COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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

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Report on Fourth Assessment Visit – **Annexes 2**

Anti-Money Laundering and Combating the Financing of Terrorism

SAN MARINO

29 September 2011

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45. INSTRUCTION 2008-01: OPERATING RULES AND PROCEDURAL ASPECTS OF THE FIGHT AGAINST MONEY LAUNDERING AND FINANCING OF TERRORISM

Preface

Through this measure, the Central Bank of the Republic of San Marino is dictating several rules of conduct for the fight against money laundering and financing of terrorism.

This instruction is aimed at the authorised parties mentioned in article 6 of Law no. 123 of 15 December, 1998 (credit and financial brokers). It transforms practices and standards already applied in the San Marino banking and financial system, but never made official up until now, into actual operating rules.

Instruction no. 2008-01 continues the line already traced with the previous circulars of the Credit and Currency Inspectorate, updating certain aspects contained therein, including in relation to the changes which have occurred in the meantime in the recommendations of international bodies and in the methods of operation of banking and financial brokers.

The document includes several rules of conduct for banks and for finance and trust companies, as far as concerns opening of continuous relationships or performance of occasional operations, and also indicates, in a more detailed manner, the procedure for notifying a suspicious operation, planning, from the date when this Instruction comes into force, feed-back to the notifying agency. A standard form is also adopted for notifying a suspected operation of money laundering or financing of terrorism.

Article 1 – Definitions

For purposes of this Instruction, the following terms have the following meanings:

1. **"identity document"**: a document containing the photograph and all the general details of an individual, issued by a national or foreign public authority;
2. **"general details of a person"**: name and surname, place and date of birth, address of residence and nationality;
3. **"occasional operation"**: any operation performed on behalf of clients, outside a continuous relationship and for an amount exceeding a threshold determined each time by current money laundering laws, which involves transfer or movement, including electronically, of cash or other means of payment;
4. **"continuous relationship"**: any contract signed with the client which contemplates the performance of a number of operations.

Article 2 – Information and documentation to be requested from individuals

On starting a continuous relationship or on performance of an occasional operation with an individual, authorised brokers must acquire at least the following information:

a) name and surname;
b) place and date of birth;
c) nationality;
d) place of residence and domicile, if these do not coincide, telephone number and, if available, fax number and e-mail address;
e) profession;
f) type and details of the identity document;
g) scope and nature of the relationship/operation;
h) general details, type and details of the identity document of the individuals who are authorised to operate within the relationship.

In order to check the data and information obtained, authorised brokers must acquire a copy of a valid identity document directly.

Article 3 - Information and documentation to be requested from companies or organisations with or without corporate status

On starting a continuous relationship or on performance of an occasional operation with a company or an organisation with or without corporate status (including associations and foundations), authorised brokers must acquire at least the following information:

a) name or corporate name;
b) legal status;
c) economic operator code or other identification code;
d) address of the registered office and the administrative office, where these do not coincide, telephone number and, if available, fax number and e-mail address;
e) activities performed;
f) date of incorporation;
g) share capital or endowment fund;
h) scope and nature of the relationship/operation;
i) general details, type and details of the identity document of the individuals who are authorised to operate within the relationship.

In the case of a company, authorised brokers must also obtain the following information: date and registration number on the register of companies and corporate purpose.

In order to check the data and information obtained, authorised brokers must acquire the following documentation:

a) true copy of the deed of incorporation;
b) true copy of the up-to-date articles of association;
c) true copy of the resolution of the shareholders' meeting or board of directors' meeting, or the corporate body with similar duties and powers, indicating the appointment and any changes in the legal representative and the people who have powers of signature or management of the relationships started with authorised brokers, in order to check that each person who acts is duly authorised to do so;
d) true copy of the most recently approved financial statements.

In the case of companies or organisations with or without corporate status (including associations and foundations), authorised brokers must also obtain the certificate of validity or an equivalent document.

Authorised brokers must acquire a copy of the documentation with which the individuals acting on behalf of the principal in the relationship are authorised to operate and must inform the client that they are required to notify any changes in the data and information provided and to deliver a copy of the relative revised documents.

Authorised brokers must identify and check the identity of individuals operating within the relationship of the client, using the methods indicated in article 2.

For companies or organisations with or without corporate status from outside San Marino, authorised brokers must acquire equivalent documents to those indicated above, accompanied by a sworn and authenticated translation. Authorised brokers may, under their own responsibility, avoid the sworn and authenticated translation of documents in English.

Article 4 - Information and documentation to be requested from the public administration

On starting a continuous relationship or on performance of an occasional operation with the public administration or agencies or companies in the extended public sector, authorised brokers must acquire at least the following information:

a) name of the company, agency, office or service of the public administration;
b) address of the registered office and the administrative office, where these do not coincide, telephone number and, if available, fax number and e-mail address;
c) activities performed;
d) scope and nature of the relationship/operation;

e) general details, type and details of the identity document of the individuals who are authorised to operate within the relationship.

Authorised brokers must acquire a copy of the documentation with which the individuals acting on behalf of the public administration are authorised to operate and must inform the client that they are required to notify any changes in the data and information provided and to deliver a copy of the relative revised documents.

Authorised brokers must identify and check the identity of individuals operating within the relationship of the client, using the methods indicated in article 2.

For public administrations other than those of San Marino, authorised brokers must acquire equivalent documents to those indicated above, accompanied by a sworn and authenticated translation. Authorised brokers may, under their own responsibility, avoid the sworn and authenticated translation of documents in English.

Article 5 – Information and documentation to be requested from clients already acquired

For relationships which already exist on the date when this Instruction comes into force, where the data, information and documentation is not already in the possession of the authorised broker, the latter must request it from the client, at the first opportunity. If the missing data, information and documentation is not produced within the reasonably necessary time, the broker must immediately withdraw from the contract, without delay.

Article 6- Registration and filing of information and identification documents

The data and information acquired to identify and check the identity of clients must be registered in archives or computer systems. In the client entries, copies must be filed of the documents acquired to identify and check the identity of the client. Registration of the data, information and copies of the documents must be kept, for at least five years, from the date when the relationship ends or the date of performance of occasional operations. The times for keeping data and documents relating to operations performed by clients, as contemplated by Circulars nos. 26 and 16/F of 27 January, 1999, remain unchanged.

This articles abrogates Standard Letters nos. 111 and 53/F dated 3 August, 2005.

Article 7 - Notification of a suspicious operation

Authorised brokers must notify any suspicious operation using the special form (ANNEX A – notification form), ensuring they include a copy of the relative documentation.
The notification must be sent to the following address:

Central Bank of the Republic of San Marino
Anti money laundering service
Via del Voltone, 120 San Marino
47890 San Marino

Article 8 - Feedback

Starting from the date of entry into force of this Instruction, sending of a notification to the Judicial Authorities or filing thereof will be communicated, when this does not prejudice the outcome of the inquiries, by the Anti Money Laundering Service of the Central Bank directly to whoever makes the notification.

The outcome of the inquiries performed by the Anti Money Laundering Service may not be revealed to the party against whom the notification is made or to third parties.

Article 9 - Notification of an operation of suspected financing of terrorism

In compliance with the requirements of the Resolutions of the State Congress no. 1 of 15 November, 2001, "Requirements on monitoring and fighting financing of international terrorism", and no. 8 of 3 August, 2007, "Application of United Nations Security Council Resolutions 1737 (2006) and 1747 (2007)", the Central Bank periodically transmits lists of those subject to restrictive measures by international bodies

Authorised brokers must therefore check for the presence of relationships or performance of operations with parties on these lists and, where present, promptly notify them to the Central Bank.

In this regard, if authorised brokers suspect that operations ordered or performed by clients, including those not on the aforementioned lists, are aimed at financing international terrorism, they must inform the Central Bank immediately, using the notification form (Annex A).

Article 10 - Veto on remote contracting

The veto on starting new contractual relationships with clients using remote means of communication, as required by article X.V.1 of the Rules on collection of savings and banking activities (Rule 2007-07), is an essential principle of the San Marino banking and financial system and, as such, must be intended as applicable to the activities of other authorised brokers. Operations by San Marino brokers must therefore always necessarily be "*face to face*". Use of new technologies is therefore prohibited, since it violates this general rule.

Article 11 - Entry into force

This Instruction comes into force on 30 June, 2008.

San Marino, 12 June, 2008

ANNEX A - Notification Form

NOTIFICATION FORM

PART I - DATA ON THE NOTIFICATION AND THE NOTIFYING PARTY

1. Notification date and number:	☐☐ / ☐☐ / ☐☐☐☐ Nº ☐☐☐ day/month/year
2. Type of notification: **a.** ☐ Suspicious operation **b.** ☐ Supplement to a suspicious operation Reference to the previous notification : ☐☐ / ☐☐ / ☐☐☐☐ Nº ☐☐☐	**Total number of documents: _____ pages** (Notification ___ pages, Annex A____ pages, Annex B ____pages, Annex C____ pages, Other documents____ pages)
3. Notifying agency:	
4. Contacts of the Compliance Officer: Name and Surname: _____ Position/Duties:_____ Telephone: (_____) _____ Fax: (_____) _____ E-mail: _____	

PART II - DATA AND DOCUMENTS IDENTIFYING THE PARTY AGAINST WHOM THE NOTIFICATION IS BEING MADE

1. Number of the parties notified:

(A) Number of individuals : _____

(B) Number of companies and organisations with or without corporate status: _____

(C) Number of public administrations: _____

Please fill out the special form referred to in letters A) or B) below for each individual, company or organisation and public administration involved in the notified operation.

A) INDIVIDUAL

1. Personal details: (attach a copy of the identity document)	
Surname	
Name	

2. Date of birth ☐☐ / ☐☐ / ☐☐☐☐

3. Place of birth

4. Nationality

5. Residence (Address)

Street name and number

Post Code

Castle/Municipality/ Province

Domicile

Other information

6. Profession

7. Scope and nature of the relationship or operation

8. Identity document:

	Type and details of the document	Place of issue	Date of issue (d / m / y) Date of expiry (d / m / y)
a.	Passport ☐☐☐☐☐☐☐☐☐☐		☐☐ / ☐☐ / ☐☐☐☐ ☐☐ / ☐☐ / ☐☐☐☐
b.	Identity card ☐☐☐☐☐☐☐☐☐☐		☐☐ / ☐☐ / ☐☐☐☐ ☐☐ / ☐☐ / ☐☐☐☐
c.	Driver's license ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐		☐☐ / ☐☐ / ☐☐☐☐ ☐☐ / ☐☐ / ☐☐☐☐
d.	Others: _____ ☐☐☐☐☐☐☐☐☐☐☐☐		☐☐ / ☐☐ / ☐☐☐☐ ☐☐ / ☐☐ / ☐☐☐☐

B) COMPANY OR ORGANISATION WITH OR WITHOUT CORPORATE STATUS OR PUBLIC ADMINISTRATION

1 Name or corporate name	
2. Legal status	
3. Date of incorporation	/ /
4. Registered office (address)	
Street name and number	
Post Code Castle/Municipality/ Province	
Domicile	
Other information	
5. Economic activity	
6. economic operator code or other identification code	
7. Scope and nature of the relationship or operation	
8. Person who operates on behalf of the company or organisation	
8.1. Personal details: (attach a copy of the identity document)	
Surname	
Name	

8.2. Date of birth

☐☐ / ☐☐ / ☐☐☐☐

8.3. Place of birth

8.4. Nationality

8.5 Identity document (type)

Details of the document

Date of issue

☐☐ / ☐☐ / ☐☐☐☐

Date of expiry

☐☐ / ☐☐ / ☐☐☐☐

9. Person authorised to operate within the relationship

9.1. Personal details: (attach a copy of the identity document)

Surname

Name

9.2. Date of birth

☐☐ / ☐☐ / ☐☐☐☐

9.3. Place of birth

9.4. Nationality

9.5 Identity document (type)

Details of the document

Date of issue

☐☐ / ☐☐ / ☐☐☐☐

Date of expiry

☐☐ / ☐☐ / ☐☐☐☐

PART III - DATA AND INFORMATION ON THE NOTIFIED OP'ERATION

1. Type of relationship	
2. Number of relationship	
3. Period of operativity	☐☐ ☐☐ ☐☐☐☐ a ☐☐ ☐☐ ☐☐☐☐

1. Type of occasional operation	
2. Date of operation	☐☐ / ☐☐ / ☐☐☐☐

1. Other information on the operation or operativity notified:

PART IV – MOTIVES OF THE NOTIFICATION

46. INSTRUCTION NO. 2008-03: IDENTIFICATION, VERIFICATION AND ASSESSMENT OF "CRITICAL TRANSACTIONS"

Preface

This order of the Central Bank of the Republic of San Marino is intended – in accordance with the provisions issued by the Financial Action Task Force (FATF) to its member Countries and Associations – to provide the financial operators referred to in Article18 subparagraphs a) and b) of Law no. 92 of 17 June 2008 with instructions on the appropriate measures to implement the provisions of Recommendation 11 of the FATF.

"Financial institutions should pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. The background and purpose of such transactions should, as far as possible, be examined, the findings established in writing, and be available to help competent authorities and auditors.

This Instruction 2008-03 is therefore intended to raise the awareness of financial operators of the need for a thorough assessment of critical transactions, which consist of complex, unusual large transactions or all unusual patterns of transactions, which have no apparent economic or visible lawful purpose.

Article 1 – Definitions

Pursuant to this Instruction, the terms below shall have the following meanings:

5. **"Financial Intelligence Agency":** means the Financial Intelligence Unit referred to in Law no. 92 of 17 June 2008;
6. **"Central Bank":** means the Central Bank of the Republic of San Marino;
7. "**Instruction no. 2008-01**": means the Instruction of the Central Bank of the Republic of San Marino on the countering of money laundering and terrorist financing, issued on 12 June 2008;
8. **"Law":** means Law no. 92 of 17 June 2008 "Provisions for the prevention and countering of money laundering and terrorist financing";
9. **"critical transaction":** means a transaction that due to its complexity or unusually large amount or due to its unusual pattern of execution with respect to the economic, financial and asset profile, and the professional profile of the customer, requires an assessment of its compatibility with respect to the customer's profile;
10. "**appointed officer":** means the person identified in Article 42 of Law no. 92 of 17 June 2008;
11. **"risk":** means the customer's exposure to the risk of money laundering or terrorist financing.

Article 2 – General principle

The financial operators, identified in Article 18, paragraph 1 subparagraphs a) and b) of the Law, must pay special attention to all critical transactions, both occasional and those carried out within an ongoing relationship.

The financial operators shall establish suitable internal criteria with reference to their operations for the identification and assessment of critical transactions. The document containing these criteria shall be approved by the managing body of the financial operator and made known to all of its employees and contract workers pursuant to Article 44 of the Law.

Article 3 – Verification and assessment of critical transactions

When carrying out the verification and assessment, the financial operators must take the following into consideration:

- the information and documentation requested at the time of opening the ongoing relationship or the execution of the occasional transaction pursuant to Instruction no. 2008-01;

- the items specified in Article 25, paragraph 3 of the Law;
- any other relevant information.

The assessment of the critical transactions must take into consideration the indicators of anomaly listed in the Circulars of 27 January 1999 and 12 February 2003 issued by the Inspectorate for Credit and Currencies (now the Central Bank).

The financial operators, identified in Article 18, subparagraphs a) and b) of the Law, which are free to act with organisational autonomy, may make use of electronic tools able to facilitate the identification and assessment of the abovementioned transactions.

Article 4 – Duties of the appointed officer

The appointed officer undertakes the identification, verification and assessment of critical transactions either on his own initiative or following an internal communication received from the personnel of the financial operator's branches, operational departments, and central and peripheral offices.

At the end of the verification and assessment process the appointed officer must compile a written report on the analysis conducted.

Article 5 – Written report on the verification and assessment of critical transactions

The written report must have the following minimum structure:

1) Information on the report:
   a) place and date of compilation of the report;
   b) name and surname of the appointed officer writing the report.

2) Information and data on the customers:
   a) the information, documents and data specified in Articles 2, 3 and 4 of Instruction no. 2008-01;
   b) economic, financial and asset profile, and professional profile of the customer;
   c) risk profile assigned to the customer at the time of opening the ongoing relationship or the execution of the occasional transaction, determined on the basis of the items identified in Article 25, paragraph 3 of the Law.

3) Information and data on the critical transactions:
   a) type and number of ongoing relationships or occasional transactions;
   b) duration of the ongoing relationship or date of the occasional transaction;
   c) description of the operational activity (for example, the number of transactions, their frequency, amount, and purpose/reason).

4) Assessment of critical transactions:
   a) a substantiated judgment on the purpose and nature of the transactions and their compatibility with the significant aspects of the customer's profile, in particular the economic, financial and asset profile, and the professional profile of the customer;
   b) assessment of any changes to the customer's risk profile following the execution of critical transactions – also taking into account the aspects identified in Article 25 paragraph 3 of the Law – and consequent decision;
   c) assessment of whether to make a report pursuant to Article 36 of the Law and consequent decision.

5) Documentation to be annexed:
   a) copy of the customer's proof of identity;
   b) copy of the documentation used for the verification and assessment of the critical transaction.

The report, signed by the appointed officer, must be kept for at least 5 years after the date of its compilation.

The financial operators must adopt suitable measures to ensure the utmost confidentiality of the internal communication received and of the content of the report.

If the report has been made as a result of an internal communication, a copy of the report must be sent to the unit that reported the critical transaction.

Article 6 – Exclusion and reporting

For the purposes of the assessment and analysis of the critical transaction the provisions of Article 24, paragraph 3 and Article 36 of the Law shall apply.

If the appointed person decides to make a report pursuant to Article 36 of the Law concerning the critical transactions analysed, a copy of this report must be annexed to the Reporting Form referred to in Instruction no. 2008-01.

Article 7 – Powers of investigation

The report shall be made available immediately on request to the Central Bank's Anti-Money Laundering Department until the declaration referred to in Article 92 of the Law or to the Financial Intelligence Agency from the same date, to the Central Bank in its role as Supervisory Authority, and to the Board of Statutory Auditors and Internal Auditing Department of the financial operator.

Article 8 – Entry into force

This Instruction shall enter into force on 15 December 2008.

San Marino, 10 November 2008

47. INSTRUCTION NO. 2008-04: SPECIFIC MEASURES FOR THE ELECTRONIC TRANSFER OF FUNDS

Introduction

With this instruction the Financial Intelligence Agency sets out certain rules of conduct in relation to the countering of money laundering and terrorist financing.

Specifically, this Instruction has been issued in implementation of Article 33 of Law no. 92 of 17 June 2008, on the basis of which the following must be established:

a) the data and information that the financial operators authorised to perform the reserved activity identified in subparagraph I) of Attachment 1 to Law no. 165 of 17 November 2005 ("Payment services") are required to obtain on the person ordering an electronic transfer of funds;
b) the procedures for the recording and keeping of these data and information.

This Instruction takes into account the guidelines issued at international level and in particular those included in the Special Recommendation VII of the FATF and (EC) Regulation no. 1781/2006 of the European Parliament and of the Council of 15 November 2006.

Article 1 - Definitions

1. "**public administrations**": the government offices, departments, public bodies, autonomous authorities, and offices of the public administration of the Republic of San Marino;
2. "**payee**": a natural or legal person who is the intended final recipient of transferred funds;
3. "**unique identifier**": a combination of letters, numbers or symbols, determined by the payment service provider, in accordance with the protocols of the messaging system or the payment and settlement system used for the transfer of funds, which allows the payment service provider to unequivocally trace the payer, by means of the documentary or electronic evidence held by the payment service provider;
4. "**payer**": either a natural or legal person who holds an account and allows a transfer of funds from that account, or, where there is no account, a natural or legal person who places an order for a transfer of funds;
5. "**payment service provider**": a person who belongs to one of the following categories:
   a) a person authorised to carry out the reserved activity identified in subparagraph I) of Attachment 1 to Law no. 165 of 17 November 2005 in the Republic of San Marino;
   b) a foreign person authorised to carry out an activity equivalent to the one referred in subparagraph a) above;
   c) the Central Bank of the Republic of San Marino when it acts as a payment service provider;
6. "**intermediate payment service provider**": a payment service provider as specified in subparagraphs a) or c) of paragraph 1 above, not acting on behalf of the payer or the payee, that participates in the execution of transfers of funds;
7. "**transfer of funds**": a transaction for an amount or value equal to or exceeding one thousand euro carried out on behalf of the payer by electronic means and in any currency through a payment system reserved to payment service providers, for the purpose of making the funds available to a payee, irrespective of whether the payer and the payee are the same person;
8. "**batch file transfers**": transfers of funds ordered by a single payer in favour of various beneficiaries and sent grouped together in a single batch file containing the individual transfers of funds.

Article 2 – Information on the payer

1. The transfer of funds must be accompanied by the following minimum information on the payer:

a) name and surname or, if a legal person, full name or business name;
b) address of residence or domicile or, if a legal person, address of the registered office;

c) current account number or, if the transfer of funds takes place without debiting a current account, the unique identifier.

2. The information specified in subparagraph b) above may be substituted by the date and place of birth or by the unique identifier.

Article 3 – Verification of the information on the payer by the payment service provider of the payer

1. The payment service provider of the payer must verify the information on the payer on the basis of an unexpired proof of identity or, when this is not possible, on the basis of documents and information obtained from a reliable and independent source (for example, registers and lists kept by public authorities or certifications issued by the competent consular authorities).

2. In the case of transfers of funds made by debit to a current account, the verification may be deemed to have already been carried out with the fulfilment, on the opening of the account, of the customer due diligence requirements and the requirements for the recording and keeping of the documents and information established in Law no. 92 of 17 June 2008.

Article 4 – Verification of the information on the payer by the payment service provider of the payee

1. The payment service provider of the payee shall detect whether, in the messaging or payment and settlement system used to effect a transfer of funds, the fields relating to the information on the payer have been completed using the characters or inputs admissible within the conventions of that messaging or payment and settlement system.

Article 5 – Transfers of fund within the Republic of San Marino

1. When the payment service provider of the payer and the payment service provider of the payee are based in the Republic of San Marino, the transfers of funds may be carried out solely on the basis of the account number of the payer or the unique identifier.

2. However, if so requested by the payment service provider of the payee, the payment service provider of the payer shall make the information specified in Article 2 available to the payment service provider of the payee within three working days of receiving such request.

Article 6 – Batch file transfers

1. In the case of batch file transfers sent from the Republic of San Marino to another country, the requirements set forth in Article 2 do not apply to the individual transfers of funds provided that the batch file contains the information on the payer and that the individual transfers carry the account number of the payer or the unique identifier.

2. The payment service provider of the payee, in the case of batch file transfers originating from abroad, is required to verify that the information on the payer is contained in batch file transfers and not in the individual transfers bundled therein.

Article 7 – Exceptions

1. The provisions of this instruction do not apply in the following cases:

   a) transfers of funds deriving from the negotiation of truncated cheques;
   b) transfers of funds deriving from the use of credit or debit cards provided that the payee has an agreement with the payment service provider permitting payment for the provision of goods and services and such transfers of funds carry a unique identifier;
   c) transfers of funds where the payer uses an ATM point to withdraw cash from his or her own account using a credit or debit card, provided that such transfers of funds carry a unique identifier;

d) the payee is a public administration and the transfer of funds is made for the payment of duties, taxes, financial penalties or other charges in the Republic of San Marino;
e) the payer and the payee are both payment service providers acting on their own behalf;
f) where there is a debit transfer authorisation between two parties permitting payments between them through accounts, provided that a unique identifier accompanies the transfer of funds.

Article 8 – Missing or incomplete information on the payer and enhanced measures

1. Where the information on the payer is incomplete the payment service provider for the payee shall refuse the transfers of funds and request the missing information in writing. To this end it may use the messaging system through which it received the order. If the request remains uncompleted, the payment service provider of the payee shall apply the enhanced requirements established in Article 27 of Law no. 92 of 17 June 2008, assess whether to suspend relations with the counterparty, and send the Financial Intelligence Agency a copy of the request for the missing information sent to the counterparty.

2. Where a payment service provider regularly fails to supply the required information on the payer, the payment service provider of the payee shall take steps, which may initially include the issuing of warnings and setting of deadlines, before adopting any restrictive measures or terminating its business relationship with that payment service provider. The payment service provider of the payee must inform, in writing, the Financial Intelligence Agency of the adoption of the aforesaid measures.

3. The payment service provider of the payee shall consider missing or incomplete information on the payer as a factor in assessing whether the transfer of funds, or any related transaction, is a suspicious transaction pursuant to Article 36 of Law no. 92 of 17 June 2008.

Article 9 – Obligations on the intermediate payment service provider

1. The intermediate payment service provider shall ensure that all information received on the payer that accompanies a transfer of funds is kept with the transfer.

2. If the intermediate payment service provider is not able to obtain the information on the payer it shall adopt the measures provided for in Article 8.

Article 10 – Requirements for the recording and keeping of information on the payer

1. The information on the payer acquired by the payment service provider of the payer, the payment service provider of the payee and the intermediate payment service provider is subject to the requirements for the recording and keeping of documents and information established in Article 34 of Law no. 92 of 17 June 2008.

Article 11 – Entry into force

1. This Instruction shall enter into force on 1st February 2009.

San Marino, 24 November 2008

48. INSTRUCTION NO. 2008-05: OPERATING RULES AND PROCEDURAL ASPECTS OF THE FIGHT AGAINST MONEY LAUNDERING AND FINANCING OF TERRORISM

EXTENSION TO ALL FINANCIAL PARTIES OF THE REQUIREMENTS ESTABILISHED IN THE INSTRUCTION No. 2008-01

Preface

The Law 17 June 2008 no.92 entered into force last 23 September 2008, it extended the type of the parties required to fulfilment of provisions on the subject of preventing and combating money laundering and terrorist financing (i.e."obliged parties" referred to in article 17 of the Law 92/2008). The obliged parties are divided in further categories ("financial parties" referred to in article 18 of the Law 92/2008, "non-financial parties" referred to in article 19 of the Law 92/2008, "professionals" referred to in article 20 of the Law 92/2008).

Through this measure, the Financial Intelligence Agency extends to all the "financial parties" referred to in article 18 of the Law 92/2008 the directions already disseminated in the Instruction no. 2008-01 and addressed to authorised parties mentioned in the abrogated Law no. 123 of 15 December, 1998.

In particular, this measure include several rules of conduct as concerns opening of continuous relationships or performance of occasional operations, and indicates the procedure for notifying a suspicious transaction.

Article 1 – Obliged parties

3. This Instruction is aimed to all "financial parties" referred to in article 18 of the Law 17 June 2008 n. 92, i.e.:

a) the authorized parties on the basis of Law N° 165 of November 17, 2005 and subsequent amendments;
b) the Central Bank, whenever in the field of its institutional functions, establishes business relationships or carries out occasional transactions that require the fulfilment of obligations set forth in this law;
c) the post offices whenever they establish business relationships or carry out occasional transactions that require the fulfilment of obligations set forth in the Law N° 92 of June 17, 2008;
d) the financial promoters as defined in article 24 and 25 of Law N° 165 of November 17, 2005;
e) the insurance and reinsurance agencies as defined in article 26 and 27 of the Law N° 165 of November 17, 2005;
f) the parties that provide professional credit recovery on behalf of third parties.

Article 2 – Extension of the scope of the Instruction no. 2008-01

1. Save as provided in article 3 below, the dispositions included in the Instruction no. 2008-01 concerning "operating rules and procedural aspects of the fight against money laundering and financing of terrorism " must be observed by all parties indicated in previous article 1.

Article 3 – Derogations

2. By way of derogation of what laid down by article 6 of the Instruction no. 2008-01, the parties referred to in the letters c), d), e), f) of the previous article 1 could keep data and information using paper files. It remains unchanged the minimum period to keep (registration of the data, information and copies of the documents) for at least five years, from the date when the relationship ends or the date of performance of occasional transaction.

Article 4 - Entry into Force

1. This Instruction enters into force on 15 December 2008.
San Marino, 24 November 2008

49. INSTRUCTION NO. 2009-02: DUTIES TO INFORM FOREIGN COUNTERPARTS

Preface

Law No. 92 of 17 June 2008 has consolidated the reform process of San Marino Law, which is aimed at the recognition, by the International community, of the compliance of the International principles on countering of money laundering and financing of terrorism.

In the light of all this, the Financial Intelligence Agency of the Republic of San Marino, in terms of this Law and in line with its function as defined under the same Law, places great importance on the actions of the designated subjects which must be transparent and on the collaboration necessary to fulfil the obligations pursuant to such International standards.

This of course applies even when the operations of the designated subjects obliges them to commence continuing relations or to carry out occasional transactions or to provide professional services with foreign counterparts obliged in terms of their local legislation, and in line with the applicable standards, to comply with client identification duties.

In this context in default of the Republic of San Marino obtaining recognition of equivalence of International standards applicable to countering money laundering and financing of terrorism, this topic becomes vitally important to retain the reputation of the National economic system, which uses direct access to foreign payment systems.

Consideration must also be given to Recommendation No. 2009-01 by which the Central Bank of the Republic of San Marino with reference to this subject, has in terms of Article 40 of Law No. 165 of 17 November 2005 given in to its own interpretation on the effect of Article 36, sub-article 6, letter c) of the same Law, except for the breach of banking secrets in cases in which revelation of the data collected in the exercise of the reserved activities is carried out by an intermediary who must carry out the transactions and which in default, will be compelled to refrain from carrying out the transaction requested in relation to the obligations pursuant to the legislation countering money laundering and financing of terrorism in force in its Country.

In any event Article 150 of Law No. 165 of 17 November 2005, in general, establishes a principle of hierarchical precedence of anti money laundering legislation over financial legislation, including banking secrecy and the relative sanctions in case of breach.

Scope

The present Instruction was adopted in terms of Article 4, sub-article 1, letter d), of Law No. 92/2008 and in the spirit of the same Law, is aimed at reinforcing the regulations to counter money laundering and terrorism financing, in line with the duties assumed internationally by the Republic of San Marino, even in order to obtain full acknowledgement of the validity of such International standards.

Article 1 - Addressees

This instruction is addressed to all the "designated persons" provided for in Law no. 92 of 17 June 2008

Article 2 – Definitions

Pursuant to this Instruction, the terms below shall have the meanings given to them under Law No.. 92/2008.

Article 3 – Obligations to inform foreign counterparts

In all cases in which the designated subject in terms of article 17 of Law No. 92/2008 - in exercising its activities and for the purposes of creating continuing relations or to carry out occasional transactions or to provide professional activities- establishes a relationship with a foreign counterpart falling compelled under its legislation to obligations similar to those under the provisions of Law No. 92/2008 binds the designated San Marino subjects who are obliged to provide on request of the foreign counterpart

(including express reference to the requirement to fulfil the obligations of client identification imposed by local legislation to counter money laundering and financing of terrorism), all information requested, provided that this is equivalent or in any case compatible with the terms of article 22 of Law No. 92/2008, and necessary and essential to establish a continuing relationship or to carry out an occasional transaction or to provide a professional service.

Article 4 – Equivalent Jurisdictions

In terms of Article 3, foreign counterparts subject to the obligations equivalent to those in terms of Law No. 92/2008 shall be binding on designated San Marino subjects, all those having offices in States, Jurisdictions and foreign Territories included those listed by the Congress of State in terms of its resolution[1] pursuant to Article 95 sub-article 5 of Law No. 92/2008.

Article 5 – Entry into force

The present Instruction shall enter into force on 9 February 2009.

San Marino, 6 February 2009

50. INSTRUCTION NO. 2009-03: RISK ASSESSMENT AND OTHER EVALUATIONS REFERRED TO IN ARTICLE 25 OF LAW NO. 92 OF 17 JUNE 2008

Preface

Under Article 25 of Law no. 92/2008, obliged parties are required to fulfil the due diligence on all their customers, carrying out risk-based verifications which depend on the type of customer, business relationship, occasional transaction, professional service, product or transaction.

This approach, based on the risk of exposure to money laundering or terrorist financing, characterises the shift from *rule-based* to *risk-based* procedures. Consequently, more responsibility is placed upon obliged parties, which can no longer exclusively rely on strict and immutable standard rules, but they shall significantly develop their customer knowledge (*know your customer, KYC*), so that they are increasingly able to evaluate which approach is the most suited to be taken with regard to any single case.

The proper definition and the ongoing update of customers' profile are the sine qua non conditions to make relevant internal assessments of the different risk level which may be associated to any customer and to take control actions based upon such assessments.

This approach allows to focus energy and resources on higher risk cases, thus increasing the opportunity to achieve tangible results in preventing and countering money laundering and terrorist financing.

In this regard, Law no. 92/2008 provides minimum criteria to guide the activity of obliged parties. In particular, Article 25, third paragraph, establishes that:

For the evaluation of the risk, the obliged parties shall evaluate at least the following aspects:

A) with reference to the customer:

1) the legal status,
2) the main business activity,
3) the behaviour at the moment of establishing the business relationship, or carrying out the transaction or professional services,
4) the residence or registered office of the customer or of the counterpart with particular attention to that do not require equivalent obligations to those set forth in this law;

B) with reference to any business relationship or occasional transaction:

1) the type and specific way of execution,
2) the amount,
3) the frequency,
4) the coherency of the transaction in relation to the whole of information available for the obliged party,
5) the geographic area of the execution of the transaction, with particular attention to that do not require equivalent obligations to those set forth in this law.

This Instruction provides further indications to apply the aforesaid criteria, which – in the spirit of the Law - do not complete the actions to be implemented by the obliged parties to assess the risk profile. According to its experience, the Financial Intelligence Agency will provide any relevant updating.

Article 1 – Addressees

Any obliged party referred to in Article 17 of Law no. 92 of 17 June 2008.

Article 2 – Definitions

For the purposes of this Instruction, the definitions referred to in Law no. 92/2008 shall apply.

Article 3 – Aspects with reference to the subjective profiles of customers (Art. 25, paragraph 3, letter A)

With regard to the legal status, the extent to which members of a company are known is particularly important when the customer is a legal person.
In this context, obliged parties shall assign a Higher Potential Risk (HPR) to customers for which it is not possible to affirm the composition of the ownership structure through documents from public offices or registers; on the contrary, a Lower Potential Risk (LPR) shall be assigned to customers being legal persons for which it is possible to carry out such verification, as well as to natural persons.

The main business activity carried out by the customer is an important criterion to check the consistency of the transactions requested/executed.
In this context, obliged parties shall assign a Higher Potential Risk (HPR) to customers (both natural and legal persons) for which they are not able to determine the activity representing their main business or income source through documents from third sources (budgets, statutes, individual income tax returns, pay packets, etc.); on the contrary, a Lower Potential Risk (LPR) shall be assigned to customers for which it is possible to conduct such verification.

As regards the customer's behaviour at the moment of establishing the business relationship, or carrying out the transaction or professional service, any non-cooperative or reticent behaviour of the customer in providing information or documents requested by the obliged party shall entail a Higher Potential Risk (HPR) assessment; on the contrary, a Lower Potential Risk (LPR) shall be assigned when the customer is cooperative and transparent in providing information and documents.

The residence or the registered office is a criterion taking account of situations where the geographical aspect may influence the assessment of the risk profile. When the customer is resident or the registered office thereof is established in States which do not require obligations equivalent to those set forth in Law no. 92/2008 or in States to which restrictive measures have been applied by the United Nations Security Council, the obliged party shall assign a Higher Potential Risk (HPR) to the customer; otherwise, a Lower Potential Risk (LPR) shall be assigned. In order to identify the States concerned, without prejudice to the Decision of the Congress of State listing the Countries, Jurisdictions and Territories whose system to prevent and counter money laundering and terrorist financing is considered to be equivalent to international standards, obliged parties shall also rely on the relevant lists indicated by the Financial Intelligence Agency in its Instructions (i.e. Annex A to Instruction no. 2009-01) or published in its web-site, as well as to the decisions of the Congress of State regarding the adoption of restrictive measures against Countries threatening international peace and security, in compliance with the resolutions of the United Nations Security Council.

Article 4 – Aspects with reference to the objective profiles of any business relationship or transaction (Art. 25, paragraph 3, letter B)

With regard to the type and specific way of execution, the identification of parameters upon which assessments in terms of higher or lower potential risk shall be based requires the analysis of a large sampling of cases. Pending the elaboration of these criteria by the Financial Intelligence Agency, obliged parties shall base their Higher or Lower Potential Risk assessments on their individual experience and comprehensive knowledge of the customer.

The amount and frequency (or length), are two distinct indexes aimed at understanding the dimensional relevance of the business relationship or the occasional transaction, to be evaluated with a specific reference to the customer, regardless of any other profile related to quantitative thresholds which are relevant for other provisions of the anti-money laundering legislation. (for instance, to detect fractioned transactions). Even in this case, when the legislation is applied for the first time, obliged parties shall base their Higher Potential Risk (HPR) or Lower Potential Risk (LPR) assessments on their individual experience and comprehensive knowledge of customers.

The consistency of the transaction with the whole information available for the obliged party establishes whether the business relationship or the occasional transaction is justified by the business activity of the customer. Obliged parties shall assign a Higher Potential Risk or a Lower Potential Risk to customers

according to all information and data available to them; in other words, they shall not rely exclusively on the specific documents collected, but they shall employ any useful source (such as information obtained from the press or other mass media or by facts which are known in the territory or in the professional context where the obliged party operates). Considering the preventive purpose of the legislation, even simple indications may be taken into account.

Finally, with regard to the geographic area of execution of the transaction, with particular attention to the States which do not require obligations equivalent to those set forth in this Law, Higher Potential Risk or Lower Potential Risk assessments shall be made in compliance with what mentioned about the residence and registered office of the customer in the previous article.

Article 5 – Level of riskiness

On the basis of the assessments of the individual profiles outlined in the preceding articles, obliged parties shall classify their customers according to the following levels of riskiness:

1 – LIMITED, when no profile has required the assignment of a Higher Potential Risk.
2 – LOW, when only two Higher Potential Risks have been assigned;
3 – MEDIUM, when a maximum of four Higher Potential Risks have been assigned;
4 – HIGH, when four or more Higher Potential Risks have been assigned and, in any case, when the customer has its residence/registered office or the transaction is executed in States which do not require obligations equivalent to those set forth in Law no. 92/2008, or in States against which the United Nations Security Council has adopted restrictive measures;

Obliged parties may, on the basis of other criteria identified, provided that they can be documented and checked, improve or worsen the automatic assessment by only one level.

Article 6 – Implementation of a risk-based approach

Towards customers identified with a "High" risk profile, obliged parties shall apply enhanced due diligence measures referred to in Article 27 of Law no. 92/2008, since they are in line with the category to which the obliged party belongs under Article 17. In addition, they shall not rely on third parties to carry out customer due diligence and finally they shall carefully monitor the business relationship.

Towards customers identified with a "Medium" risk profile, obliged parties shall fulfil monitoring and ongoing control requirements at least every six months.

Towards customers identified with a "Low" risk profile, obliged parties may fulfil monitoring and ongoing control requirements once a year.

Towards customers identified with a "Limited" risk profile, obliged parties may fulfil monitoring and ongoing control requirements every two years.

Article 7 – Entry into force

This Instruction shall enter into force on 1 June 2009. Within six months of this date, obliged parties shall carry out an analysis of their customers in order to determine the profile thereof in compliance with the above-mentioned criteria.

San Marino, 22 May 2009

51. INSTRUCTION NO. 2009-04: IDENTIFICATION TO BE CARRIED OUT THROUGH THIRD PARTIES AND WAYS OF TRANSMISSION OF DOCUMENTS AND INFORMATION REFERRED TO IN ARTICLE 29 OF LAW NO. 92 OF 17 JUNE 2008

Preface

In order to enable obliged parties to comply with their requirements, without causing damage to current operations or duplicating activities, the law sets forth that obliged parties may rely on third parties with which customers have business relationships or which customers have used to carry out an occasional transaction, in order to fulfil the obligations referred to in Article 22, paragraph 1, letters a), b) and c).

This simplified modality is authorised, provided that the following conditions are met (see Article 29 of Law no. 92/2008):

a) The ultimate responsibility for the identification and verification of the identity of the customer shall remain with the obliged parties;
b) The third parties on which obliged parties can rely shall be exclusively the financial parties referred to in Article 18, paragraph 1, letters a), b) and c) and in Article 26, paragraph 1, letters b) and c), namely:
   - The authorised parties under Law no. 165 of 17 November 2005 (the list of which is available in the Central Bank's web site www.bcsm.sm);
   - The Central Bank of the Republic of San Marino, whenever on the field of its institutional functions, establishes business relationships or carries out occasional transactions that require the fulfilment of the relevant obligations (for instance, the provision of payment or treasury services);
   - Post offices, whenever they establish business relationships or carry out occasional transactions that require the fulfilment of the relevant obligations (for instance, mail dispatch operations shall be excluded);
   - Foreign parties – located in a State or territory the jurisdiction of which is declared in the relevant Decision of the Congress of State to be equivalent to international standards to combat money laundering and terrorist financing – which carry out as their main business activity one of the reserved activities referred to in letters A, B, C, D, E of Annex 1 to LISF (banking, granting of loans, fiduciary activity, investment services).

Article 29 of Law no. 92/2008 sets forth that third parties shall issue a suitable certification, make available to obliged parties all information required in fulfilling customer due diligence and they shall forward, without delay, to obliged parties the documents regarding the identification of the customer or the beneficial owner.

According to the legislation in force, customers, obliged parties and third parties shall have a common interest in sharing information and documents; otherwise they should duplicate fulfilments already carried out by others.

Furthermore, it shall be taken into account that this legislation shall be in line and coordinated with the provisions concerning banking secrecy (Article 36 of Law no. 165 of 17 November 2005).

Bearing in mind all these aspects, the following part contains, under Article 95, paragraph 2, letter c, the implementing Instructions to apply the simplified modality envisaged in Article 29 of Law no. 92/2008.

Article 1 – Addressees

Any obliged party referred to in Article 17 of Law no. 92 of 17 June 2008.

Article 2 – Definitions

For the purposes of this Instruction, the definitions referred to in Law no. 92/2008 shall apply.

Article 3 – Customer's consent

In order to rely on third parties to fulfil customer due diligence requirements, obliged parties shall previously identify the customer and verify his/her identity in compliance with the relevant provisions (see Instruction no. 2008-01).

Therefore, a relevant statement shall be obtained by the customer, where he/she affirms to have already established a business relationship or to have carried out an occasional transaction, be relying on a third party which belongs to one of the categories indicated in Article 29, paragraph 2 of Law no. 92/2008. The customer shall provide sufficient elements to identify the third party and authorise the obliged party to request a certification concerning it.

The statement shall specify that the other relevant aspects for the fulfilment of the customer due diligence obligations envisaged in Article 22 of Law no. 92/2008 (in particular, the beneficial owner and the purpose of the transaction) have not changed compared with the information already checked by the third party referred to in the preceding paragraph.

As an example, Annex A contains a specimen of the relevant statement.

Article 4 – Third party's certification, former Article 29, paragraph 1 of Law no. 92/2008

The obliged party shall issue the statement envisaged in the previous article to the third party from which it shall obtain a suitable certification confirming that due diligence obligations have been fulfilled. This certification shall be signed by the legal representative of the third party or by a delegated person.

The issue of the certification shall fulfil the obligations applying to third parties under Article 29, paragraph 3 of Law no. 92/2008.

As an example, Annex B contains a specimen of the relevant certification.

Article 5 – Ways to transmit the certification

Communications between the obliged party and the third party may also take place by using distance communication means which allow to reproduce, in documentary form, the statement and the certification.

Article 6 – Certification issued directly by the customer to the obliged party

As a alternative to the aforesaid procedure, the customer may directly provide a certification to the obliged party, provided that it complies with the model in Annex C, which has been released to him by the third party while fulfilling customer due diligence obligations. The certification shall not be used for the purposes of Article 29 of Law no. 92/2008 when six months have passed since it was released.

Article 7 – Ongoing monitoring

The application of the simplified modality shall not exempt obliged parties to fulfil the requirements set forth in Article 22, paragraph 1, letters d) and e), of Law no. 92/2008.

Therefore, at any moment the obliged party may request information and documents related to the identification of the customer or the beneficial owner to the third party issuing the certification. Under Article 29, paragraph 4 of Law no. 92/2008, the third party shall be required to forward this information

and documents without delay, upon simple request by the obliged party. If the third party refuses to provide these data, the obliged party shall inform the Financial Intelligence Agency.

Article 8 – Entry into force

This Instruction shall enter into force on 1 June 2009.

San Marino, 22 May 2009

52. INSTRUCTION NO. 2009-05: WAYS FOR THE FULFILMENT OF THE OBLIGATIONS REFERRED TO IN ARTICLE 22, PARAGRAPH 1, LETTER B) OF LAW NO. 92 OF 17 JUNE 2008

Preface

Article 22, paragraph 1, letter b) of Law no. 92 of 17 June 2008 sets forth that while fulfilling customer due diligence obligations, obliged parties shall – if necessary – identify the beneficial owner (as defined by Article 1, paragraph1, letter r) of the same Law) and adopt risk-based and adequate measures to verify the identity.

From a logical point of view, the "identification" of the beneficial owner shall be preceded by his/her "determination", which consists in selecting – among natural persons – those presenting the characteristics established by law, namely by Article 1, paragraph 1, letter r) of Law n. 92/2008.

The "identification" consists in the subsequent assessment allowing to unequivocally associate the abstract natural person with that specific and concrete natural person, by acquiring identity documents pursuant to the relevant Instructions.

Granting that in any case obliged parties shall come into contact with natural persons – both when the customer is a natural person and when is a legal person – determination is a necessary logical process which shall allow to establish whether the beneficial owner corresponds to the customer when the latter is a natural person or, when the customer is a legal person, there is a natural person that might be qualified as the beneficial owner according to the criteria enshrined in the relevant law. As for the identification, the law provides for that it may not always be necessary.

This Instruction provides indications to enable obliged parties to perform the same identification procedures with regard to the beneficial owner, also with reference to specific and particular cases. The Agency shall reserve to update these cases in relation to the experience gained, the developments of commercial practices and changes in the international context.

Like all customer due diligence obligations envisaged by Article 22, this specific requirement regards the information that customers shall provide in written form under their own responsibility (see Art. 22, paragraph 2 of Law no. 92/2008). However, obliged parties shall not limit themselves to uncritically receive data and information to fulfil their obligations.

Article 1 – Addressees

Any obliged party referred to in Article 17 of Law no. 92 of 17 June 2008.

Article 2 – Definitions

For the purposes of this Instruction the definitions referred to in Law no. 92/2008 shall apply, with particular reference to the definition of "beneficial owner" under Article 1, paragraph 1, letter r).

Article 3 – Cases where there is no need to verify the identity of the beneficial owner.

The cases where it shall not be necessary to verify the identity of the beneficial owner shall include the following:

1. the customer being a natural person acts on his own behalf and the obliged party, on the basis of the information held, has no grounds to doubt that; in this case, more precisely, the verification of the identity of the beneficial owner is performed by carrying out the verification of the identity of the customer;
2. the conditions envisaged by law apply according to which obliged parties shall not be subject to customer due diligence obligations (Article 26 of Law no. 92/2008);

3. the customer of the San Marino obliged party is a bank or a financial institution located in Countries included in the so-called white list drafted by the Member States of the European Union;
4. the parties referred to in previous points 2 and 3 are not direct customers of obliged parties, but they are intermediaries of participants in a company or entity with or without legal personality which is a customer of San Marino obliged parties;
5. the conditions under which the obliged party may rely on third parties to perform customer due diligence procedures apply (Article 29 of Law no. 92/2008 and FIA Instruction no. 2009-04).

Article 4 – Adequate and risk-based measured to verify the identity of the beneficial owner.

With regard to the documents to be used in order to verify the identity of the customer, obliged parties shall refer to what is provided for in the relevant Instructions on this matter (Instruction no. 2008-01 and any subsequent amendment). When the beneficial owner, being duly identified, is physically present, obliged parties may obtain a copy of the valid identity document submitted by the beneficial owner.
When the beneficial owner, being duly identified, is not physically present, the obliged party shall adopt the following measures to verify the identity, based on the classification of the customer under FIA Instruction no. 2009-03:

1. when the customer presents a "Limited" risk profile, it shall be sufficient to obtain directly from the customer a simple copy of the identity document of the beneficial owner, which shall be produced within three days from the establishment of the business relationship or the execution of the transaction;
2. when the customer presents a "Low" risk profile, the simple copy of the identity document of the beneficial owner shall be obtained when the business relationship is established or the transaction is carried out;
3. when the customer presents a "Medium" risk profile, the obliged party shall obtain from the customer, within three days from the establishment of the business relationship or the execution of the transaction, a copy of the identity document of the beneficial owner, certified by a public official, which might be accompanied by a sworn translation if the document is provided in a foreign language. Obliged parties may not request, under their own responsibility, the sworn translation of documents in English.
4. when the customer presents a "High" risk profile, the obliged party shall acquire from the customer, at the moment of establishing the business relationship or executing the transaction, a copy of the identity document of the beneficial owner certified by a public official, which might be accompanied by a sworn translation if it is written in a foreign language. Obliged parties may not request, under their own responsibility, the sworn translation of documents in English.

Article 5 – Identification of the beneficial owner in some specific cases

a) Companies:
The identification of the beneficial owner requires that the obliged party shall reconstruct the shareholding structure of the company up to its top management, firstly by using the information provided by the legal representative or another person being vested with the same powers. This information shall be assessed according to objective documents (financial sheets, certifications by public entities, affidavits) and comprehensive data available, also in relation to the risk profile of the customer; in particular, the obliged party may rely only on the information provided by the customer only if the latter has been classified as showing a "limited" risk, pursuant to the criteria indicated in FIA Instruction no. 2009-03. In addition to the formal ownership of stocks and participating shares, obliged parties shall consider situations where the relevant threshold is though to be exceeded because of particular relations between natural persons or specific powers concerning the management (i.e. shareholders' agreement, family ties or ties due to business relationships, financing constraints, power to appoint one or more directors, position as sole director, etc.).

The following case shall be considered as a example:

Customer: Company A, with the following members:
B, natural person owning 4%,
C, legal person owning 26%,
D, legal person owning 70%.

C's members:
E, natural person owning 50%,
F, natural person owning 50%.
D's members:
G, natural person owning 50%,
H, natural person owning 40%,
I, natural person owning 10%.

In this case, the beneficial owners shall be identified in natural persons G and H that, according to the *de iure* presumption in Article 1, letter r) of Law no. 92/2008, own more than 25% of the capital of legal person D controlling A.
Always with reference to the example, without further elements such as those indicated above, (shareholders' agreements, etc.), the presence of a person (member D) controlling the customer and the fact that no legal person results to control member C (owning more than 25% of customer's capital) exclude the identification of beneficial owners other than the aforesaid G and H.
When the customer is a company incorporated under San Marino law and established as an anonymous company, obliged parties may obtain a copy or reference data of the minutes of the assembly drafted in compliance with Article 44 bis, paragraph 1 of Law no. 47 of 23 February 2006, as amended by Article 87 of Law no. 92/2008.

b) Mutual investment fund management companies:
In principle, beneficial owners should be identified among the investors subscribing mutual investment fund units. However, the operating manner of such companies envisaged by law prevents holders from exercising any power of management on the investment transactions of the fund. This power is exclusively assigned to the management company according to the fund management regulations. Therefore, the obliged parties having a mutual investment fund management company as a customer shall identify the beneficial owner among the participants in the management company, which therefore shall be compared to an ordinary company referred to in point a).

c) Public entities:
When the customer is a public administration or an entity of the enlarged public sector, a "beneficial owner" cannot be determined; therefore, obliged parties shall only be requested to verify the identity and the authorisation of the natural person(s) concretely establishing a business relationship or executing a transaction.

d) Conclusion and execution of insurance contracts.
With regard to an insurance contract, the beneficial owner shall be determined by referring to the "Beneficiary" of the contract, regardless whether he corresponds to the "Contracting party" or the "Insured".

Article 6 – Connection to Instruction no. 2009-02 and to special provisions applying to banks

The obligations introduced by Instruction no. 2009-02 and the obligations imposed on San Marino banks by Decree-law no. 65 of 14 May 2009 shall continue to apply.

Article 7 – Entry into force

This Instruction shall enter into force on 1 June 2009.

San Marino, 22 May 2009

53. INSTRUCTION NO. 2009-06: REQUIREMENTS OF CUSTOMER DUE DILIGENCE, RECORD KEEPING AND SUSPICIOUS TRANSACTION REPORTING FOR THE PROFESSIONAL PRACTITIONERS REFERRED TO IN ARTICLE 20 OF LAW NO. 92 OF 17 JUNE 2008

Preface

Article 4, paragraph 1, subparagraph d), establishes that the Financial Intelligence Agency can issue instructions on the prevention and countering of money laundering and terrorist financing.

Purposes

With this order, therefore, the Financial Intelligence Agency lays down specific rules of conduct in relation to customer due diligence, the recording and keeping of data and information and the reporting of suspicious transactions, in view of the specific nature of the activities undertaken, for the Professional Practitioners referred to in Article 20 of Law no. 92 of 17 June 2008.

TITLE I
GENERAL PROVISIONS

Article 1 - Definitions

Pursuant to this Instruction, the terms below shall have the following meanings:

1. **"Agency":** the Financial Intelligence Agency established by Law 92/2008 governed by delegated decree no. 135/2008, ratified by delegated decree no. 146/2008;
2. **"customer" or "customers":** the natural persons(s), the legal person(s) or the entity(ies) without legal personality in relation to whom the Professional Practitioners, as part of their activities, undertake an occasional transaction or professional service, or establish a continuing relationship or professional service; regardless of whether compensation is provided;
3. **"identification document":** a currently valid document containing the photograph and particulars of a natural person, issued by a domestic or foreign public authority;
4. **"FATF":** Financial Action Task Force;
5. **"identifying particulars":** name and surname, place and date or birth, home address, and nationality of an individual;
6. **"nature of the continuing relationship or occasional transaction":** type and/or basis of the continuing relationship or occasional transaction;
7. **"occasional transaction"**: any transaction, service or act performed on behalf of customers, outside a continuing relationship;
8. **"Professional Practitioners":** the persons identified in Article 20 of Law no. 92 of 17 June 2008;
9. **"continuing relationship"**: any relationship or service between a Professional Practitioner and a customer, regardless of whether any compensation is provided, the performance of which involves the execution of several transactions;
10. **"register":** archive created and maintained in paper form, or created and maintained by means of information systems, in which the Professional Practitioner records and keeps the data and information relating to the occasional transactions and the continuing relationships, together with the identification details of the customers and the beneficial owner, where present;
11. **"risk":** exposure to the risk of money laundering and/or terrorist financing;
12. **"purpose of the continuing relationship or occasional transaction":** the objectives to be achieved through the establishment of a relationship or the execution of an occasional transaction or which the latter are aimed at achieving.

Article 2 - Requirements to be fulfilled

The Professional Practitioners must fulfil the following requirements:

1) customer due diligence requirements;

2) recording requirements;
3) reporting requirements;
4) control requirements;
5) requirements for the adoption of internal procedures and controls.

Article 3 - Addressees of the customer due diligence requirements

The customer due diligence requirements apply to the following, in the performance of their professional activities:

a) Members of the Register of Chartered and Certified Accountants of the Republic of San Marino;
b) Members of the Register of Independent Auditors and Auditing Firms and the Register of Actuaries of the Republic of San Marino;
c) Members of the Register of Lawyers and Notaries of the Republic of San Marino, when they carry out any financial or real estate transactions in the name or on behalf of their customers or when they assist their customers in the planning and execution of transactions relating to the:

1) Transfer of any form of property rights over immovable goods or enterprises;
2) Management of customer money, securities or other assets;
3) Opening or management of bank, savings or securities accounts;
4) Creation, operation or management of trusts, companies or similar structures, with or without legal personality;
5) Organisation of the contributions necessary for the creation, operation or management of companies.

The requirements set forth in Article 2 also apply in the case of professional activities conducted as part of an association or company, to the Professional Practitioner performing the engagement, who is also responsible with respect to the activities conducted with the aid of contract workers or employees.

Consequently, in order to prevent and stop the conduct of money laundering transactions or terrorist financing, the Professional Practitioners shall ensure adequate training for the employees and contract workers.

TITLE II
CUSTOMER DUE DILIGENCE REQUIREMENTS

CHAPTER I
GENERAL PRINCIPLES

Article 4 - Content of the customer due diligence requirements

The Professional Practitioners, also, as the case may be, through their own personnel or specifically appointed contract workers, must carry out the following activities:

a) identification of the customers and verification of their identity on the basis of an unexpired identification document or, when this is not possible, on the basis of documents and information obtained from a reliable and independent source;
b) if necessary, the identification of the beneficial owner and the adoption of adequate measures commensurate to the risk to verify the beneficial owner's identity;
c) acquisition of information on the purpose and nature of the continuous relationship or the occasional transaction;
d) ongoing monitoring of the continuous relationship, verifying that the transactions concluded over the course of the entire relationship are consistent with the data and information that the Professional Practitioner has on the customers, their economic activities and their risk profile, including, where necessary, the source of funds;
e) update of the documents, data and information acquired for the fulfilment of the customer due diligence requirements.

Article 5 - Scope of the customer due diligence requirements

The Professional Practitioner is obliged to fulfil the customer due diligence requirements in the cases specified in Article 21.

The determination of the value of the professional service or the transaction does not take into account the Professional Practitioner's compensation. The receipt of compensation for the professional activity undertaken does not in itself constitute a service for which the customer due diligence requirements apply.

For the purposes of the customer due diligence requirements the netting-off of assets and liabilities, payables and receivables, and other debit positions or transactions of any nature relating to the customer is not taken into account. In such cases, the value to be taken into account is the value of each asset, liability, payable, receivable, transaction or position and not the value resulting from their netting-off.

The professional services subject to the requirements laid down in Law 92/2008 are listed in annex A. This list is only an example and is not exhaustive.

The Financial Intelligence Agency, in agreement with the Professional Associations and Trade Associations, will update the list of these professional services when necessary.

Article 6 - Fulfilment of the customer due diligence requirements via third parties and operating procedures

With regard to the above, please refer to the provisions laid down by the Financial Intelligence Agency in the Instruction 2009-04.

Article 7 - Exemptions to the application of the due diligence requirements

In addition to the cases provided for in article 26 of Law 92/2008, the Professional Practitioners are not required to fulfil the customer due diligence requirements:

- when they undertake the activities of official receiver or court-appointed expert witness, as a result of an appointment made by the Legal Authorities; in such cases the Professional Practitioners act as an adjunct to the Court.

- when they hold the position of Statutory Auditor in companies, entities or legal persons established under San Marino law; in such cases the Professional Practitioner does not act by virtue of a professional engagement but, rather, by virtue of a mandate signed by the General Members' Meeting.

The suspicious transaction reporting requirements still have to be met in the cases identified above, when the relevant conditions apply.

Article 8 - Countries, Jurisdictions and Territories subject to strict monitoring by the FATF or the MONEYVAL Committee

The Professional Practitioners must pay particular attention to the continuous or occasional professional services conducted with persons (including legal persons and other financial institutions) resident or located in Countries, Jurisdictions or Territories subject to strict monitoring by the FATF or the MONEYVAL Committee.
With regard to the above, please refer to the provisions of Instruction 2009-01 as amended.

Article 9 - Risk based approach

With regard to the above, please refer to the provisions laid down by the Financial Intelligence Agency in the Instruction 2009-03.

CHAPTER II
IDENTIFICATION AND VERIFICATION OF THE IDENTITY OF THE CUSTOMER AND THE BENEFICIAL OWNER

Article 10 - Identification and verification of the identity of the customers

The Professional Practitioners must acquire the identification details and other information required by this Instruction from the customers and verify, through the acquisition of copies of unexpired identification documents (Passport – Identity Card – Driving Licence) and/or other documents obtained from reliable and independent sources, that these contain the information and data acquired from the customer.

When the assignment of the engagement is made jointly by several customers, each of these customers must be identified.

Where several Professional Practitioners are engaged jointly for the professional service, each of these Professional Practitioners must perform the identification and verification of identity.

The identification and the verification of the customer's identity may also be performed with the aid of the Professional Practitioner's own employees or specifically appointed contract workers.

Article 11 - Identification of the beneficial owner

In the cases specified in paragraph 1, subparagraph b) of Article 22 of Law 92/2008, namely when the customers are not operating on their own behalf, the Professional Practitioner must acquire the identification details of the beneficial owner.

The identification of the beneficial owner is performed at the same time as the identification of the customer, except for the cases provided for in paragraph 4 of Article 23 of Law 92/2008, governed by Article 15 below.

Article 12 - Determination of the beneficial owner

With regard to the above, please refer to the provisions laid down by the Financial Intelligence Agency in the Instruction 2009-05.

Article 13 - Timescales

The identification and verification of the identity of the customer and, at the same time, of the beneficial owner must be performed, by the Professional Practitioner, on or before the acceptance of the engagement for the establishment of a continuous relationship or for the execution of the occasional transaction.

The Professional Practitioners may also identify the customer and the beneficial owner, where present, after the acceptance of the professional engagement, at the earliest opportunity, when they consider that there is little risk of money laundering or terrorist financing and if this is deemed necessary in order to avoid interrupting the normal course of the professional engagement.
In such case, the Professional Practitioner must fulfil the customer due diligence requirements within fifteen days at the latest from the assignment of the professional engagement.

The Professional Practitioners must also perform the customer due diligence on the customers with whom an existing continuous professional relationship is in place that was established prior to the entry into force of the Law 92/2008 (23 September 2008).
Without prejudice to the fact that the customer due diligence must be carried out at the earliest available opportunity, it is hereby established that these requirements must be fulfilled – in any event – within 12 months at the latest from the entry into force of the abovementioned Law 92/2008.

Article 14 - Identification and verification of identity procedures for natural persons

The Professional Practitioners must acquire at least the following identification details and other information on their customers:

a) name and surname;
b) date and place of birth;
c) nationality;
d) residency and domicile, if different;
e) profession;
f) type and details of the currently valid identification document or other document obtained from a reliable and independent source.

Article 15 - Identification and verification of identity procedures for companies or entities with or without legal personality

The Professional Practitioners must acquire at least the following identification details and other information on their customers when they are a company or an entity with or without legal personality (including associations, foundations and trusts):

b) name or business name;
c) legal form;
d) economic operator code or other identification code;
e) date and entry number in the register of companies;
f) address of the registered office and the head office, if different;
g) business purpose and activities conducted;
h) date of formation;
i) corporate capital or endowment fund;
j) identification details, and the type and details of the identification document of the persons appointed to act on behalf of the customer.

For the purposes of verifying the data and the information obtained, the Professional Practitioners must acquire the following documentation:

a) certificate of good standing, in either original or copy form, no more than three months old, or equivalent document;
b) copy of the resolution of the general meeting or of the Board of Directors, or of the corporate body with equivalent functions and powers, containing the appointment of and any changes to the legal representative and the persons with powers of signature or management, in order to verify that each of the persons acting is duly authorised.

For companies or entities with or without legal personality not established under San Marino law, the Professional Practitioners must acquire documents equivalent to those listed above accompanied by a sworn and certified translation.
The Professional Practitioners may, under their own responsibility, dispense with the sworn and certified translation of documents in English.

Article 16 - Information and documentation to be acquired from a sole proprietorship

The Professional Practitioners must acquire, in relation to the owner of the sole proprietorship, at least the following identification details and other information:

a) name and surname;
b) date and place of birth;
c) nationality;
d) residency and domicile, if different;
e) activity conducted;
f) type and details of the identification document.

In relation to the sole proprietorship the Professional Practitioners must acquire the certificate, in original or copy form, of entry in the Register of Businesses/of License Approval or any other document available on the sole proprietorship in accordance with the requirements established for companies in the Article above.

Article 17 - Information and documentation to be requested from public administrations

For the fulfilment of the simplified due diligence requirements set forth in Article 26 of Law 92/2008, the Professional Practitioners must acquire and keep at least the following identification details and other information:

a) name of the establishment or entity or office or department of the public administrations;
b) name of the registered office and the head office, if different;
c) activity conducted.

The Professional Practitioners must acquire copies of the documentation authorising the persons acting on behalf of the public administrations.

Article 18 - Update of the data, information and documents acquired

As part of the continuous relationships with their customers, the Professional Practitioners must update the data, information and documents acquired from the customer at least every 12 months.

Article 19 - Requirements for the customer

In accordance with the provisions of Article 22, paragraph 2, of Law 92/2008, the customers are required to provide, under their own personal responsibility, all the necessary up-to-date data and information, in written form, to enable the Professional Practitioners to fulfil the requirements laid down by the Law.

TITLE III
RECORDING OF THE DATA AND THE INFORMATION

Article 20 - General principles / introduction

As established in Article 34 of Law 92/2008, the designated persons must record the data and information acquired to fulfil the customer due diligence requirements and must keep these records and the copies of the documents acquired for at least five years from the termination of the continuous relationship or the execution of the occasional transaction or professional service.

All the data, information and documents recorded and stored must be made available without delay to the Financial Intelligence Agency for the performance of the functions assigned to it by law.

Subject, therefore, to the provisions of Article 21 below, the Professional Practitioners must be able to promptly and fully meet the requests of the Agency, aimed at determining, in particular, whether they have had dealings over the last five years with particular customers and the nature of those dealings.

Article 21 - Anti-money laundering register

The Professional Practitioners shall record the data and information set out below in a specific Anti-money laundering register in paper form, which may consist of loose-leaf sheets, provided they are duly numbered and initialled on each page by the Professional Practitioner or a contract worker or employee authorised in writing, with the last sheet showing the number of pages that make up the register and bearing the signature of the aforesaid persons.

The Register must be kept in an orderly manner and must be clearly legible, without blank spaces and erasures; it must be easy to consult and facilitate the data searches.

The Professional Practitioners may also record the data and information in a register maintained in electronic form. In such case the Professional Practitioners must ensure the continuity and updating of the records, the inability to amend or delete the records without keeping a trace of the actions taken, and the reconstructability of the historical data and the chronological order of the records.

The Register must contain at least the following information:

1) unique sequence code (USC), or equivalent code, containing the year of establishment of the continuous relationship or the occasional professional service (date/customer code);
2) date of establishment of the continuous relationship or execution of the occasional transaction/service;
3) date of termination of the continuous relationship;
4) type of professional service;
5) amount or value of the object of the service, if defined;
6) the customer's particulars or business name;
7) particulars of the beneficial owner, where present;
8) type of documents acquired;
9) notes.

If the customers are companies or entities with or without legal personality, the register must also contain:

10) the legal representative's particulars;
11) the particulars of all the natural persons acting on behalf of the customer other than the legal representative.

For professional services consisting of the keeping of accounting and payroll records, accounts auditing and the fulfilment of labour, social security and welfare requirements, only the assignment of the engagement has to be recorded.
For these engagements and tasks, therefore, the recording and storage requirement does not apply to the individual accounting entries or the individual transactions involved in their performance.

The Professional Practitioners established as companies or associations who are assigned an engagement by one or more customers, may set up a single record for each engagement received, specifying the Professional Practitioners appointed (under the item "notes").

The Register shall be kept in an orderly manner, ensuring the transparency and clarity of the information and the ease of consultation, searching and processing of the data.

The records shall be kept in the chronological order of the services, in order to enable their historical reconstruction.

The Professional Practitioner, including, if necessary, through the adoption of the appropriate formal procedures, must preserve the confidentiality of the information contained in the Register and ensure the integrity over time of the data entered, recorded and kept therein.

As a partial exception to the above, the safekeeping of the documents, certificates and deeds by a notary and the keeping of notarial registers shall constitute a suitable method for the recording of the data and information.
In such case, the Notary must however record any other information, either in paper or electronic form, required by this Instruction that is not contained in the documents, certificates or deeds subject to entry in the register

Article 22 - Timescales for recording

As established in Article 34, paragraph 3, of Law 92/2008, the data and information referred to in Article 20 above must be recorded on or before the fifth day after their acquisition. Public holidays are not included in the calculation of the number of days.

Article 23 - Customer Record Card

In order to facilitate the tasks of recording the data and information acquired as part of the customer due diligence, the Professional Practitioners may use a CUSTOMER RECORD CARD, in place of the Anti-money laundering register referred to in Article 21, prepared by the individual Professional Practitioner or, as part of the oversight activities provided for by law, by the individual Professional Associations.

In order to be deemed to be a replacement of the Anti-money laundering register, the customer record card must however contain all the data, information and characteristics required by the aforementioned Article 21.

The originals of the customer record cards must be kept in a centralised and restricted archive kept by each individual Professional Practitioner.

A copy of the customer record card may, if considered appropriate by the Professional Practitioner, be annexed to the file containing the documents required under the prevailing regulations held by the Professional Practitioners for each customer, relating to the provision of a continuous relationship or the execution of an occasional transaction.

The Professional Practitioners established as companies or associations who are assigned an engagement by one or more customers, may set up a single customer record card for each engagement received, specifying the Professional Practitioners appointed (under the item “notes”).

If the Professional Practitioner has to provide several professional services for the same customer, without a clear connection between them, or a new professional service for a customer for whom the customer due diligence requirements have already been fulfilled for a different professional service, the Professional Practitioner must nevertheless compile a customer record card with a new USC, or equivalent code.

The update of the data and information acquired as part of a continuous professional service must also be performed through the compilation of a new customer record card, when the data and information are different to that acquired previously.

For updates where the type of professional service has not changed or been renewed, the Professional Practitioner may use the previously assigned USC, or equivalent code, and is only required to add the note “update of the USC no. xxx of xxx”.

TITLE IV
CONTROLS

Article 24 - Ongoing control

Ongoing control consists of the monitoring, within the continuous relationship, of the customer activity in order to verify its consistency with not only the data and information acquired and verified but also with the knowledge and continuous assessment of the customer's risk profile.

The monitoring must be enhanced in relationships or occasional professional services where the customers have a higher risk profile.

The Professional Practitioner, even when implementing simplified customer due diligence measures, must perform the ongoing monitoring of the customer activity in order to assess any possible changes in the risk profile associated with the customers.

A number of basic suggestions for the performance of the ongoing monitoring are provided as an example below:

- periodically request in writing from the customer - on a timescale to be established on the basis of the assessment of the current risk profile - the confirmation or the change in the information held by the Professional Practitioner;

- establish automatic mechanisms for the update of the data, for example noting:
  - the expiry of the identification documents,
  - the date of the renewal of the term of office of company officers;
  - any deadlines connected to agreements or deeds;
  - other items considered useful by the Professional Practitioner;
- arrange meetings with the customer when critical situations arise (entry into the high-risk category);
- training personnel so that they can provide information useful for the assessment of the risk profile;
- record all the information acquired during the preliminary meetings and the performance of the professional services.

With reference to the activities listed above and the ongoing control, the following observations should also be taken into account:

1) the type and frequency of the updates must be proportional to the size of the firm and the procedures adopted within it;
2) in larger firms it may be appropriate to select a monitoring manager;
3) the activities undertaken for monitoring purposes should be documented as far as possible and the Professional Practitioner's remarks together with the date they were made should be recorded in the file;
4) the control performed by the Professional Practitioner must take place on the basis of the information acquired as part of the professional service provided or as a result of the assignment of the engagement, as there is no requirement to perform any other additional investigation.

Obviously, depending on the results of the control, the Professional Practitioner may implement one of the following actions:

1) maintenance of the level of ongoing control of the customer;
2) update of the customer's file through the acquisition of further documentation;
3) amendment of the risk profile and, consequently, the control frequency;
4) amendment of the type of customer due diligence assigned to the customer (simplified, enhanced or ordinary).

Article 25 - Internal controls

The Professional Practitioners shall perform internal controls to verify the correct fulfilment of the anti-money laundering requirements.
The internal controls shall relate in particular to the procedures for customer due diligence, the recording and storage of the information, and the detection and reporting of suspicious transactions.
The controls must be performed continuously, also on a periodic basis or with reference to specific cases. The extent and the frequency of the controls shall be commensurate to both the size and complexity of the organisational structure and the activities conducted by the Professional Practitioner.

The Professional Practitioners, also, where necessary, with the aid of the Professional Associations, shall adopt the necessary training measures to ensure that their employees and contract workers are also capable of using the information in their possession to have adequate knowledge of the customer and to highlight any suspicious or anomalous situations to the Professional Practitioner.

TITLE V
REPORTING REQUIREMENTS

Article 26 - Suspicious transaction reporting

With regard to the provisions of Article 36 of Law 92/2008, and subject to the provisions of Article 38, paragraphs 1 and 2, the Professional Practitioners must report, without delay, any transaction, even unexecuted, that by its nature, characteristics, and size, or in relation to the economic standing and activities of the person involved, or due to any other known circumstance, leads to the suspicion that the financial resources, money or assets subject of the transaction may originate from the offence of money laundering or terrorist financing or may be used to commit such offences.

In identifying the suspicious transactions the Professional Practitioner must also take into account the indicators of anomaly listed, by way of non-limiting example, in annex C.

When making the report, the Professional Practitioner shall - until new Instructions are issued by the Financial Intelligence Agency - use the relevant form (ANNEX B - Reporting form) ensuring that a copy of the related documentation is included.

The requirement to report a transaction that is considered to be suspect exists regardless of the seriousness of any alleged offence and of the value of the service, as it is not tied to any threshold.

The report must be sent, in confidential form, to the following address:

Financial Intelligence Agency
Strada di Paderna no. 2
Centro Fiorina
47895 – DOMAGNANO (RSM)

All the information related to the suspicious transaction reports, in terms of both their content and their execution, is strictly confidential.

The person making the suspicious transaction report is strictly forbidden from notifying the person reported or third parties of the submission of the report to the Financial Intelligence Agency.
With regard to the above, it should be noted that the infringement of the aforementioned provision is a criminally punishable offence under Article 53 of Law 92/2008.

Article 27 - Return flow of information

The sending of a report to the Legal Authorities, or its archiving, shall be notified, when this does not prejudice the outcome of the investigations, by the Financial Intelligence Agency directly to the reporting person.

The outcome of the investigations conducted by the Financial Intelligence Agency cannot be revealed to the person reported or to third parties, other than in the cases provided for by the Law.

Article 28 - Countering terrorist financing

The Financial Intelligence Agency shall send the Professional Associations the lists, for subsequent communication to their members, of the persons subject to restrictive measures by the international organisations.

The Professional Practitioners must verify the existence of relationships or the execution of transactions with persons included in these lists and, if the outcome is positive, promptly report them to the Financial Intelligence Agency.

In any event, if the Professional Practitioners suspect that transactions ordered or carried out by the customers, including those not included in the aforementioned lists, are aimed at financing international terrorism, they must immediately report them to the Agency using the reporting form (Annex B).

Article 29 - Entry into force

This Instruction shall enter into force on 6 June 2009.

San Marino, 27 May 2009

Annexes:

Annex A: list of professional services subject to due diligence
Annex B: suspicious transaction reporting form
Annex C: indicators of anomaly

Annex 'A' – List of the professional services subject to the requirements laid down by law 92/2008

A.1. : professional services - subject to the due diligence requirements - undertaken by the members of the Register of Chartered and Certified Accountants of the Republic of San Marino, the Members of the Register of Independent Auditors and Auditing Firms and the Register of Actuaries of the Republic of San Marino.

Transactions involving means of payment, assets or benefits of a value exceeding € 15,000

- administration and liquidation, on a professional basis, of businesses, assets and private property
- arbitration and any other engagement for the settlement of disputes
- assistance and advice for loan applications
- assistance and representation in tax, judicial and extrajudicial defence proceedings
- technical assessment of the business initiative and certification of the business plan for access to public funding
- contractual advisory services
- advice and transfer of shares of private limited companies
- advice of any kind on the transfer of real estate
- advice of any kind on the transfer of business activities
- safekeeping and storage of assets and businesses
- management of bank accounts, securities accounts, and cash and savings accounts
- management of receipts and payments in the name or on behalf of the customer individually exceeding the threshold
- management of social security and insurance positions
- corporate finance transactions
- preparation of expert witness appraisals and opinions
- inheritance settlements, estate planning and family wealth management
- valuation of businesses and business divisions

Transactions of indeterminate or indeterminable value

- analysis of business costs and revenues, and drafting of business and financial plans
- assistance in bankruptcy proceedings
- business, administration, contractual, tax or financial consulting on a continuous basis
- continuous consultancy relating to the management or administration of companies, entities, trusts and similar legal persons
- consultancy in relation to out-of-court settlements
- consultancy in relation to company assignments, splits, mergers and liquidations
- consultancy in relation to accounting and to financial statements and reports
- consultancy in relation to the set up and organisation of the accounts
- consultancy or services provided for the formation of companies, entities, trusts and equivalent legal persons
- certifications
- organisation, set up or keeping of the accounts

A.2. : professional services performed by the members of the Register of Lawyers and Notaries of the Republic of San Marino

Subject, where applicable, to the provisions of item a.1 of this Annex and paragraph 1, subparagraph c, of Article 20 of Law 92/2008, the members of the Register of Lawyers and Notaries must fulfil the requirements in the following cases:

- real estate purchases and sales, even when subject to suspensive or get-out clauses
- real estate purchases and sales with title retention agreement
- exchange of property rights
- deeds aimed at the establishment and/or transfer of building, perpetual lease, usufruct, use, residing and easement rights
- mortgages and other banking agreements
- income and annuities
- division of communal property with adjustment
- buyback deed for real estate held on financial lease
- transfer of financial lease agreement involving real estate to other financial companies
- donation of real estate
- deed of assignment of shares of a housing cooperative
- advanced assignment of real estate
- sale of corporate equities
- general members' meetings leading to resolutions for capital increases, reductions or surpluses, or for the discharge of bonds
- deeds of company merger or split

Consequently, the following deeds and/or agreements, by way of example, are excluded:

- real estate lease agreement, including the sublease, assignment and termination of the agreement
- real estate lease for use agreement, including the sublease for use, assignment and termination of the agreement
- real estate financial lease and related extensions and amendments
- preliminary sale agreement involving real estate, if merely a promise of sale and without signature authentication
- compulsory deed
- assignment of real estate financial lease agreement
- division of communal property without adjustment
- deeds confirming rights of ownership for real estate
- deed of correction of material errors relating to a previous deed of transfer of property rights
- establishment of mortgage
- option agreement
- powers of attorney, mandates and proxies
- minutes of general members’ meetings other than those listed above
- deeds of succession

Annex 'B' – Reporting form

SUSPICIOUS TRANSACTION REPORTING FORM
FOR PROFESSIONAL PRACTITIONERS

PART I - DETAILS OF THE REPORT AND THE REPORTING PERSON

1. Report date and Report number:	/ / dd /mm / yyyy
2. Type of report: **c.** ☐ Suspicious transaction **d.** ☐ Supplement to suspicious transaction Reference to the previous report: / / No.	**Total number of documents: _____ pages** (Report ___ pages, Annex A____ pages, Annex B ____pages, Annex C____ pages, Other Documents____ pages)

3. Professional Firm: and address	

4. Contacts for the Professional Practitioner:

Surname and Name: _____

Place and date of birth:_____

Telephone: (_____) _____

Fax: (_____) _____

E-mail: _____

5. Membership category of the reporting person:

- o Lawyers/Notaries
- o Chartered accountants
- o Certified accountants
- o Independent auditors
- o Auditing Firms
- o Actuaries
- o Other_____

PART II - IDENTIFICATION DETAILS AND DOCUMENTS OF THE PERSONS REPORTED

1. Number of persons reported:
(A) Number of natural persons: _____
(B) Number of companies and entities with or without legal personality: _____
(C) Number of public administrations: _____

Please fill one of the forms under items A) or B) below for each natural person, company or entity, or public administration involved in the transaction reported.

A) NATURAL PERSON

1. Personal details: (attach a copy of the identification document)

Surname	
Name	

2. Date of Birth ☐☐ / ☐☐ / ☐☐☐☐

3. Place of birth

4. Nationality

5. Residency (Address)

Street/Road and House/Street number	
Postcode	
Municipality/Province	
Domicile	
Other information	

6. Profession

7. Purpose and nature of the relationship or transaction

8. Identification document

Type and Details of the identification document	Place of Issue	Date of issue (dd / mm / yyyy) Date of expiry (dd / mm / yyyy)

e	Passport		/ /
f.	Identity Card		/ /
g	Driving Licence		/ /
h	Other: _____		/ /

B) COMPANY OR ENTITY WITH OR WITHOUT LEGAL PERSONALITY – PUBLIC ADMINISTRATION – SOLE PROPRIETORSHIP

1. Name or Business Name	
2. Legal form	
3. Date of formation	/ /
4. Registered Office (Address)	
Street/Road and House/Street number	
Postcode Municipality/Province	
Domicile	
Other information	
5. Business Activity	

6 Economic operator code or other identification code

7. Purpose and nature of the relationship or transaction

8. Person acting on behalf of the company or entity

8.1. Personal Details: (attach a copy of the identification document)

Surname	
Name	

8.2. Date of Birth / / /

/ / /

8.3. Place of Birth

8.4. Nationality

8.5 Identification document (Type)

Document details

Issue date / / /

Expiry date / / /

9. Person authorised to operate the account / attorney in fact

9.1. Personal details: (attach a copy of the identification document)

Surname

Name

9.2. Date of Birth

☐☐ / ☐☐ / ☐☐☐☐

9.3. Place of Birth

9.4. Nationality

9.5 Identification document (Type)

Document details

Issue date

☐☐ / ☐☐ / ☐☐☐☐

Expiry date

☐☐ / ☐☐ / ☐☐☐☐

PART III - DETAILS AND INFORMATION ON THE REPORTED TRANSACTION

1. Type of account	
2. Account number	
3. Period of activity	☐☐ ☐☐ ☐☐☐☐ a ☐☐ ☐☐ ☐☐☐☐

1. Type of Occasional Transaction	
2. Transaction date	☐☐ / ☐☐ / ☐☐☐☐

1. Other information on the transaction or the activities reported:

PART IV – GROUNDS FOR THE REPORT

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_____

Place, date

Signature and stamp of the Professional Practitioner

Annex 'C' – Example indicators of anomaly

INDICATORS OF ANOMALY

In order to facilitate the assessment by the Professional Practitioner of any suspicious aspects of the transactions involved in the professional engagement, some examples of indicators of anomaly are provided below. However this list is not exhaustive also in view of the continuing evolution of the methods used to carry out financial transactions.

In order to make it easier to understand the indicators, some of them have been broken down into sub-indicators that are an example of the indicator that they relate to.

The Professional Practitioner can use these indicators that relate to both the subjective and objective aspects of the transaction, and, when found, the practitioner must make an assessment of the nature of the transaction, taking into account all the other information available.

The list should be considered as an operational tool to be used for the verifications, bearing in mind that the absence of the anomalous profiles identified in this Instruction is not in itself sufficient to rule out the fact that the transaction is suspicious.

In the report the anomaly should be highlighted taking into account the context in which the transaction is carried out or requested and all the information available.

The reasons for the suspicion must be accurately described and explained in the report and must not be limited to a reference to one or more indicators.

The following are indicators of the suspicious nature of the transaction:

1. **Indicators of anomaly for customer behaviour:**
   - 1.1. The customers refuse or are unjustifiably reluctant to provide the information needed to perform the professional services, to specify their activity, to present the necessary documentation, to declare accounts held with other Professional Practitioners, to provide any other information that would be acquired, under normal circumstances, during the performance of the professional service.
     - 1.1.1. The customers refuse or object to providing the Professional Practitioner with the account number from which the payment has been or will be debited.
   - 1.2. The customers provide information that is clearly inaccurate or incomplete indicating the intent to conceal essential information, especially if it relates to the beneficiaries of the service.
     - 1.2.1. The customers use identification documents that appear to be forged.
     - 1.2.2. The customers provide information that is clearly false.
   - 1.3. The customers repeatedly change Professional Practitioners within a short period of time without the Professional Practitioners being able to find a suitable explanation for this behaviour.
   - 1.4. The customers ask to change the terms and conditions of the performance of the service when the original setup would have involved identification or registration or additional enquiries by the Professional Practitioner.
     - 1.4.1. The customers refuse or object to paying the sale price by bank transfer or cheque even when the amount exceeds € 15,000.
   - 1.5. The customers employ the services of a nominee without plausible justification.

2. **Indicators of anomaly for customer financial profiles:**
   - 2.1. The customers, without plausible justification, request the performance of services relating to transactions that are clearly unusual and/or unjustified with respect to the normal conduct of their profession or activities.
   - 2.2. The customers employ funds that do not appear to be consistent with the activities conducted by them or are not in any way justified.
   - 2.3. The customers use frequent transactions for the purchase and sale of equity interests in enterprises that are not justified by their financial profile or their profession or activity.
   - 2.4. The customers are legal persons that, despite having a small amount of corporate capital, acquire access in different ways to high value assets, including luxury goods, especially using cash.

3. Indicators of anomaly relating to the geographical location of the counterparties to the transactions subject of the services:

3.1. The professional services requested involve transactions with counterparties located in foreign countries known as offshore centres or characterised by favourable tax regimes or banking secrecy or identified as uncooperative by the Financial Action Task Force (FATF), and that are not justified by the customer's business activity or other circumstances.

3.1.1. Transactions involving the establishment and transfer of property rights over real estate, conducted in the abovementioned countries.

3.1.2. Contribution transactions for the formation or capital increase – especially if conducted in cash and for substantial amounts – of companies located in the abovementioned foreign countries.

3.1.3. Transactions for the formation of trust or company structures in the abovementioned countries.

3.1.4. Use of companies established in trust regimes in the abovementioned countries as shareholders.

3.1.5. Transactions for the transfer of equity interests or rights over quotas or shares, or over other financial instruments that provide entitlement to acquire said equity interests or rights, when a foreign person is interposed in the transaction clearly for the purposes of concealment.

3.2. The customers request the execution on the Professional Practitioner's account of transactions for the receipt/transfer of funds from/to counterparties located in foreign countries known as offshore centres or characterised by favourable tax regimes or identified as uncooperative by the FATF.

3.3. Loan procurement on the basis of guarantees, represented by titles or certificates or otherwise, attesting the existence of substantial deposits held at foreign banks, especially if said deposits or loans are held at or disbursed by persons based in foreign countries known as offshore centres or characterised by favourable tax regimes or identified as uncooperative by the FATF, without adequate justification.

4. Indicators of anomaly for all categories of transactions:

4.1. The customers intend to make the payments with a considerable sum in cash.

4.2. The customers intend to carry out transactions using cash or inappropriate payment means with respect to common practice and in view of the nature of the transaction, not justified by their activity or by other circumstances.

4.3. The customers intend to carry out transactions under conditions or for values that are clearly different to those of the market.

4.4. The customers regularly use techniques for splitting up transactions not justified by their activity or by other circumstances.

4.5. The transaction appears to be entirely inconsistent with the purposes declared by the customers.

4.5.1. The customers request advice for the arrangement of structured finance transactions in international markets to meet the needs of a clearly minor trading operation with a foreign country.

5. Indicators of anomaly for real estate transactions:

5.1. The professional services involving investments in real estate carried out by persons that have a wholly inadequate financial-business profile or by foreign citizens who have no connection to the State.

5.2. The customers repeatedly enter into contracts in favour of third parties or contracts to be concluded with nominated persons, involving rights over real estate, without any plausible reason.

5.3. The customers intend to purchase real estate using a considerable sum in cash.

6. Indicators of anomaly for the formation and administration of enterprises, companies, trusts and similar entities:

6.1. The professional services requested involve corporate transactions clearly aimed at concealing or hindering the identification of the beneficial owner and the source of the funds involved.

6.1.1. Formation and use of trusts, especially when regulations are applied under legal systems characterised by principles and rules not consistent with the anti-money laundering provisions of San Marino, without adequate justification.

6.1.2. Formation of particularly complex and sophisticated group structures, including in relation to the distribution of equity interests and the placement abroad of one or more companies.

6.2. The customers intend to form companies with capital in cash that have shareholders who do not have any criminal liability, without plausible justification, except for family businesses.

6.3. The customers intend to form several companies within a brief period (one month), when at least one of the shareholders of said companies is the same natural or legal person, and one or more of the following circumstances apply:

- none of the shareholders or directors are resident in the place where the registered office is located,
- the shareholders or directors are unknown and resident in different locations,
- other factors are involved that make the transaction suspicious.

6.4. The customers intend to carry out frequent transactions for the acquisition and sale of enterprises or businesses that are clearly not justified by the nature of their activity or financial profile.

6.5. The customers intend to form or use one or more nominees or interposed companies, without plausible justification.

6.6. The customers intend to form or acquire a company with a business purpose that is difficult to identify, or has no relation to what appears to be the normal exercise of their activities.

6.7. The customers intend to make contributions to companies or other entities by means that are clearly inconsistent with their financial profile or with the purposes of the company or the entity receiving the contributions.

6.8. The professional services requested involve the assignment of positions of responsibility in companies or entities to persons who do not possess the necessary capabilities, clearly designed to disassociate the decision-makers from the holders of the positions (for example, employees without specific qualifications, unemployed persons, persons without particular academic or professional qualifications, persons without known domicile or with merely formal domicile, resident in foreign countries known as offshore centres or characterised by favourable tax regimes or identified as uncooperative by the FATF).

7. Indicators of anomaly for the use of accounts or other continuous relationships:

7.1. The Professional Practitioners, as a result of the professional services requested, become aware of methods of use of accounts or other continuous relationships by the customers that are unusual or not justified on the basis of the customers' normal activity or other circumstances.

7.1.1. The customers open and close a sequence of accounts in foreign countries and of other continuous relationships that does not appear to be justified in the light of the objective needs of the activity conducted.

7.1.2. The customers carry out transactions characterised by an unjustified use of cash or offset payment methods or by elements such as agent domiciled at third party's address, presence of postal boxes or postal addresses different to the tax or professional domicile.

7.1.3. The customers request the opening of several accounts or relationships in foreign countries without a plausible justification.

7.1.4. The customers use the accounts of third parties, especially companies or entities, for the use or concealment of personal funds, or use personal accounts for the use or concealment of third party funds, especially of companies or entities.

7.1.5. The customers use safe deposit boxes that, in the absence of objective justification, appear to be aimed at ensuring the concealment of the assets held.

7.2. The professional is engaged to make deposits of cash, assets or securities, with instructions from the depositor to use them for unusual or unexpected purposes with respect to the customer's normal activity.

54. INSTRUCTION NO. 2009-07: TYPOLOGIES OF SUSPICIOUS TRANSACTIONS AND PROCEDURES FOR THE EXAMINATION OF TRANSACTIONS REFERRED TO IN ARTICLE 36 OF LAW NO. 92 OF 17 JUNE 2008

Purposes

This Instruction is issued in order to implement Article 95, paragraph 2, letter e), of Law no. 92 of 17 June 2008 n. 92, under which the Financial Intelligence Agency shall issue instructions on the typologies of suspicious transactions and procedures for the examination of transactions referred to in Article 36.

Article 1 – Addressees

Any obliged party referred to in Article 17 of Law no. 92 of 17 June 2008.

Article 2 – Definitions

For the purposes of this Instruction, the definitions referred to in Law no. 92/2008 shall apply.

Article 3 – General principles

1. Obliged parties shall make a report to the Financial Intelligence Agency without delay, whenever they suspect that the economic resources, money or funds related to the transactions requested by the customer:

a) derive from money laundering or terrorist financing;
b) may be used to commit the offences of money laundering or terrorist financing.

2. Obliged parties shall report to the Financial Intelligence Agency without delay anyone or any fact that, for any circumstances known on the basis of the activity carried out, may be related to money laundering or terrorist financing.

Article 4 – When a "suspicion" arises

Suspicions arise when obliged parties are led to believe that the transactions requested by the customer, because of their nature, characteristics or amount, or for any other circumstances, are not justified by or inconsistent with the financial, economic or patrimonial, as well as professional background of the customer. In this regard, reference shall be made to the indicators of unusual transactions – which are only illustrative examples and not comprehensive – contained in the reporting form.

Article 5 – Context of suspicious transaction reports

Once suspicions arise, obliged parties shall always be required to make a suspicious transaction report, although the facts or situations identified as suspicious do not seem to be related to predicate offences.
Such procedure shall be applied in consideration of the preventing purposes of the legislation on countering money laundering and terrorist financing, taking also into account that Article 1, paragraphs 2 and 3 of Law no. 92/2008 extends the relevant cases and conducts, as well as the circumstances being useful for the identification thereof, beyond those envisaged by Articles 199 and 199 bis of the Criminal Code.

Article 6 – Unusual transactions

A transaction which seems to be unusual or shall be considered critical under Instruction no. 2008-03 (not justified or inconsistent with the financial, economic or patrimonial, as well as professional background of the customer), shall not necessarily be considered suspicious (e.g. a sale of real estate, a bequeathment or other cases); however, the obliged party shall be required to carry out a detailed analysis in order to completely rule out the suspicion of money laundering or terrorist financing.

Article 7 – The compliance officer

The compliance officer, referred to in Article 42 of Law no. 92/2008, is the person responsible for receiving, analysing and forwarding, if necessary, suspicious transaction reports to the Financial Intelligence Agency. He shall have adequate professional skills and contribute to the training of employees on such matters.

Article 8 – Internal suspicious transaction reports

Financial parties and those having appointed a compliance officer under Article 43 of Law no. 92/2008 shall adopt internal regulations allowing their employees to send, in full autonomy, an internal suspicious transaction report to the compliance officer when a transaction, business relationship, person or facts are identified as suspicious. Such internal regulations shall also provide for the confidentiality of the identity of the reporting person under Article 40 of Law no. 92/2008 and set forth adequate measures to ensure the secrecy of the contents of the suspicious transaction report.

Furthermore, obliged parties shall provide all their employees with the name of the compliance officer to whom they shall forward suspicious transaction reports.

Anyone detecting a suspicious transaction, business relationship, person or fact, even though they have the possibility to consult the compliance officer of their operational unit, shall consider that:

a) the transmission of a suspicious transaction report is always urgent, as it may be inferred from Article 36 of the Law ("without delay"), since a delay is not justified pending an opinion from the compliance officer;
b) he/she shall be personally obliged to forward the suspicious transaction report, although he/she decides to consult his/her own compliance officer, and he/she shall not be authorised to delegate the decision concerning the transmission of the report to others.

Article 9 – Compliance officer's receipt of internal suspicious transaction reports and further analysis thereof

Except as provided in paragraph 6 of Article 42 of Law no. 92/2008, the compliance officer shall receive internal suspicious transaction reports.

The compliance officer shall take account of any suspicious transaction report submitted by employees, carry out a detailed analysis thereof and draw up a report, dated and signed, as better described in the subsequent article.

To this end, the obliged party shall enable the compliance officer to have free access to any information and document (including those used to fulfil customer due diligence requirements) available to the obliged party.

The compliance officer may request additional information on the customer, even by directly asking the latter or through other employees (e.g. those who usually come into contact with the customer); however, the compliance officer or any other person coming into contact with the customer shall take all necessary precaution to prevent the customer from suspecting that his/her position is being investigated or analysed.

According to the relevance and/or urgency of the suspicious transaction report, the compliance officer shall consider whether to forward a first suspicious transaction report to the Agency, accompanied by essential information. When the analysis is completed, such report shall be followed by a supplementary suspicious transaction report (i.e. if it is deemed necessary to extend the analysis to other positions related to the customer, the suspicious transaction report might be forwarded with some delay).

Article 10 – In-depth report by the compliance officer

The report referred to in the preceding article shall contain the following elements:

1) Information on the report:
c) place and date of drawing up the report;

d) name and surname of the compliance officer drawing it up;
e) Name and surname, function or service/structure to which the internal reporting person belongs.

2) Information and data on customers:
d) information, documents and data referred to in Articles 2, 3 and 4 of Instruction no. 2008-01 or any document envisaged by Instruction no. 2009-04 if the identification is carried out by third parties;
e) economic, financial and patrimonial, as well as professional background of the customer;
f) risk profile assigned to the customer upon establishment of the business relationship or execution of the occasional transaction and changes, if any, in the course of the relationship, under Instruction no. 2009-03;
g) data on customers acquired through commercial databases or other information providers;
h) outcome of the verification conducted on websites containing lists on combating international terrorism;
i) if the customer is a politically exposed person;
j) the beneficial owner, if any, referred to in Instruction no. 2009-05.

3) Information and data on the transaction or relationship:
d) Business relationship or occasional transaction typology and number;
e) Operational period investigated in relation to the business relationship or date of the occasional transaction;
f) Description of the operations (i.e. : number of transactions, frequency, amount, reason);
g) Purpose and nature of the business relationship or occasional transaction;
h) The last date on which the customer was monitored.

4) Final evaluations:
d) Reasoned judgement concerning the consistency/adequateness of the purpose and nature of the transaction/relationship with the significant aspects of the economic, financial and patrimonial, as well as professional background of the customer;
e) Assessment of changes (if any), as a consequence of the analysis carried out during the evaluation, in the customer's risk profile and consequent decision;
f) Consideration to make a suspicious transaction report under Article 36 of the Law. If the compliance officer decides not to forward a suspicious transaction report to the Agency, the reasons for such decision shall be provided in writing and be attached to the report through which the internal suspicious transaction report has been further analysed.

5) Documents to be enclosed:
a) a copy of the identification document of the customer;
b) a copy of the documents used to fulfil customer due diligence requirements;
c) the report envisaged by Instruction no. 2008-03 when critical operations are reported.

The compliance officer, after having completed his/her evaluations and taken the relevant decisions, shall briefly inform the reporting person of the decision adopted (for instance: "suspicious transaction report forwarded to the FIA" or "suspicious transaction report filed".

The report referred to in this Article shall be kept for at least five years from the date on which it was drawn up and in a safe place.

Article 11 – Forwarding of the suspicious transaction report to the Financial Intelligence Agency

The suspicious transaction report referred to in Article 36 of Law no. 92/2008 shall be forwarded to the Financial Intelligence Agency both by e-mail (by using the relevant form to be downloaded every time from the website www.aif.sm, section "suspicious transaction reports"), and in hard copy through a letter sent by recorded delivery to the Agency's seat[1], by printing the form sent by e-mail; in this regard, the Technical Annex contains all information to properly fill in and forward the suspicious transaction report .

Reporting forms and the relevant instructions for the filling in are produced in two versions:
- a complete version, for financial obliged parties;
- a simplified version, for non-financial obliged parties and professionals.

[1] At the date on which this Instruction enters into force, the Agency has its own seat in Domagnano (RSM), Strada di Paderna n.2.

Worth mentioning is that the value of a suspicious transaction report is based on the quality of data and information contained. Therefore, the obliged party shall include in the reporting form any information available on the customer, transaction and/or relationship, and it shall enclose herewith the report referred to in the previous Article.

Article 12 –Suspicious transaction reports in a verbal form

When a suspicious transaction report, under Article 36, paragraph 2 of Law no. 92/2008, is made in a verbal form, the obliged party, however, shall forward, without delay (and, in any case, within 48 hours from the statement made), the written suspicious transaction report referred to in Article 11 to the Agency, providing all data and information required to carry out the financial investigation, including the reasons having prevented it from sending a written suspicious transaction report and the need for a preventive oral report.

The verbal suspicious transaction report may be made personally to an employee of the Agency in his/her capacity as a Public Official, who shall identify the reporting person through an identification document and write down the most relevant facts. In such a case, the Agency's employee shall issue to the reporting person a copy of the document where the most relevant facts have been written down. A copy of the document handed over by the Agency's employee shall be timely deposited with the obliged party's main office.

Article 13 – Other information

While completing the suspicious transaction report, it shall be specified whether the customer has been introduced by a third party. In such a case, the particulars of the person having introduced the customer shall be indicated, as well as any other useful information.

If an obliged party knows that the funds reported to the Agency do not belong to the customer or has doubts about them, it shall include such information in the reporting form, specifying any relevant detail.

Article 14 – Documents to be enclosed with the reporting form

The suspicious transaction report forwarded to the Agency shall be accompanied by any useful document – preferably in an electronic format, but even hard copy – concerning the transactions under investigation (for instance: statements of account, copies of contracts, certificates of incorporation, press articles, flow of cheques, transfer details, etc.).

Article 15 – Assessments and conducts following a suspicious transaction report

Obliged parties shall carefully monitor any transaction carried out by the customer or the business relationship after a suspicious transaction report has been forwarded to the Agency. In such a case, obliged parties shall consider, case by case, to make supplementary suspicious transaction reports, by directly contacting the Agency's staff, if necessary.

The Agency may contact the compliance officer to be sure to have all relevant information concerning a suspicious transaction report. In this regard, it may also request further information, as well as additional data and documents.

Article 16 – Confidentiality of suspicious transaction reports

The criminal sanction referred to in Article 53 of Law no. 92/2008 concerns the violation of confidentiality, both in the context of a procedure of internal reporting and in the context of suspicious transaction reports referred to in former Article 24, paragraph 1, and Article 36.
The confidentiality regime shall also be applied to any request for information submitted by the Agency on its own initiative.

Article 17 – Entry into force and repeals

This Instruction shall enter into force on 20 July 2009. From this date onward, all previous provisions in conflict with this Instruction shall be repealed, with particular reference to Articles 7, 8 and 9 of Instruction no. 2008-01 and Article 26 of Instruction no. 2009-06.

San Marino, 8 July 2009

Attachments:

a. specimen reporting form;
b. Technical annex for the filling in and forwarding of the reporting form (excluded)

Annex 'a1': STR FORM FOR *FINANCIAL PARTIES*

MODULO DI SEGNALAZIONE

(Da utilizzare da parte di soggetti finanziari come meglio specificati nell'art.18 Legge 17/06/08 N. 92)

Parte Prima
DATI RELATIVI AL SOGGETTO SEGNALANTE E ALLA SEGNALAZIONE

Tipo di Segnalazione 01 - Operazione Sospetta

Soggetto Segnalante

Codice Operatore Economico

Data della Segnalazione **Numero Progressivo**

☐ Integrazione a precedente segnalazione del : Numero Progressivo

Dati del Rappresentante Legale o Responsabile Incaricato

(Figura obbligatoria per legge per i soggetti finanziari organizzati in forma societaria)

Posizione/Funzione

Cognome

Nome

N. Telefonico **N. Fax** **e-mail**

Tipo Codice Persona Fisica **Numero**

Parte Seconda
DATI E DOCUMENTI IDENTIFICATIVI DELLE PERSONE SEGNALATE

Numero dei soggetti segnalati

Numero delle persone fisiche Numero degli Enti con oppure senza Personalità giuridica

Si invita a compilare, per ogni persona fisica, società, ente, trust o amministrazioni pubbliche coinvolte nell'operazione segnalata, un apposito modello di cui alle successive lettere A) o B).

Eventuali allegati non di tipo elettronico vanno spediti per via postale assieme alla copia stampata della presente segnalazione.
Ulteriori allegati elettronici vanno inviati nella mail di trasmissione della presente segnalazione elettronica.

Sezione "A1"
DATI E DOCUMENTI IDENTIFICATIVI DELLE PERSONE FISICHE

Cognome

Nome

Data di Nascita | Luogo | Nazionalità

Residenza (Indirizzo e n.civico) | C.A.P.

Castello/Comune/Provincia | Nazione

Rischio Potenziale sulla Residenza/Sede | Rischio Potenziale per il Comportamento del Cliente

Tipo di professione | Rischio Potenziale sulla Professione

Indice di rischiosità Istr. 03/2009 Art. 5 | Grado di rilevanza del segnalato

Tipologia ed estremi del documento di riconoscimento (*allegare copia del documento di riconoscimento)*

Tipologia di documento: | Numero

Data Emissione | Data Scadenza | Luogo di Emissione

Altre informazioni

Titolari effettivi
Il formato da utilizzare (compresa la punteggiatura) è il seguente:
cognome, nome, luogo di nascita, data di nascita;

Sezione "B1"
DATI E DOCUMENTI IDENTIFICATIVI DEGLI ENTI CON O SENZA PERSONALITA' GIURIDICA

Denominazione o Ragione Sociale

Forma Giuridica | Rischio Potenziale sulla Natura Giuridica

Tipo Codice Identificativo | Numero:

Sede Legale

Via e Numero Civico | C.A.P.

Comune(Provincia)/Castello | Nazione

Sede Operativa

Via e Numero Civico | C.A.P.

Comune(Provincia)/Castello | Nazione

Rischio Potenziale per il Comportamento del Cliente | Rischio Potenziale sulla Residenza/Sede

Altre Informazioni sul soggetto segnalato

Prevalente attività svolta | Rischio Potenziale su attività

Indice di rischiosità Istr. 03/2009 Art. 5 | Grado di rilevanza del segnalato

Dati sulla persona fisica che opera per conto della società o dell'ente

Cognome

Nome

Data di nascita | Luogo | Nazionalità

Tipo collegamento con l'ente segnalato

Tipologia ed estremi del documento di riconoscimento (*allegare copia del documento di riconoscimento*)

Tipologia di documento: | Numero

Luogo di emissione | Data Emissione | Data Scadenza

Titolari effettivi
Il formato da utilizzare (compresa la punteggiatura) è il seguente:
cognome, nome, luogo di nascita, data di nascita;

Altre informazioni

Sezione "C1"
DATI SUL RAPPORTO E SULLE PERSONE FISICHE DELEGATE AD OPERARE SUL RAPPORTO

Tipologia di rapporto

Numero rapporto | Indice di rischiosità Istr. 03/2009 Art. 5

Periodo di operatività sospetta dal | al | Data di estinzione

Totali dare e avere nel periodo di operatività sospetta Totale Dare | Totale Avere

Informazioni sulla intestazione del rapporto *(barrare le caselle di cui siano intestatari i soggetti segnalati nelle sezioni indicate)*

☐ **A1** ☐ **A2** ☐ **A3** ☐ **A4** ☐ **B1** ☐ **B2** ☐ **B3** ☐ **B4**

Informazioni sulle persone fisiche che operano sul rapporto *(allegare copia del documento di riconoscimento)*

☐ **A1** Tipo collegamento ☐ **A2** Tipo collegamento

☐ **A3** Tipo collegamento ☐ **A4** Tipo collegamento

Altre persone fisiche che operano o sono collegate al rapporto *(allegare copia del documento di riconoscimento)*

Cognome

Nome | Tipo collegamento

Data di nascita | Luogo | Nazionalità

Cognome

Nome | Tipo collegamento

Data di nascita | Luogo | Nazionalità

Cognome

Nome | Tipo collegamento

Data di nascita | Luogo | Nazionalità

Cognome

Nome | Tipo collegamento

Data di nascita | Luogo | Nazionalità

Cognome

Nome | Tipo collegamento

Data di nascita | Luogo | Nazionalità

Sezione "D1"
ALTRE INFORMAZIONI
SULL'OPERAZIONE, SUL RAPPORTO O SULL'OPERATIVITA' SEGNALATA

Tipologia di operazione occasionale

Data di operazione

Indice di rischiosità Istr. 03/2009 Art. 5

Eventuali dati sul Presentatore dei soggetti segnalati

Cognome

Nome

Tipo Codice Identificativo

Numero

Informazioni su altre persone fisiche coinvolte nell'operazione (*Possibilmenle allegare copia del documento di riconoscimento)*

Cognome

Nome

Tipo collegamento

Data di nascita

Luogo

Nazionalità

Cognome

Nome

Tipo collegamento

Data di nascita

Luogo

Nazionalità

Cognome

Nome

Tipo collegamento

Data di nascita

Luogo

Nazionalità

Ulteriori informazioni sull'operazione, sul rapporto o sull'operatività segnalata:

Sezione "E1"
MOTIVI DELLA SEGNALAZIONE

Legami di parentela o di altro tipo tra i soggetti segnalati e/o altri soggetti (utilizzare A1, A2, A3, A4, B1, B2, B3, B4 per evitare di ripetere nomi es: Maria Bianchi moglie di A1, A2 figlio A1, Remo Rossi fornitore di beni di B3, ecc.)

Sezione "F1"
INDICI DI ANOMALIA

- ☐ ripetuti versamenti o prelevamenti di somme sproporzionate rispetto alla capacità economica ed all'attività svolta dal cliente;
- ☐ effettuazione in un circoscritto periodo di tempo (cinque giorni) di più operazioni singolarmente inferiori al limite fissato che possa ritenersi, per natura o modalità, parte di un'unica operazione;
- ☐ operazioni effettuate frequentemente da terzi per conto del titolare che, ingiustificatamente, non appare mai di persona
- ☐ frequenti e cospicui trasferimenti di somme disposte con bonifici anche da o per l'estero, specie se effettuati con istituzioni finanziarie insediate in aree geografiche considerate quali "centri off-shore" e non giustificabili con l'attività del cliente
- ☐ analisi approfondite di quei rapporti che, in base alle modalità di movimentazione o di strutturazione dei conti nonché alle attività professionali riferibili al cliente, possa fondarsi il sospetto di fatti di usura
- ☐ operazioni di ingente ammontare che risultano inusuali rispetto a quelle di norma effettuate dal cliente, soprattutto se non vi sono plausibili giustificazioni economiche e finanziarie
- ☐ operazioni effettuate da un cliente in nome o a favore di terzi, qualora i rapporti non appaiono giustificati
- ☐ operazioni con controparti insediate in aree geografiche note come centri off shore, incluse nella lista dei paesi non cooperativi pubblicata periodicamente dal GAFI o come zone di traffico di stupefacenti o di contrabbando, che non siano giustificate dall'attività economica del cliente o da altre circostanze
- ☐ negoziazione di strumenti finanziari senza che l'operazione transiti sul conto corrente del cliente
- ☐ negoziazioni di strumenti finanziari aventi scarsa diffusione tra il pubblico, ripetute con elevata frequenza e/o di importo rilevante, soprattutto se concluse con controparti insediate in Paesi non appartenenti all'OCSE
- ☐ Utilizzo di lettere di credito e altri sistemi di finanziamento commerciale per trasferire somme tra Paesi, senza che la relativa transazione sia giustificata dall'usuale attività economica del cliente
- ☐ intestazione fiduciaria di beni e/o strumenti finanziari, qualora gli stessi risultino in possesso del cliente da un breve intervallo di tempo, quando ciò non appaia giustificato in relazione alla situazione patrimoniale del cliente o all'attività svolta;
- ☐ sistematico utilizzo del denaro contante, in luogo di disponibilità di conto, per richieste sia di assegni circolari d'importo significativo sia di acquisto di titoli per importi rilevanti;
- ☐ conti utilizzati apparentemente per esigenze estranee all'attività economica del cliente
- ☐ conti correnti da lungo tempo non movimentati sui quali, improvvisamente, vengono effettuati ingenti versamenti o prelevamenti, specie di denaro contante, senza un'apparente giustificazione
- ☐ frequenti movimentazioni "incrociate" tra numerosi conti aperti al nome dello stesso cliente senza una plausibile giustificazione
- ☐ operazioni strutturate con modalità atte ad evitare forme di identificazione e di registrazione
- ☐ ripetute operazioni della stessa natura non giustificate dall'attività svolta dal cliente ed effettuate con modalità tali da denotare intenti dissimulatori
- ☐ ricorso a tecniche di frazionamento dell'operazione, soprattutto se volte ad eludere gli obblighi di registrazione
- ☐ operazioni con configurazione illogica, soprattutto se risultano svantaggiose per il cliente o economicamente o finanziariamente
- ☐ operazioni effettuate da terzi in nome o a favore di un cliente senza plausibili giustificazioni
- ☐ operazioni richieste con indicazioni palesemente inesatte o incomplete, tali da far ritenere l'intento di occultare informazioni essenziali, soprattutto se riguardanti i soggetti interessati all'operazione
- ☐ prelevamento di denaro contante per importi rilevanti, salvo che il cliente non rappresenti particolari esigenze
- ☐ versamento di denaro contante per importi rilevanti, non giustificabile con l'attività economica del cliente
- ☐ ricorso al contante in sostituzione degli usuali mezzi di pagamento utilizzati dal cliente
- ☐ cambio di banconote con banconote di taglio diverso e/o di altre divise, soprattutto se effettuate senza transito per il conto corrente
- ☐ ripetuti utilizzi di cassette di sicurezza o di servizi di custodia o frequenti depositi e ritiri di plichi sigillati, non giustificati dall'attività o dalle abitudini del cliente;
- ☐ rilascio di deleghe ad operare su cassette di sicurezza a terzi non facenti parte del nucleo familiare o non legati da rapporti di collaborazione o di altro tipo idonei a giustificare tale rilascio;
- ☐ acquisto o vendita di rilevanti quantità di monete, metalli preziosi o altri valori, senza apparente giustificazione e/o non in linea con le condizioni economiche del cliente;
- ☐ rapporti che presentano una movimentazione non giustificata dall'attività svolta dal cliente e che risultano caratterizzati da :
  - versamenti frequenti di assegni o presentazione allo sconto di titoli, soprattutto se in cifra tonda, con pluralità di girate, con altri elementi ricorrenti ovvero emessi al portatore o a favore dello stesso traente;
  - richiami dei titoli e ritorni di insoluti a volte seguiti da protesto;
  - sostanziale pareggiamento degli addebiti e degli accrediti.

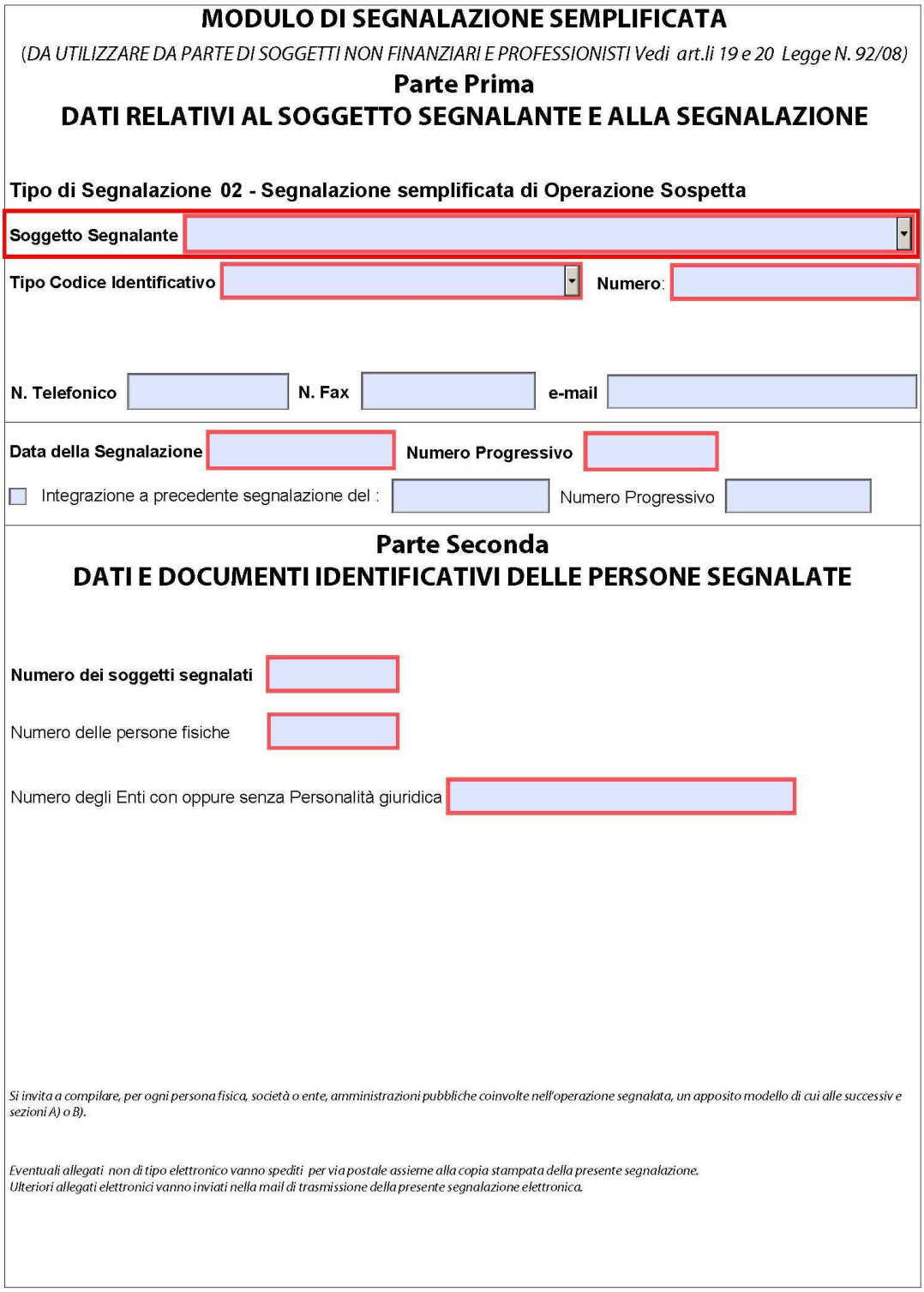
Sezione "F1"
(segue) INDICI DI ANOMALIA

- ☐ ricorso a tecniche di cointestazione di contratti aventi ad oggetto strumenti finanziari o delle polizze assicurative ovvero variazione delle intestazioni degli stessi senza plausibili giustificazioni
- ☐ stipulazione di diverse polizze di assicurazione con pagamento dei relativi premi mediante assegni bancari che presentano molteplici girate;
- ☐ stipulazione di polizza di assicurazione sulla vita con beneficiario il portatore della polizza;
- ☐ nomina di più beneficiari di polizze assicurative in modo tale che l'importo da liquidare risulti frazionato in tranche, non giustificata dai rapporti tra il cliente ed i beneficiari;
- ☐ liquidazione in un arco temporale ravvicinato di prestazioni relative a molteplici polizze sottoscritte da clienti diversi e aventi come beneficiario la stessa persona;
- ☐ rilevanti e/o contemporanee richieste di riscatto e/o di prestito relative a più polizze assicurative, soprattutto qualora comportino l'accettazione di condizioni non convenienti, ovvero frequenti operazioni di riscatto parziale relative a polizze a premio unico di rilevante importo
- ☐ clienti che si rifiutano o si mostrano ingiustificatamente riluttanti a fornire le informazioni occorrenti per l'effettuazione delle operazioni, a dichiarare le proprie attività, a presentare documentazione contabile o di altro genere, a segnalare i rapporti intrattenuti con altri intermediari, a dare informazioni che, in circostanze normali, renderebbero il cliente stesso idoneo a effettuare operazioni bancarie, finanziarie o assicurative;
- ☐ clienti che chiedono di ristrutturare l'operazione quando la configurazione originariamente prospettata implichi forme di identificazione o registrazione oppure supplementi di istruttoria da parte dell'intermediario;
- ☐ clienti che evitano contatti diretti con i dipendenti o i collaboratori dell'intermediario rilasciando deleghe o procure in modo frequente ed ingiustificato;
- ☐ clienti che presentano materialmente titoli o certificati per ingenti ammontari, soprattutto se al portatore, ovvero che, a seguito di operazioni di acquisto, ne richiedono la consegna materiale;
- ☐ clienti che effettuano operazioni di importo significativo con utilizzo del contante o strumenti al portatore quando risulti che gli stessi sono stati recentemente sottoposti ad accertamenti disposti nell'ambito di procedimenti penali o per l'applicazione di misure di prevenzione;
- ☐ clienti in situazione di difficoltà economica che effettuano operazioni di rilevante ammontare senza fornire plausibili giustificazioni in ordine all'origine dei fondi utilizzati;
- ☐ clienti che richiedono di effettuare operazioni con modalità inusuali, soprattutto se caratterizzate da elevata complessità, o di importo rilevante;
- ☐ clienti, o garanti di clienti, che frequentemente e senza fornire plausibili giustificazioni chiedono la restituzione dei valori dati in garanzia previa costituzione della provvista necessaria all'acquisto di altri strumenti finanziari;
- ☐ clienti che richiedono o intrattengono con gli intermediari rapporti con configurazione illogica;

Stampa modulo

Invia tramite posta elettronica

Annex 'a2': STR FORM FOR *NON-FINANCIAL PARTIES*



MODULO DI SEGNALAZIONE SEMPLIFICATA

(DA UTILIZZARE DA PARTE DI SOGGETTI NON FINANZIARI E PROFESSIONISTI Vedi art.li 19 e 20 Legge N. 92/08)

Parte Prima

DATI RELATIVI AL SOGGETTO SEGNALANTE E ALLA SEGNALAZIONE

Tipo di Segnalazione 02 - Segnalazione semplificata di Operazione Sospetta

Soggetto Segnalante

Tipo Codice Identificativo **Numero**:

N. Telefonico **N. Fax** **e-mail**

Data della Segnalazione **Numero Progressivo**

Integrazione a precedente segnalazione del : Numero Progressivo

Parte Seconda

DATI E DOCUMENTI IDENTIFICATIVI DELLE PERSONE SEGNALATE

Numero dei soggetti segnalati

Numero delle persone fisiche

Numero degli Enti con oppure senza Personalità giuridica

Si invita a compilare, per ogni persona fisica, società o ente, amministrazioni pubbliche coinvolte nell'operazione segnalata, un apposito modello di cui alle successiv e sezioni A) o B).

Eventuali allegati non di tipo elettronico vanno spediti per via postale assieme alla copia stampata della presente segnalazione.
Ulteriori allegati elettronici vanno inviati nella mail di trasmissione della presente segnalazione elettronica.

Sezione "A1"
DATI E DOCUMENTI IDENTIFICATIVI DELLE PERSONE FISICHE

Cognome

Nome

Data di Nascita | Luogo | Nazionalità

Residenza (Indirizzo e n.civico) | C.A.P.

Castello/Comune/Provincia | Nazionalità

Rischio Potenziale sulla Residenza/Sede | Rischio Potenziale per il Comportamento del Cliente

Tipo di professione | Rischio Potenziale sulla Professione

Indice di rischiosità Istr. 03/2009 Art. 5: 01 - Irrilevante | Grado di rilevanza del segnalato

Tipologia ed estremi del documento di riconoscimento (*allegare copia del documento di riconoscimento*)

Tipologia di documento: | Numero

Data Emissione | Data Scadenza | Luogo di Emissione

Altre informazioni

Titolari effettivi
Il formato da utilizzare (compresa la punteggiatura) è il seguente:
cognome, nome, luogo di nascita, data di nascita;

Sezione "B1"
DATI E DOCUMENTI IDENTIFICATIVI DEGLI ENTI CON O SENZA PERSONALITA' GIURIDICA

Denominazione o Ragione Sociale

Forma Giuridica | Rischio Potenziale sulla Natura Giuridica

Tipo Codice Identificativo | Numero:

Sede Legale

Via e Numero Civico | C.A.P.

Comune(Provincia)/Castello | Nazione

Sede Operativa

Via e Numero Civico | C.A.P.

Comune(Provincia)/Castello | Nazione

Rischio Potenziale per il Comportamento del Cliente | Rischio Potenziale sulla Residenza/Sede

Altre Informazioni sul soggetto segnalato

Prevalente attività svolta | Rischio Potenziale su attività

Indice di rischiosità Istr. 03/2009 Art. 5 | 01 - Irrilevante | Grado di rilevanza del segnalato

Dati sulla persona fisica che opera per conto della società o dell'ente

Cognome

Nome

Data di nascita | Luogo | Nazionalità

Tipo collegamento con l'ente segnalato

Tipologia ed estremi del documento di riconoscimento (*allegare copia del documento di riconoscimento*)

Tipologia di documento: | Numero

Luogo di emissione | Data Emissione | Data Scadenza

Titolari effettivi
Il formato da utilizzare (compresa la punteggiatura) è il seguente:
cognome, nome, luogo di nascita, data di nascita;

Altre informazioni

Sezione "D1"
ALTRE INFORMAZIONI
SULL'OPERAZIONE, SUL RAPPORTO O SULL'OPERATIVITA' SEGNALATA

Tipologia di operazione occasionale

Data di operazione

Indice di rischiosità Istr. 03/2009 Art. 5: 01 - Irrilevante

Eventuali dati sul Presentatore dei soggetti segnalati

Cognome

Nome

Tipo Codice Identificativo

Numero

Informazioni su altre persone fisiche coinvolte nell'operazione *(Possibilmenle allegare copia del documento di riconoscimento)*

Cognome

Nome

Tipo collegamento

Data di nascita

Luogo

Nazionalità

Cognome

Nome

Tipo collegamento

Data di nascita

Luogo

Nazionalità

Cognome

Nome

Tipo collegamento

Data di nascita

Luogo

Nazionalità

Ulteriori informazioni sull'operazione, sul rapporto o sull'operatività segnalata:

Sezione "E1"
MOTIVI DELLA SEGNALAZIONE

Legami di parentela o di altro tipo tra i soggetti segnalati e/o altri soggetti (utilizzare A1, B1, per evitare di ripetere nomi es: Maria Bianchi moglie di A1, Remo Rossi fornitore di beni di B1, ecc.)

Sezione "F1"
INDICATORI DI ANOMALIA

Indicatori di anomalia generici

- ☐ operazioni effettuate frequentemente da terzi per conto del cliente che, ingiustificatamente, non appare mai di persona
- ☐ analisi approfondite di quei rapporti o operazioni che, in base alle modalità di movimentazione nonché alle attività professionali riferibili al cliente, possa fondarsi il sospetto di fatti di usura
- ☐ ripetuti utilizzi di servizi di custodia o frequenti depositi e ritiri di plichi sigillati, non giustificati dall'attività o dalle abitudini del cliente;
- ☐ operazioni strutturate con modalità atte ad evitare forme di identificazione e di registrazione
- ☐ cambio di banconote con banconote di taglio diverso e/o di altre divise, soprattutto se effettuate senza transito per il conto corrente
- ☐ ripetute operazioni della stessa natura non giustificate dall'attività svolta dal cliente ed effettuate con modalità tali da denotare intenti dissimulatori
- ☐ operazioni con configurazione illogica, soprattutto se risultano svantaggiose per il cliente sotto il profilo economico o finanziario
- ☐ operazioni effettuate da terzi in nome o a favore di un cliente senza plausibili giustificazioni
- ☐ operazioni richieste con indicazioni palesemente inesatte o incomplete, tali da far ritenere l'intento di occultare informazioni essenziali, soprattutto se riguardanti i soggetti interessati all'operazione
- ☐ ricorso al contante in sostituzione degli usuali mezzi di pagamento utilizzati dal cliente

Indicatori di anomalia connessi al comportamento del cliente

- ☐ Il cliente si rifiuta o si mostra ingiustificatamente riluttante a fornire le informazioni occorrenti per l'esecuzione delle prestazioni professionali, a dichiarare l'attività esercitata, a presentare la documentazione necessaria, a segnalare i rapporti intrattenuti con altri professionisti, a fornire ogni altra informazione che, in circostanze normali, viene acquisita nello svolgimento della prestazione professionale;
- ☐ Il cliente rifiuta di o solleva obiezioni a pagare il prezzo di vendita con bonifico o assegno bancario anche se la somma è superiore a € 15.000
- ☐ Il cliente chiede di modificare condizioni e modalità di svolgimento della prestazione quando la configurazione originariamente prospettata implichi forme di identificazione o registrazione oppure supplementi di istruttoria da parte del professionista
- ☐ Il cliente fornisce informazioni palesemente inesatte o incomplete, tali da manifestare l'intento di occultare informazioni essenziali, soprattutto se riguardanti i soggetti beneficiari della prestazione
- ☐ Il cliente rifiuta di o solleva obiezioni a fornire al professionista il numero del conto sul quale il pagamento è stato o sarà addebitato
- ☐ Il cliente fornisce informazioni palesemente false
- ☐ Il cliente cambia ripetutamente professionisti in un arco breve di tempo senza che i professionisti siano in grado di trovare una spiegazione adeguata per questo comportamento
- ☐ Il cliente ricorre ai servizi di un prestanome senza plausibili giustificazioni
- ☐ Il cliente usa documenti identificativi che sembrano essere contraffatti

Indicatori di anomalia connessi al profilo economico-patrimoniale del cliente

- ☐ I clienti, in assenza di plausibili giustificazioni, richiedono lo svolgimento di prestazioni relative ad operazioni palesemente non abituali e/o non giustificate rispetto all'esercizio normale della loro professione o attività
- ☐ I clienti impiegano disponibilità che non appaiono coerenti con l'attività svolta dagli stessi o comunque non sono in alcun modo giustificate
- ☐ I clienti ricorrono a frequenti operazioni di acquisizione e cessione di partecipazioni in imprese, non giustificate dal proprio profilo economico-patrimoniale o dalla propria professione o attività
- ☐ Le persone giuridiche clienti, pur detenendo un capitale sociale di importo ridotto, acquisiscono a diverso titolo la disponibilità di beni, anche di lusso, di elevato valore, soprattutto con uso di denaro contante

Sezione "F2"
INDICATORI DI ANOMALIA (segue)

Indicatori di anomalia relativi alla dislocazione territoriale delle controparti delle operazioni oggetto delle prestazioni

- ☐ Le prestazioni professionali richieste riguardano operazioni che coinvolgono controparti insediate in paesi esteri noti come centri off-shore o caratterizzati da regimi privilegiati sotto il profilo fiscale o del segreto bancario ovvero indicati dal Gruppo di azione finanziaria internazionale (GAFI) come non cooperativi, e che non siano giustificate dall'attività economica del cliente o da altre circostanze
- ☐ Operazioni inerenti la costituzione ed il trasferimento di diritti reali su immobili, effettuati nei predetti paesi
- ☐ Operazioni di conferimento per la costituzione o l'aumento di capitale - soprattutto se effettuate in contanti e per importi consistenti - di società dislocate nei predetti paesi esteri
- ☐ Operazioni di costituzione di trust o strutture societarie nei predetti paesi.
- ☐ Utilizzazione come soci di società costituite in regime di trust nei predetti paesi
- ☐ Operazioni di trasferimento di partecipazioni o di diritti su quote o azioni, o su altri strumenti finanziari che danno diritto di acquisire tali partecipazioni o diritti, qualora venga interposto un soggetto estero con chiare finalità di dissimulazione
- ☐ I clienti richiedono di effettuare sul conto del professionista operazioni di ricezione/trasferimento di fondi da parte/a favore di controparti dislocate in paesi esteri noti come centri *off-shore* o caratterizzati da regimi privilegiati sotto il profilo fiscale ovvero indicati dal GAFI come non cooperativi
- ☐ Ricerca di finanziamenti sulla base di garanzie, anche rappresentate da titoli o certificati, attestanti l'esistenza di cospicui depositi presso banche estere, specie se tali depositi o finanziamenti sono intrattenuti presso o erogati da soggetti insediati in paesi esteri noti come centri *off-shore* o caratterizzati da regimi privilegiati sotto il profilo fiscale o del segreto bancario ovvero indicati dal GAFI come non cooperativi, in assenza di adeguate ragioni giustificative

Indicatori di anomalia relativi a tutte le categorie di operazioni

- ☐ Il cliente intende regolare i pagamenti con una somma notevole di denaro contante
- ☐ Il cliente intende effettuare operazioni mediante l'impiego di denaro contante o di mezzi di pagamento non appropriati rispetto alla prassi comune ed in considerazione della natura dell'operazione, non giustificate dall'attività svolta o da altre circostanze
- ☐ Il cliente intende effettuare operazioni a condizioni o valori palesemente diversi da quelli di mercato
- ☐ Il cliente ricorre sistematicamente a tecniche di frazionamento delle operazioni non giustificate dall'attività svolta o da altre circostanze
- ☐ L'operazione appare del tutto incongrua rispetto alle finalità dichiarate dal cliente
- ☐ Il cliente richiede una consulenza per l'organizzazione di operazioni di finanza strutturata sui mercati internazionali per esigenze legate ad un'attività commerciale con l'estero di dimensioni evidentemente contenute

Indicatori di anomalia relativi ad operazioni immobiliari

- ☐ Le prestazioni professionali riguardano investimenti in beni immobili effettuati da soggetti del tutto privi di adeguato profilo economico-imprenditoriale o da cittadini stranieri non aventi alcun collegamento con lo Stato
- ☐ I clienti ricorrono ripetutamente alla conclusione di contratti a favore di terzi o di contratti per persona da nominare, aventi ad oggetto diritti su beni immobili, senza alcuna plausibile motivazione
- ☐ Il cliente intende comprare un bene immobile con una somma notevole di denaro contante

Indicatori di anomalia relativi alla costituzione e alla amministrazione di imprese, società, trust ed enti analoghi

- ☐ Le prestazioni professionali richieste riguardano operazioni di natura societaria palesemente rivolte a perseguire finalità di dissimulazione o di ostacolo all'identificazione della effettiva titolarità e della provenienza delle disponibilità finanziarie coinvolte
- ☐ Costituzione e impiego di trust, soprattutto nel caso in cui si applichi una normativa propria di ordinamenti caratterizzati da principi e regole non in linea con le disposizioni antiriciclaggio sammarinesi, in assenza di adeguate ragioni giustificative
- ☐ Costituzione di strutture di gruppo particolarmente complesse e articolate, anche in relazione alla distribuzione delle partecipazioni e alla collocazione all'estero di una o più società
- ☐ I clienti intendono costituire società con capitale in denaro nelle quali figurano come soci persone non imputabili sul piano penale, senza plausibili giustificazioni, ad eccezione delle imprese familiari

Sezione "F3"
INDICATORI DI ANOMALIA (segue)

- ☐ I clienti intendono costituire più società in un periodo circoscritto (un mese), quando almeno uno dei soci di tali società sia la stessa persona fisica o giuridica, e concorrano una o più delle seguenti circostanze:
  - nessuno dei soci e degli amministratori sia residente nel luogo della sede,
  - si tratti di soci o amministratori non conosciuti e residenti in luoghi diversi,
  - concorrano altri fattori che rendano sospetta l'operazione.
- ☐ I clienti intendono effettuare frequenti operazioni di acquisizione e cessione di imprese o di aziende, palesemente non giustificate dalla natura dell'attività svolta o dalle caratteristiche economiche del cliente
- ☐ I clienti intendono costituire ovvero utilizzare una o più società prestanome o comunque interposta, in assenza di plausibili motivazioni
- ☐ I clienti intendono costituire o acquistare una società avente oggetto sociale di difficile identificazione, o senza relazione con quello che sembra essere l'esercizio normale delle attività condotte dal cliente
- ☐ I clienti intendono effettuare conferimenti in società o altri enti con modalità tali da risultare palesemente incoerenti con il loro profilo economico o con le finalità della società o dell'ente conferitario
- ☐ Le prestazioni professionali richieste riguardano il conferimento di incarichi di responsabilità in società o enti a persone sprovviste delle necessarie capacità, palesemente preordinato a disgiungere l'attività decisionale dalla titolarità delle cariche (ad esempio, impiegati senza specifica qualificazione, disoccupati, persone senza particolari titoli di studio o professionali, persone prive di domicilio conosciuto o con domicilio meramente formale, residenti in paesi esteri noti come centri *off-shore* o caratterizzati da regimi privilegiati sotto il profilo fiscale o del segreto bancario ovvero indicati dal GAFI come non cooperativi

Indicatori di anomalia relativi all'utilizzo di conti ovvero di altri rapporti continuativi

- ☐ I professionisti, in ragione delle prestazioni professionali richieste, vengono a conoscenza di modalità di utilizzo di conti o di altri rapporti continuativi da parte del cliente non usuali o non giustificate in ragione della normale attività del cliente o di altre circostanze
- ☐ Il cliente compie successive operazioni di apertura e chiusura di conti in paesi esteri e di altri rapporti continuativi senza che ciò appaia giustificato alla luce di obiettive esigenze o dall'attività svolta
- ☐ Il cliente compie operazioni caratterizzate da un ricorso ingiustificato all'impiego di denaro contante o a tecniche di pagamento mediante compensazione o da elementi quali domiciliazione dell'agente presso terzi, presenza di caselle postali o di indirizzi postali diversi dal domicilio fiscale o professionale
- ☐ Il cliente richiede l'apertura di più conti o rapporti in Paesi esteri senza una giustificazione plausibile
- ☐ Il cliente utilizza conti di soggetti terzi, in particolare di società o enti, per l'impiego o la dissimulazione di disponibilità personali, ovvero utilizza conti personali per l'impiego o la dissimulazione di disponibilità di terzi, in particolare di società o enti.
- ☐ Il cliente utilizza cassette di sicurezza che, in assenza di obiettive ragioni giustificatrici, appare volto ad assicurare l'occultamento delle disponibilità custodite
- ☐ Il professionista è incaricato di effettuare depositi di denaro, beni o titoli, con istruzione da parte del depositante di impiegarli per fini insoliti o non usuali rispetto alla normale attività del cliente

Stampa modulo

Invia tramite posta elettronica

55. INSTRUCTION NO. 2009-08: ENHANCED DUE DILIGENCE PROCEDURES FOR CUSTOMERS RESIDENT OR LOCATED IN COUNTRIES, JURISDICTIONS OR TERRITORIES SUBJECT TO STRICT MONITORING

Preface

This Instruction of the Financial Intelligence Agency is intended – in accordance with the provisions issued by the Financial Action Task Force (FATF) and the MONEYVAL Committee of the Council of Europe to their member Countries and Associations – to raise the awareness of obliged parties on the direct and indirect risks which may arise when business relationships are established or transactions are executed with counterparts resident or located in Countries, jurisdictions or territories subject to strict monitoring by the FATF and MONEYVAL or another international organisation, since the legislation and procedures they have adopted to counter money laundering and the financing of international terrorism clearly do not comply with international standards.

The Financial Intelligence Agency publishes on its website (www.aif.sm) any updating provided by the competent bodies.

Therefore, all obliged parties are urged to regularly consult the Financial Intelligence Agency's website in order to be always updated on the measures that the bodies involved in preventing and combating money laundering and terrorist financing adopt at international level, even through public statements.

This Instruction sets out rules of conduct aimed at preventing or minimising the risks for San Marino obliged parties to be involved in money laundering or terrorist financing transactions in their relations with counterparts located in the aforementioned Countries, jurisdictions or territories.

Article 1 – Addressees

This Instruction is addressed to all Financial Parties referred to in Article 18 of Law no. 92 of 17 June 2008.

Article 2 – Definitions

For the purposes of this Instruction, the definitions referred to in Law no. 92 of 17 June 2008 shall apply.

For the purposes of this Instruction, the expression **"Countries, jurisdictions or territories subject to strict monitoring"** shall refer to Countries, jurisdictions or territories against which the international organisations[2] involved in preventing and combating money laundering and terrorist financing issue public statements or other measures.

Article 3 – Establishment of business relationships or execution of occasional transactions with customers or counterparts resident or located in Countries, jurisdictions or territories subject to strict monitoring

The addressees of this Instruction are urged to use extreme caution when they establish business relationships or carry out occasional transactions with customers or counterparts (with or without legal personality) resident or located in Countries, jurisdictions or territories subject to strict monitoring.

Should the addressees of this Instruction wish to establish business relationships or carry out occasional transactions with said customers or counterparts, enhanced customer due diligence requirements shall be

[2] By way of example, worth mentioning is the FATF or any other FATF-Style Regional Body (FSRB), including the Moneyval Committee of the Council of Europe. For more information in this regard, please visit FATF's website: http://www.fatf-gafi.org/pages/0,3417,en_32250379_32236869_1_1_1_1_1,00.html

adopted in compliance with the rules and principles laid down in Article 27 of Law no. 92 of 17 June 2008.

Article 4 – Execution of transactions in favour of customers or counterparts resident or located in Countries, jurisdictions or territories subject to strict monitoring

Financial Parties shall also observe the enhanced customer due diligence requirements established by Article 27 of Law no. 92/2008 when a customer intends to execute a transaction in favour of one or more customers or counterparts resident or located in Countries, jurisdictions or territories subject to strict monitoring.

In particular, the Financial Parties referred to in Article 18, letters a) and b) which execute electronic transfers of funds shall comply with the provisions set forth by Article 33 of Law no. 92/2008 and Instruction no. 2008-04.

Article 5 – Execution of transactions that originate from counterparts resident or located in Countries, jurisdictions or territories subject to strict monitoring

The requirements envisaged in Article 4 shall also be observed for transactions ordered by customers or counterparts resident or located in Countries, jurisdictions or territories subject to strict monitoring, in favour of customers of San Marino Financial Parties.

Article 6 – Obligations of abstention

If the addressees of this Instruction are not able to fulfil the enhanced customer due diligence obligations envisaged by Article 27 of Law no. 92/2008, they shall refrain from establishing business relationships or carrying out occasional transactions, or shall interrupt them, if already initiated, at the earliest opportunity.

Article 7 – Repeal

This Instruction shall repeal Instruction no. 2009-01 issued on 29 January 2009.

Article 8 – Entry into Force

This Instruction shall enter into force on 6 August 2009.

San Marino, 5 August 2009

56. INSTRUCTION NO. 2009-09: OBLIGATIONS OF CUSTOMER DUE DILIGENCE, DATA REGISTRATION AND SUSPICIOUS TRANSACTION REPORTING TO BE FULFILLED BY "NON-FINANCIAL PARTIES" REFERRED TO IN ARTICLE 19 OF LAW NO. 92 OF 17 JUNE 2008

Preface

Article 4, paragraph 1, subparagraph d), establishes that the Financial Intelligence Agency may issue instructions concerning the prevention and countering of money laundering and terrorist financing.

Purposes

By issuing this Instruction, therefore, the Financial Intelligence Agency lays down specific rules of conduct in relation to customer due diligence, data and information registration and reporting of suspicious transactions, owing to the particular nature of the activities carried out. Such rules of conduct are addressed to the Non-Financial Parties referred to in Article 19 of Law no. 92 of 17 June 2008.

TITLE I
GENERAL PROVISIONS

Article 1 - Definitions

For the purposes of this Instruction, the definitions referred to in Law no. 92/2008 shall apply.

In addition, the following expressions shall mean:

13. **"identification document":** a currently valid document containing the photograph and particulars of a natural person, issued by a domestic or foreign public authority;
14. **"FATF":** Financial Action Task Force;
15. **"identifying particulars":** name and surname, place and date or birth, home address and nationality of an individual;
16. **"nature of the business relationship or occasional transaction":** type and/or basis of the business relationship or occasional transaction;
17. **"occasional transaction"**: any transaction, service or act performed on behalf of customers, outside a business relationship;
18. **"business relationship":** any relationship or service between a non-financial party and a customer, regardless of whether a remuneration is envisaged, the performance of which requires to carry out several transactions;
19. **"register":** an archive created and maintained in paper form, or created and maintained by means of IT systems, in which the non-financial party records and keeps the data and information relating to occasional transactions, business relationships, as well as the identification data of customers and beneficial owners, if any;
20. **"risk":** risk exposure to money laundering and/or terrorist financing;
21. **"purpose of the business relationship or the occasional transaction":** objectives to be achieved by establishing a relationship or conducting an occasional transaction or which the latter are aimed at achieving;
22. **"non-financial parties":** the parties specified in Article 19 of Law no. 92 of 17 June 2008.

Article 2 - Obligations to be fulfilled

Non-financial Parties shall fulfil the following obligations:

6) customer due diligence obligations;
7) recording obligations;
8) reporting obligations;

9) control obligations;
10) requirements for the adoption of internal procedures and controls.

Article 3 - Addressees of obligations

The obligations referred to in Article 2 shall apply to the following Non-financial parties while carrying out their professional activities:

a) office of the co-trustee as defined by Law no. 37 of 17 March 2005;
b) assistance and consultancy on matters of investment services;
c) assistance and consultancy on tax, financial and commercial matters;
d) credit brokerage;
e) real estate brokerage;
f) running of gambling houses and games of chance as set forth in Law no. 67 of 25 July 2000 and subsequent amendments;
g) custody and transport of cash, securities or values;
h) management of auction houses or art galleries;
i) trade in antiques;
j) purchase of unrefined gold;
k) manufacturing, mediation of and trade in, including export and import of precious metals and stones.

TITLE II
CUSTOMER DUE DILIGENCE OBLIGATIONS

CHAPTER I
GENERAL PRINCIPLES

Article 4 - Scope of customer due diligence obligations

Non-financial Parties shall fulfil customer diligence obligations in the cases specified by Article 21 of Law no. 92/2008, namely:

a) when they establish a business relationship;
b) when they carry out occasional transactions or perform professional services for an amount exceeding €15,000, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
c) when there is a suspicion of money laundering or terrorist financing;
d) when there are doubts about the veracity and adequacy of the information and data previously obtained for the identification of customers;
e) when the transaction has an undetermined value or a value which cannot be determined.

The determination of the value of the professional service or the transaction does not take account of the Non-financial Party's remuneration. Receiving a remuneration for the professional activity undertaken or the transaction conducted does not in itself constitute a service for which customer due diligence obligations shall be applied.

For the purposes of determining the value of the transaction, the netting-off of assets and liabilities, payables and receivables, and other debit positions or transactions of any nature relating to the customer is not taken into account. In such cases, the value to be taken into account is the value of each asset, liability, payable, receivable, transaction or position and not the value resulting from their netting-off.

Article 5 – Content of customer due diligence obligations

Non-financial Parties shall carry out, through their own personnel or specially appointed collaborators, as the case might be, the following activities:

a) identification of customers and verification of their identity on the basis of an unexpired identification document or, when this is not possible, on the basis of documents and information obtained from a reliable and independent source;
b) if necessary, the identification of the beneficial owner and the adoption of adequate measures commensurate with the risk to verify the beneficial owner's identity;
c) acquisition of information on the purpose and nature of the business relationship or the occasional transaction;
d) ongoing monitoring of the business relationship, verifying that the transactions concluded over the course of the entire relationship are consistent with the data and information the Non-financial Party has on customers, their economic activities and risk profile, including, if necessary, the source of funds;
e) update of documents, data and information acquired for the fulfilment of customer due diligence obligations.

Article 6 - Fulfilment of customer due diligence obligations through third parties and operating procedures

With regard to the above, please refer to the provisions laid down by the Financial Intelligence Agency in Instruction no. 2009-04.

Article 7 - Exemptions to the application of due diligence obligations

Non-financial Parties shall not be required to fulfil customer due diligence requirements:

- in the cases envisaged by Article 26 of Law no. 92/2008;
- when they carry out the activities of court-appointed expert witnesses, as a result of an appointment made by the Judicial Authority; in such cases, indeed, Financial Parties act as bodies providing assistance to the Judge.

However, suspicious transaction reporting obligations shall always be fulfilled in the cases identified above when the relevant conditions apply.

Article 8 – Risk-based approach

With regard to the above, please refer to the provisions laid down by the Financial Intelligence Agency in Instruction no. 2009-03.

CHAPTER II
IDENTIFICATION AND VERIFICATION OF THE IDENTITY OF THE CUSTOMER AND THE BENEFICIAL OWNER

Article 9 - Identification and verification of the identity of customers

Non-financial Parties shall acquire identification data and other information required by this Instruction from customers and verify, through the acquisition of copies of unexpired identification documents (Passport – Identity Card – Driving Licence) and/or other documents obtained from reliable and independent sources, that these contain the same information and data acquired from the customer.

When the professional service or the transaction is jointly requested by several customers, each of these customers shall be identified.

Where several Non-financial Parties have been jointly requested to provide the professional service or conduct the transaction, each of them shall carry out the identification procedures and verify the identity of the customer.

The identification and the verification of customers' identity may also be performed by relying on Non-financial Parties' own employees or specifically appointed collaborators.

Article 10 - Identification of the beneficial owner

In the cases specified in paragraph 1, subparagraph b) of Article 22 of Law no. 92/2008, namely when customers are not operating on their own behalf, Non-financial Parties shall acquire the identification data of the beneficial owner.

The identification of the beneficial owner shall be performed at the same time as the identification of the customer, except for the cases provided for by Instruction no. 2009-05 and by paragraph 4 of Article 23 of Law no. 92/2008.

Article 11 - Determination of the beneficial owner

With regard to the above, please refer to the provisions laid down by the Financial Intelligence Agency in Instruction no. 2009-05.

Article 12 - Timeline

The identification and verification of the identity of the customer and, at the same time, of the beneficial owner shall be performed by the Non-financial Party before or upon acceptance of the task of establishing a business relationship or executing the occasional transaction.

Non-financial Parties may also identify the customer and the beneficial owner, if any, after accepting the ongoing professional task, at the earliest opportunity, when they consider that the risk of money laundering or terrorist financing is low and if it is necessary not to interrupt the normal conduct of the business.
In such a case, the Non-financial Party shall fulfil customer due diligence obligations within fifteen days from the assignment of the professional task.

Non-financial Parties shall also perform customer due diligence on customers with whom a business relationship established prior to the entry into force of Law no. 92/2008 (23 September 2008) still exists.
Without prejudice to the fact that customer due diligence shall be carried out at the earliest opportunity, it is hereby established that such requirements shall be fulfilled – in any case – within 12 months from the entry into force of said Law no. 92/2008.

Article 13 – Special provisions for Non-financial Parties referred to in Article 19, paragraph 1, subparagraph f) of Law no. 92/2008

Under Article 23, paragraph 5 of Law no. 92/2008, Non-financial Parties carrying out the activities described in Article 19, paragraph 1, subparagraph f) (running of gambling houses and games of chance) shall identify and verify the identity of the customer immediately on entry [into gambling houses], regardless of the amount of gambling chips purchased, sold or exchanged. Therefore, the exemptions specified in the preceding Article shall not be applied.

Article 14 – Procedures for the identification and verification of the identity of natural persons

Non-Financial Parties shall acquire at least the following identification data and other information on their customers:

b) name and surname;
b) date and place of birth;
c) nationality;
d) residence and domicile, if different;

e) profession;
f) type and details of the currently valid identification document or other document obtained from a reliable and independent source.

Article 15 – Procedures for the identification and verification of the identity of companies or entities with or without legal personality

Non-financial Parties shall acquire at least the following identification data and other information on customers when they are companies or entities with or without legal personality (including associations, foundations and trusts):

k) corporate or business name;
l) legal form;
m) economic operator code or other identification code;
n) registration date and number in the Company Register;
o) address of the registered office and the administrative seat, if different;
p) corporate purpose and activities conducted;
q) date of establishment;
r) corporate capital or endowment fund;
s) identification data, type and details of the identification document of the persons appointed to act on behalf of the customer.

For the purposes of verifying the data and information obtained, Non-financial Parties shall acquire the following documents:

c) certificate of good standing, or a duplicate thereof, which is no more than three months old, or an equivalent document;
d) copy of the decision of the general meeting or of the Board of Directors, or of the corporate body with equivalent functions and powers, containing the appointment of and any changes to the persons with powers of signature or management, in order to verify that any acting person is duly authorised.

For companies or entities with or without legal personality not based on San Marino law, Non-financial Parties shall acquire documents equivalent to those listed above accompanied by a sworn and certified translation.
Non-financial Parties may, under their own responsibility, dispense with the sworn and certified translation of documents in English.

Article 16 - Information and documents to be acquired from a sole proprietorship

Non-financial Parties shall acquire, in relation to the owner of a sole proprietorship, at least the following identification data and other information:

g) name and surname;
h) date and place of birth;
i) nationality;
j) residence and domicile, if different;
k) activity conducted;
l) type and details of the identification document.

In relation to the sole proprietorship, Non-professional Parties shall acquire the certificate of registration in the Company Register/ License Certificate, or a copy thereof, or any other document available on the sole proprietorship in accordance with the requirements established for companies in the Article above.

Article 17 - Information and documents to be requested from public administrations

For the fulfilment of simplified due diligence obligations set forth by Article 26 of Law no. 92/2008, Non-financial Parties shall acquire and keep at least the following identification data and other information:

d) name of the business, entity, office or department of public administrations;

e) address of the registered office and the administrative seat, if different;
f) activity conducted.

Non-financial Parties shall acquire copies of the documents authorising the persons acting on behalf of public administrations to operate.

Article 18 - Updating of acquired data, information and documents

In the context of the existing business relationships with their customers, Non-financial Parties shall update the data, information and documents obtained from customers at least every 12 months.

Article 19 – Customer's obligations

In accordance with the provisions of Article 22, paragraph 2 of Law no. 92/2008, customers shall be required to provide, under their own personal responsibility, all necessary and updated data and information in writing, so that Non-financial Parties are able to fulfil the requirements laid down by the Law.

TITLE III
RECORDING OF DATA AND INFORMATION

Article 20 - General principles / introduction

As established in Article 34 of Law 92/2008, obliged parties (including, therefore, Non-financial Parties) shall record the data and information acquired to fulfil customer due diligence obligations and keep such records and copies of the documents acquired for at least five years from the closure of the business relationship, or execution of the occasional transaction, or performance of the professional service.

All data, information and documents recorded and kept shall be made available without delay to the Financial Intelligence Agency for the performance of the functions assigned by law.

Subject, therefore, to the provisions of Article 21 below, Non-financial Parties shall be able to respond promptly and fully to any request of the Agency aimed at determining, in particular, whether they have had relationships with certain customers over the last five years and the nature of such relationships.

Article 21 - Anti-money laundering register

Non-financial Parties shall record the data and information set out below in a specific Anti-money laundering Register in paper form, which may consist of loose-leaf sheets, provided that they are duly numbered and initialled on each page by the Non-financial Party or a collaborator or an employee authorised in writing, with the last sheet showing the number of pages that make up the register and bearing the signature of the aforesaid persons.

The Register shall be kept in an orderly manner and be clearly legible, without blank spaces and erasures; consultation of the Register and data search shall be easy.

Non-financial Parties may also record data and information in an electronic register. In such a case, they shall ensure the continuity and updating of records, the inability to amend or delete the records without keeping a trace of the actions taken, and the possibility to reconstruct the historical data and the chronological order of the records.

The Register shall contain at least the following information:

12) unique sequence code (USC), or an equivalent code, containing the year of establishment of the business relationship or of the performance of the occasional transaction/professional service (date/customer code);
13) date of establishment of the business relationship or performance of the occasional transaction/professional service;
14) date of closure of the business relationship;
15) type of professional service/transaction;
16) amount or value of the object of the professional service, if defined;
17) customer's particulars or business name;
18) particulars of the beneficial owner, if any;
19) type of documents acquired;
20) notes, if any.

If customers are companies or entities with or without legal personality, the register shall also contain:

21) the legal representative's particulars;
22) the particulars of any natural person acting on behalf of the customer other than the legal representative.

The Register shall be kept in an orderly manner, ensuring the transparency and clarity of information, as well as easy accessibility, search and processing of data.

Records shall be kept in accordance with the chronological order of the services, so that their historical reconstruction is feasible.

The Non-financial Party, even by formally adopting relevant procedures, shall preserve the confidentiality of the information contained in the Register and ensure the integrity over time of the data entered, recorded and kept therein.

Article 22 – Special provisions for Non-financial Parties referred to in Article 19, paragraph 1, letter f) of Law no. 92/2008

Under Article 23, paragraph 5 of Law no. 92/2008, Non-financial parties which carry out the activities described in Article 19, paragraph 1, letter f) (running of gambling houses and games of chance) shall also register, besides the identification data of the customer, any transaction of purchase or exchange of gambling chips or other means of gambling for amounts of or exceeding € 2,000.

Article 23 - Timeline for registration

Pursuant to Article 34, paragraph 3 of Law no. 92/2008, the data and information referred to in Article 20 above shall be recorded within five days from their acquisition. Public holidays are not included in the calculation of the number of days.

Article 24 - Customer Record Card

In order to facilitate the registration of the data and information acquired while performing customer due diligence, Non-financial Parties may use a Customer Record Card, in place of the Anti-money laundering Register referred to in Article 21. Such card shall be prepared by the individual Non-financial Party or by its relevant Professional Association.

In order to be considered as a document replacing the Anti-money laundering Register, the customer record card shall, however, contain all data, information and elements specified in aforementioned Article 21.

The originals of the customer record cards shall be kept in a centralised and restricted archive kept by each individual Non-financial Party.

If the Non-financial Party has to provide several professional services/transactions for the same customer, without a clear connection between them, or a new professional service/transaction for a customer on whom customer due diligence obligations have already been fulfilled for a different professional service/transaction, the Non-financial Party shall nevertheless complete the customer record card with a new USC, or an equivalent code.

The data and information obtained in the context of a business relationship shall be updated by filling in a new customer record card, when such data and information are different from those previously acquired.

In the event of updates, where the type of business relationship has not changed or been renewed, the Non-financial Party may use the previously assigned USC, or an equivalent code, being only required to write down "update of the USC no. xxx of xxx" as a note.

TITLE IV
CONTROLS

Article 25 - Ongoing control

Ongoing control shall consist of monitoring, in the context of a business relationship, the customers' activity in order to verify its consistency not only with the data and information acquired and verified, but also with the knowledge and ongoing assessment of the customer's risk profile.

In particular, monitoring shall be enhanced in business relationships where customers have a higher risk profile.

Even when implementing simplified customer due diligence measures, the Non-financial Party shall conduct ongoing monitoring on customers' activity in order to assess any changes in the risk profile associated with said customers.

A number of basic suggestions for the performance of ongoing monitoring are provided as an example below:

- periodically request in writing from the customer - within a timeline to be established on the basis of the assessment of the current risk profile - the confirmation or any change in the data held by the Non-financial Party;
- establish automatic mechanisms for the update of data, for example by noting:
    - the expiry of the identification documents,
    - the deadline for the renewal of the term of office of company officers;
    - any deadline connected to agreements or deeds;
    - other elements considered useful by the Non-financial Party;
- arrange meetings with the customer when critical situations arise (entry into the high-risk category);
- training personnel so that they can provide information useful for the assessment of the risk profile;
- record all information acquired during the preliminary meetings and the performance of the professional services/transactions.

With reference to the activities listed above and the ongoing control, the following observations should also be taken into account:

1) the type and frequency of updates shall be proportional to the size of the activity carried out by the Non-financial Party and the procedures adopted by it;
2) for larger Non-financial Parties it may be appropriate to appoint a person responsible for the monitoring activities;
3) the activities undertaken for monitoring purposes should be documented as far as possible and the Non-financial Party's remarks together with the date they were made should be recorded in a file;
4) the control performed by the Non-financial Party shall take place on the basis of the information acquired in the context of the professional service provided or as a result of the assignment of the professional task, as there is no requirement to perform any other additional investigation.

Obviously, depending on the results of the control, the Non-financial Party may take one of the following actions:

1) maintenance of the level of ongoing control of the customer;
2) update of the customer's file through the acquisition of further documentation;
3) amendment of the risk profile and, consequently, the control frequency;
4) amendment of the type of customer due diligence obligation assigned to the customer (simplified, enhanced or ordinary).

Article 26 - Internal controls

Non-financial Parties shall perform internal controls to verify the correct fulfilment of anti-money laundering obligations.
Internal controls shall relate in particular to the procedures for customer due diligence, registration and maintenance of information, detection and reporting of suspicious transactions.
Controls shall be continuously performed, even on a periodic basis or with reference to specific cases. The extent and frequency of controls shall be commensurate with both the size and complexity of the organisational structure and the activities conducted by the Non-financial Party.

Non-financial Parties, if necessary with the support of Professional Associations, shall adopt the necessary training measures so that their employees or collaborators are able to use the information held to have adequate knowledge of customers and to report any suspicious or anomalous situation to the Non-financial Party.

TITLE V
REPORTING OBLIGATIONS

Article 27 - Suspicious transaction reporting

With regard to the provisions of Article 36 of Law no. 92/2008, Non-Financial Parties shall report, without delay, any transaction, even if not executed, that, because of its nature, characteristics, amount, or in relation to the economic capacity and activity carried out by the customer to which it is referred, or for any other known circumstances, rouses suspicion that the economic resources, money or funds used in the said transaction may derive from the offences of money laundering or terrorist financing or may be used to commit such offences.

In this regard, please see Instruction no. 2009-07 of the Financial Intelligence Agency.

Article 28 - Countering terrorist financing

The Financial Intelligence Agency publishes on its website (www.aif.sm/misure restrittive/liste consolidate vigenti) the lists of parties subject to restrictive measures imposed by international organisations.

When establishing a business relationship or executing an occasional transaction with customers, Non-financial Parties shall verify whether their customers are included in the lists and, if this is the case, immediately report to the Financial Intelligence Agency. Such verifications shall also be carried out in the context of the ongoing control of business relationships. Even in this case, if a customer results to be included in said lists, such information shall be immediately reported to the Agency.

In any case, when Non-financial Parties suspect that the transactions ordered or carried out by customers, including those not included in the aforementioned lists, are aimed at financing international terrorism, they shall immediately make a report to the Agency, by using the reporting form enclosed with Instruction no. 2009-07.

Article 29 - Entry into Force

This Instruction shall enter into force on 1 September 2009.

San Marino, 5 August 2009

57. INSTRUCTION NO. 2009-10: DATA AND INFORMATION TO BE REGISTERED AND KEPT UNDER ARTICLE 34 OF LAW NO. 92 OF 17 JUNE 2008

DATA AND INFORMATION TO BE REGISTERED AND KEPT UNDER ARTICLE 34 OF LAW NO. 92 OF 17 JUNE 2008

Preamble

This measure is issued in implementation of Article 95, paragraph 2, letter f), of Law no. 92 of 17 June 2008. Under this Article, the Financial Intelligence Agency shall issue Instructions on data and information to be registered and kept in accordance with Article 34, paragraph 1 of said Law as well as, more generally, on the basis of the functions referred to in Article 4, letter d) of the above-mentioned Law in implementation of the obligations envisaged by Article 34.

In compliance with the legislation and supervisory rules in force prior to Law no. 92 of 17 June 2008, addressees already register any data, information, transaction and established/terminated business relationship connected with the relations established with customers in their basic information/accounting systems.

The instructions specifically issued to register mandatory data and information under aforesaid Article 34 are described below.

TITLE I
GENERAL PROVISIONS

Article 1 – Addressees
1. This Instruction shall apply to the following financial parties:
- Banks, management companies and insurance undertakings referred to in Article 18, paragraph 1, letter a) of Law no. 92 of 17 June 2008;
- the Central Bank of the Republic of San Marino, in the cases established by Article 18, paragraph 1, letter b) of Law no. 92 of 17 June 2008.

Article 2 – Definitions
1. For the purposes of this Instruction, the definitions referred to in Law no. 92 of 17 June 2008 shall apply.

2. In addition, by the following terms are meant:
"**Anti-money laundering Electronic Archive**" or "**Archive**": an archive composed of and managed through electronic systems, where addressees shall record, in chronological order, the establishment and termination of business relationships, transactions, even fractioned or occasional, identification data of customers and executors and relevant details of identity documents.
"**Customer Code**": a combination of letters univocally and permanently identifying a customer registered in the basic information system of an addressee.
"**Data confirmation**": procedure through which registrations in the Archive are confirmed.
"**Identification data**":
- Natural persons: name, surname, place and date of birth, address of residence, citizenship;
- Companies or Entities with or without legal personality: business name or corporate purpose, legal form and address of the registered office.

"**Executor**": a person that establishes or terminates business relationships or carries out transactions, even fractioned or occasional, on his/her own behalf or on behalf of a customer, duly authorised through a proxy or a power of attorney. For instance, the executor is the person putting a signature, as a receipt of payment or confirmation, on forms or notices of payment prepared by obliged parties. A sine qua non condition to be acknowledged as an executor is to be physically present before the operator entrusted by one of the parties referred to in Article 1 of this Instruction, with whom the business relationship shall be established or the occasional transaction shall be carried out.
"**Details of the identity document**": type, number, date and place of issue, issuing authority and expiry date.

"**Law**": Law no. 92 of 17 June 2008 "Provisions on preventing and combating money laundering and terrorist financing" and subsequent amendments and supplements.
"**Means of payment**": cash, bank and postal cheques, bank drafts and other cheques that are similar or can be considered equivalent, such as certified cheques, postal orders, credit or payment orders, credit cards and other payment cards and any other instrument allowing to transfer, move or acquire, even electronically, funds, financial values or assets.
"**Transaction**": the transfer or movement of means of payment.
"**Fractioned transaction**": a transaction whose total amount exceeds € 15,000 or the equivalent value in a foreign currency, composed of several transactions, individually equal to or below said amount, carried out within a period of seven calendar days, including the date of the last transaction executed. For the purposes of calculating the total amount of fractioned transactions, transactions with an amount lower than € 5,000 shall not be considered.
"**Anti-money laundering Pre-archive**" or "**Pre-archive**": a function envisaged in the general anti-money laundering computer application, to accumulate fractioned transactions and carry out compliance controls prior to the final confirmation of data, business relationships and transactions of customers.
"**Basic information system**": all computer/accounting programs used by addressees to perform their own activities.

TITLE II
REGISTRATION OF DATA AND INFORMATION ON CUSTOMERS, BUSINESS RELATIONSHIPS AND TRANSACTIONS IN THE BASIC INFORMATION SYSTEM

Article 3 – General principle
1. Article 34 of the Law provides as a general rule that addressees shall register:
a) data and information acquired to fulfil customer due diligence requirements and they shall keep such records;
b) documents and records of business relationships, occasional transactions or services provided.

Article 4 – Data and information on customers to be registered
1. Addressees shall register at least the following data and information in the basic IT system:
a) identification data of customers and executors;
b) details of the identity document, for customers who are natural persons and executors;
c) identification data of the beneficial owner and relevant details of the identification document;
d) single identifier code for customers and executors (Social Security Institute number for natural persons, Economic Operator Code for legal persons or equivalent codes for non-resident persons);
e) purpose and nature of the business relationship or occasional transaction.

2. For the purpose of a correct fulfilment of customer due diligence requirements, the following information, acquired through questionnaires in use, shall also be registered in the basic information system, by preferably using tables provided therein:
a) Customer's profession/main business activity;
b) geographic area where the business activity is mainly conducted;
c) qualification of the customer as a "politically exposed person" (so-called PEP), if the case;
d) risk level assigned to the customer.

Article 5 – Further data and information obtained on customers
1. Addressees already operate to obtain additional elements and information necessary to assess customers for purposes that might be different from preventing and combating money laundering and terrorist financing, by extrapolating them from external databases or acquiring information and references from third parties. Therefore, it is necessary that also these elements and information, for the purposes of a proper and complete customer risk assessment, are included in a "customer profile" which shall be available in an electronic format to authorised personnel, in particular to the compliance officer, and to the Financial Intelligence Agency.

Article 6 – Data and information on business relationships and transactions to be registered
1. Addressees shall register all business relationships, transactions executed therein and occasional transactions in the basic information system.

Article 7 – Time for acquiring and registering data and information on customers, business relationships and transactions

1. The data and information referred to in Articles 4 and 6 shall be timely registered in the basic information system and in any case within the fifth working day following their acquisition.

2. For existing customers, addressees shall complete the registration of the data and information referred to in Article 4, already acquired through questionnaires or other manners, in the basic information system by and not later than 31 December 2010.

TITLE III
ANTI-MONEY LAUNDERING ELECTRONIC ARCHIVE

CHAPTER I
CREATION, CHARACTERISTICS AND KEEPING OF THE ANTI-MONEY LAUNDERING ELECTRONIC ARCHIVE

Article 8 – Creation of the Anti-money laundering Electronic Archive

1. Addressees of this Instruction shall be equipped with an Anti-money laundering Electronic Archive where all data and information obtained shall be kept in a centralised system.

2. The Anti-money laundering Electronic Archive shall be adopted in order to:
a) put the business relationships established with addressees and transactions, even fractioned or occasional, executed in the course of time on behalf of customers in chronological order;
b) facilitate monitoring and control of business relationships and transactions envisaged by the Law and Instructions.

Article 9 – Technical characteristics of the Anti-money laundering Electronic Archive

1. The Anti-money laundering Electronic Archive shall be managed and kept by any addressee, in accordance with the provisions of this Instruction.

2. The electronic recording system adopted shall guarantee that the Archive is permanently kept and is undamaged. It shall also ensure it is not possible to modify or cancel data, without keeping a trace of them and shall provide for the possibility to reconstruct data and information registered therein in chronological order.

3. Addressees shall set up adequate security profiles to have access to the data stored in the Archive. These profiles shall provide for different functions assigned to the staff (data allocation; data visualization; data correction/cancellation), by establishing suitable control and tracking systems for the activities carried out.

4. In order to properly calculate fractioned transactions and control, if necessary, the compliance and accuracy of the data entered, addressees shall be allowed to temporarily store documents relating to business relationships and transactions in a provisional archive, defined as “Anti-money laundering Pre-archive”, on the basis of the functions envisaged by the respective anti-money laundering computer systems in use. This Pre-archive shall, however, be managed within the general anti-money laundering computer system, have the same characteristics and functions of the Archive, of which it shall be necessarily a part.

5. Addressees shall register transactions, according to the transaction codes envisaged in their basic information system. When transactions are registered in the Archive, the aforesaid transaction codes shall comply with the list of detailed transactions codes specified in Annex 1 .

6. If an addressee offers new products or services to its customers, it shall inform the Agency in advance, in order to include such products and services in the appropriate category of the existing tables for proper registration in the Anti-money laundering Electronic Archive.

Article 10 – Outsourcing of Anti-money laundering Electronic Archive keeping

1. In order to ensure the proper functionality of the anti-money laundering software, with the exception of data modification, addressees may rely on an autonomous outsourcer having its operational centre in the Republic of San Marino, provided that they have direct and ongoing access to the Archive and its functions. The outsourcing activity shall comply with relevant supervisory rules in force. The ultimate responsibility for properly keeping the Anti-money laundering Electronic Archive shall remain with the addressees.

2. The outsourcer shall ensure that the Anti-money Laundering Electronic Archive is separate from other archives that might be kept by the same outsourcer.

3. Addressees shall ensure that the Financial Intelligence Agency has immediate access to the Anti-money laundering Electronic Archive and its functions.

Article 11 – Internal controls
1. In defining internal control procedures, the addressees of this Instruction shall formally identify the organisational unit or the person entrusted with the controls over the accuracy of the data entered into the Archive and any supplement or correction of incomplete or wrong transactions, by giving specific instructions on the modalities to be adopted to ensure the reconstruction of the activities conducted.
With regard to banks, the above-mentioned actions and controls shall be specifically assigned to the compliance officer, in accordance with Regulation on savings collection and banking activity no. 2007/07, issued by the Central Bank.

2. Addressees shall establish appropriate periodical internal control procedures aimed at ensuring proper keeping and functionality of the Anti-money laundering Electronic Archive. A relevant internal regulation shall be issued in relation to the periodicity of such controls. It shall, however, envisage a control at least every six months. In any case, these controls shall also be carried out if particular circumstances arise, such as software installation or modification, reporting of errors or deficiencies in detection applications for the purposes of anti-money laundering monitoring. The unit or person entrusted with internal controls shall officially document this activity of verification.

3. If it is necessary to correct data and information already registered in the Anti-money laundering Electronic Archive, addressees shall make the corrections, by using the functions of the information system devised to leave traces of the corrections made and relying on the unit and persons referred to in paragraph 1 above. Addressees shall be able to document immediately any change to the data. These actions shall be considered extraordinary, subject to the prohibition against material cancellation of registrations, though wrong.

Article 12 – Usability of the Anti-money laundering Electronic Archive
1. With a view to allowing the extraction of data to be used by the compliance officer and the Financial Intelligence Agency, addressees shall have access to functions of data and information extraction from the Archive, on the basis of a number of parameters that can be combined (for instance, customer code, transaction date, transaction amount, transaction code, executor code, business relationship number, customer's or executor's address). In this way, they can draft reports where they might identify unusual characteristics of transactions and customers.
Minimum functionalities of the extractor requested are specified in Annex 2.

2. These elaborations shall be exportable electronically in the formats requested by the Financial Intelligence Agency.

CHAPTER II
REGISTRATION OF BUSINESS RELATIONSHIPS

Article 13 – Registration of business relationships in the Anti-money laundering Electronic Archive
1. The establishment and, if the case, the termination of business relationships shall be registered chronologically in the Anti-money laundering Electronic Archive. The registration requirements shall be applied to the customer and to any executor other than the customer.

2. Minimum data to be registered in the Anti-money laundering Electronic Archive shall include:
a) type and status (establishment or termination) of the relationship with a comprehensive description, which might be easily understood and consulted;
b) business relationship identifier code;
c) data of business relationship establishment and termination;
d) Customer Code, customer's identification data, with the possible exclusion of information on citizenship, as well as the details of the customer's identity document when the customer is a natural person;
e) Customer Code, identification data of the executor, with the possible exclusion of information on citizenship, as well as the details of the executor's identity document;
f) single registration number in the Anti-money laundering Electronic Archive.

3. Setting up and termination of proxies or powers of attorney to operate a business relationship shall be registered as autonomous business relationships, indicating the business relationship number to which the proxy refers as the information requested in letter b) of the previous paragraph.

Article 14 – Exemption from the registration of business relationships
1. Addressees shall not be required to register the following business relationships established with their customers in the Anti-money laundering Electronic Archive:
a) business relationships deriving from contracts of insurance in respect of damage;
b) underwriting of bond issues;
c) business relationships with buyers of electronic money, provided that it is stored on non-rechargeable instruments;
d) grant of funding in any form;
e) business relationships relating to securities assets management, when these relationships are moved from/for ordinary current accounts.

2. Business relationships in which the customer is a public administration shall not be required to be registered.

3. Business relationships where the customer is a bank shall not be registered, even if the bank is established in a State applying obligations equivalent to those envisaged in the Law and providing for the supervision and control of the requirements to prevent and counter money laundering and terrorist financing.

Article 15 – Timing for the registration of business relationships
1. Data and information related to business relationships shall be timely registered in the Anti-money laundering Electronic Archive – or in the Pre-Archive – and, in any case, within the fifth working day subsequent to the establishment of the business relationship or the termination thereof. They shall also be confirmed within thirty days following their registration in the Archive. Furthermore, the original chronological order of the dates on which individual transactions were executed shall be kept.

CHAPTER III
REGISTRATION OF TRANSACTIONS

Article 16 – Registration of transactions in the Anti-money laundering Electronic Archive
1. Addressees shall record any transaction of customers, even fractioned or occasional, exceeding € 15,000. The types of transactions subject to registration requirements are specified in Annex 1 to this Instruction.

2. Transactions in a foreign currency shall be registered in the equivalent value in Euro, at the exchange rate of the day on which they were executed.

3. The customer shall be subject to registration requirements, even though the transactions are related to several business relationships held by him/her and are carried out by different executors.

4. Clearing of transactions with the opposite sign and carried out by the same customer shall be prohibited.

5. Minimum data to be registered in the Archive shall include:
a) detailed transaction code and description (see Annex 1);
b) date of transaction execution;
c) amount of the transaction carried out;
d) business relationship number, if the transaction applies to a business relationship;
e) Customer Code, customer's identification data, with the possible exclusion of information on citizenship, and details of the customer's identity document, if the customer is a natural person;
f) Customer Code, executor's identification data, with the possible exclusion of information on citizenship, and details of the identity document;
g) single number of the transaction registration in the Archive;
h) number linking accumulated fractioned transactions with each other;

6. Besides what mentioned above, if funds are transferred electronically, addressees - payment service providers - shall register data and information obtained on the transferor or the beneficiary under the Instructions in force and, in addition, the following data on the payment service provider of the foreign transferor or beneficiary:
a) name of the provider;
b) single provider code (ex. BIC code);
c) State where the provider from which funds come or to which funds are allocated is established.

Article 17 – Calculation of fractioned transactions

1. Every single customer (Customer Code) shall be subject to registration requirements for fractioned transactions, whether this registration is related to a business relationship or the execution of occasional transactions, regardless of who carries out the transaction. Calculation shall be made by putting together transactions of the same sign (debit and credit separately).

2. With a view to calculating the total amount of fractioned transactions, the addressee shall include additional transactions that might be carried out on the same day when the threshold of € 15,000 is exceeded.

3. For a proper calculation of the fractioned transactions, addressees shall adopt IT instruments and adequate organizational measures to identify and record transactions carried out by the customer at the headquarters or with subsidiaries.

4. For the transactions recorded in the Archive through detailed transaction codes "DD" and "DA" (referred to in Annex 1), addressees shall not be required to calculate fractioned transactions, subject to the registration obligation only for the transactions individually exceeding € 15,000, by using the table parameters elaborated by the computer application.

5. Addressees shall not be required to keep fractioned transactions that are not subject to accumulation procedures in the Archive.

6. In the framework of their organizational independence and for reasons pertaining to the fight against money laundering and terrorist financing, addressees shall be authorised to identify transaction and amount categories which are non significant to detect fractioned transactions. In case of an unjustified registration of redundant transactions with respect to the ways fractioned transactions are established, addressees shall be able to extract data, upon request of the Agency, on the basis of the parameters specified in this Instruction.

Article 18 – Exemption from the registration of transactions
1. Transactions, even fractioned, carried out within the business relationships mentioned in Article 14, shall not be subject to registration.
2. Transactions from/for exempted business relationships shall not be registered.

Article 19 – Timing for the registration of transactions
1. Transactions shall be timely recorded in the Anti-money laundering Electronic Archive – or in the Pre-archive – and, in any case, within the fifth working day subsequent to their execution. They shall be confirmed within thirty days following their registration in the Archive. Furthermore, the original chronological order of the dates on which individual transactions were executed shall be kept.
2. In order to register the total amount of fractioned transactions in the definitive Anti-money laundering Electronic Archive, the time limit for data confirmation, referred to in the preceding paragraph, shall run from the date on which the last transaction calculated in the total amount was carried out.

TITLE VI
FINAL PROVISIONS

Article 20 – Training and internal controls
1. Addressees shall ensure adequate training to their staff and assistants and develop and organise adequate internal controls to ensure that the obligations envisaged in this Instruction are properly fulfilled.

Article 21 – Use of data and information on customers
1. Data and information relating to customers acquired to fulfil customer due diligence obligations, as well as relevant data on business relationships, transactions, even occasional or fractioned, shall be made available not only to the Agency, but also to the Central Bank in the performance of supervisory functions.

Article 22 – Sanctions
The violation of the registration obligations applied by the Law and this Instruction shall be punished with the sanctions envisaged by Article 62 of Law no. 92 of 17 June 2008 and subsequent amendments and supplements.

Article 23 – Entry into force and repeals

1. The provisions referred to in this Instruction shall apply to all customers, business relationships and transactions established from 1 January 2010, beginning from 1 January 2010.

2. Any need for derogation shall be reported to the Agency and be duly justified.

3. From the entry into force of this Instruction, the provisions in conflict and, in particular, Circular no. 26 of 27 January 1999 of the former Office for Banking Supervision shall be considered repealed for all addressees.

San Marino, 3 December 2009

Annexes:
Annex 1 – List of detailed transaction codes
Annex 2 – Technical characteristics of the parametric extractor referred to in Article 12

Annex 1 to Instruction FIA 2009-10

CONSISTENCY CRITERIA BETWEEN DETAILED TRANSACTION CODES AND ENTRIES

		Sign	Entry	Sign	Entry
Detailed transaction code	Detailed transaction code description	Transaction carried out on the account		Transaction carried out at the counter	
3	Automatic cash deposit or cash dispenser at the counter	C	2		
4	Automatic cash deposit. other institution at the counter	C	2		
5	Withdrawal through the same intermediary - ATM	D	3		
6	Credit against pre-authorized debit on account	C	12		
7	Credit against pre-authorized debit on account or at the counter	C	12		
10	Issue of circular cheques and securities similar to money orders	D	9	D	9
13	Debit for cheque cashing[3]	D	5		
14	Extracted coupons, dividends, and premiums	C	26	D	27
15	Funds redemption (loans etc.)	D	23	D	9
26	Order in favour of ….[4]	D	17	D	17
29	Credits or proceeds (RI.BA. Bank receipt)	C	12	D	13
30	Credits or proceeds subject to final payment	C	12	D	13
31	Withdrawn bills	D	13	C	12
32	Called back bills	D	13	C	12
44	Debit or payment for the use of documentary credit abroad	D	19	C	18
47	Credit or proceeds for the use of documentary credit in Italy	C	18	D	19
48	Bank transfer for order and account[5]	C	16	C	16
51	Issue of traveller's cheques	D	9	D	9
52	Withdrawal through branch withdrawal forms	D	3		
53	Charge for the use of documentary credit in Italy	D	19	C	18
56	Proceeds from notes or cheques in Liras and/or foreign currency after collection	C	12	D	13
64	Credits or proceeds discounted bills	C	12	D	13
72	Credit or proceeds for the use of documentary credit abroad	C	18	D	19

[3]Notes

[3] Envisaged even if the security is used for transactions identified with specific transaction codes.
[4] Complete the registration with the beneficial owner's personal data and his/her intermediary (Bank)
[5] Complete the registration with the originator's personal data and his/her intermediary (Bank)

79	Credit transfer order from another intermediary [3]	C	16		
79	Credit transfer order to another intermediary [2]	D	17		
81	Securities lending take out	C	36		
82	Paying off of securities lending	D	37		
84	Expired or extracted securities	C	26	D	27
91	ATM withdrawal by another intermediary	D	3		
A1	Cashing of circular cheques			D	7
A2	Cashing of one's own cheque	D	3		
A3	Exchange of third party cheques			D	1
A7	Disbursement of different funds and of private loans	C	22	D	23
A8	Withdrawals from simple credits			D	3
AA	Bank transfer from abroad [3]	C	16	C	16
AA	Bank transfer to foreign countries [2]	D	17	D	17
AF	Credit transfer order between accounts bearing different names (same intermediary) beneficiary [3]	C	16		
AF	Credit transfer order between accounts bearing different names (same intermediary) originator [2]	D	17		
B7	Credit transfer order (same intermediary) originator[6]	D	79		
B8	Credit transfer order (same intermediary) beneficiary	C	78		
BA	Security sale and option to buy securities	C	26	D	27
BB	security Purchase and option to buy securities	D	27	C	26
BE	Underwriting of securities and/or Common Funds	D	43	C	38
BF	Reimbursement of securities and/or Common Funds	C	42	D	39
BI	Disbursement import funding	C	22	D	23
BL	Reimbursement import funding	D	23	C	22
BM	Disbursement export funding	C	22	D	23
BN	Reimbursement export funding	D	23	C	22
BP	Revenues from documented remittances for or from abroad	C	18	D	19
BQ	Payment of documented remittances for or from abroad	D	19	C	18
BR	Securities collected at the counter			D	51
BS	Securities delivered at the counter [5]			C	50
BT	Reimbursement on savings passbooks			D	11
BU	Deposit on savings passbooks			C	10
BV	Termination of certificates of deposit, interest-bearing bonds	C	42	D	39
BZ	Issue of certificates of deposit, interest-bearing bonds	D	43	C	38
C0	Sale of gold and precious metals	C	68	D	69
C1	Inter-deposit transfer of securities (outgoing)[7]	D	53		
C2	Inter-deposit transfer of securities	C	52		

[6] To be used only for credit transfers between accounts bearing the same name.
[7] It only concerns possible bearer securities

	(incoming) [5]				
C3	Securities transfer from another institution [5]	C	56		
C4	Securities transfer to another institution [5]	D	57		
C5	Opening of securities deposits for an account bearing a different name [5]	C	56		
C6	Withdrawal of securities deposits for an account bearing a different name [5]	D	59		
C7	Deposit or delivery of cash and /or bearer securities by banks or branches located abroad	C	62	C	62
C8	Withdrawal or collection of cash and /or bearer securities by banks or subsidiaries located abroad	D	63	D	63
C9	Purchase of gold and precious metals	D	69	C	68
D0	Conversion of Euro banknotes			C	70
D1	Cash deposits	C	2		
D2	Paper titles deposit	C	4		
D3	Paper titles deposit with remainder	C	4		
D4	Deposit of banker's cheque	C	6		
D5	Paper titles and cash deposit	C	8		
D6	Credit or proceeds for derived contracts	C	32	D	33
D7	Debit or payments for derived contracts	D	33	C	32
D8	Termination of life insurances	C	48	D	47
D9	Underwriting of life insurances	D	49	C	46
DA	POS collection	C	72		
DA	Outstanding bank receipts	D	73	C	72
DA	ATM payment or instructions	D	73		
DA	Unpaid or dishonoured bills	D	73		
DA	POS payment	D	73	C	72
DA	Charge for credit card use	D	73	C	72
DA	Different payments	D	73	C	72
DA	Outstanding or dishonoured bank cheques	D	73		
DA	Cash collection (expense accounts "vouchers")			D	73
DA	Documents collection in Italy	C	72	D	73
DA	Documents payments in Italy	D	73	C	72
DA	RI.BA. chargeoff	C	72	D	73
DA	RI.BA. charge-back	D	73	C	72
DA	Capital increase and/or company transactions[8]	C	72	D	73
DA	Capital increase and/or company transactions[9]	D	73	C	72
DA	Occupancy (rent, leasing) and insurance premiums (except for life insurances)	D	73	C	72
DB	Sale of foreign banknotes against Liras (Euros)	C	74	C	74
DC	Purchase of foreign banknotes against Liras (Euros)	D	75	D	75

[8] It concerns customers who receive capital increase.
[9] It concerns customers who underwrite a capital increase.

DD	Unpaid pre-authorised standing order debits	D	79		
DD	Payment of utilities	D	79	C	78
DD	Fees	D	79	C	78
DD	Charges and taxes	D	79	C	78
DD	Fees for safekeeping and custody of valuables	D	79	C	78
DD	Insurance and social security benefits	D	79	C	78
DD	Custody rights and securities management	D	79	C	78
DD	Credit/Proceeds for emoluments	C	78	D	79
DD	Money available for emoluments[10]	D	79		
DD	Implementation payment orders[11]	C	78	D	79
DD	Certified cheques	D	79	C	78
DD	Return of irregular cheques and money orders	D	79		
DD	Implementation collection vouchers[12]	D	79	C	78
DD	Credits or proceeds for discounted direct bills	C	78	D	79
DD	Bank discounts	D	79		
DD	Expenses	D	79	C	78
DD	Revenue stamps	D	79	C	78
DD	Cost cheque books	D	79	C	78
DD	Charges and expenses for securities transactions	D	79	C	78
DD	Charges and expenses for transactions abroad	D	79	C	78
DD	Interests and charges (credit)	C	78	D	79
DD	Interests and charges (debit)	D	79	C	78
DE	Termination of pre-paid cards	C	28	D	83
DF	Issue pre-paid cards (issue/recharge)	D	29	C	82
U1	Cash and bearer securities transfer e.g. Art. 31 of the Law (transferor)			C	66
U2	Cash and bearer securities transfer e.g. Art. 31 of the Law (receiver)			D	67
U2	Delivery of instruments of payment by customers			C	80
U2	Collection of instruments of payment by customers			D	81
U3	Cash deposit (lower than Euro 15,000)	C	76		
U4	Cash withdrawal (lower than Euro 15,000)	D	77		

[10] To be used, as only registration, also for direct payments to different persons/entities.
[11] It concerns customers who receive payments from the Public Administration.
[12] It concerns customers who order payments in favour of the Public Administration.

ANNEX 2 TO INSTRUCTION FIA 2009-10

Technical characteristics of the parametric extractor as mentioned in Article 12

1 . Drawing up of a report based on the following criteria, which can be also be combined:

a) from Customer Code to Customer Code (that is, all);
b) from business relationship to business relationship;
c) from date of transaction to date of transaction;
d) from amount to amount (that is, any amount indicated in the archive);
e) from transaction code to transaction code;
f) from executor to executor (that is, all).

2. In order to ensure that the extracted data are properly interpreted, these reports must bear the essential data on a single line, or on a maximum of two consecutive lines, so as to be able to detect immediately high sums of money, concentrations/clusters or unusual transactions. Here below is a sample string, which is regarded as useful for efficient customer due diligence:

a) Customer code
b) Holder of the business relationship
c) Customer's State of residence code
d) Transaction date
e) Reason
f) Executor
g) Amount.

3. It is important that these reports also provide comprehensive information such as the total extracted data or the mathematical discrepancy among the data extracted for each single customer.

58. INSTRUCTION NO. 2009-11: PROCEDURE FOR IRREGULAR CHEQUES REPORTING UNDER ARTICLE 32 OF LAW NO. 92 OF 17 JUNE 2008

PROCEDURE FOR IRREGULAR CHEQUES REPORTING UNDER ARTICLE 32 OF LAW NO. 92 OF 17 JUNE 2008

Preamble

Article 32 of Law no. 92 of 17 June 2008 envisages that obliged parties which detect violations of the provisions referred to in Article 31 in the course of their activities, shall inform the Agency without delay.

Financial parties already report irregular cheques, drawn on or issued by San Marino banks, in accordance with the legislation and supervisory rules, by using forms introduced prior to Law no. 92 of 17 June 2008 (Laws, Decrees, circulars and instructions issued by the former Office for Banking Supervision).

New specific instructions with which addressees shall comply are issued as follows:

TITLE I
GENERAL PROVISIONS

Article 1 – Definitions
1. For the purposes of this Instruction, the definitions referred to in Law no. 92 of 17 June 2008 shall apply.
2. In addition, by the following terms are meant:
"**Reporting form**": the standard form to be used to report irregular cheques. The form is available on the Financial Intelligence Agency's website.
"**Law**": Law no. 92 of 17 June 2008 and subsequent amendments.
"**Irregular cheque under former Article 31.2**": cheque drawn on a San Marino bank or issued by a San Marino bank, if its individual amount exceeds € 15,000, without bearing the name and surname or the company name of the beneficiary and/or the clause "non-transferable".

Article 2 – Addressees
1. This Instruction shall apply to the obliged parties referred to in Article 17 of Law no. 92 of 17 June 2008.

TITLE II
REPORTING PROCEDURE

Article 3 – Reporting of irregular cheques under former Article 31.2
1. Addressees shall be required to inform without delay the Financial Intelligence Agency of any cheques that have been drawn/issued/negotiated in violation of the provisions referred to in Article 31, paragraph 2 of the Law.
2. Reporting shall be required both for cheques presented to the bank for the negotiation and for credit instruments received from San Marino or foreign correspondents to be cashed.
3. Without the clause "non-transferable" referred to in Article 31.2 of the Law, reporting shall also be required for cheques drawn in favour of the same drawer, or with the indication "made out to self" or "to our favour" or other equivalent forms. For legal persons, the report shall be accompanied by the company stamp both on the drawer's signature and on the signature of endorsement, provided that the amount of these cheques exceeds € 15,000. In this regard, financial parties shall provide their customers with appropriate information, for instance by fixing apposite notices in their main offices.

Article 4 – Methods to fill in a reporting form
1. Addressees shall, without delay and in any case within the third working day following the day on which the violation was identified, complete the reporting form, by using the electronic format available on the Agency's website (www.aif.sm) and send it in accordance with the transmission procedures already implemented for suspicious transaction reporting, by enclosing a copy of the cheque, if possible. The Financial Intelligence Agency shall also receive the report, duly signed by the Compliance Officer, if appointed, or another authorised party, together with a clearly legible double-sided copy of the cheque.

Article 5 – Sanctions
1. Any violation of the obligations referred to in Article 31, paragraph 2 of the Law shall be punished with the administrative sanction under Article 63, paragraph 2 of said Law.
2. Any violation of the reporting obligations referred to in Article no. 32 of the Law shall be punished with the administrative sanction under Article 66 of the Law.

TITLE III
FINAL PROVISIONS

Article 6 – Final provisions
1. Banker's drafts and currency cheques issued by San Marino banks on the basis of relevant correspondence mandates with foreign credit institutions shall be subject to the provisions on combating money laundering and terrorist financing in force in the Countries where their respective drawee entities are established.
2. The reporting obligation shall also apply to cheques directly issued by San Marino banks (drawing cheques and any certified issued instrument), since they are consistent.
3. Failure to specify the clause "non-transferable" shall not prevent *de jure* the payment of the cheque, but it only gives rise to the reporting obligation.
4. Addressees shall not allow to use the clause "for acknowledgement and guarantee" in the negotiation of current account cheques, banker's drafts and similar "non-transferable" instruments in order to materially acknowledge the amount for a third person other than the beneficiary.

Article 7 – Entry into force and repeals
1. The provisions referred to in this Instruction shall be applied beginning from 18 January 2010.
2. Any provision in conflict with this Instruction shall be repealed.

San Marino, 15 December 2009

59. INSTRUCTION NO. 2010-01: CLOSURE AND REPLACEMENT OF 'OMNIBUS ACCOUNTS'

CLOSURE AND REPLACEMENT OF "OMNIBUS ACCOUNTS"

Preamble

Law no. 92 of 17 June 2008 adopted the so-called "risk-based approach" in order to adjust San Marino legislation to the international standards relating to the prevention of money laundering and terrorist financing.

In this methodology, "know your customer" principles are much more important than in the past and they are applied in customer due diligence procedures.

The effectiveness of these procedures must not be undermined by operational practices that could potentially affect the clear determination and identification of the beneficial owner, where necessary.

Besides these aspects, the application of coercive and precautionary measures envisaged by law to ensure deterrent effectiveness and efficiency of prevention rules shall never be delayed or weakened by difficulties in the proper and clear identification of the assets related to a certain party, which are subject to blocking, seizure or confiscation measures imposed by the FIA or the criminal judicial authority. Furthermore, though it is not a remote possibility, the aforesaid provisions, where applied to bank accounts rather than specific amounts or securities valued therein, shall not damage parties that are completely not involved in the facts justifying the measure itself.

In the light of the above, the operational practice of fiduciary companies to use, while carrying out their typical business, the so-called "omnibus accounts" presents some critical points, as recently highlighted by the experts of the International Monetary Fund.

This practice, although it has not been challenged so far, provided that the companies exercising the reserved activity referred to in Attachment 1, letter C) of LISF and holding "omnibus accounts", were given accounting and organisational instruments aimed at ensuring the separation of assets and compliance with the limits set by the trust, cannot be accepted anymore, given the mentioned purposes of the legislation to combat money laundering and terrorist financing, as well as the legislative innovations recently introduced in respect of "due diligence" and the operating requirements of San Marino banks, as laid down by former Decree-Law no. 65 of 14 May 2009.

Article 1 – Definitions

1. For the purposes of this Instruction the definitions referred to in Law no. 92 of 17 June 2008 and Law no.165 of 17 November 2005 (so-called LISF) shall apply.
2. In addition, it is meant by:
   a) **"omnibus accounts":** bank accounts held on a fiduciary basis by companies exercising the reserved activity referred to in Attachment 1, letter C) of LISF, other than ownership accounts, where:
      - liquid assets or financial instruments flow combined,
      - combined transactions of multiple trust agreements are carried out.
   b) **"dedicated accounts":** bank accounts held on a fiduciary basis by companies exercising the reserved activity referred to in Attachment 1, letter C) of LISF, other than ownership accounts, where:
      - only liquid assets or financial instruments flow,
      - only transactions related to a single trust agreement, as identified in the Trust Register, though it is co-registered in the name of multiple settlors, are carried out;
   c) **"own accounts" or "ownership accounts":** bank accounts where:
      - only liquid assets or financial instruments owned by the fiduciary company holding the bank account flow;
      - only transactions pertaining to the company management are carried out.
   d) **"fiduciary company or fiduciary companies":** an obliged party exercising the reserved activity referred to in Attachment 1, letter C) of LISF or a foreign entity authorised to carry out an equivalent activity.

Article 2 – Parties subject to the Instruction and scope

1. This Instruction shall apply to fiduciary companies, as well as banks as far as the fulfilments under this Instruction are concerned.

2. The provisions of this Instruction shall not apply to trusts falling within categories B and C, as defined in uniform letter no. 48/F del 07/02/2005 of the Central Bank.

Article 3 – Provisions on accounts held on a fiduciary basis

1. From the entry into force of this Instruction it is prohibited to open new omnibus accounts.
2. It is prohibited to use ownership accounts in fiduciary activities.
3. Fiduciary companies shall initiate, without delay, the organizational procedures necessary to close omnibus accounts and replace them with dedicated accounts. This task shall be completed within 120 days of the entry into force of this Instruction.

Article 4 – Accounting transparency

1. Any transaction related to individual dedicated accounts shall be consistent with the data contained in the company's accounting books and, consequently, with the transactions of the individual trust.
2. Subject to the provision in the preceding paragraph, it is possible to open more dedicated accounts for the same trust.
3. For each dedicated account, banks shall be required to request, and fiduciary companies shall provide in writing, the code number assigned to the trust corresponding to the bank account in the Trust Register or in a foreign equivalent register. Only fiduciary companies shall be responsible for the truth, accuracy and completeness of the information provided.
4. The communication referred to in the preceding paragraph and concerning new dedicated accounts shall take place by using the form attached to this Instruction (letter A). The form shall also be used for the communications regarding accounts other than those dedicated.
5. The information collected by the bank under paragraph 3 shall be reported in the heading of the dedicated account, so that its fiduciary nature can be easily identified, or, subordinately, in the master record of the account. In both cases, the information shall be subsequently reported in the Basic Information System.
6. The obligations referred to in the previous paragraphs shall be fulfilled regardless of whether or not the bank has exercised the right to fulfil simplified due diligence requirements under Article 26 of Law no. 92/2008.

Article 5 – Reporting to the Financial Intelligence Agency

1. When the time limit specified in preceding Article 3, paragraph 3 expires, banks shall advise, without delay, the Financial Intelligence Agency of any omnibus account which could not be replaced or any information not provided by the fiduciary company, specifying the relevant reasons.
2. The reporting activity referred to in the previous paragraph shall be carried out by using the form attached to this Instruction (letter B).

Article 6 – Accounts held on a fiduciary basis by foreign parties

1. Banks are required to comply with Articles 4 and 5 of this Instruction also with respect to accounts held on a fiduciary basis by parties under foreign law.

Article 7 – Violation

1. The violation of the obligations referred to in this Instruction shall be punished under Article 67 of the Law.

Article 8 – Entry into force and repeal

1. This Instruction enters into force on 15 March 2010.
2. Any provision in conflict with this Instruction shall be repealed.

San Marino, 08 March 2010

Attachment "A" – Instruction no. 2010-01

HEADED PAPER
FIDUCIARY COMPANY

San Marino,

_____

Distinguished
Bank _____

Ref.: Reporting on the account type, former Art. 4.4 – Instruction no. 2010-01

In compliance with the above-mentioned legislation, we report the type:
of the following accounts we hold with your institution as of this date.

of the following new accounts.

BANK ACCOUNT NUMBER	**NATURE OF THE ACCOUNT**[1]	**ACCOUNT TYPE** ***P= ownership account*** ***D= account related to an individual trust*** ***BC= account exclusively relating to several accounts of "B" or "C" typology.***	**TRUST CODE** ***(only for accounts falling within category D)***

Regards.

STAMP AND SIGNATURE

[1] For instance: euro current accounts, currency current accounts, securities deposits, etc.

Attachment "B" – Instruction no. 2010-01

HEADED PAPER
BANK

San Marino, _____

Distinguished

Financial Intelligence Agency

Strada di Paderna, n. 2

47895 Domagnano (RSM)

Ref.: reporting *former Article* 5 – Instruction no. 2010-01

We hereby inform you that once the time limits referred to in Article 3.3 of the aforesaid Instruction expired, the fiduciary company _____:

did not replace the omnibus accounts reported below.

did not provide any information about the type of accounts reported below.

BANK ACCOUNT NUMBER	**NATURE OF THE ACCOUNT** [1]	**ACCOUNT TYPE** ***O= omnibus*** ***NC= unknown***

Regards.

STAMP AND SIGNATURE

[1] For instance: euro current accounts, currency current accounts, securities deposits, etc.

60. INSTRUCTION NO. 2010-02: PROVISIONS RELATING TO CLOSURE OR CONVERSION OF BEARER PASSBOOKS AND OTHER BEARER INSTRUMENTS AND SECURITIES

PROVISIONS RELATING TO CLOSURE OR CONVERSION OF BEARER PASSBOOKS AND OTHER BEARER INSTRUMENTS AND SECURITIES

Preamble

This Instruction is aimed at linking the provisions introduced by Delegated Decree no. 136 of 31 October 2008 and Decree-Laws no. 136 of 22 September 2009 and no. 154 of 11 November 2009.

This Instruction is issued following the inspections carried out in San Marino banks in compliance with Article 5 of Decree-Law no. 136 of 22 September 2009. During such inspections, obliged parties were already provided with operational indications that are described and formalised as follows.

The aforesaid regulations and laws envisage a gradual withdrawal of bearer passbooks and bearer instruments representing savings deposits, as well as the prohibition on the new issuance of such instruments.

With a view to enhancing the effectiveness of the provisions enshrined in Article 31, paragraph 1 of Law no. 92 of 17 June 2008, relating to bearer securities, measures preventing and combating money laundering and terrorist financing are also introduced, with respect to other bearer financial instruments, such as bonds and investment trusts, with the exception of shares, which are already subject to relevant legislation.

Article 1 – Addressees

3. Any party authorised to exercise the reserved activity under Law no. 165 of 17 November 2005.
4. Any party issuing financial instruments, in the cases envisaged by Article 14.

Article 2 – Definitions

1. For the purposes of this Instruction, the definitions referred to in Law no. 92/2008 shall apply.
2. Furthermore, it shall be meant by:
   a) "**other bearer savings deposit instruments**": all bearer instruments representing savings deposits, other than passbooks, including certificates of deposit;
   b) "**different bearer securities**": bearer financial instruments referred to in Attachment 2 of Law no. 165 of 17 November 2005, except for shares;
   c) "**Law**": Law no. 92 of 17 June 2008 and subsequent amendments and supplements.

.

Article 3 – Scope and legislation in force

1. This Instruction shall refer to:
   a) Bearer passbooks;
   b) Other bearer savings deposit instruments;
   c) Different bearer securities.
2. In addition to the Law, the following legislation shall be applied:
   - Delegated Decree no. 136 of 31 October 2008 "Transitional provisions relating to bearer passbooks";
   - Decree-Law no. 136 of 22 September 2009 "Urgent provisions on bearer passbooks";
   - Decree-Law no. 154 of 11 November 2009 "Urgent provisions on savings deposits".

TITLE I

BEARER PASSBOOKS

Article 4 – Provisions relating to closure or conversion of bearer passbooks

1. All passbooks referred to in Article 3.1, letter a), regardless of the balance, shall be closed or converted into nominal accounts:
   a) At the time of the first transaction requested by the customer;
   b) By and not later than 30 June 2010.
2. If on 1 July 2010 there are still bearer passbooks which have not been closed or converted yet, the provisions referred to in Article 7 of this Instruction shall be applied.

Article 5 – Application of customer due diligence requirements

1. The addressees, in relation to the passbooks referred to in Article 3.1 letter a), regardless of their balance, shall fulfil the customer due diligence requirements referred to in Articles 21 and 22 of the Law:
   a) until 30 June 2010, at the time of the first transaction requested by the customer;
   b) after 30 June 2010, at the time of the transaction for the payment of the balance.

Article 6 – Reporting of potential suspicious transactions related to bearer passbooks

1. The transactions involving the withdrawal, closure or conversion of bearer passbooks with a total balance exceeding €15,000.00 (capital and interest) shall be reported to the Compliance Officer as potential suspicious transactions.
2. The addressees shall set out operational processes designed to timely report the transactions referred to in the preceding paragraph to the Compliance Officer.
3. Internal reports shall include elements of assessment on the part of those who are responsible for the reporting unit. These elements represent a first step of analysis for the Compliance Officer, who is required to carry out detailed research and to draw up a description, though concise, outlining the results of his analysis, to be kept in the electronic or hardcopy file of the report.
4. If the conditions to report to the Financial Intelligence Agency under Article 36 of the Law are met, the Compliance Officer shall report without delay, also describing the analysis carried out under the preceding paragraph, and shall apply the provisions referred to in FIA Instruction no. 2009-07. To this end, it shall be pointed out that the closure or conversion of a bearer passbook carried out by a holder other than the person having opened it or the last holder performing transactions through the passbook shall represent an indicator of unusual transactions to be carefully assessed for reporting purposes.
5. If one of the provisions on mandatory canalization referred to in Article 31.1 of the Law is violated, the Compliance Officer shall make a relevant report to the FIA, in accordance with Article 32 of the Law.

Article 7 – Closure by law

1. On 1 July 2010 the parties subject to this Instruction shall identify and close by law all passbooks referred to in Article 3.1 letter a) that still exist, and they shall record the amounts in a non-interest-bearing liability account until the date on which they are effectively returned to the entitled person.
2. The obligation referred to in the preceding paragraph is considered to be fulfilled, by at least creating a hardcopy inventory which analytically reports the data of the passbook closed by law and recorded in accounts, whose total amount shall agree with that one of the corresponding ledger. This inventory shall be attached to the accounting statement for the relevant period.
3. The right to be reimbursed for the amounts held in the deposits closed shall lapse within the special limitation period referred to in Article 149 of Law no. 165 of 17 November 2005, starting from 1 July 2010. Once the limitation period (ten years) expires, addressees shall be required to pay the amounts which have not been returned into the relevant guarantee fund to protect depositors.

TITLE II
OTHER BEARER SAVINGS DEPOSIT INSTRUMENTS

Article 8 – Enforcement provisions relating to bearer instruments representing saving deposits other than passbooks

1. Under and by virtue of Article 2 of Decree-Law no. 154 of 11 November 2009, the other bearer savings deposit instruments the reimbursement of which is envisaged on a due date, also by paying intraperiod regular coupons (i.e. certificates of deposit), may be maintained until maturity, even in consideration of the necessity to ensure financial balance connected with the investments made by addressees in the short and medium term.

Article 9 – Enforcement of customer due diligence requirements

1. Granted that at the time of issuance addressees have already identified, verified and registered the customers holding the bearer instruments referred to in Article 3.1, letter b), regardless of the balance, they shall fulfil the customer due diligence requirements referred to in Articles 21 and 22 of the Law upon reimbursement at maturity.
2. If case of bearer instruments issued prior to the entry into force of the Law and not subject to customer due diligence, addressees shall fulfil the obligation at the earliest possible occasion (for instance, upon coupon detachment), to prevent transactions being carried out through the account without being subject to due diligence procedures. In addition, as provided by the Decrees referred to in Article 3 paragraph 2, addressees shall fulfil such obligations also upon termination of the bearer instrument.

Article 10 – Reporting of potential suspicious transactions related to the termination of other bearer savings deposit instruments.

1. Transactions to terminate the instruments referred to in Article 3.1, letter b), subject to a date of maturity and with a total balance exceeding €15,000.00 (capital and interest), shall be reported to the Compliance Officer as potential suspicious transactions. To this end, addressees shall set out similar operational processes as those already specified in preceding Article 6, paragraph 2.
2. Internal reports shall contain elements of assessment on the part of the Compliance Officer of the reporting unit. Such elements represent the first step of analysis for the Compliance Officer, who shall carry out detailed research and draw up a description, though concise, outlining the results of his analysis, to be kept in the electronic or hardcopy file of the report.
3. If the conditions to report to the Financial Intelligence Agency under Article 36 of the Law are met, the Compliance Officer shall report without delay, also describing the analysis carried out under the preceding paragraph, and shall apply the provisions referred to in FIA Instruction no. 2009-07.

Article 11 – Termination of instruments referred to in Article 3.1 letter b)

1. With regard to the instruments referred to in Article 3.1 letter b), the reimbursement of which is envisaged on a due date, addressees shall record the amounts, time by time, within the working day following the date of maturity, by means of an analytic document, in a relevant non-interest-bearing liability account, other that one of the passbooks referred to in Article 3.1 letter a), until the date on which the amounts are effectively returned to the entitled person.
2. With respect to any instruments referred to in Article 3.1 letter b) without agreed maturity dates, addresses shall terminate them by law on 1 July 2010 and record the amounts in a relevant non-interest-bearing liability account, until the date on which the amounts are effectively returned to the entitled person.
3. The provisions referred to in the preceding paragraphs shall also be applied to instruments already matured and not reimbursed; therefore, addressees shall register the relevant equivalent in the same liability account referred to in paragraph 1 above.
4. The right to be reimbursed for the amounts held in the deposits closed by law or matured shall lapse within the special limitation period referred to in Article 149 of Law no. 165 of 17 November 2005, starting from the date of closure by law. Once the limitation period (ten years) is expired, addressees shall be required to pay the amounts which have not been returned into the relevant guarantee fund to protect depositors.

TITLE III
COMMON PROVISIONS

Article 12 – Elements of unusual transactions

1. The closure or conversion of a passbook referred to in Article 3.1, letter a) or of a different bearer instrument referred to un Article 3.1, letter b) of an unusually large amount against an income and economic background that seems to be inconsistent therewith shall be considered as an element of unusual transactions to be carefully assessed and examined for reporting purposes under Article 36 of the Law.
2. The additional indicators of unusual transactions referred to in FIA Instruction no. 2009-07 shall also be taken into account.

Article 13 – Sanctions

1. With respect to customer due diligence obligations, the provisions referred to in Article 61 of the Law shall be applied.
2. For any other non-criminal violation of the obligations envisaged by the Decrees specified in Article 3.2, the Agency shall apply administrative sanctions from €10,000.00 to €50,000.00 for each violation identified.
3. For any violation resulting from the failure to comply with the provisions of this Instruction, the administrative sanctions laid down by Article 67 of the Law shall be applied.

TITLE IV
DIFFERENT BEARER SECURITIES

Article 14 – Dematerialization of different bearer securities

1. The issuance of bearer financial instruments referred to in Article 3.1, letter c) shall be allowed only in dematerialised form, as a guarantee for the mandatory canalization of the transfers of bearer financial instruments through financial parties, whether San Marino or foreign.

TITLE V
FINAL PROVISIONS

Article 15 – Entry into force

1. This Law shall enter into force on 10 May 2010 only with respect to Article 14 and the part relating to the organisation of internal processes under Article 6 paragraph 2, whereas the other parts serve as clarifications of the law provisions already in force.

San Marino, 30 April 2010

61. INSTRUCTION NO. 2010-03: PROVISIONS IMPLEMENTING FATF SPECIAL RECOMMENDATION III

PROVISIONS IMPLEMENTING FATF SPECIAL RECOMMENDATION III

Preamble

The 9 Special Recommendations of the FATF (Financial Action Task Force) define a framework to combat money laundering and they should be applied at international level. These Recommendations contain the principles lying at the core of the measures implemented by Countries on the basis of their situation and constitutional order.

In particular, specific reference is made to FATF Special Recommendation III "Freezing and confiscating terrorist assets", which states:

Each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organisations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts.

Each country should also adopt and implement measures, including legislative ones, which would enable the competent authorities to seize and confiscate property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations.

Preventing terrorists from using the global financial system to promote criminal activities is essential for the suppression of international terrorism. A key element of the response of the international community has been to adopt preventive measures against the concealment and transfer of funds or assets used to finance terrorism, and to designate individuals and other entities to whom such measures should be applied, by placing them on the lists.

It should be highlighted that any effort aimed at combating terrorist financing could be seriously compromised if Countries did not freeze funds or other assets linked to terrorists in a rapid and effective manner.

In this regard, the FATF has also established some *Best Practices*[15] which should be considered as general guidance for the effective implementation of restrictive measures, in accordance with international standards. The *Best Practices* are not legally binding. However, they are aimed at identifying key elements in implementing targeted sanctions.

In compliance with the international obligations undertaken by the Republic of San Marino to counter terrorism, terrorist financing and the activity of Countries threatening international peace and security, San Marino authorities have been given regulatory instruments and administrative measures aimed at implementing the restrictive measures of the United Nations Security Council resolutions.

In particular, reference is made to Title IV "Measures for preventing, combating and repressing terrorist financing and the activity of States that threaten international peace and security" and, in particular, Article 46 and following of Law no. 92 of 17 June 2008.

Restrictive measures include, inter alia, freezing of funds and economic resources held or controlled, directly or indirectly, by individuals, entities or groups contained in the lists drawn up by the competent United Nations Committees. Article 1, paragraph 1, letter g) of Law no. 92/2008 defines freezing of funds as *the prohibition to move, transfer, modify, dispose, use or manage funds or economic resources, to have access to them in such a way as to modify the entity, amount, location, entitlement of rights, ownership, nature, destination or cause any other change that would permit the use of funds or economic resources, including, for mere illustration purposes, portfolio management, sales, leasing, renting or establishment of real rights of guarantee*.

[15] Cfr http://www.fatf-gafi.org/dataoecd/30/43/34242709.pdf

On 6 October 2008, the Congress of State approved Decisions[16] n. 2 e n. 3 implementing the United Nations Security Council Resolutions, in particular Resolution no. 1267 (1999) relating to individuals and entities associated with Osama Bin Laden, the "Al-Qaida" group or the Taliban, and Resolution no. 1737 (2006) against the Islamic Republic of Iran, as well as their relevant amendments and supplements.

In this context, the Financial Intelligence Agency, in the framework of the tasks assigned by Law no. 92 of 17 June 2008, attaches great importance to the fact that behaviours of all obliged entities are based on the utmost rapidity, uniformity, transparency and cooperation, so that the obligations deriving from higher international principles can be fulfilled.

Purposes

This Instruction is adopted by virtue of Article 4, paragraph 1, letter d), of Law no. 92/2008 and, in the spirit of the said Law, it aimed at strengthening the instruments useful to counter money laundering and terrorist financing, in accordance with the commitments undertaken by the Republic of San Marino at international level.

Article 1 – Addressees

1. The obliged parties referred to in Article 17 of Law no. 92 of 17 June 2008 that hold, control or manage "assets" or "funds", as defined by Law no. 92 of 17 June 2008 and the relevant Technical Annex;
2. Public administrations, in the cases specifically regulated.

Article 2 – Definitions

1. For the purposes of this Instruction, the definitions referred to in Law no. 92 of 17 June 2008 shall apply.

2. In addition, it shall be meant by:
   a) **"CCS"**: the Committee for Credit and Savings;
   b) **"Law"**: Law no. 92 of 17 June 2008 and subsequent amendments or supplements;
   c) **"List"** or **"Lists"**: list of parties (persons, entities and groups) drawn up and amended on a regular basis by the United Nations Security Council or one of its Committees, in accordance with its resolutions implemented or to be implemented by the Republic of San Marino through a relevant Decision of the Congress of State.

TITLE I
GENERAL PROVISIONS

Article 3 – Freezing

1. Freezing is immediately effective on the date of adoption of the Decision of the Congress of State and it shall be applied, without any prior notice, to the party whose assets or funds are subject to this measure.

2. Freezing shall be applied to all assets or funds held, managed or in any way controlled by individuals, entities or groups contained in the Lists, and not only those who can be related to a specific terrorist act, plan or threat.

Article 4- Decisions of the Congress of State relating to restrictive measures envisaged in the United Nations Security Council Resolutions

1. Under Chapter VII of the United Nations Charter, the United Nations Security Council shall adopt resolutions in order to maintain or restore international peace and security, by applying restrictive measures designed to strengthen its own decisions. The restrictive measures envisaged in the Security Council decisions include the preparation of Lists of parties (persons, entities and groups) on whom freezing of funds, assets or other economic resources, or commercial, financial or financial aid restrictions

[16] All Decisions of the Congress of State are regularly published on the website of the Ministry of Internal Affairs at the following link http://delibere.interni.segreteria.sm/

shall be imposed. The Lists are updated by the Security Council or one of its Committees, according to the procedures set forth by the Council itself.

2. Under and by virtue of Article 46 and following of the Law, the Congress of State, upon proposal of the Secretariat of State for Foreign Affairs and the Secretariat of State for Finance and the Budget, shall adopt a decision outlining restrictive measures in accordance with the Unites Nations Security Council resolutions. Any update of the decisions of the Security Council or one of its Committees shall be acknowledged by the Congress of State on a regular basis, by adopting a relevant decision.

Article 5 – Publicity of the Decisions of the Congress of State and the Lists

1. With a view to implementing the provisions of paragraph 6, Article 46 of the Law, the Financial Intelligence Agency shall publish the decisions adopted by the Congress of State and any relevant update in a specific section of its website (www.aif.sm).

2. The Agency has also provided for a direct access to the consolidated Lists published on its website, so that the addressees can consult the Lists updated to the most recent measure adopted by the Security Council or one of its Committees.

3. The Agency shall send the decisions of the Congress of State to addressees, by using the most appropriate means (by registered mail, e-mail, fax or other means).

TITLE II
PROVISIONS RELATING TO ADDRESSEES

Article 6 – Check requirements for addressees

1. Addresses shall adopt internal procedures aimed at verifying, when they receive the communications from the Agency referred to in Articles 4 and 9 of this Instruction, if any of their customers or beneficial owners are included in the Lists.

2. For new customers and relevant beneficial owners, addressees shall adopt internal procedures to check whether the person is included in the Lists upon fulfilment of customer due diligence requirements.

Article 7 – Freezing procedures

1. If it results from the checking activity referred to in the preceding paragraph that a customer or a beneficial owner is included in the Lists, addressees shall freeze assets or funds and adopt any adequate measure to ensure the maintenance of such assets or funds.

2. Freezing shall be applied without delay and without prior notice to customers or beneficial owners subject to the measure.

Article 8 – Reporting to the Agency in the event of customers or beneficial owners included in the Lists

1. If addresses discover that a customer or beneficial owner is included in the Lists, they shall send the form referred to in Annex 1 to the Agency. The form shall be sent to the Agency by means of a registered mail within 48 hours from the discovery and it shall be sent in advance by e-mail to the following address congelamento@aif.sm by and not later than the day of discovery.

2. With a view to complying with Article 48 of the Law, and after having fulfilled the requirements envisaged by the paragraphs above, addressees shall notify to the Agency what specified in paragraph 3 letters a) and b) of Article 48 of the Law by registered mail, by filling in the form referred to in Annex 2.

Article 9 – Custody, administration and management of economic resources subject to freezing

1. Under Article 1, paragraph 2 of Delegated Decree no. 137 of 31 October 2008, the Financial Intelligence Agency shall provide the Law Commission with any information about the frozen assets, as well as the transactions and accounts related to the parties included in the Lists.

2. With respect to custody, administration and management of assets or funds subject to freezing, reference shall be made to Delegated Decree no. 137 of 31 October 2008 "*Regulations for the custody, administration and management of economic resources subject to freezing*".

Article 10 – Internal controls

1. Addressees shall carry out internal controls aimed at verifying that the provisions enshrined in this Instruction are properly complied with. If established, the Board of Auditors shall verify that addressees have implemented effective and efficient internal controls aimed at ensuring compliance with this Instruction.

TITLE III
COMMUNICATIONS CONCERNING RESTRICTIVE MEASURES

Article 11 – Immediate communication of freezing measures

1. In pursuing the main objective of immediacy and effectiveness of freezing measures, the Agency considers necessary to timely inform obliged parties, the Public Administrations keeping public registers and Police Forces of any update of the United Nations Security Council or one of its Committees.

2. To this end, the Financial Intelligence Agency shall notify in advance any update of the resolutions and the communication of the United Nations Security Council or one of its Committees by e-mail.

Article 12 – Presence of customers or beneficial owners in the Lists

1. Any update of the resolutions and the communication of the United Nations Security Council or one of its Committees that are notified in advance by the FIA under the preceding paragraph shall be mirrored in the Decision which the Congress of State shall adopt, without delay, under Article 46, paragraph 1 of the Law. Through this prior notification, addressees are in the position to know "in real time" whether they keep, control or manage assets or funds since, without the decision and until the implementation of a blocking measure on the part of the Agency, the assets or funds of parties included in the Lists would be free and available.

2. Therefore, any time that it is acknowledged that a customer or beneficial owner is included in the Lists, while waiting for the adoption of the decision of the Congress of State, this information shall be immediately reported to the Financial Intelligence Agency (nor later than three hours after discovery) to facilitate the adoption of a timely blocking measure. In this case, the Agency shall request, through the Secretary of State for Finance in his capacity as President of the CCS, an urgent decision to be adopted by the Congress of State. Such a decision shall regard funds or assets blocked by the FIA, so that they can be frozen under Article 46 of the Law.

3. Reporting procedures and the form to be used if customers or beneficial owners are discovered to be included in the Lists are specified in Article 7.

TITLE IV
PROVISIONS RELATING TO STATE ADMINISTRATIONS

Article 13 – State administrations keeping public registers

1. When a State administration that keeps public registers verifies that registered movable or immovable assets belong to parties mentioned in the Lists, it shall immediately inform the Agency, by filling in the form referred to in Annex 3.

2. The communication referred to in the preceding paragraph can be sent beforehand by e-mail to the following address congelamento@aif.sm.

3. Under Article 48, paragraph 2 of the Law, the Agency shall issue a relevant provision requesting that the freezing of registered movable or immovable assets belonging to parties mentioned in the Lists shall be recorded in the public registers.

TITLE V
PROVISIONS RELATING TO THE EXEMPTION FROM OR ANNULMENT OF FREEZING MEASURES AND JUDICIAL PROTECTION

Article 14 – Exemption from freezing of assets or funds

1. Anyone requiring to use frozen assets or funds to meet personal needs or the needs of a relative, may submit a written and reasoned request for exemption, total or partial, from freezing to the Secretary of State for Finance in his capacity as the President of the Committee for Credit and Savings. The request shall be deposited with the Secretariat of State for Finance and be accompanied by any useful document or information.

2. The reason for the exemption request shall result unequivocally from the request, as specified by Article 49, paragraph 3 of the Law. In particular, the essential needs for which the exemption is requested, the amount and payment methods, as well as the person (name, corporate name, main office and economic operator code or other similar identifying codes) to be paid to meet such needs shall be supported by documents. An example of exemption request is enshrined in Annex 4 to this Instruction.

3. In the same manner as that established in the previous paragraphs, a similar request may be submitted for the payment of foodstuff, medicines, as well as housing, medical and legal expenses, taxes, duties, mandatory insurance premiums, bank charges for the keeping of accounts.

4. After having carried out the relevant checks, on the basis of the documents received and if the request is considered to be well-grounded, the Committee for Credit and Savings shall submit the request received to the United Nations Security Council or one of its Committees.

5. The Committee for Credit and Savings shall inform the requesting party of the outcome of the exemption request as soon as it receives some relevant information.

Article 15 – Annulment of the freezing order

1. Anyone interested, who is of the opinion that funds, assets or economic resources have been frozen without good cause, shall submit a written and reasoned request to the Secretary of State for Finance in his capacity as the President of the Committee for Credit and Savings, at the Secretariat of State for Finance, enclosing any useful document or information. An example of the request for annulment of the freezing order is contained in Annex 5 to this Instruction.

2. After having carried out the relevant checks, the Committee for Credit and Savings, on the basis of the documents received and if the request is considered to be well-grounded, shall forward the request to the United Nations Security Council or one of its Committees.

3. If the proposal of the cancellation from the list, which precedes annulment, is accepted by the United Nations Security Council or one of its Committees, the Committee for Credit and Savings shall timely take all necessary measures to return the funds, assets and economic resources to those entitled or, if they are registered movable or immovable assets, to register the cancellation of the freezing measure in the public registers. In the same manner, if the proposal of cancellation from the lists and the subsequent annulment of the freezing order are not agreed by the United Nations Security Council or one of its Committees, the Committee for Credit and Savings shall inform the requesting party without delay.

Article 16 – Judicial protection

1. Under Article 50 of the Law, the interested party can lodge, personally or through a lawyer, an appeal against the restrictive measures ordered by decision of the Congress of State. A judicial appeal is also allowed against such measures. Therefore, by way of derogation from Article 3 of Law no. 5 of 25 January 1984, the interested party, if he has not appointed a personal lawyer or does not have one, shall be assisted by a public defender also in the proceedings before the administrative judge. The public defender shall not receive any remuneration for the professional services provided.

TITLE VI
FINAL PROVISIONS

Article 17 – Violations

1. For any violation of the provisions of this Instruction which has been identified, the sanctions referred to in Article 67 of Law no. 92 of 17 June 2008 and subsequent amendments and supplements shall be applied.

Article 18 – Entry into force

1. This Instruction shall enter into force on 14 June 2010.

San Marino, 4 June 2010

ANNEX 1
COMMUNICATION OF FROZEN ASSETS OR FUNDS

Place and date of filing _____

Financial Intelligence Agency
Strada di Paderna n. 2
47895 Domagnano
Rep. San Marino

Subject: communication of frozen assets or funds – Presence of customers or beneficial owners in the Lists of the United Nations Security Council or one of its Committees.

I, the undersigned_____,
born in _____ on _____,
residing in _____,
identification document *(a copy thereof is enclosed herewith)* _____,

☐ on my own
or:
☐ in my capacity as *(legal representative, compliance officer)* _____
of the company _____
established in _____

☐ In relation to the check carried out on (date) _____ vis-à-vis_____
_____
_____

Having discovered that

the following (person, entity or group_____
is included in the Lists drawn up by the competent Unites Nations Committees to counter terrorism, terrorist financing and the activity of Countries threatening international peace and security, hereby provide the data relating to freezing in the following table**:**

Reference list (The list where the party is included)	Name of the party (name and surname or corporate name)	Reference code (permanent reference number in the List)	Nature (kind of business relationship or occasional transaction subject to freezing)	Sum, Balance or Amount (Euro) (referring to frozen "assets" or "funds" expressed in Euro)	Notes (any other data or information available or deemed useful by the reporting party)

In witness thereof
Signature

ANNEX 2

SPECIMEN OF COMMUNICATION BY REGISTERED MAIL UNDER ARTICLE 48, PARAGRAPH 3, LETTERS A) AND B) OF LAW NO. 92 OF 17 JUNE 2008

Date and place of filing _____

Financial Intelligence Agency
Strada di Paderna n. 2
47895 Domagnano
Rep. San Marino
_____

Subject: communication under Article 48, paragraph 3, letters a) and b) of Law no. 92 of 17 June 2008.

I, the undersigned_____,
born in _____ on _____,
residing in _____,
identification document *(a copy thereof is enclosed herewith)* _____,

☐ on my own
or:
☐ in my capacity as *(legal representative, compliance officer)* _____
of the company _____
established in _____

☐ With reference to the State Congress Decision no.____ of _____, containing the following name
__ (my customer) _____
or
☐ In relation to the check performed on _____ vis-à-vis my customer _____
_____
(Specify full personal details for natural persons, whereas corporate name, address and any useful identifying element such as telephone number and legal representative in case of legal entities):
_____

Having discovered that

said person, entity or group is included in the lists drawn up by the competent United Nations Committees to counter terrorism, terrorist financing and the activity of Countries threatening international peace and security

Hereby report

a) the measures applied under this Law have been the following _____, the parties involved are the following _____,
the amount and nature of funds or economic resources are _____;

b) the transactions carried out by Mr./Company _____ are _____,
the accounts held by _____or related/referable are _____,
other data or information relating to the person included in the lists_____;

To this end, I enclose herewith the following documents/data/information

_____
_____

In witness thereof
Signature

ANNEX 3

SPECIMEN OF COMMUNICATION FROM A STATE ADMINISTRATION THAT KEEPS PUBLIC REGISTERS

Date and place of filing _____

Financial Intelligence Agency
Strada di Paderna n. 2
47895 Domagnano
Rep. San Marino
_____

Subject: communication under Article 48, paragraph 1 of Law no. 92 of 17 June 2008

I, the undersigned,_____
born in _____ on _____,

☐ in my capacity as *(director, official, etc.)* _____
of the Office_____
established in _____

☐ With reference to the register_____ containing
__ the following name_____
or
☐ In relation to the check carried out on _____ vis-à-vis the name _____
_____
(Specify full personal details for natural persons, whereas corporate name, address and any useful identifying element in case of legal entities):
_____

Having discovered that

said person, entity or group is included in the lists drawn up by the competent United Nations Committees to counter terrorism, terrorist financing and the activity of Countries threatening international peace and security

Hereby report

The following data or information
_____
_____
_____
_____
_____
_____
_____

To this end, I enclose herewith the following documents/data/information

_____
_____

In witness thereof
Stamp and Signature

ANNEX 4

SPECIMEN OF REQUEST FOR EXEMPTION FROM FREEZING

Date and place of filing _____

Distinguished
President of the Committee for Credit and Savings
Secretariat of State for Finance
Contrada Omerelli
Rep. San Marino
_____

Subject: request for authorization under Article 49, paragraphs 1-3 of Law no. 92 of 17 June 2008.

I, the undersigned_____,
born in _____ on _____,
residing in _____,
identification document *(a copy thereof is enclosed herewith)* _____,

☐ on my own
or:
☐ in my capacity as *(legal representative, director)* _____
of the company_____
established in _____

with reference to the Congress of State Decision no._____ of _____
which provided for restrictive measures against _____
_____

Submit a request to this Committee so that it authorizes
in accordance with the above-mentioned Law
the exemption from freezing of funds and economic resources for the following **reasons** (ex. specify an essential need, payment of foodstuff, medicines, as well as housing, medical and legal expenses, taxes, duties, mandatory insurance premiums, bank charges for the keeping of accounts):
_____
_____
_____
_____
_____
_____

To this end, I enclose herewith the following documents/data/information
_____
_____

While waiting for a reply, please accept my best regards.

In witness thereof
Signature

ANNEX 5

SPECIMEN OF REQUEST FOR ANNULMENT OF THE FREEZING ORDER

Date and place of filing _____

Distinguished
President of the Committee for Credit and Savings
Secretariat of State for Finance
Contrada Omerelli
Rep. San Marino
_____

Subject: request for annulment of the freezing order under Article 49, paragraph 2 of Law no. 92 of 17 June 2008.

I, the undersigned_____,
born in _____ on _____,
residing in _____,
identification document *(a copy thereof enclosed herewith)* _____,

☐ on my own
or:
☐ in my capacity as *(legal representative, director)* _____
of the company_____
established in _____

with reference to the Congress of State Decision no._____ of _____
which provided for restrictive measures against _____
_____

Submit a request to this Committee so that
it can make a proposal of annulment of the freezing order to the competent international bodies for the following reasons:_____
_____
_____
_____
_____

To this end, I enclose herewith the following documents/data/information
_____
_____

While waiting for a reply, please accept my best regards.
.

In witness thereof
Signature

62. INSTRUCTION NO. 2010-04: PROVISIONS TO IMPLEMENT THE GAFI/FATF IV SPECIAL RECOMMENDATION – INDICATORS OF ANOMALIES LINKED TO TERRORIST FINANCING

PROVISIONS TO IMPLEMENT THE GAFI/FATF IV SPECIAL RECOMMENDATION – INDICATORS OF ANOMALIES LINKED TO TERRORIST FINANCING

Introduction

The GAFI/FATF 9 Special Recommendations (Financial Action Task Force) contain a set of measures aimed at combating the funding of terrorism and are suitable for application in all Countries. The Recommendations set minimum standards for action for countries to implement the detail according to their particular circumstances and constitutional frameworks.

In particular, we refer to the GAFI/FATF IV Special Recommendation "Reporting suspicious transactions related to terrorism" which states:

If financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organizations, they should be required to report promptly their suspicions to the competent authorities.

Therefore the above-mentioned special Recommendation widens the preventing process of reporting suspicious transactions, which is already operative in relation to money laundering, to the funding of terrorism, assuming that the strategy to implement with reference to the two cases must necessarily be unitary. Precisely the studies carried out by GAFI/FATF and Egmont Group point out that the funding of terrorism must be regarded as a financial matter, as well as money laundering and, therefore, must be compared to this one in all the aspects relating its combating.

A key element in the reaction of the international community has been to impose preventing measures against the concealment and transfer of funds or goods used for financing terrorism.

In compliance with the international obligations undertaken by the Republic of San Marino to combat terrorism, terrorism financing and the Countries' activity which threatens international peace and security, even the Sammarinese Authorities have been provided with regulations and administrative provisions in order to prevent and combat terrorism.

The Law n. 92, June 17, 2008 fits in this context and inserted article 337 *ter* (Financing of terrorism) in the Criminal Code and provided some important definitions such as "terrorist purposes", "financing of terrorism", "terrorism" or "terrorist acts" as well as "terrorist".

Among the various obligations, the Law provides for the reporting obligation referred to in article 36. In this connection we should point out that on July 8, 2009 the Financial Intelligence Agency promulgated the instruction n. 2009-07 *Typologies of suspicious transactions and procedures for the examination of transactions referred to in article 36 of Law n. 92 of 17 June 2008.*

In this connection, within the tasks entrusted by the Law n. 92, June 17, 2008 the Financial Intelligence Agency gives great importance to the fact that the obliged parties behave with promptness, uniformity, transparency and cooperation in order to allow the fulfilment of the obligations deriving from the above/mentioned international principles.

Therefore, in order to increase the awareness of the obliged parties, the Agency points out that a section of its own website (www.aif.sm) has been created under the name of "Typologies, methods and trends" in which a selection of documents is contained defining the typologies of crimes which include those regarding terrorism.

Purposes

This Instruction is implemented on the strength of article 4, paragraph 1, letter d) of the Law n.92, June 17, 2008 and, in accordance with the same Law, pursues the consolidation of those instruments aimed at combating money laundering and financing of terrorism, consistently with the commitments undertaken by the Republic of San Marino in the international context.

This Instruction regulates article 36 of the Law n. 92, June 17, 2008, that is the reporting obligation of suspicious transactions which finance terrorism or circumstances in which funds or economic resources involved in the financial and professional service transactions may be used for terrorism purposes, terrorist acts, terrorist organizations, by those who finance terrorism or by a terrorist.

In addition to the above mentioned reporting obligation must not be confused with the freezing of funds and economic resources obligation relating to, directly or indirectly, persons under restrictive measures in accordance with the United Nations resolutions. The freezing of funds obligation is regulated by articles 46 and subsequent of the Law n. 92, June 17, 2008 and by the Instruction FIA 2010-03.

For a better comprehension of terrorism financing we refer to what we mentioned in the introduction, namely the Agency has dedicated a section of its own website where documents by GAFI/FATF and the EGMONT Group, which can be further analyzed by obliged parties, are posted.

Furthermore, in this perspective, another section of its website is addressed to the non-profit sector and contains information on the possible abuse of this sector for purposes linked to terrorism or its financing.

Article 1 – Covered subjects
The obliged parties we refer to in article 17 of the Law n. 92, June 17, 2008.

Article 2 – Definitions
For the purposes of this Instruction we refer to the definitions of the Law n. 92, June 17, 2008.

Article 3 – Reporting obligations
The article 36 of Law n. 92, June 17, 2008 provides for that the obliged parties shall promptly report to the Agency:
a) any transaction - even if not executed- which because of its nature, characteristics, amount, or in relation to the economic capacity and activity carried out by the customer to which it is referred, or for any other known circumstance, rouses suspicion that the economic resources, money or funds involved in the transaction may derive from offences of money laundering or terrorist financing or may be used to commit such offences;
b) anyone or any fact that, for any circumstance known on the basis of the activity carried out, may be related to money laundering or terrorist financing.

Furthermore the obliged parties shall report without delay the funds when they know, suspect or there are reasonable grounds to believe that these funds may be used for terrorist purposes, terrorist acts, terrorist organizations, by those who finance terrorism or by a terrorist.

Article 4 – Identifying the financial flows intended for terrorist activity
Identifying the financial flows intended for terrorist activity, in absence of risk indicators linked to the customer's profile, is difficult to detect, since the amount of the resources employed for terrorist financing may be insignificant.
Furthermore, we take into account that in cases linked to terrorism and/or its financing, it could occur that funds or lawful economic resources are employed to finance a criminal activity.
Identifying such flows is even more difficult as the subjects who finance terrorism are not usually driven by the primary aim of obtaining profits.

Article 5 – Methods used to finance terrorism
As for the methods for illicit gains laundering and terrorism financing we should point out that they sometimes may coincide. As a consequence the obliged parties may be facilitated in the activity referred to

in article 36 of the Law n. 92, June 17, 2008, taking into account the indicators of anomalies in the current report scheme (Annex Instruction n. 2009-07).

Article 6 – Indicators of anomalies
With regard to what mentioned in the previous articles and in order to integrate what established by FIA with Instruction n. 2009-07, facilitate the reporting activity referred to in the previous article 3, we annex to this Instruction a list which describes possible anomalies related to terrorism or its financing.

The indicators of anomalies annexed to this Instruction are an integral part of the Suspicious Transaction Report form (STR).

As we pointed out in the introduction, the indicators of anomalies are taken by the GAFI/FATF and Egmont Group documents and take into account the experience of other Countries more involved in such cases. These indicators will be periodically updated.

Article 7 – Valuations of covered subjects
In order to properly fulfil what established by article 3 of this Instruction, the information gathered by covered subjects on the origin and the allocation of funds and the actual economic-financial purposes underlying fund transfer transactions are of great importance.
In order to properly fulfil the reporting obligations we point out that it is not necessary that all the behaviours described in the operating schemes occur simultaneously. However, should a single behaviour occur, it is not a sufficient reason to proceed to the reporting.

Article 8 – Penalties
For any breaches of obligations regarding the reporting we refer to articles 53, 55 and 56 of the Law n. 92, June 17, 2008.

Article 9 – Coming into force
1. This Instruction is coming into force on July 1, 2010.

San Marino, June 21, 2010

ANNEX 1

1. Indicators of anomalies linked to customers

1) Customers such as associations, institutions or other bodies with office in Countries, Territories or Jurisdictions which are known for supporting terrorists, terrorist activities that is terrorist organizations.

2) Customers in the international Lists drawn up by the United Nations Security Council or one of its Committees.

3) The presence, among the members of corporate bodies (board of governors) of associations, institutions or other bodies or among the persons appointed to act on behalf of those, of persons native of Countries, Territories or Jurisdictions where the funds of the associations, institutions or other bodies are transferred especially if these Countries, Territories or Jurisdictions which are known for supporting terrorists, terrorist activities that is terrorist organizations.

4) Media outcome regarding the link between the customer and terrorist organizations or his involvement in terrorist activities.

2. Indicators of anomalies linked to the type of transaction and/or operativeness

1) Considerable moving of cash or bearer securities above the estimated threshold, in absence of specific declaration relating the moving across transnational borders.

2) Transactions, even occasional, of any amount and frequency if the ordering subjects or beneficial owners are residents or citizens that is who come from Countries, Territories or Jurisdictions which are known for supporting terrorists, terrorist activities that is terrorist organizations.

3) Transactions, even occasional, of any amount and frequency if the funds come from or are intended for Countries, Territories or Jurisdictions which are known for supporting terrorists, terrorist activities that is terrorist organizations.

4) Transactions, such as donations, remittances, contributions of any amount and frequency, on business relationships opened in associations, institutions or other bodies' name, without a link or a specific purpose between the donor and the body which receives the funds and when said funds are employed by the body in Countries, Territories or Jurisdictions which are known for supporting terrorists, terrorist activities that is terrorist organizations.

5) Operativeness, of any amount and frequency, of associations, institutions or other bodies whose purpose is not referable to the typical activity of the body.

6) Operativeness of associations, institutions or other bodies which collect, manage or transfer funds, if the transferred amount is significantly high in comparison with the context in which they act.

7) Inconsistency between the operativeness and the declared purpose of associations, institutions or other bodies in terms of amount and frequency of the financial transactions.

8) Sudden increase in the frequency and the amount of transactions of accounts opened in associations, institutions or other bodies' name, on the contrary current accounts opened in these latter's name holding high amounts on the account for long time.

9) Significant and unexpected cash transactions carried out by associations, institutions or other bodies.

10) The absence of contributions from donors native of the Country where the association, institution or other body has its office.

11) Operativeness of business relationships opened in associations, institutions or other bodies' name characterized by a complex series of fund transfers which involve natural persons in order to conceal the destination and the purpose of the funds which are transited on the business relationships.

12) Operativeness of business relationships, not exclusively in associations, institutions or other bodies' name, where the carried out transactions of any amount and frequency are not consistent with the regular business relationship's operativeness.

13) Operativeness of business relationships, not exclusively in associations, institutions or other bodies' name, characterized by withdrawals carried out through ATM, credit cards, debit cards or prepaid cards.

14) Operativeness of business relationships, even but not exclusively in associations, institutions or other bodies' name, characterized by deposits of inconsiderable amount and below the threshold of Euro 15,000 and with subsequent transfers of considerable amount.

15) Operativeness of associations, institutions or other bodies, showing unclear links among them, for instance fund transfers among bodies, same registered office, same members of corporate bodies, same employees, etc.

3. Indicators of anomalies for financial entities

1) Transactions, even occasional, of any amount and frequency, of fund transfers by electronic means, whose "ordering subject" or "beneficial owner", as defined by the Instruction 2008-04, is an association, institution or a body with several offices, even in Countries, Territories or Jurisdictions which are known for being linked to terrorist organizations or indicated by GAFI/FATF or by Moneyval.

2) Operativeness of current accounts characterized by transactions, of any amount and frequency, off und deposits, which are transferred by electronic means to "beneficial owners", as defined in the Instruction 2008-04, whose names are in the Lists namely an association, institution or a body with several offices, even in Countries, Territories or Jurisdictions which are known for being linked to terrorist organizations or indicated by GAFI/FATF or by Moneyval.

3) Several cash deposits, even for small amount on a current account and subsequent fund transfer by electronic means for a high amount in a foreign Country.

4) Funds transferred on business relationships opened in associations, institutions and other bodies' name through *alternative money remittance*.

5) A lack of correspondence between the standard and the extent of the financial transactions, and between the declared purpose and the body's activity. For instance, a cultural association which opens a current account for the management of the proceeds of an art festival after ten years from its establishment and deposits a great amount of money on the current account.

6) Sudden increase in frequency and amount of financial transactions on behalf of a body or on the contrary a body which holds funds in its account for long time.

4. Other indicators of anomalies

1) Disparity between the supposed financing sources and the amount of managed funds, for instance when substantial amounts are seemingly transferred from places of communities with a very low standard life.

2) The existence of several associations, institutions or other no-profit bodies having numerous and unclear links, for instance, fund transfers among bodies, same registered office, same members of corporate bodies.

3) Associations, institutions and other bodies of little significance estimated on the basis of the following criteria: purpose, financial flows, number of employees, structures.

4) Transactions from/to countries which GAFI/FATF consider at high risk.

63. INSTRUCTION NO. 2010-05: IDENTIFICATION OF THE BENEFICIAL OWNER OF INSTITUTIONS AND ASSOCIATIONS

IDENTIFICATION OF THE BENEFICIAL OWNER OF INSTITUTIONS AND ASSOCIATIONS

Purposes

Some guidelines which permit to identify the beneficial owner of recognized institutions and associations are provided in this Instruction taking into account the delays in legislative reviews regarding the non-profit Bodies and in light of the results of the recent survey aimed at specifically examining the extent and the effectiveness carried out by the above mentioned Bodies.

Article 1 – Covered subjects

1. The obliged parties we refer to in article 17 of the Law n. 92, June 17, 2008.

Article 2 – Definitions

1. For the purposes of this Instruction we refer to the definitions of the Law n. 92/2008, with particular attention to the definition of "beneficial owner" referred to in article 1, paragraph 1, letter r).

Article 3 – Identification of the beneficial owner of Institutions

1. The beneficial owner of institutions is identified on the basis of the following criteria:

I. **In case of determined beneficiary the beneficial owner is " the natural person(s) who is beneficiary of more than 25% of the property".** A similar criterion is specifically applied in case of:
   a) beneficiaries of more than 25% of the property, if explicitly identified by name in the articles of association, whose legal position is definite, that is not subject to a condition precedent or an initial term. The absence of the condition precedent or the initial term must be referred to the acquisition of the legal position and not to its exercise;
   b) whenever there is an restricted category of beneficiaries – and therefore the number of the subjects who can be included in the category is already determined – whose members have a legal position with the characteristics referred to in the previous point a) and whenever the articles of association do not give any subjects the power to define how to allocate the funds at his own discretion.

II. Whenever the beneficiaries have not been determined, the beneficial owner is "the natural person(s) in whose principal interest the entity is established or acts".
This criterion is applied whenever the is a unrestricted category of beneficiaries and until its definition. Whenever the articles of associations provide for several possible categories of beneficiaries who can receive the fund, the category which is more likely to receive the fund is regarded as the beneficial owner. However, in case the several categories of beneficiaries take part in the allocation of the fund, the category of beneficiaries which has the right to receive the higher share of the fund is regarded as the beneficial owner. In case the category to be regarded as the beneficial owner of the institution is uncertain, all the categories provided for in the articles of association shall be regarded as beneficial owner.

III. **"The natural person(s) who is able to control more than 25% of the property".** This criterion is therefore applied:
   a) in institutions in whose purpose a determined and identified beneficiary and/or a category of beneficiaries is absent;
   b) in institutions with a restricted category of beneficiaries - and therefore the number of the subjects who can be included in the category is already determined - whose members have a legal position with the characteristics referred to in the previous point 1 letter a),

and in which the founder has given a subject the power to chose the beneficiary within the category to whom allocate the fund and to which extent;

c) in institutions in which the founder has given a subject the power to chose the beneficiary at his own discretion - even without any category - to whom allocate the fund and to which extent;
d) all the other cases in which the criteria referred to in the above mentioned point I and II are not applied.

2. The criteria referred to in the previous paragraph may be applied even at the same time in order to identify several beneficial owners within the same institution.
3. The enforceable criterion of identification of the beneficial owner may change throughout the lifetime of the institution.

Article 4 – Identification of the beneficial owner of recognized Associations

1. The nature of the body as well as the type of contract – contracts with common purposes – make enforceable the following criterion in order to identify the beneficial owner: "the natural person(s) who is able to control more than 25% of the property", thus establishing the person(s) who actually has managing powers as the beneficial owner.

Article 5 – Coming into force

This Instruction is coming into force on July 12, 2010.

64. INSTRUCTION NO. 2010-06: IDENTIFICATION OF THE BENEFICIAL OWNER OF TRUSTS

IDENTIFICATION OF THE BENEFICIAL OWNER OF TRUSTS

Purposes

Some guidelines which permit to identify the beneficial owner of Trusts are provided in this Instruction, on the basis of the previous Instruction 2010-05.

Article 1 – Covered subjects

2. The obliged parties we refer to in article 17 of the Law n. 92, June 17, 2008.

Article 2 – Definitions

2. For the purposes of this Instruction we refer to the definitions of the Law n. 92/2008, with particular attention to the definition of "beneficial owner" referred to in article 1, paragraph 1, letter r).

Article 3 – Identification of the beneficial owner of Trusts

4. The beneficial owner of a trust is identified on the basis of the following criteria:

IV. **In case of determined beneficiary the beneficial owner is " the natural person(s) who is beneficiary of more than 25% of the property".** A similar criterion is specifically applied in case of:

c) Beneficiaries specifically identified by name in the articles of association whose legal position is "acquired". This is the legal position of the beneficiary with definite qualification, not subject to a condition precedent or an initial term. The absence of the condition precedent or the initial term must be referred to the acquisition of the legal position and not to its exercise;

d) whenever there is an restricted category of beneficiaries – and therefore the number of the subjects who can be included in the category is already determined – whose members have a legal position with the characteristics referred to in the previous point a) and whenever the articles of association do not give any subjects the power to define how to allocate the funds in trust at his own discretion.

V. Whenever the beneficiaries have not been determined, the beneficial owner is "the natural person(s) in whose principal interest the trust is established or acts".

This criterion is applied whenever the is a unrestricted category of beneficiaries and until its definition. Whenever the articles of associations provide for several possible categories of beneficiaries who can receive the fund, the category which is more likely to receive the fund is regarded as the beneficial owner. However, in case the several categories of beneficiaries take part in the allocation of the fund, the category of beneficiaries which has the right to receive the higher share of the fund is regarded as the beneficial owner. In case the category to be regarded as the beneficial owner of the trust is uncertain, all the categories provided for in the articles of association shall be regarded as beneficial owner.

VI. **"The natural person(s) who is able to control more than 25% of the property".** This criterion is therefore applied:

e) trust in whose purpose beneficiaries who have the power to act towards the trustee in order to carry out the trust are absent;

f) trust with a restricted category of beneficiaries - and therefore the number of the subjects who can be included in the category is already determined - whose members have a legal position with the characteristics referred to in the previous point 1 letter a), and in which

the settlor has given a subject the power to chose the beneficiary within the category to whom allocate the fund in trust and to which extent;

g) trust in which the settlor has given a subject the power to chose the beneficiary at his own discretion - even without any category - to whom allocate the fund in trust and to which extent;
h) all the other cases in which the criteria referred to in the above mentioned point I and II are not applied.

5. The criteria referred to in the previous paragraph may be applied even at the same time in order to identify several beneficial owners within the same trust.
6. The enforceable criterion of identification of the beneficial owner may change throughout the lifetime of the trust.

Article 5 – Coming into force

This Instruction is coming into force on July 12, 2010.

65. FIA INSTRUCION NO. 2010-07 - DATA AND INFORMATION TO BE RECORDED AND KEPT BY FINANCIAL AND FIDUCIARY COMPANIES UNDER ARTICLE 34 OF LAW NO. 92 OF 17 JUNE 2008

DATA AND INFORMATION TO BE RECORDED AND KEPT BY FINANCIAL AND FIDUCIARY COMPANIES UNDER ARTICLE 34 OF LAW NO. 92 OF 17 JUNE 2008

Preamble

This measure is issued in implementation of Article 95, paragraph 2, letter f), of Law no. 92 of 17 June 2008. Under this Article, the Financial Intelligence Agency shall issue Instructions on data and information to be recorded and kept in accordance with Article 34, paragraph 1 of said Law as well as, more generally, on the basis of the functions referred to in Article 4, paragraph 1, letter d) of the above-mentioned Law in implementation of the obligations envisaged by Article 34.

This Instruction follows that issued on 3 December 2009 (Ref no. 2009-10) addressed to banks, management and insurance companies.

In accordance with Law no. 92 of 17 June 2008, addressees already record any data, information, transaction and established/terminated business relationship connected with the relations established with customers in their basic information/accounting systems.

In addition thereto, pursuant to Circular no. 16 F issued on 17 January 1999 by the former Office of Banking Supervision, addressees already record cash transactions executed by customers in a paper-based or electronic anti-money laundering register, by recording them chronologically together with the identification data of the mandate/agency, the mandate/agency-holder – i.e. by using a unique code for each customer -, as well as the identification data of the executor, if other than the mandate/agency-holder.

The instructions specifically issued to record mandatory data and information under aforesaid Article 34 are described below.

TITLE I
GENERAL PROVISIONS

Article 1 – Addressees

1. This Instruction shall apply to the parties authorised to exercise the reserved activities referred to in Attachment 1, letters B and C of Law no. 165 of 17 November 2005 (LISF).

Article 2 – Definitions

1. For the purposes of this Instruction, the definitions referred to in Law no. 92 of 17 June 2008 shall apply.
2. In addition thereto, the following terms are used with the following meanings:

"**Anti-money laundering Electronic Archive**" or "**Archive**": an archive composed of and managed through electronic systems, where addressees shall record, in chronological order, the establishment and termination of business relationships, transactions, even fractioned or occasional, as well as the identification data of customers and executors and the relevant details of their identity documents.

"**Customer Code**": a combination of letters univocally and permanently identifying a customer registered in the basic information system of an addressee.

"**Consolidation**": a procedure through which registration in the Archive becomes final.

"**Identification data**":

- Natural persons: name, surname, place and date of birth, address of residence, citizenship;
- Companies or Entities with or without legal personality: business name or corporate purpose, legal form and address of the registered office.

"**Executor**": a person that establishes or terminates business relationships or carries out transactions, even fractioned or occasional, on his/her own behalf or on behalf of a customer, duly authorised through a proxy or a

power of attorney. For instance, the executor may be the person putting a signature, as a receipt of payment or confirmation, on forms or notices of payment prepared by obliged parties. A sine qua non condition to be acknowledged as an executor is to be physically present before the operator entrusted by one of the parties referred to in Article 1 of this Instruction, with which the business relationship shall be established or the occasional transaction shall be carried out.
"**Details of the identity document**": type, number, date and place of issue, issuing authority and expiry date.
"**Law**": Law no. 92 of 17 June 2008 "Provisions on preventing and combating money laundering and terrorist financing" and subsequent amendments and supplements.
"**Means of payment**": cash, bank and postal cheques, bank drafts and other cheques that are similar or can be considered equivalent, such as certified cheques, postal orders, credit or payment orders, credit cards and other payment cards and any other instrument allowing to transfer, move or acquire, even electronically, funds, financial values or assets.
"**Transaction**": the transfer or movement of means of payment.
"**Fractioned transaction**": a transaction whose total amount exceeds € 15,000 or the equivalent value in a foreign currency, composed of several transactions, individually equal to or below said amount, carried out within a period of seven calendar days, including the date of the last transaction executed. For the purposes of calculating the total amount of fractioned transactions, transactions with an amount lower than € 5,000 shall not be considered.
"**Anti-money laundering Pre-archive**" or "**Pre-archive**": a function envisaged in the general anti-money laundering computer application, to accumulate fractioned transactions and carry out compliance controls prior to the final consolidation of data, business relationships and transactions of customers.
"**Anti-money laundering paper-based register**": a paper-based register containing the data and information relating to business relationships, transactions – even occasional and fractioned – carried out by addressees on behalf of their customers in the period during which the requirement to use the Anti-Money laundering Electronic Archive is waived.
"**Basic information system**": all computer/accounting programs used by addressees to perform their own activities.

TITLE II
REGISTRATION OF DATA AND INFORMATION ON CUSTOMERS, BUSINESS RELATIONSHIPS AND TRANSACTIONS IN THE BASIC INFORMATION SYSTEM

Article 3 – General principle

1. Article 34 of the Law provides as a general rule that obliged parties shall record:
a) the data and information acquired to fulfil customer due diligence requirements and they shall keep such records;
b) documents and records of business relationships, occasional transactions or services provided.

Article 4 – Data and information on customers to be recorded

1. Addressees shall record at least the following data and information in the basic information system:
a) identification data of customers and executors;
b) details of the identity document, for customers who are natural persons and executors;
c) identification data of the beneficial owner and relevant details of the identification document;
d) unique identification code for customers and executors (Social Security Institute number for natural persons, Economic Operator Code for legal persons or equivalent codes for non-resident persons, or registration code in the general customer database of obliged parties);
e) purpose and nature of the business relationship or occasional transaction.

2. For the purpose of properly fulfilling customer due diligence requirements, the following information, acquired through questionnaires in use, shall also be recorded in the basic information system, by preferably using the tables provided therein:
a) Customer's profession/main business activity;
b) geographic area where the business activity is mainly conducted;
c) qualification of the customer as a "politically exposed person" (so-called PEP), if the case;
d) risk level assigned to the customer.

Article 5 – Further data and information obtained on customers

1. Addressees already operate to obtain additional elements and information necessary to assess customers for purposes that might be different from those of preventing and combating money laundering and terrorist financing, by extracting them from external databases or acquiring information and references from third parties. Therefore, it is necessary that also these elements and information, for the purposes of a proper and complete customer risk assessment, are included in a "customer profile" which shall be available, possibly in electronic format, to authorised personnel, in particular to compliance officers and the Financial Intelligence Agency.

Article 6 – Data and information on business relationships and transactions to be recorded
1. Addressees shall record all business relationships, transactions executed throughout such business relationships and occasional transactions in the basic information system.

Article 7 – Time for acquiring and recording data and information on customers, business relationships and transactions
1. The data and information referred to in Articles 4 and 6 shall be timely recorded in the basic information system and, in any event, within the fifth working day following their acquisition.

2. For customers existing on the date of entry into force of this Instruction, addressees shall complete the registration of the data and information referred to in Article 4, already acquired through questionnaires or other means, in the basic information system by and not later than 31 March 2011.

TITLE III
ANTI-MONEY LAUNDERING ELECTRONIC ARCHIVE

CHAPTER I
CREATION, CHARACTERISTICS AND KEEPING OF THE ANTI-MONEY LAUNDERING ELECTRONIC ARCHIVE

Article 8 – Creation of the Anti-money laundering Electronic Archive
1. Addressees of this Instruction shall be equipped with an Anti-money laundering Electronic Archive by 1 January 2011. In this archive all data and information obtained shall be kept in a centralised system.

2. The Anti-money laundering Electronic Archive shall be adopted in order to:
a) put the business relationships established with addressees and transactions, even fractioned or occasional, executed in the course of time on behalf of customers in chronological order;
b) facilitate monitoring and control of business relationships and transactions envisaged by the Law and Instructions.

Article 9 – Technical characteristics of the Anti-money laundering Electronic Archive
1. The Anti-money laundering Electronic Archive shall be managed and kept by any addressee, in accordance with the provisions of this Instruction.

2. The Anti-money laundering Electronic Archive shall have the following technical characteristics:
a) to be interfaced with the basic information system to facilitate automated registration of data and information pursuant to the standards set forth in this Instruction;
b) to allow data extraction and analysis to facilitate controls by addressees or supervisory authorities;
c) to allow exportation of data according to the standard patterns and schemes envisaged in Annex 2:
d) to ensure continuity in keeping the Archive and its completeness;
e) to ensure that changes in or cancellation of data without keeping a track thereof are not possible;
f) to ensure that the data and information stored in the Archive are reconstructed in chronological order.

3. Addressees shall set up adequate security profiles to have access to the data stored in the Archive. These profiles shall provide for different functions assigned to the staff (data allocation; data visualization; data correction/cancellation), by establishing suitable control and tracking systems for the activities carried out.

4. In order to properly calculate fractioned transactions and control, if necessary, the compliance and accuracy of the data entered, addressees shall be allowed to temporarily store documents relating to business relationships and transactions in a provisional archive, defined as "Anti-money laundering Pre-archive", on the basis of the functions envisaged by the respective anti-money laundering information systems in use. This Pre-archive shall,

however, be managed within the general anti-money laundering computer system, have the same characteristics and functions of the Archive, of which it shall necessarily be a part.

5. Addressees shall record transactions, according to the transaction codes envisaged in their basic information system. When transactions are recorded in the Archive, the aforesaid transaction codes shall comply with the list of detailed transaction codes specified in Annex 1 .

6. If an addressee offers new products or services to its customers, it shall inform the Agency in advance, in order to include such products and services in the appropriate category of the existing tables for proper registration in the Anti-money laundering Electronic Archive.

7. Addressees shall obtain a certificate of compliance of the technical characteristics referred to in this Article, paragraph 2 from the producer of the Anti-money laundering Electronic Archive.

Article 10 – Outsourcing of Anti-money laundering Electronic Archive keeping
1. In order to ensure proper functionality of the anti-money laundering software, with the exception of data modification, addressees may rely on an independent outsourcer having its place of business in the Republic of San Marino, provided that they have direct and ongoing access to the Archive and its functions. The outsourcing activity shall comply with relevant supervisory rules in force. The ultimate responsibility for properly keeping the Anti-money laundering Electronic Archive shall remain with the addressees.

2. The outsourcer shall ensure that the Anti-money Laundering Electronic Archive is separate from other archives that might be kept by the same outsourcer.

3. Addressees shall ensure that the Financial Intelligence Agency has immediate access to the Anti-money laundering Electronic Archive and its functions.

Article 11 – Internal controls
1. In defining internal control procedures, the addressees of this Instruction shall formally identify the organisational unit or the person entrusted with the controls over the accuracy of the data entered into the Archive and with any supplement or correction of incomplete or wrong transactions, by giving specific instructions on the modalities to be adopted to ensure the reconstruction of the activities conducted.

2. Addressees shall establish appropriate periodical internal control procedures aimed at ensuring proper keeping and functionality of the Anti-money laundering Electronic Archive. A relevant internal regulation shall be issued in relation to the periodicity of such controls. It shall, however, envisage a control at least every six months. In any case, these controls shall also be carried out if particular circumstances arise, such as software installation or modification, reporting of errors or deficiencies in detection applications for the purposes of anti-money laundering monitoring. The unit or person entrusted with internal controls shall officially document this verification activity.

3. If data and information already recorded in the Anti-money laundering Electronic Archive need to be corrected, addressees shall make the corrections, by using the functions of the information system devised to keep track of the corrections made and relying on the unit and persons referred to in paragraph 1 above. Addressees shall be able to immediately document any change in the data. These actions shall be considered extraordinary, subject to the prohibition against material cancellation of records, though wrong.

4. The Audit Board shall carry out verifications on a regular basis to ascertain the effectiveness and efficiency of the internal control procedures in accordance with this Instruction.

Article 12 – Usability of the Anti-money laundering Electronic Archive
1. With a view to allowing extraction of data to be used by compliance officers and the Financial Intelligence Agency, addressees shall have access to functions of data and information extraction from the Archive, on the basis of a number of parameters that can be combined (for instance, customer code, transaction date, transaction amount, transaction code, executor code, business relationship number, customer's or executor's address). In this way, they can draft reports where they might identify unusual characteristics of transactions and customers.
Minimum functionalities of the extractor requested are specified in Annex 2.

2. These elaborations shall be exportable electronically in the formats requested by the Financial Intelligence Agency.

CHAPTER II
REGISTRATION OF BUSINESS RELATIONSHIPS

Article 13 – Registration of business relationships in the Anti-money laundering Electronic Archive

1. The establishment and, if the case, the termination of business relationships shall be recorded chronologically in the Anti-money laundering Electronic Archive. Registration requirements shall be applied to the customer and any executor other than the customer.

2. Minimum data to be recorded in the Anti-money laundering Electronic Archive shall include:
a) type and status (establishment or termination) of the relationship with a comprehensive description, which shall be easily understandable and consultable;
b) business relationship identification code;
c) data of business relationship establishment and termination;
d) person in whose name the business relationship is opened: Customer Code, customer's identification data, with the possible exclusion of information on citizenship, as well as the details of the customer's identity document when the customer is a natural person;
e) person executing the transaction: Customer Code, identification data of the executor, with the possible exclusion of information on citizenship, as well as the details of the executor's identity document;
f) Beneficial owner: Customer Code, identification data, with the possible exclusion of information on citizenship, details of the identity document, in addition to the number of the business relationship to which the data refer, when an independent business relationship is registered.
g) unique registration number in the Anti-money laundering Electronic Archive.

3. Setting up or termination of proxies or powers of attorney to operate a business relationship shall be registered as independent business relationships, specifying the business relationship number to which the proxy or power of attorney refer.

Article 14 – Exemption from the registration of business relationships

1. Addressees shall not be required to register the following business relationships established with their customers in the Anti-money laundering Electronic Archive:
a) underwriting of bond issues;
b) grant of funding in any form;

Article 15 – Timing for the registration of business relationships

1. Data and information related to business relationships shall be timely recorded in the Anti-money laundering Electronic Archive – or in the Pre-Archive – and, in any case, within the fifth working day subsequent to the establishment of the business relationship or the termination thereof. They shall also be consolidated within thirty days following their registration in the Archive. Furthermore, the original chronological order of the dates on which individual transactions were executed shall be kept.

CHAPTER III
REGISTRATION OF TRANSACTIONS

Article 16 – Registration of transactions in the Anti-money laundering Electronic Archive

1. Granted that the use of owned accounts for the settlement of transactions referred to customers is prohibited, addressees shall record any transaction of customers, even fractioned or occasional, exceeding € 15,000. The types of transactions subject to registration requirements are specified in Annex 1 to this Instruction.

2. Transactions in a foreign currency shall be recorded in the equivalent value in Euros, at the exchange rate of the day on which they were executed.

3. The customer shall be subject to registration requirements, even though the transactions are related to several business relationships held by him/her and are carried out by different executors.

4. Clearing of transactions with the opposite sign and carried out by the same customer shall be prohibited.

5. Minimum data to be recorded in the Archive shall include:
a) detailed transaction code and description (see Annex 1);
b) date of transaction execution;
c) amount of the transaction carried out;
d) business relationship number, if the transaction is related to a business relationship;
e) Customer Code, customer's identification data, with the possible exclusion of information on citizenship, and details of the customer's identity document, if the customer is a natural person; in case of co-holders, the data of all co-holders shall be reported;
f) Customer Code, executor's identification data, with the possible exclusion of information on citizenship, and details of the identity document;
g) unique number of transaction registration in the Archive;
h) number linking accumulated fractioned transactions with each other.

6. When occasional transactions are recorded, though they must represent an exception in fiduciary activities and be considered with more attention with a view to assessing suspicious transactions, in addition to the information specified above, the identification data of the beneficial owner of the transaction shall be recorded. Such data shall include: Customer Code, identification data, with the possible exclusion of information on citizenship, and details of the identity document.

7. Furthermore, when funds are electronically transferred, addressees shall record the data and information acquired on the originator or beneficiary.

Article 17 – Calculation of fractioned transactions

4. The same customer (Customer Code) shall be subject to registration requirements for fractioned transactions, whether this registration is related to a business relationship or the execution of occasional transactions, regardless of who carries out the transaction. Calculation shall be made by putting together transactions of the same sign (debit and credit separately).

5. With a view to calculating the total amount of fractioned transactions, the addressee shall include additional transactions that might be carried out on the same day when the threshold of € 15,000 is exceeded.

6. For a proper calculation of the fractioned transactions, addressees shall adopt IT instruments and adequate organizational measures to identify and record transactions carried out by the customer at the main office or with all subsidiaries.

4. Addressees shall not be required to keep fractioned transactions that are not subject to accumulation procedures in the Archive.

5. In the framework of their organizational independence and for reasons pertaining to the fight against money laundering and terrorist financing, addressees shall be authorised to identify transaction and amount categories which are non significant to detect fractioned transactions. In case of an unjustified registration of redundant transactions with respect to the ways fractioned transactions are established, addressees shall be able to extract data, upon request of the Agency, on the basis of the parameters specified in this Instruction.

Article 18 – Exemption from the registration of transactions

1. Registration requirements shall not apply to:
a) transactions involving owned accounts;
b) sales or purchases relating to securities assets management.

Article 19 – Timing for the registration of transactions

1. Transactions shall be timely recorded in the Anti-money laundering Electronic Archive – or in the Pre-archive – and, in any case, within the fifth working day subsequent to their execution. They shall be consolidated within

thirty days following their registration in the Archive. Furthermore, the original chronological order of the dates on which individual transactions were executed shall be kept.
2. In order to register the total amount of fractioned transactions in the final Anti-money laundering Electronic Archive, the time limit for data consolidation referred to in the preceding paragraph shall run from the date on which the last transaction calculated in the total amount was carried out.

TITLE IV
PROVISIONS RELATING TO THE ANTI-MONEY LAUNDERING ELECTRONIC ARCHIVE IN THE TRANSFORMATION PROCESSES

Article 20 – Keeping of the electronic archive at the termination of the business activities and access to data.
1. Addressees shall appoint, before the business activity is definitely terminated, a person entrusted with the task of meeting AML requests submitted by the Judicial Authority, the Central Bank and the Financial Intelligence Agency. Such a person shall also have access to relevant paper-based and electronic documents in order to provide right and adequate answers. This task, always for anti-money laundering purposes, shall be guaranteed for the period of time envisaged by the laws in force, i.e. currently for five years after the termination of the business relationship or activity.
2. The data of the entrusted person referred to in the preceding paragraph shall be timely notified to the Agency for the updating of its databases.

TITLE V
FINAL PROVISIONS

Article 21 – Training and internal controls
1. Addressees shall ensure adequate training to their staff and assistants and develop and organise adequate internal controls to ensure that the obligations envisaged in this Instruction are properly fulfilled.

Article 22 – Use of data and information on customers
1. Data and information relating to customers acquired to fulfil customer due diligence obligations, as well as relevant data on business relationships, transactions, even occasional or fractioned, shall be made available not only to the Agency, but also to the Central Bank in the performance of supervisory functions.

Article 23 – Sanctions
1. The violation of the registration requirements applied by the Law and this Instruction shall be punished with the sanctions envisaged by Article 62 of the Law and subsequent amendments and supplements.
2. The violation of the other provisions of this Instruction shall be punished with the sanction referred to in Article 67 of the Law and subsequent amendments and supplements.

Article 24 – Entry into force and repeal
1. The provisions referred to in this Instruction shall apply to all customers, business relationships and transactions existing from 1 September 2010, beginning from 1 September 2010. This is without prejudice to the possibility for intermediaries to specify an earlier date, according to the organisational procedures adopted.
2. Any need for derogation from the use of the Anti-money laundering Electronic Archive having the technical characteristics referred to in Article 9 above, to be implemented by 1 January 2011, shall be reported to the Agency and be duly justified.
3. From the entry into force of this Instruction, any contrary provision and, in particular, Circular 16/F of the former Office of Banking Supervision, dated 27 January 1999, shall be repealed for addressees.

Article 25 – Transitional provisions
1. The addressees which do no have computer tools meeting the technical requirements specified in Article 9 above at the entry into force of this Instruction, shall electronically record the same data and information requested by this Instruction in Excel format, as specified in Annex 3. They shall also publish them in a

paper-based register every three months to ensure the consolidation of the data until the Anti-money laundering Electronic Archive is adopted.
2 The publication referred to in the preceding paragraph shall be made on paper within the month following every calendar quarter by an employee purposely delegated by the Director or the Board of Directors. The publication shall contain the data and information relating to business relationships, transactions – even occasional and fractioned - executed by addressees on behalf of customers in the period of exemption from the use of the Anti-money laundering Electronic Archive.
3. The paper-based register shall be composed of sheets numbered progressively and countersigned by the delegated person referred to in the preceding paragraph.
4. The Audit Board shall verify at least every three months whether the aforesaid anti-money laundering paper-based register is properly kept.
5. During the period of exemption addressees shall be allowed to record all transactions exceeding € 5,000.00 and, therefore, they shall be exempted from the obligation to calculate fractioned transactions.
6. The other provisions of this Instruction shall remain unchanged.

San Marino, 27 June 2010

Annexes:
Annex 1 – List of detailed transaction codes.
Annex 2 – Technical characteristics of the parametric extractor as mentioned in Art. 12.
Annex 3 – Technical characteristics of the paper-based register referred to in Article 25.

	FIA Instruction 2010-07 : Annex 1	
List of detailed transaction codes for banks, insurance companies, management companies, financial and fiduciary companies		
Detailed transaction code	Transaction description	sign
3	Automatic cash deposit or cash dispenser at the counter	A
6	Credit against pre-authorized debit on account	A
7	Credit against pre-authorized debit on account or at the counter	A
8	Unpaid pre-authorised standing order debits	D
9	POS collection	A
10	Issue of circular cheques and securities similar to money orders	D
13	Debit for cheque cashing	D
14	Extracted coupons, dividends, and premiums	A/D
15	Funds redemption (loans etc.)	A/D
24	Documents collection in Italy	A/D
25	Documents payments in Italy	A/D
26	Outgoing payment orders	D
27	Emoluments	A/D
29	Credits or proceeds (RI.BA. Bank receipt)	A/D
30	Credits or proceeds subject to final payment	A/D
31	Withdrawn bills	A/D
32	Called back bills	A/D
33	Issue of certified cheque	D
37	Outstanding bank receipts	A/D
39	Money available for emoluments	D
42	Unpaid or dishonoured bills	D
43	POS payment	D
44	Debit or payment for the use of documentary credit abroad	A/D
45	Charge for credit card use	A/D
46	Cashing of payment orders	D
47	Debit or payment for the use of documentary credit in Italy	A/D
48	Incoming payment orders	A
50	Different payments	A/D
51	Issue of traveller's cheques	D
52	Withdrawal through branch withdrawal forms	D
53	Charge for the use of documentary credit in Italy	A/D
55	Outstanding or dishonoured bank cheques	D
56	Proceeds from notes or cheques in Liras and/or foreign currency after collection	A/D
57	Return of irregular cheques and money orders	D
58	Execution of collection orders	A/D
59	ATM payment or instructions	A/D
64	Credits or proceeds discounted bills	A/D
72	Credit or proceeds for the use of documentary credit abroad	A/D
74	Lease payment	A/D
A2	Cashing of one's own cheque drawn on the same intermediary	D
A7	Disbursement of different funds and of private loans	A/D
AA	Bank transfer from abroad	A
AA	Bank transfer to foreign countries	D
AF	Transfer order between accounts (same intermediary) - beneficiary	A
AF	Transfer order between accounts (same intermediary) - originator	D
AF	Transfer of balances between fiduciary mandates (beneficiary) (transactions code for fiduciary and financial companies)	A
AF	Transfer of balances between fiduciary mandates (originator) **(transactions code for fiduciary and financial companies)**	D
BA	Security sale and option to buy securities	A/D
BB	security purchase and option to buy securities	A/D
BE	Underwriting of securities and/or Common Funds	A/D
BF	Reimbursement of securities and/or Common Funds	A/D

ANNEX 2 TO FIA INSTRUCTION 2010-07

Technical characteristics of the parametric extractor as mentioned in Article 12

1. Drawing up of a report based on the following criteria, which can be also be combined:

   g) from Customer Code to Customer Code (that is, all);
   h) from business relationship to business relationship (that is, all);
   i) from date of transaction to date of transaction (that is, all);
   j) from amount to amount (that is, any amount indicated in the archive);
   k) from transaction code to transaction code (that is all);
   l) from executor to executor (that is, all).

4. In order to ensure that the extracted data are properly interpreted, these reports must bear the essential data on a single line, or on a maximum of two consecutive lines, so as to be able to detect immediately high sums of money, concentrations/clusters or unusual transactions. Here below is a sample string, which is regarded as useful for efficient customer due diligence:

   h) Customer code
   i) Holder of the business relationship
   j) Customer's State of residence code
   k) Transaction date
   l) Reason
   m) Executor
   n) Amount.

5. It is important that these reports also provide comprehensive information such as the total extracted data or the mathematical discrepancy among the data extracted for each single Customer Code.

ANNEX 3 TO FIA INSTRUCTION 2010-07

FIA Instruction 2010-07 : Annex 3

Date of transaction execution	Customer unique code	identification data of the person(s) in whose name the business relationship is registered or the person on whose behalf the transaction is carried out	Details of the identity document of the customer's beneficial owner	Residence country code	Comprehensive registration/transaction code	Detailed registration/transaction code	amount (in EUR or equivalent value in EUR)	sign (D/A)	business relationship number	Executor unique code	Executor's identification data	details of the identity document	residence country code	beneficial owner unique code	beneficial owner's identification data	details of the identity document	residence country code	A.I.A. registration number	number linking fractioned transactions
Model for registration of transactions																			

FIA Instruction 2010-07 : Annex 3

Date of establishment or termination of the business relationship	establishment / termination of the business relationship	number of the business relationship	Customer unique code	identification data of the person (s) in whose name the business relationship is registered	details of the identity document	Residence country code	Executor unique code	executor's identification data	details of the identity document	Residence country code	beneficial owner unique code	beneficial owner's identification data	details of the identity document	Residence country code	A.I.A. registration number
Model for registration of business relationships															

66. GUIDELINES ON GAFI SPECIAL RECOMMANDATION III

GUIDELINES
ON GAFI/FATF SPECIAL RECOMMENDATION III

Preamble

The 9 Special Recommendations of the FATF (Financial Action Task Force) define a framework to combat money laundering and they should be applied at international level. These Recommendations contain the principles lying at the core of the measures implemented by Countries on the basis of their situation and constitutional order.

Preventing terrorists from using the global financial system to promote criminal activities is essential for the suppression of international terrorism. A key element of the response of the international community has been to adopt preventive measures against the concealment and transfer of funds or assets used to finance terrorism, and to designate individuals and other entities to whom such measures should be applied, by placing them on the lists.

It should be highlighted that any effort aimed at combating terrorist financing could be seriously compromised if Countries did not freeze funds or other assets linked to terrorists in a rapid and effective manner.

In compliance with the international obligations undertaken by the Republic of San Marino to counter terrorism, terrorist financing and the activity of Countries threatening international peace and security, San Marino authorities have been given regulatory instruments and administrative measures aimed at implementing the restrictive measures of the United Nations Security Council resolutions.

In particular, reference is made to Title IV “Measures for preventing, combating and repressing terrorist financing and the activity of States that threaten international peace and security” and, in particular, Article 46 and following of Law no. 92 of 17 June 2008.

In this context, the Financial Intelligence Agency, in the framework of the tasks assigned by Law no. 92 of 17 June 2008, attaches great importance to the fact that behaviours of all obliged entities are based on the utmost rapidity, uniformity, transparency and cooperation, so that the obligations deriving from higher international principles can be fulfilled.

Financial Intelligence Agency on 4 June 2010 issued Instruction no.2010-03 ‘Provision implementing FATF Special Recommendation III.

Having said this, the Agency, in the spirit of the Law and with the aim to strengthen the instruments useful to counter money laundering and terrorist financing, contributes the attached guidelines on FATF Special Recommendation III. These latter represent a tool of easy reference elaborated in form of question-answer and provide a framework for understanding the procedures prescribed by law, with particular reference to the "Lists" (*listing* and *de-listing*) and "asset freeze" (*freezing* and *un-freezing*).

San Marino, 20 August 2010

1. What is the content of the FATF Special Recommendation III?

he FATF Special Recommendation III "Freezing and confiscating terrorist assets" provides:

Each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organisations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts.

Each country should also adopt and implement measures, including legislative ones, which would enable the competent authorities to seize and confiscate property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations.

This recommendation requires two basic obligations: the first one, that refers to the freezing and seizing of terrorists assets, has preventive purposes and is directed to block goods potentially intended to finance terrorist activities; while the second, which concerns the obligation to proceed with confiscation of such properties, has both preventive and punitive nature and intended to subtract assets to terrorists.

The FATF Special Recommendation III is implemented into San Marino with Articles 46-50 of Law no.92 of June 17, 2008 as subsequent amended. Moreover on June 4, 2010, FIA issued in this regard Instruction no. 2010-03.

2. What are the United Nations Resolutions which have been implemented in San Marino?

With reference to Special Recommendation III, the relevant Resolutions, implemented in San Marino, are:

a. the **1267 (1999)** and its subsequent amendments or additions, implemented by Decision No. 2 of 6 October 2008, then updated periodically. Resolution 1267 (1999) requires countries to freeze the assets and funds held or controlled by the Taliban, Al-Qaida, Osama bin Laden, or persons and entities associated with them. The Sanctions Committee (the Al-Qaida and the Taliban Sanctions Committee, also called Committee 1267), based on the indications given by individual countries, compile lists of persons against whom the measure adopted must be freezing. The designations made by the Committee are binding - as adopted under Chapter VII of the UN Charter - and require States to freezing *(freezing)* of assets in respect of the entities included in these lists.

b. the **1737 (2006)** and its subsequent amendments or additions, implemented by Decision No. 3 of October 6, 2008, updated periodically thereafter. That resolution ordered substantially against the Islamic Republic of Iran a nearly complete embargo of all deliveries of materials in any way connected with the nuclear industry and provides a general obligation to freeze funds and other assets of persons (individuals, legal persons and groups) involved in the proliferation of weapons of mass destruction. Furthermore, the resolution orders other restrictive measures, including a ban on the transport of specific materials useful in the creation of nuclear weapons and the prohibition of transit in the States that adopt restrictive measures, for certain persons and of persons and entities acting on their interest or at their direction.

3. What is meant by "freezing"?

It means the "freezing of funds" as defined in Article 1, paragraph 1, letter g) of Law no. 92 of June 17, 2008, as subsequently amended. More specifically, “freezing of funds” is the prohibition to move, transfer, modify, dispose, use or manage funds or economic resources, to have access to them in such a way as to modify the entity, amount, location, entitlement of rights, ownership, nature, destination or cause any other change that would permit the use of funds or economic resources, including, for mere illustration purposes, portfolio management, sales, leasing, renting or establishment of real rights of guarantee.

4. Who is competent to decide whether the funds should be affected by freezing?

Article 46 of Law no.92 of June 17, 2008 as amended, provides that in compliance with international obligations of the Republic of San Marino for counter terrorism, terrorist financing and activities of countries that threaten international peace and security, The Congress of State, proposed by the Secretary of State for Foreign Affairs and the Secretary of State for Finance and Budget, by Decision, adopts restrictive measures (which include also the freezing of funds), according to the resolutions of UN Security Council or its Committee.

5. Which effects implies the freezing of funds?

Article 47 of Law no.92 of June 17, 2008 as amended, provides that the funds and economic resources subject to freezing cannot constitute the object of any transfer, holding or use. It is also prohibited to make funds or economic resources available, directly or indirectly, to subjects included in the lists drawn up by the appropriate Committees of the United Nations or to allocate them for their benefit. Contrary acts are null and void.

6. How quickly do you get the freezing?

The freezing is effective immediately after adoption of the Congress of State Decision and perfected without prior notice to the person whose property or funds are affected by such action.

7. How can I identify which assets are affected by freezing?

The freezing affects all property or funds held, managed or controlled in any way by persons, organizations or groups within the list, not just those that can be tied to a particular terrorist act, plot or threat.

8. What is the "List" or "Lists"?

For "List" or "Lists" it is meant a list of parties (persons, entities and groups) drawn up and amended on a regular basis by the United Nations Security Council or one of its Committees, in accordance with its resolutions implemented or to be implemented by the Republic of San Marino through a relevant Decision of the Congress of State.

9. Where can I find these lists updated?

The latest Lists can be found *in primis* on the United Nations Security Council website (http://www.un.org/sc/committees). However, to make it easier to consultation, the Financial Intelligence Agency, hosts on its website (www.aif.sm) a direct link to the UN lists. The Agency has established that direct access to the consolidated existing list on its website in order to allow obliged parties to see the updated lists to the most recent amendment of the Security Council or its Committee.

10. Who changes or updates the lists?

Lists are updated by the Security Council of the United Nations or its Committee in accordance with procedures established by the Council itself. Updates to the decisions of the Security Council or its Committee are regularly implemented in San Marino by Congress of State decision.

The Congress of State decisions are available on the FIA website under the "restrictive measures".

11. Lists are immutable or undergo changes?

Lists are modified and/or updated regularly, both "incoming" *(listing)* and "outgoing" *(de-listing).* That is, the list of parties (persons, institutions and groups) are regularly included but they can be subject to cancellation.

12. Is it difficult to see the lists?

Lists are easy to examine. The following guide/example of the modality of consultation of the List is shown on the Financial Intelligence Agency website: (.doc).

13. What is the San Marino authorities responsible for formulating to international bodies in charge the proposals for inclusion or deletion from lists and/or repeal of an order to freeze?

The Committee for Credit and Savings (CCS) may make proposals to the competent international bodies to include people, organizations or groups in the lists and proposals to remove from lists, even on the basis of applications advanced by stakeholders.

The CCS has the competence to evaluate requests for unfreezing of funds and economic resources presented by the interested parties. In case of abrogation of a freezing measure the Committee for Credit and Savings shall take the necessary actions to return the assets to the rightful owner or, in cases involving registered movable or immovable assets, to annotate the unfreezing order in the public registries.

14. What are restrictive measures? What types of restrictive measures may be adopted by resolution of the Congress of State?

Restrictive measures are sanctions, a tool of economic or diplomatic nature that will lead to changes with regard to activities or policies, such as violations of international law or human rights, or policies that do not respect the rule of law or democratic principles.

The restrictive measures include the following:

a) the freezing of funds and economic resources held or controlled, directly or indirectly, by persons, entities or groups included in the list drawn up by the appropriate United Nations Committee;

b) commercial restrictions, including commercial restrictions on imports or exports and arms embargoes;

c) restrictions of a financial nature, including financial restrictions or financial assistance and the prohibition of providing financial services;

d) restrictions of any other nature, including restrictions on technical assistance, flight prohibitions, prohibition of entry or transit, diplomatic sanctions, the suspension of cooperation and the boycotting of sporting events.

The Congress of State Decision may also introduce further restrictive measures or specific provisions in relation to the contents of the resolutions adopted by the UN Security Council or by its Committee. Moreover, the same Congress of State Decision which provides for the implementation of restrictive measures may provide for exceptions in respect of the resolutions of the UN Security Council or limitations for reasons of public order or interest.

15. Where can I find the Congress of State decisions adopting restrictive measures?

Such decisions are immediately published *ad valvas Palatii* and at the Court, and from that moment they are expected to be known by every one. The website of the Secretariat of State for Home Affairs (http://delibere.interni.segreteria.sm/) permit to view/search/download these decisions.

The Financial Intelligence Agency to give greater publicity to these measures has dedicated a special section on its website (www.aif.sm) "restrictive measures" - "Resolutions of the State Congress."

16. Who are the addressees of the FIA Instruction no.2010-03?

The Instruction 2010-03 issued by FIA on 4 June 2010 addressed to all obliged parties referred to in Article 17 (then the financial parties, non-financial parties and professionals as best described in Articles

18, 19 and 20) of Law 17 June 2008 No which they hold, control or manage "property" or "funds" as defined by Law 17 June 2008 No and, in cases specifically covered, to the State Administrations that keep public registries.

17. What is meant by "assets" or "funds"?

Assets" or "funds" are defined in Article 1, para 1, letter e) of Law 17 June 2008 and subsequent amendments as any property, whether tangible or intangible, movable or immovable, including means of payment and credit, any document or instrument, including electronic or digital form, evidencing title to, or interest in such property; economic resources of any nature, tangible or intangible, movable or immovable assets, thus including all accessories, fixtures and returns that may be used to obtain funds, assets or services as well as any other utility specified in the technical Annex to this Law.

Article 2 of the Technical Annex to the law clarifies:

The following are considered “assets” or “funds”: property of any kind, tangible or intangible, movable or immovable, including means of payment and credit, any document or instrumentalities, even electronic or digital, evidencing title to or interest in such property. The following can be included as an example:

a) cash, checks, bills of exchange, pecuniary credits and claims on money, payment orders and other means of payment;
b) deposits with banks or financial institutions or other entities, the balance on accounts, credits, bonds of any nature and negotiable securities at public and private levels as well as financial instruments as defined by Law N° 165 on November 17, 2005 and subsequent amendments;
) interests, dividends and other incomes and increases of values generated by the assets;
d) credits, right of set-off (settlement and clearing), guarantee of any nature and other financial commitments, letters of credit, bills of lading and other certificates representative of assets or goods;
e) documents that demonstrate an interest in funds or economic resources;
f) all other instruments of exports-financing.

18. Is my office part of the State Administrations that keep public records? If yes, how can I communicate with FIA the data and information available in relation to a listed name?

The State Administrations concerned to the restrictive measures are all public offices that ensure the keeping of public records.

If State Administrations verifies that the movable or immovable property belong to persons registered in the list, they immediately notify the Agency, through filling in the following format (.doc).

The content of this communication must be anticipated by email to the following address congelamento@aif.sm .

19. Who order to annotate in the public registries the freezing?

It is the Financial Intelligence Agency that, under Article 48 paragraph 2 of Law, with special provision, order to annotate in the public registries the freezing of registered movable and immovable assets.

20. What governs the custody, administration and management of property or funds subject to freezing?

To regulate the custody, administration and management of property or funds subject to freezing, see the Delegate Decree of 31 October 2008 n.137 *"Discipline of custody, administration and management of financial resources to freeze"*, available on the website of the Financial Intelligence Agency (www.aif.sm) to section "legislation in force" - "legislation".

21. What do I have to do if I discover that I am managing assets or funds for a person whose name is in this list?

The Law 17 June 2008 no.92 and subsequent amendments and Instruction 2010-03 provide that, where the obliged parties verify the presence among its customers or between the beneficial owners, of listed subjects, they shall send to the Agency a statement according the following format (.doc). This model must be received by registered letter to the Agency within 48 hours after the determination and must be anticipated by email to the following address congelamento@aif.sm not later than the day of detection.

Later, obliged parties shall:

a) notify the Agency within 15 days from the adoption of the Congress of State decision, of the measures applied in accordance with the law, indicating the subjects involved, the amount and nature of the funds and economic resources;

b) notify the Agency of the transactions, business relationships, as well as any other data or information available with reference to subjects included in the lists.

Who made that statement, must complete the following format (.doc).

22. What can I do if I need to use frozen funds or assets to satisfy a fundamental need or a need of my family?

Law no.92 of June 17, 2008 as subsequently amended provides that anyone who needs to use frozen funds or assets to satisfy a fundamental need of themselves or of a family members, may submit an application, in written, specifying the reasons for exemption, full or partial, from freezing to the Secretary of State for Finance in his capacity as Chairman of the Committee for Credit and Savings, at the Ministry of State for Finance, enclosing any relevant documentation or information.

The ground of the request must be unequivocally explained in the request for an exemption as specified in Article 49 paragraph 3 of Law. In particular, it must be document what is the basic need for which exemption is sought, the amount and terms of payment and the person (name, company name, headquarters and identification code or other similar identifier) that is intended to pay to meet demand.

A model example of application for exemption has been prepared by FIA: (.doc).

A similar application may be made for payments of charges food, medicines, housing, medical and legal assistance, taxes, compulsory insurance premiums, bank charges for maintaining accounts.

23. What do I do if my name has been wrongly included in the lists to ask to be removed?

The request, in written indicating the ground, must be addressed to the Secretary of State for Finance in his capacity as Chairman of the Committee for Credit and Savings, at the Ministry of State for Finance, enclosing any relevant documentation or information.

A model example of application is as follows (.doc).

The Committee for Credit and Savings, made the necessary verifications, on the basis of the documentation received and as it deems the merits, will notify the UN Security Council or its Committee the received request.

24. What happens after the request is accepted by the UN Security Council or its Committee?

If the proposal for de-listing, which comes before the un-freezing, is accepted by the UN Security Council or by its Committee, the Committee for Credit and Savings, take timely measures to ensure that funds,

property and economic resources are returned to the rightful owner or, in cases involving registered movable or immovable assets, to annotate the unfreezing order in the public registries.

25. What happens if the request for de-listing is not accepted by the UN Security Council or its Committee?

If the de-listing proposal (and the consequent un-freezing order) is not accepted by the UN Security Council or its Committee, the Committee for Credit and Savings shall inform without delay the applicant.

26. What can I do if I realize that my asset or properties are unfairly affected by freezing in order to request the removal of this measure [un-freezing]?

Anyone with interest, if it considers that the freezing of funds, assets or economic resources was done without just cause, may make an application, written and reasoned, to the Secretary of State for Finance in his capacity as Chairman of the Committee for Credit and Savings , at the Ministry of State for Finance, enclosing any relevant documentation or information.

It should be noted that as freezing is the immediate consequences of the listing mechanism (if implemented by Congress of State decision), at the same way, the un-freezing can be obtained as a direct result of the de-listing mechanism from such lists.

FIA has prepared the following examples of application form to request un-freezing (.doc).

In this process, the Committee for Credit and Savings, made the necessary verifications, based on the documentation received and as it deems the merits, will be in charge to notify the UN Security Council or its Committee about the application received.

27. Is it possible that I may find the name of my client is in the list, but the Congress of State has not yet adopted its relevant Decision? If this is the case, what do I have to do?

Where it is found that the name of a client is in the list, in the case where the Congress of State has not yet adopted the relevant decision, we recommend an immediate communication to FIA, according the following format (.doc).

This event may occur as FIA anticipates by e-mail any update of the resolutions of the UN Security Council or its Committee.

This with the main objective to pursue immediacy and effectiveness of freezing measure, in order to report promptly to obliged parties, the State Administrations who keep public registers and the Police Forces about the updates of the UN Security Council or its Committee.

The above, with the sole aim to put the obliged parties in this position to know "in real time" if he owns, controls or manages assets or funds.

Therefore, any positive comparison, pending the adoption of the of the Congress of State decision, must be reported immediately (at the latest within 3 hours after the determination) to Financial Intelligence Agency to enable it to adopt a timely blocking measure and prevent that property or funds of subjects related to terrorism can circulate freely. In such cases the Agency will require, through the Secretary of State for Finance, the urgent adoption of the Congress of State decision concerning the funds or assets blocked by the FIA, which will dispose the freezing referred to in Article 46 of the Law.

28. Is there a jurisdictional protection against the restrictive measures (including freezing) disposed towards me?

Under Article 50 of Law no.92 of June 17, 2008, as amended, against the restrictive measures ordered by the Congress of State decision and against the provisions adopted by the Committee for Credit and Savings, the person may lodge personally or through a lawyer, an appeal.

Therefore, by way of derogation from article 3 of Law N° 5 of January 25, 1984, the interested subject, if he/she has not designated his/her own defence lawyer or has no defence lawyer, shall be assisted by the public defender also in proceedings before the administrative judge. No compensation shall be owed to the public defender for the professional services provided under this article.

29. Where can I find additional material on the procedures adopted by the UN Security Council on the Resolution 1267 (1999) and 1737 (2006)?

On the website of the UN Security Council Sanctions Committee (http://www.un.org/sc/committees/) are regularly published all documents related to distinct Resolutions.

More specifically, with regard to the resolution:

a. 1267 (1999) and its subsequent amendments or additions, see the website of the 1267 Committee (http://www.un.org/sc/committees/1267/index.shtml) to acquaint himself with general information on the work carried out, the guidelines on the procedure it follows in carrying out its work, as well as basic information on the procedures for insertion *(listing)* and cancellation *(de-listing)* from the lists, as well as the freezing *(freezing)* and its requests for exemption. The 1267 Committee also publishes annual reports on the activities carried out.
b. 1737 (2006) and its subsequent amendments or additions, see the website of the Committee established under the same resolution (http://www.un.org/sc/committees/1737/index.shtml) to have knowledge of selected documents relating to activity carried out, the guidelines on the procedure it follows in carrying out its work, in addition to reports that periodically (at least every 90 days), the Committee directs the Security Council.

30. Are there documents prepared by institutional bodies that might be useful to better understand this topic?

The FATF (Financial Action Task Force) has prepared Best Practices (*International Best Practices - Freezing of Terrorist Assets*, June 23, 2009) that are considered general guidelines for the effective implementation of restrictive measures, in accordance with international standards. *Best Practices* are not legally binding, they nevertheless seek to identify key elements in implementing appropriate disciplinary measures.

Even the European Union, in the framework of the Common Foreign and Security Policy (CFSP), apply restrictive measures to achieve the specific objectives of the CFSP, as set out in the Treaty on European Union. In this context the EU, therefore developed and updated a document entitled The EU Best Practices for the effective implementation of restrictive measures , which provides practical guidelines and recommendations on issues relating to the implementation of financial sanctions.

67. CBSM REGULATION NO. 2006-03 - COLLECTIVE INVESTMENT SERVICES REGULATIONS

http://www.bcsm.sm/images/pdf/eng/reg%202006_03_consolidated%20pdfprof.pdf

68. CBSM REGULATION NO. 2007-07 - REGULATION OF SAVINGS AND OTHER BANKING ACTIVITIES

http://www.bcsm.sm/images/pdf/eng/reg%202007-07_en.pdf

69. CBSM RECOMMENDATION NO. 2009-01 - INTERPRETATION OF ARTICLE 36, PARAGRAPH 6 OF LAW NO. 165/2005

Recommendation no. 2009-01

INTERPRETATION
of Article 36, paragraph 6 of Law no. 165/2005

Introduction
The evolution of international standards to prevent and counter money laundering and terrorist financing, which have been introduced and implemented in the national legislations of the different Countries, may require the intermediaries establishing a relationship with San Marino banks and other financial institutions to obtain from them any necessary information to fulfil the obligations contained in the AML legislation in force in their Countries or, when this information is not provided, to refuse to carry out the transaction requested.
Granted that the intermediary that conducts the transaction, in whole or in part, shall be considered a third party under Article 36 of Law no. 165/2005, some San Marino financial businesses have asked this supervisory authority to clarify the aspects concerning the acceptance of information requests in relation to the observance of banking secrecy, which is monitored by this Authority under paragraph 9 of the aforementioned article.

Purposes
In order to encourage San Marino financial institutions to adopt correct and uniform procedures, the Supervisory Authority has decided to use the interpretative instrument referred to in Article 40 of Law no. 165/2005, by issuing a relevant Recommendation.

Contents
As it is known, paragraph 6 of Article 36 of Law no. 165/2005 lists a series of cases and situations in which the disclosure of data covered by banking secrecy to third parties does not constitute a violation of the prohibition referred to in paragraph 1 of the above-mentioned Article.
Among these cases, those described in letters a) and c) are particularly significant for the purposes of this Recommendation.
When the transaction requested by the customer to the San Marino authorised party shall be carried out, in whole or in part, by banks or other financial intermediaries or, in any case, by parties which shall comply with the AML provisions in force in their own Countries, the situation described in letter c) occurs, provided that the communication to the above-said third parties is "necessary" to execute the customer's request.
For all the other cases in which the requirement of "necessity" does not occur, the disclosure to third parties, however, may not constitute a violation of banking secrecy if the customer, as the party concerned, has given a specific written declaration of consent to the data. This clearly shows that banking secrecy is not of binding nature in relation to the powers of disposition recognised by the law to the party concerned.
However, it is reiterated that, in particular in case of transactions requested in the context of contractual relationships existing before the current legislative framework entered into force, business relationships with customers shall be based on transparency, properness and diligence rules, under Article 66 of Law no. 165/2005, adequately informing customers in order to limit the risk of disputes.

San Marino, 30 January 2009

70. NPOS QUESTIONNAIRE

Link to FIA-Website, No-profit section

http://www.aif.sm/on-line/en/Home/Non-profitsector.html