receiving all correspondence of the Central Bank. All correspondence is screened by the Vice-Director General and by the Head of the AML Service (in his quality of member of the Supervision Committee) and then sent to the relevant services. The authorities advised that there are various levels of confidentiality assigned to the correspondence and that the majority of AML related correspondence is assigned a higher confidential status.

265. Each activity of the AML Service is given a code and the data received is included in the AML Service's database, including identification data. The analysis starts by assessing the report received and the documents attached to it. The AML Service makes a check- list for any additional information it may require to carry out the analysis. The AML Service also makes an assessment as to whether it needs to request information from other public services, and if so, it awaits the decision for granting access to such information before proceeding.

266. Additional sources consulted include: the Public Register, commercial databases, other foreign FIUs if relevant. Other banking and financial institutions may receive a letter with a request for information on possible business relations with the suspect. In some particular cases (eg. when the time aspect is an important factor), the AML Service may decide to speed up the procedure by involving the Law Commissioner. The information received did not enable the evaluators to assess the time in which the analysis is carried out. Considering the limited number of staff of the AML Service (2 persons), the evaluators can only presume that in case of absence of one or the other staff members, the whole analysis process is interrupted.

267. During the on-site visit, the evaluation team was informed that the AML Service was analysing the STRs and deciding upon their dissemination to the Court.

268. According to the information received after the visit, the AML Service sends its opinion to the Supervision Committee. The team was informed that the AML Service makes a report to the Supervision Committee, including a proposal on the outcome of the report and it is the Supervision Committee which decides whether the report can be filed or communicated to the Court. The authorities advised that in practice, to date, the Supervision Committee always followed the proposal submitted by the AML Service.

269. The AML Service disseminates to the Court a file including a summary of the report and its findings, any relevant additional documents (eg. balance sheets, banking documents), and other information obtained from other sources, excluding the report made by the compliance officer.

Guidance

270. The AML law, as amended in 2004, provides that the former Supervision Division of the Central Bank is the competent authority to issue provisions for the implementation of the customer identification, record maintenance and reporting requirements for designated reporting entities. This competence lies now with the Supervision Committee which decides upon the issuance of such regulations. These are subsequently issued by the Central Bank.

271. The guidance issued dates back from the period prior to the second on-site evaluation visit. It was issued by the former Office for Banking Supervision and is contained in several circulars which are addressed exclusively to credit and financial institutions:

- Circular No 26 of 27 January 1999 to credit institutions and No. 16/F to financial companies concerning the implementation of the Law No. 123/1998
- Circular No 33 of 12 February 2003 to credit institutions and No. 22/F to Financial Institutions supplementing the provisions for the application of the Law No. 123/1998

272. These circulars contain information on the reporting of suspicious transactions and list a number of indicators of "unusual" transactions. The 1999 circular provides that the director of a credit or financial institution has to inform the former Office of Banking Supervision of any suspicious transaction by submitting a detailed report. This procedure was further clarified in the 2003 circular which provides that reporting has to take place in writing, preferably using a standard form, and has to be accompanied by relevant documents and observations. A format receipt is to be provided to the person making/receiving the report (be it the employee, the officer, the compliance officer or the Director).

273. Apart from this information, there are no specifications laid out concerning a standard reporting form. Also, these circulars do not make any reference to reporting of suspicious transactions related to financing of terrorism.

Access to information

274. Regarding the access to other agencies' information, the authorities referred to article 36 (on banking secrecy) of the Law on companies, and banking, financial and insurance services (law No.165 of 17 November 2005 - LISF). According to this article, banking secrecy cannot be opposed to the supervisory authority (i.e. the Central Bank) in its exercise of its functions of surveillance and prevention of terrorism and the laundering of money of unlawful origin. The Central Bank has direct access to the information held by supervised parties. In accordance with article 41 of the LISF, the Central Bank (the supervisory authority) may request the supervised parties to notify, if necessary on a periodical basis, data and information and to forward deeds and documents on an ad-hoc basis as necessary. In practice, the AML Service makes the request: subject to the type of information required, an authorisation of the Supervision Committee may be necessary. If the information required is of an urgent nature, then the Supervision Committee can be summoned to decide on the issue. The AML Service sets the deadline for receiving such information, data or documents in his request.

275. The Central Bank does not have direct access to information outside the authorised subjects.

276. The Central Bank can request the co-operation of the law enforcement and the offices of the Public Administration, including the tax administration. For instance, access to the Public Register of Companies is direct for the basic general information, however for some type of information (eg. minutes of general assemblies) a written request to the Court must be made.

277. The authorities indicated that access to publicly available administrative or accounting information held by the Public administration bodies can be granted to the AML Service upon formal request by the Head of the AML Service.

278. The evaluation team did not receive any information about the number of requests made, the quality of the information received and the time it takes to receive an answer. Furthermore, it appeared to the evaluators that the legal basis indicated above is relevant for access to information for the Central Bank in its supervisory functions rather than in its FIU function. Though the persons met on site did not indicate that access to information was a problem, particularly in the context also of the size of the country, the assessors believe that the legal

basis should be reviewed to provide separately for the access to financial, administrative and law enforcement information in a timely manner in the FIU capacity.

Request for additional information from reporting entities

279. The authorities indicated that the Central Bank – in practice the AML Service - can obtain directly all financial information necessary credit and financial institutions on the basis that banking secrecy cannot be opposed to them in the context of a financial investigation (article 36 of the LISF). The time frame for reply is specified by the AML Service itself in its request.

280. The Central Bank can also request information, upon written request, from the Investigating Judge concerning criminal cases.

281. Concerning requests for additional information, the evaluation team was informed that there may be instances where some information is not accessible to the Central Bank (eg. bearer shares)

282. The evaluators noted that apart from credit and financial institutions, the Central Bank has not issued implementing provisions regarding the reporting obligations of the other listed reporting entities, which render the AML legislation and reporting requirements in their respect ineffective. These other reporting entities did not file any STRs since the entry into force of the law and they are not supervised for AML/CFT matters. Though the Central Bank in its FIU function could request information from them, the latter could decline to supply it. Direct or indirect access to information does not appear to be covered as regards DNFBPs.

283. The assessors reiterate the same comments made above. The FIU should have the power to request additional information and documentation from all reporting entities, based on the AML law and should be authorised to obtain from reporting entities additional information needed to undertake its functions.

Dissemination of information

284. According to article 17 of the Law No. 28/2004, the former Supervision Division of the Central Bank had the legal obligation to report to the Court any facts that may constitute a crime under the AML law, subject to the authorisation of the former Supervision Committee which existed at that time. During the on-site visit, the AML Service representatives indicated that it is the AML Service as such which decides upon transmission or not of the report to the Court, together with the explanatory notes on their findings and that the Supervision Committee of the Central Bank is informed about this dissemination of the report.

285. After the visit, the evaluators were advised by the authorities that the transmission of reports is in fact decided by the Supervision Committee and is operationally undertaken by the AML Service. When carrying out its analysis, the AML Service can further investigate and for that purpose it can obtain additional information or take testimonies from the reporting institution to complete its analysis. STRs which are not found to potentially constitute a crime under the AML law are closed by the Supervision Committee.

Operational independence and autonomy

286. The evaluators have analysed the issue of operational independence and autonomy on the basis of the information supplied in the replies to the questionnaire and during the on-site visit according to which the AML Service was the FIU.

287. At that time, the authorities had indicated that the independence of the FIU stemmed from the provisions of the Statutes of the Central Bank, which stipulate the independence and autonomy of the Bank. Furthermore, article 26 of the Statutes provides that when defining the internal organisation of its structure, the Central Bank shall provide for the necessary autonomy of the Supervision Department, without prejudice to the coordination requirements. The assessors had noted however that there is no specific legal provision referring to the FIU's operational independence or autonomy within the Supervision Department 1 or the Central Bank.

288. The evaluators were informed that the Head of the AML Service at the time of the evaluation (and to date) is also the Head of the Supervision Department 1, which is answerable to the Supervision Committee. He is also a member of the Supervision Committee, given his status of internal inspector. However, any qualified person could be appointed as Head of the AML Service.

289. After the visit, the authorities advised that the FIU is the Central Bank and that accordingly, article 26 of the Statutes clearly provides that it enjoys full organisational, management, negotiating and accounting autonomy in due compliance with the provisions of the law.

290. The decisions related to the FIU are taken by a collegial body, that is the Supervision Committee, chaired by the Director General of the Central Bank. The Director General is appointed by the Governing Council of the Bank, subject to the approval of the Great and General Council (the Parliament) for a mandate of 6 years which may be renewed. The Supervision Committee is also composed by a minimum of 2 inspectors, either internal or external, selected from persons of high integrity who have acquired many years of experience in the work of supervision of the banking, financial or insurance sector. Their mandate is of 3 years and may be renewed. At the time of the on-site visit, the Head of the AML Service was one of the two inspectors appointed. The Governing Council, after consulting the Committee for Credit and Savings, can remove one or more inspectors from their office before the expiration of their term in case of conflict of interest with the performance of supervision work or if they are no longer capable of carrying out their work.

291. Article 12 of the Statute provides that the Supervision Committee will report from time to time to the Governing Council on its work and on its supervision and anti-money laundering initiatives. This is done in practice by the Director General of the Central Bank, upon information provided by the AML Service and Supervision Committee.

292. The Supervision Committee meets whenever the Director General decides or at the request of at least 2 inspectors and decisions are taken at an absolute majority (in practice 1-2 times per month).

293. During the on-site visit, it remained unclear to the evaluators exactly what was the scope of the decisions taken by the Supervision Committee in the anti-money laundering field and whether the Committee could undermine the ability of the AML Service to exercise its functions in full operational independence and autonomy. The authorities acknowledged during the visit that according to the legal provisions, in theory the Supervision Committee could have a role in deciding which STRs are disseminated to the Court, however they indicated that this was not happening in practice. The views expressed after the visit are different.

294. Also, during its various meetings with the credit institutions and other officials, the assessors noted that the Central Bank in its FIU functions relies extensively on the personnel of the Supervision Department 1 and 2 for a number of tasks (eg. on-site inspections, collecting documents from financial and credit institutions).

295. Furthermore, the persons met during the visit systematically referred to the "Central Bank", and not to the FIU as a separate entity, when providing information on the reporting procedures.

Protection of information and dissemination

296. On a practical level, the AML Service has its own separate secure premises within the Central Bank. The IT database is partially owned by the Central Bank and provides for restricted access for a number of staff: the staff of the AML Service, the Director General of the Bank. Only the personnel of the AML Service can modify data within this IT system. When a report or other correspondence is received by the Secretariat of the Internal Resources Department, the original is kept in the secure premises of the Secretariat and the copy of the correspondence is sent to the AML Service. The authorities declared that in practice the correspondence is treated as highly confidential and that access to the original documents is restricted to authorised persons (secretary of the Internal Resources Department, Head of the Department, any other person upon authorization of the Head of the AML Service if this is necessary in the context of their AML tasks).

297. All members of the organs of the Central bank, its consultants and the staff are under a legal obligation to observe the strictest secrecy on all matters pertaining to the activities of the Central bank and its relations with third parties (article 29 of the Statutes). The obligation of professional secrecy applies even after having terminated the office or employment relationship with the Central Bank. It was reported that any breaches are sanctioned under article 377 of the Criminal Code with second degree imprisonment. There have been no breaches of confidentiality reported so far.

298. According to the evaluators' understanding during the on-site visit, the AML Service relies on the personnel of the Central Bank for instance for collecting documents from reporting entities. This raised serious questions, as it would infer that Central bank's employees, even though they may be bound by professional secrecy rules, may come in contact with sensitive or restricted FIU information. Furthermore, during the on-site visit, the evaluators were informed that the hard copy documents of the AML Service are accessible to other Central Bank staff.

Periodic reports

299. Neither the Supervision Committee nor the AML Service have ever issued any periodic reports including statistics, typologies and trends. The Central Bank issues since 2005 an annual report, which generally includes a one page description of the AML functions of the Bank, the number of STRs received, the international co-operation undertaken in this fieldwork. However this is far from providing a comprehensive picture of the work which is to be carried out by an FIU and does not include any detailed statistics, typologies or trends. The report is publicly available on the website of the Central Bank.

EGMONT Group membership and co-operation

300. As clarified by the authorities, the San Marino Central Bank is a member of the EGMONT Group since 29 June 2005. The authorities indicated that the Central Bank uses the Egmont Group Statement of Purpose and its Principles for Information Exchange between Financial Intelligence Units. The AML Service is connected to the Egmont Secure Web.

301. There is a legal requirement that FIU co-operation and exchange of information with foreign counterparts can only take place on the basis of a Memorandum of Understanding (MoU) and with other supervisory authorities. The Head of the AML Service signs the MOUs on behalf of the Central Bank in its FIU functions, subject to authorisation by the Supervision Committee. MoUs were signed with Italy, Czech Republic, Monaco, Israel, Peru and Slovenia and 2 additional MoUs were in the process of being finalised. It was not possible to assess the level or quality of information exchange with foreign FIUs as no statistics or other information was provided by the authorities. In this context, the evaluators pointed out that the FIU may not

always be in a position to provide information on cases such as self-laundering or certain cases of tax evasion as these are not regarded as underlying predicate offences. Such information could be given, but can only be used for intelligence purposes.

Structure and resources of the FIU (Recommendation 30)

302. The former Office of Banking Supervision had a staff comprised of nine persons, out of which in practice three persons were specifically responsible for anti-money laundering matters.

303. The AML Service has 2 staff members (the Head and a deputy) who mainly deal with analysing STRs and with international co-operation aspects. As regards the other functions of the FIU, they are undertaken through reliance on other staff of the Central Bank as follows:

- the AML regulatory functions are carried out through reliance upon the expertise of the legal experts of the Regulatory Supervision Service (Supervision Department 2).
- for supervisory functions, but also in the framework of financial investigations or international co-operation, the staff resources of the On-site Inspection service are also involved and subject to the authorisation of the judicial authorities on law enforcement.
- ordinary administrative and clerical tasks are carried out through the secretarial staff of the Central Bank.

304. The AML Service does not have a separate budget; its expenditure is borne by the budget of the Central Bank. The authorities do not keep separate budgetary information on expenditure incurred by the Central Bank on AML/CFT matters .

305. The following data was provided, which includes all costs related to supervisory functions, including AML/CFT.

2003 : € 260.000 (data for 6 months only).
2004 : € 820.000
2005 : around € 900.000
2006 : € 1.600.000
2007: € 1.700.000

306. The Central Bank staff is selected on the basis of rigorous fit and proper tests. The Bank's internal and external inspectors are appointed for a renewable 3 year term. The Statutes of the Bank provide that external inspectors are to be selected from persons of irreproachable integrity who have acquired many years of experience in the work of supervision of the banking, financial or insurance sector. Furthermore, such functions are incompatible with elected official positions (eg. status of member of the Grand and General Council and the Congress of State,), the status of judge, the status of director, auditor, officer or employee of banks, or credit, financial or insurance entities in San Marino or other countries. They may not own holdings in banks and companies supervised by the Central Bank. They cannot be engaged in any professional activities that might directly affect their independence and they do not offer sufficient guarantees of being able to perform their assigned during freely and independently. There is also a 12 month period after the expiry of their term or termination of their contract during which they cannot exercise the function of directors, employee or consultant of an entity supervised by the Central Bank.

Training

307. The AML Service staff took part in training activities organised periodically in Italy as well as training seminars and sessions organised by MONEYVAL and the Egmont Group. Contacts were established with the Italian FIU in order to enable some of the staff to take part in training courses organised in the course of 2007 on ML and FT typologies and trends, investigation techniques, including IT technologies.

Statistics

308. The authorities reported that the AML Service maintains statistics on suspicious and unusual transaction reports received from reporting entities (credit and financial institutions), analysed and disseminated to the Court. These statistics, which were not included in publicly disseminated documents, were provided to the evaluators for the period 2003-2006. Further information on the breakdown of STRs per type of financial institution was provided to the evaluation team upon request, the large majority of reports is made by banks.

	2003	**2004**	**2005**	**2006**	**2007 (end of March 2007)**
STRs/UTRs	19	20	20	17	5
of which STRs	**14**	**15**	**14**	**9**	**2**
STRs sent to the Court	2	2	1	1	1
STRs closed	12	13	10	4	3
STRs under examination	0	0	3	4	1

309. Also, the evaluation team received during the on-site visit a small chart indicating how many foreign requests were received by the AML Service and how many requests were referred to foreign FIUs. This chart failed to indicate how many requests were fully met and how many were not fully met (if any), explaining also why these were not fully met.

2.5.2 Recommendations and comments

Recommendation 26

310. The evaluators of the previous two evaluation rounds had considered that the multiplicity of functions of the former OBS prevented it from playing effectively its role as an FIU and they had recommended that a separate structure be created to deal exclusively with FIU issues or that its resources be strengthened with regard to its anti-money laundering functions. The institutional changes which were initiated in 2003 and finalised in 2005 (ie. the reorganisation of the Central Bank, the adoption of its administrative organisational structure) addressed some of the concerns raised previously.

311. However, an important number of improvements are necessary in order to fully meet the requirements of Recommendation 26.

312. As seen above, the evaluation team received varying information before, during and after the on-site visit as to which is the national centre for receiving, analysing and disseminating disclosures of STRs and other relevant information concerning suspected ML and FT activities and how the AML/CFT functions are set in law and how they are operationally implemented by the Central Bank and its various administrative units. The San Marino authorities explained the advantages of the current institutional set up of the Central Bank, particularly in the light of the size of the institution and number of staff. The institutional set up chosen by the San Marino authorities which makes the Central Bank to be the FIU is a novelty, as there is no other similar precedent in MONEYVAL jurisdictions. The analysis of this particular situation raised a number of questions and more specifically whether such an institutional set up would be in line with criterion 26.1, which requires that the FIU be established either as an independent governmental authority or within an existing authority or authorities. Though the FIU function is assigned to the Central Bank, it is a fact that this is not its main function, as it should be. In addition, such a set up calls into question a number of other factors such as how is guaranteed

the autonomy and operational independence of the Central Bank operating as an FIU from the Central Bank operating in its other functions (as supervisory authority, currency authority or other), what is the decision-making process for FIU daily operations, how is guaranteed the autonomy of the head of the FIU, how is the protection of data systems ensured, the allocation of budgetary resources for FIU functions, etc. The current institutional and legal framework which identifies the Central Bank as the FIU does not appear to satisfy the requirements of criterion 26.1 and needs reviewing.

313. Although the San Marino authorities may have a different view, the evaluators believe that the current role of the FIU in San Marino is a) to receive, in second place STRs, b) to analyse STRs and c) after advising the Supervision Committee, the latter will inform the AML Service to remit the STR for investigation or otherwise. The evaluation team urges the authorities to revisit the current institutional set up in the light of the requirements of Recommendation 26 and to adopt specific legislation which clearly states and defines the functions, responsibilities, powers of the FIU, irrespective of whether it is established as an independent governmental authority or within another entity. There must be transparent legislation that denotes the independence of the FIU. This should in particular take into account the traditional core functions of the FIU, that is receiving, analysing and disseminating disclosures of STRs and other relevant information concerning suspected ML or FT activities .

314. During the on-site visit, the evaluators felt that the interaction between the Supervision Committee and the AML Service needed clarifying. Diverging views as to the role of the Supervision Committee expressed before and after the visit could only raise further concerns as to how this system functions effectively in practice.

315. The main source of concern for the evaluators remains the full integration of the AML Service into the Central Bank. The AML Service has no decision powers: as regards forwarding a case for further inquiry/investigation or dissemination to the court, as regards international co-operation with a foreign FIU or authority, etc, the decision of the Supervision Committee is needed. This is partly mitigated in the current situation, as the Head of the AML Service is also a member of the Supervision Committee, but as it was explained to the evaluators, this situation could as well change and in that case, the unit responsible for analysing STRs would not be at all involved in the final stage of decision-making as regards next steps.

316. Thus, the evaluators recommend that the identity and independence of the FIU be established clearly in the legislation, in particular in the AML law (which refers only to the former Supervision Division) to bring it into convergence with the criteria for and characteristics of FIUs generally. In their view, the AML Service could be assigned fully the role of the FIU. Also, the authorities could give consideration as to whether an additional committee is necessary to be maintained at a higher level with an oversight/ policy role and if so, it is recommended that they review carefully both its composition and functions. In particular the authorities should ensure that its composition is balanced and transparent, and that it does not call into question the ability of the FIU to exercise full operational independence. Such a layer should not lead to unnecessary delays both in obtaining further information to carry out the analysis (as noted earlier, in some cases currently the authorisation of the Supervision Committee is required) and for disseminating the STRs to the Court for investigation or action.

317. As noted above, there is no mandatory reporting obligation of suspicious transactions related to FT (with the exception of lists of designated or suspected terrorists) and this should be urgently established.

318. The guidance issued on procedures to be followed and information to be provided for STRs purposes does not appear to be sufficiently detailed and precise. Furthermore, the only implementing provisions were issued before the adoption of the Law No. 28/2004 on provisions on anti-terrorism, anti-money laundering and anti-insider trading, they still refer to the former

OBS and do not cover all reporting entities. The evaluators are surprised to note that no guidance was issued after the changes brought to the AML legislation. The Central Bank should ensure that all financial institutions and other reporting entities are provided with comprehensive and up to date guidance regarding the manner of reporting and the procedures. A standardised STR reporting format should also be developed for all reporting entities.

319. Though the persons met on site did not indicate that access to information was a problem, particularly in the context also of the size of the country, the assessors believe that the legal basis should be reviewed to provide the FIU access in a timely manner, be it directly or indirectly, to the relevant financial, administrative and law enforcement information which it needs to properly undertake its functions. Also, it should take the necessary implementing measures to ensure that the access to information held by all reporting entities can be obtained by the FIU.

320. It appears that a good number of people within the Central Bank may be involved or may come into contact with sensitive or restricted information remitted in connection with a STR, requested as further information or through a foreign request for assistance. Notwithstanding that all Central Bank personnel are covered by professional secrecy, and notwithstanding the integrity of the personnel of the Central Bank, the evaluation team considers that the risk of such information accidentally reaching or ending up in the hands of unauthorised persons is real. Thus, the San Marino authorities should take all necessary measures to ensure that the FIU information held is securely protected and address the concerns expressed earlier in relation to access to such information by other Central Bank personnel other than the staff of the AML Service and the members of the Supervision Committee. In particular, the evaluators believe that the current procedures for handling the correspondence of the AML Service should be reviewed to ensure that information received and communicated to the FIU is securely protected and disseminated.

321. The current information contained in the Central Bank annual report on AML/CFT matters is basic. The evaluators recommend the FIU to publish periodic reports containing information regarding its activities, information on typologies and trends in ML and FT. Such a report could serve as an important visibility tool and would also assist the Government and the public to understand the importance of the FIU's function as well as the difficulties which it faces in its daily work. In the context of San Marino and the staff shortage, the evaluators recommend either that the FIU issues its own report or otherwise includes it in a specific section of the annual Central Bank report.

Recommendation 30

322. Another improvement to be made concerns the number of staff and their functions. While the previous FIU comprised three persons specifically responsible for anti-money laundering matters, the current AML Service only comprises 2 persons. Though it may seem that this number could be adequate given the very small number of STRs, the evaluators are not convinced that this enables the Service to fulfil its tasks at the desired level. This also raises concerns in particular regarding the speed with which suspicious transaction reports and other financial disclosures are analysed and disseminated.

323. The shortage of staff which has continued for a long period now can only impact negatively on the FIU's duties. Furthermore, the extension of the list of reporting entities is likely to lead very shortly to an increase in the number of STRs/UTRs reported which will constitute an additional burden on the existing staff. The evaluators recommend that the authorities should conduct an assessment of the staff needs of the FIU separately from those of the Central Bank.

324. Furthermore, the practice of using Central Bank personnel to undertake FIU duties should be abandoned.

Recommendation 32 – statistics

325. A more comprehensive system of statistics eliminating the shortcomings indicated earlier should be organised. This would also assist in determining trends and effectiveness.

Additional elements

326. The FIU does not maintain comprehensive statistics on STR resulting in investigation, prosecution or convictions for ML, FT or an underlying predicate offence.

2.5.3 Compliance with Recommendations 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**NC**	• The institutional set up of the Central Bank as the FIU is not considered in line with the requirements of R. 26 • FIU not analysing STRs related to FT as there is no legal obligation to report to the FIU such STRs • Guidance issued is not comprehensive and up to date, furthermore it does not cover all reporting entities, and reporting forms and procedures have not been issued for all reporting entities • No direct or indirect access to some administrative information. Information with regard to bearer shares cannot be obtained. • Lack of implementing measures to ensure that the access to information held by all reporting entities can be obtained by the FIU. • The autonomy, functions, responsibilities, powers and identity of the FIU needs reviewing and the identity of the FIU is not established clearly in the legislation and other implementing provisions • Restricted or sensitive information may accidentally reach unauthorised persons. • No periodic reports issued with statistics, typologies, trends and information on FIU activities • The lack of staff impacts on the effectiveness of the FIU

2.6 Law enforcement, prosecution and other competent authorities - the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, 28, 30 & 32)

2.6.1 Description and analysis

Recommendation 27

327. Competence to investigate crimes is mainly referred to the three law enforcement agencies of San Marino: the Civil Police, the Gendarmerie and the "Guardia di Rocca". All three agencies exercise both public security and investigative functions.

- The Civil Police deals with traffic duties, civil protection, and also crime investigations, in particular economic crime;
- The Gendarmerie: a military Police force is responsible for public order, security matters. It is also the agency responsible for investigating terrorism offences.
- Guardia Di Rocca: another military Police force which is also responsible for border control tasks.

328. When carrying out their general preventive investigative functions, all three law enforcement agencies may encounter information related to money laundering or financing of terrorism offences. In such a case, and if the information appears to reveal elements of a criminal offence; the police agencies are required by law (article 22 CPC) to report a *notitia criminis* to the Law Commissioner (investigating judge). Omission to report is criminally sanctioned (article 350 CC). There are 2 investigating judges.

329. The investigating judge has the obligation to proceed "*against any sort of crime as soon as he gets knowledge thereof in any manner*" (article 15 CPC). On the basis of the information provided by the law enforcement, the investigating judge enters the notice in a register and can begin a judicial investigative proceeding.

330. The investigating judge has the legal power to direct any of the three law enforcement agencies to serve as judicial police in the conduct of the investigation. In practice, they are assisted by a number of agents from the Inter Force. The persons met on-site indicated that the co-operation between the investigating judge and the three law enforcement forces and the FIU was very good.

331. The Inter-force is a special section of the judicial police, set up since 1998, which regroups 3 agents of the Civil Police, 1 agent of the Gendarmerie and 2 from the Guardia di Rocca. The six agents which form the Inter-Force are selected by the judge based on their professional qualifications. They have specific anti-money laundering tasks.

332. The Gendarmerie is the competent law enforcement agency to carry out investigations of terrorism related offences.

333. The preliminary investigative stage consists in the investigating procedure directly carried out by the investigating judge. It includes interviews, examination of witnesses, confrontations, identification, searches, seizures, surveys, etc.

334. During the criminal proceedings, the judge may request, by issuing an order, the application of some precautionary measures concerning the persons (preventive detention, home arrest, prohibition or obligation to remain on the national territory) or the property (seizure and forfeiture under article 59 CPC). Any such measure can be challenged before the Criminal

Judge of Appeal within 10 days from notification or execution of the measure (article 56 of the CPC).

335. Law enforcement agencies are vested with autonomous precautionary powers (eg. arrest and stop) which automatically expire if they are not confirmed by the judge within 96 hours from notification. When any of the police forces carry out an arrest in connection with any crime, this has to be referred to the investigating judge for his noting and for necessary action from his end. Arrest by the police is mandatory in the event of flagrant offences punished by the law by terms of at least 3rd degree imprisonment.

336. Police agents can also seize the corpus delicti and relating goods. This measure has to be validated by the judge.

337. *Authority to waive or postpone arrest/seizure*. The Law commissioner may postpone validating the seizure order until the conclusion of the investigation or delay the issue of preventive detention orders as long as the acquisition of relevant evidence is necessary (article 15(4) of Law No. 28/2004 on anti-terrorism, anti-money laundering and anti-insider trading).

338. After having collected the evidence, the investigating judge may either file or adjourn the case. The case may be filed when the evidence collected is not sufficient to provide legal grounds for declaring the defendant guilty, the judge will forward the written record and address it to the *Procuratore del Fisco* for his opinion on closing the proceedings. If the opinion of the *Procuratore del Fisco* is positive, the investigating judge orders the closing of the file and the defendants' acquittal without prejudice to the Procuratore del Fisco's rights to reopen the case if new substantiated evidence is acquired (article 135 CPC). When the evidence collected is sufficient to state the defendant's liability, the judge shall serve summon to the accused specifying the indictment and the hearing is fixed. The relevant written records may be seen by either party to the trial.

Additional elements

339. The Law No. 28/2004 provides that the Law Commissioner may authorise special agents of the Police forces to conduct undercover operations, intervene in intermediation activities, simulate the purchase of goods, materials and things which can generate illicit proceeds (article 15(1)). The persons met on site informed the evaluation team that the authorisation of the Law Commissioner can be very rapidly obtained, through their reference contact agent.

340. The law provides for the possibility to gather evidence through wire interception and phone tapping, including both wire and mobile telephone, subject to the adoption by the Congress of State of implementing regulations on the use of such investigative techniques and providing for the relevant procedures. However the use of wire interception and phone tapping has not been regulated yet. The evaluation team was informed that the relevant provisions are included in a draft text of the code of criminal procedure.

341. It was explained to the evaluation team that if the circumstances would require the use of such techniques, the law enforcement authorities would need to inform the judge who decides on the use of special investigative techniques and which of the law enforcement agency would be authorised to use them in the context of the investigation.

342. So far, San Marino law enforcement agencies continue to make use of ordinary techniques (i.e. shadowing, search and collection of information, seizure, etc), they have not used any special investigative techniques so far in their investigations. The evaluators were also informed that the use of special investigative techniques can only be possible in ML and FT investigations.

343. There are no permanent or temporary groups specialised in investigating the proceeds of crime. As regards co-operative investigations with foreign authorities, the evaluation team was informed that such co-operation was frequently carried out, notably with Italy. Such co-operation is requested by the judge by means of letters rogatory, which provides for a basis for co-operation between police forces. However, investigations within the national territory are exclusively conducted by the San Marino police forces.

344. The authorities indicated that the competent authorities review jointly the methods, techniques and trends, as well as the outcome of investigations. However, the discussions onsite indicated that the police forces and the investigative judges did not review ML/FT methods, techniques, and trends with the AML Service and the Central Bank on a regular basis, inter-agency basis.

Recommendation 28

345. Financial information held by financial institutions, including the data collected in the context of KYC and CDD and other information covered by banking secrecy is accessible through the intervention of judicial authorities (court order). The persons met on-site indicated that the order of the investigating judge was drafted in general terms thus granting full access to bank and financial institutions information.

346. The law enforcement authorities have the power to search persons or premises. Searches have always to be authorised by the magistrate (with the exception of suspicions of drug offences, for which they can search out of their own initiative without having to request an authorisation).

347. The search of a defendant can be performed only upon order of the investigating judge during the examination or the detention of this person (article 73 CPC). The search of the defendant's house or of other premises is also subject to a written order of the judge, which is included in the file of the proceedings and which has to indicate all cautions to be exercised during the search. Non compliance with the order entails the liability of the Head of the law enforcement agency. The investigating judge can participate in any search ordered by him, directing the search and ensuring that all operations are duly recorded in the report. The order is not required when the search of the house of the defendant occurs during is arrest.

348. The San Marino authorities are able to seize assets. The seizure can be ordered in the course of a judicial investigation and it remains in force indefinitely until the end of the criminal proceedings. In cases of necessity and urgency, law enforcement agents can seize the corpus delicti and any relevant items. This seizure has to be notified in writing within 48 hours to the Law Commissioner who can validate it within 96 hours, otherwise the measure is deemed revoked.

349. The three law enforcement agencies can take statements in connection with any investigation. Statements and testimonies made to the police or to the investigating judge may be used both during investigation and legal proceedings. The use of statements and testimonies made to the law enforcement agencies or to the investigative judge is regulated in article 160 of the CPC. All the acts of the preliminary stage may be used for the final sentence. The parties may require that the witnesses already heard during the preliminary stage, are examined once again, in order to ensure the cross-examination before the deciding judge (article 140ss of the CPC). Giving false or hostile evidence to the judge is punished by terms of imprisonment from 3 months – 1 year, or by the arrest from 5 days – 2 months or by a 3rd degree fine in days (20-60 days). Refusal to give evidence is punished by imprisonment from 6 months to 3 years and disqualification from public offices and political rights from 1-3 years (article 380 CC).

Recommendation 30 – Structure, resources, integrity standards and training for law enforcement, prosecution and other competent authorities

350. The Civil Police forms part of the public administration and its agents are civil servants recruited according to the law on civil servants of 1993. It counts 78 agents (1 commander, 2 officials, 8 inspectors, 7 heads of section and several agents. 3 of its agents are part of the Inter-Force Group.

351. The Gendarmerie, which is a military police force, does not have a defined number of agents, their staffs vary according to their needs and the evaluators were informed that it had recently increased. It counted at the time of the visit 88 agents, 1 of them being part of the Inter-Force Group. 8 of its agents are exclusively judicial police officers having both preventive and repressive functions.

352. The Guardia Di Rocca counted 34 judicial police officers, out of which 2 were members of the Inter-Force Group.

353. The Inter Force Group was established in 1998 followed by a judge decision on its composition. The 6 police officers of this specialised group work under the supervision of the judicial authorities and depend entirely on them as regards its operational activities. Administratively though they are under the authority of their respective commanders.

354. There were slight changes in the human resources assigned to the specialised group since the previous evaluation visit, as the number of police officers decreased by 1 person.

355. The San Marino authorities indicated that law enforcement agents of the Inter Force Group are recruited, selected and trained on the basis of the relevant criteria and professional standards (Law No. 131 of 12 November 1987, Law No. 132 of 13 November 1987 and Law No. 142 of 21 November 1980). Initial recruitment and hierarchical advancement take place through public competition. All officers are public officials and have an obligation of professional secrecy.

356. The evaluators were informed that all law enforcement agents receive training and specialised units usually are trained in Italy. However, on the basis of information provided, there appears to be very little formal training provided to law enforcement agents, both upon recruitment as well as on an ongoing basis regarding AML and CFT. The skill level of law enforcement personnel regarding ML and FT issues clearly needs to be enhanced.

Additional elements

357. No special training or educational programmes are provided for judges and courts regarding ML and FT offences and the seizure, freezing and confiscation. Their training is done on the job.

Recommendation 32 – Investigations, prosecutions and convictions

358. The evaluators were not made aware of any exercise undertaken by any of the police forces to maintain appropriate statistics nor did they receive any general crime statistics. Therefore they are not in a position to assess the effectiveness and the efficiency of the law enforcement authorities' action in ML cases or in general as they were not provided with comprehensive data. The small number of cases does not enable to draw any conclusions about the pattern of money laundering. It is believed that such limited experience cannot enable law enforcement officials to gain know how and develop expertise in a satisfactory manner.

359. The replies to the questionnaire indicated that major courses of illegal proceeds are still considered to be fraud, theft, smuggling, mark counterfeiting (?), drug trafficking and extortion

and that the money laundering situation had remained virtually unchanged. However, the evaluators did not receive any statistics which could corroborate this statement.

360. The Court is the authority collecting and maintaining statistics on initiated proceedings, pending proceedings and judgments. The following statistics were provided, which do not provide information concerning the underlying predicate offences:

Proceedings initiated for ML

2003	2004	2005	2006
2	1	1	3

Proceedings pending until 31 December 2006 for ML

2003	2004	2005	2006
1	0	0	3

Judgements pronounced for ML

2003	2004	2005	2006
-	-	1	-

361. Since the second evaluation round, there were 4 investigations related to money laundering. The predicate offences were all committed abroad and related to offences against the public administration, corporate offences (proceedings instituted upon the report of the Supervision Department), tax evasion and fraud to the detriment of private individuals (notitia criminis received following a letter rogatory). One investigation was initiated by the police forces on their own initiative at the end of 2003, on suspicions of fraud, which ultimately led to suspicions of money laundering. Furthermore, another investigation was initiated following a report of a bank to the law commissioner in 2006 led to the seizure and confiscation of around €11 million in the first half of 2007. This case was successfully carried out with the co-operation of the AML Service, the police forces and foreign authorities (Switzerland, Luxembourg and Austria)

362. During the visit, law enforcement authorities stated that they have not yet experienced any investigations related to terrorism financing or other terrorist related offences.

363. No statistics are maintained on property frozen, seized and confiscated. The only figures provided referred to the seizure in 2003 of €1 892 700. which were confiscated following conviction in 2005.

2.6.2 Recommendations and comments

364. In view of the above, the evaluators are reserved on the effectiveness and efficiency of the framework for the investigation and prosecution of offences, and more specifically ML offences.

365. It is strongly advised that the San Marino law enforcement authorities start playing a more active role in AML/CFT efforts. The successful outcome of the investigation in 2007 demonstrates the importance of coordinated actions at national level and such promising efforts should be further pursued. A more pro-active approach should be adopted in investigating and prosecuting money laundering, putting focus more on the financial aspects of major proceeds generating crimes as a routine part of the investigation.

366. The limited number of cases calls into question the level of knowledge and practical experience of all law enforcement authorities in ML offences. Though there are measures in place to provide competent authorities with a basis for the use of a wide range of investigative techniques when conducting ML or FT investigations, it is surprising to note that the authorities did not have the opportunity yet to make use of such tools. The law enforcement and judicial authorities' competencies in AML/CFT should definitely be strengthened, in particular through training developed and/or continued, placing an emphasis on the systematic recourse to financial investigations, the use of existing tools and investigative techniques, analysis and use of computer techniques.

367. The evaluators also believe that there needs to be a more in-depth analysis of the phenomenon of and trends in money laundering and terrorism financing. Even though it appears that there is a good degree of operational co-operation between the law enforcement units and the FIU concerning individual cases, there is no established regular co-operation between the parties concerned (the investigation judge, the law enforcement units, the FIU and the Central Bank and other competent authorities) with a view to analysing methods, techniques, and typologies of AML/CFT and sharing the results of such analyses amongst themselves. Such joint exercise should be conducted regularly among the relevant authorities and the resulting information should be disseminated to law enforcement and FIU staff.

368. The authorities could consider establishing a joint committee comprising all those concerned in AML/CFT matters together with certain policy makers (this joint committee should be one apart from what the one referred to under section 2.5.2, this should be an inner committee where besides the usual topics, sensitive issues are also discussed) be set up to discuss and evaluate AML/CFT effectiveness and reviewing the system to detect and eliminate shortcomings, develop and implement policies and legislation thus improving results.

369. ***Recommendation 30.*** In view of the country's size, the evaluators consider that the law enforcement units appeared to be adequately structured and staffed. Furthermore, they took note that if additional resources would be needed by the Inter force group, the judge could decide on additional police officers to join in.

2.6.3 Compliance with Recommendations 27 and 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	**PC**	• The law enforcement system is response based and there does not appear to be an adequate proactive inquiry in money laundering matters. There

		were no ML investigations initiated by the police at their own initiative after 2003 • Low number of investigations and prosecutions raises effectiveness issues
R.28	**LC**	• The investigating judge and the three law enforcement units have the powers required to carry out investigations and take statements concerning any crime with the exception of certain tax related cases and self money laundering cases which are not deemed to be predicate underlying offences.

2.7 Cross border declaration or disclosure (SR.IX)

2.7.1 Description and analysis

370. San Marino is an enclave in Italy. It has no airport or railway station, the only access is possible by road through Italy. Given the historical context and the existing treaty provisions between Italy and San Marino, there was never a physical border with customs officers between the two States. Under the Treaty of 1939 with Italy (Articles 44-52), San Marino is considered as part of the Italian customs area. The 1939 treaty provides for the freedom of movement of goods and products of any kind (including cash, securities and other monetary instruments) between the two countries, as such San Marino and Italian residents do not have any declaration obligation. Any foreign citizen travelling to San Marino via Italy have first to comply with the Italian laws and regulations and declare the physical transportation of cash, securities and other monetary instruments (above € 12 500).

371. Under the 1991 Agreement on Customs Union and Cooperation between San Marino and the European Community, San Marino authorised the Community, acting on behalf of and for San Marino to carry out customs clearance formalities. In practice, these are carried out by a number of designated Italian customs offices.

372. San Marino does not have any declaration or disclosure system for incoming and outgoing cross-border transportation or currency or bearer negotiable instruments as provided for by the Methodology.

373. In this context, the authorities referred to the obligation provided in the law (article 1 of Decree No. 71 of 29 May 1996 as amended by article 5 of Law No. 123/1998) which requires that for the purposes of combating the laundering of illicit proceeds, any transactions in cash or bearer instruments exceeding € 15 500 should be carried out through a bank or financial company and recorded in accordance with the instructions of the Central Bank.

374. Law enforcement agencies may stop and check vehicles either on random checks or because they would be alerted about any illegal infringement. If the money or assets found are considered to be illegal proceeds, regardless of the amount, they can seize them and have to send a report to the judicial authority within 48 hours, which validates the action within 96 hours. The validation of seizures conducted by law enforcement agencies is exclusively vested with the judicial authority. The Guardia di Rocca representative informed the evaluation team that if cash or negotiable instruments in excess of the threshold of € 15 500 were to be found in such context, they would make a report to the Central Bank for necessary action from their end. . The evaluators were advised after the visit that the Central Bank may have competence in this context on the basis of article 9 of Law No. 123/1998 only to impose sanctions.. The evaluators were informed by the Central Bank authorities that they had never received such a report from the Guardia di Rocca.

375. The evaluators were not provided with any additional information in this respect.

376. Recommendations and comments

377. Special Recommendation IX was developed with the objective of ensuring that terrorists and other criminals cannot finance their activities or launder proceeds of their crimes through the physical cross-border transportation of currency or bearer negotiable instruments.

378. While taking into account the historical context and geographical situation of the country, the evaluators noted that the tourist flows to San Marino lead to large movements of people and vehicles into the country.

379. In the light of the information received, the evaluators cannot help but conclude that there are no measures in place in San Marino which would enable to detect the physical cross-border transportation of currency and bearer negotiable instruments, to stop and restrain it in case of suspicion of ML or FT and to apply appropriate sanctions. The existing provision drawn to the attention of the evaluators does not appear to be satisfactory in the light of the requirements of Special Recommendation IX.

380. Furthermore, the authorities did not seem to have undertaken any analysis or consideration of potential measures which could to be taken, either at national level or in co-operation with the Italian authorities, to comply with SR. IX.

381. Thus it is strongly recommended that the San Marino authorities review the implementation of Special Recommendation IX as a whole and take the necessary steps as soon as possible to ensure that all criteria are adequately satisfied.

2.7.2 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	**NC**	• Absence of a cross border declaration or disclosure system – currency and bearer negotiable instruments can enter and leave San Marino without any controls • The authorities have not undertaken an analysis of potential measures which could be taken to comply with SR.IX criteria, thus its requirements are not met

3 PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

Customer due diligence and record-keeping

Regulations, Circulars, Instructions

382. Under article 30 (Powers of the Central Bank) of its Statute, the Central Bank may adopt measures in the form of regulations, orders, circulars, standard letters, recommendations and instructions. Instruments pertaining to matters of supervision and to the anti-money laundering unit, as resolved by the Supervision Committee, are issued by the Director General.

383. Under Section 39 (Regulatory Powers) of the LISF, the Central Bank as supervisory authority may issue measures in the form of *regulations*, *circulars* and *instructions* which contain binding and general provisions implementing and supplementing the provisions of the law and its implementing decrees as well as any other measure that the supervisory authority deems appropriate in achieving its own aims.

384. Regulations issued under the LISF are the equivalent of what would previously have been issued as circulars. Regulations issued by the supervisory authority are published in the official gazette. Instructions are measures issued by the Central Bank acting as the unit combating money laundering, in accordance with article 8(5) of the Law No. 123/ 1998 as amended (ie. implementing provisions on customer identification, record maintenance and reporting requirements). Circulars issued under the LISF are the equivalent of what would previously have been issued as standard letters.

385. Breaches are punishable by administrative fines and in the case of violations of Central Bank provisions are also subject to criminal sanctions.

386. Circulars and standard letters which were previously issued by the Office of Banking Supervision remain in force under the new legislation unless expressly repealed under Article 157 of the LISF or subsequently withdrawn and replaced.

387. The evaluators were of the view that circulars, regulations and instructions issued by the Central Bank under article 39(2) of the LISF are other enforceable means according to the Methodology. Such documents are binding and general provisions which implement and supplement the provisions of the law and its implementing decrees. The table below sets out the hierarchy of relevant norms in this context and their status according to the Methodology as endorsed by the plenary:

Hierarchy of relevant norms in San Marino	**Status according to the Methodology**
International treaties and conventions	Law or regulation
Constitutional laws	Law or regulation
Qualified and ordinary laws	Law or regulation
Decrees (*Decreto, Decreto Consigliare, Decreto Delegato)*	Law or regulation
Congress of State decisions	Law or regulation

Circulars issued by the former Office for Banking supervision	Other enforceable means
Standard letters issued by the former Office for Banking Supervision	Other enforceable means
Regulations of the Central Bank	Other enforceable means
Circulars of the Central Bank	Other enforceable means
Instructions of the Central Bank	Other enforceable means
Standard letters of the Central Bank (only issued until the entry into force of the Law on companies and banking, financial and insurance services, April 2006)	Other enforceable means
Recommendations	Non binding guidance

388. The San Marino authorities have advised that their firm view is that regulations, circulars and instructions issued by the Central Bank, under the LISF constitute secondary or subordinate legislation because, in their view:
- the provisions are binding and of a general nature and as such, they possess the characteristics of obligatoriness, generality and abstractness which are peculiar to laws;
- they can translate the law into working regulations ("put into effect") and actually integrate it ("integrare – to integrate") so as to make up for any incompleteness by introducing provisions which, although formally of a secondary type, substantially end up by becoming equally important and of the same hierarchical source level;
- the obligatory and "law equivalent" character of the provisions issued by the Central Bank in order to pursue its AML/CFT scopes is confirmed by the fact that violations are not only punished from the administrative aspect (article 141 LISF) but also from the penal one (article 140(3) of the LISF), serious and repeated violations can also lead to sentences of imprisonment (first degree imprisonment);
- The Central Bank is authorised to issue such legal instruments by the law (article 39 LISF) which they consider as being in line with the reference in the Methodology to "authorised by a legislative body".

3.1 Risk of money laundering or terrorist financing

389. The San-Marino AML/CFT system currently in place has not been based on a risk assessment of the financial sector by the authorities, as envisaged in the revised FATF 40 Recommendations.

390. The Circulars that have been issued contain some examples of different types of situation that require special attention by financial institutions. Banking industry representatives advised during meetings with the evaluators that in practice banks pay attention to the more risky situations that arise and apply enhanced identification procedures as appropriate.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and analysis

391. On the basis of the definition of activities conducted by a Financial Institution within the meaning of the 40 FATF Recommendations, the financial institutions operating in the Republic of San Marino are the following:
   a. Banks;
   b. Financial companies;
   c. Post Offices (which are State-owned);
   d. Credit recovery on behalf of third parties;
   e. Financial promoters and insurance promoters;
   f. Agencies of Italian insurance companies and insurance brokers selling solely insurance policies based on Italian law.

392. Banks and financial companies are required to identify all the clients, record and keep record of customer identification data and of:
   i) transactions exceeding €15,500 ; and
   ii) series of transactions that are individually below this threshold, but which, in a given period of time, may be considered as forming part of a single transaction because of their nature or procedure. (Article 7 of the AML Law No. 123/1998 as supplemented by Article 8 of Law No. 28/2004).

393. Banks and financial companies are required to report suspicious transactions (STRs) to the AML Service of the CBSM. (Article 8, par. 1 of the AML Law No. 123/1998 as supplemented by Article 8 of Law No. 28/2004).

394. Banks and financial companies are subject to the regulatory provisions (mainly CBSM Circular of 27 January 1999, CBSM Circular of the 12 February 2003 and CBSM Standard Letter of 3 August 2005) issued by the CBSM on AML/CFT preventive requirements.

395. In the case of the other categories listed above under (c) - (f), while Article 8 of Law No. 28/2004 states that these categories are subject to customer identification, record maintenance and reporting requirements of the AML Law No. 123/1998 and that the CBSM shall issue provisions for implementation of these requirements for these categories, at the date of the on-site evaluation no such provisions had been issued and accordingly these provisions were not implemented.

Recommendation 5

Anonymous accounts or accounts in fictitious names

396. The customer identification requirements as described below do not permit anonymous or numbered accounts. However, banks may issue bearer passbooks, which while they are not anonymous in so far as identification of the bearer takes place upon issuance and closure of the passbook, do pose challenges in that they can be transferred to another person. Persons opening a bearer passbook and depositing or withdrawing money through such passbooks must be regularly identified as any other customer, and their transactions have to be recorded in an AML register kept by the bank if they exceed - separately or jointly - €15,500. In addition, persons closing bearer passbooks are identified.

397. Article 7 of AML Law No. 123/1998 requires banks and financial companies to identify anyone opening or maintaining a business relationship with them. In addition, the implementing provisions set forth in the Circulars No. 26 and 16/F of 27 January 1999 issued by the former OBS to credit institutions and financial companies state that, when opening any account, banks must obtain all the identification data of clients as well as a hard-copy of their official ID document. The CBSM has advised that the same identification procedure must be applied whenever a transaction is conducted through passbooks - regardless of the amount- including when these forms of business relationship are terminated. Deposits or withdrawals exceeding the € 15 500 threshold (both as single transaction or series of transactions) must be recorded in an AML register of the bank. However, there is no explicit reference in the current legislation to such measures applying to passbooks although the above-mentioned circulars refer to identification of bearers. The draft law includes an amendment to Article 7 of the LISF in relation to identification and verification of identity of anyone depositing or withdrawing money on savings passbooks, regardless of the amount involved in the transaction.

398. As at 31 December 2006 and 31 December 2005 the number of passbooks in circulation and the value of outstanding balances were as follows:

	31 December 2006	**31 December 2006**	**31 December 2005**	**31 December 2005**
	Number	**Value € M**	**Number**	**Value € M**
Bearer Passbooks	41 511	443.5	42 567	454.1
Total Deposits	N/A	6 973.8	N/A	5 955.4
BP as % of Total Deposits		**6.3 %**		**7.6 %**

399. While the CBSM advised that bearer passbooks are used exclusively for cash deposits and withdrawals, the number and outstanding balances of such passbooks in circulation may pose some additional AML/CFT risks over that of cash. In particular they may provide a convenient and portable store of value for the proceeds of criminal activities. The facility to transfer such passbooks anonymously poses a significant challenge for banks to ensure that they conduct ongoing due diligence on these passbooks throughout the business relationship with the person presenting themselves as the bearer.

400. The CBSM advised that the draft law intends to limit the value of the amount which may be held in such passbooks to € 15,500. However, the proposed provisions as currently drafted will not result in the elimination of bearer passbooks.

<u>When CDD is required</u>

401. The AML Law No. 123/1998 (Article 7) requires financial institutions to identify anyone:

- opening current accounts, deposits or entering into business relationship with them;
- transferring or using payment instruments for amounts exceeding € 15 500;
- carrying out, in a given period of time, a series of transactions which, though individually not exceeding the amount of € 15 500, may be considered as forming part of a single transaction because of their nature or procedure.

402. In the event that the above-mentioned transactions are carried out on behalf of third parties, the law states that the latter shall be identified in compliance with the instructions given by the CBSM.

403. The OBS Circulars 26 and 16F of 27 January 1999 (issued to Credit Institutions and Financial Companies) sets out provisions on the implementation of Law No. 123/1998. It states that the identification procedure must be applied to the customer or any other persons authorised to operate such account at the opening of any account or deposit or the starting of any other ongoing business relation (including the rental of safety boxes), by obtaining all identification data - including a photocopy of the ID document.

404. The same Circular specifies that the identification procedure must be performed in respect of any single cash transaction, of any kind and amount as follows:
- in case of deposits of money or bills, a deposit slip, signed by the customer, must be submitted at the counter; such slip shall enable audit tracing;
- in case of withdrawals, a document shall be signed at the counter by the customer; such document equally enables audit tracing.

405. The Circular also states that special attention must be paid to the identification of occasional customers carrying out transactions exceeding €15,500. In the case of transactions conducted on behalf of third parties, the person showing up at the bank or financial company must produce a formal proxy or, if a formal proxy is not produced, indicate in writing and under their full responsibility, all the identification data of the person on whose behalf the transaction is being carried out.

406. The identification process requires banks and financial companies to obtain the identification data of the client.

407. However, as required by Recommendation 5.2, there is no reference in the current legislation to the obligation to carry out identification when:
- carrying out occasional transactions that are wire transfers in the circumstances covered by the IN to SR.VII
- there is a suspicion of money laundering or terrorist financing regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations or
- the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

408. In addition the threshold applied to transactions is €15 500 rather the €15 000 limit, referred to in FATF Recommendations. The authorities advised that the reason for this is that the legislation was based on an Italian Lire amount of 30 million which ultimately translated to €15 500 rather than €15 000 as required by the FATF Recommendations.

<u>Required CDD measures</u>

409. Criterion 5.3 is marked with an asterisk. Financial institutions are required to identify permanent or occasional customers (whether natural or legal persons or legal arrangements) and verify the customers 'identity using reliable independent source documents, data or information.

410. Banks and financial companies must identify customers:
- when they open an account or any kind of business relationship;
- when they conduct transactions in excess of €15 500 or transactions which though individually exceeding €15 500 may be linked.

411. Under former OBS Circular of 27 January 1999, when entering into a business relationship, all the identification data of customers must be obtained together with a copy of their official ID document. Enhanced customer identification procedures are implemented in respect of occasional customers carrying out transactions exceeding €15 500.

412. Under former OBS Circular of 12 February 2003, banks and financial companies are further required to periodically check the documentation they possess in respect of their customers against documents other than those produced for entering into business relationship (for example utility billing).

413. In addition the San Marino authorities advised that in practice in order to have a more comprehensive knowledge of their customers and to substantiate the information acquired in their regard, including their economic or professional background, banks and financial companies generally obtain further data from third parties or other sources (for example, commercial databases, and private investigation agencies).

414. However, as required by Criterion 5.3 of Recommendation 5, there is no reference in the current legislation to the obligation to verify the customer's identity using reliable independent source documents, data or information or to the other elements of the CDD measures specified in the recommendations i.e. identification of beneficial owner, obtaining information on purpose and intended nature of the business relationship or conducting ongoing due diligence on the business relationship and scrutiny of transactions to ensure consistent with knowledge of customer, their business , risk profile and where necessary source of funds. The draft law contains a provision that refers to verification of data from accurate and independent sources.

Legal persons or legal arrangements

415. Article 7 (2) of the AML Law No. 123/1998 states that if transactions are carried out on behalf of third parties, the latter shall be identified in compliance with the instructions given by the CBSM.

416. The former OBS Circular of 27 January 1999 states that in the case of transactions conducted on behalf of third parties, the person showing up at the bank or financial company must produce a formal proxy or, if a formal proxy is not produced, indicate in writing and under their full responsibility, all the identification data of the person on whose behalf the transaction is being carried out.

417. However, as required by criterion 5.4 of Recommendation 5, there is no explicit reference in the law or the circular to the measures that should be taken in the case of opening of an account by a person on behalf of a customer.

418. As regards the opening of business relationships with customer that are legal entities, there are no specific provisions for banks and financial companies to collect and record information including: the corporate or business name; the main or registered office; certified copies of the articles of association; certified copy of the industrial, commercial or business licence; certificates of legal representatives; power to sign and act on behalf of the entity given by the shareholders' meeting or the board of directors. However in practice, the authorities advised that banks and financial companies would collect this type of information as part of normal business operations.

419. Licensed Trustees (and qualified trustees under Article 19, paragraph 4 of Law No.37 of 17 March 2005 trust legislation) are exclusively banks and financial companies. The identification process of beneficiaries and settlors is conducted in accordance with AML law and regulatory provisions.

Identify the beneficial owner and take reasonable measures to verify identity

420. Under former OBS Circulars of 27 January 1999, in the case of transactions conducted on behalf of third parties, the person showing up at the bank or financial company must produce a formal proxy, or indicate - under their full responsibility - in writing the complete identification details of the person on whose behalf the transaction is carried out.

421. With regard to legal entities, the authorities advised that in practice banks and financial companies require the names of shareholders.

422. However, as required by essential criteria 5.5*, there are no requirements in legislation on the need to identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the financial institution is satisfied that it knows the beneficial owner. Furthermore, there is no definition of beneficial owner, as provided for in the Glossary to the FATF Recommendations, incorporating the concept of identifying those who ultimately control the legal person (or natural person).

Obtain information on the purpose and intended nature of the business relationship

423. The authorities advised that banks and financial companies generally ask their clients the purpose of the business relationship.

424. Former OBS Circular of 12 February 2003 requires that staff of banks and financial companies should be trained so that the list of customers includes accurately all personal data concerning their clients and their business activity. This circular also provides under the section on staff training that "equal attention shall be paid to the correct indication of the purpose for which each single transaction was conducted" regardless of the amount.

Conduct ongoing due diligence on the business relationship

425. Under OBS Circulars, banks and financial companies must perform "monitoring" or scrutiny of the transactions executed by their clients in order to verify the consistence of such transactions with the economic and financial background of the clients. As a practical consequence, information and data on customers are kept up-to date.

426. Banks and financial companies are required to monitor or scrutinise all transactions, regardless of their amount.

427. Former OBS Circulars of 27 January 1999 requires banks and financial companies to "analyse critically and periodically all transactions made by their customers by establishing closer relations with them, for the purpose of detecting any laundering and usury activity, whenever such transactions are deemed to be suspicious".

428. On the requirement to update customer identification data, CBSM Circular of 12 February 2003 states that in their direct relations with customers, banks and financial companies "*shall consider, on a more general basis, the important know-your-customer rules, so as to be informed and updated with regard to the customers' financial background.*"

429. However, as required by criterion 5.7*, there are no requirements in law for financial institutions to conduct ongoing due diligence on the business relationship to ensure that:
- the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds or

- that documents collected are kept up to date and relevant by undertaking reviews of existing records particularly for higher risk categories of customers.

Risk

Enhanced Due Diligence

430. CBSM Circular of 12 February 2003 provides for a list of indicators of unusual transactions, customers' behaviours, products and services, etc. highlighting what categories may be considered particularly liable to risk of ML or FT. However, as required by criterion 5.8, there is no provision in law or circulars that requires financial institutions to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction.

Low Risk - Simplified Due Diligence

431. There are no provisions in the AML law or CBSM Circulars that permit banks and financial companies to conduct simplified CDD.

Timing of verification

432. In accordance with CBSM Circular of 27 January 1999 the opening of any account or starting of any other business relationship is subject to the acquisition of all identification data. Accordingly, the authorities advised that this means that the identification process (including verification of data obtained) must be done at the moment of opening a business relationship and prior to conducting any transaction.

Complete the verification of the identity of the customer and beneficial owner following the establishment of the business relationship

433. As there are no explicit provisions, either in the Law or in the CBSM Circulars, that would permit banks and financial companies not to complete verification of customers' identity prior to entering into business relationship or executing a transaction, this situation may not arise in practice.

Failure to satisfactorily complete CDD

434. While as set out in the previous paragraph this situation may not arise in practice, the AML Law No. 123/1998 does not require that a) an account should not be opened if there is failure to satisfactorily complete CDD or b) that consideration should be given to making an STR in such cases .

435. Under AML Law No. 123/1998, Article 9, par. 1 (b), failure to identify clients is punished by terms of an administrative sanction (fine) up to one third of the value of each transaction carried out without fully completing the identification procedure. It should be explicitly stated that this would also apply to situations where there was a failure to satisfactorily complete CDD.

Existing customers

436. The authorities have advised that all customers have to be identified on the basis of the same identification procedure, regardless of whether they existed prior to the entry into force of AML Law No. 123/1998 and relevant former OBS Circulars. As a matter of good practice, however, the identification process had already been put in place by the banks and financial companies for any business relationship or transaction, regardless of thresholds.

437. The authorities have also advised that once AML Law No. 123/1998 entered into force, banks and financial companies have applied customer identification provisions to all their existing clients.

438. However, it is not clear that there is any explicit requirement to apply customer identification requirements to those customers that had opened accounts prior to the entry into force of the AML Law No. 123/1998. The authorities advised that customer identification procedures were provided for in the Circular issued by the former Office of Banking Supervision (No. 16 of 11 June 1990, however the evaluators were not provided with a translation which they could assess.

Recommendation 6 - PEPs

439. There are no specific requirements in the AML laws or regulations (e.g. CBSM Circulars and Standard Letters) providing for enhanced due diligence by banks and financial companies in respect of PEPs.

440. The CBSM advised that compliance officers in the banks were familiar with the concept of PEPs and that as a matter of "good practice", senior management approval is always supposed to be required where banks and financial companies face higher risk cases.

441. Evaluators were also informed by banking industry representatives, who were aware of the potential ML risks connected to such customers, that they buy access to commercial databases where lists of names of PEPs are available.

Recommendation 7 – Correspondent Banking

442. In relation to cross-border correspondent banking and other similar relationships there are no specific requirements in AML laws or regulations and other enforceable means (e.g. CBSM Circulars and Standard Letters). The San Marino authorities advised that the ML and FT risk is taken into account within the open list of indicators of suspicious/unusual transactions (either executed or attempted), customers' behaviours, products and services, or when countries are involved that are listed among "off-shore centres" or drug- trafficking and -smuggling location (former OBS Circular No. 33 of 12 February 2003).

443. Consequently, as there are no legislative or other enforceable requirements, correspondent banking relationships are governed by internal banking policies and procedures, which determine the information to be acquired by the banks before opening any correspondent banking relationship. Internal policies and procedures also require banks to establish the AML/CFT responsibilities of their respondents.

444. However, according to the information provided to the evaluators by the banking industry representatives in practice San Marino banks do not usually gather extra information about a respondent institution to understand the nature of the respondent's business, to determine from publicly available information the reputation of the institution and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action. The San Marino authorities nevertheless advised that as a matter of "good practice", senior management approval is always required before actually entering in a business relationship with respondents.

445. "Payable-through accounts" are not permitted in the Republic of San Marino. There is no explicit prohibition for the use of "payable-through accounts", but as advised by the San Marino authorities, the correspondent bank accounts with other banks are used only by the bank itself

and not by its clients. Clients can only open and use "current accounts" and "securities" accounts" on their name and can not access the correspondent accounts of the bank.

Recommendation 8

446. Criteria 8.1 to 8.2. of the Methodology cover policies to prevent the misuse of technological developments in ML or FT schemes and policies regarding specific risks associated with non-face to face business relationships or transactions, including specific and effective CDD procedures to apply to non-face to face customers. These policies and procedures should apply when establishing customer relationships and when conducting ongoing due diligence.

447. There is no specific provision in the AML laws or regulations that requires the presence of a customer when establishing a business relationship. However, the San Marino authorities and financial institutions representatives stated that in order for financial institutions to carry out customer identification procedures as set out in the AML legislation and circulars, the physical presence of the customer is required and accordingly, in practice, non face to face business relationships are not permitted in the Republic of San Marino.

448. Non face-to-face operations/transactions that may be conducted are mainly of two types: i) use of ATM machines to withdraw/deposit money; and ii) buying and selling of securities in a regulated market via electronic channels or by telephone, executed by banks, such securities being deposited with them in accounts held in their customers' names. In both cases, customers must maintain a business relationship with a bank, (having been duly identified by the bank prior to starting the business relationship), and have to be given either a password or PIN code to be able to conduct such transactions.

449. In the discussion with the banking industry, the evaluators understood that Internet banking is not offered by San Marino banks. But according to further information available, although no bank operates exclusively via the Internet, some banks do offer their clients remote banking and web-banking services, which are used only for certain activities - account management (control of movements and balances, bank transfers, gyro systems, payments of salaries).

450. Payment cards (i.e. debit cards, credit cards, prepaid cards and the like, issued by international card-companies like Visa, Mastercard, American Express, etc.) are provided or sold exclusively by banks. Debit and credit cards are commonly used at POS and ATMs. In order to use these cards clients are required to maintain a business relationship, e.g. an account with a bank, and consequently be subject to a face-to-face identification procedure. To ensure the use of the payment card only by its holder a PIN code is provided. Transfer to others is in not allowed in any case.

451. Prepaid cards do not require a bank account and are issued for a maximum value of €2,500. Similar to debit cards, they may be used at POS and ATMs, but may not be transferred to persons other than the holder who has to sign the prepaid card. Banks are the only legal entities authorized to sell prepaid cards in San Marino and the holder of a prepaid card is previously identified under the identification procedures applying to all customers.

452. The evaluators were informed by the CBSM that banks and financial companies have been made aware of the possible misuse of new technologies for ML/FT purposes. Former OBS Circular No 33 of 12 February 2003, among others, states that while modern IT technologies have opened up new opportunities for economic growth and efficiency, money laundering related risks have also become more serious.

453. Furthermore, the CBSM pointed out that in the same Circular No 33 of 12 February 2003 the following indicators of suspicious transactions are provided with regard to electronic transactions, such as ATM services:

"*2.1.2 Indicators of unusual transactions concerning cash or electronic transactions*

- *Considerable cash withdrawals, except where the customer needs the money for special reasons;*
- *Considerable cash deposits which are not justified by the client's business activity;*
- *Use of cash instead of usual means of payment;*
- *Exchange of banknotes for smaller or larger denominations and/or in other currencies, especially when such exchange does not take place through the current account*."

454. There is however no requirement in the San Marino AML system for financial institutions to have policies and procedures in place to address any specific risks associated with those new opportunities, especially non-face to face business relationships or transactions.

3.2.2 Recommendations and comments

Recommendation 5

455. The evaluators consider that a number of the basic obligations of Recommendation 5, which need to be implemented by law or regulation are not currently provided for in legislation or regulations issued or authorised by a legislative body. In particular, while banks and financial companies are required to undertake identification measures in number of specified situations, there is no obligation in the law to carry out identification when there is a suspicion of money laundering or terrorist financing or when the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data. Furthermore the other elements of Customer Due Diligence (CDD) are not required by law (e.g. beneficial ownership, and where necessary the source of funds). Additionally, the threshold applied to transactions is €15 500 rather than the €15 000 limit, referred to in FATF Recommendations.

456. At the time of the evaluation visit, the provisions on customer identification, record maintenance and reporting requirements for post offices, credit recovery on behalf of third parties, financial promoters and insurance promoters and agencies of Italian insurance companies and insurance brokers had not been implemented, as no provisions were issued by the CBSM as required in the law.

457. The evaluators recommend that the authorities should take steps to terminate the issue of bearer passbooks. As regards existing bearer passbooks, the evaluators recommend that at a minimum clear requirements be introduced in law to ensure that full identification and recording of persons to whom a bearer passbook is transferred is carried out.

458. There is no definition or reference to a risk-based approach in the legislation or circulars issued. There appears to have been no risk assessment undertaken by the CBSM of the financial sector to determine those areas where there may be particular AML/CFT risks. Such an assessment would be of benefit to the authorities as well as the financial sector in ensuring that enhanced measures are taken in those situations where there is a greater risk of AML/CFT.

459. A comprehensive definition of beneficial owner, as provided for in the Glossary to the FATF Recommendations, incorporating the concept of identifying the natural persons who ultimately own or control the customer should be included in relevant legislation.

460. The following requirements to verify customers' identity are not in the current legislation and should be provided for:

- use reliable, independent source documents, data or information;

- verify that any person purporting to act on behalf of the customer (for customers that are legal persons or legal arrangements) is so authorised, and identify and verify the identity of that person;
- identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the financial institution is satisfied that it knows who the beneficial owner is;
- determine whether the customer is acting on behalf of another person, and then take reasonable steps to obtain sufficient identification data to verify the identity of that other person;
- conduct ongoing due diligence on the business relationship, which includes scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds.

461. There are some obligations of Recommendation 5 that can be implemented by other enforceable means (e.g. issued by a competent authority such as a supervisory authority). In this regard, there are currently no provisions that address circumstances where there is a failure to satisfactorily complete CDD.

Recommendation 6

462. There are no specific requirements in San Marino AML laws or regulations with regard to PEPs. The San Marino authorities should put in place measures that require financial institutions to:
- determine if the client or the potential client is a PEP as defined in the FATF Recommendations;
- obtain senior management approval for establishing a business relationship with a PEP;
- take reasonable measures to establish the wealth and on the source of the funds of customers identified as PEPs;
- conduct enhanced monitoring on PEP business relationships.

Recommendation 7

463. San Marino has not implemented Recommendation 7 through enforceable means. In relation to cross-border correspondent banking and services, financial institutions should not only be required to perform normal due diligence measures but should also be required to obtain information on:
- the reputation of the respondent counterparts and the quality of supervision from publicly available information;
- assess their AML/CFT controls and ascertain their adequacy;
- obtain approval from senior management before establishing new correspondent relationships;
- document the respective AML/CFT responsibilities of each institution;
- where 'payable through accounts' are involved obtain guarantees that counterpart organisations apply the normal CDD measures to all customers that have client access to the accounts of the correspondent institutions and that it is able to provide relevant customer identification data on request.

Recommendation 8

464. San Marino AML legislation and regulations do not include enforceable requirements on non-face to face business relationships or transactions. Financial institutions need to be not only made aware of the possible misuse of new technologies for ML/FT purposes but also required to have policies in place to prevent the misuse of technological developments for ML/FT purposes, and to have policies in place to address specific risks associated with non face to face transactions.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**NC**	• Existence of Bearer Passbooks – while there is regular identification of the bearer upon issuance, conduct of transactions and closure of passbooks, the facility to transfer such passbooks anonymously poses a significant challenge for banks to ensure that they conduct ongoing due diligence on these passbooks throughout the business relationship with the person presenting themselves as the bearer. • Certain categories of financial institution are not covered by the identification obligations set out in the Law yet as implementing provisions had not been issued by the CBSM: - Post Offices (which are State-owned); - Credit recovery on behalf of third parties; - Financial promoters and insurance promoters; - Agencies of Italian insurance companies and insurance brokers selling solely insurance policies based on Italian law. • No requirement in law or regulation to carry out CDD when: - there is a suspicion of money laundering or terrorist financing regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations or - the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data. - carrying out occasional transactions that are wire transfers in the circumstances covered by the In to SR.VII • The threshold applied to transactions is €15 500 rather the €15 000 limit set out in the recommendations. • While there are requirements in place to identify customers when establishing business relationships, there are no requirements in law or regulation to: - verify the customer's identity using reliable independent source documents, data or information or to the other elements of the CDD measures (e.g. beneficial ownership, where necessary the source of funds); - verify that any person purporting to act on behalf of the customer (for customers that are legal persons or legal arrangements) is so authorised and to identify and verify the identity of that person; - identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the financial institution is satisfied that it knows the beneficial owner; - determine whether the customer is acting on behalf of another person, and take reasonable steps to obtain sufficient identification data to verify the identity of that other person; - conduct ongoing due diligence on the business relationship, which includes scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds.

		• No provisions in law, regulation or other enforceable means that address circumstances where there is a failure to satisfactorily complete CDD. • No provisions in law, regulation or other enforceable means that require financial institutions to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction. • Existing customers - it is not clear if there is any explicit requirement to apply customer identification requirements to those customers that had opened accounts prior to the entry into force of the AML Law No.123/1998.
R.6	**NC**	• San Marino AML/CFT system does not contain any enforceable measures concerning the establishment of business relationships with politically exposed persons (PEPs).
R.7	**NC**	• San Marino has not implemented any enforceable AML/CFT measures concerning establishment of cross-border correspondent banking relationships.
R.8	**PC**	• At the time of the on-site visit, there were no direct requirements for financial institutions to have policies in place to prevent the misuse of technological developments in ML/FT schemes or to have policies and procedures in place to address the specific risks associated with non-face to face business relationships or transactions.

3.3 Third parties and business generators (R.9)

3.3.1 Description and analysis

465. AML legislation in force does not contain any provisions that permit financial institutions to rely on third parties to perform the customer identification process on behalf of San Marino intermediaries, however, there is no legally binding provision that prohibits it. The evaluators have questioned whether third parties are being relied upon to carry out CDD, or whether they are strictly being used in an outsourcing context.

466. The San Marino authorities explained that the requirements set out in the AML law and former OBS Circulars No. 26 and 16/ F of 27 January 1999 clearly oblige banks and financial companies to carry out customer identification procedures for any customer. In addition, the identification process requires the physical presence of the customer. Therefore, in the view of the competent authorities, financial institutions cannot rely on intermediaries or other third parties to perform some elements of the CDD process or to introduce business.

467. Although no foreign bank has a branch in San Marino, the evaluators were informed by financial sector representatives that in practice, especially in case of foreign customers, another e bank or financial company often introduces or recommends a potential new costumer to the San Marino bank or financial company. After such introduction, as assured by the private sector and San Marino authorities, banks and financial companies nevertheless conduct customer identification according to the San Marino AML legislation and do not rely on the third party introducer.

468. The authorities indicated that San Marino banks, owned by Italian or foreign banks, do not rely on the Italian or foreign bank to perform customer identification procedures.

469. As regard agents, agencies of Italian insurance companies and insurance brokers, which sell solely insurance policies based on Italian law, operate in the San Marino insurance sector. As the relevant domestic AML regulation has not been issued yet, those intermediaries act in accordance to Italian AML legislation. More or less the same is the case with post offices, for which the San Marino authorities advised that they act exactly as branches of the Poste Italiane S.p.A. Outsourcing agreements are anyhow outside the scope of Recommendation 9 and therefore the evaluation team determined that this Recommendation is not applicable to San Marino.

3.3.2 Recommendations and comments

470. Currently the AML Law does not provide for third party reliance in the performance of customer identification or for introduced business but neither does it prohibit it, even though in practice this situation does not occur.

471. If financial institutions were in future to consider relying on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business, the San Marino authorities would need to take account of all the essential criteria under Recommendation 9 and ensure that they were covered by enforceable means that would contain specific provisions allowing financial institutions to rely on the CDD conducted by intermediaries or other third parties.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**N/A**	

3.4 Financial institutional secrecy or confidentiality (R.4)

3.4.1 Description and analysis

472. Banking secrecy is an important component of San Marino's financial services business. The banking associations whom the evaluators met confirmed that the banking secrecy legislation in San Marino is an appealing factor for many foreign customers (mostly Italians) and is used as part of the marketing of the sector.

473. The secrecy provisions were previously defined in the Bank Law No. 21 of 12 February 1986 as subsequently amended in 1999. Article 23 covered the professional secrecy obligations for the inspectors and officials of the former Office of Banking Supervision, even in respect of the Public Administration. Such information and data acquired in its supervisory authority could only be transmitted to the Congress of State. The documentation was kept confidential even in the event of judicial proceedings. Article 24 established the bank secrecy rules for all bank directors and employees. Information and data acquired in the performance of bank activities could be used in cases of violations of the criminal legislation and, in other cases, exclusively to monitor bank access requirements, to facilitate the control of bank liquidities and solvency and supervision of operating conditions. Violations of professional secrecy and bank secrecy or aiding and abetting entailed first decree imprisonment and third degree fine in days or respectively second degree fine in days. The adoption in November 2005 of the new law on companies and banking, financial and insurance services (LISF) introduced new provisions on

secrecy which entered into force as of April 2006 and were in force at the time of the on-site visit (articles 36 and 139 on banking secrecy, article 104 on official secrecy).

474. Article 36 (1) of the LISF defines banking secrecy as the prohibition on authorised parties to reveal to third parties the data and information acquired in the exercise of the reserved activities listed in annex I of the LISF.

475. This obligation bounds a large range of persons namely directors, internal and external auditors, actuaries and employees (including those on placements or in periods of vocational training), outside consultants, company representatives, liquidators and commissioners of authorised parties, financial promoters, insurance and reinsurance intermediaries. It also bounds natural persons or directors, employees, internal and external auditors of the companies to which the authorised parties have outsourced functions. The obligation persists even after the cessation of the employment relationship, office, function or exercise of the profession.

476. Article 36 lists a number of specific cases when banking secrecy is not considered to be breached, which include for instance:
- if the client consents in writing to the data to be disseminated to a specific recipient for a pre-determined purpose;
- when the data and information are contained in publicly available registers, lists, records or documents that are open to public inspection;
- when the party under an obligation of banking secrecy is being sued in civil or criminal proceedings insofar as the disclosure is of use in the defence of the proceedings, etc.

477. Banking secrecy cannot be opposed in two cases. Firstly, authorised parties under the LISF cannot oppose bank secrecy to disclose data and information to the judicial criminal authority. Such information can be obtained through court order[14]. In this case, records of the preliminary enquiry phase of the proceeding are strictly confidential. Evaluators were informed by several persons during the visit that information relevant to AML/CFT matters that is direct tax evasion related would not be asked nor be made available.

478. Secondly, banking secrecy cannot be opposed "to the supervisory authority when exercising its functions of surveillance and prevention of terrorism and laundering of money of unlawful origin". As mentioned earlier, as there is no specific identity of the FIU, this provision refers to the "supervisory authority" ie. Central Bank. The supervisory authority can demand all information and records from authorised parties which are necessary to perform its functions. If any person would impede the Central Bank's exercise of its functions would be punished by first degree imprisonment or a fine (article 140 LISF). In practice, the AML Service representatives advised that they did not experience any difficulties in obtaining information and data.

479. Article 8 of the Law No. 123/1998 , providing for the obligation to report suspicious transactions and excluding violation of secrecy obligation for STRs sent to the Central Bank in good faith, only refers to ML and does not cover FT.

480. It is worth noting that, under article 29 of the Law No. 96/2005 (Central Bank Statute), all details , information and data in the Central Bank's possession (including the AML Service) by reason of its activity of supervision over banking and financial intermediaries are official

[14] The evaluators were advised after the visit that, in accordance with article 361 of the CC (which they were unable to see), if the information being refused to be disseminated is contained in a document (hard copy or electronic format), the handing over of which is refused, the competent authorities can apply an imprisonment sentence from 6 months to 3 years. If information is owned by the staff of the bank or financial company as witnesses (direct or hearsay witness), the punishments applied are the same as the ones envisaged for giving evidence or refusal for giving evidence. When documents are not handed over, the competent authorities shall issue a warrant to find, coercively, the concealed information.

secrets. Confidentiality on these topics cannot be opposed to the judicial authority only whereby such information is necessary to investigate criminal offences.

481. The Central Bank or the AML Service cannot share information with other third parties other than with the judicial authorityin the course of criminal investigations (article 29 of the CBSM Statute and article 104 (3) of the LISF). The evaluators were not able to identify any provisions which would specifically allow the Central Bank to share information with other national authorities involved in AML/CFT activities.

482. As to the possibility to share information and data internationally, article 103 of the LISF defines the conditions for co-operation of the supervisory authority with foreign financial supervisors. Such co-operation is authorised only subject to the conclusion of a co-operation agreement, which should comply with 4 cumulative conditions:

a) the information shared has to be covered by guarantees as to official secrecy which are equivalent to the ones provided in article 29 of the Central Bank Statute;
b) the exchange of information is for the purpose of contributing towards the performance of the supervisory task of the foreign authorities;
c) the information communicated is to be used only in the exercise of the supervisory authority's functions as listed therein , including for the prevention of ML and FT;
d) the information cannot be disseminated without the explicit written consent of the requested competent authorities by which it has been provided and only for the purposes for which the said authorities have given their consent.

483. The LISF requires the supervisory authority to monitor the "strict observance" of banking secrecy. To this purpose, under article 68 of the LISF, clients are entitled to inform the supervisory authority of any violation of the secrecy.

484. The evaluators noted that Central Bank's employees are bound by official secrecy and have to report any irregularities exclusively to the Supervision Committee, even when these are in the nature of crimes (article 104 of the LISF). It is the Supervision Committee (physically the Director General) which will forward on a confidential basis any information or data on serious irregularities to the Congress of State through the Committee for Credit and savings. Such data will also be forwarded to the judicial authority in those cases specified by law (article 35 (2) of the CBSM statute).

485. In accordance with article 139 of the LISF, breach of bank secrecy is punished by first degree imprisonment, a fine and the disqualification from holding offices in companies or other legal persons. The same applies to any person who, having wrongfully or involuntarily acquired knowledge of data or information covered by banking secrecy, reveals it to third parties or uses it.

486. As regards information sharing between financial institutions, San Marino banks and financial institutions cannot share information with any third party without a written consent of the client. In order to comply with the requirements for sharing of information between financial institutions under SR. VII (wire transfers) a written consent of the client is required. Evaluators were also advised that at the time of the evaluation, there was no legal permission for the banks located in San Marino which are part of a foreign banking group to send all relevant information to their parent company: they could send only a qualitative overview. One other area of concern regarded limits to on-site inspections carried out in such banks by auditors sent in San Marino by the parent company, since not all relevant information and data could be accessed by inspectors or banking secrecy limitations apply.

3.4.2 Recommendations and comments

487. San Marino authorities should review their legal provisions on banking and official secrecy to ensure that they do not inhibit implementation of FATF Recommendations. The AML Law should clearly lift bank secrecy, not only for STRs in respect of money laundering, but also in particular in the context of the ability of competent authorities to access information required in the performance of their AML/CFT functions and of the sharing of information between competent authorities, either domestically or internationally.

488. Following the introduction of the obligation to report suspicious transactions on FT, it should be clearly provided in legislation that banking secrecy does not apply with regard to STRs on FT. As a consequence, STRs relating to FT sent to the FIU should not constitute a violation of secrecy obligation or imply liability of any kind.

489. The current framework should be reviewed to ensure that banking and official secrecy should not prevent the sharing of relevant information, either domestically or internationally among AML/CFT competent authorities, nor impose too strict conditions for exchanges which inhibit such cooperation.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**PC**	• The AML Law lifts bank secrecy only for STRs in respect of money laundering; • Given the fact there is no legal provision excluding liability for STRs related to FT, submitting a report even in good faith constitutes a violation of bank secrecy. • Official secrecy only allows the Central Bank to share information with the judicial authority, in the course of a criminal proceeding, and does not seem to allow any kind of sharing of relevant documents and data with other domestic authorities outside the course of a criminal proceeding. • Article 103 of the LISF allows the CB to share information with foreign supervisory authorities only subject to a previous cooperation agreement s and subject to very strict cumulative conditions. • Sharing of information between financial institutions where this is required by SR VII limited to cases where the client consents

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and analysis

Recommendation 10

490. Under Article 7, paragraph 3 of the AML Law No. 123/1998 financial institutions are required to record and keep for five years customer identification data as well as data related to transactions for amounts exceeding €15 500 and in the case of a series of transactions conducted in a given period of time, which, though individually not exceeding the amount of €15 500 €, may be considered as forming part of a single transaction because of their nature or procedure.

491. In addition former OBS Circular of 27 January 1999 sets out further details on Recording and Record Maintenance. It specifies that transactions exceeding €15 500 (or a series of linked transactions conducted within a given period of time - three working days- involving amounts below the €15 500) must be recorded chronologically in a special book (AML register) duly numbered, or in the electronic format considered best suited

492. While this Circular states that records on transactions, have to be kept for at least five years following completion of the transaction, there is no reference to the need to retain data for at least five years after the closure of the account or termination of the business relationship**.**

493. The Central Bank subsequently issued Standard Letter No.111 (August 2005) to specify that records of customer identification data have to be maintained for at least five years after the closure of the account or termination of the business relationship the 5 year record keeping requirements provided for in the AML law.

Transaction records should be sufficient to permit reconstruction of individual transactions

494. In order to permit the reconstruction of recorded transactions, the former OBS circular requires that the following data and information have to be collected and recorded:

- date, amount and reason for the transaction;
- the personal data (name and surname, date and place of birth, address, etc.) and details of the official ID document of the customer conducting the transaction, either on his own behalf or on behalf of third parties;
- the personal data or, in case of legal entities, the corporate name and registered office of the person on whose behalf the transaction is made.

495. Recording must be carried out in compliance with the relevant instructions, without clearing transactions of opposite signs, e.g. withdrawals and deposits made by the same person.

496. The circular states that with regard to usual and already identified customers, it is sufficient to record the reason and the amount of the transaction, as well as the name in full or the bank identification code of the customer.

Maintain records of the identification data, account files and business correspondence for at least five years following the termination of an account or business relationship

497. Article 7 (3) of AML Law No. 123/1998 requires banks and financial companies to record and keep record of customer identification data for five years.

498. This provision is reiterated in former OBS Circular of 27 January 1999 where the collection and maintenance of identification data and records, as well as hard-copy of ID documents are mandatory.

499. The Central Bank subsequently issued Standard Letter No. 111 (August 2005) to specify that records of customer identification data have to be maintained for at least five years after the closure of the account or termination of the business relationship. However, in accordance with Recommendation 10.2*****, the obligation that records should be kept for at least five years after the closure of the account or termination of the business relationship should be included in law or regulation.

500. The authorities advised that as for business correspondence, while records have to be kept for at least five years under the law, as a matter of good commercial practice, banks and financial companies keep such records for longer periods.

Customer and transaction records and information are available on a timely basis to domestic competent authorities

501. The CBSM has powers to compel production of data or information by financial institutions in its supervisory function. There are no provisions in the AML law that require financial institutions to ensure that customer and transaction records and information are available on a timely basis to the competent authorities. However, article 41 of the LISF states that the supervisory authority may request authorised parties to notify, if necessary on a periodical basis, data and information and to forward deeds and documents in accordance with the procedures and within the terms that it has established.

Special Recommendation VII

502. Currently, banks and post offices are the only entities that provide wire transfers in the Republic of San Marino. Post offices, which are wholly state-owned, may carry out wire transfers services not by virtue of LISF but under relevant governmental agreements, which date back to the early 1900s. In practice, such services are rendered on behalf of what is today Poste Italiane S.p.A (an Italian private corporation), as if under an "agency contract".

Wire transfers (SRVII.1)

503. Article 7 of the AML Law No. 123/1998 sets out the requirements for financial institutions to identify customers when-:

- entering into business relationship
- transferring or using payment instruments for amounts exceeding € 15 500;
- carrying out, in a given period of time, a series of transactions which, through individually not exceeding the amount of €15 500, may be considered as forming part of a single ransactions because of their nature or procedure.

Under SR.VII.1, originator/payer information should now be obtained and verified for all wire transfers above the threshold of EUR/USD 1.000. There is no such requirement in the current legislation.

504. However, in practice, all domestic and international wire transfers are requested by filling in a "form", whereby information on the transaction (data, amount, purpose), originator and beneficiary (in particular, full name and bank account details) has to be provided.

505. When the bank operates as an ordering/remitting bank for an existing customer,, the customer identification procedure (which has already been done at the time of entering into the business relationship) and the filled-in form allow the bank to obtain the information on the originator (in particular, full name and address) and details on the account involved in the transaction. However, in the case of occasional transactions/customers, no clear information was given to the evaluators, on whether the originator's address (or its substitutes, as allowed by the Methodology) must be (and indeed is) obtained before executing a wire transfer. Records of these operations (e.g. the filled-in forms) are maintained at the bank, similar to all other documents and data (records, books, correspondence) for at least 5 years (under relevant provisions of corporate legislation).

Cross-border wire transfers (SR.VII 2)

506. Under SR.VII.2 originator/payer information should be included for all cross-border wire transfers above the threshold of EUR/USD 1 000. There is no such requirement in the current legislation. In practice a channel for executing international wire is SWIFT. As already noted, before executing cross border wire transfers, customers are requested to fill in a form providing details on the wire transfer, including information on the originator, beneficiary and bank account numbers involved.

507. Transfers exchanged in batch files are subject to the same requirements as individual transfers. Therefore the above procedures are fully applicable to each individual transfer exchanged through the system in a batch file.

Domestic wire transfers (SR.VII.3)

508. Under SR.VII.3 the ordering/remitting financial institution should be required to either comply with SR.VII 2 or include only the originator account number or a unique identifier with the message or payment form. In practice, domestic wire transfers are executed via the Sammarinese Interbank Network (*Rete Interbancaria Sammarinese* - RIS). RIS requires ordering banks to insert the name of the originator and the name of the beneficiary, as well as the number of the accounts involved. However, the evaluators understood from discussions with the authorities that no originator's address is included. There is also no provision in the AML law or regulation which enables the beneficiary financial institution to receive upon request full originator information within three business days.

Intermediary and beneficiary financial institutions (SR.VII.4)

509. There is no provision requiring each intermediary and beneficiary financial institution in the payment chain to ensure that all originator information accompanies and is transmitted with the transfer. However, the San Marino authorities advised that in practice where a San Marino bank is an intermediary institution in the "chain" of payments, all the information obtained by one bank and subsequently forwarded to another bank is maintained in the records of the intermediary or beneficiary bank and kept for at least 5 years, as any other information and document of the bank (under record keeping obligations set forth in corporate legislation).

Transfers not accompanied by originator information (SR.VII.5)

510. There is no specific requirement for beneficiary financial institutions to adopt effective risk base procedures for identifying and handling wire transfers that are not accompanied by complete identifier information. However, the former OBS Circular of 12 February 2003 requires financial institutions to pay special attention to certain transactions, including those which are not accompanied by complete originator information. The CBSM in that context advised that where a San Marino bank is the beneficiary financial institution of a wire transfer, that bank has to scrutinize the transaction and verify the information held on the client who is the beneficiary of the transaction against the information obtained with the customer identification procedure, as well as consider the STRs/UTRs indicators listed in the relevant former OBS Circulars.

Monitoring of implementation (SR.VII.6) and sanctions (SR.VII.7)

511. The CBSM carries out monitoring and supervision of all activities of the banks, thus including wire transfer operations. Since there are no provisions related to wire transfers there is no specific monitoring of compliance with SR VII, other than in the context of CBSM's supervision of financial institutions compliance with AML/CFT requirements. as theer are no specific provisions on wire transfers there are no sanctions in this area.

Post Offices

512. Out of the 10 post offices operating in San Marino, only 5 are technologically equipped (PGOs) to carry out cross-border wire transfers. They are connected to the Poste Italiane S.p.A. information network and register, and they act exactly as an office of the Rimini branch of Poste Italiane. Unlike the Poste Italiane S.p.A. PGOs, San Marino post offices may however offer a much more limited range of services, which include:

- ordinary money orders;
- international money orders (with countries other than Italy);
- urgent money orders (for a maximum of €2,500; the beneficiary has to provide a password to be given the money)
- regular payments (e.g. pensions);
- deposits (but not withdrawals) on postal current accounts which may be opened only in Italy.

513. Technologically less equipped, post offices are allowed to pay out payment orders and postal cheques.

514. Under Law No. 28/2004, supplementing AML Law No. 123/1998, post offices are included in the extended list of obliged entities. However, the CBSM has not issued the relevant implementing regulation yet, hence AML/CFT obligations are not actually enforced under San Marino legislation. Nonetheless, the competent authorities (e.g. Ministry of Finance) advised that the San Marino post offices, which are connected to the Poste Italiane S.p.A. information network and register, meet the AML requirements applied to Italian post offices are fully integrated in the Italian postal system. Although there are no relevant provisions in force in San Marino, the evaluators were furthermore informed by the San Marino authorities that post offices obtain and keep information on the originator (in particular, full name and address). From the information provided it was however not clear, if in case that no account number exists a unique reference number is obtained.

3.5.2 Recommendations and comments

Recommendation 10

515. Under the AML Law No. 123/1998, financial institutions are required to record and keep for 5 years customer identification data and transaction data. The obligation that records of the identification data, account files and business correspondence should be kept for at least five years after the closure of the account or termination of the business relationship will have to be included in law or regulation. There are no provisions in the AML law that require financial institutions to ensure that customer and transaction records and information are available on a timely basis to the competent authorities. Such provisions should be included in law or regulation.

Special Recommendation VII

516. The provisions of SR VII on wire-transfers are not directly addressed in law or regulation. While in practice some measures are taken that cover certain limited elements of SR.VII, the San Marino authorities should introduce requirements to ensure that complete originator information is included in outgoing wire transfers and that beneficiary financial institutions adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by account number and address information.

517. The CBSM should introduce measures to effectively monitor compliance with any requirements introduced in relation to wire transfers. There should be specific sanctions in relation to obligations under SR.VII.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**NC**	• No requirement in law or regulation to specify the obligation that identification data, account files and business correspondence should

		be kept for at least five years (i) after the closure of the account or (ii) termination of the business relationship. • No requirement in law or regulation that requires financial institutions to ensure that customer and transaction records and information are available on a timely basis to the competent authorities.
SR.VII	**NC**	• There are only some very limited references in circulars to wire transfers. • There are no legal or other enforceable means that require financial institutions to ensure that complete originator information is included in outgoing wire transfers and that beneficiary financial institutions based in San Marino adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. • No measures in place to monitor compliance with SR.VII • No specific sanctions with regard to the provisions of SR.VII

Unusual or suspicious transactions

3.6 Monitoring of transactions and business relationships (R.11 & 21)

3.6.1 Description and analysis

Recommendation 11

Pay special attention to all complex, unusual large transactions, or unusual patterns of transactions

518. There are no explicit provisions that impose a direct obligation on financial institutions to pay special attention to all complex, unusual large transactions or unusual patterns of transactions..

519. However, indicators of unusual transactions are set out in former OBS Circular No. 33 of 12 February 2003. The Circular states that the indicators of unusual transactions listed provide examples and indicate objective criteria for financial institutions to identify unusual transactions and also on the basis of other information in their possession, to carry out further investigations to assess the true nature of the operation. In addition, the Circular states that the list of indicators of unusual transactions, together with those specified in Circulars 26 & 16/F of 27 January 1999 on suspicious transactions is not exhaustive, partly because of the ever-changing ways in which financial transactions are conducted but rather an operational tool for banks and financial companies in their anti-money laundering efforts. In addition the circular states that the absence of such indicators is not sufficient by itself to exclude suspicion that a transaction may be actually related to a money laundering offence. In practice, arising from meetings held with financial industry representatives, it appears that the procedures adopted by financial institutions include monitoring of transactions to detect any unusual transactions.

520. At meetings held with the staff of the CBSM and with a selection of compliance officers during the on-site evaluation, the evaluators were advised that from time to time the CBSM issues warning letters to financial institutions drawing their attention to the names of particular persons that would have tried to conduct unusual transactions with particular financial institutions. This information would be based on reports of unusual transactions received by the CBSM from financial institutions.

Examine as far as possible the background and purpose of such transactions and to set forth findings in writing

521. Under Circular No. 26 & 16/F of 27 January 1999, banks and financial companies are required to analyse critically and periodically all transactions made by their customers by establishing closer relations with them for the purpose of detecting any laundering whenever such transactions are deemed to be suspicious. Under former OBS Circular No. 33 of 12 February 2003, banks and financial companies are obliged to report any transaction suspected of money laundering, analysed on the basis of objective features of the transaction (such as type, amount and nature), of the customers' profile (economic capacity or background and business activity) and of any other information or circumstance they may have knowledge of because of their activity. However, there is no specific requirement in law, regulation or other enforceable means to examine as far as possible the background and purpose of such transactions and to set forth findings in writing.

Keep such findings available for competent authorities and auditors for at least five years

522. The CBSM reviews through its inspections whether the procedures for the analysis of suspicious/unusual transactions have been put in place and are properly implemented. While the CBSM advised that any findings referred to above would be kept for at least five years, in compliance with ordinary corporate record keeping requirements, there is no specific requirement in law, regulation or other enforceable means.

Recommendation 21

Special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations

523. The circular of 12 February 2003, issued by the former Office of Banking Supervision for credit institutions, sets out lists of indicators of unusual transactions which indicate objective criteria for institutions to use to identify unusual transactions and, together with other information in their possession, to carry out further investigation to assess the true nature of the operation. One of the items listed under the category '*Indicators of unusual transactions concerning all categories of transactions'* is transactions with counterparts established in geographical areas considered off-shore centres included in the list of NCCTs published by FATF (a list is attached to the circular) or located in drug-trafficking and smuggling areas when such transactions are not justified by the customers business activities or by other circumstances.

524. Another part of the same circular, namely section 2.1.3, concerns indicators of unusual transactions concerning financial instrument transactions and insurance policies, indicates as suspicious activity any negotiation of financial instruments not publicly widespread which takes place very frequently and for substantial amounts, especially if it involves counterparts established in non OECD member countries.

525. The circular partly fails to provide guidance on how a credit institution can determine which transaction is suspicious with the information available at hand, and such a general reference to non OECD member countries could be misleading, as this membership is not necessarily an accurate indicator of the level of implementation of the FATF recommendations.

Effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries

526. As referred to in the previous paragraph, Circular of 12 February 2003 serves as a guiding tool in this regard. No further circulars updating such lists of countries have been issued. The authorities have advised that such updates form part of the ongoing support, assistance or information that the CBSM provides to financial institutions, for example by e-mail or through ordinary correspondence.

527. While a few examples of e-mails issued to financial institutions were provided during the evaluation**,** it was not clear if these contained any references to concerns regarding other countries as they were not translated into English.

Background and purpose of such transactions should be examined and written findings should be available

528. As set out above Circular of 12 February 2003 sets out lists of indicators of unusual transactions which indicate objective criteria for institutions to use to identify unusual transactions and, together with other information in their possession, to carry out further investigation to assess the true nature of the operation.

529. However, there are no specific requirements on reviewing the background and purpose of such findings and the documentation of findings.

Where a country continues not to apply or insufficiently applies the FATF Recommendations, countries should be able to apply appropriate counter-measures

530. The CBSM advised that it may instruct financial institutions, as appropriate, to apply enhanced customer identification procedures and reporting mechanisms. However, no details on specific provisions on counter measures were provided to the evaluators.

3.6.2 Recommendations and comments

Recommendation 11

531. More explicit and comprehensive provisions should be introduced with regard to unusual transaction monitoring that should be adopted by financial institutions. The circulars issued to date focus on the listing of indicators of and examples of unusual transactions.

532. Financial institutions should be required that the background and purpose of such transactions be adequately examined and documented and that their findings in this respect should be set forth in writing and retained for a period of five years.

Recommendation 21

533. The San Marino authorities should introduce mechanisms which would facilitate financial institutions being made aware of the different degree of compliance by other jurisdictions with respect to the FATF standards.

534. It is recommended that the San Marino Central Bank or any other authority, besides those guidelines already in use, augment these with a system or systems that could render better assistance and guidance to credit and financial institutions in vigilance concerning risk countries.

3.6.3 Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R.11	**PC**	• Financial institutions are not explicitly required to pay special attention to all complex, unusual large transactions or unusual patterns of transactions that have no apparent or viable economic or lawful purpose. • Although there is some reference in Circular 33 of 12/02/2003 to report suspicious transactions on the basis of objective features of transactions, including the customers' background, there are no explicit requirements to: - examine as far as possible the background and purpose of unusual transactions and to set forth findings in writing - there is no explicit requirement to keep written findings available for competent authorities and auditors for at least five years
R.21	**NC**	• There is no requirement to examine and monitor transactions from countries, other than countries listed on the NCCT list published by the FATF that insufficiently apply FATF Recommendations, or transactions from countries located in drug-trafficking or smuggling areas (no list of such countries issued), that have no apparent economic or lawful purpose, or to make these findings available to competent authorities. • No specific requirements on reviewing the background and purpose of such findings and the documentation of findings. • No specific provisions (or practice) on application of counter- measures where a country continues not to apply or insufficiently applies the FATF Recommendations

3.7 Suspicious transaction and other reporting (R.13-14, 19, 25.2 & SR.IV)

3.7.1 Description and analysis

Recommendation 13 & Special Recommendation IV

535. Article 8 of Law No. 123/1998, as amended, requires banks, financial institutions and other obliged entities to report to the former Supervision Division (now the CBSM) any transaction which, because of its nature, characteristic, amount or any other circumstances, rouses suspicion that the money, property or instruments used in the transaction may derive from criminal activities as referred to in article 1 of the law (amended by article 7 of Law No. 28/2004), which defines the offence of money laundering.

536. According to the explicit requirement of Recommendation 13, the AML law should require financial institutions to report promptly to the FIU. There is no provision in the AML law or in circulars setting a time frame for such reporting. Former OBS Circular No. 26/1999 only make a general reference indicating that the timely compliance with the STR requirement contributed to preventing both the intermediary and the staff from being involved in criminal offences.

537. Circular No. 26/1999 further details this reporting obligation, clarifying that in case of suspicious circumstances, the director of the credit institution shall inform the former Office of Banking Supervision (ie. the CB currently) of "*any transaction reasonably deemed to be linked to a criminal activity*" by submitting a detailed report.

538. Circular No. 33/2003 indicates that intermediaries shall report any transaction suspected of money laundering on the basis of the objective features of transactions (such as type, amount, nature) of the customers' background (economic capacity and business activity) and of any other circumstances known to intermediaries in their functions. The term transaction is defined as not only a single transaction but also a series of operations that appear to be economically and functionally connected.

539. As mentioned in section 2.1 (see comments in relation to Recommendation 1), the list of predicate offences does not include all of the FATF designated predicate offences in full. It has to be indicated that certain cases (eg. smuggling in persons or self money laundering) are not regarded as predicate underlying crimes in San Marino. In relation to FT, evaluators recall their comments under section 2.2. These shortcomings limit de facto the scope of the reporting obligation.

540. There is no standard form to report an STR. The AML Service advised the evaluators that reporting entities state in most of their reports the reasons why they have a suspicion.

541. The legislation is based on reporting suspicious transactions and is not constrained by a transaction amount or any de minimis limit.

542. Attempted transactions are not dealt with explicitly in the AML Law. Circular No. 33/2003 indicates that even if a transaction has not taken place, but an intermediary has acquired sufficient elements of suspicion, reporting is in all cases mandatory.

543. There is no obligation in legislation to make an STR where there are reasonable grounds to suspect or they are suspected to be linked or related to or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism. No STRs were reported on suspicions of FT.

Recommendation 14

544. In accordance with article 8 of the AML Law No. 123/1998, reporting suspicious transactions does not amount to infringement of secrecy rules, nor entails liability of any kind. However, this reporting obligation for banks and financial institutions is to be made only in relation to criminal activities as referred to in article 1 of the law, that is for money laundering offences.

545. There is no specific legal provision in the AML law prohibiting financial institutions and their directors, officers and employees to disclose the fact that a STR or related information is being reported or provided to the Central Bank.

546. An indirect provision could be seen in article 157 (4) of the LISF providing for the on-going application of measures issued by the Central Bank , pursuant to laws or regulations abrogated by the LISF, until new measures pursuant to the LISF will come into force.

547. Circulars No. 26 & 16F /99 of the former Office of Banking Supervision, sent to credit and financial institutions, contain a reference to the importance of keeping reports on ML "*as confidential as possible, avoiding any disclosure of information to people other than those responsible for the examination of reported transactions*".

Additional elements

548. Circular No. 26 & 16F/99 underlines the importance of safeguarding the anonymity of the reporting person, "*in order to protect banking and financial institutions from any form of retaliation*".

Recommendation 19

549. The authorities advised that there has been no analysis undertaken regarding the feasibility and utility of a system where banks and other financial institutions would report all domestic and international currency transactions above a fixed amount to a national central agency.

550. The San Marino authorities referred in this context to the Circular of 27 January 1999 which requires financial institutions to record and keep records of all transactions, including cash transactions, exceeding €15 500 in a special register (either electronically, which is preferred, or in hard copy). Such records are to be kept for at least 5 civil years in addition to the year of reference and compared with the relevant accounting data during inspections made by the supervisory authority.
    a) the date, amount and reason for the transaction
    b) the amount of cash and bearer instrument:
    c) for physical persons: the personal data of the person (name, surname, date and place of birth, address etc) and details of the official ID document of the customer conducting the transaction either on how own behalf or on behalf of third parties;
    d) for legal persons: personal data which includes the corporate or business name, the registered or the main office of the entity on whose behalf the transaction is made

551. There is no national central agency with a computerised database. The CBSM advised that it has unrestricted access to the above-mentioned data.

Recommendation 25 (guidance and feedback related to STRs - criterion 25.2)

552. The authorities advised that as there is no legal requirement, the AML Service or the Central Bank does not provide any general or specific feedback to reporting entities. Receipt of STRs is acknowledged in writing.

553. As mentioned earlier, statistics were not published in any report by the AML Service or the Central Bank. No information was disseminated so far on current techniques, methods and trends (typologies), on sanitised examples of money laundering cases.

554. Compliance officers usually prepare an annual report (including on trends and specific cases) which they send to the Board of directors of their bank and to the Central Bank (Supervision department 1). The persons met on site indicated that they have never been questioned on the content of the report by Central Bank representatives.

555. The compliance officers and other representatives whom the evaluation team met expressed their desire for receiving feedback from the AML Service . While some of them indicated that the only contact they had with the Central Bank/ AML Service was through receipt of circulars and recommendations, and that the current focus was more on the acceleration in production of legal texts, they all expressed the need to hold regular meetings with the Central Bank representatives to discuss trends, typologies, etc.

Statistics

556. The following statistics were provided by the AML Service :

	2006	**2005**	**2004**	**2003**	**2007 (end of March 2007)**
STRs/UTRs	17	20	20	19	5
of which STRs	9	14	15	14	**2**
STRs sent to the Court	1	1	2	2	1
STRs closed	4	10	13	12	3
STRs under examination	4	3	0	0	1

557. Though there is no breakdown per reporting entity, the evaluators were advised these STRs/ UTRs were received mainly from banks and a very few from financial institutions. Overall, the evaluation team considered that both the number of suspicious and unusual transaction reports received so far since the second evaluation round from the banks, and particularly from the financial companies, is low. The conversion rate from STRs to cases sent to the Court (1 or 2 out of maximum 15) suggests that the quality of reports must be rather poor.

558. Statistics surprisingly indicate a decrease over time, which leads evaluators to question the awareness among reporting entities of their reporting obligations and their ability to recognise and report suspicious activities.

3.7.2 Recommendations and comments

Recommendation 13 & Special Recommendation IV

559. The evaluators consider that the system put in place for the reporting of suspicious transactions should be reviewed to ensure that it meets all the requirements set out in Recommendation 13. The AML law should require financial institutions to report *promptly* to the FIU. The reporting requirement which should be in law or regulation should clearly cover all predicate offences and all aspects of FT.

560. There is currently no requirement in law or regulation obliging authorised subjects to report STRs related to terrorist financing. Hence the current situation does not satisfy the requirements set out in Special Recommendation IV. Consequently, San Marino authorities are urged to set out in law or regulation a direct mandatory obligation for financial institutions to report to the

FIU when it suspects or has reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism.

561. Furthermore, San Marino should ensure that there is a requirement in law or regulation that all suspicious transactions, including attempted transactions, are reported regardless of the amount of the transaction. Also, such a reporting requirement should apply regardless of whether they are thought, among other things, to involve tax matters.

562. The authorities should also take steps to address the concerns related to the effectiveness as a whole of the reporting system. The FIU should pursue outreach to those financial institutions which are either nor reporting or underreporting suspicious transactions, and possibly issue further guidance and recommendations on how to determine whether a transaction is suspicious.

Recommendation 14

563. The situation as regards implementation of requirements of Recommendation 14 highlights issues which were already of concern in the first and second evaluation rounds and for which no changes have occurred.

564. Legal protection of reporting entities for disclosures in good faith should be extended to cover reporting of suspicions of financing of terrorism. There should be a clear legal provision excluding any kind of liability for breach of any restriction on disclosure of information imposed by contractual, legislative, regulatory or administrative provisions for persons reporting suspicions of financing of terrorism.

565. The San Marino authorities should ensure that legislation provides for an explicit legal prohibition of tipping-off. Such provision should cover financial institutions and their directors, officers and employees (permanent and temporary) and should prohibit from disclosing the fact that a STR is being reported or provided to the FIU.

Recommendation 19

566. San Marino should consider the feasibility and utility of implementing a currency reporting system across all regulated sectors.

Recommendation 25

567. The competent authorities should establish feedback mechanisms to provide adequate and appropriate feedback to reporting entities. They should update and complete as necessary existing guidance so as to improve the effectiveness of suspicious transaction reporting, in particular in relation to types of suspicious activities, use of standard forms, procedures and time for submission of an STR, and consider developing targeted guidance as appropriate.

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criterion 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	**NC**	• The reporting requirement which should be in law or regulation does not clearly cover all predicate offences • There is no explicit legal requirement to report funds suspected to be linked or related to financing of terrorism as required by criterion 13.2 • Attempted transactions are not explicitly covered in law or regulation

		• very low level of reports, including from outside the banking sector, raises concerns in relation to the effectiveness of the reporting system
R.14	**PC**	• There is no law provision protecting reporting entities from responsibility for violating restrictions on disclosure of information imposed by contractual, legislative, regulatory or administrative provisions in relation to STRs on FT. • There is no explicit or direct provision in the law prohibiting the disclosure of a STR being reported to the FIU.
R.19	**NC**	• San Marino has not considered the feasibility and utility of implementing a system whereby financial institutions report all transactions in currency above a fixed threshold to a centralised agency with a computerised database.
R.25.2	**NC**	• Lack of adequate and appropriate feedback to reporting entities by competent authorities
SR.IV	**NC**	• no explicit obligation to report any suspicions of terrorist financing • requirements under 13.3* not covered in law or regulation and 13.4 not covered

Internal controls and other measures

3.8 Internal controls, compliance and branches located abroad (R.15 & 22)

3.8.1 Description and analysis

Recommendation 15

Establish and maintain internal procedures, policies and controls to prevent ML and FT, and to communicate these to their employees

568. The Circular of 12 February 2003 requires banks and financial companies to appoint compliance officers whose tasks will included the powers to carry out "line controls" aimed at ensuring the correct transactions and the accurate information flows of data flows as well as any other control related to anti-money laundering.

569. The circular states that such controls are intended, among other things, to identify the facilities necessary to guarantee suitable procedures for the collection and processing of such data and that these procedures must be verified periodically.

Develop appropriate compliance management arrangements

570. As referred to in the previous paragraph, the Circular of 12 February 2003 requires banks and financial companies to appoint compliance officers with clear AML/CFT tasks and responsibilities. Given the nature of the tasks and responsibilities in practice compliance officers have to be appointed at managerial level.

Nominated Compliance Officers

571. Under the Circular, in addition to the analysis and transmission of STRs/UTRs to the AML Service, compliance officers are also required to prepare a detailed annual report on the entire AML/CFT activity of the bank or financial company, including statistics on STRs/UTRs, which must be submitted to the Board of Directors for approval and subsequently to the CBSM. Compliance officers are also in charge of:
    - maintaining relations with the AML Service;
    - identifying and developing adequate anti-money laundering measures, including internal regulations, procedures and controls;
    - training of staff.

572. During discussions with representatives of the Banking and financial associations (ABS, ASSOBANK, ASSOFIN) they advised that the role of Compliance Officer has recently been formalised and expanded. The ABS advised that it issued a circular to its members in 2006 for the purpose of advising its members to fully comply with AML provisions and other statutory provisions. This circular provides that with regard to AML there should be a specific structure with an independent compliance function reporting to the Board of Directors. Persons in the compliance function should have high professional standards, in-depth knowledge of the bank and possibly a legal qualification/background. In terms of training requirements for Compliance Officers this is a matter that is under consideration. In particular views have been exchanged with Italian counterparts and a training course with an Italian University is being arranged by the Central Bank.

Compliance officer and other appropriate staff should have timely access to customer identification data and other CDD information

573. The authorities have advised that as compliance officers are appointed at managerial level, as a rule, they have timely access to all such information held in the institution.

Maintain an adequately resourced and independent audit function to test compliance

574. Under Article 41 (3) of the banking Law No. 165/2005 (LISF), the board of auditors of a financial institution is required to notify the supervisory authority (CBSM) without delay of all events and facts that are learnt while performing their tasks that might constitute management irregularity or a breach of regulations governing the financial institutions. The CBSM confirmed that it has received some such reports under this section.

575. There are no specific requirements on an independent audit function within financial institutions and this may be an issue for smaller financial institutions.

Ongoing employee training to ensure that employees are kept informed of new developments

576. Circular of 12 February 2003 sets out obligations on staff training. The circular states that staff has to be addressed, in particular, to those employees and collaborators who generally have direct relations with customers.

577. The circular indicates that such training shall cover know-your-customer rules and that special training programmes must be arranged for compliance officers on updates on the development of international standards, ML risks and typologies.

578. Staff training must be ongoing and systematic and take place within comprehensive programmes, taking into account both developments in the relevant legislation and procedures arranged by the financial institutions.

579. Representatives of the private sector advised that there is AML/CFT training for staff involved in the dealing with customers. This is usually included as part of general training courses, particularly for new staff. Some banks also advised of plans to introduce more formal training to specifically cover AML/CFT issues.

Screening procedures to ensure high standards when hiring employees

580. Policies and procedures for hiring employees are mainly aimed at ensuring that the staff meet “fit and proper” criteria, e.g. adequate educational background and professional skills, integrity, etc.

581. Directors, auditors, managers or similar executives, including compliance officers, must fulfil other requirements as to their professional integrity and skills, under the relevant company law provisions and instructions issued by the CBSM.

Additional elements

582. Compliance officers met by the evaluation team advised that they report to the Board of Directors.

Recommendation 22

Ensure that foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations

583. At present no San Marino financial institutions have established any foreign branches or subsidiaries.

584. The Central Bank advised that while the law would permit a bank to establish a representative office or branch abroad or provide services without an establishment (Article 74 of the LISF) this could not take place without prior notification to the Central Bank prior to making an application to the competent authority in the country of establishment. The Central Bank may prohibit the establishment in the light of its capital, financial and organisational position or if the legislative, regulatory or administrative measures in the country of establishment impede the effective exercise of its supervisory functions. Moreover the Central Bank advised that establishment could not take place without putting in place agreements with such countries.

Pay particular attention that this principle is observed with respect to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations

585. There is no legislation or other enforceable means that specifically address this recommendation although no such operations have been established to date.

586. Minimum AML/CFT requirements of the home and host countries differ; branches and subsidiaries in host countries should be required to apply the higher standard.

587. There is no legislation or other enforceable means that specifically address this recommendation although no such operations have been established to date.

Inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures

588. There is no legislation or other enforceable means that specifically address this recommendation although no such operations have been established to date.

Additional elements

589. There is no legislation or other enforceable means that specifically require financial institutions to apply consistent CDD measures at the Group level, taking into account the activity of the customer with the various branches and majority owned subsidiaries worldwide. No such operations have been established to date.

3.8.2 Recommendations and comments

Recommendation 15

590. Circular of 12 February 2003 partially meets the requirements of Recommendation 15. The San Marino authorities should ensure that detailed requirements for financial institutions to establish internal procedures to prevent AML/CFT are contained in a law, regulation or other enforceable obligation.

591. In particular there should be requirements to ensure that compliance officers and other appropriate staff have timely access to customer identification data and other CDD information,

that financial institutions maintain an adequately resourced and independent audit function to test compliance and that there are screening procedures to ensure high standards when hiring employees.

Recommendation 22

592. While there are currently no financial institutions that have established operations abroad, provisions on AML/CFT requirements in respect of subsidiaries, branches or representative offices abroad should be included in future legislation or other enforceable means.

593. These provisions should include the need to ensure that foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and FATF Recommendations, the need to pay particular attention that this principle is observed with respect to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations, provisions that where minimum AML/CFT requirements of the home and host countries differ branches and subsidiaries in host countries should be required to apply the higher standard and the need to inform the home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	**PC**	• There are no legislative or other enforceable obligations to ensure that compliance staff has timely access to CDD and transaction information. • There are no legislative or other enforceable obligations to require that financial institutions maintain an adequately resourced and independent audit function to test compliance. • There are no legislative or other enforceable obligations that require screening procedures for hiring employees
R.22	**NC**	• Notwithstanding that at this time no financial institutions have established operations abroad and that in order to do so a series of agreement would need to be put in place, in the event that a financial institution applied to the Central Bank to establish operations abroad there are currently no specific requirements in place to cover the following areas: - the need to ensure that foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and FATF Recommendations, - the need to pay particular attention that this principle is observed with respect to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations, - provisions that where minimum AML/CFT requirements of the home and host countries differ branches and subsidiaries in host countries should be required to apply the higher standard and - the need to inform the home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures.

3.9 Shell banks (R.18)

3.9.1 Description and analysis

Countries should not approve the establishment or accept the continued operation of shell banks

594. There is no explicit reference to shell banks in the law. The authorities advised that, arising from the legislation that is in place on establishing banks, they are not permitted and that there are no shell banks in San Marino

595. The previous banking law (Law No. 21 of February 1986 as amended in 1999) contained provisions on authorisation of banks which included the requirement to have a permanent establishment in San Marino.

596. Article 13 of the new Banking Law No. 165 of 17 November 2005 (LISF) sets out the minimum requirements for authorisation of new banks and financial companies. These requirements include a registered office and main office located in San Marino, paid-up capital of a certain amount, a business plan, fit and proper tests for the management and directors, and no close links exist that might impede the exercise of the supervisory functions. The imposition of these requirements would not seem to facilitate the establishment of a shell bank and the authorities have stated that in their view, these requirements would prohibit the establishment of a shell bank.

Financial institutions should not be permitted to enter into, or continue, correspondent banking relationships with shell banks

597. There are no specific provisions that prohibit banks or financial companies to enter into or maintain business relationships with shell banks.

Financial institutions should be required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks

598. At the time of the on-site visit, there was no requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.2 Recommendations and comments

599. The prohibition of establishment or operation of shell banks and the issue of correspondent banking relationships with shell banks should be referred to explicitly in future law, regulation or other enforceable means.

600. San Marino should require financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**PC**	• There is no prohibition on financial institutions from entering into, or continuing correspondent banking relationships with shell banks. • Financial institutions are not required to satisfy themselves that respondent institutions in a foreign country do not permit accounts to be used by shell banks.

Regulation, supervision, monitoring and sanctions

3.10 Regulatory and supervisory system – competent authorities and SROs - Roles, functions, duties and powers (including sanction powers) (R.17, 23, 25, 29 and 30)

3.10.1 Description and analysis

Authorities/SROs roles and duties & Structure and Resources (R23, 30)

Recommendation 23

601. Criterion 23.1 requires that countries should ensure that financial institutions are subject to adequate AML/CFT regulation and supervision and are effectively implementing the FATF Recommendations.

602. AML Law No. 123/1998 charges the former Office of Banking Supervision (now the CBSM) to issue implementing provisions for the application of the AML legislation (CBSM Circulars and Standard Letters). Law No. 28/2004 supplementing the 1998 AML Law charges the CBSM to issue implementing provisions on customer identification, record maintenance and reporting requirements for the person listed that Act new obliged entities which include credit recovery on behalf of third parties, financial promoters and insurance promoters and insurance agencies).

603. In accordance with Law No. 96/2005 (statutes of the CBSM) and Law No. 165/2005 (LISF), AML/CFT functions are fulfilled by the CBSM:

a) the Supervision Committee is in charge of "preparing regulatory provisions implementing AML/CFT legislation which are issued by the Central Bank;

b) the "on-site inspection service", within the Supervision Department 2, is in charge of carrying out on-site visits. AML/CFT requirements (identification, registration, reporting requirements and internal auditing) are included in the issues dealt with by this service. In addition, the AML Service conducts on-site inspections on its own or jointly with the On-Site Inspection Service.

604. CBSM (on-site inspection service) has drafted an inspection programme for AML/CFT which is used during on-site inspections of banks and financial institutions. It is expected that this draft will be finalised during 2007. This covers the following areas:
- Review of compliance of internal regulations with laws/circulars issued by the CBSM.
- Review of staff training.
- IT Tools used for Identification/Record-keeping.
- Random inspection of a number of customer accounts re account opening/ transactions.
- Random inspection of record-keeping.
- Review of transactions that may be anomalous – any enhanced due diligence carried out.
- Review of approach to customer identification – does the bank/financial institution really know its customers

605. There is an obligation on financial institutions to submit an Annual Report on AML to the CBSM (Circular of 12 February 2003- Section 1.2). During the on-site evaluation compliance officers advised the evaluators that they do not normally receive any feedback on these reports unless there is a query.

606. Other contacts by the CBSM with financial institutions includes meetings on quarterly assessment of the accounts. At these meetings other matters may also be discussed including AML issues.

607. Criterion 23.2 requires countries to ensure that a designated competent authority or authorities has/have responsibility for ensuring that financial institutions adequately comply with the requirements to combat money laundering and terrorist financing

608. The designated authority is the CBSM.

Recommendation 30

Supervisors should be adequately structured, funded, staffed, and provided with sufficient technical and other resources to fully and effectively perform their functions. Adequate structuring includes the need for sufficient operational independence and autonomy

609. The functional merger between the former San Marino Credit Institute and Office of Banking Supervision initiated in June 2003 (shortly after the 2nd mutual evaluation) came to its final stage in December 2005, with the approval of the new statutes and staff organisational charticle The establishment of the new Central Bank required a great deal of time and resources.

610. Besides stipulating the typical functions of a Central Bank, the new statutes - namely Law No.96 of 29 June 2005, as amended by Law No. 179 of 13 December 2005 - designate the Central Bank as the currency authority, the tax collecting agency on behalf of the State, and the supervisory authority over the whole financial system in respect of banking, financial, and insurance services. It is also vested with inspection powers in anti-money laundering matters.

611. The Central Bank of the Republic of San Marino (CBSM) has a total staff of 55, assigned to the various Services responsible for fulfilling the functions assigned as set forth in the Central Bank Law (No. 96/2005) and its internal regulation.

612. At the time of the visit, there were e 17 staff assigned to the areas of Supervision and the AML Service split as follows:

Area	**Staff Numbers**
Inspections – On-site	2
Inspections Off-Site	4
Regulation –Banks/Financial Cos/Mutual Funds	7
Economic Analysis (Statistics/Macro etc.)	2
Total staff for supervision	**15**
AML Service	2
Total Staff	17

613. Overall, while the CBSM appears to be adequately structured and provided with sufficient technical resources, the level of staff resources assigned to the inspections area is not considered adequate, particularly for on-site inspection work.

614. This is evidenced by the low level of on-site inspections carried out. Out of 12 banks and 42 financial companies, in 2005, 2 inspections (1 Bank, 1 Financial Company) and 2006 , 5 inspections (2 Banks, 3 Financial Companies) were carried out[15]. There were no inspections undertaken during 2003 and 2004 due to the work that was being undertaken during that period on the new CBSM structure.

[15] The authorities advised after the visit that in 2007, the On-Site Inspection Service carried out 4 inspections concerning supervision issues, including on AML/CFT matters (3 banks and 1 financial company) and 6 specific AML/CFT inspections (3 banks and 3 financial companies).

615. In relation to 2007 the CBSM advised that some financial companies will be subject to inspection. However, a detailed plan was not provided to the evaluators at the time of the evaluation.

616. The on-site inspection staff also work closely with the AML Service and carry out certain work on behalf of the AML Service in relation to gathering of information and documents.

617. All or part of the costs incurred by the CBSM for supervision (both on-site and off-site, prudential, etc.) are charged to the banking and financial entities once a year, in accordance with the law.

618. The evaluators were advised by representatives of the private sector that, in their view there had been a significant increase in the resources of the CBSM since 2003 which increase had resulted in cost increases imposed on the financial sector through its funding of supervision. The representatives advised that they were not in a position to comment on whether the resources of the CBSM were adequate.

Staff of competent authorities should be required to maintain high professional standards, including standards concerning confidentiality, and should be of high integrity and be appropriately skilled

619. The CBSM staff are selected on the basis of fit and proper tests. Article 15 of Law No. 96/2005 (Central Bank Statutes), which sets out provisions on the Supervision Committee (composed of the Director General and two Inspectors), stipulates, inter alia, that as far as external inspectors are concerned, these have to be selected from among professionals of undisputed integrity, with longstanding experience in banking, financial and insurance supervision. Inspectors, whether internal or external, are not allowed to engage in self-dealing. They are appointed for a three-year term of office, renewable.

620. Article 17 indicates, among other things, what offices or conditions are incompatible with the office of Director General or Inspector, e.g. to be a member of parliament or government, a judge, a director or auditor of a bank; to hold shares in a bank or legal entity subject to supervision by the Central Bank, to meet the criteria defining an "unfit person" (under Company Law No. 47/2006, repealing Law No. 162 of 19 November 2004).

621. Representatives of the private sector expressed the view to the evaluators that the staff of the CBSM were competent.

Staff of competent authorities should be provided with adequate and relevant training for combating ML and FT

622. Training for CBSM supervisory staff takes the form of 'on-the-job' training. In addition during 2007 some international training initiatives have been undertaken or are planned in relation to AML/CFT (with the Bundesbank/ Bank of Italy).

Authorities' Powers and Sanctions – Recommendations 29 & 17

Recommendation 29

Supervisors should have adequate powers to monitor and ensure compliance by financial institutions

623. Powers to monitor and ensure compliance by financial institutions with AML/CFT requirements are vested in the CBSM under AML Law No. 123/1998 as supplemented by Law No. 28/2004, Law No. 96/2005 (Statutes of the CBSM) and Law No. 165/2005 (LISF). Such powers are set

out in Article 34 of the CBSM Statutes (and are not limited to AML/CFT requirements), and Articles 39 - 44 of the LISF cover the areas of regulatory powers.

Supervisors should have the authority to conduct inspections of financial institutions, including on-site inspections, to ensure compliance

624. Article 42 of the LISF sets out the powers of investigation of the CBSM. This states that the supervisory authority may conduct inspections at the offices and branches of financial institutions as well as requesting information, ordering disclosure of documents and carrying out the checks and verifications deemed to be necessary.

Supervisors should have the power to compel production of or to obtain access to all records, documents or information relevant to monitoring compliance

625. Under Article 36 of LISF, banking secrecy may not be invoked against the supervisory authority in the exercise of its functions of surveillance and prevention of terrorism and the laundering of money of unlawful origin. Article 42 of the LISF states that the supervisory authority may have access to the accounts and all the books, notes and documents of an institution and may question the directors and any employee or officer with a view to obtaining information and clarification.

The supervisor's power to compel production of or to obtain access for supervisory purposes should not be predicated on the need to require a court order

626. Under Art 36 of LISF banking secrecy may not be invoked against the supervisory authority. Article 42 of the LISF sets out the powers of investigation of the CBSM as referred to above.

Supervisor should have adequate powers of enforcement and sanction against financial institutions, and their directors or senior management for failure to comply with or properly implement requirements

627. Powers to impose pecuniary sanctions for non-compliance anti money laundering provisions are provided for in Article 9 of AML Law No. 123/1998 as supplemented by Article 9 of Law No. 28/2004. The types of actions that can be punished include: violation of customer identification and transaction recording obligations by staff, issue of bank cheques exceeding €15,500 and not bearing the clause' not transferable', failure to report suspicious transactions and irregular bank cheques not bearing the clause 'not transferable'.

628. Powers to impose pecuniary administrative penalties more generally are set out in Article 31 of the CBSM Statutes and Article 141 of the LISF. In this latter case, the amounts of fines are fixed from time to time in a decree, the latest being Decree No. 76 of 30 May 2006**.** Such fines ange between €1000 and €50 000.

Recommendation 17

Ensure that effective, proportionate and dissuasive criminal, civil or administrative sanctions are available to deal with natural or legal persons covered by the FATF Recommendations

629. With regard to administrative sanctions the position is as outlined under Recommendation 29 above. These sanctions apply to the individuals who actually infringed the provisions. As for legal entities, under the LISF they are liable, with an obligation to "charge" pecuniary sanctions on the infringing individual.

630. With regard to other sanctions e.g. criminal these are referred to under Section 2.1.1 (R.1 & 2).

631. Article 34 of the CBSM Statutes provide, among other things, for a wide range of situations where the CBSM may inflict punishment accordingly, including the possible withdrawal of a licence.

Designate an authority (e.g. supervisors, the self-regulatory organisations referred to in Recommendation 24 or the FIU) empowered to apply these sanctions

632. The designated authority is the CBSM.

Sanctions should be available in relation not only to the legal persons that are financial institutions or businesses but also to their directors and senior management

633. Sanctions are available for physical persons only. The administrative sanctions imposed by the Central Bank are applied to the natural persons who are responsible for the violations (article 9 of Law 123/1998). The legal persons to which the physical person responsible for the infringements belong will be answerable jointly with the latter for payment of the penalties, and will be under an obligation to recover this payment from the physical person responsible (article 141 of the LISF). In cases of criminal offences under Law No. 123/1998, administrative sanctions are not applied.

The range of sanctions available should be broad and proportionate to the severity of a situation

634. Article 34 of the CBSM Statutes provide, among other things, for a wide range of situations where the CBSM may inflict punishment accordingly, including pecuniary sanctions, and the suspension of authorisation in the event of serious irregularities and serious infringements of the laws and regulations. The Central Bank can also propose to the Congress of State, through the Committee for Credit and Savings, the revocation or dissolution of the administrative and monitoring organs of the banks and financial intermediaries, and the appointment of extraordinary administration bodies in accordance with the procedure specified by the Banking Law.

635. The CBSM advised that following the conduct of an inspection their findings and actions required are set out in a report to the bank or financial institution. The institution must confirm that actions will be taken. Non-compliance with the requirements set out in the report could lead to sanctions such as a fine. In 2006 one fine of €2 000 was imposed on a bank for non-compliance with customer identification and for not reporting an irregular cheque to the CBSM.

Recommendation 23 (Market entry)

Supervisors or other competent authorities should take the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function

636. Law No.165/2005 (LISF) governs the authorisation process and sets out the requirements to be met by applicants for the purpose of conducting financial business defined as “reserved” activities listed in Annex 1 of that Act. Reserved activities include banking, granting of loans, fiduciary activity, investment services, collective investment services, insurance, reinsurance, payment services, electronic money issue services, exchange intermediation and the taking of holdings represented by securities in the capital of other undertakings.

637. The provisions on Access to Reserved Activities are set out in Part I - Title II of the LISF, while the ‘requirements for company members’ and in relation to ‘assets held on own account’ are set out in Part I - Title III and Title IV. Financial promotion and insurance intermediation are regulated under Part I- Title V of the LISF.

638. While LISF (Law No.165/2005) provisions are in force, in addition for each reserved activity a Regulation is also required. At the date of the on-site evaluation the only CBSM Regulation in force is for collective investment services (Regulation No.2006-03). Shortly after the on-site visit, Regulation No. 2007-2 was issued for insurance intermediaries (27 March 2007, in force 15 April 2007). In the case of the other reserved activities, the existing laws and decrees continued to apply until a replacement measures are issued under the LISF (article 157(5) of LISF) as well as regulations issued by the Central Bank.

639. In addition the following legal instruments provide further regulatory provisions for the following:

- Article 5 (4) b2 of Law No. 21 of 1986 requires, for the authorisation of banking activities, 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 purpose;
- Former OBS Circular of 20 November 2000, sets out requirements and criteria to be met by applicants for a licence to form and operate a new bank or financial company, subsequently supplemented by Circular of 17 February 2006.
- CBSM Standard Letter of 7 February 2005 sets out the moral and professional requirements to be met by directors and auditors of banks and financial companies.
- Financial Promoters are regulated under Circular of 24 January 1992, Standard Letter of 20 July 1998 and Circular of 23 May 1986, which contain inter alia provisions on liability.

Directors and senior management of financial institutions subject to the Core Principles should be evaluated on the basis of "fit and proper" criteria

640. Directors and senior management staff are subject to the requirements set out in (1) Article 15 of LISF Requirements on company members, which includes the obligation to satisfy requirements of good repute, professionalism and independence set out by the supervisory authority and (2) the relevant Circulars and Standard Letters referred to above.

Natural and legal persons providing a money or value transfer service, or a money or currency changing service should be licensed or registered.

641. MVT services and money or currency changing services are considered "reserved activities" under LISF, and its Annex 1.

642. The authorities advised that in practice these activities are exclusively carried out by banks, which are subject to the licensing procedure established under LISF. However, during the on-site evaluation the evaluators noted a hotel that was providing currency exchange service. This matter was raised with the Central Bank which advised that as this business was carried out on an occasional basis and not part of the main business of the hotel. Accordingly, it was not considered to fall within the reserved activities of the LISF.

Financial institutions (other than those mentioned in Criterion 23.4 should be licensed or registered and appropriately regulated, and subject to supervision or oversight for AML/CFT purposes

643. All persons and entities carrying out "reserved" activities are licensed, regulated and supervised by the CBSM under LISF provisions and in accordance with relevant implementing Regulations issued by the CBSM.

644. The licensing procedure as well as regulatory and supervisory measures and provisions take into account prevention of ML and FT and relevant Circulars and Standard Letters.

Recommendation 23 (Ongoing supervision and monitoring)

645. For financial institutions that are subject to the Core Principles the regulatory and supervisory measures that apply for prudential purposes and which are also relevant to money laundering, should apply in a similar manner for anti-money laundering and terrorist financing purposes.

646. LISF (Banking Law No. 165/2005) covers all the requirements:
- Licensing and structure – Part I - Title II, III and IV- Risk management – Part II - Title I
- Ongoing supervision– Part II - Title I;
- Consolidated supervision– Part II - Title I.

647. Such requirements apply to all persons and entities that carry out "reserved activities", as defined in LISF. As already set out in previous paragraphs above, these requirements are further specified in relevant Regulations, Circulars and Standard Letters.

Natural and legal persons providing a money or value transfer service, or a money or currency changing service should be subject to effective systems for monitoring and ensuring compliance with national requirements to combat money laundering and terrorist financing

648. Money Value Transfer (MVT) services and money or currency changing services are considered "reserved activities" under LISF, and its Annex 1, and the authorities advised that as such they are provided exclusively by banks, subject to supervision of the CBSM (and limited MVT service provided by Post Offices – see Section 3.11).

Financial institutions (other than those mentioned in Criterion 23.4) should be licensed or registered and appropriately regulated, and subject to supervision or oversight for AML/CFT purposes

649. At present, the only category of financial institution in San Marino providing a limited range of MVT services are post offices, which are wholly state-owned. As set out in under Section 3.11 below, such services are rendered on behalf of Poste Italiane S.p.A (the privatised Italian postal administration), as if under an "agency contract" or similarly to a branch office. Pending the issue of the implementing regulation by the CBSM of AML/CFT requirements under Law No. 28/2004 (extending the list of obliged entities under AML Law No. 123/1998), for the purpose of AML they are not subject to supervision by the San Marino authorities although the authorities have advised that they are currently subject to supervision by Poste Italiane S.p.A.

Recommendation 25 (Guidance for financial institutions other than on STRs)

Competent authorities should establish guidelines that will assist financial institutions and DNFBP to implement and comply with their respective AML/CFT requirements

650. CBSM has issued Circulars and Standard Letters on customer identification procedures, record keeping requirements and reporting regime (STRs/UTRs).

651. The AML Service of the CBSM disseminates the lists of designated persons of UN Resolution 1267 and successor resolutions, as well as the lists of targeted persons under relevant EU Regulations (notably 2580/2001 and 881/2002) on terrorists, terrorist groups and organizations. The AML Service, moreover, disseminates lists of persons designated by foreign FIUs.

652. The AML Service also issues "Information Notes" to warn about the names of persons which were reported by obliged entities as having requested banking and financial institutions to carry out unusual transactions (ie. financial transactions which were economically ill-grounded because of their nature, typology and amount) (Circular of 12 February 2003).

653. The AML Service also provides assistance, on request, to reporting entities with regard to the application and/or implementation of AML/CFT requirements set out in relevant legislative or regulatory provisions, and with regard to transactions conducted by their customers.

654. These guidelines date back (for the latest) from 2003 and have not been updated since.

3.10.2 Recommendations and Comments

Recommendation 17

655. San Marino should ensure that there are effective, proportionate and dissuasive criminal, civil or administrative sanctions to deal with legal persons that fail to comply with the AML/CFt requirements.

656. The effectiveness of the sanctions in place has not been fully tested in practice.

Recommendation 23

657. As noted above, the level of on-site inspections is considered low. The authorities are urged to remedy this situation in order to ensure effective supervision of financial institutions.

658. A detailed plan should be put in place to carry out regular inspections of banks and financial institutions which inspections should include the assessment of AML/CFT procedures.

659. More formalised training procedures should be put in place for supervision staff, in particular for those staff involved in on- and off site inspections.

Recommendation 25

660. The competent authority should issue comprehensive and updated guidance to assist financial institutions to implement and comply with AML/CFT requirements.

Recommendation 29

661. While the Central Bank has the adequate powers to monitor and inspect financial institutions, the effectiveness of these powers has not been fully tested to date due to the low level of inspections.

Recommendation 30

662. To ensure effectiveness of the new supervisory framework, and in particular compliance with the AML/CFT international standards, the level of available resources should be reviewed in order to ensure that adequate resources are assigned to facilitate the carrying out of sufficiently detailed onsite and offsite supervision.

3.10.3 Compliance with Recommendations 17, 23, 25, 29, 30 & 32

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	**PC**	• There are a range of criminal, civil or administrative sanctions available to deal with natural persons covered by the FATF Recommendations - however, the effectiveness of these powers has not been fully tested to

		date • No sanctions for legal persons • Effectiveness concerns
R.23	**LC**	• The level of on-site inspections is considered low and the effectiveness of the powers of the CBSM has not been fully tested to date.
R.25	**PC**	• No comprehensive and updated guidance to assist financial institutions to comply with AML/CFT requirements
R.29	**LC**	• The effectiveness of these powers has not been fully tested to date.

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and analysis

663. According to San Marino legislation, money or value transfer services fall within the scope of the new banking Law No. 165/2005 (LISF), notably under letter I of ANNEX 1 dealing with payment or settlement services, and as such are defined as "reserved activity", e.g. subject to licensing by the CBSM. As informed by the CBSM, for the time being only banks can be authorized to provide a money or value transfer service.

664. The only non-bank entities in San Marino that may offer services similar to MVT services, but on a much more limited scale, are post offices, not by virtue of the LISF, but under the relevant governmental agreement which dates back to 1933 and which, as the authorities advised, was going to be replaced in the near future by a new one. Although San Marino post offices are entirely state-owned and form part of the Public Administration, under the responsibility of the Ministry of Posts and Telecommunications, in practice they render MVT services on behalf of Poste Italiane S.p.A (an Italian private corporation).

665. As already noted in Section 3.5.1, 5 out of the 10 post offices operating in San Marino are technologically equipped (PGOs) to offer MVT services. In offering these services, they act exactly as branches of the Poste Italiane S.p.A. The range of MVT services that may be offered in San Marino is however much more limited and includes:
- ordinary money orders;
- international money orders (with countries other than Italy);
- urgent money orders (for a maximum of € 2,500; the beneficiary has to provide a password to be given the money)
- regular payments (e.g. pensions);
- deposits (but not withdrawals) on postal current accounts which may be opened only in Italy.

666. Issue or selling of postal credit or debit cards is not licensed. Unlike in Italy, there are no postal ATMs (Postamat) in San Marino. Despite the PGO equipment that would also allow using Moneygram (the money remittance system operated by Poste Italiane S.p.A.), San Marino post offices are not licensed to do so. Other MVT service providers like, for example, Western Union, do not exist in San Marino.

667. Under Law No. 28/2004, supplementing AML Law No. 123/1998, post offices are included in the extended list of obliged entities. When the CBSM will issue the relevant implementing regulation, all AML/CFT obligations that are applicable to the other institutions will be also applicable to postal organisations.

668. Nonetheless, the evaluators were advised that the San Marino post offices equipped to offer MVT services meet the AML requirements applied to Italian post offices and for the reasons explained in the previous paragraphs, in respect of MVT services San Marino post offices are fully integrated in the Italian postal system. The evaluators were also informed that post offices report transactions to the Italian authorities above a certain threshold in a special form provided by Poste Italiane S.p.A. The situation on reporting of suspicious transactions by the post offices was somewhat unclear. There was mention that while the formal obligation was to report suspicious transactions to the Italian authorities, employees had also been instructed to report unusual transactions to the San Marino FIU. According to the information available, no unusual transaction has been reported to the San Marino FIU by a post office by the time of the evaluation.

669. As regards control and monitoring of state-owned post offices, the evaluators were informed by the San Marino authorities that Poste Italiane S.p.A may carry out on-site inspections, which are subject to prior agreement with the Directorate General of the Post Offices of the Republic of San Marino and that such controls have been carried out. The evaluators were informed that no sanctions can be applied by the Poste Italiane S.p.A. For that reason, for example, San Marino postal organisations cannot offer some other MVT services, such as Moneygram.

670. Sanctions as provided for in FATF Recommendation 17 are not applied, given that, as noted above, the San Marino AML/CFT legislation is not being applied in respect of postal organisations. After the adoption of the relevant implementing provisions, the Central Bank will be responsible for the supervision of the postal organisations and applicable sanctions will be those under Article 9 of AML Law No. 123/98 as amended and supplemented by Law No. 28/2004.

3.11.2 Recommendations and comments

671. Although San Marino authorities pointed out that in respect of AML requirements connected to the provision of MVT services, San Marino post offices comply with the rules applicable to the Italian postal service, domestic AML/CFT implementing provisions legislation should be adopted as soon as possible in order to meet the requirements of Special Recommendation VI, criteria 1 to 6.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**NC**	• Lack of implementing measures on provision of money transfer services by San Marino post offices • There is no provision for the application of administrative, civil or criminal sanctions.

4 PREVENTIVE MEASURES - DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1 Customer due diligence and record-keeping (R.12)

(applying R. 5, 6 and 8 to 11)

4.1.1 Description and Analysis

672. Most of the FATF designated Non-Financial Businesses and Professions (DNFBPs) currently operate in San Marino: real estate agencies, dealers in precious metals and stones, lawyers, notaries, accountants, auditors and trust and company service providers.

673. Recommendation 12 requires DNFBP to meet the CDD and record-keeping requirements set out in Recommendations 5, 6 and 8 to 11 in the circumstances specified in Criterion 12.1.

674. Overall it can be noted, that although the core obligations for both DNFBP and financial institutions are based on the same law (AML Law No. 123/1998 as amended by Law No. 28/2004)), the AML/CFT preventive measures as described for financial institutions do not apply to DNFBP yet, since the Central Bank has not issued the relevant implementing regulations yet.

Applying Recommendations 5, 6, 8 - 11

675. Article 8 of Law No. 28/2004 supplementing AML Law No. 123/1998 extends customer identification, record keeping and reporting requirements to other persons and entities, including DNFBPs. It determines that such obligations:

"shall equally apply to Post Offices and to the following activities which, in order to be carried on, remain subject to being duly licensed, authorised, registered, or incorporated:

a) credit recovery on behalf of third parties;
b) financial promoters and insurance promoters;
c) insurance agencies;
d) ***real estate agencies****;*
e) ***running of gambling houses and casinos****;*
f) custody and transport of cash, securities or values by means of "special security guards";
g) ***business of auction houses or art galleries****;*
h) ***trade in antiques****;*
i) ***trade in, including export and import of, gold for industrial or investment purposes****;*
j) ***manufacturing, mediation of and trade in, including export and import of, precious stones and objects****;*
k) as well as to the following natural or legal persons when they perform their professional activities such as:
- ***(1) auditors, external accountants and tax advisors;***
- ***(2) notaries, attorneys and other independent legal and commercial professionals when they participate, whether:***
  - **a.** ***by assisting in the planning or execution of transactions for their client concerning the:***
    - ***(i) buying and selling of real property or business, industrial, and service entities;***
    - ***(ii) managing of client money, securities or other assets;***

(iii) opening or management of bank accounts, bearer securities and securities accounts;

(iv) organisation of contributions necessary for the creation, operation or management of companies;

(v) creation, operation or management of companies, trusts or similar structures;

b. ***or by acting on behalf of and for their client in any financial or real estate transaction."***

676. All above stated obliged entities are subject to the same AML requirements as banks and financial institutions and are punishable by the same terms in case of non-compliance (Article 9 of AML Law No. 123/1998 as amended by Law No. 28/2004). The Central Bank has the power to impose sanctions.

677. Under Article 8 of Law No. 28/2004 supplementing the AML Law No. 123/1998 "the Supervision Department of the Central Bank of the Republic of San Marino shall issue provisions for the implementation of the customer identification, record maintenance and reporting requirements by the persons referred to in paragraph 3 above [new categories of obliged entities and persons." At the time of the on –site visit however the CBSM had not issued the relevant implementing regulation, hence the AML/CFT obligations are not actually enforced.

678. Notwithstanding the absence of relevant legislative or other enforceable requirements, from the discussion with the Accountants' Association it was noted that they have taken certain actions since the adoption of the AML law in 2004 (Law No. 28/2004). As associations of lawyers, notaries and accountants are a self-regulatory body and there is a national committee of independent professionals in place in San Marino, the accountants would propose that this body should be the one that issues regulations to the profession and have prepared a draft regulation and they will approach the CBSM on this matter. In addition, they have started raising awareness among accountants as regards preventive AML/CFT measures.

679. The authorities were of the opinion that the competence to issue such regulations is vested with the Central Bank.

4.1.2 Recommendations and Comments

680. Although San Marino has brought a long list of DNFBPs within the remit of the AML laws, the required implementing regulations have not yet been adopted.

681. As such, the DNFBPs are currently not obliged to comply with the AML/CFT requirements. Therefore the San Marino authorities are urged to issue relevant implementing regulations as soon as possible and introduce the obligations required under Recommendation 12 to DNFBPs. The changes recommended for CDD requirements for financial institutions should be applied also to DNFBP.

682. It should be considered if the explicit inclusion of Internet casinos and trust and company service providers in the list of entities that have to be monitored for AML/CFT purposes is needed.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	NC	• The implementing regulations for DNFBPs have not been adopted, thus the requirements of R. 12 are not being applied to DNFBPs currently • Existing CDD requirements have the same deficiencies as applied to financial institutions

4.2 Reporting of suspicious transactions (R. 16)

(in application of Recommendations 13 to 15 & 21)

4.2.1 Description and analysis

683. DNFBPs are subject to the same requirements of the AML law (Article 8 of Law No. 28 /2004) as apply to financial institutions and are detailed in Section 3.7 above. However, the Central Bank has failed to issue implementing regulatory provisions; therefore DNFBPs are currently not considered as being subject to any reporting requirements.

684. None of the DNFBPs or their representative bodies spoken to during the evaluation had taken steps to comply with the provisions of the requirement to report suspicious transactions. They informed the evaluators that they were fully aware of the obligations posed by article 8 and have held series of meetings considering the implications and obligations set out by the law and also for raising awareness meetings to facilitate the implementation of the obligations. Most of them were of the view that STRs should be sent to their self regulatory organisation. It appeared that at the time of the visit, they had not had any consultations with the Central Bank on these aspects.

685. For instance, the association of lawyers and notaries informed the evaluation team that they would like the San Marino authorities to allow lawyers and notaries to send their suspicious transaction reports first to the Bar Association.

686. The authorities advised after the on-site visit that in their view, suspicious transactions reports should be sent to the Central Bank.

Applying Recommendation 14

687. As all DNFBPs are within the scope of the AML Law, the protection from breach of restriction on disclosure in Article 8 applies. However, the practical impact of these provisions is extremely limited. Furthermore, the deficiencies identified earlier as regards R. 14 are also relevant in this context.

Applying Recommendation 15

688. As previously noted, while the core obligations for both DNFBP and financial institutions are present in the law (AML Law No. 123/1998 as amended by Law No. 28/2004,) the AML/CFT preventive measures for DNFPB as described for financial institutions are not implemented yet, since the Central Bank has not issued the relevant implementing provisions. There are no obligations in place for DNFBPs on establishment of internal procedures, policies and controls to prevent money laundering and financing of terrorism.

Applying Recommendation 21

689. As noted above, while the core obligations for both DNFBP and financial institutions are present in the law, the AML/CFT preventive measures for DNFBP are not implemented, since the Central Bank has not issued the relevant implementing provisions. There are no obligations in place for DNFBPs to pay special attention to business relations and transactions with persons from or in countries which do not or insufficiently apply the FATF recommendations.

4.2.2 Recommendations and comments

690. San Marino should take immediate steps to fully implement the provisions of the AML law in respect of DNFBPs and address the deficiencies which have been identified. Outreach and guidance should be developed for all DNFPB to explain the reporting obligations.

691. The San Marino authorities should put in place requirements for all categories of DNFBPs to establish internal procedures, policies and controls to prevent money laundering and financing of terrorism.

692. DNFBPs should be required to give special attention to business relations and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF recommendations.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**NC**	• Although DNFBPs are covered by the scope of the AML law, in practice nothing has been done to implement the provisions as the Central Bank has not adopted the relevant implementing regulations. This raises serious concerns due to lack of effectiveness of measures in place. • Similar deficiencies in the AML legislation relating to Recommendations 13 -15 & 21 that apply to financial institutions also apply to DNFBPs (see comments and ratings in sections 3.6, 3.7 & 3.8)

4.3 Regulation, supervision and monitoring (R. 24 & 25)

4.3.1 Description and Analysis

Recommendation 24

693. As regards supervision of DNFBPs, for the time being no regulation has yet been devised for the implementation of AML/CFT supervision over the new categories of obliged entities and persons.

694. Consequently, currently there are also no designated competent authorities or SRO's responsible for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements for most categories of the DNFBPs, though, as already noted in Section 4.1.1, bodies such as the Accountants' Association and Bar Association have taken certain limited actions.

695. The supervisory authority of the Central Bank is vested with regulatory powers under Article 39 of Law No. 165/2005: the Central Bank may issue "instructions" – measures of a binding

nature, hence non-compliance is punished –"in accordance with article 8(5) of Law No. 123, of 15 December 1988, as amended by Law No. 28, of 26 February 2004". Administrative sanctions in case of non-compliance with these and other regulatory measures are provided for in Article 141 of Law No. 165/2005.

Casinos, gambling houses, lotteries

696. Although explicitly mentioned in Law No. 28 of 26 February 2004, casinos and similar gambling houses are illegal under San Marino legislation (Article 1 of Law No. 67 of 25 July 2000) and it was contended by the San Marino authorities that no such entities (including internet casinos) operate in the Republic of San Marino. However, San Marino has not taken any measures to identify whether there are any San Marino residents/citizens who own or operate: (1) an internet casino; (2) a company that runs an internet casino; or (3) a server that is located in the Republic of San Marino and which hosts an internet casiNo.

697. Pursuant to Law No. 67 of 25 July 2000, the following games, *inter alia*, are allowed in San Marino: games of chance and skill/ability, lotteries, lotto and betting/bookmakers. Prior to the adoption of the Law No. 143 of 27 December 2006, these activities were licensed by a Control and Supervision Committee appointed by the Government. Applications for license have to be accompanied by the documents required under the said law, and under the company legislation where appropriate. It is obligatory, *inter alia*, to include personal details of the persons who intend to organize and run the initiative along with their general penal record certificates. The application could be rejected by the Committee for Control and Surveillance when it is without the information required or when the authorisation requested is found to be directed towards the pursuit of a scope that fails to conform to the interests of the State, its international conventions or agreements and also when the applicant fails to provide adequate guarantees in relation to payment or the prize or settlement of the taxes and lastly, if the general penal record certificate indicates sentences for criminal offences of a financial nature or offences of another nature for which a final criminal sentence has been passed involving imprisonment for not less than two years or when the documentation presented shows that the applicant has lost his competence or has been declared bankrupt and a definitive sentence for this has been passed.

698. The functions of the Committee for Control and Surveillance were transferred to the Public Institution for Gaming Activities which was set up by Law No. 143/2006. They include the control and surveillance of the running of the gaming activities. At the time of the on-site visit, it had no staff, 5 members and 2 inspectors . The authority however has no power with regard to AML/CFT compliance.

699. Gaming activities are regulated under relevant Decrees that are issued for this purpose. For the time being, only bingos and similar games, lotteries, lotto, betting and game machines other than slot-machines and roulettes are allowed. None of these activities is however covered by AML/CFT legislation.

Recommendation 25 (criteria 25.1)

700. No guidance has been issued for DNFPB. The authorities advised that this would be issued only once the CBSM issues the implementing regulation under article 8.3 of the Law No. 28/2004.

4.3.2 Recommendations and Comments

701. Due to the absence of implementing regulations DNFBPs are not subject to AML/CFT obligations yet and are not supervised and monitored by designated competent authorities or SROs, which could ensure compliance of DNFBPs with AML/CFT requirements.

702. The authorities are therefore urged to issue relevant implement regulations and designate AML/CFT supervisors for all DNFBPs and ensure that these supervisors have adequate powers to inspect for compliance with AML/CFT requirements, including internal procedures.

703. San Marino should be aware of issues relating to the illicit operation of internet casinos in San Marino, and should be prepared to address these problems.

704. Sector specific guidance on suspicious transaction reporting needs to be developed and provided to DNFBP required to make suspicious transaction reports in line with the FATF Best Practice Guideline on Providing Feedback to Reporting Financial Institutions and other Persons.

4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**NC**	• There is no supervision or monitoring for AML/CFT requirements in place for DNFBPs, except for casinos, which anyway are not allowed in San Marino and therefore this recommendation is not applicable for casinos. • The implementing regulations on AML/CFT for DNFBPs will need to be brought into effect so that there are requirements that can be monitored.
R.25	**NC**	• No guidelines were developed to assist DNFBP to implement and comply with their respective AML/CFT requirements, either by the CB or by the SROs.

4.4 Other non-financial businesses and professions – modern secure transaction techniques (R. 20)

4.4.1 Description and analysis

705. Criterion 20.1. states that countries should consider applying Recommendations 5, 6, 8-11, 13-15, 17 and 21 to non-financial businesses and professions (other than DNFBP) that are at risk of being misused for money laundering or terrorist financing.

706. In addition to the non-financial businesses and professions as designated by FATF Recommendations the obligations under San Marino AML/CFT legislation will also apply to:

- Business of auction houses or art galleries;
- Activities connected with the trade in antiques;
- Transportation of cash, securities or values by means of “special security guards”;
- Financial activities/ Transfers and drafts managed by Post Offices;
- Running of gambling houses (in addition to running of casinos).

707. All those categories were introduced by Article 8 of Law No. 28/2004 supplementing AML Law No. 123/1998. However, as the relevant implementing provisions, as mentioned under Section 4.1, have not yet been issued by the Central Bank, these AML/CFT obligations are not actually enforced.

708. At this point it should be noted that Article 2a of the second EU directive applies also to all dealers in high value goods – not only dealers in precious metals and precious stones – whenever payments is made in cash in an amount of € 15 000 or more.

709. Criterion 20.2 specifies that countries should take measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering. Examples of techniques or measures that may be less vulnerable to money laundering include reducing reliance on cash, not issuing very large denomination banknotes and secured automated transfer systems.

710. The San Marino authorities advised that the use of cash is very limited. Most financial transactions are conducted through bank transfers, credit cards and cheques. Article 5 of the AML Law No. 123/1998 amending Article 1 of Decree No. 71 of 29 May 1996 namely limits the use of cash and negotiable instruments exceeding € 15 500. Transactions above this amount can only be conducted through a licensed intermediary - a bank or financial company.

711. The use of bank accounts and the electronic transfer of money for settlements on direct debit and credit systems together with the use of credit cards have been increasing. The Central Bank contributed to establish an efficient infrastructure for electronic fund transfers (the Sammarinese Interbank Network – Rete Interbancaria Sammarinese). They have also encouraged the banking sector and public administration to reduce cash payments (eg. payment of pensions).

4.4.2 Recommendations and comments

712. San Marino has taken steps to extend AML/CFT requirements to some other categories of professions and activities.

713. Regardless of the restrictions on the use of cash in amounts over € 15 500 it is recommended that the San Marino authorities extend the AML/CFT framework in accordance to Article 2a(6) of the second EU Directive to all dealers in high value goods not only to antiques shops, dealers in precious metals and precious stones.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**LC**	• While consideration has been given to this area, the relevant legislation adopted has not been implemented.

5 LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and analysis

714. Recommendation 33 requires countries to tale legal measures to prevent the unlawful use of legal persons in relation to money laundering and terrorist financing by ensuring that their commercial, corporate and other laws require adequate transparency concerning the beneficial ownership and control of legal persons. Competent authorities must be able to have access in a timely fashion to beneficial ownership and control information, which is adequate, accurate and timely. Competent authorities must also be able to share such information with other competent authorities domestically or internationally. Bearer shares issued to legal persons must be controlled.

715. Under article 18 and 19 of the Company Law No. 47/2006, the formation of companies and partnerships in San Marino requires a memorandum of association in the form of a public deed which includes the following information:
- legal format of business
- business name
- duration
- main or registered office
- purpose
- amount of capital stock
- name, date and place of birth, domicile and nationality of all individuals, or business name, date and place of incorporation, registered office and registration number of companies having taken part as members or on whose behalf a memorandum of association has been drafted
- the share of each partner/member
- full capital issue
- capital contributions by each partner/member
- value of capital contributions in kind including evaluation criteria
- rules concerning the composition and functions of corporate bodies, e.g. management and representation
- rules on profit distribution
- members of corporate bodies first appointed
- rules concerning the functioning.

716. With respect to joint-stock companies and anonymous companies, the memorandum of association must also specify the number and nominal value of shares, whether they are nominee or bearer, issue and circulation criteria. With respect to partnerships, the partnership contract must specify the rules concerning profit distribution and the share of each partner in profits and losses.

717. The by-laws or articles of association set forth rules on the functioning of the company and of its corporate bodies. It is a separate act, yet it forms integral part of the memorandum of association or partnership deed.

718. In order to form an anonymous company or an atypical company under article 2(5) of the company law, the authorization of the State Congress is also required (article 16.3) based on a "rough business plan" that is objectively and subjectively convincing, as to its "reliability and compatibility with the economic-social requirements of the Republic". In accordance with Decision No. 32 of 19 February 2007 of the Congress of State, such authorization also takes into account personal identity data, Social Security Number or Taxpayer Identification Number

and curricula vitae of the initiators (promotori). Decision n. 32/2007 also applies to fiduciaries. At the time of the on-site visit, authorities confirmed the existence of 591 anonymous companies but were not able to provide evaluators with information of the total amount of capital held by such companies.

719. Company members, as well as directors or persons performing similar functions may not be "unfit persons". Under Delegate decree No. 130/2006, unfit parties are natural persons who:

- have been sentenced, with a definitive penal sentence, for not less than three months or two years, during the past fifteen years, according to whether an offence against property or not was involved, or
- has suffered bankruptcy proceedings or equivalent proceedings under foreign legal systems, under way or concluded less than five years ago.

720. Fiduciary shareholders have to verify that each grantor is a fit party (article 17, Company Law No. 47/2006).

721. Under Article 14 of Delegate Decree No. 130/2006 the notary who received the memorandum of association forming a company, being satisfied that all law requirements have been met, has to deposit certified copy thereof within 30 days with the Court's Register, together with appropriate evidence of compliance with all law requirements. Failing the deposit within said time limit, any member or director may do that at the expenses of the company. Registration in the Company Register is requested upon deposit of the memorandum of association.

722. The total share capital of a limited company is divided in quotas, freely transferable, unless differently established by the Articles of Association – statuto (article 24.2 company law). The transfer of quotas must take place in the form of public deed or authenticated private agreement, a copy of which must be submitted to the Register of Companies under the responsibility of the notary receiving the deed or authenticating the signatures (article 26 company law).

723. The total share capital of anonymous companies and joint stock companies is divided into shares, both nominee and bearer. Bearer shares may not be issued nor may nominee shares be converted into bearer shares before the entire company capital has been paid up (article 27.7 company law). Nominee shares are transferred by public deed or authenticated private agreements (article 28 company law). Under article 29 of the company law, "bearer shares are transferred by consignment".

724. The Company Register is kept by the Court Registrar in accordance with the provision of article 6 of the new Company law (Law No. 47/2006 as amended by the Decree No. 130 of 11 December 2006). The law provides that the Register can also be kept by computerized means.

725. The Registrar checks only the formal regularity of the documents submitted (article 20(4)), and within 10 days from the request either enters the company in the Company Register or rejects the request providing reasoned notification to the applicant. In case of rejection or failure to enter the company within such 10 days, the notary, or director, or any member of the company may address the judge within 30 days from the notification of rejection or expiry of the deadline. The judge, being satisfied that all law requirements have been met, orders the registration of the company in the Company Register. On the contrary, rejection by the judge may be appealed against within 30 days from the notification of rejection.

726. Registration in the Company Register is notified by the Court's Registrar to the Office of Industry, Handicraft and Trade within the following 15 days.

727. The data which is entered in the Register for each company is as follows :

- the details of the memorandum of association

- the Congress of State's authorisation, where required by special legislation, and any subsequent license granted or withdrawn;
- the registered office and any subsequent changes thereof;
- the issued and paid-up capital stock and any changes therein;
- the corporate purpose and any subsequent changes therein;
- the name of the legal representative or representatives, directors, auditors, external auditors or auditing firms where appointed, liquidators, specifying their relevant powers;
- the date of balance sheet approval;
- any formal business transformation, merger or splitting;
- any order issued by the judicial authority concerning winding-up, granting of a moratorium, starting of bankruptcy proceedings and any other order the judicial authority deems useful to have reported;
- the presence of a single shareholder where the company has not issued bearer shares;
- the existence of pledged shares;
- the seizure or foreclosure of shares or stakes.

728. In accordance to article 43 of Company Law No. 47/2006, the general meeting is entitled to modify both the memorandum of association and the articles of associations. The minutes of all general meetings must be deposited with the Court's Register within 30 days from their registration or, if not applicable, from the date on which the meeting was held, unless otherwise specified by the law. As long as they are not reported in the Company Register, any changes in the information listed above may not be opposed to third parties, unless one can demonstrate they had knowledge of such changes (article 6.3). Modifications to the articles of association are made in a public deed, and within 30 days from the date on which the deed is registered, the notary applies for it to be registered in the Register (article 22).

729. According to article 6 paragraph 6, the Register of Companies is public and can be freely examined by anyone. It is not clearly stated whether it is allowed to make copies of relevant information contained in the Register. There is no time limit set for requesting parties to be granted access to the Register.

730. Evaluators were told that details of the memorandum of association to be submitted to the Register do not include personal identification data of shareholders, which only are in the memorandum itself not submitted nor registered in full. Consequently, there does not seem to be possible to know the identity of shareholders by consulting the Register of Companies.

731. Some concern arises given the fact that in anonymous companies all shares can be bearer shares and that, in such a case, real owners of anonymous companies are not known when bearer shares are transferred. Information on natural persons holding bearer shares, which are transferred by consignment, do not appear in the Register.

732. Under Law No. 47/2006 and delegate Decree No. 130/2006, companies have to keep accounting records in the registered office of the company in the Republic of San Marino which may be accessed by shareholders, the notary and the auditors. Companies are also required to keep the originals of each transaction for 5 years in the registered office of the company, the share register (indicating the number of shares, personal data or share or stakeholders, transfers or constraints), a bond register, records of general meetings and decisions of the executive committee, of the board of auditors or of a single auditor, a book of audit. All such books and records are certified by the Registration Office prior to their use and have to be kept throughout the existence of the company.

733. As of 1st January 2008, article 44-bis of the company law, as amended by Decree No. 130/2006, requires notaries to identify bearer of anonymous companies' shares (by acquiring a copy of their identity documents) only when attending the General Assembly meetings. Under this provision, notaries are permitted to show identification data of shareholders only to the judiciary

authorities, upon request, in the course of criminal proceedings. Any other disclosure by the notary as to the identity of holders of bearer shares is punished under article 377 of the Criminal Code. As a consequence, notaries are not allowed to show such information to the FIU unless a Court order exists over a pending criminal proceeding.

734. The evaluators consider that legislation in San Marino does not clearly provide for transparency on information on beneficial ownership and control of companies, notably in the case of one company owing shares in another company which in turn will buy shares in a third company, and so forth, thus creating a chain-reaction of participations in which the whole network of participation is not easy to trace down. In this regard, they recall also the comments expressed in previous sections of this report regarding the lack of a definition of beneficial owner incorporating the concept of identifying those who ultimately control the legal person and the absence of requirements in legislation on the need to identify the beneficial owner and verify his identity using relevant information or data from a reliable source. The requirement to identify shareholders when establishing a company does not refer to natural persons owning or controlling the legal person buying shares in a company.

5.1.2 Recommendations and comments

735. It is recommended that San Marino reviews its legislation with a view to taking measures to ensure wider transparency as to legal persons. In particular:

- San Marino should consider abolishing anonymous companies.
- The Register of Companies should include identification data of natural persons being shareholders of a company or owning/controlling the legal person-shareholder of the company.
- The requirement to identify shareholders when establishing a company should refer also to beneficial owners (natural persons owning or controlling the legal person buying shares in a company).
- San Marino should consider introducing a clear procedure to access the information kept in the Register of Companies, notably as to time limits set to be granted access to the relevant documents.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	**PC**	• The Register of Companies does not contain information on the beneficial owners • There is no full transparency of the shareholders, in particular with reference to anonymous companies, and the requirement to identify shareholders when establishing a company does not refer to natural persons owning or controlling the legal person buying shares in a company. • There are no appropriate measures to ensure transparency in cases of transfers of bearer shares

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and analysis

736. Legislation governing trusts was enacted in 2005, namely Law No. 37 on Trusts, providing for the creation of trusts under the law of San Marino as well as Law No. 38 on the tax treatment of trusts based on San Marino law. Further provisions were also issued with Decree n. 86/2005 on Trusts Register and Book of Events. San Marino has ratified (through Decree No. 119 of 2004) the Hague Convention of 1 July 1985 on the law applicable to trusts and their recognition.

737. Law No. 37 only applies to trusts enacted by the will of the settler. The trust is enacted through a written act. If the act is inter vivos, the trust must be constituted through an act with a signature authenticated by a notary public. Under article 6 of the Trust act, the trust act must contain inter alia: the will of the settlor, identification of the authorised or qualified trustee, the identification of trust property, and for trusts including beneficiaries, their identification, or the criteria which lead to identify beneficiaries. If the act fails to identify the trustee the Court shall appoint one "upon the motion of anyone with vested interest".

738. It is worth noting that there is no clear definition of trust beneficial ownership in San Marino; only the Annex to Circular No. 29/F of 2005 of the Central Bank defines as "effective beneficiary" the individual who possesses or exercises control over the company acting as a trustee.

739. In accordance with article 19 of the law, only banking and financial institutions or fiduciaries, authorized by the Central Bank of San Marino, can be appointed as trustees when their company structure can be identified by the Central Bank and their legal and administrative seat is in San Marino. Nevertheless, under paragraph 5, if the trust has more than one trustee and at least one of them is an authorized trustee, the trustee office may also be held by natural persons. In such a case, the trustees act unanimously.

740. In accordance with article 8, within 15 days from the receiving of the trust act, the trustee shall draw up an abstract including , among other elements, reference to trust beneficiaries and the trustee indication. This abstract shall be signed by the trustee itself and its signature shall be authenticated by a notary. Article 8 does not seem to require identification details of beneficiaries or settlor to be contained in the abstract.

741. Under article 9, a public Trust Register is established under e supervision of a magistrate delegated by the Executive Magistrate. The trust is registered with the transcription of the abstract. Consequently, the Register does not seem to contain any reference to the identification of the settlor and beneficiaries. The extent of the "trustee indication " required by article 8 is also vague: in particular, it is not clear whether information on individuals (owning or controlling the authorized legal person acting as a trustee) would be contained in the abstract and, therefore, in the Register.

742. Under article 3 of the Decree No. 86/2005, implementing article 9 of the Trust law, the Register is paper-based and must guarantee, at the same time, availability and confidentiality of registrations. Anybody can have access to the Register and make copies upon a written request indicating the related reasons (article 4, Decree No. 86/2005). The request is immediately granted or, whereby not possible, the consultation procedure shall be concluded within 10 days from the date of the request.

743. The extent granted to confidentiality by article 3 of the Decree No. 86/2005 is not clear. More specifically, the relationship between confidentiality and the possibility allowed to any person to consult and make copies of the Register provided by article 4 is not clearly outlined as well as

the reference in article 4(3) of Decree No. 86/2005 to the required indication of reasons so as to access the Register; notably on the basis of what reasons one would be granted access (article 4.3).

744. The evaluators noted that the magistrate responsible for the Trust Register was only appointed on 1st January 2007 and was subsequently authorized to study how to implement the Register for a 3-month-period. Evaluators were told that, pending his appointment, the Executive Magistrate was supposed to be holding the Register. As a consequence, it is not clear whether the Register, though formally established by Law No. 37/2005, was physically in place at the time of the on-site visit. In particular it is not clear when the five trusts established in 2005 under the new Trust Law were actually registered.

745. In accordance with article 29 of the Trust law, the trustee is responsible for the Book of Events, which shall contain, among other information, a description of the events regarding beneficiaries. Upon request, the book shall be exhibited to the guardian (the subject controlling s the actions of the trustee and entitled to add or remove beneficiaries), as well as to the judicial authority or to the supervisory authority (the Central Bank). In particular, articles 29 and 19.3 letter d) provide for the Central Bank to issue provisions on the supervision of companies acting as a trustee with particular reference to the disclosure and communication duties. With Circular No. 29/F of 2005, the Central Bank issued some preliminary supervisory regulations requesting the Board of Auditors and the Auditing company to check compliance with all pertinent AML legislation and regulations and, subsequently indicating checks conducted, respectively, in the Minutes' Book and in the Register. Nevertheless, Circular No. 29/F does not seem to contain specific regulation on the consultation of the Book of Events held by the trustee office.

5.2.2 Recommendations and comments

746. In the light of the foregoing, the evaluators believe that the San Marino authorities should take additional steps to ensure that legislation on trusts require additional information on the beneficial ownership and control of trusts and other legal arrangements. More specifically:

- A clear definition of beneficial ownership should be provided in the legislation , notably as to trusts' beneficiaries.
- It should be clearly stated in the legislation that information accessible in the Trust Register should include details on settlors, administrators, and trustee; this information should include details also on individuals owning or controlling legal persons acting as beneficiaries, settlors or trustees.
- The relation between the public nature of the Trust Register, accessible to anybody (under article 9.3 of the Trust law and article 4 of Decree No. 86/2005) and the confidentiality of registered information (article 3 of Decree No. 86/2005) should be clarified.
- The reference to reasons to request access to the Register made by article 4.3 of Decree No. 86/2005 should also be clarified.

5.2.3 Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	**NC**	• There is no clear definition of beneficial ownership of trust in San Marino. • The Register of Trust does not contain information on beneficiaries or settlors. • At the time of the visit, there were indications that the legislation had not yet been implemented, there were doubts that the Register was physically in place and whether the established trusts had been registered.

5.3 Non-profit organisations (SR. VIII)

5.3.1 Description and analysis

747. As noted in section 1.4, the NPO sector primarily consists of associations, foundations and non-profit credit institutions all operating domestically. These are under the supervision of the Council of Twelve, which also authorizes their purchasing of real estate and accepting of gifts, inheritances or legacies.

748. 2 non-profit credit institutions currently exist in San Marino which are legal persons although excluded from the application of article 4 of the old company law requiring registration.

749. Associations are not required to be registered; nevertheless a registration is required in order to acquire legal status. At the time of the on-site visit, 233 registered associations existed in San Marino.

750. Foundations are a legal form based on the proprietary principle and consist of financial means and property assigned so as to generally support beneficial purposes. At the time of the on-site visit there were 50 foundations.

751. Furthermore, there are also 50 ecclesiastic entities and 7 trade unions or workers' associations, subject to the same registration requirements applicable to associations and foundations.

752. Public associations, foundations, ecclesiastic entities and trade unions are registered in a special record of private bodies corporate kept with the Court's Register. Although unable to see the relevant regulation, evaluators were informed that the NPO Register contains the following information on each registered entity:
- date of establishment;
- personal data of the members of the board of directors and of the board of auditors;
- duration;
- purpose;
- personal data of the founder(s);

753. The evaluators were not able to verify whether there is any specific legislation which would require the collection of such information or whether budgets or balance sheets are submitted to the Register.

754. The Judge of Supervision over non-profit organization, responsible for the NPO Register, confirmed the absence of such a requirement in the legislation but mentioned a formal request submitted to the Secretary of State for Foreign Affairs, Secretary of State for Justice and to the Executive Magistrate of the Single Court in order to be authorised to prepare a draft law containing a legal framework ensuring transparency of the NPO Register, based on the current practice applied at the moment.

755. The evaluators were also told that the Judge holding the Register applies, by analogy, transparency requirements provided for in the new Company Law. They were informed that when appointed , the judge wrote to all registered organisations, requesting the missing information and relevant up-to-date documents, so as to complete the Register.In case of no reply, the judge requested the Council of Twelve to issue a decree to wind-up the organisation. Once the Decree stating the winding up had been issued, the organisation had to appoint a listed auditor responsible for closure of all accounts and transferring the remaining money to non-profit organisations having similar purposes or to the State. Similarly, the evaluation team was told that whenever the Judge of Supervision became aware or suspected irregularities on the basis of the documents and information received or registered, he requested the Council of Twelve to carry out further verification or issue a decree winding up the concerned organisation,

although there a mandatory reporting policy does not seem to exist in such cases. This led to reducing numbers from 500 to 330 organisations.

756. It is not clear whether the Council of Twelve, the supervisory authority for registered associations and foundations, is aware of the issues in SR VIII or whether it effectively and regularly checks them as to the risk of being exploited for FT purposes .

757. Evaluators were told that the judge annually verifies that funds are spent as announced or planned upon examination of the budget and balance sheet every organization is requited to send to the Register.

758. The Judge of Supervision also confirmed the existence of a clear procedure allowing public access to the Register.

759. Some concerns arise as information on people receiving funds from non-profit foundations is not publicly available, by virtue of Law No. 70/1995 protecting privacy. It was not clear whether, in case of suspicions, the concerned criminal judge could have access to such information, regardless of the existence of a pending criminal proceeding.

760. The Judge of Supervision has never received guidance with regard to NPOs from the FIU or the Central Bank.

5.3.2 Recommendations and comments

761. It appears that no review of the adequacy of laws and regulations related to NPOs has been undertaken by the San Marino authorities, as required by Criterion VIII.1 nor any review of the sector's potential vulnerabilities to terrorist activities. Though some very limited measures are applied, the authorities of San Marino should review and complete the existing system of laws and regulations. Such reviews should be undertaken and necessary changes to the laws and regulations should be made.

762. The authorities should also develop an effective outreach program with the NPO sector.

763. A number of measures have been taken, as a matter of practice and by analogy to the existing requirements for companies, which led to the collection of certain information on registered entities, though there is no legal requirement in legislation for this purpose. The authorities should promote effective supervision and monitoring and ensure that there is a clear legal basis which enables them to require NPOs to maintain information on the purpose and objectives of their activities, on the identity of persons who own, control or direct their activities (including senior officers, board members and trustees). Appropriate measures should also be in place to sanction violations of oversight measures.

764. The evaluators were not made aware of any legal requirement for NPOs to maintain for a period of at least 5 years records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objective of the organisation. Such a requirement should be introduced in law or regulation.

765. San Marino authorities should also raise awareness of the SR VIII among existing supervisory authorities engaged with the NPO sector and to define a clear and effective coordination mechanism between NPO supervisory authorities, law enforcement agencies, FIU/Central Bank.

766. Furthermore appropriate contacts points and procedures should be established to respond to international requests for information regarding particular NPOs that are suspected of FT or other forms of terrorist support.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**NC**	• San Marino has not yet reviewed the adequacy of domestic laws and regulations that relate to non profit organisations vis à vis FT nor has conducted periodic reviews of the sector for FT vulnerabilities • No review of the risks in the NPO sector has been undertaken, though there is some transparency. • It is unclear whether there is an adequate legal basis to implement measures to ensure accountability and transparency • No outreach to the NPO sector with a view to protecting the sector specifically from FT abuse • No requirement for the NPO sector to keep detailed records or to keep them for a period of at least 5 years • no specific points of contact and procedures have been identified to respond to international request for information regarding particular NPOs

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R. 31)

6.1.1 Description and analysis (R. 31 & 32.1)

767. The key players in AML/CFT in the Republic of San Marino are the Central Bank, the Investigating Judges and the three law enforcement forces (the Police, Gendarmerie, Guardia di Rocca); and the Ministries of Finance, Foreign Affairs, and Justice.

768. Various provisions in the AML legislation make reference to forms of cooperation between competent authorities, in particular in the context of investigation and prosecution as well as for confiscation and freezing (see previous sections). Co-ordination between and among competent authorities where criminal investigations are involved is ensured by the judge (law commissioner,) who directs the law enforcement agencies and relies on the Central Bank.

769. The evaluators noted from the various meetings held that the co-operation between the investigating judge, the law enforcement agencies and the AML Service was considered to be very good in the context of specific cases.

770. Also, throughout the on-site evaluation, it was established that the law enforcement forces routinely co-operate with each other in various investigations under the direction of the investigating Judge. During the meeting with the law enforcement forces it was mentioned that a law of 1994 provides that the law enforcement forces are to meet at least once a month to discuss law enforcement issues (nowadays they meet more frequently, at times even once a week). It however came to light that the AML Service, under normal circumstances, is not invited to attend meeting held jointly by the law enforcement forces.

771. The authorities advised that in addition there are also “informal” ways of co-operation that are inherent to the close, day to day relationships between the authorities involved in AML/CFT matters.

772. It appeared nevertheless that there was no effective mechanism in place to enable policy makers, the AML Service, law enforcement and the Central Bank to cooperate and coordinate their actions.

773. There is no collective regular review of the AML/CFT system and its performances which would enable to set the basis for future development and implementation of policies and activities to combat money laundering and terrorist financing.

Additional elements

774. The authorities advised that the Central Bank has put in place a consultation mechanism with the banking and financial institutions which is operated whenever AML/CFT measures are planned to be implemented. The Bankers association and various bank compliance officers informed the evaluation team that they had an excellent working relationship with the Central Bank. However when the bank compliance officers were asked whether they meet with the Central Bank of San Marino and the AML Service to discuss AML/CFT matters their reply was negative.

775. There is no mechanism in place for consultation with DNFBPs.

6.1.2 Recommendations and comments

776. The evaluators noted with satisfaction the close co-operation and co-ordination that existed between the judiciary and the law enforcement forces as well as the consultation process between the Central Bank and banking and financial institutions. Operational co-operation between the Judiciary and the AML Service appeared to take place at a working level in specific cases under investigation and it should be further fostered, as these cases are pursued on a limited basis.

777. However, the evaluators are concerned as the meetings held indicated a lack of policy co-operation across all relevant competent authorities. There appeared to be no mechanism facilitating a regular and joint review of the AML/CFT system and its effectiveness by competent authorities. The lack of such a review is considered to be a serious weakness in the system.

778. It is recommended that the relevant authorities develop a mechanism at national level facilitating co-operation, co-ordination and consultation concerning the development and implementation of AML/CFT policies and legislation leading to a clear national strategy. This could for instance be obtained by forming a joint working group (comprising representatives from the AML Service, the Central Bank, the Judiciary, the Law Enforcement units, relevant ministries and involving as well the private sector) which could meet on a regular basis to evaluate the systems operating, its results, its drawback and ailments and then determine which actions are required to improve the effectiveness of the system.

779. The authorities should also consider establishing mechanisms for consultation between competent authorities, the financial sector and other sectors, including DNFPB, that are subject to AML/CFT requirements. This is particularly important in the current context of developing further the AML/CFT primary and secondary legislation, given that guidelines developed so far remain modest.

780. San Marino should ensure that the competent authorities review the effectiveness of the AML/CFT system on a regular basis.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**PC**	• There is no mechanism facilitating a regular and joint review of the AML/CFT system and its effectiveness by competent authorities. • Policy level co-ordination and co-operation is lacking on AML/CFT matters

6.2 Special UN conventions and resolutions (R. 35 & RS. I)

6.2.1 Description and analysis

781. San Marino signed the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) on 10 Oct. 2000 and its entered into force on 8 January 2001.

782. San Marino signed the United Nations Convention against Transnational Organised Crime ("Palermo Convention"), and its two Protocols (New York, 2000), on 14 December 2000 but it has not ratified them yet.

783. The 1999 United Nations International Convention for the Suppression of the Financing of Terrorism ("Terrorist Financing Convention") was ratified on 10 December 2001 and entered into force on 11 April 2002. It has also signed the International Convention for the Suppression of Terrorist Bombings (New York, 1997) on 26 February 2002, which entered into force on 11 April 2002;

784. San Marino officials advised, that ratification of above mentioned Conventions had not caused any legislative changes.

785. How San Marino has implemented the obligations under these Conventions has already been touched upon in earlier sections. In connection with the Vienna Convention, the evaluators refer to the various parts of the report which highlight the strengths and weaknesses of the country's arrangements regarding criminalisation, penalties, confiscation the machinery for cooperation and special investigative methods. It has been noted earlier that with regard to some issues of the physical and material aspects of the Conventions need further clarification and/or legislative improvements (i.e. simple acquisition and possession of property known to be proceeds, concealment of not only the origin but "nature, source, location, disposition, movement or ownership of or rights with respect to property, conspiracy to commit, funding of individual terrorist, definition of funds, "collection" of funds, liability of legal persons and other issues discussed in other paragraphs). Also, the evaluators refer to their previous comments about the effectiveness of San Marino's system for detecting the physical cross-border transport of currency or bearer securities. So far no special investigative techniques were used.

786. The Terrorist Financing Convention requires financial institutions and other professions involved in financial transactions to utilise the most efficient measures available for the identification of the usual or occasional customers, as well as customers in whose interest accounts are opened and for this purpose to consider *inter alia* adopting regulations prohibiting the opening of accounts where the holders or beneficiaries are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions. It has been noted above that there is no definition of a beneficial owner in the AML legislation. This and other aspects of the preventive measures under this Convention need further work for effective implementation.

787. As discussed in relation to SR.III above, San Marino has taken some measures to implement the UN Security Council resolutions, however the legal framework for their implementation remains incomplete.

Additional elements

788. San Marino has ratified the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime in 2001. It has issued a series of reservations, one of which relates to article 6 (1) limiting its application to criminal predicate offences or categories of criminal predicate offences provided for in Law No. 123/1998.

6.2.2 Recommendations and comments

789. San Marino should take immediate steps to ratify and implement fully the Palermo Convention.

790. The evaluators' earlier recommendations apply equally to the effective implementation of the Vienna Convention and the Terrorist Financing Convention, in terms of incrimination of the ML and FT offences, criminal liability of legal persons, cooperation arrangements, special investigation methods, the detection of physical cross-border transport and to the implementation of the UN Security Council resolutions.

791. The evaluators also encourage the San Marino authorities to reconsider the reservations made to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of reasons for the rating
R.35	**PC**	• Reservations about certain aspects of the implementation of the Vienna Convention and of the TF Convention • Palermo Convention not ratified and implemented
SR I	**PC**	Deficient implementation of the TF Convention and of UN resolutions

6.3 Mutual legal assistance (R. 36-38 & SR. V)

6.3.1 Description and analysis

Recommendation 36

792. San Marino has signed the European Convention on Mutual Assistance in Criminal Matters on 29 September 2000, but has not ratified it. It has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances as well as the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, with a number of reservations and declarations. Two bilateral agreements have been signed with Italy on criminal, civil and administrative matters (31 March 1939) and with France on criminal and civil matters (14 January 1954). The authorities indicated that most requests are submitted and responded under the 1939 agreement with Italy.

793. There appears to be no specific provisions in the Criminal Procedure Code regulating the procedure for mutual legal assistance or in the absence of any applicable bilateral or multilateral agreement on the possibility to grant MLA on a reciprocal basis.

794. Legal assistance is provided by the judicial authorities of San Marino, usually through the services of the investigative judge, in response to a letter rogatory from a foreign country. In the context of CETS No. 141, the competent central authority is the Secretariat of State for Foreign Affairs and for urgent cases, direct communication is possible in application of article 24 of the Convention. In the absence of a treaty, the processing of the letter by the judicial authorities requires the approval of the political authority on the basis of a legal assessment of the admissibility of the request undertaken by the judicial authorities. Such assistance may cover the production, search and seizure of information, documents, and evidence in general from banking and financial institutions, or other legal and natural persons; the taking of statements; obtaining evidence. Assistance may also be given where the state is seeking the identification, freezing, seizure and confiscation of property or proceeds laundered or intended to be laundered.

795. The authorities advised that generally, responding to a request for assistance takes "a few weeks" from the date of the receipt. The evaluators are reserved on the efficiency of the process for the execution of mutual legal assistance requests in a timely way and without undue delays, in particular regarding the involvement of the political body. No statistics were available about the average time of response.

796. The authorities indicated that the dual criminality requirement must be met as a precondition for granting mutual legal assistance or certain forms of such assistance. It was stated that when a request for assistance is sought and the crime forming the basis of the request is not an offence in San Marino, no response is submitted back. There are no other conditions. Legal proceedings, either underway or concluded in the requesting state for the predicate offence are not a requirement for meeting the request. They indicated that the request for assistance should however be adequately justified and supported by sufficient elements, however there appears to be no detailed information as to what is considered as adequate and sufficient in this context.

797. The fact that a predicate offence is also considered to involve tax matters is not sufficient to justify e rejection to a legal assistance request. Dual criminality applies. Under domestic law, failure to pay taxes is not an offence, unless such conduct occurred in an artificial or deceitful manner as to constitute fraud to the detriment of the inland revenue of a foreign state. Only in such cases legal assistance is provided.

798. Banking secrecy cannot be opposed to the judicial authorities, either in domestic legal proceedings or by rogatory commission (article 36(5) of LISF). Production of all information and documents held by banking or financial institutions may be compelled in the framework of a rogatory commission. as regards DNFBPS or other entities, the authorities advised that in practice, the only obstacle in this area is related to lawyers, who cannot give testimony "pertaining to actions learned during the practice of the professional activity" (article 17 of Decree No. 56/1995). The situation remained unclear as far as the evaluators are concerned in relation to secrecy rules applicable to any other legal professionals, as the evaluation team did not receive any provisions. The authorities informed the evaluation team that no other secrecy provisions can be opposed to the judicial authority by any other professionals and that, in the context of requests received, they have not refused granting assistance on the basis of secrecy requirements.

799. The evaluators were not informed of any rules or consideration of a mechanism for determining the best venue for prosecutions in cases that are subject to prosecution in more than one country. The authorities only referred to the application of articles 5-7 of the Criminal Code related to the domestic criminal jurisdiction criteria.

Additional elements

800. It was understood that direct requests from foreign judicial or law enforcement authorities to domestic San Marino counterparts are possible, if provided so by bilateral agreements (eg. Italy, France).

Recommendation 37

801. As indicated above, San Marino responds to a request for legal assistance only subject to meeting the dual criminality requirement, including for less intrusive and non compulsory measures.

802. In this context, certain shortcomings identified earlier may render requests for assistance vein. As regards money laundering, it is likely that legal assistance is provided only where the offence of money laundering in the requesting state is based on actual knowledge and /or inferences drawn from objective circumstances but not if the offence is based on a "should have

known" or negligence criterion". Moreover, certain cases of tax evasion (in-direct tax evasion) or self money laundering are not regarded as a criminal offence therefore San Marino can refuse mutual legal assistance in these cases. The existing domestic financing of terrorism offence appears insufficiently wide to render assistance for all types of financing of terrorism where dual criminality is required. In all cases, the predicate offence must also be an offence in San Marino. These issues have not been tested, and in these circumstances the evaluators had reservations as to how far all types of mutual legal assistance could be applied in particular cases of FT.

Recommendation 38

803. In connection with mutual legal assistance a Judge in San Marino can use the same investigative powers in both domestic proceedings and requests for mutual legal assistance. Therefore, the San Marino legislation allows the investigating judge, in connection with a foreign request, to use special investigative techniques ranging from controlled delivery to undercover work; postpone or waive the arrest of suspected persons and seizure of money for the purpose of identifying person/s involved in such activities as evidence. San Marino has restrictions concerning wire tapings. So far no special investigative techniques were used. The Law allows to compel production of search persons and premises for, seize and obtain transaction records, identification data obtained through CDD process, account files and business correspondence and other records/documents or information held or maintained by financial institutions, other businesses and persons. When any of the above actions are carried out by any of the law enforcement units without the judge's directions, such action will have to be referred to the Investigating Judge for validation.

804. In connection with letters rogatory, a summary of the facts is important. Without such a requisite the request would not be acceded to. There is no time-frame for replies. All the above is however, subject to dual criminality.

805. The shortcomings identified in the context of the mechanism for freezing, seizing and confiscating are also relevant in the context of mutual legal assistance.

806. Concerning arrangements with other countries for co-ordinating seizure and confiscation actions San Marino has such an agreement with Italy. Evaluators were informed that in one case, the sums seized and confiscated by the San Marino judicial authority in response to requests submitted by the Italian judicial authority have been transferred to the Italian State. Under said arrangement, an amount of € 7 469 487.95, "including interest accrued from the date of seizure" executed on request of the Italian judicial authority, was transferred to Italy. It was indicated that where there is no agreement with a country, the authorities can still proceed to the confiscation requested by a foreign country in accordance with the Strasbourg Convention.

807. There was no consideration given to establishing an asset forfeiture fund nor an opportunity to consider authorising the sharing of confiscated assets when confiscation is the result of coordinated law enforcement actions.

Additional element

808. Foreign non-criminal confiscation orders cannot be enforced in San Marino.

Special Recommendation V

809. The evaluators refer to the comments made above under recommendation 37 and 38. Shortcomings indicated in the recommendations quoted above will invariably apply to special recommendation V.

Recommendation 32

810. The following statistics were provided by the authorities:

Letters rogatory received in relation to a ML offence

Year	Received	Responded	Withdrawn by Requesting Authority ([1])	Pending clarification ([2])
2003	4	3		1
2004	3	3		
2005	6	2	2	2
2006	5	5		

([1]) The requesting authority relinquished prior to the execution of the request.

([2]) The San Marino judicial authority requested further clarification to the requesting authority which has not been provided yet.

Seizures/forfeitures executed on request of a foreign judicial authority

Year	Received	Responded	Amounts seized or forfeited	Withdrawn by Requesting Authority ([1])
2003	1	1	€ 1,894,707.35	
2004				
2005	2	1	€ 147,935.53	1
2006				

([1]) The requesting authority relinquished prior to the execution of the request.

811. No information was available regarding outgoing requests for MLA. The evaluators were informed aftert he visit that San Marino has made some requests to other states for assistance in ML cases. No requests were made in FT cases.

812. From 2003 to present no requests for mutual legal assistance have been received in relation to a FT offence.

813. No statistics were available about the average time of response.

6.3.2 Recommendations and comments

814. San Marino has ratified a number of international conventions relevant in this context, including the Council of Europe's Convention No. 141 (though making a number of reservations upon accession) and only 2 bilateral agreements regulating the details and procedures for mutual legal assistance.

815. Given the absence of clear and specific national provisions on mutual legal assistance which detail the process of receiving and executing MLA requests, the evaluators recommend that consideration is given to introducing such provisions in legislation. This would also have the advantage of clarifying the process for both domestic and foreign practitioners.

816. As the evaluators could not clarify fully the situation on secrecy requirements in relation to DNFBPs, it is recommended to clarify in legislation that there is no possibility to oppose secrecy or confidentiality rules to the competent authorities requesting any information in the context of foreign mutual legal assistance requests, with the exception of legal professional privilege or legal professional secrecy rules.

817. The authorities should also consider devising and applying mechanism for determining the best venue for prosecution of defendants in the interest of justice in cases that are subject to prosecution in more than one country.

818. They should ensure that confiscation of laundered property and proceeds should be also possible (not only instrumentalities) in the context of international cooperation.

819. Consideration should be given to an asset forfeiture fund and sharing of confiscated assets with other countries in joint enquiries.

820. As regards recommendation 37, the deficiencies identified in the ML and FT offence should be remedied to enable full compliance with the dual criminality ruled requests. San Marino officials may consider legislating to render mutual legal assistance in the absence of dual criminality, at least for less intrusive and non compulsory measures.

821. Comprehensive statistics should be kept on an annual basis; statistics concerning mutual legal assistance should include also information about the predicate offence(s) and the average time of response.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	**PC**	• Concerns about the efficiency of the process for execution of MLA requests and possible delays • the evaluators could not clarify, with the exception of the situation of lawyers, whether there are grounds for refusal of MLA requests in the context of secrecy or confidentiality requirements for DNFBPs • No consideration of a mechanism for determining the best venue for prosecutions in cases that are subject to prosecution in more than one country. • Deficiencies in ML and FT may negatively impact on dual criminality
R.37	**LC**	Due to the gaps in the incrimination of offences in article 199bis and 337bis
R.38	**LC**	• Concerns related to requests for confiscation of laundered property and proceeds (not only instrumentalities) • No consideration given to establishing an asset forfeiture fund.

SR.V	**PC**	Reservations about the possibility of rendering MLA for all offences related to terrorist financing

6.4 Extradition (R. 37 & 39, SR. V)

6.4.1 Description and analysis

822. San Marino signed the European Convention on Extradition on 29 September 2000, but has not ratified yet. It has concluded only 7 bilateral treaties on extradition with the following countries: Belgium (15 June 1903), France (30 April 1926), Italy (1939), the United Kingdom (10 October 1899), the Netherlands (7 November 1902), the US (10 January 1906), and Lesotho (5 October 1971).

823. In the absence of a treaty, the authorities advised that a person may be extradited to the requesting country subject to the necessary political authority to proceed following a legal assessment of the request by the judicial authorities within the limits laid down by article 8 of the Criminal Code which reads as follows:

"Article 8. Extradition
Extradition shall be governed by international conventions and, for any other aspect not covered by the conventions, by San Marino law.

The extradition of people in the territorial jurisdiction of the Republic shall be granted solely where:

1) *the felony or crime committed is considered as such both under San Marino law and the law of the requesting State;*
2) *the crime, punishment or security measure has not already been extinguished under the legislation of both States;*
3) *the crime is prosecutable under the legislation of both States;*
4) *the request does not refer to a San Marino national, except where expressly provided for by international conventions;*
5) *the request does not refer to a political offence or an offence connected with a political offence, to offences punished under military law and it has been ascertained that the request is not based on political reasons.*

Any offence detrimental to a political interest of the State or a political right of a citizen shall be considered as a political offence. For the purposes of extradition only, even an offence committed for political reasons shall be regarded as a political offence. In no case shall the crimes committed for the purpose of terrorism or subversion of the constitutional order be deemed political crimes."

824. The evaluators were concerned by the translation of the wording in the first paragraph of article 8 which could imply that extradition can only happen on the basis of an international treaty or bilateral agreement, which would limit dramatically the extradition to the 7 countries with which a treaty has been signed. The San Marino authorities advised that that they can extradite, even when there is no international convention or no bilateral agreement with a requesting country. However this was not confirmed by practice of extradition to a country with which there is no bilateral agreement.

825. The authorities advised that money laundering and terrorist financing are extraditable offences. However, all the bilateral treaties, with the exception of that with Italy, take the list or enumerative approach to extraditable offences and extradition for money laundering offences under these treaties does not appear to be possible. The treaty with the UK contains a provision which allows extradition at the discretion of the requested country for other offences not in the list provided the offence is extraditable according to the laws of both countries. The

treaties with France and Italy also contain provisions on mutual legal assistance in criminal matters; neither of them is specifically concerned with ML.

826. Dual criminality is a key principle for extradition. San Marino officials informed the evaluators that they interpret the dual criminality broadly, explaining that the principle is met even if the offence is criminalized in a different category or with a different denomination under the law of the requesting State, e.g. technical differences do not prevent the rendering of assistance. The evaluators are reserved about the extent to extradition request could be enforced where dual criminality is invoked particularly in respect of ML on the basis of tax offences, self money laundering and certain aspects of financing of terrorism not covered in domestic provisions, also in respect of those predicate offences, which are designated by FATF Glossary, but are not covered by San Marino Criminal Code.

827. The extradition of nationals is prohibited unless it is otherwise agreed by treaty. As regards current bilateral treaties, there is a prohibition to the extradition of own nationals only in the treaty with Italy but in this case there is an obligation to prosecute. In the other treaties, the extradition of nationals is discretionary and in the case of France there is an obligation to prosecute if extradition is refused. There is no practice of extraditing own nationals. Article 15 of the Criminal Procedure Code lays down that a San Marino national is not extraditable (unless it is indicated in the treaty) but he will have to be charged for the criminal offence (if it is an offence in San Marino) in San Marino.

828. With regard to co-operation between San Marino and other countries particularly on procedural and evidentiary aspects of extradition, the questionnaire submitted only indicates Italy as one country were such co-operation exists (in part). There appears to be no co-operation procedures in the Criminal Code or in any other legislation submitted to the evaluation team which was enacted with a view to simplify and effectively, in the shortest time possible, deal with extradition. There is no time-frame for extradition, but the evaluation team was informed that proceedings usually take about ninety (90) days in all. During the evaluation it came to light that mutual legal assistance and extradition requests are at first discussed by those persons who have a political responsibility in San Marino. This could cause time problems – cases should be dealt with without any undue delays.

829. Since 2002, only one extradition request was received, for offences other than ML or FT and it was granted and performed.

Additional elements

830. The San Marino legislation does not allow a simplified procedure of extradition. No one can be extradited solely on the strength of a warrant of arrest or judgement and there is no simplified procedure for extradition for consenting persons who waived formal extradition proceedings.

Special Recommendation V

831. Short comings indicated in the recommendations quoted above (especially R 39) will invariably apply to special recommendation V.

6.4.2 Recommendations and comments

832. The application of dual criminality may create an obstacle to extradition in cases involving ML/FT activities that are not properly criminalised in San Marino. The authorities should review the current legislation to ensure that there are no legal impediments to render assistance

where the conduct underlying the offence is criminalised. The evaluators reiterate in this context their previous recommendations related to the review of the criminalisation of ML and FT.

833. As regards extradition, San Marino has acceded to very few extradition agreements. It is recommended that:
- San Marino ratifies the European Convention on Extradition as soon as possible;
- Extradition proceedings may incur in undue delays since requests are first tackled at a political level. This will cause delays. It is suggested that a body or authority, not solely at political level, deals with such requests. It is suggested that this body could be composed of elements coming from the Judiciary and Ministry of Justice.
- Clear and detailed procedures on procedural and evidentiary aspects are established.
- studies be undertaken to establish whether:
    - □ it is feasible to establish an office or central authority that deals solely with extradition and mutual legal assistance;
    - □ simplified procedures of extradition should be in place to allow direct permission of extradition requests between appropriate ministries;
    - □ it is appropriate to allow extraditions solely on the strength of a warrant of arrest or judgement;
    - □ simplified procedure for extradition for consenting persons who waived formal extradition proceedings be allowed;

834. The authorities should ensure that the current framework enables to extradite individuals charged with the financing of terrorism, terrorist acts or terrorist organisations.

6.4.3 Compliance with Recommendations 37 and 39 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.37	**LC**	Due to the gaps in the incrimination of offences in article 199bis and 337bis
R.39	**PC**	• Reservations about extradition due to the limitations in the extradition of ML/FT offences • Need to clarify the extradition procedures and to ensure that requests and proceedings can be effectively handled without undue delay
SR.V	**PC**	Reservations about the possibility of extradition for all offences related to terrorist financing

6.5 Other forms of international co-operation (R. 40 & SR.V)

6.5.1 Description and analysis

835. The general provision on international cooperation is set out in Article 10(4) of Law No. 123/1998, which provides that the Supervision Department (formerly the Office of Banking Supervision) may collaborate, for the purposes of applying this Law, with the supervisory authorities of other States to mutually facilitate the prevention of and fight against money laundering".

836. Article 103 (1) of Law No. 165/2005 (LISF) authorises the supervisory authority to transmit to and/or request from foreign supervisory authorities the information and documents required in the performance of their respective tasks. To this end, the supervisory authority has to conclude cooperation agreements with the competent authorities of foreign countries for the exchange of information.

837. There appears to be no fixed timeframe for providing assistance, though the San Marino authorities indicated that it is always provided as expeditiously as possible.

838. The provisions mentioned above raised doubts as to the ability of the FIU to co-operate with foreign FIUs not having supervisory functions. The evaluators received assurances that in practice the FIU could exchange information with foreign FIUs not having a supervisory function.

839. The FIU can only exchange information on the strength of a Memorandum of Understanding (MoU). This includes searching its database, and can request information from law enforcement units and other public authorities and entities.

840. According to the persons met on site, information might also be given/ exchanged when there is no MoU but such information could only be used for intelligence purposes only. The FIU may not be in a position to obtain information concerning ultimate beneficiaries since at times banks do not know the details of ultimate beneficiaries of companies that have bearer shares.

841. At the time of on-site visit MoUs were concluded only with the Italian FIU, the Czech Republic, Monaco, Israel, Peru, and Slovenia.

842. The gateways to facilitate and allow prompt and constructive exchanges of information directly between counterparts are for police cooperation the Interpol channels and for the FIU, as a member of the Egmont Group (since June 2005), use of the secure network.

843. San Marino joined the International Criminal Police Organization (Interpol) in September 2006. The authorities advised nevertheless that membership being so recent, at the time of the evaluation, the ways in which such cooperation should occur still had to be specified. Police authorities will be able to exchange information with their counterparts in foreign countries directly using Interpol channels. The exchange of information through Interpol extends to ML, FT and predicate offences. If a procedure is started by a judicial authority, the exchange of information occurs at judicial cooperation level or through the channels of Interpol if so ordered by the judicial authorities.

844. The authorities advised that the FIU is authorised to search its own databases, including with respect to information related to suspicious transaction reports, and compel production of information, records and documents by all entities subject to its supervision. This is the current practice, in the absence of legal provisions authorising it. It remains unclear whether it may search other databases to which it has direct or indirect access in the context of inquiries on behalf of foreign counterparts.

845. Law enforcement agencies may search the vehicle registration office, records of the vital statistics office, criminal records and commercial registers that are kept with the Court. With regard to the law enforcement, however, responding to certain requests may require actions that police forces are allowed to undertake only upon order of the judiciary (eg. article 73 CPC for search of houses, article 26 LISF for obtaining banking documentation). The other actions which are not explicitly reserved to the judge can be undertaken by the police forces of their own initiative (eg. taking statements of witnesses or persons under investigations). In other cases (seizure of the corpus delicti, arrest or stop of people), the Police has initiative powers but such measures have to be validated by the judge (articles 78, 91 and 92 of the CPC).

846. Law enforcement authorities in San Marino can conduct inquiries on behalf of foreign counterparts only upon order of the judicial authority.

847. According to article 103 of the LISF, agreements on information exchange with foreign counterparts may be concluded only subject to 4 cumulative conditions:

a) the information communicated is covered by the guarantees as to official secrecy equivalent to those laid down in article 29 of the Central Bank Statute
b) the exchange of information shall be for the purpose of contributing towards the performance of the supervisory task by the said authorities
c) the competent authority receiving the confidential information may use that information only in the exercise of its functions (for the prevention of the crimes of money laundering and financing of terrorism)
d) the information received may not be disseminated without the explicit written consent of the competent authorities by which it has been provided, and in that case, only for the purposes for which the said authorities have given their consent.

848. According to article 36 (5) of Law No. 165/2005 LISF, bank secrecy cannot be invoked either against the criminal judicial authority or against the supervisory authority in the exercise of its functions of surveillance and prevention of terrorism and the laundering of money of unlawful origin As far as DNFBP are concerned, the authorities informed the evaluators that article 17 of decree No. 56/1995 allows lawyers to refuse giving testimony "pertaining to actions learned during the practice of the professional activity". The San Marino authorities also informed the evaluation team that there are no similar provisions for other DNFBPs.

849. As mentioned above, article 103 of the LISF provides for a number of controls and safeguards to that information received by competent authorities is used only in an authorised manner, which is applicable in the context of cooperation of the FIU with foreign counterparts. The authorities advised that law enforcement agencies may establish similar conditions.

Additional elements

850. So far as exchanges of information with non-counterparts are concerned, the San Marino authorities indicated that cooperation may take place even with police forces that are non-counterparts, though no detailed information was provided.

851. Evaluators were informed that as a matter of practice the requesting authority provides indication of the purpose or subject-matter of the request, as well as on whose behalf the request is made. No detailed information was provided.

852. Representatives of San Marino FIU noted that the FIU can obtain from other competent authorities or financial institutions relevant information requested by a foreign FIU. However, it seems they have such authority only regarding financial institutions (under Article 36 para. 5 of the Law No. 165/2005 – LISF).

Statistics

853. Statistics were provided to the evaluation team only after the visit, which rendered the assessment of the level or quality of information exchange with foreign FIUs difficult. In this context, the evaluators pointed out that the FIU may not always be in a position to provide information on cases such as self-laundering or certain cases of tax evasion as these are not regarded as underlying predicate offences. Information given by the FIU concerning fiscal matters can only be used for intelligence purposes.

	2003	2004	2005	2006	March 2007
Requests made by the AML Service	1	0	0	2	4
Requests received by the AML Service of which:	2	4	2	9	4
Granted	2	4	2	8	4
Refused	0	0	0	1[16]	0

Information sent to foreign FIUs spontaneously : 2 in 2005 and in 2007.

854. The law enforcement agencies do not maintain special statistics on this subject. In any case, no such requests have been received or sent by the law enforcement agencies. No statistics were provided regarding requests made by the supervisory authority or received from foreign supervisory authorities.

6.5.2 Recommendations and comments

855. The evaluators recommend that the authorities review the AML/CFT legislation in order to eliminate any uncertainties related to the scope of co-operation of the FIU with foreign counterparts. They recall in this context the comments made regarding the necessity to establish the identity of the FIU in legislation and as part of the reinforcement of its organisational autonomy within the Central Bank, they recommend that specific provisions be adopted which detail the capacities of the FIU in this context in accordance with recommendation 40.

856. Bank secrecy cannot be invoked either against the criminal judicial authority or against the supervisory authority in the exercise of its functions of surveillance and prevention of terrorism and the laundering of money of unlawful origin. However, San Marino authorities should consider to adopt relevant provisions regarding disclosing of professional secrecy also for other entities (e.g. DNFBPs).

857. There is no information as to how quickly the FIU responds to requests. The FIU should keep detailed statistical data showing in particular their response times and whether the requests were fulfilled in whole or in part or were incapable of being fulfilled. It is also advised that statistical information is kept in relation to the numbers and types of spontaneous disclosures made by the FIU.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	PC	• Legal framework for cooperation on AML/CFT matters needs reviewing to eliminate concerns regarding the scope of cooperation • Requests for cooperation can be refused on the grounds of laws that impose secrecy on DNFBP

[16] Refused on the following grounds: 1) absence of MoU ; 2) request did not contain any description or information about the case.

		• Central Bank(FIU) may not be in a position to obtain information concerning ultimate beneficiaries since at times banks do not have the details of ultimate beneficiaries of companies due to bearer shares. • Effectiveness issues
SR.V	**PC**	Terrorist financing is not covered in AML law No practice in information exchange in relation to FT.

7 OTHER ISSUES

7.1 Resources and statistics

858. The text of the description, main analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report i.e. all of section 2, parts of section 3 and 4 and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report contains the boxes showing the rating and the factors underlying the rating.

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
R.30	**PC**	*FIU* • Lack of sufficient staff to ensure that the FIU fulfils its tasks at the desired level *Law enforcement* • Reservations about the practical experience and expertise on ML/FT issues of law enforcement authorities • Limited training provided to law enforcement agents, both upon recruitment as well as on an ongoing basis regarding AML and CFT. *Supervisory authorities* • The level of resources available to the CBSM are not adequate to enable it to fully and effectively perform its functions
R.32	**PC**	• No review of the effectiveness of the system for combating ML and FT on a regular basis *Statistics on matters relevant to the effectiveness and efficiency of systems for combating ML and FT:* *- STRs and other reports* • Statistics kept are incomplete and lack the data required to draw up a comprehensive picture of the effectiveness and efficiency of the unit • No statistics on STRs or other disclosures concerning physical cross-border transportation or currency of bearer negotiable instruments *- ML and FT investigations, prosecutions and convictions and on property frozen, seized and confiscated* • No annual comprehensive statistics maintained in relation to money laundering cases • No statistics maintained relating to the number of cases, amounts and property frozen, seized, confiscated related to ML, FT, criminal proceeds or underlying predicate offences • Limited information and data available do not demonstrate the effectiveness and efficiency of the law enforcement and prosecuting authorities' action *- Mutual legal assistance* • Statistics do not include information about the predicate offence(s) and the average time of response. • No statistics available on outgoing requests for MLA. *- Extradition*

		• No comprehensive statistics are kept related to incoming and outgoing requests for ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused and the time required to respond. - *Other forms of international co-operation* • No statistics provided on international police cooperation, exchange of information between supervisors

IV. TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system
Table 3: Authorities' Response to the Evaluation (if necessary)

8 TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (na).

Forty Recommendations	Rating	Summary of factors underlying rating
Legal systems		
1. ML offence	LC	• Concealment of the location and disposition not covered • Concerns if all kinds of assets and funds are covered, in particular assets indirectly obtained • At the time of the assessment, doubts as to whether all designated categories of offences (such as migrant smuggling) are covered • Self laundering not covered
2. ML offence – mental element and corporate liability	PC	• No criminal, civil or administrative liability of legal persons • Serious concerns about the sanctions applicable to money laundering in the absence of an established case law on money laundering
3. Confiscation and provisional measures	PC	• Gaps identified in relation to confiscation in Article 147: paragraph 1 exclusively permits confiscation when property subject to confiscation belongs to the defendant. • Article 147 does not provide for value-based confiscation for offences other than ML or FT. • In accordance with article 16 of Law No. 28/2004 , the FIU powers to block or freeze only apply to money, assets or business relationships existing within the financial or banking sectors. • There is no measure that would allow for the voiding of contracts or actions • Lack of data raises concerns as to the

		effective application of the current seizure and confiscation provisions
Preventive measures		
4. Secrecy laws consistent with the Recommendations	PC	• The AML Law lifts bank secrecy only for STRs in respect of money laundering; • Given the fact there is no legal provision excluding liability for STRs related to FT, submitting a report even in good faith constitutes a violation of bank secrecy. • Official secrecy only allows the Central Bank to share information with the judicial authority, in the course of a criminal proceeding, and does not seem to allow any kind of sharing of relevant documents and data with other domestic authorities outside the course of a criminal proceeding. • Article 103 of the LISF allows the CB to share information with foreign supervisory authorities only subject to a previous cooperation agreement s and subject to very strict cumulative conditions. • Sharing of information between financial institutions where this is required by SR VII limited to cases where the client consents
5. Customer due diligence	NC	• Existence of Bearer Passbooks – while there is regular identification of the bearer upon issuance, conduct of transactions and closure of passbooks, the facility to transfer such passbooks anonymously poses a significant challenge for banks to ensure that they conduct ongoing due diligence on these passbooks throughout the business relationship with the person presenting themselves as the bearer. • Certain categories of financial institution are not covered by the identification obligations set out in the Law yet as implementing provisions had not been issued by the CBSM: - Post Offices (which are State-owned); - Credit recovery on behalf of third parties; - Financial promoters and insurance promoters; - Agencies of Italian insurance

		companies and insurance brokers selling solely insurance policies based on Italian law. • No requirement in law or regulation to carry out CDD when: - there is a suspicion of money laundering or terrorist financing regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations or - the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data. - carrying out occasional transactions that are wire transfers in the circumstances covered by the IN to SR.VII • The threshold applied to transactions is €15,500 rather the €15,000 limit set out in the recommendations. • While there are requirements in place to identify customers when establishing business relationships, there are no requirements in law or regulation to: - verify the customer's identity using reliable independent source documents, data or information or to the other elements of the CDD measures (e.g. beneficial ownership, where necessary the source of funds); - verify that any person purporting to act on behalf of the customer (for customers that are legal persons or legal arrangements) is so authorised and to identify and verify the identity of that person; - identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the financial institution is satisfied that it knows the beneficial owner; - determine whether the customer is acting on behalf of another person, and take reasonable steps to obtain sufficient identification data to verify the identity of that other person; - conduct ongoing due diligence on the

		business relationship, which includes scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds. • No provisions in law, regulation or other enforceable means that address circumstances where there is a failure to satisfactorily complete CDD. • No provisions in law, regulation or other enforceable means that require financial institutions to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction. • Existing customers - it is not clear if there is any explicit requirement to apply customer identification requirements to those customers that had opened accounts prior to the entry into force of the AML Law No.123/1998.
6. Politically exposed persons	NC	• San Marino AML/CFT system does not contain any enforceable measures concerning the establishment of business relationships with politically exposed persons (PEPs).
7. Correspondent banking	NC	• San Marino has not implemented any enforceable AML/CFT measures concerning establishment of cross-border correspondent banking relationships.
8. New technologies & non face-to-face business	PC	• At the time of the on-site visit, there were no direct requirements for financial institutions to have policies in place to prevent the misuse of technological developments in ML/FT schemes or to have policies and procedures in place to address the specific risks associated with non-face to face business relationships or transactions.
9. Third parties and introducers	N/A	
10. Record keeping	NC	• No requirement in law or regulation to specify the obligation that identification data, account files and business correspondence should be

		kept for at least five years (i) after the closure of the account or (ii) termination of the business relationship. • No requirement in law or regulation that requires financial institutions to ensure that customer and transaction records and information are available on a timely basis to the competent authorities.
11. Unusual transactions	PC	• Financial institutions are not explicitly required to pay special attention to all complex, unusual large transactions or unusual patterns of transactions that have no apparent or viable economic or lawful purpose. • Although there is some reference in Circular no. 33 of 12/02/2003 to report suspicious transactions on the basis of objective features of transactions, including the customers' background, there are no explicit requirements to: - examine as far as possible the background and purpose of unusual transactions and to set forth findings in writing and - There is no explicit requirement to keep written findings available for competent authorities and auditors for at least five years
12. DNFBP – R.5, 6, 8-11	NC	• The implementing regulations for DNFBPs have not been adopted, thus the requirements of R. 12 are not being applied to DNFBPs currently • Existing CDD requirements have the same deficiencies as applied to financial institutions
13. Suspicious transaction reporting	NC	• The reporting requirement which should be in law or regulation does not clearly cover all predicate offences • There is no explicit legal requirement to report funds suspected to be linked or related to financing of terrorism as required by criterion 13.2 • Attempted transactions are not explicitly covered in law or regulation • very low level of reports, including from outside the banking sector, raises concerns in relation to the effectiveness of the reporting system

14. Protection & no tipping-off	PC	• There is no law provision protecting reporting entities from responsibility for violating restrictions on disclosure of information imposed by contractual, legislative, regulatory or administrative provisions in relation to STRs on FT. • There is no explicit nor direct provision in the law prohibiting the disclosure of a STR being reported to the FIU.
15. Internal controls, compliance & audit	PC	• There are no legislative or other enforceable obligations to ensure that compliance staff have timely access to CDD and transaction information. • There are no legislative or other enforceable obligations to require that financial institutions maintain an adequately resourced and independent audit function to test compliance. • There are no legislative or other enforceable obligations that require screening procedures for hiring employees
16. DNFBP – R.13-15 & 21	NC	• Although DNFBPs are covered by the scope of the AML law, in practice nothing has been done to implement the provisions as the Central Bank has not adopted the relevant implementing regulations. This raises serious concerns due to lack of effectiveness of measures in place. • Similar deficiencies in the AML legislation relating to Recommendations 13 -15 & 21 that apply to financial institutions also apply to DNFBPs (see comments and ratings in sections 3.6, 3.7 & 3.8)
17. Sanctions	PC	• There are a range of criminal, civil or administrative sanctions available to deal with natural persons covered by the FATF Recommendations, however, the effectiveness of these powers has not been fully tested to date • No sanctions for legal persons • Effectiveness concerns
18. Shell banks	PC	• There is no prohibition on financial institutions from entering into, or continuing correspondent banking relationships with shell banks.

		• Financial institutions are not required to satisfy themselves that respondent institutions in a foreign country do not permit accounts to be used by shell banks.
19. Other forms of reporting	NC	• San Marino has not considered the feasibility and utility of implementing a system whereby financial institutions report all transactions in currency above a fixed threshold to a centralised agency with a computerised database.
20. Other DNFBP & secure transaction techniques	LC	• While consideration has been given to this area, the relevant legislation adopted has not been implemented.
21. Special attention for higher risk countries	NC	• There is no requirement to examine and monitor transactions from countries, other than countries listed on the NCCT list published by the FATF that insufficiently apply FATF Recommendations, or transactions from countries located in drug-trafficking or smuggling areas (no list of such countries issued), that have no apparent economic or lawful purpose, or to make these findings available to competent authorities. • No specific requirements on reviewing the background and purpose of such findings and the documentation of findings. • No specific provisions (or practice) on application of counter- measures where a country continues not to apply or insufficiently applies the FATF Recommendations
22. Foreign branches & subsidiaries	NC	• Notwithstanding that at this time no financial institutions have established operations abroad and that in order to do so a series of agreement would need to be put in place, in the event that a financial institution applied to the Central Bank to establish operations abroad there are currently no specific requirements in place to cover the following areas: - the need to ensure that foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and FATF Recommendations, - the need to pay particular attention that this principle is

		observed with respect to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations, - provisions that where minimum AML/CFT requirements of the home and host countries differ branches and subsidiaries in host countries should be required to apply the higher standard and the need to inform the home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures.
23. Regulation, supervision and monitoring	LC	• The level of on-site inspections is considered low and the effectiveness of the powers of the CBSM has not been fully tested to date.
24. DNFBP - regulation, supervision and monitoring	NC	• There is no supervision or monitoring for AML/CFT requirements in place for DNFBPs, except for casinos, which anyway are not allowed in San Marino and therefore this recommendation is not applicable for casinos. • The implementing regulations on AML/CFT for DNFBPs will need to be brought into effect so that there are requirements that can be monitored.
25. Guidelines & Feedback	NC	• Lack of adequate and appropriate feedback to reporting entities by competent authorities • No comprehensive and updated guidance to assist financial institutions to comply with AML/CFT requirements • No guidelines were developed to assist DNFBP to implement and comply with their respective AML/CFT requirements, either by the CB or by the SROs.
Institutional and other measures		
26. The FIU	NC	• The institutional set up of the Central Bank as the FIU is not considered in line with the requirements of R. 26 and should be reviewed • FIU is not analysing STRs related to FT as there is no legal obligation to report to the FIU such STRs

		• Guidance issued is not comprehensive and up to date, furthermore it does not cover all reporting entities, and reporting forms and procedures have not been issued for all reporting entities • No direct or indirect access to some administrative information. Information with regard to bearer shares cannot be obtained. • Lack of implementing measures to ensure that the access to information held by all reporting entities can be obtained by the FIU. • The autonomy, functions, responsibilities, powers and identity of the FIU needs reviewing and the identity of the FIU should be established clearly in the legislation and other implementing provisions • Restricted or sensitive information may accidentally reach unauthorised persons. • No periodic reports issued with statistics, typologies, trends and information on FIU activities • The lack of staff impacts on the effectiveness of the FIU
27. Law enforcement authorities	PC	• The law enforcement system is response based and there does not appear to be an adequate proactive inquiry in money laundering matters. There were no ML investigations initiated by the police at their own initiative after 2003 • Low number of investigations and prosecutions raises effectiveness issues
28. Powers of competent authorities	LC	• The investigating judge and the three law enforcement units have the powers required to carry out investigations and take statements concerning any crime with the exception of certain tax related cases and self money laundering cases which are not deemed to be predicate underlying offences.
29. Supervisors	LC	• The effectiveness of these powers has not been fully tested to date.
30. Resources, integrity and training	PC	*FIU* • Lack of sufficient staff to ensure that the FIU fulfils its tasks at the desired

		level *Law enforcement* • Reservations about the practical experience and expertise on ML/FT issues of law enforcement authorities • Limited training provided to law enforcement agents, both upon recruitment as well as on an ongoing basis regarding AML and CFT. *Supervisory authorities* • The level of resources available to the CBSM is not adequate to enable it to fully and effectively perform its functions
31. National co-operation	PC	• There is no mechanism facilitating a regular and joint review of the AML/CFT system and its effectiveness by competent authorities • Policy level co-ordination and co-operation is lacking on AML/CFT matters
32. Statistics	PC	*32.1* • No review of the effectiveness of the system for combating ML and FT on a regular basis *Statistics on matters relevant to the effectiveness and efficiency of systems for combating ML and FT:* *- STRs and other reports* • Statistics kept are incomplete and lack the data required to draw up a comprehensive picture of the effectiveness and efficiency of the unit • No statistics on STRs or other disclosures concerning physical cross-border transportation or currency of bearer negotiable instruments *- ML and FT investigations, prosecutions and convictions and on property frozen, seized and confiscated* • No annual comprehensive statistics maintained in relation to money laundering cases • No statistics maintained relating to the number of cases, amounts and property frozen, seized, confiscated related to ML, FT, criminal proceeds or underlying predicate offences • Limited information and data available do not demonstrate the effectiveness and efficiency of the law enforcement

		and prosecuting authorities' action *- Mutual legal assistance* • Statistics do not include information about the predicate offence(s) and the average time of response. • No statistics available on outgoing requests for MLA. *- Extradition* • No comprehensive statistics are kept related to incoming and outgoing requests for ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused and the time required to respond. *Other forms of international co-operation* • No statistics provided on international police cooperation, exchange of information between supervisors
33. Legal persons – beneficial owners	PC	• The Register of Companies does not contain information on the beneficial owners • There is no full transparency of the shareholders, in particular with reference to anonymous companies, and the requirement to identify shareholders when establishing a company does not refer to natural persons owning or controlling the legal person buying shares in a company. • There are no appropriate measures to ensure transparency in cases of transfers of bearer shares
34. Legal arrangements – beneficial owners	NC	• There is no clear definition of beneficial ownership of trust in San Marino. • The Register of Trust does not contain information on beneficiaries or settlors. • At the time of the visit, there were indications that the legislation had not yet been implemented, there were doubts that the Register was physically in place and whether the established trusts had been registered.
International Co-operation		
35. Conventions	PC	• Reservations about certain aspects of the implementation of the Vienna Convention and of the TF Convention • Palermo Convention not ratified and

		implemented
36. Mutual legal assistance (MLA)	PC	• Concerns about the efficiency of the process for execution of MLA requests and possible delays • The evaluators could not clarify, with the exception of the situation of lawyers, wqhether there are grounds for refusal of MLA requests in the context- of secrecy or confidentiality requirements for DNFBPs • No consideration of a mechanism for determining the best venue for prosecutions in cases that are subject to prosecution in more than one country. • Deficiencies in ML and FT may negatively impact on dual criminality
37. Dual criminality	LC	Due to the gaps in the incrimination of offences in article 199bis and 337bis
38. MLA on confiscation and freezing	LC	• Concerns related to requests for confiscation of laundered property and proceeds (not only instrumentalities) • No consideration given to establishing an asset forfeiture fund.
39. Extradition	PC	• Reservations about extradition due to the limitations in the extradition of ML/FT offences • Need to clarify the extradition procedures and to ensure that requests and proceedings can be effectively handled without undue delay
40. Other forms of co-operation	PC	• Legal framework for cooperation on AML/CFT matters needs reviewing to eliminate concerns regarding the scope of cooperation • Requests for cooperation can be refused on the grounds of laws that impose secrecy on DNFBP • Central Bank (FIU) may not be in a position to obtain information concerning ultimate beneficiaries since at times banks do not have the details of ultimate beneficiaries of companies due to bearer shares. • Effectiveness issues
Nine Special Recommendations	**Rating**	**Summary of factors underlying rating**
SR.I Implement UN instruments	PC	Deficient implementation of the TF Convention and of UN resolutions
SR.II Criminalise terrorist financing	PC	• The FT offence does not cover all offences defined as terrorist offences in the annex to the FT convention

		• Concerns regarding whether the concept of "financing "would include for instance the fact of collecting funds or of transferring or concealing assets as well as whether all types of funds and assets which can serve the purpose of financing terrorism are covered; • Criminal, civil or administrative liability of legal persons for FT is not provided for, • Legal persons are not subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions for FT
SR.III Freeze and confiscate terrorist assets	PC	• No designating authority for UNSCR 1373 • Absence of guidance on obligations and procedures • There are no clear publicly known provisions for considering de-listing and unfreezing • There is no appropriate procedure authorizing access to frozen funds for necessary basic expenses, payment of certain fees, service charges or extraordinary expenses. • The legal framework for imposing administrative sanctions should be reviewed • No checks of compliance made
SR.IV Suspicious transaction reporting	NC	• no explicit obligation to report any suspicions of terrorist financing • requirements under 13.3* not covered in law or regulation and 13.4 not covered
SR.V International co-operation	PC	• Reservations about the possibility of rendering MLA for all offences related to terrorist financing • Reservations about the possibility of extradition for all offences related to terrorist financing • Terrorist financing is not covered in AML law • No practice in information exchange in relation to FT.
SR VI. AML requirements for money/value transfer services	NC	• Lack of implementing measures on provisions of money transfer services by San Marino post offices • there is no provision for the application of administrative, civil or criminal sanctions.
SR VII Wire transfer rules	NC	• There are only some very limited

		references in circulars to wire transfers. • There are no legal or other enforceable means that require financial institutions to ensure that complete originator information is included in outgoing wire transfers and that beneficiary financial institutions based in San Marino adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. • No measures in place to monitor compliance with SR.VII • No specific sanctions with regard to the provisions of SR.VII
SR.VIII Non-profit organisations	NC	• San Marino has not yet reviewed the adequacy of domestic laws and regulations that relate to non profit organisations vis à vis FT nor has conducted periodic reviews of the sector for FT vulnerabilities • No review of the risks in the NPO sector has been undertaken, though there is some transparency. • It is unclear whether there is an adequate legal basis to implement measures to ensure accountability and transparency • No outreach to the NPO sector with a view to protecting the sector specifically from FT abuse • No requirement for the NPO sector to keep detailed records or to keep them for a period of at least 5 years • no specific points of contact and procedures have been identified to respond to international request for information regarding particular NPOs
SR.IX Cross Border Declaration & Disclosure	NC	• Absence of a cross border declaration or disclosure system – currency and bearer negotiable instruments can enter and leave San Marino without any controls • The authorities have not undertaken an analysis of potential measures which could be taken to comply with SR.IX criteria, thus its requirements are not met

9 TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 & 2)	• It would be helpful to cover explicitly in legislation the acquisition and possession of property known to be proceeds, as envisaged in article 6.1.c of the Strasbourg Convention and in article 3.1.c of the Vienna Convention. • According to article 199 bis, the material conduct is done with the purpose of concealing the true origin of money. The evaluators recommend widening this aspect, to cover also the concealment of the true location and disposition, as provided for by the Vienna and the Palermo Conventions. • The authorities should clarify in the legislation that the offence of ML extends to any type of property that directly or indirectly represents the proceeds of crime, in particular "money" indirectly obtained. Thus the language of the offence should be reviewed in order to explicitly provide for a definition of assets ("property") which includes indirect proceeds of crime. • Legislative amendments are also required to ensure, that all designated categories of offences indicated in the Glossary to the FATF Recommendations are covered by San Marino Criminal Code. • The authorities of San Marino are invited to revisit the definition of the laundering offence in order to extend it to the laundering of proceeds from one's own criminal activity. • The evaluators recommend that consideration be given to criminally punishing the conduct laid down in article 199bis when committed negligently. In some jurisdictions a clearer subjective mental element of suspicion that property is proceeds (with appropriately lesser sentences than for an offence based on direct intention) has been useful and, if this would not be contrary to any fundamental legal principles in San Marino, it could be considered. • Criminal liability of legal persons should be clearly provided by law as there is no fundamental principle of law prohibiting it.

	• Given that the implementation aspect appears to be quite unsatisfactory, this issue should be addressed by the San Marino authorities through a firm prosecution policy and that a review of the effectiveness of the current legislation be carried out. In particular, the authorities should review their legislation to ensure that natural and legal persons should be subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions for ML and consider increasing the level of sanctions. • More comprehensive statistics in relation to money laundering cases should be kept, which include for instance information on whether confiscation was ordered, information on the underlying predicate offences and information as to whether the ML offence was prosecuted autonomously or together with the predicate offence, so as to assist future analysis of the effectiveness of the money laundering criminalisation.
2.2 Criminalisation of Terrorist Financing (SR.I)	• The evaluators recommend that terrorist financing should be criminalised as an autonomous offence in the Criminal Code. • The authorities should ensure that this offence is reconciled with all the aspects of the United Nations International Convention for the Suppression of the Financing of Terrorism and explicitly covers all the essential criteria in SR. II and the requirements of the Interpretative Note. In particular: - the definition should expressly include the financing of individual terrorists and all offences defined as terrorist offences in the Annex to the TF convention and not be limited to the financing of terrorist associations; - it is recommended to define the terms “terrorism”, “terrorist act”, “terrorist”, in the legislation of San Marino; - there should also be a definition of the concept of financing, including with regard to the type of funds and assets which can serve the purpose of financing terrorism; - criminal liability for FT should extend to legal persons and such persons should be subject to effective, proportionate and dissuasive criminal sanctions for FT.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	The evaluators recommend the San Marino authorities to address the following shortcomings: • Equivalent value confiscation should be considered also for offences other than ML or FT; • The legal powers of competent authorities to identify and trace proceeds should be reviewed, in particular those of the FIU so as to enable it to block or freeze assets other than those held or maintained within banks or financial intermediaries; also the FIU should have direct access to public available information held within public administrations. • There should be legal provisions to void actions, both contractual and non-contractual, whose effects consist in prejudice to the possibility to confiscate property or assets.

2.4 Freezing of funds used for terrorist financing (SR.III)	• The authorities should clarify the framework for the conversion into San Marino law of designations under UNSCR 1267 and in the context of UNSCR 1377 and designate a national authority to consider requests for designations under UNSCR 1373. • It should also be clarified that once the Supervision Department has communicated designations, immediate checks should be performed. • The authorities should also ensure that the mechanism applies to all targeted funds or other assets as described in the UN resolutions of individuals, groups and legal entities. Given the gaps in the incrimination of the offence of financing of terrorism, the court based system for freezing appears to be of limited assistance for the effectiveness of the system. • The authorities should establish a clear and publicly known procedure for de-listing and unfreezing requests; and appropriate procedures authorizing access to frozen funds for necessary basic expenses, payment of certain fees, service charges or extraordinary expenses. • The supervisory authority should be actively checking compliance with SR III and the legal framework for imposing administrative sanctions should be reviewed to adequately enable it to sanction failure to comply with the obligations.
2.5 The Financial Intelligence Unit and its functions (R.26)	• The current institutional set up of the FIU should be revisited and specific legislation be adopted which clearly states and defines the functions, responsibilities, powers of the FIU, irrespective of whether it is established as an independent governmental agency or within another entity. There must be transparent legislation that denotes the independence of the FIU. • The evaluators recommend that the identity and independence of the FIU be established clearly in the legislation, in particular in the AML law (which refers only to the former Supervision Division) to bring it into convergence with the criteria for and characteristics of FIUs generally. • Also, the authorities could give consideration as to whether an additional committee is necessary to be maintained at a higher level with an oversight/ policy role and if so, it is recommended that they review carefully both its composition and functions. In particular the authorities should ensure that its composition is balanced and transparent, and that it does not call into question the ability of the FIU to exercise full operational independence.

	• There is no mandatory reporting obligation of suspicious transactions related to FT (with the exception of lists of designated or suspected terrorists) and this should be urgently established. • The Central Bank should ensure that all financial institutions and other reporting entities are provided with comprehensive and up to date guidance regarding the manner of reporting and the procedures. A standardised STR reporting format should also be developed for all reporting entities. • The legal framework and basis should be reviewed to provide the FIU access in a timely manner, be it directly or indirectly, to the relevant financial, administrative and law enforcement information which it needs to properly undertake its functions. Also, the authorities should take the necessary implementing measures to ensure that the access to information held by all reporting entities can be obtained by the FIU. • The San Marino authorities should take all necessary measures to ensure that the FIU information held is securely protected and to address the concerns expressed in relation to access to such information by other Central Bank personnel other than the staff of the AML Service and the members of the Supervision Committee. In particular, the evaluators believe that the current procedures for handling the correspondence of the AML Service should be reviewed to ensure that information received and communicated to the FIU is securely protected and disseminated. • The evaluators recommend the FIU to publish periodic reports containing information regarding its activities, information on typologies and trends in ML and FT. In the context of San Marino and the staff shortage, the evaluators recommend either that the FIU issues its own report or otherwise includes it in a specific section of the annual Central Bank report.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	• It is strongly advised that the San Marino law enforcement authorities start playing a more active role in AML/CFT efforts. Indeed a more pro-active approach should be adopted in investigating and prosecuting money laundering, putting focus more on the financial aspects of major proceeds generating crimes as a routine part of the investigation. • The law enforcement and judicial authorities' competencies in AML/CFT should definitely be strengthened, in particular through training developed and/or continued, placing an emphasis on the systematic recourse to financial investigations, the use of existing tools and investigative techniques, analysis and use of

	computer techniques. • The evaluators also believe that there needs to be a more in-depth analysis of the phenomenon of and trends in money laundering and terrorism financing. • Even though it appears that there is a good degree of operational co-operation between the law enforcement units and the FIU concerning individual cases, there is no established regular co-operation between the parties concerned (the investigation judge, the law enforcement units, the FIU and the Central Bank and other competent authorities) with a view to analysing methods, techniques, and typologies of AML/CFT and sharing the results of such analyses amongst themselves. Such joint exercise should be conducted regularly among the relevant authorities and the resulting information should be disseminated to law enforcement and FIU staff. • The authorities could consider establishing a joint committee comprising all those concerned in AML/CFT matters together with certain policy makers (this joint committee should be one apart from what the one referred to under section 2.5.2, this should be an inner committee where besides the usual topics, sensitive issues are also discussed) be set up to discuss and evaluate AML/CFT effectiveness and reviewing the system to detect and eliminate shortcomings, develop and implement policies and legislation thus improving results.
2.7 Cross Border Declaration & Disclosure	• It is strongly recommended that the San Marino authorities review the implementation of Special Recommendation IX as a whole and take the necessary steps as soon as possible to ensure that all criteria are adequately satisfied.
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	***Recommendation 5*** • The evaluators advise that obligations in the AML/CFT Methodology marked with an asterisk are put into the AML Law. • At the time of the evaluation visit, the provisions on customer identification, record maintenance and reporting requirements for post offices, credit recovery on behalf of third parties, financial promoters and insurance promoters and agencies of Italian insurance companies and insurance brokers had not been implemented, as no provisions were issued by the CBSM as required in the law. The authorities should ensure that these provisions are implemented, by issuing the relevant provisions required by law and by taking any additional necessary measures to facilitate the implementation process.

	• The evaluators recommend that the authorities should take steps to terminate the issue of bearer passbooks. As regards existing bearer passbooks, the evaluators recommend that at a minimum clear requirements be introduced in law to ensure that full identification and recording of persons to whom a bearer passbook is transferred is carried out. • The authorities should introduce a risk-based approach, performing enhanced and simplified CDD measures for different categories of customers, business relationships, transactions and products. They should consider undertaking a risk assessment of the financial sector to determine those areas where there may be particular AML/CFT risks, to assist the financial sector in ensuring that enhanced measures are taken in those situations where there is a greater risk of AML/CFT. • They should require in legislation financial institutions to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction. • A comprehensive definition of beneficial owner, as provided for in the Glossary to the FATF Recommendations, incorporating the concept of identifying the natural persons who ultimately own or control the customer should be included in relevant legislation. • The following requirements to verify customers' identity are not in the current legislation and should be provided for: - use reliable, independent source documents, data or information; - verify that any person purporting to act on behalf of the customer (for customers that are legal persons or legal arrangements) is so authorised, and identify and verify the identity of that person; - identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the financial institution is satisfied that it knows who the beneficial owner is; - determine whether the customer is acting on behalf of another person, and then take reasonable steps to obtain sufficient identification data to verify the identity of that other person; - conduct ongoing due diligence on the business relationship, which includes scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds.

	• Provisions should be adopted which address circumstances where there is a failure to satisfactorily complete CDD. ***Recommendation 6*** • There are no specific requirements in San Marino AML laws or regulations with regard to PEPs. The San Marino authorities should put in place measures that require financial institutions to: - determine if the client or the potential client is a PEP as defined in the FATF Recommendations; - obtain senior management approval for establishing a business relationship with a PEP; - take reasonable measures to establish the wealth and on the source of the funds of customers identified as PEPs; - conduct enhanced monitoring on PEP business relationships. ***Recommendation 7*** • In relation to cross-border correspondent banking and services, financial institutions should not only be required to perform normal due diligence measures but should also be required to obtain information on: - the reputation of the respondent counterparts and the quality of supervision from publicly available information; - assess their AML/CFT controls and ascertain their adequacy; - obtain approval from senior management before establishing new correspondent relationships; - document the respective AML/CFT responsibilities of each institution; - where 'payable through accounts' are involved obtain guarantees that counterpart organisations apply the normal CDD measures to all customers that have client access to the accounts of the correspondent institutions and that it is able to provide relevant customer identification data on request ***Recommendation 8*** • San Marino AML legislation and regulations should include enforceable requirements on non-face to face business relationships or transactions. Financial institutions need to be made aware of the possible misuse of new technologies for ML/FT purposes but also be required to have policies in place to prevent the misuse of technological developments for ML/FT purposes, and to have policies and procedures in place to address specific risks associated with non face to face relationships and transactions.
3.3 Third parties and introduced business (R.9)	• If financial institutions were in future to consider relying on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business, the San Marino authorities would need to take account of all the essential criteria under Recommendation 9 and

	ensure that they were covered by enforceable means that would contain specific provisions allowing financial institutions to rely on the CDD conducted by intermediaries or other third parties.
3.4 Financial institution secrecy or confidentiality (R.4)	• San Marino authorities should review their legal provisions on banking and official secrecy to ensure that they do not inhibit implementation of FATF Recommendations. The AML Law should clearly lift bank secrecy, not only for STRs in respect of money laundering, but also in particular in the context of the ability of competent authorities to access information required in the performance of their AML/CFT functions and of the sharing of information between competent authorities, either domestically or internationally. • Following the introduction of the obligation to report suspicious transactions on FT, it should be clearly provided in legislation that banking secrecy does not apply with regard to STRs on FT. As a consequence, STRs relating to FT sent to the FIU should not constitute a violation of secrecy obligation or imply liability of any kind. • The current framework should be reviewed to ensure that banking and official secrecy should not prevent the sharing of relevant information, either domestically or internationally among AML/CFT competent authorities, nor impose too strict conditions for exchanges which inhibit such cooperation.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	***Recommendation 10*** • The obligation that records of the identification data, account files and business correspondence should be kept for at least five years after the closure of the account or termination of the business relationship (or longer if requested by a competent authority in specific cases and upon proper authority) should be included in law or regulation. • Also, financial institutions should be required in law or regulation to ensure that all customer and transactions records and information are available on a timely basis to the competent authorities. ***Special Recommendation VII*** • The provisions of SR VII on wire-transfers are not directly addressed in law or regulation. While in practice some measures are taken that cover certain limited elements of SR.VII, the San Marino authorities should introduce requirements to ensure that complete originator information is included in outgoing wire transfers and that beneficiary financial institutions adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by account number and address information. • The CBSM should introduce measures to effectively

	monitor compliance with any requirements introduced in relation to wire transfers. There should be specific sanctions in relation to obligations under SR.VII.
3.6 Monitoring of transactions and relationships (R.11 & 21)	***Recommendation 11*** • More explicit and comprehensive provisions should be introduced with regard to unusual transaction monitoring that should be adopted by financial institutions. • Financial institutions should be required that the background and purpose of such transactions be adequately examined and documented and that their findings in this respect should be set forth in writing and retained for a period of five years. ***Recommendation 21*** • The San Marino authorities should introduce mechanisms which would facilitate financial institutions being made aware of the different degree of compliance by other jurisdictions with respect to the FATF standards. • It is recommended that the San Marino Central Bank or any other authority, besides those guidelines already in use, augment these with a system or systems that could render better assistance and guidance to credit and financial institutions in vigilance concerning risk countries.
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	***Recommendation 13 & Special Recommendation IV*** • The evaluators consider that the system put in place for the reporting of suspicious transactions should be reviewed to ensure that it meets all the requirements set out in Recommendation 13. The AML law should require financial institutions to report *promptly* to the FIU. The reporting requirement which should be in law or regulation should clearly cover all predicate offences and all aspects of FT. • San Marino authorities are urged to set out in law or regulation a direct mandatory obligation for financial institutions to report to the FIU when it suspects or has reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism. • Furthermore, San Marino should ensure that there is a requirement in law or regulation that all suspicious transactions, including attempted transactions, are reported regardless of the amount of the transaction. Also, such a reporting requirement should apply regardless of whether they are thought, among other things, to involve tax matters. • The authorities should also take steps to address the concerns related to the effectiveness as a whole of the reporting system. The FIU should pursue outreach to those

	financial institutions which are either nor reporting or underreporting suspicious transactions, and possibly issue further guidance and recommendations on how to determine whether a transaction is suspicious. ***Recommendation 14*** • Legal protection of reporting entities for disclosures in good faith should be extended to cover reporting of suspicions of financing of terrorism. There should be a clear legal provision excluding any kind of liability for breach of any restriction on disclosure of information imposed by contractual, legislative, regulatory or administrative provisions for persons reporting suspicions of financing of terrorism. • The San Marino authorities should ensure that legislation provides for an explicit legal prohibition of tipping-off. Such provision should cover financial institutions and their directors, officers and employees (permanent and temporary) and should prohibit from disclosing the fact that a STR is being reported or provided to the FIU. ***Recommendation 19*** • San Marino should consider the feasibility and utility of implementing a currency reporting system across all regulated sectors. ***Recommendation 25*** • The competent authorities should establish feedback mechanisms to provide adequate and appropriate feedback to reporting entities. They should update and complete as necessary existing guidance so as to improve the effectiveness of suspicious transaction reporting, in particular in relation to types of suspicious activities, use of standard forms, procedures and time for submission of an STR, and consider developing targeted guidance as appropriate.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	***Recommendation 15*** • The San Marino authorities should ensure that detailed requirements for financial institutions to establish internal procedures to prevent AML/CFT are contained in a law, regulation or other enforceable obligation. • In particular there should be requirements to ensure that compliance officers and other appropriate staff have timely access to customer identification data and other CDD information, that financial institutions maintain an adequately resourced and independent audit function to test compliance and that there are screening procedures to ensure high standards when hiring employees. ***Recommendation 22*** • While there are currently no financial institutions that have established operations abroad, provisions on AML/CFT

	requirements in respect of subsidiaries, branches or representative offices abroad should be included in future legislation or other enforceable means. • These provisions should include the need to ensure that foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and FATF Recommendations, the need to pay particular attention that this principle is observed with respect to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations, provisions that where minimum AML/CFT requirements of the home and host countries differ branches and subsidiaries in host countries should be required to apply the higher standard and the need to inform the home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures.
3.9 Shell banks (R.18)	• The prohibition of establishment or operation of shell banks and the issue of correspondent banking relationships with shell banks should be referred to explicitly in future law, regulation or other enforceable means. • San Marino should require financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	***Recommendation 17*** • San Marino should ensure that there are effective, proportionate and dissuasive criminal, civil or administrative sanctions to deal with legal persons that fail to comply with the AML/CFt requirements. • The effectiveness of the sanctions in place has not been fully tested in practice and should be enhanced. ***Recommendation 23*** • As noted above, the level of on-site inspections is considered low. The authorities are urged to remedy this situation in order to ensure effective supervision of financial institutions. • A detailed plan should be put in place to carry out regular inspections of banks and financial institutions which inspections should include the assessment of AML/CFT procedures. • More formalised training procedures should be put in place for supervision staff, in particular for those staff involved in on- and off site inspections. ***Recommendation 25*** • The competent authority should issue comprehensive and updated guidance to assist financial institutions to implement and comply with AML/CFT requirements.

	Recommendation 29 • While the Central Bank has the adequate powers to monitor and inspect financial institutions, the effectiveness of these powers has not been fully tested to date due to the low level of inspections and should be enhanced.
3.11 Money value transfer services (SR.VI)	• Although San Marino authorities pointed out that in respect of AML requirements connected to the provision of MVT services, San Marino post offices comply with the rules applicable to the Italian postal service, domestic AML/CFT implementing provisions legislation should be adopted as soon as possible in order to meet the requirements of Special Recommendation VI, criteria 1 to 6.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• The San Marino authorities are urged to issue relevant implementing regulations as soon as possible and introduce the obligations required under Recommendation 12 to DNFBPs. The recommendations made above for CDD requirements for financial institutions should be applied also to DNFBP. • It should be considered if the explicit inclusion of Internet casinos and trust and company service providers in the list of entities that have to be monitored for AML/CFT purposes is needed.
4.2 Suspicious transaction reporting (R.16)	• San Marino should take immediate steps to fully implement the provisions of the AML law in respect of DNFBPs and address the deficiencies which have been identified in the analysis of compliance with recommendations 13-15. Outreach and guidance should be developed for all DNFPB to explain the reporting obligations. • The San Marino authorities should put in place requirements for all categories of DNFBPs to establish internal procedures, policies and controls to prevent money laundering and financing of terrorism. • DNFBPs should be required to give special attention to business relations and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF recommendations.
4.3 Regulation, supervision and monitoring (R.24-25)	• The authorities are therefore urged to issue relevant implement regulations and designate AML/CFT supervisors for all DNFBPs and ensure that these supervisors have adequate powers to inspect for compliance with AML/CFT requirements, including internal procedures. • San Marino should be aware of issues relating to the illicit operation of internet casinos in San Marino, and should be prepared to address these problems.

	• Sector specific guidance on suspicious transaction reporting needs to be developed and provided to DNFBP required to make suspicious transaction reports in line with the FATF Best Practice Guideline on Providing Feedback to Reporting Financial Institutions and other Persons.
4.4 Other non-financial businesses and professions (R.20)	• Regardless of the restrictions on the use of cash in amounts over € 15 500 it is recommended that the San Marino authorities extend the AML/CFT framework in accordance to Article 2a(6) of the second EU Directive to all dealers in high value goods not only to antiques shops, dealers in precious metals and precious stones.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	• It is recommended that San Marino reviews its legislation with a view to taking measures to ensure wider transparency as to legal persons. In particular: - San Marino should consider abolishing anonymous companies. - The Register of Companies should include identification data of natural persons being shareholders of a company or owning/controlling the legal person-shareholder of the company. - The requirement to identify shareholders when establishing a company should refer also to beneficial owners (natural persons owning or controlling the legal person buying shares in a company). - San Marino should consider introducing a clear procedure to access the information kept in the Register of Companies, notably as to time limits set to be granted access to the relevant documents.
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	• San Marino authorities should take additional steps to ensure that legislation on trusts require additional information on the beneficial ownership and control of trusts and other legal arrangements. More specifically: - A clear definition of beneficial ownership should be provided in the legislation, notably as to trusts' beneficiaries. - It should be clearly stated in the legislation that information accessible in the Trust Register should include details on settlors, administrators, and trustee; this information should include details also on individuals owning or controlling legal persons acting as beneficiaries, settlors or trustees. - The relation between the public nature of the Trust Register, accessible to anybody (under article 9.3 of the Trust law and article 4 of Decree No. 86/2005) and the confidentiality of registered information (article 3 of Decree No. 86/2005) should be clarified. - The reference to reasons to request access to the Register made by article 4.3 of Decree No. 86/2005 should also be clarified.
5.3 Non-profit organisations	• The San Marino authorities should review the adequacy of

(SR.VIII)	laws and regulations related to NPOs as well as the sector's potential vulnerabilities to abuses for the financing of terrorism and make any necessarychanges to the laws and regulations. • The authorities should also develop an effective outreach program with the NPO sector. • A number of measures have been taken, as a matter of practice and by analogy to the existing requirements for companies, which led to the collection of certain information on registered entities, though there is no legal requirement in legislation for this purpose. The authorities should promote effective supervision and monitoring and ensure that there is a clear legal basis which enables them to require NPOs to maintain information on the purpose and objectives of their activities, on the identity of persons who own, control or direct their activities (including senior officers, board members and trustees). Appropriate measures should also be in place to sanction violations of oversight measures. • The evaluators were not made aware of any legal requirement for NPOs to maintain for a period of at least 5 years records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objective of the organisation. Such a requirement should be introduced in law or regulation. • San Marino authorities should also raise awareness of the SR VIII among existing supervisory authorities engaged with the NPO sector and to define a clear and effective coordination mechanism between NPO supervisory authorities, law enforcement agencies, FIU/Central Bank. • Furthermore appropriate contacts points and procedures should be established to respond to international requests for information regarding particular NPOs that are suspected of FT or other forms of terrorist support.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	• Operational co-operation between the Judiciary and the AML Service should be further fostered. • It is recommended that the relevant authorities develop a mechanism at national level facilitating co-operation, co-ordination and consultation concerning the development and implementation of AML/CFT policies and legislation leading to a clear national strategy. • The authorities should also consider establishing mechanisms for consultation between competent authorities, the financial sector and other sectors, including

	DNFPB, that are subject to AML/CFT requirements. • San Marino should ensure that the competent authorities review the effectiveness of the AML/CFT system on a regular basis.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	• San Marino should take immediate steps to ratify and implement fully the Palermo Convention. • The evaluators' earlier recommendations apply equally to the effective implementation of the Vienna Convention and the Terrorist Financing Convention, in terms of incrimination of the ML and FT offences, criminal liability of legal persons, cooperation arrangements, special investigation methods, the detection of physical cross-border transport and to the implementation of the UN Security Council resolutions. • The evaluators also encourage the San Marino authorities to reconsider the reservations made to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	• Given the absence of clear and specific national provisions on mutual legal assistance which detail the process of receiving and executing MLA requests, the evaluators recommend that consideration is given to introducing such provisions in legislation. This would also have the advantage of clarifying the process for both domestic and foreign practitioners. • Also, it is recommended to clarify in legislation that there is no possibility to oppose secrecy or confidentiality rules to the competent authorities requesting any information in the context of foreign mutual legal assistance requests, with the exception of legal professional privilege or legal professional secrecy rules. • The authorities should also consider devising and applying mechanism for determining the best venue for prosecution of defendants in the interest of justice in cases that are subject to prosecution in more than one country. • They should ensure that confiscation of laundered property and proceeds should be also possible (not only instrumentalities) in the context of international cooperation. • Consideration should be given to an asset forfeiture fund and sharing of confiscated assets with other countries in joint enquiries. • As regards recommendation 37, the deficiencies identified in the ML and FT offence should be remedied to enable full compliance with the dual criminality ruled requests. San Marino officials may consider legislating to render

	mutual legal assistance in the absence of dual criminality, at least for less intrusive and non compulsory measures.
6.4 Extradition (R.39, 37 & SR.V)	• The application of dual criminality may create an obstacle to extradition in cases involving ML/FT activities that are not properly criminalised in San Marino. The authorities should review the current legislation to ensure that there are no legal impediments to render assistance where the conduct underlying the offence is criminalised. The evaluators reiterate in this context their previous recommendations related to the review of the criminalisation of ML and FT. • As regards extradition, it is recommended that: - San Marino ratifies the European Convention on Extradition as soon as possible; - Extradition proceedings may incur in undue delays since requests are first tackled at a political level. This will cause delays. It is suggested that a body or authority, not solely at political level, deals with such requests. It is suggested that this body could be composed of elements coming from the Judiciary and Ministry of Justice. - Clear and detailed procedures on procedural and evidentiary aspects are established. - studies be undertaken to establish whether: □ it is feasible to establish an office or central authority that deals solely with extradition and mutual legal assistance; □ simplified procedures of extradition should be in place to allow direct permission of extradition requests between appropriate ministries; □ it is appropriate to allow extraditions solely on the strength of a warrant of arrest or judgement; □ simplified procedure for extradition for consenting persons who waived formal extradition proceedings be allowed; • The authorities should ensure that the current framework enables to extradite individuals charged with the financing of terrorism, terrorist acts or terrorist organisations.
6.5 Other Forms of Co-operation (R.40 & SR.V)	• The evaluators recommend that the authorities review the AML/CFT legislation in order to eliminate any uncertainties related to the scope of co-operation of the FIU with foreign counterparts. They recall in this context the comments made regarding the necessity to establish the identity of the FIU in legislation and as part of the reinforcement of its organisational autonomy within the Central Bank, they recommend that specific provisions be adopted which detail the capacities of the FIU in this context in accordance with recommendation 40. • San Marino authorities should consider to adopt relevant provisions regarding disclosing of professional secrecy also for other entities (e.g. DNFBPs).
7. Other Issues	

7.1 Resources and statistics (R. 30 & 32)	*R. 30* *In the context of the FIU* • The evaluators recommend that the authorities should conduct an assessment of the staff needs of the FIU, separately from those of the Central Bank, and that they take the necessary measures to ensure that the FIU is given sufficient staff to fulfil its tasks at the desired level. • Furthermore, the practice of using Central Bank personnel to undertake FIU duties should be abandoned. *In the context of law enforcement* • Law enforcement officials should be provided with adequate and relevant AML/CFT training in order to enhance their skills regarding ML and FT issues; *Supervisory authorities* • To ensure effectiveness of the new supervisory framework, and in particular compliance with the AML/CFT international standards, the level of available resources should be reviewed in order to ensure that adequate resources are assigned to facilitate the carrying out of sufficiently detailed onsite and offsite supervision *R. 32 - Statistics on matters relevant to the effectiveness and efficiency of systems for combating ML and FT* • A more comprehensive system of statistics eliminating the shortcomings indicated in the report should be organised. This would also assist in determining trends and effectiveness. • Statistics on STRs and other disclosures concerning physical cross-border transportation or currency of bearer negotiable instruments should be kept. • Annual comprehensive statistics should be kept in relation to ML cases • Statistics should be maintained on the number of cases, amounts and property frozen, seized, confiscated related to ML, FT, criminal proceeds or underlying predicate offences *In the context of MLA* • Comprehensive statistics should be kept on an annual basis (outgoing and incoming MLA requests); statistics concerning mutual legal assistance should include also information about the predicate offence(s) and the average time of response *In the context of extradition* • Comprehensive statistics should be kept related to incoming and outgoing requests for ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused and the time required to respond.

	In the context of other forms of co-operation • The FIU should keep detailed statistical data showing in particular their response times and whether the requests were fulfilled in whole or in part or were incapable of being fulfilled. It is also advised that statistical information is kept in relation to the numbers and types of spontaneous disclosures made by the FIU. • Statistics on international police co-operation and on formal requests for assistance made or received by supervisors relating to or including AML/CFT including whether it was granted or refused.
7.2 Other relevant AML/CFT measures or issues	-
7.3 General framework – structural issues	-

V. ANNEXES

10 ANNEX 1: LIST OF ABBREVIATIONS AND ACRONYMS

AML Law	Anti-Money Laundering Law
CBSM	Central Bank of San Marino
CC	Criminal Code
CDA	Central Depository Agency
CDD	Customer Due Diligence
CETS	Council of Europe Treaty Series
CFT	Combating the financing of terrorism
CPC	Criminal Procedure Code
CTR	Cash Transaction Reports
DNFBP	Designated Non-Financial Businesses and Professions
ETS	European Treaty Series [since 1.1.2004: CETS = Council of Europe Treaty Series]
EU	European Union
EUR	Euro
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
GRECO	Group of States against Corruption
IN	Interpretative Note
IT	Information Technology
KYC	Know your customer
LISF	Law No. 165/2005 on companies and banking, financial and insurance services
MLA	Mutual Legal Assistance
MOU	Memorandum of Understanding
MVT	Money Value Transfer
NCCT	Non-cooperative countries and territories
NPO	Non-profit organisations
OBS	Office of Banking Supervision
OECD	Organisation for economic co-operation and development
OFAC	Office of Foreign Assets Control (US Department of the Treasury)
PEP	Politically Exposed Person
RIS	Rete Interbancaria Sammarinese
SAR	Suspicious Activity Report
SR	Special Recommendation
SRO	Self-regulatory organisations
STR	Suspicious transaction report
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TCSP	Trust and company service providers
UN	United Nations
UNSCR	United Nations Security Council resolution
UTR	Unusual Transaction Report

11 ANNEX 2: DETAILS OF ALL BODIES MET ON THE ON-SITE MISSION - MINISTRIES, OTHER GOVERNMENT AUTHORITIES OR BODIES, PRIVATE SECTOR REPRESENTATIVES AND OTHERS

Their Excellencies the Captains Regent

Ministries

- Minister of Foreign and Political Affairs and Economic Planning and staff responsible for aspects related to international agreements and conventions in AML/CFT matters and relations with relevant international organisations
- Minister of Finance and Budget, Posts and Relations with the State Stamp and Coin Corporation (AASFN) & Staff (Finance department, Post Directorate, tax office, Games authority)
- Minister of Justice & Staff
- Minister of Industry, Handicraft, Trade, Research and Relations with the State Public Utilities Company (AASS) & Staff

Operational and law enforcement agencies

- Commander of Gendarmerie
- Commander of Civil Police
- Commander of Guardia di Rocca
- Financial Intelligence Unit

Judiciary

- Law Commissioners (judge), Single Court
- Administrative Judge (State Register), Single Court

Financial institutions

Supervisory agencies

- Central Bank of the Republic of San Marino (Director General, member of the Supervision Committee, head regulatory service for Banks and Financial Companies, head regulatory Service for Insurance and CIS, Head of the On-site Supervision service)

Selection of banks and financial companies (management level + compliance officers)

Representative insurance companies

Professional associations

- President of Assobank
- President of Associazione Bancaria Sammarinese
- President of Assofin (financial companies association)
- President of Accountants' association (Ordine dei Dottori Commercialisti)
- President of Bar Association

12 ANNEX 3 - COMPLIANCE WITH THE SECOND EU AML COUNCIL DIRECTIVE

Prior to the on-site visit MONEYVAL had identified seven Articles in the EU AML Second Council Directive that differed, mostly in their mandatory aspect, from the FATF 40-Recommendations:

(i)	Article 2a	on the applicability of the AML obligations;
(ii)	Article 3	on identification procedures;
(iii)	Article 6	on reporting suspicious transactions and facts which might be an indication of money laundering;
(iv)	Article 7	on suspected transactions and the authority to stop/suspend a transaction;
(v)	Article 8	on tipping off;
(vi)	Article 10	on reporting of facts that could contribute suspicious transactions by supervisory authorities;
(vii)	Article 12	on extension of AML obligations.

The following sections address the findings of the on-site examination. They first describe the differences between the identified articles of the EU AML Second Council Directive and the relevant FATF 40-Recommendations. Following an analysis of the findings of the on-site visit and conclusions on compliance and effectiveness, recommendations and comments are made as appropriate.

Article 2a: Applicability of AML obligations

Description	Article 2a of the EU AML Second Council Directive lists the types of institutions and legal or natural persons, acting in the exercise of certain professions and businesses, that are subject to the Directive. The Article specifies the type of activities of the legal profession for which the obligations become applicable. In the case of auditors, external accountants and tax advisors the obligations are applicable to their broad activities in their respective professions. FATF Recommendation 12, which extends the AML obligations to designated non financial businesses and professions (DNFBP), excludes applicability to auditors and tax advisors whilst it limits the applicability to external accountants under circumstances similar to those applied to the legal profession. Indeed FATF Recommendation 16(a) *strongly encourages* countries to extend the *reporting* requirement (note the further limitation) to the rest of the professional activities of accountants, including auditing – but

	makes no reference to tax advisors. Also, the applicability of the AML obligations to dealers in high value goods under the EU AML Second Council Directive, in giving some examples, lends itself to a broader interpretation of application. Again, FATF Recommendation 12 limits the application to dealers in precious metals and precious stones. This is further confirmed in the definition of DNFBP in the Glossary.
Analysis	The obligations of the San Marino AML Law apply to the following financial institutions or activities: banks, financial companies, Post Offices, credit recovery on behalf of third parties, financial promoters and insurance promoters, insurance agencies, custody and transport of cash, securities or values by means of "special security guards. The coverage of DNFBPs in the San Marino AML Law is very complete and in line with both international standards and the EU Directive. It comprises casinos and gambling houses, real estate agencies, auction houses and art galleries, antique shops, gold traders, precious stones and objects traders, auditors, external accountants and tax advisors, notaries, attorneys and other independent legal and commercial professionals, when they perform specified activities. For the time being, however, only banks and financial companies institutions are required to identify all the clients, record and keep record of customer identification data and to report suspicious transactions to the AML Service of the CBSM. The general requirements of the AML Law are not applicable to other categories of obliged entities as no relevant implementing acts have been issued yet (see Section 4.4 of the Report).
Conclusion	Although the current legislation (article 8 Law No. 28/2004) extend CDD, record keeping and reporting obligations to persons and entities (including DNFBPs) other than financial and credit institutions, as the implementing regulations have not been issued by the Central Bank, as required by article 8, paragraph 5 of the Law No. 28/2004, these provisions are not currently in force. As a consequence, the personal scope of the EU Directive 97/2001 is not met.
Recommendations and Comments	As already recommended by the second evaluation team, the prevention and fight against money-laundering urgently needs to be made more effective by bringing the professions, persons and entities subject to AML obligations into line with the EU Directive 97/2001. Also, regardless of the restrictions on the use of cash in amounts over € 15 500, which is in force in San Marino, it is recommended that the San Marino authorities extend the AML/CFT framework in accordance to Article 2a(6) of the second EU Directive to all dealers in high value goods not only not only dealers in gold, precious objects and precious stones.

Articles 3(3) and 3(4): Identification requirements - Derogation

Description	By way of derogation from the mandatory requirement for the identification of customers by persons and institutions subject to the Directive, the third paragraph of Article 3 of the EU AML Second Council Directive removes the identification requirement in cases of insurance activities where the periodic premium to be paid does not exceed €uro 1,000 or where a single premium is paid amounting to €uro 2,500 or less. Furthermore, Paragraph 4 of the same Article 3 provides for discretionary identification obligations in respect of pension schemes where relevant insurance policies contain no surrender value clause and may not be used as collateral for a loan. FATF Recommendation 5, in establishing customer identification and due diligence, does not provide for any similar derogation. It however provides for a general discretionary application of the identification procedures on a risk sensitivity basis. Therefore, in certain circumstances, where there are low risks, countries may allow financial institutions to apply reduced or simplified measures. Indeed, the Interpretative Note to Recommendation 5 quotes the same instances as the EU AML Second Council Directive as examples for the application of simplified or reduced customer due diligence.
Analysis	Law No. 28/2004 does not contain derogation from the mandatory CDD requirement in case of insurance activities where the periodic premium to be paid does not exceed €1000 or where a single premium is paid amounting to €2 500 or less (para 3) nor provides for discretionary identification obligations in respect of pension schemes where relevant insurance policies contain no surrender value clause and may not be used as collateral for a loan (para 4). However, as noted under Article 2a of the Directive, as implementing measures for Law No. 28/2004 have not been issued yet, insurance promoters and agencies are not currently required to apply CDD.
Conclusion	The AML legislation does not contain measures implementing paragraphs 3 and 4 of article 3 of the Directive.
Recommendations and Comments	The Law No. 28/2004 should be implemented in order to be applied also by insurance promoters and agencies established in San Marino. Moreover The AML legislation should be revised implementing article 3, para 3 of the Directive, removing the identification requirement in case of insurance activities where the periodic premium to be paid does not exceed €1000 or where a single premium is paid amounting to €2 500 or less.

Articles 3(5) and 3(6): Identification requirements - Casinos

Description	Paragraph 5 of Article 3 of the EU AML Second Council Directive requires the identification of all casino customers if they purchase or sell gambling chips with a value of € 1 000 or

	more. However, Paragraph 6 of the same article provides that casinos subject to State Supervision shall be deemed in any event to have complied with the identification requirements if they register and identify their customers immediately on entry, regardless of the number of gambling chips purchased. FATF Recommendation 12 applies customer due diligence and record keeping requirements to designated non-financial businesses and professions. In the case of casinos, these requirements are applied when customers engage in financial transactions equal to or above the applicable designated threshold. The Interpretative Note to Recommendation 5 establishes the designated threshold at € 3 000, irrespective of whether the transaction is carried out in a single operation or in several operations that appear to be linked. Furthermore, in the Methodology Assessment, under the Essential Criteria for Recommendation 12, the FATF defines, by way of example, financial transactions in casinos. These include the purchase or cashing in of casino chips or tokens, the opening of accounts, wire transfers and currency exchanges. Identification requirements under the FATF - 40 Recommendations for casinos are likewise applicable to internet casinos.
Analysis	Under San Marino legislation operating of casinos is not allowed at all, therefore there are no casino specific identification requirements in place.
Conclusion	N/A
Recommendations and Comments	N/A

Article 6: Reporting of Suspicious Transactions

Description	Further to the reporting of suspicious transactions paragraph 1 of Article 6 of the EU AML Second Council Directive provides for the reporting obligation to include facts which might be an indication of money laundering. FATF Recommendation 13 places the reporting obligations on suspicion or reasonable grounds for suspicion that funds are the proceeds of a criminal activity.
	Furthermore, paragraph 3 of Article 6 of the EU AML Second Council Directive provides an option for member States to designate an appropriate self-regulatory body (SRB) in the case of notaries and independent legal profession as the authority to be informed on suspicious transactions or facts which might be an indication of money laundering. FATF Recommendation 16 imposes the reporting obligation under Recommendation 13 on DNFBPs but does not directly provide for an option on the disclosure receiving authority. This is only provided for in a mandatory manner in the Interpretative

	Note to Recommendation 16. Also, probably because the FATF identifies accountants within the same category as the legal profession, the Interpretative Note extends the option to external accountants. Finally, the same paragraph 3 of Article 6 of the EU Directive further requires that where the option of reporting through an SRB has been adopted for the legal profession, Member States are required to lay down appropriate forms of co-operation between that SRB and the authorities responsible for combating money laundering. The FATF Recommendations do not directly provide for such co-operation but the Interpretative Note to Recommendation 16, although in a non-mandatory manner, makes it a condition that there should be appropriate forms of co-operation between SRBs and the FIU where reporting is exercised though an SRB.
Analysis	The San Marino AML legislation (Law No. 123/1998) requires banks, financial companies and other obliged entities to report to the AML Service any transaction which, because of its nature, characteristic, amount or any other circumstance, arises suspicion that money, property or instruments used in such transaction may derive from a ML offence. Similarly, transactions with no apparent economic or visible lawful purpose, or otherwise unusual, have to be reported to the AML Service. There is however no standard form to report a STR. Part 2.1 of Circular No. 33/2003 of the Central Bank clarifies that, even if a transaction has not taken place, but an intermediary has acquired sufficient elements of suspicion, reporting is in all cases mandatory. There is also no legislative requirement to report facts, which might be indications of money laundering but the FIU advised that in practice reporting institutions in most reports state reasons why they have a suspicion. Due to the absence of implementing regulations of Law No. 28/2004, notaries and independent legal professionals of San Marino are not subject to AML/CFT obligations, they are not reporting and are not supervised and monitored by designated competent authorities or SRBs.
Conclusion	Even though not formally provided for in law, the requirement to report each kind of fact which might be an indication of money laundering is contained in Circular No. 33/2003 of the Central Bank. As a consequence, Article 6 para 1 of the Second EU AML Directive is implemented, according to this Circular. There is no provision yet implementing the reporting obligation for legal professionals.
Recommendations and Comments	Although Recommendation 13 places the reporting obligation only on suspicion or reasonable suspicion that funds are the proceeds of criminal activity, the evaluators are of the view that San Marino should make the requirements of Article 6 of the Second EU AML Directive explicit in legislation or guidance.

	Article 6 paragraphs 1, 2 and 3 of the Second EU AML Directive should be implemented with regard to legal professionals. In particular, measures implementing Law No. 28/2004 should contain reference to the reporting procedure and, where the option of reporting through an SRB has been adopted for legal profession, to appropriate cooperation forms between the SRB and the national authorities competent for AML issues.

Article 7: Suspected Transactions – Refrain / Supervision

Description	Article 7 of the EU AML Second Council Directive requires that institutions and persons subject to the Directive refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the authorities who may stop the execution of the transaction. Furthermore where to refrain from undertaking the transaction is impossible or could frustrate efforts of an investigation, the Directive requires that the authorities be informed (through an STR) immediately the transaction is undertaken. FATF Recommendation 13, which imposes the reporting obligation where there is suspicion or reasonable grounds to suspect that funds are the proceeds of a criminal activity, does not provide for the same eventualities as provided for in Article 7 of the EU Directive. FATF Recommendation 5 partly addresses this matter but under circumstances where a financial institution is unable to identify the customer or the nature of the business relationship. However, whereas Recommendation 5 is mandatory in this respect, it does not provide for the power of the authorities to stop a transaction. Furthermore, the reporting of such a transaction is not mandatory. Paragraphs 1-3 of the Interpretative Note to Recommendation 5 seem to be more mandatory in filing an STR in such circumstances.
Analysis	According to article 8 Law No. 123/1998, credit and financial institutions are required to report to the FIU/CB any transaction suspected to be related to ML but, there is no clear obligation refraining them from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the competent authorities. Also Circulars No. 26/1999 and No. 33/2003 of the Central Bank do not contain references to the prohibition to carry out the suspicious transaction before having informed the FIU. As regard the power of the FIU to stop the execution of a transaction that has been brought to their attention by an obliged person who has reason to suspect that such transaction could be related to money laundering, article 16 of the Law No. 28/2004 does not refer explicitly to the possibility of the FIU to stop a reported suspicious transaction. Article 16 simply refers to the blocking or freezing possibility, in case of serious

	and converging circumstantial evidence.
Conclusion	The AML legislation does not require financial institutions to refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the competent authorities. Moreover, it does not explicitly empower the FIU to stop the execution of a transaction that has been brought to their attention by an obliged person who has reason to suspect that such transaction could be related to money laundering.
Recommendations and Comments	San Marino should introduce a legal requirement for financial institutions to refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the competent authorities. Furthermore, where to refrain from undertaking the transaction is impossible or could frustrate efforts of an investigation, there should be a requirement in legislation that the competent authority (FIU) should be informed immediately the transaction is undertaken. The FIU should clearly have the power to stop the esxecution of a transaction that has been brought to their attention by an obliged person who has reason to suspect that such transaction could be related to money laundering

Article 8: Tipping off

Description	Article 8(1) of the EU AML Second Council Directive prohibits institutions and persons subject to the obligations under the Directive and their directors and employees from disclosing to the person concerned or to third parties either that an STR or information has been transmitted to the authorities or that a money laundering investigation is being carried out. Furthermore Article 8(2) provides an option for Member States not to apply this prohibition (tipping off) to notaries, independent legal professions, auditors, accountants and tax advisors. FATF Recommendation 14 imposes a similar prohibition on financial institutions, their directors, officers and employees. Recommendation 16 extends this prohibition to all DNFBPs. However, the prohibition under Recommendation 14(b) is limited to the transmission of an STR or related information. It does not therefore cover ongoing money laundering investigations. Furthermore, the FATF Recommendations do not provide for an option for certain DNFBPs to be exempted from the "tipping off".The Interpretative Note to Recommendation 14 exempts tipping off only where such DNFBPs seek to dissuade a client from engaging in an illegal activity.
Analysis	Prohibition to disclose the fact that a STR has been sent to the FIU was not explicitly provided for in the law at the moment the on-site visit took place. Only Circular No. 26/99 of the former Office of Banking Supervision, sent to credit and financial institutions, contains a

	reference to the importance of keeping reports on ML "as confidential as possible, avoiding any disclosure of information to people other than those responsible for the examination of reported transactions
Conclusion	There is no explicit provision in the law prohibiting the disclosure of a STR being reported to the FIU.
Recommendations and Comments	The prohibition to disclose the fact that a STR has been reported to the FIU should be explicitly provided for in the legislation.

Article 10: Reporting by Supervisory Authorities

Description	Article 10 of the EU AML Second Council Directive imposes an obligation on supervisory authorities to inform the authorities responsible for combating money laundering if, in the course of their inspections carried out in the institutions or persons subject to the Directive, or in any other way, such supervisory authorities discover facts that could constitute evidence of money laundering. The Directive further requires the extension of this obligation to supervisory bodies that oversee the stock, foreign exchange and financial derivatives markets. In providing for the regulation and supervision of financial institutions and DNFBPs in Recommendation 23 and in providing for institutional arrangements (Recommendations 26 –32) the FATF 40 do not provide for an obligation on supervisory authorities to report findings of suspicious activities in the course of their supervisory examinations.
Analysis	According to San Marino AML legislation, the reporting duty is limited to obliged entities for the time being. Competent supervisory authorities are not required by law to report to the FIU any indications of suspected money laundering activities or violations of the law encountered in the course of their supervisory or other work. However, as there is only one supervisory authority, that is the Central Bank, which acts also as FIU, in practice AML findings of on-site examinations of the Supervisory Department 1 of the Central Bank are known to the FIU.
Conclusion	As the CBSM is the only supervisory authority, the obligation on supervisory authorities to report their finding to the FIU is to a certain extent met.
Recommendations and Comments	However, in the light of the recommendations formulated in the present report to review the institutional set up of the FIU so as to establish an FIU either as an independent governmental authority or within an existing authority or authorities, the San Marino authorities should make the requirements of Article 10 of the Second EU AML Directive explicit in legislation.

Article 12: Extension of AML obligations

Description	Article 12 of the EU AML Second Council Directive provides for a mandatory obligation on Member States to ensure that the application of the provisions of the Directive are extended, in whole or in part, to professions and categories of undertakings, other than the institutions and persons listed in Article 2a, that are likely to be used for money laundering. FATF Recommendation 20 imposes a similar obligation but in a non-mandatory way by requiring countries to consider applying the Recommendations to categories of businesses or professions other than DNFBPs.
Analysis	Article 2a of the second EU directive applies to all dealers in high value goods whenever payments are made in cash in an amount of € 15 000 or more. Instead of that, the San Marino authorities have added auction houses and art galleries, antique shops, gold traders, traders in precious stones and precious objects to the list of currently required obliged entities, which broadly matches that of the Directive, with few exceptions.
Conclusion	The San Marino AML Law goes wider than the Directive by covering the designated traders regardless to the value and the mean of the payments. However, it is also narrower in scope, in that not all traders in high value goods are subject to the AML requirements (for example, car dealers).
Recommendations and Comments	The San Marino authorities may wish to reconsider the AML Law in this regard.

13 ANNEX 4: DESIGNATED CATEGORIES OF OFFENCES BASED ON THE FATF METHODOLOGY

Designated categories of offences based on the FATF Methodology	Criminal Code
Participation in an organised criminal group and racketeering	Association to commit offences (article 287 CC)
Terrorism, including terrorist financing	Associations for the purpose of terrorism or subversion of the constitutional order (article 337bis CC)
Trafficking in human beings and migrant smuggling Sexual exploitation, including sexual exploitation of children	Enslavement (article 167 CC); trafficking and trade in slaves (article 168 CC) Exploitation of child prostitution (article 177bis CC), Child pornography (article 177ter CC), organisation of travels for the exploitation of child prostitution (article 177quater CC), trafficking for purposes of prostitution (article 268 CC), inducement to prostitution (article 269 CC), running of a prostitution business (article 270 CC), exploitation of prostitution (article 271 CC)
Illicit trafficking in narcotic drugs and psychotropic substances	Law No. 139 of 26 November 1997 supplementing provisions of the Criminal Code and Code of Criminal procedure for offences related to narcotic drugs, alcoholic beverages, harmful or dangerous substances, psychotropic substances; illegal production, trading and prescription of narcotic drugs (article 244 CC)
Illicit arms trafficking	Making of, circulating, shooting, unauthorised carrying of arms, bombs, explosive devices and inflammable or explosive materials (article 251 CC); failure to observe caution with respect to arms, bombs and explosive devices (article 252 CC); purchase of firearms (Law No. 40 of 13 March 1991)
Illicit trafficking in stolen and other goods	Sale of stolen property (article 199 CC)
Corruption and bribery	Corruption (article 373 CC), bribery (article 372 CC)
Fraud	Swindling (article 204 CC), fraud in the execution of contracts (article 208), fraudulent bankruptcy (article 212 CC)
Counterfeiting currency	Misuse of credit cards or similar devices (article 204bis CC); counterfeit currency, stamps and negotiable instruments (article 401 CC); counterfeiting of credit cards or similar devices (article 401bis CC); making, holding, buying and

	selling of instruments or materials designated for counterfeiting (article 403 CC).
Counterfeiting and piracy of products	Counterfeiting and alteration of marks of intellectual works and trademarks (article 308 CC); products and intellectual works bearing deceitful marks (article 309 CC)
Environmental crime	Attacks on public health through environmental deterioration (article 241 CC); deterioration of the natural environment (article 246 CC)
Murder, grievous bodily injury	Murder (article 150 CC), bodily injury (article 155 CC) ; beating (article 157 CC) ; injury of beating followed by death (article 158 CC) ; involuntary manslaughter (article 163 CC) ; involuntary bodily injury (article 164 CC) ; epidemic and slaughter (article 236 CC);
Kidnapping, illegal restraint and hostage-taking	Illegal restraint (article 169 CC) ;
Robbery or theft	Theft (article 194 CC) ; robbery (article 195 CC) ; misappropriation (article 197 CC) ; embezzlement by public official (article 371 CC)
Smuggling	Manufacturing and smuggling of goods to defraud the state tax office (article 388 CC) ;
Extortion	Extortion (article 196 CC) ;
Forgery	Material falsehood in public deeds (article 295 CC) ; ideological falsehood in public deeds (article 296 CC) ; falsehood in private contracts (article 299 CC), use of forged deeds (article 300 CC) ;
Piracy	
Insider trading and market manipulation	Stockjobbing (article 305 CC) ; misuse of privileged information (article 305bis CC) ; false communications (article 316 CC) ;

14 ANNEX 5: COPIES OF KEY LAWS, REGULATIONS AND OTHER MEASURES

14.1 Law No. 123 of 15 December 1998 on Anti-money laundering and usury (published on December 21, 1998)

Law on Anti Money Laundering and Usury

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

Promulgate and order the publication of this law, approved by the Great and General Council during its session of December 15, 1998.

Article 1

The following article is added after article 199 of the Criminal Code:

"Article 199 bis
Money Laundering

1. Apart from cases of complicity in the offence, anyone who - for the purpose of concealing its true origin – conceals, substitutes or transfers money, or cooperates or intervenes in causing it to be concealed, substituted or transferred, knowing or having to assume that such money is proceeds of a non-negligent and non-contraventional offence, commits a money laundering offence.
2. Also anyone who uses money, or cooperates or intervenes in causing it to be used in economic or financial activities, knowing or having to assume that such money is proceeds of a non-negligent and non-contraventional offence, commits a money laundering offence.
3. The provisions of this article shall also apply when the offender from whom the proceeds were received is not indictable or punishable, or failing any of the conditions for the predicate offence to be proceeded against. Where the predicate offence was committed abroad, it shall be punishable also under the San Marino criminal laws and procedures.
4. Any property, as well as legal documents, acts or instruments evidencing title to or interest in such property shall be considered equivalent to money.

Article 2

Article 207 of the Criminal Code is superseded by the following:

"Article 207
Usury

1. Anyone reserving and taking an exorbitant rate of interest or other disproportional advantages, in return for a loan of money, goods or things in action, or facilitating the reservation and receipt of such interests or advantages in return for a loan of money, goods or things in action, commits a usury offence.
2. Usury occurs when the advantages, reserved and taken, exceed the rate periodically published by the Office of Banking Supervision, and calculated on the basis of the average rate generally applied on transactions by the banking system.
3. Also the use of insidious mechanisms to take possession of the property received as security in return for a loan of money, goods or things in action, shall constitute usury.

Article 3
Confiscation of proceeds

1. Conviction for offences under this law shall entail the confiscation of money and any other property or proceeds deriving from an offence, without prejudice to the other provisions on confiscation set forth in the Criminal Code.
2. Where confiscation is not possible, the judge shall impose an obligation to pay a sum of money corresponding to the value of the proceeds.

Article 4
On penalties

1. Anyone committing the offences referred to in this law shall be punished by terms of the penalties set forth in article 199 of the Criminal Code.
2. Penalties may be reduced by one degree by reason of the amount of money involved and nature of the transactions conducted. Conversely, penalties may be increased by one degree if the offences have been committed in the conduct of a business or profession subject to licensing and qualifying by the competent public Authorities, or if the offender is a usurer.
3. In the event of a money laundering offence, the offender shall be punished by terms of a penalty corresponding to that applicable to the predicate offence, if the latter is less severe.

Article 5
Restrictions to the use of cash

1. The amount of money referred to in article 1 of Decree No. 71 of May 29, 1996, shall be fixed at ITL 30 million.
2. Cheques drawn on or issued by San Marino authorised subjects for amounts exceeding each the threshold referred to above, shall bear the name or the corporate name of the beneficiary, as well as the clause “non-transferable”.

Article 6
Authorised subjects

1. The license to carry out the transactions referred to in article 1 of Decree No. 71 of May 29, 1996, shall be granted only to credit and financial institutions subject to the supervision of the Office of Banking Supervision.
2. Authorised subjects shall report to the Office of Banking Supervision any violations of article 5 they detect in the performing of their activities.

Article 7
Customer identification and record maintenance requirements

1. Authorised subjects shall identify anyone:
a) opening current accounts, deposits or entering into a business relationship with them;
b) transferring, or using means of payment to transfer, amounts exceeding the threshold indicated in article 5;
c) carrying out, in a given period of time, more transactions each involving an amount of money below the threshold referred to in article 5, which may be however considered as forming part of a single transaction because of their nature or procedure.
2. Where the above-mentioned transactions are carried out on behalf of third parties, the latter shall be identified following the instructions that the Office of Banking Supervision will impart accordingly.
3. Authorised subjects shall record and keep customer identification data, as well as data related to the transactions referred to in paragraph 1 for five years.

Article 8
Suspicious transaction reporting

1. Authorised subjects shall report to the Office of Banking Supervision any transaction which, because of its nature, characteristic, amount or any other circumstances, rouses suspicion that the money, property or utilities involved in the transaction may derive from an offence under in article 1 of this Law. Any such report made in good faith shall not constitute a violation of secrecy obligations, nor entail liability of any kind.
2. The Office of Banking Supervision shall, in turn, report to the Civil and Criminal Court the facts that may constitute an offence under this Law.

Article 9
Sanctions

1. Non-compliance with the provisions set forth in this Law, including the provisions issued by the Office of Banking Supervision under article 3 of Decree No. 71 of May 29, 1996, unless such non-compliance constitutes an offence under this Law, shall be punished by the Office of Banking Supervision by terms of administrative fines up to one third of the amount of each transaction, as follows:

a) assessed transfer of cash or bearer instruments denominated in Italian lire or other currency, such transfer having been made at any title directly between different parties and involving an amount exceeding the threshold set forth in article 5 of this Law;
b) non-compliance with the customer identification and/or transaction recording obligations by the staff of credit or financial institutions;
c) issue of bank cheques each exceeding the threshold set forth in article 5 of this Law and not bearing the clause “non-transferable”;
d) failure to report suspicious transactions and irregular bank cheques not bearing the clause “non-transferable”.

Article 10
General provisions

1. The amount referred to in article 5 of this Law may be adjusted by means of Regency Decree, having heard the opinion of the Office of Banking Supervision.
2. The Office of Banking Supervision shall issue implementing provisions of this Law.
3. Where judicial investigations involve credit institutions and other entities conducting financial activities, the Law Commissioner shall avail himself to this end of the Office of Banking Supervision.
4. The Office of Banking Supervision may collaborate, in the framework of this Law, with the supervising Authorities of other States to mutually facilitate each other in the prevention of and fight against money laundering.

Article 11
Repealing

Any provision in conflict with this Law is hereby repealed.

Article 12
Entry into force

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

14.2 Law No. 28 of 26 February 2004 on Provisions on anti-terrorism, anti-money laundering and insider trading

Unofficial translation

Provisions on Anti-terrorism, anti-money laundering and anti-insider trading

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

Promulgate and order the publication of this Law approved by the Great and General Council during its sitting of 26 February 2004.

Title I

Provisions to counter terrorism and organised crime

Article 1

The following article is added to the Criminal Code:

"Article 337 *bis*
Associations for the purpose of terrorism or subversion of the constitutional order

1. Anyone promoting, establishing, organising, directing or financing associations that aim at perpetrating violent acts for the purpose of terrorism or subversion of the constitutional order against public or private institutions or bodies either of the Republic, or of a foreign State or international, shall be punished by terms of sixth-degree imprisonment and fourth-degree disqualification from public offices and political rights.

2. Anyone participating in such associations shall be punished by terms of fourth-degree imprisonment and third-degree disqualification from public offices and political rights.

3. Except for cases of participation and support, anyone providing participants in the associations referred to in the preceding paragraphs with assistance or aid in any form shall be punished by terms of second-degree imprisonment and second-degree disqualification from public offices and political rights.

4. The person committing the fact referred to in paragraph 3 above in favour of a close relative shall not be punishable.

Article 2

The first paragraph of Article 6 of the Criminal Code is superseded by the following:

"Anyone committing any of the felonies covered in articles 170, 185, 196, 284, 285, 305, 305 bis, 324, 325, 326, 328, 329, 331, 332, 333, 334, 337, 337 bis, 338, 339, 341, 342, 343, 344, 346, 347, 400, 401, 403, 403 bis, 405 outside the territory of the State shall be subject to the provisions of this Code."

Article 3

The following period is added to the third paragraph of Article 8 of the Criminal Code:

“In no case shall the crimes committed for the purpose of terrorism or subversion of the constitutional order be deemed political crimes.”

Article 4

The following point is added to the first paragraph of Article 90 of the Criminal Code:

“4) for the purpose of terrorism or subversion of the constitutional order.”

Article 5

The third and fourth paragraphs of Article 147 of the Criminal Code are superseded by the following:

“In case of conviction, the confiscation of the instrumentalities that served or were destined to commit the crime referred to in Article 199 bis, or crimes for the purpose of terrorism or subversion of the constitutional order, and of the things being the price, product or profit thereof, shall always be mandatory. Where confiscation is not possible, the judge shall impose an obligation to pay a sum of money equal to the value of the instrumentalities and things referred to above.
Confiscated instrumentalities and things or equivalent sums shall be allocated to the inland revenue or, where appropriate, destroyed.”

Article 6

For financial investigations in respect of the crime covered by Article 337 bis, the Law Commissioner shall avail himself of the Supervision Department of the Central Bank of the Republic of San Marino.

TITLE II

Additions to Law No. 123 of 15 December 1998

Article 7

Article 199 *bis* of the Criminal Code is superseded by the following:

“Article 199 bis
Money laundering

1. Apart from cases of complicity in the offence, anyone who - for the purpose of concealing its true origin – conceals, substitutes or transfers money, or cooperates or intervenes in causing it to be concealed, substituted or transferred, knowing that such money is proceeds of a felony, commits a money laundering felony.
2. Also anyone who uses money, or cooperates or intervenes in causing it to be used in economic or financial activities, knowing that such money is proceeds of a felony, commits a money laundering felony.
3. The provisions of this article shall also apply when the felon from whom the proceeds were received is not indictable or punishable, or failing any of the conditions for the predicate felony to be proceeded against. Where the predicate felony was committed abroad, it shall be punishable also under the San Marino criminal laws and procedures.
4. Any property, as well as legal documents, acts or instruments evidencing title to or interest in such property shall be considered equivalent to money.

Article 8

The following paragraphs are added to Article 8 of Law No. 123 of 15 December 1998:

"3. The customer identification, record maintenance and reporting requirements set forth in this Law shall equally apply to Post Offices and to the following activities which, in order to be carried on, remain subject to being duly licensed, authorised, registered, or incorporated:

a) credit recovery on behalf of third parties;
b) financial promoters and insurance promoters;
c) insurance agencies;
d) real estate agencies;
e) running of gambling houses and casinos;
f) custody and transport of cash, securities or values by means of "special security guards";
g) management of auction houses or art galleries;
h) trade in antiques;
i) trade in, including export and import of, gold for industrial or investment purposes;
j) manufacturing, mediation of and trade in, including export and import of, precious stones and objects;
k) as well as to the following natural or legal persons when they perform their professional activities such as:
   (1) auditors, external accountants and tax advisors;
   (2) notaries, attorneys and other independent legal and commercial professionals when they participate, whether:
      a. by assisting in the planning or execution of transactions for their client concerning the:
         (i) buying and selling of real property or business, industrial, and service entities;
         (ii) managing of client money, securities or other assets;
         (iii) opening or management of bank accounts, bearer securities and securities accounts;
         (iv) organisation of contributions necessary for the creation, operation or management of companies;
         (v) creation, operation or management of companies, trusts or similar structures;
      b. or by acting on behalf of and for their client in any financial or real estate transaction.

4. The persons referred to in paragraph 3.k)(1) and (2), shall not be subject to the obligations set forth in the same paragraph with regard to information they receive from or obtain on one of their clients in the course of performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

5. The Supervision Department of the Central Bank of the Republic of San Marino shall issue provisions for the implementation of the customer identification, record maintenance and reporting requirements by the persons referred to in paragraph 3 above."

Article 9

Article 9.b) of Law No. 123 of 15 December 1998 is superseded by the following:

"b) violation of the customer identification and/or transaction recording obligation by the staff of credit and financial institutions, by the employees of Post Offices, or by the persons referred to in Article 8, paragraph 3."

TITLE III
Provisions on insider trading and market abuse

Article 10

The following Article is added to the Criminal Code:

"Article 305 bis
Misuse of privileged information

1. Anyone holding privileged information by reason of his participation in the capital of a company or by reason of his function, even public, or profession or office who:

a) buys, sells or conducts other transactions – even through a third party – involving financial instruments by using such privileged information; or

b) without justified reason, communicates such privileged information, or on the basis of such information advises others to conduct any of the transactions indicated in a) above

shall be punished by terms of second-degree imprisonment, third-degree daily fine and second-degree disqualification from public offices and civil rights.

2. Anyone who, having obtained privileged information either directly or indirectly from any of the persons referred to in paragraph 1, commits any of the facts described in paragraph 1. a), shall be punished by terms of the same penalty.

3. For the purpose of implementing the provisions of paragraphs 1 and 2, privileged information means specific information the content of which is well-defined, not available to the public and concerning financial instruments or issuers of financial instruments which, if made public, would be capable of influencing prices in a significant way.

4. In case of conviction or enforcement of punishment, the confiscation of the instrumentalities, including financial ones, that were used to commit the felony and of the things being the profit thereof, shall always be mandatory, except where such instrumentalities belong to a person not involved in the felony.

5. The provisions of this article shall not apply to transactions carried out on behalf of the State on grounds of economic policy.

Article 11

1. Penalties may be increased by one degree when the facts are committed in the exercise of a business or professional activity subject to authorisation and licensing by the competent public authorities.

2. Penalties may be decreased by one degree by reason of a lower level of wrongfulness of the fact or of the small amount of profits derived.

Article 12
Scope of application

1. The provisions referred to in Articles 305 and 305 *bis* of the Criminal Code shall apply to facts concerning financial instruments negotiated or negotiable on regulated markets of either San Marino or countries of the European Union.

Article 13
Assessment activities

1. The Supervision Department of the Central Bank of the Republic of San Marino shall assess the violations by exercising the powers vested in it by the law in force in respect of all the persons subject to its supervision.

2. For the same purpose, the Supervision Department of the Central Bank of the Republic of San Marino may also:

a. request information, data or documents from anyone deemed to be informed on the facts, setting the term for disclosure;

b. hear anyone deemed to be informed on the facts, keeping a verbatim record of any such hearing;

c. request the cooperation of the law enforcement and the offices of the Public Administration, including the tax administration.

Article 14
Notitia criminis

The Law Commissioner, upon receipt of a notitia criminis concerning any of the crimes set forth in Articles 305 and 305 bis of the Criminal Code shall avail himself of the Supervision Department of the Central Bank of the Republic of San Marino.

TITLE IV
Special investigation provisions

Article 15

1. Within operations of an investigative nature aimed at identifying and suppressing the felonies referred to in Articles 199 *bis*, 207 and 337 *bis* of the Criminal Code and at acquiring relevant evidence, the Law Commissioner may authorise special agents of the Police Forces to conduct undercover operations, intervene in intermediation activities, simulate the purchasing of goods, materials and things liable to generate illicit proceeds, and take part in any initiative aimed at suppressing the felonies considered in this paragraph.

2. With regard to the acquisition of evidence by means of wire interception and phone tapping, including both wire and mobile telephones, the Congress of State shall submit, within twelve months from the entry into force of this Law, an appropriate draft bill regulating such investigative techniques and providing for relevant procedures.

3. In the cases referred to in paragraph 1 above, the Police Forces shall communicate immediately and solely to the Law Commissioner the outcome of the activities performed. They shall obtain neither copies nor duplicates of the acts concerning such activities, unless expressly authorised to do so by the Law Commissioner. The findings of any investigation under paragraph 1 concerning third parties or parties not involved in the facts under investigation shall be destroyed as soon as their non-involvement is proven. The infringement of these provisions or the dissemination of information gathered in conducting the operations under paragraph 1 shall be punished by terms of second-degree imprisonment together with second-degree disqualification from public offices and political rights.

4. The Law Commissioner may postpone the validation of seizure until the conclusion of the investigation, or delay the issue of preventive detention orders as long as the acquisition of relevant evidence is necessary.

5. Evidence acquired under the provisions of this Article may be used in court proceedings concerning offences connected to the felonies considered in paragraph 1 above.

Article 16

Within operations of an investigative nature aimed at identifying and suppressing the felonies referred to in Articles 199 bis, 207 and 337 bis of the Criminal Code and at acquiring relevant evidence, the Supervision Department of the Central Bank of the Republic of San Marino may, in case of serious and converging circumstantial evidence, temporarily block or freeze the capitals or other financial resources or assets, as well as any account or business relationship held or maintained with the San Marino banking and financial intermediaries under Law No. 21 of 12 February 1986 and subsequent amendments and Law No. 24 of 25 February 1986. Such temporary blocking or freezing shall be notified within 48 hours to the Law Commissioner who, in turn, shall either lift the provisional measure or order seizure as a precautionary measure within the following 96 hours. Within the same hours the Law Commissioner's order shall be notified to the intermediary concerned and to the Supervision Department of the Central Bank of the Republic of San Marino. Non compliance with the terms above shall make the measure ineffective.

Article 17

The Supervision Department of the Central Bank of the Republic of San Marino shall conduct financial investigations also with the cooperation of the Police Forces – such cooperation being subject to the prior authorisation of the Law Commissioner – who shall report directly to the Supervision Department of the Central Bank of the Republic of San Marino. Where the reported facts have been found such as to potentially constitute a felony under this Law or under Article 207 of the Criminal Code, the Supervision Department of the Central Bank of the Republic of San Marino shall, in turn, report them to the Single Court. Reported facts which have not been found to potentially constitute a felony under this Law or under Article 207 of the Criminal Code shall be closed directly by the Supervision Department of the Central Bank of the Republic of San Marino.

Article 18

Article 3 and the second paragraph of Article 8 of Law No. 123 of 15 December 1998 are repealed.

Article 19
Entry into force

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

Done at Our Residence on 2 March 2004

14.3 Law No. 165 of 17 November 2005 on companies and banking, financial and insurance services (LISF)

TITLE VII
BANKING SECRECY

Article 36
(Obligation of banking secrecy)

1. By "banking secrecy" is meant the prohibition on authorised parties to reveal to third parties the data and information acquired in the exercise of the reserved activities referred to in Attachment 1.

2. The directors, internal and external auditors, actuaries and employees of any type and grade, including those on placements or in periods of vocational training, outside consultants, company representatives, liquidators and commissioners of the authorised parties will be bound by the obligation of banking secrecy.

3. The obligation of banking secrecy covering the data and information referred to in paragraph 1 will also be binding on the financial promoters referred to in article 25, as well as on the agents and intermediaries referred to in article 27.

4. The obligation of banking secrecy covering the data and information referred to in paragraph 1 will also be binding on natural persons or the directors, employees, internal and external auditors of the companies to which the authorised parties have outsourced functions.

5. Banking secrecy may not be evoked against:
   a) the judicial criminal authority. In such cases the records in the preparatory enquiry phase of the judicial proceedings will be treated as strictly confidential.
   b) the supervisory authority in the exercise of its functions of surveillance and prevention of terrorism and the laundering of money of unlawful origin.

6. No breach of banking secrecy will be deemed to have occurred if:
   a) the party concerned gives a specific written declaration of consent to the data being made known to a given recipient for a pre-determined purpose;
   b) the data and information are taken from public registers, lists, records or documents that are open to public inspection;
   c) communication to third parties is necessary in order to fulfil obligations arising from a contract to which the interested person is a party or in order to comply, before the conclusion of the contract, with that person's specific, express requests;
   d) communication to third parties is the direct and necessary consequence of the termination of the contract due to non-compliance on the part of the person concerned or enforcement of the guarantees received;
   e) the party under an obligation of banking secrecy is being sued in civil proceedings or prosecuted in criminal proceedings, insofar as the disclosure of the data and information covered by banking secrecy is of use in the defence in the proceedings;
   f) communication is being made to parties carrying out the reserved activity referred to in section H of Attachment 1, who are so authorised according to the present law, and its subject is the information strictly necessary in arriving at a proper assessment of the risks and to fulfil obligations entered into in the exercise of that reserved activity;
   g) communication is directed towards the performance of the services described in articles 50 and 51 and complies with the provisions of those articles.

7. In the event of the decease of the party concerned or the opening of insolvency or interdictory or disqualification proceedings against him, the heir, receiver in insolvency, tutor and guardian respectively, together with those persons commissioned to draw up an inventory of the assets of the incompetent or disqualified party, may obtain the data and information covered by banking secrecy, covering the period prior to the death or judicial measure by which they have been appointed, only by authorisation of the *Commissario della Legge* [examining judge]; in the absence of such authorisation, they will be entitled to be given only the data and information as of the date of the decease or the judicial measure by which they have been appointed and the period thereafter.

8. The obligation of maintaining banking secrecy will persist even after the cessation of the employment relationship, office, function or exercise of the profession.

9. The supervisory authority will monitor the strict observance of banking secrecy.

PART II
SUPERVISION OF RESERVED ACTIVITIES

TITLE I
INSTRUMENTS AND SPHERES OF SUPERVISION

Chapter I
General Measures

Article 37
(Purposes of supervision)

1. In the exercise of its supervisory function, the supervisory authority will be guided by the following aims:
   a) the stability of the financial system of the Republic and the protection of savings, in part through supervision of the authorised parties' sound and prudent management;
   b) the transparent and appropriate conduct of the authorised parties;
   c) the prevention of financial crime in matters of money laundering, the funding of terrorism and other offences of a financial nature;
   d) safeguarding of the image and reputation of and confidence in the financial system of the Republic.

Article 39
(Regulatory powers)

1. In the performance of its functions, the supervisory authority will issue measures containing binding and general provisions implementing and supplementing the provisions of the present law and its implementing decrees, as well as any other measure that the supervisory authority deems appropriate in achieving its own aims.

2. The measures referred to in paragraph 1 will consist of regulations, circulars and instructions.

3. Instructions are measures issued by the supervisory authority, acting as the unit combating money laundering, or the "financial intelligence unit", in accordance with article 8(5) of Law 123, 15 December 1988, as amended by Law 28, 26 February 2004, and are on matters associated with the implementation of the aforesaid statutory provisions and any amendments thereto.

4. The measures referred to in paragraph 1 will be made public in accordance with the procedures deemed most appropriate by the supervisory authority, to include their publication on the

authority's Internet website. The regulations issued by the supervisory authority will be published in the *Bollettino Ufficiale*.

Article 40
(Recommendations)

1. The supervisory authority may issue recommendations of a general but non-binding nature, for the purpose of interpreting the provisions of the present law and the measures issued by itself.

Article 41
(Powers to request information or obligations of information)

1. The supervisory authority may request the authorised parties to notify, if necessary on a periodical basis, data and information and to forward deeds and documents in accordance with the procedures and within the terms that it has established.

2. The powers specified in paragraph 1 may also be exercised vis-à-vis the external auditors and actuaries, appointed in accordance with article 33, the financial promoters, the insurance and reinsurance intermediaries and the parties to which functions have been outsourced by authorised parties.

3. Save as provided by article 65 *ter* of the Companies Law, the authorised party's board of auditors will notify the supervisory authority without delay of all the events and facts coming to its knowledge in the performance of its tasks that might constitute a management irregularity or a breach of the regulations governing the authorised parties' activities. To that end, the authorised parties' articles of association will assign the relevant tasks and powers to the board of auditors.

4. The authorised parties' external auditors and actuaries, appointed in accordance with article 33, will notify the supervisory authority without delay of the events or facts noted in the performance of their appointment that might constitute a grave breach of the regulations governing the activities of the authorised parties being audited or that might adversely affect the continuity of the enterprise.

5. Where internal and external auditors and actuaries notify the supervisory authorities in good faith of those facts or decisions referred to in paragraphs 3 and 4, such notification will not constitute a breach of any restrictions on the disclosure of information imposed under contracts or in the form of legislative, regulatory or administrative measures.

Article 42
(Powers of investigation)

1. The supervisory authority may conduct inspections at the offices and branches of the authorised parties, as well as requesting information, ordering the disclosure of documents and carrying out the checks and verifications deemed to be necessary, to include those on non-reserved activities; it may have access to the company's accounts and all its books, notes and documents; it may question the directors and any employee or officer within the sphere of each one's duties, with a view to obtaining information and clarification.

2. The powers referred to in paragraph 1 may also be exercised in respect of the financial promoters, insurance and reinsurance intermediaries and the parties to which functions have been outsourced by authorised parties.

3. The supervisory authority may, in the exercise of the powers of investigation, avail itself of external auditors and actuaries appointed, on that authority's mandate, to carry out specified checks and assessments.

Article 43
(Powers of authorisation)

1. The supervisory authority will issue the authorisations specified in the present law.

2. In the performance of its prudential supervisory function, the supervisory authority may identify acts and operations brought into being by authorised parties for which prior authorisation is required.

Article 44
(Specific measures)

1. In the conduct of its prudential supervisory function, the supervisory authority will, when the situation so requires, adopt specific measures in respect of individual authorised parties in those matters indicated in article 45(1).

2. In the implementation of the regulations, the supervisory authority will issue orders and adopt the necessary precautionary and prohibition measures laid down by the present law.

TITLE III
RELATIONS WITH OTHER AUTHORITIES

Article 101
(Relations with the Committee for Credit and Savings)

1. The Committee for Credit and Savings may pass a resolution specifying the guidelines and general criteria to be observed by the supervisory authority in the performance of its supervisory functions and in the issue of measures of a general nature.

Article 102
(Relations with the Congress of State)

1. The supervisory authority will forward to the Congress of State, through the Committee for Credit and Savings, a copy of the general measures it has issued and the penalties it has imposed.

2. The supervisory authority will, on a confidential basis, forward information and data on serious irregularities ascertained to the Congress of State, according to the procedures laid down by article 35 of the Central Bank's Statutes.

Article 103
(Relations with foreign supervisory authorities)

1. The supervisory authority will be authorised to transmit to and/or request from foreign supervisory authorities the information and documents required in the performance of their respective tasks. To this end, the supervisory authority will conclude cooperation agreements with the competent authorities of foreign countries for the exchange of information.

2. The agreements referred to in paragraph 1 may be concluded on condition that:

a) the information communicated is covered by guarantees as to official secrecy equivalent to those laid down by article 29 of the Central Bank's Statutes;
b) the exchange of information shall be for the purpose of contributing towards the performance of the supervisory task by the said authorities;
c) the competent authority receiving the confidential information may use that information only in the exercise of its functions:
   - for examining the conditions of access to the activity of credit, finance and insurance intermediaries and for facilitating the individual and consolidated monitoring of the manner in which that activity is being exercised, in particular in matters of supervision of liquidity, solvency, administrative and accounting organisation and internal auditing;
   - for the imposition of penalties;
   - in the context of an administrative appeal or legal proceedings against a decision of the competent authority;
   - for the prevention of the crimes of money laundering and the funding of terrorism;
d) the information received may not be disseminated without the explicit written consent of the competent authorities by which it has been provided and, in that case, only for the purposes for which the said authorities have given their consent.

Article 104
(Relations with the judicial authority)

1. The supervisory authority's employees will, in the exercise of their functions, be public officials. The parties appointed by the supervisory authority in accordance with article 42(3) will also be public officials in the conduct of the assignment to which they have been appointed.

2. The parties referred to in paragraph 1 will be bound by official secrecy. They will be under an obligation to report all irregularities coming to their knowledge exclusively to the Supervision Committee , even when these are in the nature of crimes.

3. The Supervision Committee will notify the judicial authority as laid down by article 35(2) of the Central Bank's Statutes.

4. In the event of judicial investigations on authorised parties, financial promoters and insurance and reinsurance intermediaries, the investigating judge may avail himself of the supervisory authority for that purpose and for all effects.

Article 105
(Relations with the Department of the State Secretary for Industry)

1. The supervisory authority will cooperate with the Department of the State Secretary for Industry on supervision over the auditing firms and independent auditors entered in the list referred to in Law 146 of 27 October 2004, where they have been appointed by the authorised parties.

2. If the supervisory authority ascertains a breach of the rules set out in the present law that govern the activities of independent auditors, it will notify the Department for the State Secretary for Industry.

TITLE I
CRIMINAL PENALTIES

Article 133
(Modification to article 321 of the Criminal Code)

1. Article 321 of the Criminal Code will be replaced by the following:

"*Article 321*

(Abusive taking of savings)

Any person taking savings from the public, to include by way of the issue of bonds, in breach of the provisions of current law or of the measures issued by the Central Bank of the Republic of San Marino, will be punished by second-degree imprisonment and by a fine, as well as by third-degree disqualification from holding the offices of director, holder of representative powers, internal auditor, external auditor, actuary, liquidator or commissioner in companies or other bodies with a legal personality.".

Article 134

(Abusive exercise of an activity)

1. Any person carrying out a reserved activity without the authorisation of the supervisory authority or without the Congress of State declaration of non-impediment, where this is required, will be punished by second-degree imprisonment and a fine, as well as by third-degree disqualification from holding the offices of director, holder of representative powers, internal auditor, external auditor, actuary, liquidator or commissioner in companies or other bodies with legal personality.

2. The same penalty will be applied to:
   a) anyone promoting to or placing financial instruments and insurance policies with the public in the absence of the authorisations referred to in the present law;
   b) anyone engaged in the activity of financial promoter without being entered in the register indicated by article 25(3);
   c) anyone engaged in the activity of insurance or reinsurance intermediation without being entered in the register indicated by article 27(1).

Article 135

(Proprietary assets)

1. Any person providing false information in the notifications specified in articles 16, 17, 19 and 23, or fraudulently omitting to provide information, will be punished by first-degree imprisonment or a fine.

2. The penalty specified in paragraph 1 will also apply to the same infringements in the matter of holdings in the parent holding companies referred to in article 55.

Article 136

(Confusion of assets)

1. Any person who, in the exercise of reserved activities, in order to procure undue profit for himself or others, is in breach of the measures on the separation of property, causing prejudice to clients, will be punished by second-degree imprisonment and a fine as well as by third-degree disqualification from holding the offices of director, holder of representative powers, internal auditor, external auditor, actuary, liquidator or commissioner in companies or other bodies with a legal personality.

Article 137

(False notification by issuers)

1. Any person who, in order to procure undue profit for himself or others, sets out false information or conceals data or information in the prospectuses prescribed for the soliciting of investment, with awareness of the falsity and with the intention of deceiving the recipients of the prospectus, in such a way as to induce those recipients into error, will be punished by:

- first-degree imprisonment, a fine and first-degree disqualification from holding the offices of director, holder of representative powers, internal auditor, external auditor, actuary, liquidator or commissioner in companies or other bodies with legal personality, if their conduct has not caused financial loss; or
- second-degree imprisonment, a fine and second-degree disqualification from holding the offices of director, holder of representative powers, internal auditor, external auditor, actuary, liquidator or commissioner in companies or other bodies with legal personality, if their conduct has caused financial loss.

Article 138
(Falsity on the part of auditing firms in their reports and communications)

1. The persons responsible for auditing who, in their reports or other communications, in order to procure undue profit for themselves or others, attest to false information or conceal information concerning the revenue and expenditure, assets and liabilities and financial situation of the authorised party, parent holding company**,** or issuer being audited, with awareness of the falsity and with the intention of deceiving the recipients of those communications, in such a way as to induce the recipients of those communications into error as to the situation, will be punished by:
   - first-degree imprisonment, a fine and first-degree disqualification from holding the offices of director, holder of representative powers, internal auditor, external auditor, actuary, liquidator or commissioner in companies or other bodies with legal personality, if their conduct has not caused financial loss to the recipients of the communications on the said situation; or
   - second-degree imprisonment, a fine and second-degree disqualification from holding the offices of director, holder of representative powers, internal auditor, external auditor, actuary, liquidator or commissioner in companies or other bodies with legal personality, if their conduct has caused them financial loss.

Article 139
(Breach of banking secrecy)

1. A breach of banking secrecy by parties required to observe secrecy pursuant to article 36 will be punished by first-degree imprisonment, a fine and third-degree disqualification from holding the offices of director, holder of representative powers, internal auditor, external auditor, actuary, liquidator or commissioner in companies or other bodies with legal personality.

2. The same penalty will apply to any person who, having wrongfully or involuntarily acquired knowledge of data or information covered by banking secrecy, reveals it to third parties or uses it for his own or others' profit.

Article 140
(Impeding the exercise of the supervisory function)

1. Any person who, in the exercise of functions of director, holder of representative powers, internal auditor, external auditor, actuary, liquidator or commissioner in authorised parties or other parties subject to supervision in pursuance of the present law,
   a) fraudulently states, in communications to the supervisory authority, facts not corresponding to the truth on the revenue and expenditure, assets and liabilities and financial situation of the authorised party or the parties cited above; or
   b) fraudulently conceals, in whole or in part, facts that he ought to have notified concerning that situation,

   will be punished by second-degree imprisonment, a fine and third-degree disqualification from holding the offices of director, holder of representative powers, internal auditor,

external auditor, actuary, liquidator or commissioner in companies or other bodies with legal personality.

2. Save in the cases specified in paragraph 1, any person who, in the exercise of the same functions and in the same parties as referred to in that paragraph, states facts not corresponding to the truth to the supervisory authority, will be punished by first-degree imprisonment, a fine and second-degree disqualification from holding the offices of director, holder of representative powers, internal auditor, external auditor, actuary, liquidator or commissioner in companies or other bodies with legal personality.

3. Save in the cases specified in paragraphs 1 and 2, any person who, in the exercise of the same functions and in the same parties as referred to in those paragraphs, impedes the supervisory authority's exercise of its functions, or seriously or repeatedly fails to comply with the measures issued by that authority will be punished by first-degree imprisonment or a fine.

TITLE II
ADMINISTRATIVE PENALTIES

Article 141
(Pecuniary administrative penalties)

1. Without prejudice to the criminal penalties specified in Title I, any person in breach of the provisions of the present law, or of Regency decrees and the supervisory authority's measures issued further to the present law, will be punished by a pecuniary administrative penalty. An ad hoc Regency decree will, following the opinion of the Committee for Credit and Savings and on the proposal of the supervisory authority, determine those provisions of the present law whose infringement will be penalised, the parties responsible for such a breach and the minimum and maximum limit of the pecuniary administrative penalty therefor. The maximum limit on the amount of the penalty specified by the decree may be even higher than laid down by article 31 of the Central Bank's Statutes.

2. Having made known the charge to the parties responsible and having considered the pleadings submitted, within thirty days the supervisory authority will state the penalty, giving written notice of the injunction to pay. The amount of the individual penalty will be determined by the supervisory authority, which will also take due account of the existence of two or more infringements of the same measure or the breach of various measures effected by a single action or omission, or the repetition of the irregular conduct, or any other elements used to infer the gravity of the infringement.

3. The persons being penalised will extinguish the administrative penalty by payment to the supervisory authority. The legal persons to which those responsible for the infringements belong will be answerable jointly with the latter for payment of the stated penalty, and will be under an obligation to recoup that payment from the persons responsible. The option of extinguishing the offence by a reduced payment will not apply.

4. Appeal may be made against the sanction measure to the administrative court, in the manner and form stated by article 34 of Law 68, 28 June 1989 and any amendment to that Law.

5. After the term allowed for payment has lapsed, the supervisory authority will, in order to collect the amounts, avail itself of the procedure for collection by the assessment roll pursuant to Law 70 of 25 May 2004. The procedures for the collection of the pecuniary administrative penalties specified by the present law will therefore be the same as for the duties, rates, charges, sanctions

and all other incoming payments to be made to the Chamber of the Grand and General Council and to Public Entities and Autonomous Authorities.

6. The supervisory authority will transfer the amounts collected in the form of penalties to the Chamber of the Grand and General Council; these amounts will be attributed to a special chapter heading in the State Budget, "Banking, financial and insurance system interventions".

7. The pecuniary administrative infringements defined by the present law and the subsequent decree to be issued as specified in paragraph 1 shall be included in the list proposed annually by the Administrative Court of Appeal in accordance with article 32 of Law 68, 28 June 1989.

14.4 Criminal Code (extracts)

6. Crimes committed abroad

1. Anyone who commits one of the misdemeanours envisaged by articles: 170, 185, 196, 284, 285, 305, 305 bis, 324, 325, 326, 328, 329, 331, 332, 333, 334, 337, 337 bis, 338, 339, 341, 342, 343, 344, 346, 347, 400, 401, 403, 403 bis, 405, outside the territory of the State, is subject to the provisions established by this Penal Code.
2. Also subject to this Penal Code are persons who commit the misdemeanours envisaged by articles 167, 168, 244 and 268, the misdemeanours envisaged by articles 237 and 239 if committed by hijacking aircraft, the first destination of which is the territory of the State, or that has departed from this latter; all other crimes for which international agreements or conventions oblige the Republic to suppress unlawful acts committed abroad.
3. The Law of San Marino also applies to anyone who commits, outside the territory of the State to the detriment of a San Marinese citizen, misdemeanours punishable with imprisonment of no less than the second degree.

(*) Article 6, sub-section 1, was thus amended by article 2 of law N° 28 of 26 February 2004 (Provisions for combatting terrorism, the laundering of money of unlawful origin and abuse of inside information). (*) See note (17).

8. Extradition

1. Extradition shall be governed by international conventions and, for any other aspect not covered by the conventions, by San Marino law.

2. The extradition of people in the territorial jurisdiction of the Republic shall be granted solely where:
   a. the felony or crime committed is considered as such both under San Marino law and the law of the requesting State;
   b. the crime, punishment or security measure has not already been extinguished under the legislation of both States;
   c. the crime is prosecutable under the legislation of both States;
   d. the request does not refer to a San Marino national, except where expressly provided for by international conventions;
   e. the request does not refer to a political offence or an offence connected with a political offence, to offences punished under military law and it has been ascertained that the request is not based on political reasons.

3. Any offence detrimental to a political interest of the State or a political right of a citizen shall be considered as a political offence. For the purposes of extradition only, even an offence committed for

[17] The original text of article 6, sub-section 1, was as follows: «*Any person who commits one of the misdemeanours envisaged by articles: 170, 185, 196, 284, 285, 324, 325, 326, 328, 329, 331, 332, 333, 334, 337, 338, 339, 341, 342, 343, 344, 346, 347, 400, 401, 403, 405 outside the territory of the State, is subject to the provisions established by this Penal Code.*».

political reasons shall be regarded as a political offence. “In no case shall the crimes committed for the purpose of terrorism or subversion of the constitutional order be deemed political crimes.”

26. Attempted misdemeanour

1. The uncommitted misdemeanour is punishable as an attempted misdemeanour when the party concerned, with the intention of committing a crime, has undertaken to do so with suitable means without having been able to accomplish the deed.
2. In this case, the punishment can be reduced by one or two degrees.
3. An unperformed agreement to commit a crime is not punishable. However, the judge may apply a safety measure (*).
4. Unless provided differently by the law, the provision established by the previous sub-section also applies in the case of incitements that are disregarded or not performed.

(*) See article 2 of current Penal Code provisions in the notes ([18]).

27. Unsuccessful misdemeanour

The misdemeanour is unsuccessful when the party in question has accomplished all the actions required to commit it, but the event has failed to occur.
The punishment in this case can be reduced by one degree.

31. Malice

The crime is with malicious intent when the party in question intends to even indirectly bring about the event with his/her conduct.
The party in question need not necessarily wish or expect the condition on which the law bases the punishableness of the crime to occur.
The party in question answers to the events that aggravate the crime, and that he/she neither expected nor desired.

73. Complicity and collaboration

All those who have in any way taken part in committing a fact envisaged as a misdemeanour are subject to the punishment established for that misdemeanour.
When fact is an offence and the event has been determined by the interdependent conduct of several persons, each of these persons is subject to the punishment established for that offence.
Depending on the case in question, abettors are responsible for offences by way of complicity or collaboration.

90. Particular aggravating or extenuating circumstances

When the offender has acted:

1) in order to commit another crime; to conceal a previous crime or destroy the evidence; to obtain or keep for himself/herself or others, the product, the profit, the price of another crime, or for contemptible or futile reasons;
2) with abuse of power, public or private office, or of family relations, or of the capacity of childcare worker, teacher, employee, guest or cohabitant;
3) by inciting a minor aged less than eighteen years in full possession of his/her faculties or a person who is unpunishable or affected by partial insanity to commit the crime or having the crime committed by such a person;
4) for the purpose of terrorism or overthrowing the constitutional order (*).

In such cases, the jude may apply the punishment of the higher degree.

[18] Article 2 of current Penal Code provisions: «*In the cases envisaged by articles 26, 3rd sub-section, 28 and 29 of the Penal Code, where the judge, deeming that a safety measure must be applied, proceeds with a sentence”*.

The judge may apply the punishment of the lower degree when the offender has acted for mainly moral grounds or reasons of particular social value, as he may when the provocation has been particularly serious or when the confession has been spontaneous and usefully submitted.
The punishment can be reduced by one degree for minors aged less than eighteen years in full possession of their faculties; for the person affected by partial insanity in the case envisaged in number three, as well as for the abettor who has acted owing to the effect of the abuse indicated in number two.
The circumstances envisaged in the second book, that aggravate or extenuate the punishments of the individual crimes, are also considered to be particular.

(*) Article 90, sub-section 1, N° 4, was introduced by article 4 of law N° 28 of 26 February 2004 (Provisions for combatting terrorism, the laundering of money of unlawful origin and abuse of inside information).

141. Publication of the conviction
If publication constitutes a means for making amends for the moral injury determined by the crime, the offender is also obliged to have the conviction published, at his/her expense and request, by a San Marinese newspaper and by a daily newspaper of a foreign State that circulates in the territory of the Republic and in the neighbouring regions.

147. Confiscation
An offence shall entail confiscation of the instrumentalities, owned by the culprit, that served or were destined to commit the offence, and of the things being the price, product or profit thereof.

Regardless of conviction, confiscation shall also apply to the illegal making, use, carrying, holding, sale of or trade in property even not owned by the offender.

In case of conviction, the confiscation of the instrumentalities that served or were destined to commit the felony referred to in Article 199 bis, or felonies for the purpose of terrorism or subversion of the constitutional order, and of the things being the price, product or profit thereof, shall always be mandatory. Where confiscation is not possible, the judge shall impose an obligation to pay a sum of money equal to the value of the instrumentalities and things referred to above.

Confiscated instrumentalities and things, or equivalent sums, shall be allocated to the inland revenue or, where appropriate, destroyed.

Article 150
Murder

Murder shall be punished by terms of 7th degree imprisonment and 4th degree disqualification from public offices and political rights.

Eight degree imprisonment and 4th degree disqualification from public offices, political rights, trade or profession shall apply where the felony was committed:
1) bodily by an ascendant or descendant, even if natural, a stepparent or stepchild;
2) with premeditation;
3) with torture or cruel means;
4) by means of poisoning or other malicious means.

Four degree imprisonment shall apply in case of consent of the victim.

Article 155
Bodily injury

Anyone injuring others physically or mentally shall be punished by terms of 2nd degree imprisonment at the maximum.

Where the injurer has used a weapon, or a means which can be used as a weapon, or other malicious, venomous or corrosive means, 3rd degree imprisonment at the maximum shall apply.

Where the injury heals in ten days' time, action shall be brought by the injured party.

Article 157
Beating

Simple beating shall be punished, following action brought by the beaten party, by terms of 1st degree arrest or 2nd degree daily fine.

Article 158
Injury or beating followed by death

Where injury or beating is followed by death, 4th degree imprisonment and disqualification shall apply.

Article 163
Involuntary manslaughter

Involuntary manslaughter shall be punished by terms of 2nd degree imprisonment.

In case of serious negligence due to non-compliance with laws on road traffic and prevention of accidents, or non-compliance with the requirements related to one's own business or profession, punishment shall also include 3rd degree disqualification from government licences, authorizations or permissions.

Article 164
Involuntary bodily injury

Involuntary bodily injury shall be punished by terms of 1st degree imprisonment or arrest or 2nd degree daily fine.

Where the injury heals in thirty days' time, action shall be brought by the injured.

Under the aggravating circumstances envisaged in the second paragraph of the preceding article, punishment shall also include 1st degree disqualification from government licences, authorizations or permissions.

Article 167
Enslavement

Anyone reducing or keeping an individual to slavery shall be punished by terms of 5th degree imprisonment and 4th degree disqualification.

Article 168
Trafficking and trade in slaves

Anyone trafficking or otherwise trading in slaves shall be punished by terms of 6th degree imprisonment and 4th degree disqualification.

Article 169

Illegal restraint

Anyone abducting, holding back or otherwise depriving a person of his or her liberty shall be punished by terms of 2nd degree imprisonment.

Where the culprit - prior to reaching the intended purpose - spontaneously sets the person free or releases him or her in a safe place, 1st degree imprisonment shall apply.

Article 177 bis
Exploitation of child prostitution

Anyone engaging in sex acts with a child under 18 against payment of a sum of money or other economic advantage shall be punished by terms of 2nd degree imprisonment and disqualification, unless the conduct amounts to a more serious offence.

The punishment above shall be increased by one degree where the conduct has been committed to the detriment of a child under 14, or a child under 18 who is physically or mentally disabled.

Punishment may be reduced by one degree where the conduct proves not to be particularly serious and failing the aggravating circumstances referred to above.

Article 177 ter
Child pornography

Anyone using a child under the age of 18 to produce child pornography performances, works or material that show a minor having a sexually explicit conduct aimed at sexual incitement, shall be punished by terms of 3rd degree imprisonment and disqualification. The same punishment shall apply to anyone trading in such child pornography material.

The punishment above shall be increased by one degree where the conduct has been committed to the detriment of a child under 14, or a child under 18 who is physically or mentally disabled.

Apart from the cases referred to in the preceding paragraphs, anyone who provides others, against payment or for free, with child pornography material, shall be punished by terms of 1st degree imprisonment or 2nd degree arrest and , in all cases, with 1st degree disqualification.

Apart from the cases referred to in the preceding paragraphs, anyone who even by using information systems disseminates, distributes, circulates or advertises child pornography material or disseminates information aimed at enticing or sexually exploiting children under the age of 18 shall be punished by terms of 3rd degree imprisonment and disqualification.

In case of conviction for the felonies referred to in the preceding paragraphs, confiscation of the pornographic material in accordance with Article 147 of the Criminal Code shall always be mandatory. To this end, the Law Commissioner (Judge) may order, during the investigating stage, the seizure of such pornographic material.

Article 177 quater
Organisation of travels for the exploitation of child prostitution

Anyone who organizes, promotes or advertises travels, meetings and transfers abroad for the purpose of facilitating engagement in the sexual activities referred to in Article 177 bis, in sexual activities to the detriment of minors, shall be punished by terms of 2nd degree imprisonment at the maximum and 3rd degree disqualification.”

194. Theft

Anyone who, for profit making, takes possession of movable property or energy belonging to another, without the holder's consent, shall be punished by terms of 1st degree imprisonment and 2nd degree daily fine.

Where theft is committed out of necessity and involves things of minor value, or letting livestock graze on other people's land without their permission, 1st degree arrest or daily fine shall apply subject to suit brought by the plaintiff.

The offender shall be punished by terms of 2nd degree imprisonment and 3rd degree daily fine if the theft was perpetrated:
1) by breaking into and entering a dwelling;
2) by violence on things, snatching, seizing quickly or by fraudulent means;
3) involving things exhibited publicly or held in churches or cemeteries, or things of significant value;
4) in complicity with no less than three other people.

195.Robbery

When the property of another is taken from his/her person by violence or threat, even if such violence or threat occur immediately thereafter to maintain possession of the property or procure impunity, the offender shall be punished by terms of 3rd degree imprisonment and daily fine and 4th degree disqualification from public offices and political rights.
Where the offence is committed by no less than three people or involves kidnapping, imprisonment shall be increased by one degree.

Article 196
Extortion

Anyone who, compelling others by violence or threat to do, tolerate or omit something, obtains an unjust profit for himself or for others, shall be punished by terms of 3rd degree imprisonment and daily fine and 4th degree disqualification from public offices and political rights.

Where the offence is committed by no less than three people or involves kidnapping to extract ransom, imprisonment shall be increased by one degree.

197. Misappropriation

Anyone who misappropriates movable property belonging to another which was entrusted to him at any title shall be punished, following action brought by the offended, by terms of 2nd degree imprisonment and daily fine.

First degree imprisonment and 2nd degree daily fine shall apply where misappropriation involves things of little value, or lost by another, or which the offender came into possession of by mistake, chance or force majeure.

Where the offence is committed by a director, collector, guardian, trustee or anyone entrusted by another with the care of something, action shall be initiated ex officio and entail punishment by terms of 2nd degree imprisonment, 3rd degree daily fine and 4th degree disqualification from guardianship or trusteeship, trade or profession.

199. Sale of stolen property

Apart from cases of complicity in the offence, anyone who, for profit making purposes, buys or receives, or causes to buy or receive property which is proceeds of crime, or receives property from individuals or entities knowing that such individuals or entities suffer insolvency, or buys such property at a much lower price where a bankruptcy procedure is initiated, shall be punished by terms of 2nd degree imprisonment and daily fine, and 3rd degree disqualification from public offices and political rights.

221. Imprudent purchase
Anyone who, without having first ascertained their legitimate source, purchases, receives things which, owing to their quality, the condition of those who offer them or the entity of the price, can be considered as being of illicit origin, or who arranges to have them purchased or received, is punishable with third degree imprisonment.

Article 202
Usurpation of non-corporeal goods

Anyone who, by means of publication or use in his own name or in any other form, wrongfully claims authorship of a scientific, literary or artistic work or of an invention, utility or ornamental model of another, or reproduces, disseminates or uses such work, invention or model, wholly or partly, without consent by the author, inventor or person having disposal, shall be punished by terms of 2nd degree imprisonment and daily fine.

Article 204
Swindling

Anyone who, deceiving another by means of a trick or artifice, secures an unjust profit for himself or for a third party shall be punished by terms of 2nd degree imprisonment as well as 2nd degree daily fine or disqualification.

The punishment above shall also apply to anyone who, imposing on a physically or mentally disabled or minor person, has such person perform acts detrimental to himself or to another.

The punishment above shall be increased by one degree:
1) if the conduct occurred to the detriment of the Republic [of San Marino] or public bodies;
2) if the conduct occurred to secure the price of insurance or induce someone to purchase an insurance policy;
3) if the conduct occurred by false pretences involving a public official or power of the Republic [of San Marino];
4) if the conduct occurred to obtain a victory in a sports competition or other public competition or in authorized betting related thereto.

Where the conduct under the first paragraph occurred dissimulating a state of insolvency, the offender shall be punished, following action brought by the offended, by terms of 1st degree imprisonment and daily fine.

In the event envisaged in the preceding paragraph, fulfilment of the obligation by the offender before a first-degree judgement is rendered shall extinguish the offence.

Article 204 *bis*
Misuse of credit cards or similar devices

Anyone who, for the purpose of securing an unjust profit for himself or for a third party, uses credit or payment cards or any other device allowing the withdrawal of cash or purchase of goods and services shall be punished by terms of 2nd degree imprisonment and daily fine.

Article 207
Usury

1. Anyone reserving and taking an exorbitant rate of interest or other disproportional advantages, in return for a loan of money, goods or things in action, or facilitating the reservation and receipt of such interests or advantages in return for a loan of money, goods or things in action, commits a usury offence.

2. Usury occurs when the advantages, reserved and taken, exceed the rate periodically published by the Office of Banking Supervision, and calculated on the basis of the average rate generally applied on transactions by the banking system.

3. Also the use of insidious mechanisms to take possession of the property received as security in return for a loan of money, goods or things in action, shall constitute usury.

Article 208
Fraud in the execution of contracts

Anyone who, being obliged under a contract, deceives another in fulfilling such contract or avoids it fraudulently, thus securing an unjust profit for himself, shall be punished, following action brought by the offended, by terms of 1st degree punishment and 2nd degree daily fine.

Action shall be initiated ex officio where the conduct occurs in the carrying on of business.

Article 212
Fraudulent bankruptcy

A debtor who, for the purpose of avoiding or reducing the discharge of creditors' claims, diverts or conceals assets until their assignment to the judicial bodies, or declares or purports non-existent liabilities or otherwise fictitiously reduces assets, shall be punished –formal bankruptcy having been initiated - by terms of 3rd degree imprisonment and 4th degree disqualification from public offices, political rights and commerce.

The same punishment shall apply even in case of sale, dissipation, destruction, damage, devaluation of assets occurred for the same purpose until their assignment to the judicial bodies.

Article 236
Epidemic and slaughter

Anyone who commits a fact aimed at causing an epidemic, a slaughter or otherwise the killing of more people, shall be punished by terms of 6th degree imprisonment.

Eight degree imprisonment and 4th degree disqualification shall apply where the conduct results in the death of one or more people.

Article241
Attacks on public health through environmental deterioration

Anyone who in any manner, even indirectly, spreads in the atmosphere, disperses into flowing or still, ground or surface waters, or places upon the ground, substances of any nature and species, even living, which by themselves or in connection with air, water or ground conditions, or because of their quality or quantity, jeopardize public health, shall be punished by terms of 3rd degree imprisonment.

Punishment shall be increased by one degree if radioactive substances are spread, dispersed or placed.

244. Illegal production, trading and prescription of narcotic drugs (*)
Anyone who cultivates plants used to obtain opium or prohibited drugs, extracts from them or who produces narcotic drugs in other ways, is punished with second degree imprisonment.
Those who, without authorization, bring narcotic drugs into the territory of the Republic, trade such drugs, keep them with the purpose of trading them or procure them for others, is also subject to the same punishment.
If the facts envisaged in the previous sub-section are committed in violation of the authority's regulations or provisions by those who possess governmental authorization, third degree imprisonment and fourth degree disqualification from using the authorization itself are applied.
Fourth degree disqualification is always added if the offender exercises a health care profession.
The medical practitioner or veterinarian who, with the purpose of favouring the violation, issues prescriptions for narcotic drugs without there being the need for curative care or in proportions that exceed the treatment requirements, is punishable with third degree imprisonment and with fourth degree disqualification from exercising the profession.

(*) See law N° 139 of 26 November 1997 concerning narcotic drugs.

Article246
Deterioration of the natural environment

Apart from the cases covered under Article 241, anyone who in any manner, even indirectly, spreads in the atmosphere, disperses into flowing or still, ground or surface waters, or places upon the ground, substances of any nature and species, even living, which by themselves or in connection with air, water or ground conditions, or because of their quality or quantity, may cause modifications or alterations in the natural environment such as to adversely influence the life and development of essential living organisms in the ecosystem, or which may otherwise affect the use of water for household, agricultural and industrial purposes, shall be punished by terms of 2nd degree imprisonment.

Conviction shall entail a civil obligation to restore - at the convict's own expenses - the damaged area to its original condition.

251. Making of, circulating, shooting, unauthorized carrying of arms, bombs, explosive devices
and inflammable or explosive materials - First degree imprisonment or 2nd degree arrest shall be applied to anyone who, without the required authorizations:
1) makes, introduces in the domestic territory, circulates, holds for the purpose of circulating arms, bombs, gases or explosive devices or inflammable or explosive materials;
2) explodes mines;
3) shoots firearms, lights fireworks, shoots rockets or lights or explodes dangerous materials in or aiming at an inhabited place;
4) carries out of his own dwelling a weapon.

252. Failure to observe caution with respect to arms, bombs, gases and explosive devices

Third degree arrest or daily fine shall be applied to anyone who:
1) fails to render harmless or to report to the authorities any found bombs or other inflammable or explosive devices;
2) gives or allows a minor under 16 or a person unable to exercise his free will to carry weapons, bombs, explosive devices or inflammable or explosive materials, or fails to observe the necessary caution to prevent him from getting possession thereof;
3) without justified reason takes a weapon out his home or premises.

The sports-related use of arms and improper arms in accordance with relevant rules and regulation shall remain unaffected.

Article 268
Trafficking for purposes of prostitution

Anyone who commits trafficking in people abroad for purposes of prostitution shall be punished by terms of 4th degree imprisonment and disqualification from political rights, public offices, trade or profession.

Imprisonment shall be increased by one degree where the offender:
1) has acted in connection with organizations operating in the territory of several States;
2) has used violence, threat or deception or committed kidnapping.

Article 269
Inducement to prostitution

Anyone inducing others to prostitution shall be punished by terms of 3rd degree imprisonment and disqualification form political rights, public offices, trade or profession.

Imprisonment shall be increased by one degree where the conduct occurred:
1) with violence, threat or deception;
2) to the detriment of a minor under 18 or a person physically or psychically disabled;
3) to the detriment of ascendants, descendants, direct affines, stepparents, stepchildren, spouses or siblings.

Article 270
Running of a prostitution business

Anyone running a prostitution house or letting premises for such use shall be punished by terms of 3rd degree imprisonment and disqualification form political rights, public offices, trade or profession.

Anyone involved in the administration of a prostitution house, or working or cooperating therein, punished by terms of 2nd degree imprisonment.

Article 271
Exploitation of prostitution

Anyone who repeatedly exploits the prostitution of others shall be punished by terms of 2nd degree imprisonment and 3rd degree disqualification from political rights, public offices, trade or profession. Third degree imprisonment shall apply where the offender also facilitates prostitution.

287. Association to commit offences
The association of three or more people to carry out a plan of criminal activity shall constitute an offence punishable by terms of 3rd degree imprisonment and 4th degree disqualification from political rights and public offices.

Imprisonment shall be increased by one degree if the associates carry weapons in the countryside or public streets.

Article 289
Incitement to commit offences

Anyone publicly inciting to commit a felony shall be punished by terms of 1st degree imprisonment.

The same punishment shall be inflicted on anyone who – exceeding the limits of criticism – incites to a conduct which amounts to a felony under the law.

Punishment shall be increased by one degree if the offence is committed by using social communications [i.e. *the media*].

Article 295
Material falsehood in public deeds

A public official who, in the fulfilment of his functions, forges or alters a public deed shall be punished by terms of 3rd degree imprisonment and disqualification from public offices.

Imprisonment shall be reduced by one degree if the offender is a private individual.

Article 296
Ideological falsehood in public deeds

A public official who, in the fulfilment of his functions, falsely represents facts or declarations as occurred or filed, or fails to represent or alters facts or declaration occurred or filed, shall be punished by terms of 3rd degree imprisonment and disqualification from public offices.

Punishment shall be decreased by one degree if the public official issues an untruthful certificate or statement with respect to facts for which such certificate or statement has to provide evidence.

Article 299
Falsehood in private contracts

Anyone who forges or alters a private contract, using it for securing an advantage for himself or for a third party, or for causing damage to another, shall be punished by terms of 1st degree imprisonment and 2nd degree daily fine.

Punishment shall increase by one degree if the conduct involves forgery of a bearer negotiable instrument or instrument transferable by endorsement.

Article 300
Use of forged deeds

The punishing provision under the preceding articles shall also apply to anyone who uses forged deeds even if he has not taken part in the forgery.

305. Stockjobbing
Anyone who causes the price of goods or of public or private securities to change by means of false or biased information or other fraudulent schemes shall be punished by terms of 2nd degree imprisonment and 3rd degree disqualification from commerce.

Article 305 bis
Misuse of privileged information

1. Anyone holding privileged information by reason of his participation in the capital of a company or by reason of his function, even public, or profession or office who:
   a) buys, sells or conducts other transactions – even through a third party – involving financial instruments by using such privileged information; or
   b) without justified reason, communicates such privileged information, or on the basis of such information advises others to conduct any of the transactions indicated in a) above

shall be punished by terms of second-degree imprisonment, third-degree daily fine and second-degree disqualification from public offices and civil rights.

2. Anyone who, having obtained privileged information either directly or indirectly from any of the persons referred to in paragraph 1, commits any of the facts described in paragraph 1. a), shall be punished by terms of the same penalty.

3. For the purpose of implementing the provisions of paragraphs 1 and 2, privileged information means specific information the content of which is well-defined, not available to the public and concerning financial instruments or issuers of financial instruments which, if made public, would be capable of influencing prices in a significant way.

4. In case of conviction or enforcement of punishment, the confiscation of the instrumentalities, including financial ones, that were used to commit the felony and of the things being the profit thereof, shall always be mandatory, except where such instrumentalities belong to a person not involved in the felony.

5. The provisions of this article shall not apply to transactions carried out on behalf of the State on grounds of economic policy.

306. Economic boycott
Anyone who, for economic purposes, induces others to abstain from supplying raw materials or working tools, or from buying or selling industrial or agricultural products, thus causing serious damage to boycotted people shall be punished by terms of 2nd degree punishment and daily fine.

Article 306
Economic boycott

Anyone who, for economic purposes, induces others to abstain from supplying raw materials or working tools, or from buying or selling industrial or agricultural products, thus causing serious damage to boycotted people shall be punished by terms of 2nd degree punishment and daily fine.

Article 308
Counterfeiting and alteration of marks of intellectual works and trademarks

Anyone who counterfeits or alters marks of intellectual works, trademarks of industrial or agricultural products, where relevant legislative provisions or international conventions have been complied with, or uses such counterfeit or altered marks or trademarks, shall be punished by terms of 2nd degree imprisonment and daily fine.

The same punishment shall apply to anyone who circulates or introduces in the domestic territory, purchases or holds for the purpose of circulating works and products with counterfeit or altered marks or trademarks.

Article 309
Products and intellectual works bearing deceitful marks

Anyone who makes, introduces in the domestic territory or holds intellectual works or industrial or agricultural products bearing trade names, trademarks or marks that are deceitful as to the origin, provenance, quality or makeup of such works or products, shall be punished by terms of 2nd degree imprisonment or fine, unless the conduct amounts to a more serious offence.

316. False communications

Directors, managers, auditors or liquidators of a legally recognized company who - in their relationships with shareholders or communications to the general meeting, in company financial statements or other official documents - fraudulently report, for purposes other than tax evasion, untrue data as to the financial and asset position of the company, or conceal economically important information, shall be punished by terms of 2nd degree imprisonment, fine and 3rd degree disqualification.

324. Attack against the territorial integrity and perpetual freedom of San Marino
Anyone who commits a fact aimed at subjecting the territory of the Republic to the sovereignty of another State or at lessening the freedom or independence of San Marino, is punished with seventh degree imprisonment and fourth degree disqualification from holding public offices and from exercising political rights.

326. Intelligence with a foreign State against the integrity and freedom of San Marino
The San Marinese citizen who exchanges intelligence with a foreign State with a view to committing one of the facts envisaged by article 324, is punished with imprisonment from the fifth to the sixth degree and with fourth degree disqualification from holding public offices and from exercising political rights.

337. Attack against the Republic's constitution or form of government
Anyone who commits facts aimed at changing the Constitution of the Republic or the form of government with violent means or other means forbidden by law, is punished with imprisonment and with fourth degree disqualification from exercising political rights.

337 bis. Associations for the purpose of terrorism or overthrowing the constitutional order (*)
1. Anyone who promotes, establishes, organizes, directs or finances associations aimed at committing violent actions for the purpose of terrorism or overthrowing the constitutional order, directed against public or private institutions or bodies of the Republic, of a foreign State or international, is punished with sixth degree imprisonment and with fourth degree disqualification from holding public offices and from exercising political rights.
2. Anyone who takes part in these associations is punished with fourth degree imprisonment and with third degree disqualification from holding public offices and from exercising political rights.
3. Anyone, beyond the cases of aiding and abetting or complicity, provides any form of assistance or aid to the participants of the associations indicated in the previous sub-sections, is punished with imprisonment and second degree disqualification from holding public offices and from exercising political rights.
4. He or she who commits the fact envisaged by the third sub-section in favour of a near relative, is not punishable.

(*) Article 337 bis was introduced by article 1 of law N° 28 of 26 February 2004 (Provisions for combatting terrorism, the laundering of money of unlawful origin and abuse of inside information). See note ([19]). Articles 6, 15, 16 and 17 of law N° 28 of 26 February 2004, contain provisions governing the bodies and powers of investigation. See note ([20]).

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[19] According to article 6 of law N° 28 of 26 February 2004: «The Commissioner of Law makes use of the Surveillance Division of the Central Bank of the Republic of San Marino for the financial investigations concerning the misdemeanour envisaged by article 337 bis of the Penal Code».

[20] The text of article 6 of law N° 28 of 26 February 2004 is as follows: «**1.** The Commissioner of Law makes use of the Surveillance Division of the Central Bank of the Republic of San Marino for the financial investigations concerning the misdemeanour envisaged by article 337 bis of the Penal Code».

The text of article 15 of law N° 28 of 26 February 2004 is as follows: «**1.** Within the scope of the investigations conducted in order to identify and suppress the misdemeanours envisaged by articles 199 bis, 207 and 337 bis of the Penal Code and to acquire the relative items of evidence, the Commissioner of Law may authorize the specialized personnel of the Police force to conduct undercover operations, to take action in brokerage activities, to simulate the purchase of goods, materials and things that could lead to illicit income, to take part in any undertaking that aims to suppress the misdemeanours envisaged in this sub-section. **2.** With regard to the acquisition of evidence by tapping the fixed and mobile telephone and telematic networks, the State Congress must present a dedicated draft Bill that governs these particular investigating methods and the

362. *Abetting* - Anyone, beyond the cases of complicity, who helps someone to elude the authorities or to keep the product or profit of the crime, is punished with imprisonment and second degree disqualification from exercising political rights.
Relatives in the ascending line, relatives in the descending line and the spouse who helps his/her husband or wife to elude the authorities, are not punishable.

*(*) The following text appeared under sub-section 1 of article 362 of the code published in the Official Gazette: "imprisonment **or** with disqualification". Law N° 28 of 9 June 1976 that «establishes the authentic text of the penal code», inserted the current text.*

371. Embezzlement by public official
A public official who, by reason of his office, has possession or disposal of movable property belonging to the administration or to private individuals and embezzles or steals them, thus securing an unjust profit for himself or for a third party, shall be punished by terms of 3rd degree imprisonment and daily fine and 4th degree disqualification from public offices and political rights.

Punishment shall be decreased by one degree if the embezzled or stolen property is deemed by the judge to be of negligible value.

372. Bribery
A public official who, by abusing his quality or functions, intimidating others, secures for himself or for a third party the giving of an undue advantage or prospect thereof, shall be punished by terms of 3rd degree imprisonment and daily fine, as well as 4th degree disqualification from public offices and political rights.

The same punishment shall apply even if the offence is committed by a public employee who is not a public officials.

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relative procedures within twelve months from the date on which this law comes into force. **3.** With regard to the case envisaged in sub-section 1, the Police Force must immediately notify, to the Commissioner of Law alone, the result of the activities conducted and may only extract copies and duplicate documents concerning the activities conducted when explicitly authorized to do so by the Commissioner of Law. The results of the investigating work indicated in sub-section 1 that concern third parties or persons alien to the investigated facts, must be destroyed as soon as it has been proved that these third parties or persons had no part in the crimes. Violation of these provisions, or dissemination of the information acquired during the accomplishment of the duties indicated in sub-section 1, is punished with second degree imprisonment together with second degree disqualification from holding public offices and from exercising political rights. **4.** The Commissioner of Law may postpone the validity of the measures for enforcement until the investigations have terminated, or delay the issue of warrants for provisional custody when important evidence must be acquired. **5**. Evidence acquired by means of the procedures envisaged by this article may also be of account for proceedings for crimes connected to those envisaged in the first sub-section of this article».

The text of article16 of law N° 28 of 26 February 2004 is as follows: «**1.** Within the scope of the investigations conducted in order to identify and suppress the misdemeanours envisaged by articles 199 bis, 207 and 337 bis of the Penal Code and to acquire the relative items of evidence, the Surveillance Division of the Central Bank of the Republic of San Marino may, if serious and convergent evidence exists, temporarily block or freeze the capital or other financial resources or assets deposited with San Marinese bank intermediaries and financial brokers as per Law N° 21 of 12 February 1986 and successive amendments and Law N° 24 of 25 February 1986, as well as any relations maintained or account kept with these intermediaries and brokers. Within fortyeight hours, the higher provisions for temporary blocking or freezing must be transmitted to the Commissioner of Law who, within the successive ninetysix hours will, if the pertinent conditions exist, convalidate by ordering the temporary blocking and freezing measure to be released or by arranging for the cautionary measure of seizure to be adopted. The Commissioner of Law's provision must be notified to the intermediary or broker in question and to the Surveillance Division of the Central Bank of the Republic of San Marino within the same term The terms indicated must be complied with under penalty of ineffectiveness of the measure.

The text of article17 of law N° 28 of 26 February 2004 is as follows: «1. The Surveillance Division of the Central Bank of the Republic of San Marino conducts the financial investigations, also availing itself, after having obtained authorization from the Commissioner of Law, of the collaboration of the Police Forces, which answer directly to the Surveillance Division of the Central Bank of the Republic of San Marino and, if it discovers that the reported facts constitute misdemeanour according to this law and article 207 of the Penal Code, reports the matters to the Sole Court. Reported matters for which facts that could constitute misdemeanour according to the aforementioned law and article 207 of the Penal Code have not been found, are filed by the Surveillance Division of the Central Bank of the Republic of San Marino».

373. Corruption
A public official who accepts for himself or for a third party an undue advantage or the prospect thereof against performing an act contrary to his official duties, shall be punished by terms of 4th degree imprisonment and disqualification from public offices and political rights, as well as 3rd degree daily fine.

Punishment shall be reduced by one degree if the act to be performed forms part of one's own official duties.

The same punishment shall apply to a public employee who is not a public official.

The punishment referred to in the preceding paragraphs shall also apply to the one giving or promising the advantage.

377. Disclosure of professional secrets
The public officer or civil servant who does not possess that rank, who discloses information constituting professional secrets, is punished with second degree imprisonment.

378. Failure to carry out professional duties
The public officer who, without justified grounds, delays, omits or refuses to carry out one of his/her professional duties, is punished with either imprisonment or disqualification from holding public offices or with first degree penalty calculated in days.
If the fact is committed by a commander of one of the armed forces of the Republic, the punishment is increased by one degree. The offender is subject to second degree imprisonment if the omission occurs at the time of civil war, riots, devastation, looting or uprising.

Article 388
Manufacturing and smuggling of goods to defraud the state tax office

Anyone who manufactures, introduces in the domestic territory, buys, receives, circulates or holds for the purpose of circulating goods liable to tax for which tax has not been paid, or monopolies, defrauding the state tax office or state contractors, shall be punished by terms of 1st degree imprisonment and 4th degree disqualification from political rights without prejudice to fines applicable under special legislation.

Third degree arrest shall apply if a modest quantity of goods is involved and if the offender is not a recidivist.

Payment of tax due and related administrative fines within ninety days from the date of final assessment shall rule out punishability.

Criminal action, report requirement, investigation and expiry of the offence shall occur only after expiry of the deadline referred to in the preceding paragraph.

Where the offence was committed in connection with other offences, the judicial authority shall proceed against such other offences separately.

Article 389
Tax evasion

Anyone who files false tax returns using fraudulent means or otherwise puts in place fraudulent arrangements for the purpose of evading tax liabilities, or facilitating others to evade tax liabilities, shall be punished, where the final amount of tax evaded, as assessed by the relevant tax bodies, exceeds ITL 25 million for each operation or ITL 250 million in the taxation period, by terms of

second degree imprisonment, a fine in liras and third degree disqualification from the office of member of the Estimate Board and Assessment Committee, from functions of representation and assistance in tax matters, from the offices of director, general manager, auditor or member of supervisory bodies and liquidator of a company or other entity with legal personality, from entering into procurement and supply contracts with the Public Administration.

In case of habitual offender, third degree disqualification from public offices and a six-month suspension of the business license shall be also imposed.

Conviction shall be followed by the publication of the judgment.

Payment of tax liabilities and related administrative sanctions within ninety days following that of the final assessment order shall exclude punishability.

The criminal action, reporting obligation and preliminary investigation, as well as the prescription of the crime shall only have effect after the expiration of the term set forth in the preceding paragraph.

In the event of a connection with other crimes, the latter shall be prosecuted separately by the judicial authority.

Article 401
Counterfeit currency, stamps and negotiable instruments

Anyone counterfeiting or altering currencies that are legal tender or negotiable instruments issued by the Republic [of San Marino] shall be punished by terms of 4th degree imprisonment.

The same punishment shall apply to anyone who uses, introduces in the domestic territory, buys or receives for the purpose of using or circulating such counterfeit or altered instruments.

Punishment shall be reduced by one degree where the conduct involves stamped paper, revenue stamps, postage stamps or other equivalent values.

The preceding provisions shall also apply to foreign currencies, bonds and values.

Article 401 *bis*
Counterfeiting of credit cards or similar devices

Anyone who, for the purpose of securing an unjust profit for himself or for a third party, counterfeits or alters credit or payment cards or any other device allowing the withdrawal of cash or purchase of goods and services, or otherwise holds, sells, buys or in any manner receives such cards or devices, shall be punished by terms of 3rd degree imprisonment.

The use of cards or devices referred to above shall be punished in accordance with Article 204 *bis*.

Article 403
Making, holding, buying and selling of instruments or materials designated for counterfeiting

Anyone who makes, holds, sells, buys or otherwise receives instruments, materials or other means designated for counterfeiting or altering the things referred to in Articles 401 and 401 *bis* of the Criminal Code shall be punished by terms of 2nd-degree imprisonment.

The same punishment shall apply where the conducts referred to in the first paragraph involve:
a) computer programmes or other instrumentalities which, by their nature, are specially adapted to counterfeiting or altering;

b) holograms or other components of the currency, cards or other documents referred to in Article 401 *bis* designated for ensuring protection from counterfeiting or altering.

14.5 Criminal Procedure Code (extracts)

Article 15

The Law Commissioner shall have at the same time the right and duty to undertake investigation with respect to any type of offences as soon as he has knowledge thereof in any manner .He shall thus act as Investigating Judge.

Article 22

The political force and the military on duty are required to transmit to the Commissioner any report or official denunciation of a public prosecution offence; failure to do so shall be punished by terms of Article [275] of the Criminal Code.

Chapter VIII
On the writ of summons, arrest and provisional liberty

Article 53

Measures of personal coercion include detention on remand either in prison or in a place of treatment, house arrest, the obligation or prohibition to stay on the territory of the Republic or part thereof, the prohibition to leave the country.
Nobody may be subjected to personal coercion measures failing adequate evidentiary elements that a person may be held responsible for the conduct being proceeded against and that such conduct amounts to an offence whereby the such measures may be adopted by law.
Measures of personal coercion shall be ordered by the Judge in charge of the proceeding only if there is a risk of destruction or corruption of evidence or of flight by the defendant or in case of serious need to protect the community.
The precautionary measure which is less severe for the defendant and his family shall be adopted, provided that it is sufficient for its intended purpose.
The measure shall in any case be proportionate to the level of wrongfulness of the conduct and to the punishment or security measure that would apply in such a case, account being taken of any conditional suspension of sentence. Such elements shall be considered in the light of the current state of the documents.

Article 54

Detention on remand may be ordered in the following cases:
where the offence being proceeded against is punished by terms of first-degree imprisonment and there is a risk of destruction or corruption of evidence, concealment of the offence or flight from execution of punishment;
where the offence being proceeded against is punished by terms of no less than second-degree imprisonment and any other measure is inadequate.
In ordering house arrest the Judge shall act in accordance with the rules set forth in article 106 ter, paragraphs 3-5, of the Criminal Code.
The defendant shall have the right to obtain release where the reasons which have led to the issue of an arrest warrant no longer exist.

Article 55

A writ of summons may be issued in respect of defendants not subject to personal coercion measures.

In all cases where a writ of summons is issued, the defendant shall be released after interrogation, but under the obligation to show up whenever summoned.

Article 57

The Law Commissioner may render provisional liberty subject to the payment of a bail, to be credited on a term deposit with a San Marino credit institution, the amount of which shall be determined account being taken of the nature and wrongfulness of the offence and the defendant's economic condition.
In alternative to said deposit, the defendant may request and obtain that the bail and sum foreseeably necessary to cover legal expenses be guaranteed by a surety.. In such case the surety shall sign the relevant agreement before the Law Commissioner.
The defendant having obtained provisional liberty shall elect a domicile for notification purposes.
The Law Commissioner may also order that the defendant so released be subject throughout the proceedings or until the arrest warrant is lifted to police supervision or to the monitoring system under Article 64 of the Criminal Code.
Failure to comply with said obligations or in the event of unsuccessful probation the Law Commissioner shall revoke the liberty benefit and issue a new warrant of arrest of the defendant.

Article 58

Having executed the foregoing, the defendant shall be released and allowed to defend himself while in liberty, subject however to prior, formal obligation to show up whenever summoned by the Judge and to losing the bail money in case of failure to show up when formally summoned.

Article 92

1. Agents of the police forces shall:
   a. have the faculty to arrest anyone caught in the act of committing an offence punished by terms of imprisonment, having regard of the offender's personality;
   b. proceed with the arrest of anyone caught in the act of committing an offence punished by terms of no less than third-degree imprisonment;
   c. irrespective of flagrancy, they may stop circumstantial suspects of offence punished by terms of imprisonment when there is grounded suspicion of escape also in relation to the inability to identify the suspect or when reasons for investigation or community protection so require.

2. Where the offence involved is prosecutable under a charge, the stop or arrest in flagrancy shall require the legitimate party to file a charge, to be formalized in writing within fifteen days.

Article 135

After having examined all witnesses, both to the charge and in favour of the defendant, and having exhausted all ways to find out the truth on the conduct being investigated, the Investigating Judge shall transmit – where he founds that all the evidence collected during the investigation does not provide legal grounds for declaring the defendant guilty –the relevant file to the Procuratore del Fisco for an opinion; if the latter's opinion is that there are no grounds for stating the defendant's guilt, then the Investigating Judge shall order the closing of the file, the defendant's acquittal of judgement without prejudice to the Procuratore del Fisco's rights in the event new evidence is subsequently collected to the charge of the defendant.

Chapter XXI
On the sentence and its publication

Article 161

The sentence shall indicate the conduct and main circumstances thereof, and shall be reasoned.
It shall either acquit the defendant of the offence, or of the judgment or convict him.

Article 162

In offences where general evidence of conduct is distinct and separate from specific evidence, a sentence shall preliminarily state whether a conduct amounts to an offence in general. If it does not amount to an offence, the sentence shall order the defendant's dismissal and final acquittal. If it amounts to an offence, the sentence shall declare the defendant either guilty, or not guilty, or that there are no sufficient grounds to prove him guilty. In the former case the sentence shall convict the defendant to legal punishment, quoting the applicable articles of the relevant law. In the second case the defendant shall be definitively acquitted and dismissed. In the latter case the defendant shall be dismissed, but the sentence may declare – if deemed necessary for justice reasons – that the proceeding shall remain open for a certain period of time, which shall not exceed however the relevant statute of limitations.
Where the defendant is found not guilty, the Judge – on request of the defendant himself – shall convict the plaintiff - or the civil party, in case of public prosecution offences- to refund expenses as well as to compensate damage caused during the trial when gross negligence occurred. For such applications no separate civil action shall be admitted.

14.6 Congress of State Decision No. 1 of 5 November 2001 on provisions to monitor and counter the financing of international terrorism

UNOFFICIAL TRANSLATION
Congress of State
Sitting of 5 November 2001
Decision N° 1

Subject: Provisions to monitor and counter the financing of international terrorism

The Secretary of State for Foreign Affairs communicates that, in the wake of the tragic and grievous events of 11 September 2001, the US Administration has been informed of San Marino's willingness to establish, also in the absence of special bilateral agreements, direct contacts between their respective competent offices, or resort to any other instrument aimed at countering the threat of terrorism.

The Secretary of State for Foreign Affairs also informs that a phone conversation has recently occurred with the US Undersecretary of the Treasury, Mr. Taylor. During such conversation it was agreed that a direct link be established with the US Administration responsible for monitoring and combating any suspicious financial flows that might affect or have affected the San Marino financial system.

Secretary of State Galassi informs the Congress of State of the measures, already taken by the Office of Banking Supervision, aimed at verifying the list of names disseminated by relevant foreign organisms, and monitoring financial flows to and from Islamic countries that may have transited through the San Marino banking and financial system, as explained by the Office of Banking Supervision in its letter n° 4430 of 23 October 2001, which is put on record during this sitting.

The Congress of State

Whereas there is a need to strengthen international cooperation in combating terrorism, to protect the security of the Republic and the soundness of the San Marino economic and financial system also by adopting provisions on the freezing of capitals or any other financial resources deposited with the San Marino banking and financial institutions by persons connected to individuals or organisations suspected of carrying out international terrorist activities;

Having regard to UN Security Council's Resolutions No. 1267/1999, No. 1333/2000, and No. 1373/2001;

Whereas there is an urgent need to adopt and strengthen the instruments designed for the fight against the financing of international terrorism;

invites

the Office of Banking Supervision to continue to transmit to all banking and financial institutions the lists drafted by the supervisory or police bodies of other countries or International Organizations containing the names of individuals and organizations suspected of international terrorism;

orders

that banking and financial institutions immediately freeze the capitals and any other resources or assets deposited with them, as well as block any other transaction suspected of being directly or indirectly linked to the individuals appearing in the above-mentioned lists, and that they promptly report back to the Office of Banking Supervision;

mandates

the Office of Banking Supervision to communicate the decisions referred to herein to all intermediaries subject to supervision, to issue all implementation provisions that it may deem necessary and to inflict, where appropriate, the administrative sanctions set forth in article 9 of Law No. 123 of 15 December 1998 on Anti Money Laundering.

The Secretary of State
Fiorenzo Stolfi

14.7 Law No. 96 of 29 June 2005 on the Statutes of the Central Bank of the Republic of San Marino

STATUTES OF THE CENTRAL BANK OF THE REPUBLIC OF SAN MARINO

Law 96 of 29 June 2005

as amended by Law 179 of 13 December 2005

UNOFFICIAL TEXT

NOTICE

The purpose of this document, issued by the Central Bank of the Republic of San Marino, is to facilitate consultation of Law 96 of 29 June 2005 as further amended, as stated below. It is not an official text, and the Central Bank of the Republic of San Marino assumes no liability for any errors or omissions. The official text of the Laws of the Republic of San Marino can be found in the *Bollettino Ufficiale* or on the Internet website, www.consigliograndeegenerale.sm.

We the Captains Regent
of the Serene Republic of San Marino

Hereby promulgate and order the publication of the following law approved by the Grand and General Council at its sitting on 29 June 2005.

CHAPTER I
STATUTES OF THE CENTRAL BANK OF THE REPUBLIC OF SAN MARINO

TITLE I
GENERAL

Article 1
(Definitions)

1. For the purposes of this law, by the following terms are meant:
   a. "Central Bank", the Central Bank of the Republic of San Marino;
   b. "Republic", the Republic of San Marino;
   c. "CCR", the Comitato per il Credito e il Risparmio (Committee for Credit and Savings);
   d. "Banking Law", Law 21 of 12 February 1986 as further amended;
   e. "Law on financial and fiduciary companies", Law 25 of 25 February 1986 as further amended;
   f. "Law on the tax collection service", Law 70 of 25 May 2004 as further amended;
   g. "authorised intermediaries", the banking, financial and insurance intermediaries, together with the subsidiaries and representative offices of foreign intermediaries having obtained authorisation to operate in or from the territory of the Republic;
   h. "supervised parties", the authorised intermediaries, the groups of enterprises of which the

authorised intermediaries form part, and any other party over which the Central Bank performs, in accordance with law, the function of supervision authority;

i. "financial system", the body of authorised intermediaries operating in or from the territory of the Republic.

TITLE II
DEFINITION AND OBJECTIVES OF THE CENTRAL BANK

Article 2
(The Central Bank)

1. The Central Bank of the Republic of San Marino will be a publicly and privately owned entity having private legal status, unlimited life and its registered office in the territory of the Republic.
2. The Central Bank will assume the roles of a central bank, an authority having supervision of the banking, financial and insurance sector, and the currency authority of the Republic. Future laws may be enacted assigning the Central Bank other functions provided that they are consistent with the objectives of these Statutes.
3. The objectives and functions of the Central Bank will be as established by this Law.

Article 3
(The Central Bank's objectives)

1. The Central Bank will exercise its powers for the purpose of:
   a. promoting the stability of the financial system and protecting savings, whose substantial social value is recognised by the Republic, through supervision of the credit, financial and insurance activities in which authorised intermediaries are engaged;
   b. providing banking and financial services to the State and to the Public Administration, one purpose being to coordinate the management of liquidity and the choice of forms of financing;
   c. providing adequate support to the financial system of the Republic, to include performing the functions of incentive and guidance;
   d. facilitating economic and financial activity, setting up and maintaining efficient and reliable payment systems for the Republic.

Article 4
(The Central Bank's responsibilities)

1. The Central Bank will be answerable for the attainment of its objectives to the Grand and General Council.
2. At the time of presenting its Annual Accounts, the Central Bank will present the Grand and General Council, through the Department of the State Secretary for Finance, a final report containing an account of the activities in which it has been engaged over the preceding year and providing information on the progress of the financial system of the Republic. The report will be subject to due cognizance by the Grand and General Council.

TITLE III
THE ORGANS OF THE CENTRAL BANK

Article 5
(The Organs of the Central Bank)

1. The following are the organs of the Central Bank:
   a. the General Meeting of Members;
   b. the Governing Council;

c. the Chairman;
d. the Director General;
e. the Supervision Committee;
f. the Board of Auditors.

SECTION I
THE GENERAL MEETING OF MEMBERS

Article 6
(Composition of the General Meeting of Members)

1. The State will be represented at the General Meeting of Members by the State Secretary for Finance and the Budget and by another member of the Congress of State. In the absence or indisposition of the State Secretary for Finance and the Budget, the Congress of State will designate a substitute representative.
2. The other participating members will be represented by their legal representatives or persons designated thereby.
3. In votes, each member will have one vote per share in the endowment fund which that member is recorded as holding at least one month before the date of the General Meeting.
4. With the exception of the State, every member may arrange to be represented by another participant by a written proxy. No participant may hold more than one proxy.

Article 7
(Convocation of the General Meeting of Members)

1. An Ordinary General Meeting shall be convened at least once a year during the first five months of the financial year.
2. The General Meeting will also be convened, on an extraordinary basis, whenever deemed necessary by the Chairman or the Governing Council or when a written request, stating the grounds therefor, is made by members representing at least thirty for cent of the endowment fund; in such cases the General Meeting shall take place within thirty days of presentation of the request.
3. The ordinary General Meeting and extraordinary General Meeting will be convened by registered letter to be forwarded to members, at the address recorded in the company books, at least twenty days before the date appointed for the meeting.
4. The letter of convocation shall state the date, time and place of the meeting and contain a list of agenda items.
5. The letter convening the General Meeting may specify the date and time of a meeting held on second call. If the date and time of the second meeting are not stated in the letter, the General Meeting shall be reconvened within thirty days of the date of the first meeting, and the period specified by the third paragraph of this article will be reduced to eight days.

Article 8
(Powers of the General Meeting of Members)

1. The General Meeting,
   a. having viewed the report by the Governing Council and the Board of Auditors, will by 31 May approve the Annual Financial Statement, including the report by the Governing Council and the Board of Auditors' report, and will forward it to the Grand and General Council through the Department of the State Secretary for Finance;
   b. will approve the Final Report on the Central Bank's activities in the previous year and will forward it to the Grand and General Council, through the Department of the State Secretary for Finance;

c. will admit new members on the proposal of the Governing Council and after their approval by the Congress of State;
d. will resolve on action for which the members of the Governing Council and the Board of Auditors are responsible, where necessary proposing the measures laid down by law; determine the remuneration of the members the Governing Council and Board of Auditors;
e. will resolve on increases in the endowment fund; changes to the endowment fund proposed by the General Meeting will come into force after their approval by the Grand and General Council;
f. will appoint a firm listed in the specific San Marino Register of Accountant Auditors to certify the accounts;
g. will pass resolutions on any other agenda items not falling within the competence of other organs, or the decision on which has been referred by the competent organs to the judgment of the General Meeting in view of the significant nature of the subjects.

Article 9
(Procedures for General Meetings of Members)

1. For a General Meeting to be valid, a quorum, at the meeting held at first call, of participants representing at least two thirds of the endowment fund will be required; at a meeting at second call, the quorum required will be participants representing an absolute majority of the endowment fund.
2. The General Meeting will pass resolutions by a majority of the members representing at least two thirds of the endowment fund in the first two votes, and an absolute majority in subsequent votes.
3. Ordinary and extraordinary general meetings will be chaired by the Chairman of the Governing Council.

SECTION II
THE GOVERNING COUNCIL

Article 10
(Composition of the Governing Council)

1. The Governing Council will consist of the Chairman and five members nominated by the Grand and General Council, on the proposal of the Committee for Credit and Savings, chosen from persons with financial and/or legal expertise and experience of relevance to the management and monitoring of the financial system.
2. The members of the Governing Council will remain in office for five years and will be eligible for re-election for one further mandate.
3. The Governing Council will appoint the Vice Chairman from among its own number. It will also appoint a Secretary chosen from among the senior officers and officers of the Central Bank. If the Secretary is absent or indisposed, the functions will be performed by the youngest member.
4. The Director General will attend meetings of the Governing Council without being entitled to vote.

Article 11
(Convocation of the Governing Council and procedures for their meetings)

1. Meetings of the Governing Council will be convened by a notice setting out the agenda, to be forwarded to the members at the address stated by them at least five days before the meeting.
2. In urgent circumstances, notice of the meeting may be given without complying with the period of notice stated in the preceding paragraph, provided that at least one day’s notice is given.
3. The Governing Council will meet whenever the Chairman deems appropriate, or whenever requested by at least three of its members, stating the items to be submitted to the Council, although meetings will be held no less than ten times a year and without allowing more than two months to elapse between two successive notices.

4. For resolutions to be valid, the presence of the Chairman, or the Vice Chairman if the Chairman is absent or indisposed, and at least three members of the Governing Council will be required.
5. Resolutions will be passed by an absolute majority of those present. In urgent circumstances, the resolutions may also be passed by an indication of each vote, entered by hand in the document setting out the text of the proposed resolution.
6. If votes are equal in the case of open voting, the Chairman's vote, or the Vice Chairman's vote in the former's absence, will prevail, and in secret voting the proposal will be deemed to have been rejected.
7. The minutes of Governing Council meetings will be signed by the Chairman, or by the Vice Chairman in the former's absence, and by the Secretary.
8. The Secretary may issue copies of and extracts from the minutes which, when countersigned by the Chairman, will evidence those minutes in court or before any judicial and administrative authority and vis-à-vis third parties.

Article 12
(Powers of the Governing Council)

1. The Governing Council will be assigned the powers of management of the Central Bank.
2. The Governing Council will:
   a. propose the admission of new Members to the General Meeting of Members;
   b. draw up the Financial Statement and submit it to the General Meeting together with its own report;
   c. propose increases in the endowment fund to the General Meeting;
   d. resolve on the taking, modification and disposal of holdings, including those acquired to protect the Central Bank's credit claims;
   e. designate the representatives of the Central Bank on Boards of Directors, Auditors' Boards and organs of the entities or enterprises in which holdings have been taken;
   f. appoint the Director General, subject to the approval of the Grand and General Council;
   g. nominate the Supervision Committee Inspectors, on the proposal of the Director General, subject to the approval of the Committee for Credit and Savings;
   h. nominate the Vice Director, senior officers and officers and decide on the recruitment of staff;
   i. determine the remuneration and allowances of members of the Supervision Committee and other contractual conditions for external inspectors;
   j. propose any resolution to the General Meeting that it deems appropriate to refer for its consideration;
   k. pass resolutions on any other matter deemed to be in the interest of the Central Bank.
3. Without prejudice to the provision of the third paragraph of article 30, the Governing Council will be responsible for matters of regulatory supervision. The Supervision Committee will report from time to time to the Governing Council on its work and on its supervision and anti-money laundering initiatives.
4. The Governing Council may delegate part of its powers to the Director General, the Vice Director or other Bank staff, at the same time establishing the procedures for the persons delegated those powers to bring the decisions they have taken to the knowledge of the Council; the powers listed in paragraph 2 will, however, be excluded.

5. The Governing Council will also lay down the criteria for the exercise of the power to sign and may confer special powers of attorney for certain instruments or negotiations to the Central Bank's senior officers, officers and other staff, or also to third parties.

SECTION III
THE CHAIRMAN

Article 13
(Chairman)

1. The Chairman will have the power of legal representation of the Central Bank.
2. The Chairman will be appointed by the Grand and General Council, remain in office for five years and be eligible for re-election on one further occasion.
3. The Chairman will convene and chair the Governing Council and the General Meeting of Members.
4. In urgent matters, the Chairman will be empowered to pass resolutions, bring legal and administrative actions and defend actions brought against the Central Bank, appointing counsel and attorneys ad litem.
5. The mere fact that the Chairman avails himself of the power conferred on him by the preceding paragraph will constitute the legal proof vis-à-vis third parties of the existence of the grounds of urgency. The Chairman will then inform the Governing Council, at the earliest feasible meeting, that he has availed himself of that power.
6. In the Chairman's absence, his functions will be performed by the Vice Chairman. In dealings with third parties, the Vice Chairman's signature will constitute legal proof of the absence or indisposition of the Chairman.

SECTION IV
THE DIRECTOR GENERAL

Article 14
(Director General)

1. The Director General will be appointed by the Governing Council, subject to the approval of the Grand and General Council.
2. The office of Director General will be for a term of six years, which may be renewed.
3. The Director General will attend meetings of the General Meeting of Members, take part in meetings of the Governing Council without being entitled to vote and chair the Supervision Committee.
4. The Director General will be head of staff and will coordinate and supervise the work to be carried out. Among his duties, the Director General will:
   a. arrange for the implementation of resolutions of the Governing Council and of measures adopted as a matter of urgency by the Chairman; he will also ensure that resolutions are implemented by the Supervision Committee;
   b. formulate proposals to protect the interests of the Central Bank;
   c. issue orders and instructions that will be binding on all staff, including those on the structure of the organisation chart and the allocation of posts and duties;
   d. sign instruments of ordinary administration; countersign statements, the annual reports and the accounts; sign documents of any other nature concerning the functions of the Central Bank and adopt any other measures that may be required for the conduct and due performance of the Central Bank's functions and services;
   e. propose measures to the Governing Council pertaining to staff, including promotions and the recruitment of staff of any grade.
5. In the absence or indisposition of the Director General, his functions will be performed by the Vice Director. In dealings with third parties, the Vice Director's signature will in itself constitute legal proof of the absence or indisposition of the Director General.

SECTION V
SUPERVISION COMMITTEE

Article 15
(The Supervision Committee)

1. The Supervision Committee will consist of the Director General, who will chair the Committee, and the Central Bank inspectors. The inspectors will be appointed by the Governing Council, on

the proposal of the Director General, subject to approval by the Committee for Credit and Savings.

2. The Supervision Committee will be assigned the authority for management of supervision of the banking, financial and insurance system of the Republic, in its three components of inspection, information and regulation, and as an anti-money laundering unit.
3. There may be no fewer than two inspectors. They may be internal, in other words members of the Central Bank's own staff, or external, in other words consultants to the Central Bank.
4. External inspectors will be selected from persons of irreproachable integrity who have acquired many years' experience in the work of supervision of the banking, financial or insurance sector.
5. Neither internal nor external inspectors shall have interests that conflict with the performance of their supervision work.
6. Each inspector's term of office will be three years, which may be renewed.
7. The Governing Council, having consulted the Committee for Credit and Savings, may remove one or more inspectors from their office before the expiration of its term if they fall short of the requirements stated in paragraph 5, or if they are no longer capable of carrying out their work.
8. The Supervision Committee will meet whenever the Director General thinks fit, or at the request of at least two inspectors, and will reach decisions by an absolute majority of those present. If voting is equal, the vote of the Director General will prevail.

SECTION VI
THE BOARD OF AUDITORS

Article 16
(Board of Auditors)

1. The Board of Auditors will consist of a Chairman and two statutory auditors; the Chairman will be appointed by the Grand and General Council, on the proposal of the Committee for Credit and Savings; the two statutory members will be appointed by the minority members.
2. The Board of Auditors will exercise control over management, accounting and compliance with the Central Bank rules and the provisions of law, vouch for the veracity of the financial statements, monitor that the criteria for the valuation of entries in the accounts comply with stringent accounting criteria and present its own report on the annual report.
3. The Board of Auditors will be empowered to inspect the Bank's books and request information on the performance of its duties, with the exception of matters of a confidential nature pertaining to the Bank's duties of Supervision and its anti-money laundering functions.
4. The Statutory Auditors shall have been entered in the Register of Accountant Auditors regulated by Law 146 of 27 October 2004 and will remain in office for three years; their appointment may be reconfirmed for one further term.

SECTION VII
INCOMPATIBILITY AND SUBSEQUENT PROHIBITIONS

Article 17
(Incompatibility and conflict of interest)[21]

1. The office of member of the Governing Council, Director General or Inspector of the Central Bank will be incompatible with:
   a. the status of member of the Grand and General Council and the Congress of State;
   b. the status of judge;
   c. the status of director, auditor, officer or employee of banks or credit, financial or insurance entities in the territory of the Republic of San Marino or in other countries.

[21] As amended by Law 179 of 13 December 2005

2. The office of Statutory Auditor of the Central Bank will be incompatible with:
   a. the status of member of the Grand and General Council and the Congress of State;
   b. the status of judge;
   c. the status of director, officer or employee of banks or credit, financial or insurance entities in the territory of the Republic of San Marino.
3. Persons not satisfying the requirements stated in article 55 bis of Law 162 of 19 November 2004 may not be elected to the office of member of the Governing Council, Director General, Statutory Auditor or Inspector and, if they are so elected, their office will lapse.
4. The office of member of the Governing Council, Director General or Inspector of the Central Bank will be incompatible with the ownership of holdings in banks and companies supervised by the Central Bank.
5. Persons may not hold the office of member of the Governing Council, Director General, Statutory Auditor or Inspector of the Central Bank if they are in any way engaged in professional activities that might directly affect their independence and if they do not offer sufficient guarantees of being able to perform their assigned duties freely and independently in compliance with the laws of the Republic and in its sole interest.
6. The members of the Governing Council and the Board of Auditors, on the proposal of the Committee for Credit and Savings, may be removed from their office by the Grand and General Council if they no longer satisfy the conditions laid down in the preceding paragraphs of this article, or if they are no longer able to perform their activity.
7. If, at the time of passing a resolution, it is noted that there is a conflict of interest on the part of a member of the Governing Council having regard to the subject of the resolution, that member will be required to abstain from voting.
8. Abstention from voting by the member of the Governing Council will be ruled by the Chairman at the request of the other members of the Council.
9. If the conflict of interest relates to the Chairman, abstention from voting will be ruled by the Vice Chairman further to a request put forward by a majority of the members present at the meeting.

Article 18
(Subsequent prohibitions)

1. Over the twelve month period following the expiry of their office or the tendering of their resignation, the Inspectors and Director General may not hold the office of director or perform any work as an employee of or consultant to parties that are supervised by the Central Bank.

TITLE IV
THE CENTRAL BANK'S FINANCIAL RESOURCES AND OPERATIONS

Article 19
(Composition of the equity)

1. The equity of the Central Bank will consist of its endowment fund, ordinary reserve, any extraordinary reserve and any other non-earmarked fund.

Article 20
(Endowment fund, members and holdings)

1. The Central Bank's endowment fund shall be € 12,911,425, distributed as indivisible nominative participation quotas of € 5,164.57 each.
2. Ownership of the participation quotas will be reserved for the State, which will be the majority holder, and San Marino companies engaged in credit, financial or insurance business.
3. Participants in the Central Bank endowment fund will assume the status of members of the Central Bank.
4. The endowment fund may be increased or reduced by a resolution of the General Meeting of Members.

5. Decisions to increase or reduce the endowment fund will be taken by a majority of votes representing two thirds of the fund in the first two votes and an absolute majority in subsequent votes.
6. The liability of members of the Central Bank will be limited to their participation quotas.
7. Members will have an option right to new issues of securities in proportion to those already held.
8. If members fail to exercise their option, the new securities will be temporarily acquired by the Central Bank and be at the disposal of the Governing Council, until such time as it arranges for their further placement.
9. The assignment of quotas will be subject to approval by the General Meeting of Members.
10. The status of member will be forfeited on withdrawal or due to an exclusion measure, stating the reasons therefor, resolved by the Governing Council and ratified by the Congress of State.

Article 21

(Charges levied from supervised parties)

1. The Central Bank will also fund its operations out of contributions made by the supervised parties.
2. The contributions made by the supervised parties will be laid down by a specific decree on the proposal of the Central Bank, based on the principles of objectivity and fairness, and shall be in proportion to the dynamic development and growth of the supervised parties.
3. The amount of contributions may be determined so as to cover the whole of the costs, direct and indirect, incurred by the Central Bank exclusively in the performance of its supervision functions, and shall be evidenced by an annual report that the Central Bank will be required to present to the State Secretary for Finance and the Budget and to the supervised parties.

Article 22

(Remuneration for the functions performed by the Central Bank for the State)

1. The Central Bank will also fund its operations out of fees granted by the State, Public Institutions and Autonomous Authorities to the Central Bank for the functions performed and services rendered.
2. Unless otherwise specified, the functions performed and the services rendered by the Central Bank to the State, Public Institutions and Autonomous Authorities shall be remunerated with due regard for the costs incurred by the Central Bank.
3. The terms and conditions of the treasury and tax collection functions, the function of depository of financial resources and any other service that the Central Bank renders to the State, Public Institutions and Autonomous Authorities, will be established by separate agreements between the Central Bank and the Congress of State through the State Secretary for Finance and the Budget.

Article 23

(Financial Statement, profits, reserves)

1. The financial year will begin on 1 January and close on 31 December each year.
2. The Annual Financial Statement, including the report by the Governing Council and the Board of Auditors' report, will be lodged at the registered office of the Central Bank within the periods laid down by current regulations on capital companies, and at least twenty days before the date of the General Meeting for whose approval it is to be submitted.
3. The Central Bank's Financial Statement will be certified by the auditing firm chosen by the General Meeting. The mandate for the auditing of the Financial Statement may not exceed five years.
4. The General Meeting will determine the distribution of the profits for the year, providing for the allocation of at least 40 per cent to ordinary reserves and at least 25 per cent to the bodies participating in the capital; any residual balance, on the other hand, will be transferred to an extraordinary reserve and to setting up or supplementing other funds contributing towards the formation of the Central Bank's equity.
5. Any losses by the Central Bank will be offset by drawing on reserves; if the funds are

insufficient, the loss will be made up by the end of the following year out of resources contributed by members in proportion to the quotas of the endowment fund held by them.

Article 24

(Central Bank tax status)

1. The Central Bank's profits will be exempted from general income tax and will go towards the formation of the taxable base of those receiving the profits if they are distributed.

Article 25

(The Central Bank's Operations)

1. The Central Bank will manage its own financial resources independently and according to principles of prudence and good administration.
2. For the purpose of its own operating requirements, the Central Bank may enter into transactions and maintain relations with both San Marino and foreign credit institutions, International Financial Organisations, Central Banks, Supervision Authorities or similar foreign Authorities.
3. Within the scope of its own functions the Central Bank may, as well as availing itself of its own equity funds, conduct any financial borrowing transactions, to include the issue of bonds and more generally of any financial instrument.
4. Any issue of its own bonds other than as established by law shall have been authorised by the General Meeting, and made known to the Grand and General Council.
5. Bonds issued by the Central Bank may be classified as a compulsory reserve.
6. The Central Bank may also, in compliance with current measures, engage in any transaction promoting the conduct of its own business and the attainment of its objectives, including:
   a. conducting transactions in financial instruments, gold and precious metals, foreign currencies and derivative instruments;
   b. taking holdings in organisms, entities and companies whose activities contribute towards and are correlated with the Central Bank's institutional objectives;
   c. granting loans or mortgages to the State or Public Entities and Autonomous Authorities;
   d. purchasing and selling real property and carrying out any act of management to meet its own requirements, as well as becoming the assignee of movable and immovable assets in partial or total satisfaction of its own credit claims;
   e. receiving escrow deposits for custody or as surety or provided as guarantee in any other manner;
   f. opening current accounts in foreign currencies and securities deposit accounts;
   g. signing contracts with the purpose of reducing and managing the financial risks arising from variations in interest or exchange rates or from other factors of an economic and financial nature affecting its institutional activity.
7. Except with its own employees and members of the Bank's organs, and except where strictly necessary in order to achieve its own institutional aims, the Central Bank may not maintain active or passive banking relationships or conclude banking transactions with private persons.

TITLE V
THE CENTRAL BANK'S ORGANISATION AND STAFF

Article 26

(Administrative organisation)

1. The Central Bank will enjoy full organisational, management, negotiating and accounting autonomy in due compliance with the provisions of law.
2. The Central Bank will issue its own internal regulations on the organisation of the administrative structure as compatible with its budget and according to the criteria of efficiency, effectiveness and economy.
3. Save as laid down in paragraphs 1 and 2, and without prejudice to the provision of paragraph 4 below, there will be at least the following Departments in the organisation of the Central Bank:

a. Supervision Department;
b. Treasury Department;
c. Tax Collection Department;
d. Payments System Department.

4. In defining the internal organisation of its administrative structure, the Central Bank shall however provide for the necessary autonomy for the Supervision Department, without prejudice to the requirement of coordination.

Article 27
(Regulation of activities)

1. The activities of the Central Bank will be regulated by the present Law, the internal regulations laid down by the Governing Council and the internal measures issued by the Director General.

Article 28
(Legal protection)

1. No civil proceedings, claims for compensation from, or claims against the liability of, the members of the Governing Council, the inspectors, the management or the staff of the Central Bank will be admissible for acts which have, in good faith, been committed or omitted in the exercise of the Central Bank's powers and functions or in compliance with the obligations and duties established in the present law.

Article 29
(Official secrecy)

1. The members of all the Central Bank's organs, its consultants and its entire staff will be under an obligation to observe the strictest secrecy on all matters pertaining to the activities of the Central Bank and its relations with third parties. All particulars, information and data in the Central Bank's possession by reason of its activity of supervision over intermediaries will be official secrets. The obligation of observing official secrecy will persist even after leaving office or employment with the Central Bank.
2. In the same way, all those who, on the occasion of any relationship with the Central Bank, acquire - even involuntarily - information on the Central Bank, its activities or the data in its ownership or under its control, will be bound by the ties of secrecy.
3. Such confidentiality may not be relied upon against the judicial authority if the information requested is necessary for investigations into infringements liable to criminal sanctions.

TITLE VI
FUNCTIONS OF THE CENTRAL BANK

SECTION I
GENERAL

Article 30
(Powers of the Central Bank)

1. In order to achieve the objectives and carry out the functions it is assigned by the present Law, the Central Bank, through its organs and in its respective areas of competence, may adopt measures, to include those in the form of regulations, orders, circulars, standard letters, recommendations and instructions, which will, besides being of a cogent nature in dealings with supervised parties, also perform the function of explaining and interpreting the tasks assigned to the Central Bank by law.
2. The Central Bank will, adopting the methods regarded as most appropriate, make public the measures referred to in the previous paragraph if they are of general relevance and addressed to

the public.

3. Central Bank instruments pertaining to matters of supervision and to the anti-money laundering unit, as resolved by the Supervision Committee, will be issued by the Director General.

Article 31
(Sanctions)

1. Save in those cases specified in Title IX of the Banking Law and in Title III of the Law on financial and fiduciary companies, those Directors, Auditors, Managers, Legal Representatives, Receivers and Liquidators contravening the provisions of the decree referred to in paragraph 4 of this article will be punishable by a pecuniary sanction of a minimum of Euro 1,000.00 to a maximum of Euro 50,000.00.
2. A pecuniary sanction imposed by the Central Bank shall, when it has become enforceable, be paid by the supervised party, which will have the obligation of recouping the amount from the person in the sanctioned company, by a payment to the Central Bank.
3. An appeal against the sanction measure may be made to the Administrative Judge within the statutory periods.
4. Except as laid down in the preceding paragraphs, a special decree as proposed by the Central Bank, after obtaining the opinion of the Committee for Credit and Savings, will identify:
   a. the infringements for which the pecuniary sanction specified in this article is to be applied and the amounts thereof;
   b. the procedures for rendering the sanctions enforceable;
   c. the procedure for the imposition and extinction of the pecuniary sanctions.
5. The Central Bank of the Republic of San Marino will transfer the amount received in respect of sanctions to the Chamber of the Grand and General Council; these amounts will be allocated to a specific chapter of the State Budget, “banking and financial system interventions”.

Article 32
(Publication of sanctions)

1. The Central Bank may, in those cases and according to the procedures it thinks fit, make public the pecuniary sanction measure and the supervised party or parties to which that measure applies.

SECTION II
SUPERVISION AND INVESTOR PROTECTION FUNCTIONS

Article 33
(Supervision and investor protection functions)

1. For the attainment of its objectives, the Central Bank will be assigned the functions of:
   a. regulation, monitoring and supervision of intermediaries and their activities and services and of financial, banking and insurance instruments;
   b. management, regulation and administration of the systems of guarantee to protect depositors;
   c. the custody and administration of deposits in securities and in cash in respect of the compulsory reserve by Banks in escrow;
   d. the granting of credit to supervised parties operating in the territory of the Republic, provided that it has adequate backing in the form of guarantees;
   e. the anti-money laundering unit.

Article 34
(Regulation, monitoring and supervision of authorised intermediaries)

1. The regulation, monitoring and supervision of the activities of authorised intermediaries will include the power to request information and data, the power to examine, supervise and regulate

the acts of the supervised parties, and the imposition of restrictions and sanctions on the supervised parties and their Directors and senior officers.

2. In the performance of its functions of regulation, monitoring and supervision of authorised intermediaries, the Central Bank may also:
   a. issue any normative instrument, regulation, order, circular, standard letter, recommendations and instructions it deems necessary in order to attain its objectives;
   b. inspect any supervised party in order to examine the status of its accounts, books, funds, documents and any other relevant material, and to access any information that may be deemed necessary by the Central Bank inspectors;
   c. request periodical information together with the financial statements and any other data and documents deemed necessary to the performance of its functions;
   d. impose pecuniary sanctions on the supervised parties;
   e. issue authorisations and formulate the opinions stated in current laws and regulations;
   f. suspend authorisation for authorised intermediaries in the event of grave irregularities in administration, grave infringements of the laws and regulations and the articles of association regulating the supervised parties' activities, grave infringements of provisions issued by the Central Bank, serious capital losses and a serious and lasting state of illiquidity. The grounds for the suspension measure shall be stated. The Central Bank will promptly notify the Congress of State of the suspension measures through the Committee for Credit and Savings;
   g. propose to the Congress of State, through the Committee for Credit and Savings, the revocation or dissolution of the administrative and monitoring organs of the banks and financial intermediaries, and the appointment of extraordinary administration bodies in accordance with the procedure specified by the Banking Law.

Article 35

(Notification of grave irregularities)

1. The Supervision Committee of the Central Bank, in the person of the Director General, will forward, on a confidential basis, the information and data acquired in the exercise of its supervision function and pertaining to ascertained grave irregularities to the Congress of State, through the Committee for Credit and Savings,
2. The information and data referred to in paragraph 1 will also be forwarded to the judicial authority in those cases specified by law. The exhibits in proceedings brought further to that notification will be treated as strictly confidential.

SECTION III
CURRENCY AUTHORITY FUNCTIONS

Article 36

(Currency authority functions)

1. The Central Bank will, in order to achieve its objectives, be assigned the following functions:
   a. the exclusive management of currency transactions, with the option of delegation to other banks or branches operating in the territory, in compliance with current laws;
   b. supervision on the application of currency measures.

SECTION IV
PAYMENTS SYSTEM MANAGEMENT FUNCTIONS

Article 37

(Payments system management functions)

1. The Central Bank will, in order to achieve its objectives, be assigned the functions of management, regulation and oversight of the Republic's payments system.

Article 38
(Payments system management functions)

1. The Central Bank will ensure that the payments system operates in a secure, stable and efficient manner. The Central Bank will adopt all those measures and procedures it deems necessary in order to secure the efficiency and stability of the San Marino payments system.
2. The Central Bank may delegate the management of the information technology infrastructure of the payments system to third parties. In that event, the delegated party will enter into a contract with the Central Bank in which it undertakes to treat the information acquired by virtue of such management with the strictest secrecy, and also to implement and use adequate security systems and procedures.

SECTION V
CONSULTANCY FUNCTIONS

Article 39
(Consultancy functions)

1. The Central Bank will, in order to achieve its objectives, be assigned the following functions:
   a. the furnishing of opinions on monetary, credit, finance, currency and economic issues, through the Department of the State Secretary for Finance, to the Grand and General Council and to the Congress of State;
   b. the identification, when commissioned by the Congress of State through the State Secretary for Finance and the Budget, of the forms of borrowing best suited to cover any funding requirement of the State and the Public Administration.

SECTION VI
OTHER FUNCTIONS

Article 40
(Other functions)

1. The Central Bank will, in order to achieve its objectives, be assigned the following functions:
   a. the collection, compilation and publication of monetary, finance, credit and currency statistics;
   b. the function of State treasurer and tax collector through the management of the treasury and tax collection services on behalf of the State, Public Entities and Autonomous Authorities, regulated by Law 35 of 3 March 1993 and Law 70 of 25 May 2004, both as further amended;
   c. the role of depository of the available financial assets of the State and of any other Public Entities and Autonomous Authority within the Extended Public Sector of the Republic;
   d. the function of State agent for the management of public debt securities;
   e. the coordination and promotion of consortium activities, initiatives and services in favour of the San Marino financial system;
   f. the role of institutional reference point, consistent with its own objectives and functions, in relations with International Financial Organisations and foreign Central Banks and Supervision or similar Authorities.
   g. any other function it may be assigned under the laws of the Republic.

Article 41
(Central Bank Publications)

1. The Central Bank may publish statistical information, reports and studies on legal, economic and institutional issues pertaining to the objectives and functions it is assigned by the present law.

Article 42
(Statistics on the financial system)

1. The Central Bank, operating in accordance with its own autonomy, will be delegated sole competence for the production and publication of statistical data on the parties and activities that it supervises.
2. The Central Bank, in relation to the provision of the preceding paragraph, will maintain direct relations with international and supranational Authorities, Bodies and Agencies, providing them with the data and information permitted by law and its own Articles of Association.
3. To enable the Central Bank to carry out the activities referred to in this article, there will be recognition of its authority to operate, within the limits of the matters and procedures specified in paragraphs 1 and 2, in derogation of the provisions of Laws 70 and 71 of 23 May 1995 as further amended. For all its other activities, the Bank will be required to abide by the provisions of the laws cited in this paragraph.

Article 43
(Code of conduct)

1. Within one year of approval of this law the Central Bank shall draw up its code of conduct addressed to members of its organs and all the staff, which shall be presented by the Governing Council and approved by the General Meeting. The code shall provide for disciplinary and pecuniary sanctions in the event of its infringement, for the purpose inter alia of guaranteeing the independence and proper operation of the Central Bank, as well as settling conflicts of interest.

TITLE VII
THE CENTRAL BANK'S RELATIONS WITH STATE INSTITUTIONAL BODIES AND FOREIGN AND INTERNATIONAL BANKING AND FINANCING BODIES

Article 44
(The Central Bank's Relations with the State)

1. The Central Bank may, at its own discretion, grant loans or mortgages to the State, Public Institutions and Autonomous Authorities, and buy, hold and sell public securities issued or backed by the Republic of San Marino.

Article 45
(Provision of information to the Congress of State)

1. The Central Bank will be entitled to assist and inform the Congress of State, through the Department of the State Secretary for Finance, on economic matters and measures which, in the opinion of the Central Bank, can be associated with and influence the pursuit of the Central Bank's institutional objectives.
2. The Central Bank will be entitled to put forward resolutions and comments on proposed laws and on normative instruments referring directly to the objectives and functions reserved by the present law to the Central Bank, and also to draft proposed bills and normative instruments on matters within its sphere of competence, to be submitted to the Congress of State through the Committee for Credit and Savings.

Article 46
(Relations with the Congress of State)

1. The Central Bank, through the Committee for Credit and Savings, will forward information to the Congress of State on the more significant facts noted or obtained in the exercise of its institutional functions.

Article 47
(Relations with foreign and international bodies)

1. The Central Bank will have the role of the institutional reference point, as consistent with its own objectives and functions, in dealings with the international Financial Institutions and with foreign Central Banks and Supervision or similar foreign Authorities.
2. Jointly with the representatives of the Congress of State, the Central Bank will represent the Republic of San Marino in all the international financial institutions in which the Republic takes particle
3. The Central Bank, through the Committee for Credit and Savings, will inform the Congress of State of current relations with international financial institutions.

CHAPTER II
COORDINATION NORMS AND FINAL AND TRANSITIONAL MEASURES

TITLE I
COORDINATION NORMS

Article 48
(Committee for Credit and Savings)

1. The Committee for Credit and Savings will be a body consisting of the State Secretary for Finance, by whom it will be chaired, and a minimum of two up to a maximum of four persons appointed by the Congress of State from among its own members.
2. The Committee for Credit and Savings will be assigned the function of directing and guiding the activity of banking, finance and insurance supervision.
3. Sittings of the Committee for Credit and Savings may be attended, but without the right to vote, by the Director General of the Central Bank and a representative of the Supervision Committee; other representatives of the Central Bank may also be invited.

Article 49
(Monitoring and supervision of financial activity)

1. All the functions, powers and prerogatives previously assigned by law to the Supervision Division and the Bank Division of the Central bank of the Republic of San Marino, the Inspectorate for Credit and Currencies and the Istituto di Credito Sammarinese will be deemed, when this law comes into force, to be assigned to the Central Bank.

Article 50
(Managerial Staff and Staff of the Supervision Committee)

1. In order to secure the full operational continuity of the Central Bank, the Director General in office as of the date on which this law comes into force will retain his role within the Bank on the contractual terms already signed at the time of his appointment and up to the natural expiration of the mandate for which he has been appointed.
2. In order to guarantee the continuity of the supervision activity:
   a. the Coordinator of the Supervision Division in office on the date on which the present law comes into force will retain the existing contractual relations with the Central Bank, up to the time of their natural expiry, in his role as External Inspector within the Supervision Committee;
   b. the current members of the Supervision Committee not linked to the Central Bank by an indefinite contract of employment will retain their existing contractual relations with the Central Bank, up to the time of their natural expiry.

TITLE II
FINAL AND TRANSITIONAL MEASURES

Article 51
(Final provisions)

1. The present law abrogates:
   a) Law 34 of 9 March 1988;
   b) Law 86 of 27 June 2003;
   c) All other measures conflicting with the present law published at a date prior to the date on which it comes into force.
2. Article 3 of Law 35 of 3 March 1993 will be substituted by the following:
   a) without prejudice to the provision of article 87 of Law 70 of 9 November 1979, the supervision and monitoring of the proper management of the Sole Treasury service will be assigned to the Board of Auditors of the Central Bank;
   b) in the quarter following the annual close of the financial year, the Central Bank will be required to present to the State Secretary for Finance and the Budget, the Public Finance Control Commission and the Boards of Auditors of the individual Public Institutions concerned, the annual statement of incoming and outgoing payments made on behalf of the State and Authorities in the Extended Public Sector, together with an analytical illustrative report and opinion as to conformity by the Board of Auditors of the Central Bank.

Article 52
(Entry into force)

1. The present law will come into force on the fifteenth day following the day of its legal publication.

Given by Our Residence, on 4 July 2005/1704 d.F.R

THE CAPTAINS REGENT
Fausta Simona Morganti - Cesare Antonio Gasperoni

THE SECRETARY OF STATE FOR INTERNAL AFFAIRS
Rosa Zafferani

14.8 Decree No. 71 of May 29, 1996 on Anti Money Laundering Provisions (published on May 29, 1996)

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

Having regard to article 9 of Law No. 41 of April 25, 1996, governing currency matters,
Having regard to Congress of State Decision No. 15 of May 27, 1996,
Availing ourselves of our powers,
Promulgate and make public this Decree.

Article 1
Compulsory intermediation

For the purposes of combating the laundering of illicit proceeds, anyone intending to carry out transactions with cash or bearer instruments exceeding ITL 80 million on the territory of San Marino shall make use of the authorised subjects referred to in article 2 of this Decree.

Article 2
Authorised subjects

Credit and financial institutions, which are subject by law to the supervision of the Office of Banking Supervision, are automatically authorised to perform the functions referred to in article 1 of this Decree. Having heard the opinion of the Credit and Savings Committee and I.C.S. (Central Bank), the Office of Banking Supervision may formally authorise other subjects to perform such functions.

Article 3
Customer identification, record maintenance and reporting requirements

The authorised subjects referred to above shall identify, maintain records of and, under special circumstances, report on transactions referred to in article 1 above, pursuant to the criteria and procedures set forth by the Office of Banking Supervision.

Article 4
Sanctions

Failure to comply with the provisions of this Decree, including those set forth by the Office of Banking Supervision under article 3, shall entail the application of the sanctions referred to in article 10.5, 10.12 and 10.13 of Law No. 41 of April 25, 1996.

Done at San Marino, on May 29, 1996

THE CAPTAINS REGENT
Pier Paolo Gasperoni - Pietro Bugli

THE MINISTER OF THE INTERIOR
Antonio Lazzaro Volpinari

14.9 Circular No. 26 of 27 January 1999 of the Office of Banking Supervision

REPUBLIC OF SAN MARINO
OFFICE OF BANKING SUPERVISION

San Marino, January 27, 1999

To: **Credit Institutions**
To: **Financial Companies**

CIRCULAR N.26 OF JANUARY 27, 1999

PROVISIONS FOR AUTHORISED INTERMEDIARIES CONCERNING THE IMPLEMENTATION OF LAW N. 123 OF DECEMBER 15, 1998

Preserving banking and financial institutions from being involved in transactions related to criminal activities rests upon the safeguard of public interests and contributes to the stability of the intermediation system.

As it is well-known, there are several initiatives aimed at co-ordinating anti money laundering measures internationally, some of which have led to the establishment of special organisations and the drafting of international treaties.

Recently, numerous countries have introduced special measures in their domestic legislation in order to protect their economic activity and prevent their banking and financial system from being involved in illicit transactions of the organised crime.

Regency Decree No. 71 of June 10, 1996 and Law No. 123 of December 15, 1998 contain provisions limiting the use of cash and bearer instruments in transactions conducted on the territory of the Republic of San Marino, for the purpose of countering money laundering and usury by criminal organisations.

Besides introducing the money laundering offence and reformulating that of usury, the Law No. 123/1998 also modifies the limit fixed by article 1 of Decree No. 71/96 and stipulates that any transfer of cash and bearer instruments between different persons exceeding the amount of ITL 30 million or € 15 500 shall take place through authorised intermediaries.

This equally applies to foreign currency transactions, where the value shall be converted against the lira or the euro.

Law No. 123/1998, like the preceding law, stipulates the obligation for credit and financial institutions to report to the Supervising Authority any transaction suspected of being related to laundering and usury.

Hence, in applying the law more transactions conducted by the same person during the same working day shall be considered globally.

In compliance with the same law, it shall also be assessed whether more transactions conducted within a given period of time (three days) - each transaction not exceeding the limit referred to above - can be regarded, because of their nature or procedure, as forming part of a single transaction or not.

This circular shall replace that issued by the Office of Banking Supervision on June 10, 1996.

CUSTOMER IDENTIFICATION

The procedures currently followed by the banking and financial system are already in line with the customer identification requirement: indeed, the opening of any account or deposit or the starting of any other ongoing business relation (including the rental of safety boxes), whether nominal or to the bearer, is subject to the acquisition of all identification data - including a photocopy of the ID document - of the customer and of any other persons authorised to operate such account, either because they have signed the contract at the opening of the account, or because they have a proxy.

In any case, in conducting single cash transactions, of any kind and amount, the following procedures shall be followed:

– in case of deposits, a deposit slip, signed by the customer, shall be submitted at the counter; such slip shall enable audit tracing;

– in case of withdrawals, a document shall be signed at the counter by the customer; such document shall enable audit tracing.

Special attention shall be paid to the identification of occasional customers carrying out transactions exceeding ITL 30 million, or EURO 15,500. In such cases, the authorised intermediaries shall collect all identification and personal data of the customer.

Moreover, in case of transactions conducted on behalf of third parties, the person not producing a formal proxy shall report in writing and under his full responsibility all the identification data of the person on whose behalf he is making the transaction.

RECORDING AND RECORD MAINTENANCE

Each transaction exceeding ITL 30 million or EURO 15,500 shall be recorded chronologically in a special book, duly numbered, or in the electronic format considered best suited. The electronic system is in any case preferable, as it makes the whole identification/recording/reporting process much smoother.

With regard to usual and already identified customers, it is sufficient to record the reason and the amount of the transaction, as well as the name in full or the identification number of the customer.

In all other cases, the data of the ID document and all personal data of the customer shall also be recorded.

Such records shall be kept by the authorised intermediaries for at least 5 civil years in addition to the year of reference, and compared with the relevant accounting data during the inspections made by the Office of Banking Supervision.

Recording shall be carried out in compliance with the relevant instructions, without compensating transactions of opposite signs made by the same person and irrespective of whether such transactions are made over the counter or at 24-hour banks.

Recording shall not be mandatory for: transactions between authorised intermediaries; fund transfers on behalf of the State; “non cash” transactions”, including those concerning the management of savings (administration, custody or trust management of securities accounts, time contracts, etc.) deposited in accounts for which the recording requirement has already been met.

The following data and information shall be collected and recorded:
– the date of and reason for the transaction;
– the amount of cash and bearer instrument;
– the personal data (name and surname, date and place of birth, address) and the data contained in the ID document of the customer making the transaction on his own behalf or on behalf of third parties;
– the personal data or, in case of legal persons, the corporate name and the main office of the party on behalf of which the transaction is made.

REPORTING OF SUSPICIOUS TRANSACTIONS

San Marino credit and financial institutions have always entered into business relations with reliable customers with a good reputation.

However, it is appropriate that authorised intermediaries analyse critically and periodically all transactions made by their customers by establishing closer relations with them, for the purpose of detecting any laundering and usury activity, whenever such transactions are deemed to be suspicious. For example, in case of:

- frequent deposits or withdrawals of sums considered to be exorbitant in respect to the economic position and activity of the customer;
- frequent use of cash instead of bank deposits for banker's drafts and purchase of securities for significant amounts;
- the carrying out in a given period of time (three days) of more transactions - each not exceeding the limit referred to above - which, by nature or procedure, may be regarded as forming part of a single operation;
- accounts apparently used for reasons foreign to the economic activity of the customer;
- transactions frequently conducted by third parties on behalf of the holder who, for unjustified reasons, never shows up;
- sudden and apparently unjustified deposits or withdrawals of significant sums, especially in cash, on current accounts which have not been used for a long period of time;
- frequent and significant bank transfers, including those to and from abroad, in particular with financial institutions located in geographical areas considered "off-shore centres" and foreign to the economic activity of the customer;
- frequent cross transfers, without a reasonable explanation, between a number of accounts held by the same customer;
- structuring, that is transactions conducted in such a way as to avoid identification and recording;
- use and structuring of accounts which, in relation to the professional activity of the customer, may rouse the suspicion of being linked to usury (for example a high number of cheques issued by or in favour of numerous persons; extraordinary increase in the number of bills presented to the credit line, under reserve, for collection).

All staff, at any level, shall be made aware of the foregoing, while intermediaries shall adopt appropriate instruments to fulfil this demanding task, including suitable information and organisation procedures, internal supervision and staff training.

In this connection, a close relationship between the customer and the intermediary is fundamental as is the active co-operation of the intermediary itself in detecting situations in contrast with the laws in force.

Therefore, in case of suspicious circumstances, the Director of the credit or financial institution shall inform the Office of Banking Supervision of any transaction reasonably deemed to be linked to a criminal activity by submitting a detailed report.

The investigation on reported transactions shall include the following.

* a first assessment shall be carried out by the person responsible for the office, branch or counter where the suspicious transaction has been detected, and reported to the Director or his representative;

* a subsequent assessment shall be carried out by the Director or his representative who, having ascertained that the information obtained also by other colleagues is well-grounded, shall promptly report it to the Office of Banking Supervision.

The above-described procedure shall be as confidential as possible, avoiding any disclosure of information to people other than those responsible for the examination of reported transactions.

Significantly, the timely and full compliance with anti money laundering and anti usury provisions, and in particular with the suspicious transaction reporting requirement, contributes to preventing both the intermediary and its staff from being involved in criminal offences.

Lastly, the anonymity of the person reporting a suspicious transaction shall be safeguarded in order to protect banking and financial institutions from any form of retaliation.

ISSUE AND NEGOTIATION OF BANKER'S DRAFTS AND BANK CHEQUES

Bank cheques issued in San Marino and drawn on San Marino credit institutions, each exceeding ITL 30 million or EURO 15,500, shall bear the name or corporate name of the beneficiary as well as the clause "non transferable".

Banker's drafts and foreign currency cheques issued by San Marino banks authorised to correspond with foreign credit institutions shall be subject to the relevant provisions required by the beneficiaries.

Current account cheques drawn on San Marino banks and issued outside the territory of the Republic shall be subject, with regard to the clause "non transferable", to the provisions of the foreign country.

The authorised intermediaries are recommended not to make an improper use of the clause "for information and guarantee" in the negotiation of "non transferable" current account cheques and banker's drafts, when such clause is included to indicate that the sum is in favour of a person other than the beneficiary.

Irregular bank cheques not bearing the clause "non transferable", when required, shall be reported to the Office of Banking Supervision by filling in the form herewith attached.

The above mentioned form shall be accompanied by a photocopy of both sides of the cheque and the personal data and domicile of the drawer, if the reporting is made by the drawee bank, or of the transferor if the reporting is made by a negotiating bank of San Marino.

SANCTIONS

Under article 9 of Law No. 123/1998, the Office of Banking Supervision shall be responsible for imposing on intermediaries not complying with the identification, recording and reporting requirements, administrative fines up to one third of the amount of each transaction, in case of severe violations of the relevant laws. Here follows a list of transactions liable to sanctions:

a) established transfers of cash or bearer instruments, in national or foreign currency, made directly between different persons for a value exceeding the limit referred to article 5.1 of Law 123/1998;
b) failure to comply with the identification and/or recording requirement by the staff of the credit or financial institution,
c) issue of bank cheques, each exceeding the amount referred to article 5.1 of Law 123/1998, and not bearing the clause “non transferable”;
d) failure to report transactions suspected of being related to laundering or usury, and irregular bank cheques not bearing the clause “non transferable”.

The cases contemplated in articles 1 and 2 of law 123/1998 are predicate offences and as such shall be prosecuted by the Court.

14.10 Circular No. 33 of 12 February 2003 of the Office of Banking Supervision

San Marino, 12 February 2003

To **Credit Institutions**

SUPPLEMENTING PROVISIONS

ADDRESSED TO AUTHORISED INTERMEDIARIES

FOR THE APPLICATION ON LAW N° 123 OF 15 DECEMBER 1998

FOREWORD

This Circular follows the previous Circular N° 26 of 27 January 1999, by means of which the Office of Banking Supervision issued provisions addressed to authorised intermediaries for the application of Law N° 123/1998.

By virtue of Circular N° 26, the Office of Banking Supervision set forth the requirements to which intermediaries are subject while entering and conducting business relations with their customers.

In particular, specific requirements were identified with regard to customer identification, transaction recording by typology and amount, as well as suspicious transaction reporting.

With this new Circular, the Office of Banking Supervision intends to impart updated instructions considering recent changes in international regulation and in the operation of banking and financial intermediaries.

As a matter of fact, the globalisation of financial activity and the rapid development of information technologies have opened up new opportunities for operational efficiency and economic growth. At the same time, however, the risks linked to money laundering have also become more serious.

In countering money laundering a common objective is therefore to prevent banking and financial intermediaries from being involved in transactions originating from crime.

This Circular contains operational rules aimed at reducing areas of uncertainty due to subjective assessments or discretionary behaviours and ensuring full cooperation with the anti-money laundering Authority.

The Circular consists of two parts: the former explicitly provides for a compliance officer with anti-money laundering functions and in charge of relations with the Office of Banking Supervision, as well as for staff training; the latter provides an updated list of indicators of unusual transactions to be carefully examined and, if appropriate, reported.

PART I

1.1 COMPLIANCE OFFICER

As regards compliance officers with anti-money laundering functions, banks have already entrusted their own supervisory or legal office with tasks of analysis and assessment.
In principle, such services maintain direct relations with the Office of Banking Supervision.

In February 2000 financial companies were equally invited by the Office of Banking Supervision to identify a person that would maintain direct contacts and collaborate with the Office of Banking Supervision in supervision and anti-money laundering matters.

Now that all necessary adjustments have been made, the Office of Banking Supervision believes that the appointment of a compliance officer responsible for the analysis and management of money laundering-related risks will lead to effective internal controls, thus protecting business integrity and autonomy.

The names of the persons who will perform such delicate functions shall be promptly communicated to the Office of Banking Supervision, being these the contact persons.

The compliance officer shall have the powers to carry out line controls, i.e. controls aimed at ensuring correct transactions and accurate information flows, as well as any other control related to anti-money laundering.

Such controls shall, among others, identify the facilities necessary to guarantee suitable procedures for the collection and processing of such information. These procedures shall be periodically verified.

In addition, the compliance officer shall:

- receive the anti-money laundering regulation and the provisions of the Office of Banking Supervision, translating them into service instructions;
- receive STRs coming from branches and local offices;
- examine and assess such reports;
- if necessary or appropriate, transmit STRs to the Office of Banking Supervision;
- submit annually a detailed report on anti-money laundering activity to the Board of Directors for approval and, subsequently transmit it to the Office of Banking Supervision. Such report shall also contain accurate statistical data on the case history related to the application of Law N°123/1998 and to the provisions of the Office of Banking Supervision.

The Office of Banking Supervision shall control, also through inspections, whether the organisational measures are adequate and the procedures for the analysis of suspicious transactions are correctly implemented.

1.2 STAFF TRAINING

As already instructed during the numerous meetings on this subject, intermediaries have to arrange for adequate staff training on customer identification, transaction recording and reporting requirements.

The effective application of anti-money laundering legislation rests upon the full knowledge of its basic objectives and principles.
In this regard, the staff must be aware of the obligations and liabilities that may derive from non compliance.

Staff training shall be addressed, in particular, to those employees and collaborators who generally have direct relations with customers.

Such activity shall consider, on a more general basis, the important know-your-customer rules, so as to be informed and updated with regard to the customers' financial background.

Special training programmes shall be arranged for officers in contact with the Office of Banking Supervision. Such officers shall constantly update on the development of international standards, money laundering risks and typologies.

Staff training shall be ongoing and systematic and take place within comprehensive programmes, taking into account both developments in the relevant legislation and procedures arranged by the intermediaries.

A report on anti-money laundering staff training shall be submitted annually to the Board of Directors of each intermediary. Copy of the report shall be transmitted to the Office of Banking Supervision together with the report referred to in the preceding point 1.1.

Staff shall be duly trained so that the list of customers includes accurately all personal data concerning clients and their business activity. Moreover, as a rule, personal data shall be periodically checked with documents other than those used for entering business relationships (for example utility billing).

Equal attention shall be paid to the correct indication of the purpose for which each single transaction was conducted.

Economic associations or other external bodies (such as the San Marino Banking Association) may provide support to staff training activities and to the dissemination of this broad discipline.

By virtue of its institutional functions, the Office of Banking Supervision shall carry out initiatives aimed at enhancing legislation, devising relevant application terms and disseminating its content clearly and effectively.

PART 2

2.1 INDICATORS OF UNUSUAL TRANSACTION

The anti-money laundering legislation stipulates the obligation for all intermediaries to report any transaction suspected of money laundering on the basis of the objective features of transactions (such as type, amount and nature), of the customers' background (economic capacity and business activity) and of any other circumstances known to intermediaries by virtue of their functions.

Clearly, the term "transaction" means not only a single transaction, but also a series of operations that appear to be economically and functionally connected.

The assessment method is based on the fact that the way most transactions are structured may be quite "neutral", thus preventing the immediate detection of underlying objectives.

The indicators of unusual transactions listed in the preceding Circular N° 26 and in this Circular, provide examples of UTs and indicate objective criteria for intermediaries to identify unusual transactions and, also on the basis of other information in their possession, to carry out further investigation to assess the true nature of the operation.

The list in Circular N° 26, supplemented by the following one, is not exhaustive, partly because of the ever-changing ways in which financial transactions are conducted, but is rather an operational tool for banking and financial institutions in their anti-money laundering activity. It is understood, however, that the absence of such indicators is not sufficient, by itself, to exclude the suspicion that a transaction may be actually related to money laundering.

Even if a transaction has not taken place, but an intermediary has acquired sufficient elements of suspicion, reporting is in all cases mandatory.

2.1.1 Indicators of unusual transactions concerning all categories of transactions

- Frequent transactions of the same nature which are not justified by the client's business activity and seemingly conducted for the purpose of dissimulation;
- Structured or layered transactions, especially if aimed at avoiding recording requirements;
- Transactions for considerable sums, which are unusual compared to those normally carried out by a customer, especially failing plausible economic and financial reasons;
- Illogic transactions, especially when economically and financially disadvantageous for a customer;
- Transactions conducted by a customer on behalf or in favour of third parties, if their business relationship is seemingly unjustified;
- Transactions conducted by third parties on behalf or in favour of a customer, with no plausible justification;
- Clearly inaccurate or incomplete information is given when requesting a transaction, thus arising suspicion that essential information is purposely concealed, especially if it concerns parties interested in the transaction;
- Transactions with counterparts established in geographical areas considered "off-shore centres" included in the list of non cooperative countries and territories, regularly published by FATF (NCCT countries, the first list of which is enclosed to this Circular), or located in drug- trafficking and -smuggling areas, when such transactions are not justified by the customer's business activity or by other circumstances.

2.1.2 Indicators of unusual transactions concerning cash or electronic transactions

- Considerable cash withdrawals, except where the customer needs the money for special reasons;

- Considerable cash deposits which are not justified by the client's business activity;
- Use of cash instead of usual means of payment;
- Exchange of banknotes for smaller or larger denominations and/or in other currencies, especially when such exchange does not take place through the current account.

2.1.3 Indicators of unusual transactions concerning financial instrument transactions and insurance policies

- Negotiation of financial instruments without transactions taking place through the current account;
- Negotiation of financial instruments not publicly widespread which take place very frequently and for substantial amounts, especially if involving counterparts established in non OECD countries;

- Co-ownership or co-registration of financial instruments or insurance policies, or changes in registrations with no plausible justifications.

2.1.4 Indicators of unusual transactions concerning life insurance policies and capitalization ratios

- Underwriting of different insurance policies with payment of premiums by means of bank cheques endorsed several times;
- Underwriting of a life insurance policy with the policy-holder being the beneficiary,
- Indication of more beneficiaries of insurance policies for the purpose of fractionating payments, seemingly unjustified by the business relation between the customer and the beneficiaries;
- Settlement, in the short run, of premiums related to several policies underwritten by different customers and having the same beneficiary;
- Considerable and/or simultaneous requests for redemption and/or borrowing related to more insurance policies, especially when these entail accepting unfavourable conditions, or frequent operations of partial redemption related to high single premium policies.

2.1.5 Indicators of unusual transactions concerning transactions in other products and services

- Use of letters of credit and other systems of commercial financing for international money transfers, seemingly unjustified by the customer's usual business activity;
- Trust ownership of goods and/or financial instruments, if these have been held by the customer for a short period of time, where seemingly unjustified by the customer's personal wealth or business activity;
- Repeated use of safety boxes or other custody services, or frequent deposits and withdrawals of sealed correspondence, unjustified by the customer's business activity or habits;
- Issue of proxies to operate safety boxes to third parties that are neither family members, nor involved in any type of business relationship that would justify such issue;
- Buying or selling of high quantities of coins, precious metals or other values, seemingly unjustified by and/or inconsistent with the customer's economic conditions;

- Transactions unjustified by the customer's business activity and characterised by:

    - frequent deposits of cheques or requests for bill discounting, especially for round numbers, with several endorsements, showing other recurring features, or issued to the bearer or to the drawer;
    - calls and returns of unpaid bills sometimes followed by protest;
    - substantial balancing of crediting and debiting.

2.1.6 Indicators of unusual transactions concerning unusual customer's behaviours

- Customers refusing or unreasonably reluctant to: provide the information necessary to conduct transactions, declare their own business activities, submit accounting or other documents, indicate relations with other intermediaries, and provide any other information which would normally enable the client to carry out banking, financial or insurance transactions;

- Customers requesting to structure or layer a transaction, since the normal procedure would entail meeting identification or registration requirements or additional investigation by the intermediary;

- Customers avoiding direct contacts with the intermediary's employees or collaborators by issuing powers of attorney or proxies frequently and unjustifiably;

- Customers showing up with securities or certificates for considerable amounts, mainly bearer securities, or requesting their material delivery following purchase transactions,

- Customers conducting transactions for considerable amounts using cash or bearer instruments when such customers have been recently investigated in relation to criminal proceedings or the application of prevention measures;

- Customers in economic difficulties carrying out transactions for considerable amounts without providing plausible justification with regard to the origin of the funds used;

- Customers requesting unusual transactions, that are either very complex or for considerable amounts;

- Customers or guarantors of customers, who frequently and unjustifiably request the restitution of securities given as collateral before providing the necessary funds for buying other financial instruments;

- Customers requesting or maintaining illogical business relations with intermediaries.

2.1.7 Requests for unusual transactions

There have been frequent cases where customers requested the local banking and financial intermediaries to carry out financial transactions which were economically ill-grounded because of their nature, typology and amount.

Similar cases – aimed at defrauding the intermediary or others – shall be always reported to the Office of Banking Supervision together with a description, copy of any documentation handed out to the intermediary and the names of the customers. The other banking and financial institutions can thus be warned and – if necessary – the collaboration of the law enforcement or of the judiciary requested.

2.1.8 Clarifications with regard to internal reporting procedures

The preceding Circular No. 26 imparts precise instructions on internal reporting procedures. In this regard, it is worth clarifying that within banking and financial institutions reporting has to take place in writing (preferably using a standard format) together with relevant documents and observations.

The employee, the officer, the compliance officer or the Director making/receiving the report shall obtain/issue formal receipt of the same.

14.11 CBSM Standard Letter No. 111 of 3 August 2005 for Banks and Financial Companies on anti-money laundering - clarifications on record maintenance of customer identification data and documentations

BANCA CENTRALE
DELLA REPUBBLICA DI SAN MARINO

For the kind attention of:
Banks
Financial Companies

Standard Letter No. 111

San Marino, 3 August 2005

Subject: Anti-money laundering – clarifications on record maintenance of customer identification data and documentation.

Circular No. 26 of 27 January 1999 – applying the provisions of Article 7 of Law No. 123 of 15 December 1998 "*Law on Anti-Money Laundering and Usury*" stipulates that records of customer identification data and transactions be kept by intermediaries for at least five years.

In this regard – based on the relevant recommendations made by international organizations – it is hereby specified that records of customer identification data and copy of customer identity documents shall be kept for at least five years after closure of the account or termination of the business relationship.

As for the maintenance of customer transaction records, the terms specified in said Circular No. 26 shall remain unaffected.

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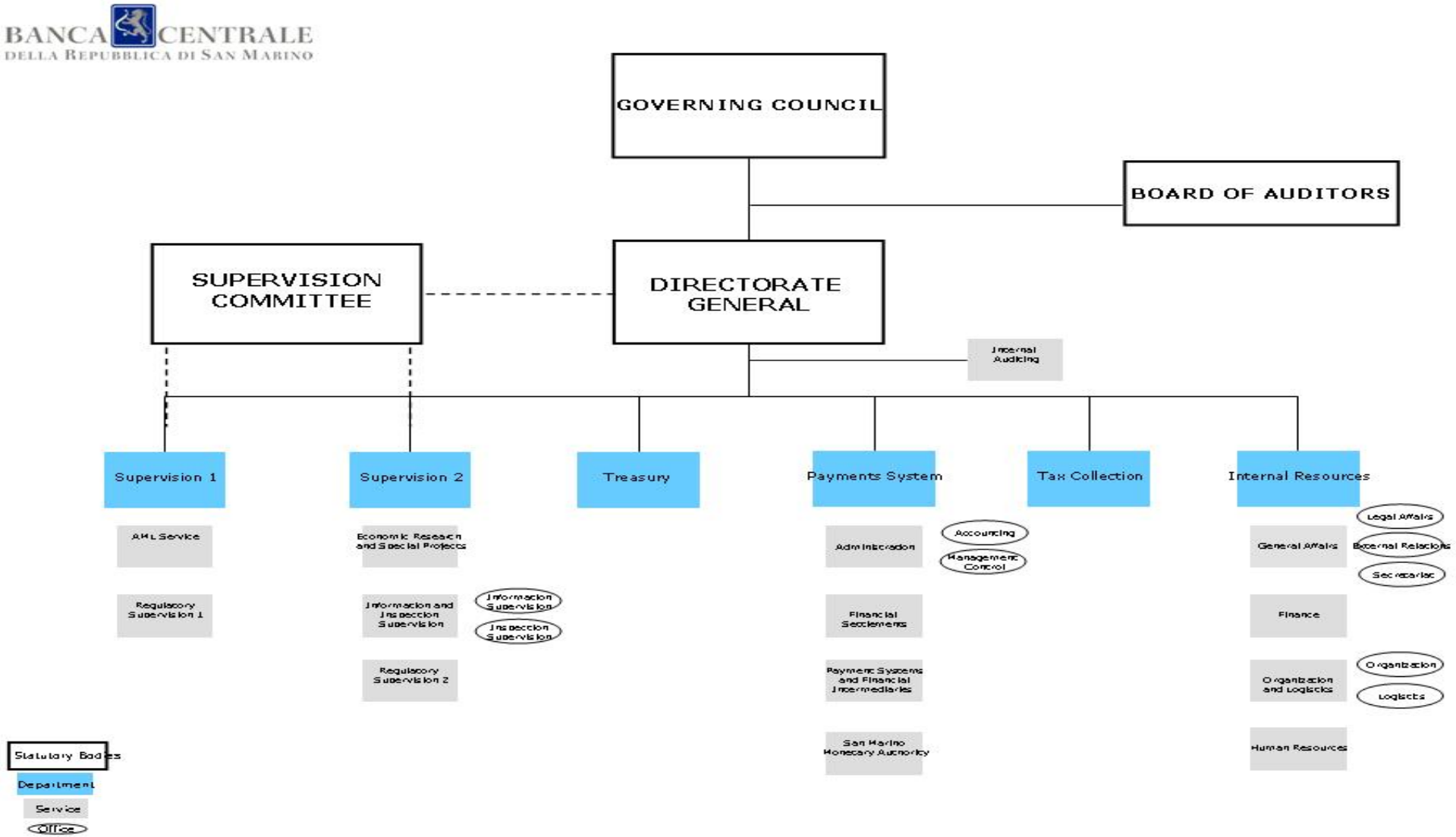
14.12 Organizational chart of the Central Bank of San Marino (as of March 2007)



15 ANNEX 6: LIST OF ALL LAWS, REGULATIONS AND OTHER MATERIAL RECEIVED

Laws

- Criminal Code (Law No. 17 of 25 February 1974 and subsequent amendments)
- Law No. 24 of 25 February 1986 on Rules governing financial companies, fiduciary companies and securities
- Law No. 21 of 12 February 1986 (as amended by Law No. 24 of 25 February 1986) – Bank law (superseded in 2005 by laws 165/2005)
- Law No. 68 of 13 June 1990 on companies (article 4 - non commercial associations and foundations: definitions and basic provisions)
- Law No. 149 of 29 November 1991 on cooperative companies (excerpts)
- Law No. 130 of 29 November 1995 (issued on 13 December 1995) on provisions for modifying banking bodies and establishing joint stock companies and other provisions concerning undertakings and credit organisations
- Law No. 41 of 25 April 1996 on currency provisions
- Law No. 139 of 26 November 1997 supplementing the provisions of the Criminal Code and Code of Criminal Procedure for offences related to narcotic drugs, alcoholic beverages, harmful or dangerous substances, psychotropic substances
- Law No. 123 of 15 December 1998 on Anti-money laundering and usury
- Law No. 113 of 29 October 1999 Integration to Law No. 21 Of 12 February 1986 and Subsequent Amendments (Bank Law)
- Law No. 146 of 27 October 2004 on establishment of the register for external auditors and auditing companies
- Law No. 28 of 26 February 2004 on Provisions on anti-terrorism, anti-money laundering and insider trading
- Law No. 37 of 17 March 2005 - Trust Act
- Law No. 96 of 29 June 2005 on the Statutes of the Central Bank of the Republic of San Marino
- Law No. 165 of 17 November 2005 on companies and banking, financial and insurance services (as amended by corrigendum 2006)
- Law No.179 of 13 December 2005 amending Law 96/ 2005 on CBSM Statutes on budgets of the state and public bodies for the 2006 financial year and year 2006/2008 multi-annual financial statements
- Law No. 47 of 23 February 2006 – corporate law (consolidated text amended and supplemented by Delegate Decree No. 130 of 11 December 2006)

Congress of State decisions

- Decision No. 13 of 23 October 2000 on criteria for submitting applications for authorisation to establish banks and financial companies, license to carry on business, start up of activities and revocation of their authorisations
- Decision No. 1 of 5 November 2001 on provisions to monitor and counter the financing of international terrorism
- Decision No. 8 of 6 november 2006 on the working group on MONEYVAL
- Decision No. 32 of 19 February 2007 on provisions concerning the submission of applications for authorisation to establish companies

Decrees

- Criminal Procedure Code (Decree of 2 January 1878 and subsequent amendments)
- Decree No. 56 of 26 April 1995 on legal recognition of the bar association (excerpts)
- Decree No. 57 of 26 April 1995 on legal recognition of the accountants' association" (holding a university degree - *Dottori commercialisti (excerpts)*
- Decree No. 71 of May 29, 1996 on Anti Money Laundering Provisions

- Decree No. 119 of 20 September 2004 on Accession to the Convention on the Law Applicable to Trusts and on their Recognition
- Decree No. 83 of 8 June 2005 on establishment of the terms and conditions for keeping the accounts of the administrative matters relating to assets held in trust
- Decree No. 86 of 10 June 2005 on registration, keeping and consultation of the Trust Register and authentication of the Trust Book of Events
- Decree 76 of 30 May 2006 – sanctionable instances according to the provisions of the Law No. 96 of 29 June 2005 and Law No. 165 of 17 November 2005 and provisions issued by the Central Bank of San Marino

Regulations

- CBSM regulation No. 01/2006 – register of authorised parties
- CBSM regulation 2006-04 – regulations pertaining to coarse gold
- CBSM regulation 2007-01 – regulations pertaining to procedures for notification pursuant to article 68 of the Law No. 165 of 17 November 2005

Circulars

- Circular No. 2/F of 23 May 1986 to Financial brokers on investments and finance transactions
- Circular No. 8/F of 24 January 1992 to Financial promoters (professionals authorised to invest securities on behalf of financial companies whose registered offices are in Italy)
- Circular No. 26 of 27 January 1999 to Credit institutions and and Financial Companies on Provisions For Authorised Intermediaries Concerning the Implementation of Law No. 123 of December 15, 1998
- Circular No. 19/F of 20 November 2000 to Financial companies on criteria for requesting permission to establish banks and finance companies, authorisation to operate, trading start-up and revocation of their authorisation
- Circular No. 29 of 20 November 2000 to credit institutions on criteria for requesting permission to establish banks and finance companies, authorisation to operate and revocation of their authorisation
- Circular n° 33 of 12 February 2003 to Credit Institutions supplementing provisions addressed to Authorised Intermediaries for the Application of Law No. 123 of 15 December 1998
- Circular No. 29/F to finance companies and banks on provisions on acting as a trustee pursuant to article 19 of Law No. 37 of 17 March 2005
- Circular No. 44 of 25 October 2005 on regulations on acting as a trustee pursuant to article 19 of Law No. 37 of 17 March 2005
- CBSM Circular No. 30/F of 17 February 2006 to Finance companies and banks on contents of the application for obtaining the authorisation to operate and consequent obligations
- CBMS Circular No. 45 of 17 February 2006 to Banks and finance companies on content of application for obtaining qualification to operate and consequent obligations

CBSM Standard letters and others

- CBSM Standard Letter No. 109 of 7 February 2005 to banks and financial companies on new legislative provisions pertaining to the functions and responsibilities of auditing bodies and consequent fulfilments
- CBSM Standard Letter No. 111 of 3 August 2005 for Banks and Financial Companies anti-money laundering - clarifications on record maintenance of customer identification data and documentations
- CBSM Letter dated 14 December 2006 to banks and financial institutions on adjustments to the EC regulations