COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 12 December 2008

MONEYVAL (2008) 39

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

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

SAN MARINO

SECOND COMPLIANCE REPORT[1]

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

[1] Adopted by MONEYVAL at its 28th Plenary meeting (8-12 December 2008).

SECOND COMPLIANCE REPORT

I. INTRODUCTION

Background

1. MONEYVAL adopted the mutual evaluation report of San Marino under the third round of evaluation at its 26th Plenary meeting (31 March – 4 April 2008).

2. Following the adoption of the report, and in accordance with rules 41 and 45(1) of MONEYVAL's Rules of Procedures, the authorities of San Marino were required under Step 1 of the Compliance Enhancing Procedures to provide a report on measures that it has or is taking to address the deficiencies underlying the recommendations which were rated Non-Compliant (NC) or Partially Compliant (PC).

3. San Marino was rated NC on 19 Recommendations and PC on 22 Recommendations, including on several core recommendations, as indicated in the table below:

Non Compliant		Partially compliant	
R.5	Customer due diligence	**R.2**	Criminalisation of ML (mental element and corporate liability)
R.6	Politically exposed persons	**R.3**	Confiscation and provisional measures
R.7	Correspondent banking	**R.4**	Secrecy laws consistent with the Recommendations
R.10	Record keeping	**R.8**	New technologies & non face-to-face business
R.12	DNFBP (R.5, 6, 8-11)	**R.11**	Unusual transactions
R.13	Suspicious transaction reporting	**R.14**	Protection & no tipping-off
R.16	DNFBP (R.13-15 & 21)	**R.15**	Internal controls, compliance & audit
R.19	Other forms of reporting	**R.17**	Sanctions
R.21	Special attention for higher risk countries	**R.18**	Shell banks
R.22	Foreign branches & subsidiaries	**R.27**	Law enforcement authorities
R.24	DNFBP (regulation, supervision and monitoring)	**R.30**	Resources, integrity and training
R.25	Guidelines & Feedback	**R.31**	National co-operation
R.26	The Financial Intelligence Unit (FIU)	**R. 32**	Statistics
R.34	Legal arrangements – beneficial owners	**R.33**	Legal persons – beneficial owners
SR.IV	Suspicious transaction reporting	**R.35**	Conventions
SR.VI	AML requirements for money/value transfer services	**R. 36**	Mutual legal assistance (MLA)
SR.VII	Wire transfer rules	**R. 39**	Extradition
SR.VIII	Non-profit organisations	**R. 40**	Other forms of co-operation
SR.IX	Cross Border Declaration & Disclosure	**SR.I**	Implementation of United Nations instruments
		SR.II	Criminalisation of terrorist financing
		SR.III	Freezing and confiscating terrorist assets
		SR.V	International co-operation

First compliance report

4. San Marino presented its first compliance report at MONEYVAL's 27th Plenary meeting (7-11 July 2008) and provided to the Plenary additional information on several issues of concern raised in this context[2].

5. The Plenary acknowledged that San Marino had taken promptly legislative action aimed at remedying several deficiencies identified in the mutual evaluation report. Nevertheless the legislation adopted was not in force at the time of discussion of the report and a significant number of additional implementing regulations were planned to be adopted in the near future. This transitional process raised a number of unanswered questions and concerns on how this will be achieved.

6. Therefore the Plenary decided to retain San Marino under the compliance enhancing procedure and requested that it should report back to the Plenary in December 2008 on additional progress that had been made, not only in relation to the subsequent secondary legislation issued in relation to the new AML/CFT legislation (Law no. 92) but also in the implementation of AML/CFT measures in force and the effectiveness of the AML/CFT system.

II. SUMMARY OF THE PROGRESS MADE BY SAN MARINO SINCE THE LAST COMPLIANCE REPORT

7. This section summarises the measures taken by San Marino since the adoption of the first compliance report (July 2008) and includes additional information on issues raised by the Plenary on which San Marino was specifically directed to provide further information. For more details, the written responses of the San Marino authorities are enclosed in the Annex.

8. Since July 2008, several legal and institutional developments are to be noted:

a) Law no. 92 of 17 June 2008 on provisions on preventing and combating money laundering and terrorist financing entered into force on September 23, 2008.

b) The Congress of State adopted the following delegated decrees:
- Delegated decree on regulations of the financial intelligence agency (no. 135 of 31 October 2008)
- Delegated decree on transitory regulations relating to bearer passbooks (no. 136 of 31 October 2008)
- Delegated decree on regulations for the safekeeping, administration and management of frozen economic resources (no. 137 of 31 October 2008)
- Delegated decree on cross-border transportation of cash and similar instruments (no. 138 of 31 October 2008)

c) The Congress of State adopted the following decisions:
- Decision no. 2 (6 October 2008) on Provisions for implementing the measures adopted by the United Nations Security Council against persons and organisations linked to Osama Bin Laden, to the "Al -Qaida" group or to the Taleban
- Decision no. 3 (6 October 2008) on Provisions for implementing the measures adopted by the United Nations Security Council against the Islamic Republic of Iran

d) On 3 November 2008, the Congress of State appointed the Director and Vice Director of the Financial Intelligence agency (FIA) (Decision no. 19 , File no. 3232)

[2] See MONEYVAL(2008)17REV

e) On 18 November 2008, the Director of the FIA informed officially the Congress of State, through the Secretary of State for Finance and Budget, that the FIA will officially start operating as of 24 November 2008.

f) Several instructions were issued as follows:

- Instruction no. 2008/02 of the Director General of the Central Bank on the fight against money laundering and terrorism financing which details the procedures for enhanced due diligence on customers resident or located in countries, jurisdictions or territories subject to strict monitoring by the FATF (dated 4 July 2008, in force from 7 July 2008)

- Instruction no. 2008/03 of the Director of the FIA on identification, verification and assessment of "critical transactions" (dated 24 November 2008, in force from 15 December 2008)

- Instruction no. 2008/04 of the Director of the FIA on specific measures for the electronic transfer of funds (dated 24 November 2008, in force from 1 February 2009)

- Instruction no. 2008/05 of the Director of the FIA on Operating rules and procedural aspects of the fight against money laundering and financing of terrorism - Extension to all financial parties of the requirements established in the instruction no. 2008-01 (dated 24 November 2008, in force from 15 December 2008).

1. Legal system and related institutional measures

Laws and regulations

9. **R. 2, SR.II, R. 3 –** Numerous changes to the legal framework were introduced with the entry into force of the law no. 92/2008, which address several identified deficiencies (see previous compliance report for further details). Effectiveness cannot be proved nor assessed considering their recent adoption.

10. **SR.III** – Articles 46-50 of Law no. 92/2008 (which is now in force) set out new procedures to cover the implementation of SR.III. Furthermore, as noted above, the Congress of State adopted 2 decisions on 6 October 2008 aimed at implementing the Security Council UN resolutions. A delegated decree from 31 October regulates the procedure for the administration and management of frozen assets. Considering their recent adoption, effectiveness of implementation of these provisions and recommendation remains to be assessed in due time.

Authorities

11. **R. 26**. The mutual evaluation report highlighted numerous deficiencies as regards the implementation of this recommendation, which was rated non compliant. The first compliance report noted the changes foreseen to the institutional framework, and concluded for the necessity of a close monitoring of the transitional process given that some of the deficiencies were only partly addressed at the level of primary legislation and would need to be further detailed through secondary legislation.

12. The institutional framework has been modified with the entry into force on 23 September 2008 of the new AML/CFT act. The second compliance report provided by the authorities (annexed) includes detailed information on these changes since the adoption of delegated decree no. 135/2008.

13. The FIA was established at the Central Bank and has been formally declared operational as of 24 November 2008. The Director and Vice Director of the FIA were appointed by the Congress of State. The latter regulated through delegated decree the FIA's organisational, functional and financial structure through several provisions on the logistical independence, custody and protection of data;

requirements of professionalism, honourability and independence for the director and vice-director; the regulatory and remunerative framework, criteria and rules applicable for the employees and personnel from external transfers to the FIA, application of official secrecy, etc.

14. As regards FIA's personnel structure and any related modifications as well as budgetary expenditure, these are proposed by the Director of the FIA through reports which are submitted to the Credit and Savings Committee[3]. The latter consults the Governing Council[4] of the Central Bank before evaluating the report(s) against several criteria (economy, proportionality, efficiency and effectiveness) and if it is approved, it it sent to the Central Bank for application (art.7 of delegated decree no. 135/2008). The Governing Council of the Central Bank is also kept informed by the Director of the FIA of assessments of the FIA personnel for any decisions on recruitment and promotions and other contractual matters (article 8 of delegated decree no. 135/2008).

15. The new organisation chart of the FIA was received. As of 24 November 2008, the FIA's staff counted 7 persons, including the Director and Vice-Director and the authorities reported that the Agency intended to recruit other 4-5 qualified persons. The FIA will be located in separate premises provided by the Central Bank for the exclusive use of the Agency. At the time of the second compliance report, the FIA was due to finalise the list of the personnel needed and the budget request for 2009.

16. Also, a memorandum of understanding was signed between the FIA and the Central Bank (26 November 2008) covering the relations between the two institutions.

17. The Plenary sought additional clarifications from San Marino authorities on the independence of the FIA from the Central Bank, its set up and the protection of data held by the FIA, including information and data received from foreign financial intelligence units. The authorities acknowledged that the past situation as regards the independence of the financial intelligence unit from the Central Bank was vague. They stressed that the current regulations provide for a clear separation of powers and functions and for the full independence and autonomy of the FIA from the Central Bank. Furthermore, the authorities stated that Central Bank has no access to information nor is entitled to have access to information held by the FIA.

18. The Plenary's discussions highlighted that there remained questions regarding the autonomy and operational independence of the FIA. It expressed the view as to whether the secondment of staff from the personnel of the Central Bank to the FIA could be further strenghtened through written agreements or through an extension of the memorandum of understanding referred to above, so as to prevent any risks of these staff members being taken away from the FIA without the Agency's control on this matter.

19. It is to be noted that the anti-money laundering service of the Central Bank (former unit which undertook certain FIU functions) issued a report covering 2007 and the first half of 2008 which highlighted that in the first half of 2008, there was an increase in reports received and that the time spent on the analysis of suspicious transaction reports had decreased by 10% due to an increase of the workload connected to the development of regulatory acts. This impacted negatively on the timeliness with which the reports reach investigation authorities.

[3] This Committee is an administrative body chaired by the Secretary of State for Finance and Budget, composed of two to four members nominated by the Congress of State among its own members. The Director General of the Central Bank and representatives of the Supervisory Department of the Central Bank can participate in its sittings but without the right to vote.

[4] It consist of the Chairman and five members nominated by the Grand and General Council, on the proposal of the Credit and Savings Committee for a term of five years renewable once. Meetings of the Council are attended by the Director General of the Central Bank but without being entitled to vote (article 10 of the Statute of the Central Bank).

20. Considering that these changes have just been introduced, San Marino cannot be required at this stage to prove the effectiveness of the measures it has recently introduced.

21. Therefore, it appears desirable to continue the close monitoring of the implementation of R. 26 and its effectiveness, particularly as regards the set up of the FIA (structural issues, financial and human resources aspects), the operational aspects in the implementation by the FIA of its new functions (analysis, supervision, investigation) and the results obtained.

22. **R. 27** – The report does not provide relevant information to enable an assessment of progress. Further information would also be required to be provided on developments regarding the general organisation of law enforcement and prosecutorial authorities, their action, including information on changes regarding resources, capacity/expertise, etc.

23. **SR.IX** – San Marino authorities have taken action to address the issue of cross-border transportation of cash and other instruments. The Congress of State adopted on 31 October 2008 delegated decree no. 138 which introduced a disclosure system with the following characteristics: any person entering or leaving San Marino with cash and/or bearer instruments above 10.000 Euros should declare, upon request of the Police at the points of entry/exit from the territory a) his/her name and address, b) name and address of the subject on behalf of whom the transfer may be made, c) the cash and similar instruments being transferred and corresponding amount, d) the origin and destination of cash or similar instruments.

24. Several sanctions are foreseen. Rejection to declare, false or inaccurate declarations are sanctioned through a fine equivalent to 25% of the value exceeding 10.000 Euros, with a minimum fine of 200 Euros. In case of serious crimes, incomplete or false declaration on the name and address of the beneficiary may be punished with imprisonment or second degree arrest of a third degree fine. Administrative seizure is also foreseen in case of violation of the disclosure obligation, however the seizure is carried out within the limit of 25% of the amount exceeding 10.000 Euros. San Marino authorities reported that in the period 1/11/2008 - 27/11/2008, the Police carried out 49 controls and no breaches were found.

25. The text does not appear to ensure that all the information obtained through the disclosure process would be available to the Agency in case of suspicious cross-border transportation incidents. The text provides that the FIA receives a copy of the verbal report of the declaration only in cases where the cash or instruments have been seized due to a violation of the disclosure obligation (ie. false declaration or refusal). Also it remains unclear whether the system put in place would allow for the greatest possible measure of international co-operation and assistance. Hence the measures that it introduces should be reviewed in the light of all requirements of SR.IX. It is recommended to continue the follow up of progress in the implementation of this act, with a particular emphasis on the co-operation at domestic level between competent authorities,

2. Preventive measures – Financial institutions

26. Specific requirements covering preventive measures have been introduced in the new AML/CFT act which is now in force. The Congress of State adopted delegated decree no. 136 on bearer passbooks. Several instructions were issued, the majority of which were not in force at the time of examination of the compliance report. The FIA initiated the drafting of implementing instructions of the customer due diligence (CDD) requirements of the law no. 92/2008, which should be issued within 6 months from the beginning of its formal operation, that it by 24 May 2009.

27. **R. 4, 5 to 8, R.10** - Several changes to the legal framework were introduced with the entry into force of the law no. 92/2008 and the adoption of the above mentioned decree and instructions, which address several identified deficiencies (see previous compliance report for further details). The Plenary highlighted potential gaps and sought additional information and clarifications on CDD measures in relation to bearer passbooks, the identification of beneficial owners, simplified CDD

measures. In particular, the Plenary expressed concern for the continuation of opening of bearer passbooks, even though those are limited to a maximum amount of 15.000 Euros, particularly since for such amounts the transferability characteristic remains. The authorities reported that additional instructions need to be issued and are currently being prepared. As regards R. 10, the deficiencies appear to be addressed by the provisions set out in the new AML/CFT law (articles 21, 34).

28. **R. 11 & 21** - Measures have been taken to address the deficiencies identified through the law no. 92/2008 (in force) and instructions no. 2008-02 (in force), no. 2008-03 (in force from 15 December 2008) and no. 2008-04 (in force from February 2009).

29. **R. 13 and SR.IV -** The changes to the reporting requirements were presented in the first compliance report. As regards the effectiveness of the new reporting system as a whole, the figures and information provided do not enable to assess its effectiveness. It is obvious that the heavy burden that represents the major work undertaken by the understaffed anti-money laundering service of the Central Bank and now by the FIA to further develop the regulatory framework properly might have affected negatively the speed of the analysis of reports received from reporting entities. Hence, the effectiveness of the implementation of these recommendations should continue to be monitored attentively.

30. **R.19** - A working group was established by decision of the Supervision Committee of the Central Bank in July 2008 and was entrusted to conduct a study on the feasibility and utility of implementing a system where financial institutions would report all transactions in currency above a fixed threshold to a national central agency. The Supervision Committee concluded that such a system would be feasible but not useful. Only the minutes of the meetings of the Supervision Committee which establish the working group (30 July 2008) and include the outcome of this process (20 November 2008) were provided.

31. **R. 17 -** The new AML/CFT law sets out several criminal and administrative sanctions available to deal with natural persons, however their effectiveness will only be ascertained when they will be applied. As regards details on inspections and sanctions, San Marino provided statistics on the number of inspections and the major types of breaches, with one example of sanction applied for the whole year of 2008. Furthermore, the Plenary requested clarifications on the application of sanctions on the basis of breaches of the AML/CFT law or instructions for CDD requirements and expressed concerns as to whether the sanctions introduced are effective, proportionate and dissuasive. The authorities expressed their commitment to clarify through further instructions the application of sanctions so as to ensure that they would be adequate and dissuasive. In the absence of further detailed information at this stage on the number of cases where sanctions have been applied and nature of sanctions applied and on which basis, it remains difficult to assess the effectiveness of the supervision and the adequacy of sanctions applied.

32. **R. 14, R. 15 & 22, R. 18, SR.VII** – Several changes were introduced with the recent entry into force of the law no. 92/2008. As regards SR.VII, the instruction no. 2008-04 will only be in force on 1 February 2009. Taking into account their recent introduction as well as the fact that the effective implementation of recommendations 15, 18, 22, SR.VII by financial institutions could only be derived from information obtained through the outcomes of supervisory action, authorities would need to be given sufficient time to demonstrate their effectiveness.

33. **R. 25, SR. VI -** Work is in progress. The FIA is in the process of drafting AML/CFT instructions for the Post Office (draft text annexed to the compliance report) and targeted guidance for reporting entities.

3. Preventive measures – designated non financial businesses and professions

34. R. 12, R. 16, R. 24, R. 25 – The first compliance report highlighted that with the introduction of the new AML/CFT act, the full application of the new provisions, issuance of subsequent

instructions and implementation, subsequent supervision, DNFBPs would not comply with AML/CFT requirements for an extended period of time. In September and October 2008, the Bar of lawyers and notaries and accountants of San Marino issued guidelines to their members. The FIA is currently drafting instructions for legal professions and accountants. Considering the current situation, developments regarding the implementation of these recommendations should continue to be monitored.

4. Legal persons and arrangements and non profit organisations

35. **R. 33 & 34** - The Plenary requested clarifications regarding the measures taken to ensure transparency of legal persons, in particular regarding data available in the Register of Companies, in the light of previously expressed concerns in the mutual evaluation report regarding transparency of information on beneficial ownership and control of companies, for instance as regards anonymous companies. The authorities reported that a further mechanism is being evaluated by the competent authorities to ensure enhanced transparency as regards anonymous companies. Several controls of companies were reported to have taken place (by the Company Control and Supervision Commission and the Working Group at the First level of Administrative Co-operation) and breaches were reported to the Single Court and the AML Service. Also, the executive magistrate of the Single Court, through a letter dated 20 November 2008, formalised the provisions to authorise the consultation in real time of the Register of Companies to any person requesting it.

36. **SR. VIII** - A review of the non-profit sector is underway and a draft law regulating the activity related to NPOs will be submitted to the Government. Monitoring action was taken by the judge of supervision which led to the winding up of one non-profit organisation and strict monitoring and control of 3 other associations.

37. Further updated information in due course on results of measures underway would assist.

5. National and international co-operation

38. **R. 31** – The Credit and Savings Committee was assigned the function of national co-ordination mechanism by the new AML/CFT law. It was not specified whether any meetings were held since the entry into force of the law.

39. **R. 35 & SR.I** – San Marino has not yet ratified the Palermo Convention and additional protocols. The new AML/CFT act, delegated decrees and decisions of the Congress of State address some of the concerns raised.

40. **R. 36 & 39 & 32** - The European convention on extradition was not yet ratified. The report provides some data and statistics on passive rogatory requests. As regards concerns for the efficiency of the process for execution of MLA requests and possible delays, the authorities had reported previously that rogatory letters were examined and accepted on average 12 days after being received by the San Marino Court and now this period was reduced to an average of 7 days.

41. **R. 40 & SR V** - The provisions of the new AML/CFT modify the framework for international co-operation and the roles of the various institutions. Concerns were raised specifically on the capacity of the FIU to exchange information with foreign FIUs, particularly in the light of the limitation imposed by the new act which provides that "protocols of agreement or conditions of reciprocity shall provide that the foreign financial intelligence unit informs the Agency whether international judicial assistance procedures have been initiated in relation to a fact being the subject of a request for information. In this case, the Agency shall not exchange the information, unless otherwise ordered by the judicial authority of San Marino". This provision lays an excessive condition and unnecessary burden on the requesting FIU and may prove to be counterproductive. The impact of this provision on the FIU's co-operation capacity remains to be assessed.

6. Other issues – Resources and statistics

42. **R. 30** – The second compliance report submitted provided updated information on the human resources of the FIA. It remains to be clarified whether there are any changes aimed at ensuring the effectiveness of the new supervisory framework. There is no updated information on the situation regarding the resources of law enforcement authorities and action taken to strengthen their capacities and expertise.

43. **R. 32** – Action was taken on 20 November 2008 by the Executive Magistrate which has ordered the Criminal registrar to collect, maintain and update information and data on the activities of the Court as regards money laundering and the financing of terrorism matters, including data on investigations, prosecutions and MLA. Available statistics were provided on money laundering investigations, suspicious transaction reports, property seized, number of passive rogatory requests, cross border controls and requests received or transmitted through Interpol offices. No information was received on the exchange of information between supervisory authorities.

III. CONCLUSION AND NEXT STEPS

44. San Marino continued taking legislative action to address deficiencies identified in the mutual evaluation report in relation to the majority of the recommendations. Most of the measures taken, in line with MONEYVAL recommendations, have just entered into force or are about to enter into force. Furthermore, several additional measures are underway or planned so as to remedy deficiencies identified.

45. However, as these acts have recently been passed, it is not yet possible to assess the effectiveness of their implementation.

46. In these circumstances, it is proposed to give San Marino a reasonable time period to pursue the implementation of these measures and be in a position to gather information which would demonstrate that sufficient progress has been made to rectify the deficiencies in an effective manner. Therefore it would seem reasonable for San Marino to remain under compliance enhancing procedures (Step 1) and report back to the Plenary in September 2009.

ANNEX: SAN MARINO AUTHORITIES' REPORT TO THE PLENARY

Recommendation 2 - ML offence (mental element and corporate liability) Rating: PC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. Criminal liability of legal persons should be clearly provided by law as there is no fundamental principle of law prohibiting it.	Law No.92 of 17 June 2008 "Provisions On Preventing And Combating Money Laundering And Terrorist Financing" (hereinafter, law no. 92/2008) ANNEX 1	San Marino authorities envisage to implement a legislative provision concerning the criminal liability of legal persons. However, the Law No. 92/2008 provides for a joint liability of the entity (article 70 of the Law No.92/2008) for the administrative violations committed by its representatives or employees. This joint liability integrates the one established in civil law for the unlawful acts committed by the representative or employee of a legal person.
2. Given that the implementation aspect appears to be quite unsatisfactory, this issue should be addressed by the San Marino authorities through a firm prosecution policy and that a review of the effectiveness of the current legislation be carried out. In particular, the authorities should review their legislation to ensure that natural and legal persons should be subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions for ML and consider increasing the level of	Criminal sanction for ML offence has been strengthened by article 77 para 2 of the Law No. 92/2008. Criminal sanctions for violations of the preventive measures adopted by articles 53, 54, 55, 56, 57, 58, 59 and 60 of the Law No. 92/2008. Administrative sanctions	San Marino authorities have reviewed sanctions regime for money-laundering offence (article 199bis of the Criminal Code) by strengthening the imprisonment penalty. The imprisonment from 4 to 10 years is applied. Article 77 para 2 of the Law No.92/2008 inserts the following para 4 within article 199bis (Money Laundering Offence) of the Criminal Code: *"Anyone who committing the offences provided for in this article shall be punished by terms of fourth degree imprisonment, a second-degree daily fine and a third-degree disqualification from public offices and political rights.* *The penalties may be decreased by one degree based on the amount of money or goods equivalent to them and by nature of the transactions carried out. They may be increased by one degree when the facts were committed in the exercise of an economic or professional activity subject to the authorization or licensing by the competent Public*

sanctions.	for violations of the preventive measures adopted by articles 61, 62, 63, 64, 65, 66 and 67 of the Law No. 92/2008. ANNEX 29	*Authorities.* *The judge shall apply the penalty corresponding to the penalty imposed for the predicate offence, if this one is lower."* The sanctions regime for the preventive measures have also been strengthened according the new provisions of the Law No.92/2008. The Annex 29 contains the list of the criminal and administrative sanctions for the violations of the provisions of the Law No.92/2008.
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		

Recommendation 3 - Confiscation and provisional measures Rating: PC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. Equivalent value confiscation should be considered also for offences other than ML or FT;	Adopted by Article 76 para 3-4 of the Law No. 92/2008 Adopted by Article 83 para 1 of the Law No.92/2008	Confiscation regime has been changed in order to extend value-based confiscation to the most serious offences constituting predicate offences, even when confiscation cannot be ordered since the property does not belong to the defendant: receiving of stolen goods, money laundering, usury, insider trading, terrorist association, terrorist financing, bribery, corruption. Value-based confiscation is also applicable to smuggling of migrants, trafficking in person and commercial offences. The "Procuratore del Fisco" can order the preventive seizure of the sums which may be subject to value-based confiscation under articles 145 and 140 no. 6 of the Criminal Code. Under article 147 of the Criminal Code, in case of conviction the judge may order the confiscation of the defendant's property or assets that served or were destined to commit the offence, and of the things being the price, product or profit thereof (para 1). Regardless of a previous conviction, confiscation is mandatory whereby the offence consists in the illicit manufacture, use, carriage, possession, transfer or trade in property (para 2). Where confiscation is not possible, the judge imposes an obligation to pay an amount of money equal to the value of the instrumentalities and things referred to above (para 4 introduced by Article 5 para 1 of the Law No. 28/2004). Confiscated assets or equivalent sums are allocated to the inland revenue or, where appropriate, destroyed (para 5). Para 4 of article 76 of the Law No. 92/2008 modifies para 3 of article 147 of the Criminal Code: "*In case of conviction, the confiscation of the instrumentalities that served or were destined to commit the crimes referred to in articles 199 paragraph 1, 199 bis, 207, 305 bis, 337 bis, 337 ter, 371, 372, 373, 374 paragraph 1, 374 ter paragraph 1 and crimes for the purposes of terrorism or subversion of the constitutional order as well as of the things being the price, product or profit thereof, shall always be mandatory. Where confiscation is not possible, the judge shall impose an*

<table>
<tr>
<td></td>
<td></td>
<td>obligation to pay a sum of money equal to the value of the instrumentalities and things referred to above".

This new provision extends the list of the criminal offences for which confiscation is always mandatory, including the following offences:

<table>
<tr><th>Article</th><th>Offence</th></tr>
<tr><td>199 para 1</td><td>Sale of stolen property</td></tr>
<tr><td>207</td><td>Usury</td></tr>
<tr><td>305 bis</td><td>Insider trading</td></tr>
<tr><td>337 bis</td><td>Associations for the purpose of terrorism or subversion of the constitutional order</td></tr>
<tr><td>337 ter</td><td>Financing of terrorism</td></tr>
<tr><td>371</td><td>Embezzlement by public official</td></tr>
<tr><td>372</td><td>Bribery</td></tr>
<tr><td>373</td><td>Corruption</td></tr>
<tr><td>374 para 1</td><td>Accepting an undue advantage for an act already performed.</td></tr>
<tr><td>374 ter para 1</td><td>Embezzlement, extortion, corruption and instigation to corruption of officials from foreign countries and international public organizations</td></tr>
</table>
</td>
</tr>
<tr>
<td>2. The legal powers of competent authorities to identify and trace proceeds should be reviewed, in particular those of the FIU so as to enable it to block or freeze assets other than those held or maintained within banks or financial intermediaries; also the FIU should have direct access to public available information held within public administrations.</td>
<td><u>Power to block</u>
Adopted by article 5, para 1 letter d) and e) and article 6 of the Law No. 92/2008

<u>Access to information</u>
Adopted by article 8 of the Law No.92/2008</td>
<td><u>Power to block</u>
According to the provisions set forth in the article 5, para 1 letter d) and e) of the Law No.92/2008, for the purpose of preventing and combating money-laundering and terrorist financing, the Financial Intelligence Agency (San Marino FIU) has, among others, the powers to:
1) order the block of assets, funds or other economic resources whenever there are reasonable grounds to believe that these assets, funds or economic resources are derived from money-laundering or terrorist financing or may be used to commit such offences;
2) suspend, also upon request by the criminal judicial Authority, suspected transactions of money-laundering or terrorist financing for a maximum of five working days, whenever this does not prejudice investigations.

Procedures and effects on these measures are prescribed in the article 6 of the Law No.92/2008.</td>
</tr>
</table>

		Access to the information held within public administrations *Under Article 8 of the Law No.92/2008, the Financial Intelligence Agency (San Marino FIU) has access, also through electronic means, to the data and information available in public registries, archives, professional rolls kept by the Central Bank, Public Administrations and Professional Associations.* *The data and information held by the Central Bank, Public Administrations and Professional Associations are immediately made available to the Agency, upon simple motivated request in relation to the purposes of preventing and combating money-laundering and terrorist financing.* *The Financial Intelligence Agency, upon simple request, shall have access to registries, archives, data or information kept by police Authorities or by the Single Court, including data regarding criminal record. The data and information regarding jurisdictional activity shall be provided to the Agency, upon authorization by the judge only for the purpose of preventing and combating money-laundering and terrorist financing.*
3. There should be legal provisions to void actions, both contractual and non-contractual, whose effects consist in prejudice to the possibility to confiscate property or assets.	Adopted by article 75 of the Law No. 92/2008	Article 75 of the Law No. 92/2008 introduces a specific provision to prevent and counter money-laundering and terrorist financing concerning the voiding of any action to have access to instrumentalities which may be subject to confiscation. According to this provision, the voiding of actions such as contracts for assets or funds related to money laundering or terrorism financing enables San Marino Authorities to recover the property subject to confiscation. The article 75 states that: ***(Nullity of the acts of disposition of assets susceptible to confiscation)*** *1. Any act of disposition, fulfilled in any capacity, having as object assets, funds or resources that constitute directly or indirectly the price, product or profits from a felony, whenever the person who has received such assets, funds or resources knew or shall have known that they derived from a felony is null.* *2. "I Sindaci di Governo" (authorities dealing with acts and deeds involving the State) shall cite in judgment the assignor, assignee and any subsequent assignees that are found jointly guilty to the devolution of assets, funds or economic resources to the Ecc.ma Camera [State], or, whenever this is not possible, to the payment of an equivalent amount in money.* *3. The assignee and any subsequent assignees have the onus of proving their good faith in accordance with the first paragraph of this article.* *4. Every other reciprocal action between the assignor, assignee and any subsequent assignees is*

		guaranteed. *5. All actions are guaranteed to the person damaged by the felony from which the assets, funds, or resources are derived.* *6. This article shall apply in derogation to the general regulations in force regarding matters of contractual invalidity, with the aim of rendering the prevention and combating money-laundering and terrorist financing more effective.*
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		

Recommendation 4 - Secrecy laws consistent with the Recommendations Rating: PC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. San Marino authorities should review their legal provisions on banking and official secrecy to ensure that they do not inhibit implementation of FATF Recommendations. The AML Law should clearly lift bank secrecy, not only for STRs in respect of money laundering, but also in particular in the context of the ability of competent authorities to access information required in the performance of their AML/CFT functions and of the sharing of information between competent authorities, either domestically or internationally.	Adopted by Article 38 (Professional Secrecy) and 39 (Exemption from responsibility) of the Law No. 92/2008 Adopted by article 86 of the Law No. 92/2008 (Amendments to the LISF - banking secrecy) <u>Access and sharing information are</u> adopted by articles 11, 12, 14 and 15 of the Law No. 92/2008.	The San Marino Authorities have reviewed the San Marino legislative framework in order to implement the FATF Recommendations. The provisions contained in the Law No.92/2008 permit San Marino Authorities to perform their AML/CFT functions in proper ways (such as, access to information) without any limitation or restriction for banking and official secrecy. Under Article 39 of the Law No.92/2008, STRs, disclosures and other communications made in respect of money laundering and terrorist financing constitute neither a violation of any restriction on disclosure of information imposed by contractual, legislative, regulatory or administrative provisions, nor a breach of the requirements of confidentiality and professional, official or bank secrecy, referred to in article 36 of Law No. 165 of 17 November 2005(LISF, Law on companies and banking, financial and insurance services). STRs and disclosures do not entail any kind of liability if they are made in good faith. The same provision is applied not only to the reporting system but also to any other communication sent to the Agency. <u>Bank secrecy</u> As stated in article 86 of the Law modifying article 36 (bank secrecy) of the No. 165 of 17 November 2005. (LISF, Law on companies and banking, financial and insurance services), bank secrecy shall be lifted to report suspicious transactions and shall not be opposed to the Agency "*in the exercise of its functions of preventing and combating money laundering and terrorist financing*". <u>Professional secrecy</u> In general, paragraphs 3 and 4 of article 38 of the Law No.92/2008 state that professional secrecy shall not be invoked against the Judicial Authority, the Financial Intelligence Agency and the

		Police Authorities in the exercise of their functions to prevent and counter money laundering and terrorist financing, except in the case described in para 1 of the same article referring to legal professionals who are subject to professional secrecy during a judicial proceeding. Access and sharing information The Financial Intelligence Agency (San Marino FIU) accesses to the information held within Public Administrations, Police Authorities, Central Bank and Professional Associations. General Principle for domestic cooperation and collaboration The Law No. 92/2008 contains specific provisions regulating the cooperation between the Agency and Public Administrations, Police Authorities, Central Bank and Professional Associations. A general provision is set forth in article 11 para 1 of the Law No.92/2008 under which, the authorities and associations mentioned above shall provide**,** upon motivated request by the Agency, the data and information in their possession, which are deemed to be useful for the purposes of preventing and combating money-laundering and terrorist financing. Cooperation between the Agency and the Police Authorities Article 12 of the Law No. 92/2008 provides for the cooperation between the Agency and the Police Authorities and the National Central Office of Interpol. Cooperation between the Agency and the Central Bank As regards the financial sector, the Central Bank, while performing its functions of supervision over financial institutions, shall inform the Agency without delay about violations of the provisions of the law or any facts or circumstances that might be related to money laundering and financing of terrorism as prescribed in the article 14, para 1 of the Law No.92/2008. Moreover, according to the article 14 para 2 of same Law, the Central Bank shall provide the Agency with data on financial institutions as well as any information considered to be useful to carry out financial investigations following reports of suspicious transactions and to analyse financial movements. On November 2008, the Agency and the Supervisory Department of the Central Bank has signed a Memorandum of Understanding, regulating the respective competences in order to strengthen the contrast to money laundering and terrorism financing
	MOU between FIA	Cooperation between the Agency and the Judicial Authority

	and Supervisory Department of the Central Bank (November 2008) ANNEX 19	According to article 5 para 4 of the Law No.92/2008, the Agency can be delegated by the Judicial Authority to carry out investigations related to proceedings involving money-laundering and terrorist financing as well as offences and administrative violations prescribed by the law. In this case, the Agency shall operate as judicial police. The investigations carried out upon delegation from the Judicial Authority shall be documented in reports. The assistance of the Agency to the Judicial Authority is illustrated in the provisions contained in the article 15 of the Delegate Decree No.135/2008 issued by the Congress of State on October 31, 2008. Moreover, article 15 of the Law No. 92/2008 states that when the Judicial Authority has reasonable grounds to suspect that money laundering or terrorist financing have been committed through transactions carried out in the premises of the obliged parties (i.e. reporting entities and persons), it shall inform the Agency.
2. Following the introduction of the obligation to report suspicious transactions on FT, it should be clearly provided in legislation that banking secrecy does not apply with regard to STRs on FT. As a consequence, STRs relating to FT sent to the FIU should not constitute a violation of secrecy obligation or imply liability of any kind.	Adopted and implemented by Article 36 and Article 39 of the Law No. 92/2008	Under article 39 of the Law No.92/2008 reporting suspicious transactions related to ML or for FT, as described in Article 36 of the same Law, does not constitute any violation of confidentiality or secrecy rules and the legislation does not entail any kind of liability. According to article 39 of the Law No.92/2008: **(Exemption from responsibility)** "*1. The reports and notifications carried out under this law do not constitute violation of any restriction to the communication of data or information resulting from contracts or legislative, statutory, regulatory or administrative provisions, nor of obligations of confidentiality and of professional, official or bank secrecy referred to in article 36 of Law no. 165 November 17, 2005. Reports and notifications involve no responsibility whatsoever if made in good faith."*
3. The current framework should be reviewed to ensure that banking and official secrecy should not prevent the sharing of relevant information, either domestically or internationally among AML/CFT competent authorities, nor impose too strict conditions for exchanges which inhibit such cooperation.	<u>Domestic cooperation</u> adopted by articles 11,12,14 and 15 of the Law No. 92/2008 Adopted by article 15 of the Delegate Decree No. 135/2008 of October 31, 2008 <u>International</u>	<u>Domestic cooperation</u> The Law No. 92/2008 contains specific provisions regulating the cooperation between Public Administrations, the Police Authority, the Central Bank, professional associations and the Agency. A general provision is set forth in article 11 para 1 of the Law No.92/2008. According to it, the entities mentioned above shall provide, upon motivated request by the Agency, the data and information in their possession, which are deemed to be useful for the purposes of preventing and combating money-laundering and terrorist financing under para 2 of the same article. Specific provision on cooperation between the Financial Intelligence Agency and other authorities are prescribes as follows: - Article 12 provides for the cooperation with Police Authorities and the National Central

	cooperation adopted by article 16 of the Law No. 92/2008 MOU between the Supervision Department of the Central Bank and the Financial Intelligence Agency (ANNEX 19)	Office of Interpol; - Article 14 provides for the cooperation with Central Bank, while performing its functions of supervision over financial institutions; - Article 15 provides for the cooperation with the Judicial Authorities. On November 26, 2008 the Supervision Department of the Central Bank and the Financial Intelligence Agency signed a Memorandum of Understanding that regulates the respective competences in order to strengthen the contrast to money laundering and terrorism financing. The MOU is attached to this document (ANNEX 19) International cooperation According to the article 16 the Financial Intelligence Agency cooperates with foreign FIUs on the basis of reciprocity including the exchange of information. The foreign financial intelligence units shall guarantee the same conditions of confidentiality of the information, as assured by the Agency.

Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable

On October 31, 2008 the Congress of State has adopted Delegate Decree No.135 that disciplines the Agency.
The article 15 of the Delegate Decree No.135/2008 regulates the assistance of the Financial Intelligence Agency to the Judicial Authority.

Article 15
(Assistance to the Judicial Authority)

1. On the delegation of the Judicial Authority, pursuant to article 5, paragraph 4 of Law no. 9o2 of 17 June 2008, the Agency may perform inquiries and evidence taking, availing of Police personnel transferred to the Agency, or other Police personnel specified by the Judicial Authority. The reports of the actions carried out shall be immediately sent to the Judicial Authority.
2. The Judicial Authority may request the assistance of the Agency in proceedings relating to crimes of money laundering and financing of terrorism and to the offences and administrative violations provided for by Law no. 92 of 17 June 2008. 92.
3. If the Judicial Authority receives a report pursuant to article 15 of Law no. 92 of 17 June 2008, or a report forwarded by a Police Authority, the Agency, in exception to the provisions of article 7 paragraph 1 of Law no. 92 of 17 June 2008, it shall inform the Judicial Authority of the outcome of the financial investigation carried out, even if no acts of criminal significance emerge.

On November 26, 2008 the Supervision Department of the Central Bank and the Financial Intelligence Agency signed a Memorandum of Understanding that regulates the respective competences in order to strengthen the contrast to money laundering and terrorism financing. The MOU is attached to this document (ANNEX 19)

Recommendation 5 - Customer due diligence Rating: NC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. The evaluators advise that obligations in the AML/CFT Methodology marked with an asterisk are put into the AML Law.	With the adoption of the Law No.92/2008	Rec.5.1* has been adopted as Article 30 of the Law No.92/2008; Rec.5.2* has been adopted as Article 21 and, as to Rec. 5.2. (c) (wire transfers), as Article 33 of the same Law; Rec.5.3* has been adopted as Article 22.1 of the same Law; Rec.5.4.(a)* has been adopted as Articles 23.2 and 23.3of the same Law; Rec.5.5*, 5.5.1* and 5.5.2 (b)* have been adopted as Article 22.1. letters a) and b)of the same Law; Rec. 5.7* has been adopted as Article 22.1.d) of the same Law.
2. At the time of the evaluation visit, the provisions on customer identification, record maintenance and reporting requirements for post offices, credit recovery on behalf of third parties, financial promoters and insurance promoters and agencies of Italian insurance companies and insurance brokers had not been implemented, as no provisions were issued by the CBSM as required in the law. The authorities should ensure that these provisions are implemented, by issuing the relevant provisions required by law and by taking any additional necessary measures to facilitate the implementation process.	Adopted as article 18 of the Law No. 92/2008 Implemented by FIA Instruction no. 2008-05 of 24th November 2008 ANNEX 16	According to the Article 18 of the Law No.92/2008, post offices, credit recovery on behalf of third parties, financial and insurance promoters and agencies of Italian insurance companies operating in San Marino and insurance brokers are considered as "obliged parties" that shall implement the preventive AML/CFT measures: Customer Due Diligence (CDD) requirements, record keeping requirements and reporting requirements and other obligations such as internal controls. Under Instruction no. 2008-05, the Financial Intelligence Agency (FIA) has clearly stated that all the rules regarding customer identification, record maintenance and reporting requirements - already addressed to banks and financial institutions by Instruction No. 2008-01 of 12th June 2008 – must be fulfilled by any "obliged party" listed in Article 18 of the Law no. 92/2008.

3. The evaluators recommend that the authorities should take steps to terminate the issue of bearer passbooks.	Adopted as article 31 of the Law No. 92/2008 Implemented by Delegate Decree No. 136 of 31 October 2008 (ANNEX 05)	According to Article 31 para 3 of the Law No.92/2008, since the entry into force of the Law (September 23, 2008) the balance of bearer passbooks is limited to 15,000 euros. The bearer passbooks issued before 23 of September 2008 whose balance exceeds 15,000 euros shall be closed or converted by 31 December 2010. (see para 4 of Article 31). As from January 1, 2012 banks shall not issue new bearer passbooks and should close or convert those bearer passbooks issued before that date (para 5 of Article 31) Under Art. 90 of Law No. 92/2008, the Congress of State (Government) issued Delegate Decree No.136 of 31 October 2008 regulating the procedures of converting or closing bearer passbooks within the terms set forth in Law No. 92/2008. The same Decree also regulates the legal and economic effects caused by the failure to close or convert bearer passbooks. If bearer passbooks are not converted or closed, the administrative sanctions envisaged by article 63 of Law No. 92/2008 shall be applied.
4. As regards existing bearer passbooks, the evaluators recommend that at a minimum clear requirements be introduced in law to ensure that full identification and recording of persons to whom a bearer passbook is transferred is carried out.	Adopted and implemented as article 31 of the Law No. 92/2008	Under para 6 of article 31 of the Law No.92/2008, banks shall comply with customer due diligence requirements for any deposits and withdrawals from bearer passbooks as well as extinction or conversion of the same, regardless of the amount of the transactions.
5. The authorities should introduce a risk-based approach, performing enhanced and simplified CDD measures for different categories of customers, business relationships, transactions and products. They should consider undertaking a risk assessment of the financial sector to determine those areas where there may be particular AML/CFT risks, to assist the financial sector in ensuring that enhanced measures are taken in those situations where there is a greater risk	Adopted by articles 25, 26 and 27 of the Law No.92/2008	The article 25 of the Law No. 92/2008 introduces a risk-based approach and indicates some aspects that shall be evaluated such as: A) with reference to the <u>customer</u>: *1) the legal status,* *2) the main business activity,* *3) the behavior 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 countries that do not require equivalent AML/CFT requirements to those set forth in Law No.92/2008;* *B) with reference to any business relationship or occasional transaction:* *1) the type and specific method of execution,* *2) the amount,*

of AML/CFT.		*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 countries that do not require equivalent AML/CFT requirements to those set forth in the Law No.92/2008.* Under article 26 of the Law No.92/2008, obliged parties (i.e. reporting entities and persons) shall applied simplified CDD requirements when the customer is: a) a financial party referred to in article 18, letters a), b) and c); b) a foreign institution that mainly carries out an activity which refers to the reserved activities mentioned in letters A), B), C), D) and E) of Annex 1 of Law No. 165 November 17, 2005 (LISF, Law on companies and banking, financial and insurance services), located in a country which requires AML/CFT requirements equivalent to those set forth in the Law No.92/2008 and imposes supervision and control of compliance with the obligations for the prevention and combating of money-laundering and terrorist financing; c) a foreign institution that carries out an activity equivalent to that referred to in article 18, paragraph 1, letter c) located in a country which imposes AML/CFT requirements equivalent to those laid down in this law and provides supervision and control of compliance with the requirements for the prevention and combating of money-laundering and terrorist financing; d) a company listed on a regulated market in a country, as long as this market is subject to regulations consistent with or equivalent to European Union legislation; e) domestic public authorities. Under the same article, obliged parties shall conduct simplified measures in respect of: a) life insurance policies where the annual premium is no more than 1,000 euros or the single premium is no more than 2,500 euros; b) complementary pension schemes if there is no surrender clause and the policy cannot be used as collateral for a loan under the schemes set forth in current legislation; c) compulsory or complementary or similar pension schemes that provide retirement benefits, which contributions are made by way of deduction from wages and the scheme rules do not permit the transfer of beneficiaries' rights if not after the death of the holder.
6. They should require in legislation financial institutions to perform	Adopted by article 25 and article 27 of the Law No.	Under article 25 of the Law No.92/2008 "obliged parties" (i.e. reporting entities and persons) shall apply CDD measures to all customers by adopting a risk based approach.

enhanced due diligence for higher risk categories of customer, business relationship or transaction.	92/2008	Enhanced Customer Due Diligence requirements are applied in the cases where the risk of money laundering or terrorism financing is considered higher (see article 27 para 1) Moreover, the Law No.92/2008 prescribes specific cases where Enhanced CDD measures are required: 1) when the customer is not physically present; 2) when the customer is a politically exposed person; 3) when the customer is a financial institution established in a country that does not impose requirements equivalent to those envisaged in the San Marino AML/CFT Legislation; 4) when the customer is a financial institution that permits the use of "payable-through accounts. Obliged parties shall also pay special attention to any money-laundering or terrorist financing threat that may arise from products or transactions that might favour anonymity, and take measures, if needed, to prevent their use for money-laundering or terrorist financing purposes See Article 27 para 2, 3, 4, 5, 6 and 7.
7. A comprehensive definition of beneficial owner, as provided for in the Glossary to the FATF Recommendations, incorporating the concept of identifying the natural persons who ultimately own or control the customer should be included in relevant legislation.	Adopted by article 1 para 1 letter r) of the Law No. 92/2008	The Article 1, para 1 letter r) of the Law No.92/2008 contains the definition of "beneficial owner" as follows: *(I) the natural person who ultimately owns or controls the customer, when the latter is a legal person or entity without a legal personality;* *(II) the natural person on whose behalf the customer acts. In any case, the following are considered beneficial owners:* *1) the natural person or persons that, directly or indirectly, own more than 25% of the voting rights in a company or, at any rate, because of agreements or other reasons, are able to control voting rights equal to said percentage or have control over the management of the company, provided that it is not a company listed on a regulated market, and subject to disclosure requirements consistent with or equivalent to European Union legislation;* *2) the natural person or persons who is beneficiary or are beneficiaries of more than 25% of the property of a foundation, trust or other entity with or without legal personality that administers funds; whenever the beneficiaries have not been determined, the natural person or persons in whose principal interest the entity is established or acts;* *3) the natural person or persons who is or are able to control more than 25% of the property*

		of an entity with or without a legal personality ; The definition of "beneficial owner" is in line with the same definition contained in the EU Directive 2005/60.
8. The following requirements to verify customers' identity are not in the current legislation and should be provided for:	Adopted by Articles 22 and 23 of the Law No. 92/2008	See below.
- use reliable, independent source documents, data or information;	Adopted as article 22 para 1 letter a) of the Law No. 92/2008. Implemented by: - CBSM Instruction No. 2008-01 of 12 June 2008 (ANNEX 12); - FIA Instruction No. 2008-05 of 24 November 2008 (ANNEX 16)	The Article 22 para 1 letter a) requires "obliged parties" "*verifying the customer's identity on the basis of a valid identification document or, where this is not possible, on the basis of documents, data or information obtained from a reliable and independent source*"; Under Instructions No.2008-01 and No.2008-05, any financial institution is required to use the following documents to verify the identity of the customers: - for physical persons: "identity documents": a document containing the photograph and all the general details of an individual, issued by a national or foreign public authority (such as passport, ID Card, certificate or declaration issued by the Consulate or Embassy); - for legal entities: "deed of incorporation", up-to-date "articles of association" (statutes), relevant resolutions of the shareholders' meeting and boards of directors' meeting and approved financial statements as well as certificate of registration and good standing or an equivalent document of the public registers.
- verify that any person purporting to act on behalf of the customer (for customers that are legal persons or legal arrangements) is so authorised, and identify and verify the identity of that person;	Adopted as article 23 para 2 of the Law No. 92/2008 Implemented by: - CBSM Instruction No. 2008-01 of 12 June 2008 (ANNEX 12); - FIA Instruction no. 2008-05 of 24 November 2008 (ANNEX 16)	According to article 23 para 2, in case of customers that are not natural persons, financial institutions shall verify that the natural person acting on behalf of the customer is so authorized. Financial institutions are also required to identify and verify the identity of that natural person. Under article 3 of CBSM Instruction No.2008-01, financial institutions shall identify and verify the identity of the persons authorized to act on behalf of the customer and also obtain documents in order to verify that they have been granted the authorization to act. In particular, Financial institutions shall obtain copies of the decisions taken by the shareholders, the board of directors or other equivalent bodies concerning the appointment and any change of the person representing the customer or being delegated to act on behalf of the customer.

- identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the financial institution is satisfied that it knows who the beneficial owner is;	Adopted by article 22 para 1 letter b) and article 23 para 3 of the Law No. 92/2008	According to article 22 para 1 letter b) of the Law No.92/2008, the financial institutions shall identify the beneficial owner and shall take adequate risk-based measures to verify the identity. Moreover article 23 para 3 of the Law No.92/2008 prescribes that the identification and verification of the identity of the beneficial owner is carried out at the same time as the identification of the customer and requires, for customers that are not natural persons, taking risk-based and adequate measures in order to understand the ownership and control structure of the customer. In order to identify and verify the identity of the beneficial owner, the obliged parties may make: a) consult public registers, lists, deeds and documents accessible to anyone containing information on the beneficial owner; b) request pertinent data and information from their customers; c) obtain information in any other way The definition of "beneficial owner" is contained in the Article 1 para 1 letter r) of the Law No.92/2008 (see the above comment to point no. 7).
- determine whether the customer is acting on behalf of another person, and then take reasonable steps to obtain sufficient identification data to verify the identity of that other person;	Adopted by article 22 and article 23 of the Law No. 92/2008 Implemented by: - CBSM Instruction No. 2008-01 of 12 June 2008(ANNEX 12); - FIA Instruction No. 2008-05 of 24 November 2008 (ANNEX 16)	Articles 22 and 23 of the Law and the definition of "beneficial owner" clearly contain provisions under which the Financial Institutions are required to identify and verify the identity of the customer and the beneficial owner. Moreover, the CBSM Instruction No. 2008-01 clearly requires Financial Institutions to determine if the customer acts on behalf of other persons. In this case, Financial Institutions shall identity and verify the identity of these persons. The identification data and documents required to identity and verify the identity of these persons are prescribed in the same CBSM Instructions.
- conduct ongoing due diligence on the business relationship, which includes scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted	Adopted by Article 22 para 1 letter d) of the Law No. 92/2008	According to article 22 para 1 letter d), financial institutions shall conduct ongoing monitoring on the customer's business relationship, verifying that the transactions undertaken by the customer are consistent with the data and information which the Financial Institutions has on the customer, their business and risk profile including, where necessary, the source of funds. The documents, data and information obtained during the CDD requirements should be kept up-dated as required by article 22 para 1 letter e).

are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds.	Implemented by: - FIA Instruction No.2008-03 of 24 November 2008 (ANNEX 14)	Moreover, throughout the monitoring procedures, under FIA Instruction No.2008-03, Financial Institutions are required to identify, verify and evaluate transactions that could be considered complex, unusual large or part of unusual patterns of transactions, in respect of the information and data of the customers.
9. Provisions should be adopted which address circumstances where there is a failure to satisfactorily complete CDD.	Adopted by article 24 and article 61 of the Law No. 92/2008	According to the article 24 of the Law No.92/2008, when the financial institutions are not able to fulfill the CDD requirements, they shall refrain from establishing ongoing business relationships or carrying out occasional transactions, interrupt them, if already initiated, at the earliest opportunity and evaluate if the situation should be reported to the Financial Intelligence Agency (San Marino FIU) Under article 61 of the Law, the failure to comply with the CDD requirements shall be punished by an administrative sanction of a minimum of € 2,000 to a maximum of € 40,000.
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		
As regards recommendations contained in the Rec 5, since the first compliance report (July 2008) the Congress of State (Government of San Marino) has adopted the Decree of 31 October 208 No.136 on bearer passbooks. The Financial Intelligence Agency has issued the Instructions No.2008-03 and No. 2008-05 of 24th November 2008, whose provisions have been illustrated above. The Financial Intelligence Agency is drafting the implementing instructions of the CDD requirements of the Law No.92/2008. The Law sets forth a time limit for the Agency to issue Instructions on these matters, that is 6 months since the Agency has started its activities. The Agency is confident to issue these documents before that date.		

Recommendation 6 - Politically exposed persons Rating: NC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
There are no specific requirements in San Marino AML laws or regulations with regard to PEPs.	Definition: adopted by article 1 letter n) and article 1 of the Technical Annex of the Law No.92/2008	With regard to PEPs, the Law No.92/2008 contains specific provisions: the notion of PEP is prescribed in the Technical Annex of the Law No.92/2008, while the Enhanced Customer Due Diligence requirements are described in the article 27 of the Law No.92/2008. The definition of politically exposed persons (PEP) is included both in article 1 of the Law N° 92/2008 and in article 1 of the Technical Annex to the Law N° 92/2008. **TECHNICAL ANNEX** **"Article 1** **(Politically exposed persons referred to in article 1, paragraph 1, letter n)** 1. *It should be considered as "politically exposed persons":* *A) any natural person, foreign citizen, who is or has been entrusted with prominent public function abroad during the year preceding the establishment of the business relationship, transaction or professional service, including the following even if differently named:* *1) head of State, head of government, minister, vice minister, undersecretary of State, member of Parliament,* *2) member of judiciary bodies whose decisions are not generally subjected to further appeal,* *3) member of the board of directors of central banks or supervisory authorities,* *4) ambassador, chargé d'affaires, a high-ranking officer in the armed forces,* *5) member of the board of directors, management or supervisory bodies of companies owned by the State;* *B) any immediate family members of the persons foreseen in the previous letter or persons known*

		to be close associates of such persons, including the following persons: *1) spouse or partner considered equivalent to the spouse,* *2) children and their spouses,* *3) parents;* *C) any natural person who is known to have the beneficial ownership of companies or legal entity with a person referred to in letter A);* *D) any natural person who is the sole beneficial owner of companies or legal entities or legal arrangements which is known to have been set up for the benefit de facto of the person referred to in letter A).* *2. Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence obligations, where a person has ceased to be entrusted with a prominent public function for a period of the least one year, the obliged parties shall not be required to consider such a person as politically exposed."* The Law No. 92/2008 requires "obliged parties" to apply enhanced customer due diligence requirements to the customers who are considered to be politically exposed persons according to the definition contained in the Article 1 of the Technical Annex of the Law No. 92/2008.
There are no specific requirements in San Marino AML laws or regulations with regard to PEPs. The San Marino authorities should put in place measures that require financial institutions to: - determine if the client or the potential client is a PEP as defined in the FATF Recommendations;	Measures: adopted and implemented by article 27 para 2 of the Law No. 92/2008	According to the article 27, para 2 of the Law N°. 92/2008: "2. The obliged parties shall take enhanced customer due diligence measures when: *a) the customer is not physically present;* *b) the customer is a politically exposed person. The obliged parties shall take adequate procedures in relation to the activity carried out in order to determine if the customer is a politically exposed person."*
- obtain senior management approval for establishing a business relationship with a PEP;	Adopted and Implemented by article 27 para 4 letter a) of Law No. 92/2008	According to the article 27, para 4 letter a) of the Law No. 92/2008, when the customer is a politically exposed person, the "obliged parties" shall: "*a) obtain the authorisation of the General Director ,an equivalent persons or a person delegated by him to establish business relationships or to undertake the transactions*"

- take reasonable measures to establish the wealth and on the source of the funds of customers identified as PEPs;	Adopted and Implemented by article 27 para 4 letter b) of the Law No. 92/2008	According to the article 27, para 4 letter b) of the Law No. 92/2008, when the customer is a politically exposed person, the "obliged parties" shall: *"b) take adequate measures to establish the source of funds which are involved in the business relationship or in the transaction"*
- conduct enhanced monitoring on PEP business relationships.	Adopted and Implemented by article 27 para 4 letter c) of the Law No. 92/2008	According to the article 27, para 4 letter c) of the Law No. 92/2008, when the customer is a politically exposed person, the "obliged parties" shall: *"c) conduct ongoing enhanced control of the business relationship"*
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		

Recommendation 7 - Correspondent banking Rating: NC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
In relation to cross-border correspondent banking and services, financial institutions should not only be required to perform normal due diligence measures but should also be required to obtain information on:	Adopted and implemented by article 26, 27 para 5 of the Law No. 92/2008	The Law No.92/2008 contains several provisions about cross-border banking activities. San Marino financial institutions shall apply CDD to any customer, including foreign financial institutions. In line with the "risk-based approach", the Law No.92/2008 contains appropriate cases where Enhanced Customer Due Diligence requirements need to be applied. Actually, under article 27 para 5 of the Law No.92/2008, financial institutions shall apply Enhanced Customer Due Diligence requirements when "*maintain business relationships or carry out occasional transactions with foreign financial institutions located in States which do not require obligations equivalent to those set forth in this law and do not impose supervision and control over compliance with such obligations*" The measures that financial institutions shall adopt are prescribed in the same article.
- the reputation of the respondent counterparts and the quality of supervision from publicly available information;	Adopted and implemented by article 27 para 5 letter a) of the Law No. 92/2008	According to the article 27, para 5 letter a) of the Law No. 92/2008, the financial institutions shall: *"a) collect sufficient information about a respondent foreign institution to fully understand the nature of the respondent's business and to determine, from publicly available information, the reputation of the institution and the quality of supervision"*
- assess their AML/CFT controls and ascertain their adequacy;	Adopted and implemented by article 27 para 5 letter b) of the Law No. 92/2008	According to the article 27, para 5 letter b) of the Law No. 92/2008, financial institution shall: *"b) assess the adequacy and effectiveness of controls applied by the respondent institution regarding matters of preventing and combating money laundering and terrorist financing"*
- obtain approval from senior management before establishing new	Adopted and implemented by article	According to the Article 27, para 5 letter c) of the Law No. 92/2008, financial institution shall:

correspondent relationships;	27 para 5 letter c) of the Law No. 92/2008	*"c) obtain authorization by the General Director or equivalent figure, or by a person authorized by the General Director, before establishing a business relationship or carrying out an occasional transaction"*
- document the respective AML/CFT responsibilities of each institution;	Adopted and implemented by article 27 para 5 letter d) of the Law No. 92/2008	According to the Article 27, para 5 letter c) of the Law No. 92/2008, financial institution shall: *"d) specify in written form the respective obligations and responsibilities regarding matters of preventing and combating money laundering and terrorist financing."*
- where 'payable through accounts' are involved obtain guarantees that counterpart organisations apply the normal CDD measures to all customers that have client access to the accounts of the correspondent institutions and that it is able to provide relevant customer identification data on request	Adopted and implemented by article 1, para 1 letter i) and article 27, para 6 of the Law No. 92/2008	The article 1, para 1 letter i) of the Law No.92/2008 defines "payable-through accounts" as "*transnational bank accounts used directly by the customers to carry out transactions on their own behalf*" According to the Article 27, para 6 of the Law No. 92/2008, financial institutions: *"shall assure that the respondent institution located in a State which is not a member of the European Union (I) has verified the identity of customers having direct access to payable-through accounts, (II) has performed ongoing customer due diligence, and (III) is able to provide relevant customer due diligence data to financial party, upon request."*
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		

Recommendation 8 - New technologies & non face-to-face business Rating: PC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. San Marino AML legislation and regulations should include enforceable requirements on non-face to face business relationships or transactions.	Adopted and implemented by article 27 para 2 and 3 and para 7 of the Law No. 92/2008	According to the article 27 of the Law No. 92/2008, when the customer is not present, the law requires "obliged parties" to apply Enhanced Customer Due Diligence requirements. In this case, the "obliged parties" shall apply one or more of the following measures: a) ensuring that the first transfer of funds related to the establishment of a business relationship or the execution of a transaction, is carried out through an account opened in the customer's name established at San Marino financial institution or foreign financial institution locate in a Country that imposes equivalent requirements to those provided by the Law No.92/2008 on AML/CFT b) verifying the identity of the customer through supplementary information or documents in addition to those requested for a customer that is physically present; c) taking supplementary measures to verify the documents supplied; d) obtaining certification in relation to the information or documents supplied; e) obtaining a confirmatory certification from a financial institution established in San Marino or in a Country imposing requirements equivalent to those laid down in the Law and monitoring the compliance with the requirements to prevent and counter money laundering and financing of terrorism. that has already applied customer due diligence for the customer in question.
2. Financial institutions need to be made aware of the possible misuse of new technologies for ML/FT purposes but also be required to have policies in place to prevent the misuse of technological developments for ML/FT purposes, and to have policies and	Adopted and implemented by article 27 para 7 of the Law No. 92/2008 Before the entrance into	Under Article 27 para 7 of the Law No. 92/2008, the obliged parties shall pay special attention to any money-laundering or terrorist financing threat that may arise from products or transactions that might favour anonymity (included the new technologies), and take measures, if needed, to prevent their use for money-laundering or terrorist financing purposes. Before the provision contained in the article 27 of the Law No.92/2008 entered into force, financial institutions should have been complied with the general principle set forth in the article

procedures in place to address specific risks associated with non face to face relationships and transactions.	force of the Law No.92/2008, implemented by: - article X.V.1 of the CBSM Regulation No. 2007-07 for bank of 27 September 2007 (ANNEX 11); - article 10 of the CBSM Instruction No. 2008-01 of 12 June 2008 (ANNEX 12);	X.V.1 of the CBSM Regulation No. 2007-07 according to which it's not possible to enter into contrasts with customers through recourse of long-distance communication technologies (article 10 of the CBSM Instruction No. 2008-01).
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		

Recommendation 10 - Record keeping Rating: NC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. The obligation that records of the identification data, account files and business correspondence should be kept for at least five years after the closure of the account or termination of the business relationship (or longer if requested by a competent authority in specific cases and upon proper authority) should be included in law or regulation.	Adopted by article 34 of the Law No. 92/2008 Implemented by: - article 6 of the CBSM Instruction No.2008-01 (ANNEX 12); - article 5 of the FIA InstructionNo.2008-03; (ANNEX 14); - article 10 of the FIA Instruction No.2008-04 (ANNEX 15);	Under article 34 para 1 of the Law No. 92/2008, "obliged parties" shall record data and information obtained to comply with Customer Due Diligence requirements and keep the records and copies of the documents obtained for at least five years after the termination of the business relationship or the execution of the occasional transaction. Under article 34 para 2 of the Law No.92/2008, as regards business relationships and transactions, the "obliged parties" shall record and keep the records of the original documents or copies admissible in Court proceedings as supporting evidence for a period of at least five years after the closure of the business relationship or the execution of the transaction. According to para 3 of the same article, data and information shall be recorded within five (5) days following their acquisition. The Article 6 of the CBSM Instruction No.2008-01 reiterates that the information and documents shall be kept for at least five years after the closure of the account or termination of the business relationship. According to the FIA Instruction No.2008-03, the article 5 requires financial institutions to keep for at least five years the written reports on "critical transactions". Under article 10 of the FIA Instruction No.2008-04, the information on the payer acquired by the payment service provider of the payer, by the payment service provider of the payee and by the intermediate payment service provider shall be kept for at least five years from the execution of the transaction
2. Also, financial institutions should be	Adopted by articles 34	The Article 34 para 4 of the Law No.92/2008 states that all the data, information and documents

required in law or regulation to ensure that all customer and transactions records and information are available on a timely basis to the competent authorities.	and 35 of the Law No. 92/2008	recorded and kept recorded by the "obliged parties" shall be made available to the Financial Intelligence Agency's (FIU's) disposal without any delay, for the carrying out of its functions of preventing and combating money laundering and terrorist financing. Under article 35 of the Law No.92/2008, financial institutions shall equip themselves with electronic systems that enable them to respond rapidly and completely to the Agency's requests that are intended to determine whether these financial parties have had business relationships with specific customers during the previous five years and the nature of these relationships.
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		
The FIA Instructions No. 2008-03 and No.2008-04 issued on November 24, 2008 reiterate the requirements to keep data, information and documents for at least five years since the closure of the business relations or the execution of the transaction.		

Recommendation 11 - Unusual transactions Rating: PC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. More explicit and comprehensive provisions should be introduced with regard to unusual transaction monitoring that should be adopted by financial institutions.	Implemented by FIA Instruction No.2008-03 (ANNEX 14)	According to the provisions of the FIA Instruction No.2008-03, financial institutions shall pay special attention to all critical transactions, both occasional and those carried out within an ongoing relationship. To this aim, financial institutions 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 institution and made known to all of its employees and contract workers pursuant to article 44 of the Law No.92/2008. The notion of "critical operation" is prescribed in the article 1 of the FIA Instruction No.2008-03 as follows: "*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*" In order to carry out its analysis, the financial institution shall take the following items into consideration: • the information and documentation requested at the time of opening the ongoing relationship or the execution of the occasional transaction pursuant to CBSM Instruction No. 2008-01; • the items specified in article 25, paragraph 3 of the Law No.92/2008 (risk-based approach); • indicators of unusual transactions; • any other relevant information.
2. Financial institutions should be	Implemented by FIA	Under article 4 of the FIA Instruction No.2008-03, the compliance officer undertakes the

required that the background and purpose of such transactions be adequately examined and documented and that their findings in this respect should be set forth in writing and retained for a period of five years.	Instruction No.2008-03 (ANNEX 14)	identification, verification and assessment of critical transactions either on his own initiative or following an internal communication received from the personnel of the financial institution's branches, operational departments, and central and peripheral offices. At the end of the verification and assessment process the compliance officer must compile a written report on the analysis conducted. Under the article 5 of the FIA Instruction No.2008-03, the written report shall contain the following minimum structure: o Information on the written report; o Information and data on the customers; o Information and data on the critical transactions; o Assessment of critical transactions; o Documentation to be annexed. The report, signed by the compliance officer, must be kept for at least 5 years after the date of its compilation. The financial institutions shall 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. Under to the Article 6 of the FIA Instruction, if the compliance officer decides to make a report pursuant to Article 36 of the Law No.92/2008 (STR reporting requirement) concerning the critical transactions analyzed, a copy of this report must be annexed to the Reporting Form referred to in CBSM Instruction No. 2008-01. According to the article 7 of the FIA Instruction No.2008-03, the written report shall be made available immediately on request to the Financial Intelligence Agency and to the Central Bank in its role as Supervisory Authority, and to the Board of Statutory Auditors and Internal Auditing Department of the financial institution.
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		
On 24th November 2008, the Financial Intelligence Agency has issued the Instructions No.2008-03, whose provisions have been illustrated above.		

Recommendation 12 - DNFBP (R.5, 6, 8-11) Rating: NC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. The San Marino authorities are urged to issue relevant implementing regulations as soon as possible and introduce the obligations required under Recommendation 12 to DNFBPs.	Articles 19 and 20 of the Law No. 92/2008	
2. The recommendations made above for CDD requirements for financial institutions should be applied also to DNFBP.	Articles 19 and 20 of the Law No. 92/2008 Draft FIA Instruction for legal professions and accountants (ANNEX 17)	The Financial Intelligence Agency is drafting a relevant Instruction to be addressed to professionals, a category of parties provided for by article 20 of Law No. 92/2008. This Instruction, herewith enclosed as a draft still subject to assessments and revisions, (ANNEX 17), includes specific indications concerning the modalities to be used by professionals in order to fulfil CDD, data and information registration, STR and ongoing monitoring obligations. As an integrating part of the Instruction to be issued, there will also be a standard form to submit reports to the Agency, the list of Countries, territories or jurisdictions subject to FATF strict monitoring and some indicators of unusual transactions. This Instruction will consider the recent international guidelines formalized by the FATF on 23 October 2008 (RBA Guidance for legal professional).
3. It should be considered if the explicit inclusion of Internet casinos and trust and company service providers in the list of entities that have to be monitored for AML/CFT purposes is needed.	Article 19 of the Law No.92/2008	Article 19 of Law No. 92/2008 includes among the parties required to fulfil AML/CFT obligations anyone who runs gambling houses and games of chance as set forth in Law No. 67/2000, acts as a co-trustee under Law No.37/2005 and provides assistance and consultancy on matters of investment services, tax, financial and commercial matters.
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		
The BAR of Lawyers and Notaries and of the Accountants of San Marino have promptly issued guidelines addressed to their members. (ANNEXES 26, 27 and 28)		

Recommendation 13 - Suspicious transaction reporting Rating: NC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. The evaluators consider that the system put in place for the reporting of suspicious transactions should be reviewed to ensure that it meets all the requirements set out in Recommendation 13. The AML law should require financial institutions to report *promptly* to the FIU.	Adopted by article 36 of the Law No. 92/2008	The article 36 of the Law No.92/2008 requires "obliged parties" to report STRs without delay to the Financial Intelligence Agency (FIU).
2. The reporting requirement which should be in law or regulation should clearly cover all predicate offences and all aspects of FT.	Adopted by article 1, para 2 and article 36 of the Law No. 92/2008	The Article 1, para 2 of the Law No.92/2008 prescribes that: "*2. With the sole object of the laws regarding preventing and combating money laundering, having regard to articles 199 and 199 bis of the criminal code, the following conducts may constitute money laundering if committed intentionally:* *a) converting or transferring assets knowing that such assets come directly or indirectly from criminal activity or from participation in said activity, with the aim of concealing or disguising the criminal origin of the said assets, or assisting any persons involved in said activity to evade the legal consequences deriving from their actions;* *b) concealing or disguising the true nature, origin, location, disposition, movement, ownership of the assets or rights with respect of these assets, carried out knowing that such assets come directly or indirectly from criminal activity or participation in said activity;* *c) the purchase, possession or use of assets, knowing, at the time of receipt, that such assets are proceeds directly or indirectly of a criminal activity or participation in said activity.* *3. Knowledge, intent or purpose as referred to in paragraph 2 may be inferred from objective factual circumstances.*" <u>Reporting requirements</u> The "obliged parties" shall report to the Agency (San Marino FIU) without delay:

	Adopted by Article 78, para 1 and 2 and Article 83 para 1 of the Law No. 92/2008	a) any transaction, even if not executed, which, because of its nature, characteristics, amount, or in relation to the economic capacity and activity or for any other known circumstance, leads to the conclusion that the economic resources, money or assets involved in the same transaction may be derived from crimes of money laundering or terrorist financing or may be used to commit such offences; b) anyone or any fact which, because of any known circumstance related to the activity carried out, may be connected to money laundering or terrorist financing. The Law No. 92/2008 modifies and introduces three offences in the Criminal Code contained in the list of the predicate offence designated by FATF: 1. Associations for the purpose of terrorism or subversion of the constitutional order (Article 78 para 1 amends Article 337bis of the Criminal Code); 2. Financing of terrorism (Article 78 para 2 introduces Article 337ter of the Criminal Code); 3. Smuggling of migrants (Article 83 para 1 introduces Article 3bis of the Law No. 22 of 24 February 2000) The reporting form contained in the CBSM Instruction No.2008-01 is used by the reporting entities for suspicious of TF as well as for ML.
3. Furthermore, San Marino should ensure that there is a requirement in law or regulation that all suspicious transactions, including attempted transactions, are reported regardless of the amount of the transaction. Also, such a reporting requirement should apply regardless of whether they are thought, among other things, to involve tax matters.	Article 36 para. 1 letter a) of the Law No. 92/2008	According to article 36 of the Law, "obliged parties" shall report transactions which have not been executed yet, that is attempted transactions (see article 36 para 1 letter a)). ***Article 36*** ***(Reporting obligations)*** *1. The obliged parties shall report the following to the Agency without delay:* *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.* *2. If the report is made in a verbal form, the obliged party shall forward a written report to the Agency without delay, providing all the data and information required to conduct the financial investigation.*

		The reporting requirements apply in all cases where the obliged parties arise suspicion that the transaction or attempted transaction may derive from money laundering or terrorism financing or may be used to commit such offences, regardless of any reason that generates or might generate the transaction of the funds.
4. The authorities should also take steps to address the concerns related to the effectiveness as a whole of the reporting system.	ANNEX 36	The Annex 36 contains the detailed statistic on STRs
5. The FIU should pursue outreach to those financial institutions which are either nor reporting or underreporting suspicious transactions, and possibly issue further guidance and recommendations on how to determine whether a transaction is suspicious.	CBSM Instruction No. 2008-01	The reporting form contained in the CBSM Instruction No.2008-01 is used by the reporting entities for suspicious transaction report.
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		

Recommendation 14 - Protection & no tipping-off Rating: PC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. Legal protection of reporting entities for disclosures in good faith should be extended to cover reporting of suspicions of financing of terrorism. There should be a clear legal provision excluding any kind of liability for breach of any restriction on disclosure of information imposed by contractual, legislative, regulatory or administrative provisions for persons reporting suspicions of financing of terrorism.	Adopted by article 39 and 40 of the Law No. 92/2008	The legal protection of "obliged parties" for disclosures in good faith has been extended to STRs for TF. Article 39 of the Law No.92/2008 protects "obliged parties" from responsibility for violating restrictions. ***Article 39*** ***(Exemption from responsibility)*** *1. The suspicious transactions reports and disclosures forwarded under this law do not constitute violation of any restriction to the communication of data or information resulting from contracts or legislative, statutory, regulatory or administrative provisions, nor of obligations of confidentiality and of professional, official or bank secrecy referred to in article 36 of Law no. 165 November 17, 2005. The suspicious transactions reports and disclosures in good shall not entail liability of any kind.*
2. The San Marino authorities should ensure that legislation provides for an explicit legal prohibition of tipping-off. Such provision should cover financial institutions and their directors, officers and employees (permanent and temporary) and should prohibit from disclosing the fact that a STR is being reported or provided to the FIU.	Adopted by article 40, para 6 and 53 of the Law No. 92/2008	The Law prohibits tipping-off and states that: *"6. The obliged parties shall not disclose to the customer reported and to third parties involved, beyond cases provided for under this law, the fact that a suspicious transaction report has been forwarded or that a money laundering or terrorist financing investigation is being or may be carried out."* Also, criminal sanctions shall be applied in case of violations of the secret concerning STRs ("tipping off") ***"Article 53*** ***(Violation of confidentiality of reports)*** *1. Except where the conduct amounts to a more serious crime, anyone subject to reporting*

		obligations reveals - except for cases set forth in the law - that a report has been forwarded or is ongoing or an investigation may be initiated for money laundering or terrorist financing, shall be punished by terms of first-degree imprisonment and second-degree daily fine. *2. The same penalty applies to anyone who, knowing that a suspicious transaction report has been filed under article 7, informs the party concerned or a third party of the filing."*
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		

Recommendation 15 - Internal controls, compliance & audit Rating: PC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified //and implement the recommendation**
1. The San Marino authorities should ensure that detailed requirements for financial institutions to establish internal procedures to prevent AML/CFT are contained in a law, regulation or other enforceable obligation.	Adopted by article 44 of the Law No. 92/2008	Under article 44 of the Law No.92/2008, financial institutions shall adopt policies and procedures conforming to the obligations of the Law No.92/2008 and to the instructions issued by the Financial Intelligence Agency (FIU) in order to prevent and combat ML and FT. In particular, they shall adopt policies and procedures to ensure that technological advancements, connected to the activity, are not used for the purpose of money laundering and terrorist financing. The financial institutions shall also inform their staff of: a) obligations set forth in the Law No. 92/2008; b) instructions issued by the Financial Intelligence Agency; c) measures and procedures adopted for the purpose of preventing and combating money laundering and terrorist financing. According to the article 44 para 3 of the Law No.92/2008, the staff of the financial institutions shall promote the continuous staff training through participation in specific training programmes on matters of preventing and combating ML and FT.
2. In particular there should be requirements to ensure that compliance officers and other appropriate staff have timely access to customer identification data and other CDD information, that financial institutions maintain an adequately resourced and independent audit function to test compliance and that there are screening	Adopted by articles 41, 42 and 44 of the Law No. 92/2008 Implemented by : - Article 49 of the CBSM Regulation No.2006-03 for COLLECTIVE	<u>Compliance Officer</u> According to article 42 of the Law, financial institutions shall appoint, among the members of its staff, an Official (i.e. Compliance Officer) in charge of receiving, analyzing internal reports on STRs and reporting them to the Financial Intelligence Agency (San Marino FIU). Even in absence of internal reports on STRs, the Compliance Officer shall analyse the transactions carried out, seek and obtain information and, in the cases laid down in article 36 of the Law No.92/2008, report them to the Agency. The Compliance Officer shall have adequate professional skills and be vested with adequate

procedures to ensure high standards when hiring employees.	INVESTMENT SERVICES; - Article VII.IX.6 of the CBSM Regulation No.2007-07 for BANKS; - Article 48 of CBSM Regulation No.2008-01,for INSURANCE COMPANIES. Abstract of the article mentioned above in the (ANNEX 11)	powers to carry out, autonomously and independently, the functions mentioned above, including the power to have access to any information or document without needing prior authorization. The Compliance Officer seeks and obtains information also through employees and assistants who, in any capacity, come into contact with customers or, however, know about the relationships with customers or the execution of transactions on their behalf. <u>Audit functions</u> According to the article 41 of the Law No.92/2008, the financial institutions, as well as legal representatives and those persons that perform management, administration and control functions of the financial institutions shall, according to their respective tasks and responsibilities, do the following: a) fulfilling obligations set forth in this law; b) making arrangements for and verifying the fulfilment of said obligations on the part of employees and collaborators. Under article 44 para 4 of the Law No.92/2008, the financial institution shall develop and organize adequate internal controls for preventing and combating the involvement in business relationships or transactions relating to money laundering or terrorist financing. Under article 44, para 5 of the Law No.92/2008, financial institutions shall equip themselves with electronic systems suitable for ensuring the prompt, confidential reception of information sent by the Agency. The communication sent by the Financial Intelligence Agency shall be accessible only to the financial institutions. Moreover specific provisions on independent and adequate resourced audit functions are prescribed in the following CBSM Regulations: - Regulation No. 2007-07, Article VII.IX.6 for BANKS; - Regulation No. 2008-01, Article 48, for INSURANCE COMPANIES; - Regulation No.2006-03, Article 49, for COLLECTIVE INVESTMENT SERVICES.
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		

Recommendation 16 - DNFBP (R.13-15 & 21) Rating: NC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. San Marino should take immediate steps to fully implement the provisions of the AML law in respect of DNFBPs and address the deficiencies which have been identified in the analysis of compliance with recommendations 13-15.	Adopted by article 25, 26, 27, 36, 38, 39, 41-45, 53 of the Law No.92/2008 Draft FIA Instruction for legal professions and accountants (ANNEX 17)	The Law No.92/2008 overcomes the deficiencies identified in the former legislation as far as DNFBPs are concerned : - Recommendation 13 on STRs is covered by Article 36; - Recommendation 14 on: a) protection from criminal and civil liability is covered by article 38 and 39 and b) prohibition from disclosing ("tipping-off") is covered by article 53; - Recommendation 15 on programs against ML & TF is covered by article 41 -45; - Recommendation 21 on countries which do not or insufficiently apply the FATF -Recommendations is covered by articles 25, 26 and 27. The draft FIA Instruction for legal professions and accountants envisages specific and clear provisions on the obligations and modalities concerning suspicious transaction reporting and internal controls.
2. Outreach and guidance should be developed for all DNFPB to explain the reporting obligations.		The draft FIA Instruction for legal professions and accountants provides guidelines and assessment criteria which are useful in order to fulfil, in particular, CDD, STR and ongoing monitoring obligations.
3. The San Marino authorities should put in place requirements for all categories of DNFBPs to establish internal procedures, policies and controls to prevent money laundering and financing of terrorism.	Adopted by article 41 and 44 of the Law No.92/2008	Under the Article 41 of Law No.92/2008, "Obliged parties" (DNFBPs included) shall, according to their respective tasks and responsibilities, do the following: a) fulfilling obligations set forth in this law; b) making arrangements for and verifying the fulfilment of said obligations on the part of employees and collaborators. Under Article 44 para 1 of the Law No.92/2008 "Obliged parties" (DNFBPs included) shall adopt policies and procedures conforming to the obligations of this law and to the instructions issued by the Agency in order to prevent and combat money laundering and terrorist financing. In particular, they shall adopt policies and procedures to ensure that technological advancements, connected to

		the activity, are not used for the purpose of money laundering and terrorist financing. According to the Article 44 para 4 and 5 of the Law No.92/2008, "Obliged parties" (DNFBPs included) shall develop and organize adequate internal controls for preventing and combating the involvement in business relationships or transactions relating to money laundering or terrorist financing. They shall equip themselves with electronic systems suitable for ensuring the prompt, confidential reception of information sent by the Agency.
4. DNFBPs should be required to give special attention to business relations and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF recommendations.	Adopted by article 25 and 27 of the Law No.92/2008	According to the Articles 25 and 27, "Obliged parties" (DNFBPs included) shall assess the ML/TF risk in the cases when the customer, the product, the transaction are related to countries that do not require equivalent obligations to those set forth in Law No.92/2008 The draft Instruction for legal professions and accountants envisages to exercise particular cautions when the customer is resident or established in countries, territories or jurisdictions subject to FATF strict monitoring or when the circumstances set forth in article 27 of Law no. 92/2008 occur.
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		
The BAR of Lawyers and Notaries and of the Accountants of San Marino have promptly issued guidelines addressed to their members. (ANNEXES 26, 27 and 28)		

Recommendation 17 - Sanctions Rating: PC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. San Marino should ensure that there are effective, proportionate and dissuasive criminal, civil or administrative sanctions to deal with legal persons that fail to comply with the AML/CFt requirements.	Adopted by Articles 53-67 and 70 of the Law No.92/2008 List of criminal and administrative sanctions of infringement of the provisions contained in the Law No.92/2008 (ANNEX 29)	<u>Criminal Sanctions</u> Article 53 (Violation of secrecy of reports) punishes anyone disclosing that a report has been made or that an investigation in underway or might be initiated. Article 54 (Omissions or false statements regarding customers) punishes anyone omitting or providing false information on customers. Article 55 (Failure to comply with the reporting obligations) punishes anyone failing to comply with the reporting obligations. Article 56 (Actions aimed at preventing reporting) punishes anyone aiming at preventing STRs to the Agency or to the Judicial Authority, using violence, threatening or giving, offering or promising any benefits. Article 57 (Violation of the orders and provisions issued by the Agency and the Congress of State) punishes anyone who, without any justified reason, fails to comply with, delays or hinders the execution of an order, request or provision issued by the Agency in compliance with article 5 of the Law or disregards the restrictive measures adopted through a decision of the Congress of State, under article 46 of the Law. Article 58 (False or omitted declarations to the Agency) punishes anyone making false declarations or withholding entirely or in part what he knows about facts for which he has been summoned by the Agency to testify in order to provide data or information useful for the

		investigation. Article 59 (False information in documents to be transmitted to the Agency) punishes anyone indicating or providing false data in acts or documents to be sent to the Agency by terms of second-degree imprisonment. Article 60 (Evading measures for freezing funds) punishes anyone carrying out actions aimed at circumventing the freezing measures referred to in article 46, paragraph 1, letter a) of the Law. <u>Administrative Sanctions</u> Article 61 (Violation of customer due diligence and registration) punishes the violation of the CDD measure. Article 62 (Violation of the registration and conservation obligations) punishes the violation of the obligation of registration and conservation of data, information and documents. Article 63 (Violation of the prohibition to keep anonymous accounts and violation of the limits on the use of cash and bearer bonds) punishes the violation of the prohibition to keep anonymous accounts or accounts in fictitious names. Article 64 (Violation of the provisions on freezing funds) and Article 65 (Violation of the obligation of disclosure on frozen funds and resources) punishes the violations of the provisions referred to in article 47, paragraph 1 and article 48 concerning the restrictive measures for the implementation of UN resolutions. Article 66 (Other violations) and Article 67 (Violation of instructions) punishes the violations of the other provisions contained in the law and in the instructions of the Agency. The Annex 29 contains the list of sanctions for AML/CFT violations.
	List of criminal and administrative sanctions of infringement of the provisions contained in the Law No.92/2008	The article 70 of the Law No. 92/2008 provides for a joint liability of the entity for the administrative violations committed by its representatives or employees. This joint liability integrates the one established in civil law for the unlawful acts committed by the representative or employee of a legal person.

	ANNEX 29	
2. The effectiveness of the sanctions in place has not been fully tested in practice and should be enhanced.	Data on inspections ANNEX 37	In 2008 the On-site Inspection Service of the Central Bank has carried out 13 inspections The main types of AML/CFT infringement are: no adoption of internal organizational measures to identify suspicious transactions; • shortcomings in the assumption of information concerning the customer and relating documents; • insufficient staff training. Concerning the violations of the AML/CFT dispositions, CBSM has adopted administrative sanctions (i.e. suspension measures in case of two financial companies).
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		

Recommendation 18 - Shell banks Rating: PC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. The prohibition of establishment or operation of shell banks and the issue of correspondent banking relationships with shell banks should be referred to explicitly in future law, regulation or other enforceable means.	Adopted by article 28 of the Law No.92/2008	Prohibition to the establishment of shell bank in San Marino Under article 13 of the Law No. 165 of 17 November 2005 (LISF) sets out the minimum requirements for authorisation of new banks and financial companies. The CBSM Regulation No.2007-07 prescribes specific and detailed provisions for the establishment of banks in San Marino. Ban to operate with shell bank for San Marino financial institutions According to article 28 of the Law No.92/2008, financial institutions are prohibited from establishing business relationships or carrying out occasional transactions with a shell bank or with a foreign institution that is known to permit its accounts to be used by a shell bank. The relationships that already exist on the date that this law enter into force should be closed at the earliest opportunity.
2. San Marino should require financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.	Adopted by article 28 of the Law No.92/2008	Please see above.
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		

Recommendation 19 - Other forms of reporting Rating: NC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
San Marino should consider the feasibility and utility of implementing a currency reporting system across all regulated sectors.	Article 19 of the Law No.92/2008 Decisions of the Supervision Committee No. 370 (30/07/08) and No. 393 (20/11/08) ANNEXES 31 and 32	San Marino Authorities are considering whether to introduce a reporting system whereby a central Authority is informed about all currency transactions exceeding a fixed amount. San Marino Authorities have considered to introduce a reporting system whereby a central national authority is informed about all currency transactions exceeding a fixed amount by banks, financial institutions and other intermediaries. The Supervision Committee on July 30, 2008 (Decision n. 370), with regard to the FATF Recommendation No. 19 and the related Moneyval Recommendations, established a working group (composed by AML Service, Information Supervision Service and Inspection Supervision Service of the Central Bank). The working group was co-ordinated by the head of the AML Service. This group studied the feasibility and utility of this kind of a system reported back to the Supervision Committee. The final document written by the working group, focused on the positive and the negative aspects of implementing a system whereby a central national authority is informed about all currency transactions exceeding a fixed amount by banks, financial institutions and intermediaries. With regard to this document, the Supervision Committee on November 20,2008 (Decision n. 393) declared not to adopt or establish a reporting system like the one described in FATF Recommendation No.19.
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		

Recommendation 21 - Special attention for higher risk countries Rating: NC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. The San Marino authorities should introduce mechanisms which would facilitate financial institutions being made aware of the different degree of compliance by other jurisdictions with respect to the FATF standards.	Adopted by: - article 25; - article 27 para 5; - article 95 para 5; -article 22 para 1 letter c) and d) of the Law No.92/2008 Implemented by: - CBSM Instruction No.2008-02 on "Enhanced CDD for listed countries, territories and jurisdictions" (ANNEX 13); - FIA Instruction No.2008-03 of 24th November 2008 on "critical operations" (ANNEX 14); - FIA Instruction No.2008-04 of 24th November 2008 on "wire transfers" (ANNEX 15);	Risk-based approach The Law No.92/2008 requires financial institutions to adopt the risk based approach when they perform the Customer Due Diligence requirements. The Article 25 of the Law No. 92/2008 introduces a risk-based approach and indicates some aspects that shall be evaluated such as: A) with reference to the customer: 1) the legal status, 2) the main business activity, 3) the behavior 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 countries that do not require equivalent AML/CFT obligations to those set forth in the Law No.92/2008*; B) with reference to any business relationship or occasional transaction: 1) the type and specific method 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 countries that do not require equivalent AML/CFT obligations to those set forth in the Law No.92/2008.* Under para 5 of article 27 of the Law No.92/2008, when establishing business relationships and transactions with foreign counterparts located in countries which neither apply obligations

		equivalent to those envisaged by the Law No.92/2008 and nor require the supervision and monitoring of said obligations, San Marino financial institutions shall adopt the following Enhanced Customer Due Diligence measures: a) gather sufficient information about a respondent foreign institution to understand fully the nature of the respondent's business and to determine from publicly available information, the reputation of the institution and the quality of supervision; b) assess the adequacy and effectiveness of controls applied by the respondent institution regarding matters of preventing and combating money laundering and terrorist financing; c) obtain authorization by the General Director or equivalent figure, or by a person authorized by the General Director, before establishing a business relationship or carrying out an occasional transaction; d) specify in writing the respective obligations and responsibilities in preventing and combating money laundering and terrorist financing. The countries having a system to prevent and counter money laundering and terrorist financing equivalent to that one established by international standards are listed by the Congress of State (the Government of San Marino) upon proposal of the Agency, according to the procedure set forth in article 95 para 5 of the Law No.92/2008.
	Feedback to Moneyval concerning the FATF Statement (FIA Letter 7713) ANNEX 22	Transactions and any other operation made to the country which are not considered to be equivalent in terms of compliance with international standard shall be monitored by the financial institutions and handled with special attention. The purpose and nature of the business relationship as well as of occasional transactions are information which shall be kept according to article 22 para 1 letter c) of the Law No.92/2008. All the information, data and documents obtained in order to identify and verify the identity of customers shall be used to scrutiny transactions under article 22 para 1 letter d) of the Law No.92/2008.
	Adopted by article 24 of the Law No.92/2008	<u>Failure to apply CDD requirements</u> Under Article 24 para 1 of the Law No.92/2008, if the financial institutions are not able to fulfil the obligations of Customer Due Diligence measures indicated in Article 22, paragraph 1, letters a), b) and c), they shall refrain from establishing business relationships or carrying out occasional transactions, and interrupt them, if already initiated, at the earliest opportunity and evaluate if the

	Adopted by article 27 para 5 of the Law No.92/2008 Adopted by article 33 of the Law No.92/2008	situation should be reported to the Agency. Enhanced CDD for financial counterparts According to the Article 27, para 5 of the Law No.92/2008, the financial institutions which maintain or intend to establish business relationships or carry out occasional transactions with foreign financial counterparts in countries that do not require obligations equivalent to those prescribed by this law and do not require supervision and control on these obligations shall adopt the following enhanced CDD measures: a) gather sufficient information about a respondent foreign institution to understand fully the nature of the respondent's business and to determine from publicly available information, the reputation of the institution and the quality of supervision; b) assess the adequacy and effectiveness of controls applied by the respondent institution regarding matters of preventing and combating money laundering and terrorist financing; c) obtain authorization by the General Director or equivalent figure, or by a person authorized by the General Director, before establishing a business relationship or carrying out an occasional transaction; d) specify in writing the respective obligations and responsibilities in preventing and combating money laundering and terrorist financing. Requirements for wire transfers According to the article 33 of the Law No.92/2008, when a San Marino financial institution receives or executes wire transfers from/to financial counterparts, special attention shall be paid to the information accompanying the order of transfer. In case of lack of information, the San Marino financial institution shall refuse the transfer and request appropriate information and data. If the request is not satisfied, it shall adopt the Enhanced Customer Due Diligence measures envisaged in article 27 para 5 of and evaluate whether to suspend relations with the counterpart receiving the transfer order. The San Marino financial institution shall immediately send a copy of the request for information to the Agency.
2. It is recommended that the San Marino Central Bank or any other authority, besides those guidelines already in use, augment these with a system or systems that could render better assistance and guidance to credit and financial institutions in vigilance	Implemented by - CBSM Instruction No.2008-02 on "Enhanced CDD for listed countries, territories and jurisdictions" ANNEX 13);	Enhanced Customer Due Diligence The CBSM Instruction No.2008-02 sets forth procedures that financial institutions shall implement when the customer is located in countries, territories or jurisdictions subjected to strict monitoring procedure by FATF. The same procedures shall be applied in case of transactions that involve those countries, territories or jurisdictions whose list is attached to the mentioned Instruction.

concerning risk countries	- FIA Instruction No.2008-03 on "critical operations" (ANNEX 14); - FIA Instruction No.2008-04 on "wire transfers" (ANNEX 15);	At the moment (1st December 2008), the List includes: Uzbekistan, Iran, Pakistan, Turkmenistan, Sao Tome and Principe and northen part of Cyprus. Critical Operations Under FIA Instruction No.2008-03, financial institutions shall pay attentions to all complex, large unusual and unusual schemes of transactions, which have been defined as "critical operations". For the analysis, the AML/CFT framework of the countries involved in such transactions shall be taken into consideration. . Wire transfers According to the FIA Instructions No.2008-04, financial institutions that are authorized by the Central Bank to transfer funds in or outside the territory of the Republic of San Marino are required to collect detailed information on the ordering customer (name, surmane, address, number of the account involved) and to transfer this information to the beneficiary's financial institutions that shall apply Enhanced Due Diligence measure in the cases where the transfers do not contain the information on the customers
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		
On 24 November 2008, the Financial Intelligence Agency issued Instructions No.2008-03 on "critical operations" and No.2008-04 on "wire transfers". Both instructions require financial institutions to access the AML/CFT risk of the country to/from which the operations are referred to (annexes 14 AND 15)		

Recommendation 22 - Foreign branches & subsidiaries Rating: NC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
While there are currently no financial institutions that have established operations abroad, provisions on AML/CFT requirements in respect of subsidiaries, branches or representative offices abroad should be included in future legislation or other enforceable means.	Adopted by article 44 para 6 and Article 45 of the Law No.92/2008	According to article 44 para 6 of the Law No.92/2008, financial institution shall extend the obligations concerning internal procedures and controls to their foreign subsidiaries, branches and representative offices.
These provisions should include the need to ensure that foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and FATF Recommendations, the need to pay particular attention that this principle is observed with respect to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations, provisions that where minimum AML/CFT requirements of the home and host countries differ branches and subsidiaries in host countries should be required to apply the higher standard and the need to inform the home country supervisor when a foreign	Adopted by Article 45 of the Law No.92/2008	According to article 45 of the Law No.92/2008, financial institutions shall ensure that their foreign subsidiaries or their foreign controlled companies comply with obligations equivalent to those provided for by the San Marino AML/CFT legislation. Under Article 45 para 2 of the Law No.92/2008, in cases where the legislation of the foreign country does not apply requirements equivalent to those envisaged in the San Marino AML/CFT legislation, financial institutions shall inform the Agency and the Central Bank and adopt supplementary measures to effectively address the risk of money laundering or terrorist financing.

branch or subsidiary is unable to observe appropriate AML/CFT measures		
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		

Recommendation 24 - DNFBP (regulation, supervision and monitoring) Rating: NC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
The authorities are urged to issue relevant implementing regulations and designate AML/CFT supervisors for all DNFBPs and ensure that these supervisors have adequate powers to inspect for compliance with AML/CFT requirements, including internal procedures.	Adopted by article 4 and article 5 and article 44 of the Law No.92/2008	Supervisory authority Under article 4 of the Law No.92/2008, the Financial Intelligence Agency is the authority in charge of supervising the DNFBPs that are listed in the article 19 and 20 of the Law No.92/2008. Powers of the supervisory authority According to the Article 5 of the Law No.92/2008, in order perform the supervisory function, the Agency has the following powers: a) to order the DNFBPs to exhibit or hand over documents, also in original copy, or to communicate data and information, according to the ways and terms established by the Agency; b) to carry out on-site inspections of the DNFBPs. If the DNFBP, for the fulfilment of the obligations set forth in this law, makes use of external subjects, the inspections may also be conducted in the offices of said subjects; Internal Procedures The DNFBPs shall adopt policies and procedures conforming to the obligations of Law No.92/2008 and to the instructions issued by the Financial Intelligence Agency in order to prevent and combat money laundering and terrorist financing. In particular, they shall adopt policies and procedures to ensure that technological advancements, connected to the activity, are not used for the purpose of money laundering and terrorist financing. The DNFBPs shall develop and organize adequate internal controls for preventing and combating the involvement in business relationships or transactions relating to money laundering or terrorist financing. Al already indicated in the previous recommendations no. 12 e 16 , the draft Instruction of the Financial Intelligence Agency to be issued to the parties referred to in Art. 20 of Law no. 92/2008

		contains specific and clear provisions on the procedures regarding internal control and ongoing monitoring of the activities carried out by customers.
San Marino should be aware of issues relating to the illicit operation of internet casinos in San Marino, and should be prepared to address these problems.	Adopted by article 19 of the Law No.92/2008	According to the article 19 of the Law No.92/2008, the parties that carry out gambling houses and games of chance as set forth in Law No. 67 of July 25, 2000 and subsequent amendments, including internet casino shall to comply with the AML/CFT requirements: CDD measures, record –keeping and reporting obligation.
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		
The BAR of Lawyers and Notaries and of the Accountants of San Marino have promptly issued guidelines addressed to their members. (ANNEXES 26, 27 and 28)		

Recommendation 25 - Guidelines & Feedback Rating: NC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
The competent authorities should establish feedback mechanisms to provide adequate and appropriate feedback to reporting entities. They should update and complete as necessary existing guidance so as to improve the effectiveness of suspicious transaction reporting, in particular in relation to types of suspicious activities, use of standard forms, procedures and time for submission of an STR, and consider developing targeted guidance as appropriate.	Implemented by CBSM Instruction No.2008-01 of 12 June 2008	Feed back mechanism According to the "*FATF Best Practice Guideline on Providing Feedback to Reporting Financial Institutions and other Persons*" and under CBSM Instruction No. 2008-01 on 12 June 2008, the result of the analysis shall be reported back to the reporting party. Standard Form The CBSM Instruction No.2008-01 contains a standard form to report suspicious transactions. The reporting parties are required to fulfill the Form and to attach documents on the customers and operations reported. The Reporting Form contains the following parts: a) Information and data on the customer identity and on other parties involved; b) Information and data on the operations executed /attempted by the customers; c) Reason of suspiciousness; d) List of the documents attached.
The competent authority should issue comprehensive and updated guidance to assist financial institutions to implement and comply with AML/CFT requirements.		The Agency is drafting targeting Guidance for reporting parties.
Sector specific guidance on suspicious transaction reporting needs to be developed and provided to DNFBP required to make suspicious transaction reports in line with the FATF Best		The Agency is drafting targeting Guidance for reporting parties.

Practice Guideline on Providing Feedback to Reporting Financial Institutions and other Persons.		
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		
The Financial Intelligence Agency is drafting guidance for reporting entities and persons.		

Recommendation 26 - The FIU Rating: NC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
The current institutional set up of the FIU should be revisited and specific legislation be adopted which clearly states and defines the functions, responsibilities, powers of the FIU, irrespective of whether it is established as an independent governmental agency or within another entity. There must be transparent legislation that denotes the independence of the FIU	Articles from 2 to 15 and 91 of the Law No.92/2008. Delegate Decree No. 135 of October 31, 2008. ANNEX 04	The institutional set up of the San Marino FIU has been fully revised through the adoption of a new piece of legislation which has both redefined functions, responsibilities and powers, and clearly stated the independence of the new Financial Intelligence Agency. The provisions set forth in the Title II of the Law No.92/2008 established the Financial Intelligence Agency. The Law defines the functions, responsibilities and powers of the Agency, as San Marino FIU. The Agency is established within the Central Bank of the Republic of San Marino and . performs its functions assigned by the law in full autonomy and independence as provided for by article 2 para 2 and art. 4 of the Law No.92/2008.. <u>Functions of the Agency</u> According to Article 4 of the Law No.92/2008, the following functions are attributed to the Agency: a) receiving suspicious transaction reports from obliged parties; b) carrying out financial investigations on received reports or, on its own initiative, on the data and information available; c) reporting to the criminal judicial Authority any fact that might constitute money-laundering or terrorist financing; d) issuing instructions regarding the prevention and combating of money-laundering and terrorist financing; e) supervising compliance with the obligations under this law and the instructions issued by the Agency; f) taking part in national and international bodies involved in the prevention of money-laundering and terrorist financing; g) promoting and taking part in the professional training of police officers on matters regarding the prevention of money-laundering and terrorist financing.

		The Agency analyzes and studies financial flows in order to identify and prevent money-laundering and terrorist financing. The Agency also examines the indicators of anomalies with reference to determined activities or sectors of the economy and evaluate the effects within the scope set forth in this law. Moreover, according to Article 5 para 4 of the Law No.92/2008, the Judicial Authority can delegate the Agency to carry out investigations related to proceedings regarding money-laundering and terrorist financing as well as crimes and administrative violations set forth in this law. In this case, the Agency shall operate as judicial police. The acts carried out upon delegation from the Judicial Authority shall be documented by reports. Powers of the Agency Article 5, para 1 and 2 of the Law N° 92/2008 states that: *"1. In order to perform the functions attributed by this law and for the purpose of preventing and combating money-laundering and terrorist financing, the Agency, through its reasoned request in writing, has the following powers:* *a) to order the obliged parties to exhibit or hand over documents, also in original copy, or to communicate data and information, according to the ways and terms established by the Agency;* *b) to ask the Central Bank or Public Administration to communicate data or information, or to exhibit or hand over any formal papers or documents according to the ways and terms established by the Agency;* *c) to carry out on-site inspections of the obliged parties. If the obliged party, for the fulfilment of the obligations set forth in this law, makes use of external subjects, the inspections may also be conducted in the offices of said subjects;* *d) to order the block of assets, funds or other economic resources whenever there are reasonable grounds to believe that these assets, funds or economic resources are derived from money-laundering or terrorist financing or may be used to commit such offences;* *e) to suspend, also upon request by the criminal judicial Authority, suspected transactions of money-laundering or terrorist financing for a maximum of five working days, whenever this does not prejudice investigations;* *f) to make inquiries about persons who refer to circumstances useful to investigations regarding offences of money-laundering and terrorist financing as well as crimes and administrative violations set forth in this law.* *2. In the exercise of the powers set forth in the previous paragraph, the Agency may make use of*

		police officers." Operational independence and autonomy of the FIU According to article 2, para 2 of Law No.92/2008, the Agency shall perform the functions assigned to it by this law in complete autonomy and independence.
	Adopted by: - article 2, para 2 of the Law N° 92/2008; - article 14, para 1 of the Delegate Decree No. 135/2008.	According to article 14 of the Delegate Decree 135/2008, in performing the duties set forth by the law in the field of prevention of and fight against money laundering and terrorist financing, the Agency will enjoy full autonomy and independence.
The evaluators recommend that the identity and independence of the FIU be established clearly in the legislation, in particular in the AML law (which refers only to the former Supervision Division) to bring it into convergence with the criteria for and characteristics of FIUs generally.	Adopted by: - article 2, para 2 of the Law No. 92/2008; - article 14, para 1 of the Delegate Decree No.135/2008.	According to article 2, para 2 of Law N° 92/2008, the Agency shall perform the functions assigned to it by this law in complete autonomy and independence. According to article 14 of the Delegate Decree 135/2008, in performing the duties set forth by the law in the field of prevention of and fight against money laundering and terrorist financing, the Agency will enjoy full autonomy and independence.
	Adopted by article 1 of the Delegate Decree No. 135/2008	Logistic and operating independence (business premises, equipment, services, ICT resources) The Financial Information Agency, established at the Central Bank of the Republic of San Marino, shall be located in separate premises provided by the Central Bank for the exclusive use of the Agency. The Delegate Decree No.135/2008 states that, the Agency avails itself of equipment, support services, computer and communication systems provided by the Central Bank for the exclusive use of the Agency in order to guarantee a correct, autonomous and efficient fulfilment of the functions established by the law.
	Adopted by articles 4, 5, 8, 11, 12, 14 and 16 of the Law No.92/2008	Operational independence In performing the duties set forth by the law in the field of prevention of and fight against money laundering and terrorist financing, the Agency will enjoy full autonomy and independence. The Agency is vested with investigating functions as referred to in Article 4, paragraph 1, letter b) of Law no. 92 of 17 June 2008, by carrying out an in-depth financial analysis of the reports received

	Adopted by article 14 of Delegate Decree No. 135/2008.	and the data and information available. In order to carry out its financial investigations, the Agency shall exercise the powers referred to in Article 5, paragraph 1, letters a), b), c), f) of Law no. 92 of 17 June 2008. The Agency shall also avail itself of the powers referred to in Articles 8, 11, 12, 14 and 16 of Law no. 92 of 17 June 2008.
	Adopted by article 2, para 4 of Law 92/2008 and by article 12 of Delegate Decree No. 135/2008	<u>Financial autonomy</u> The Agency prepares, every year, a document where it states the resources it needs. The document is sent to Committee for Credit and Saving (CCS). The CCS evaluates if resources are coherent with cost effectiveness and efficiency criteria. Then, the CCS transmits the document to the Central Bank to fulfil its obligation (i.e. the Central Bank provides the Agency with the required resources). The text states: The budget document referred to in Article 2 paragraph 4 of Law no. 92 of 17 June 2008 defines a list and the relevant amounts of financial and instrumental resources necessary for the following year and drafted according to the criteria of economy, proportionality, efficiency and effectiveness. The Director of the Agency shall present his document to the Credit and Savings Committee. Having heard the opinion of the Central Bank Governing Council and having carried out the evaluations referred to in Article 2 paragraph 4 of Law no. 92 of 17 June 2008, the Credit and Savings Committee, shall transmit its decision to the Central Bank. The Central Bank Governing Council having received the budget document, shall allocate a specific expenditure item in its own budget. If further financial resources are needed to ensure the operation of the Agency, the Director of the Agency may request a change be introduced in the budget document following the same procedure defined in this article.
	Adopted by articles 2, 3, 4 and 5 of the Delegate Decree No.135/2008 Congress of State Decision N. 19 of 3 November 2008 (Appointment of the Director and Vice Director) ANNEX 08	<u>Autonomy of the Director and the Vice Director</u> Director and Vice Director are appointed by Congress of State (ANNEX 08) Director and Vice Director can be removed from their office only in limited number of cases, indicated by the legislation. Article 3 states that: The Director and Vice Director shall be removed by the Congress of State in the cases provided for in Article 4, or if they have performed or omitted to perform an act while in a conflict of interest according to Article 5, or if they have acted to the detriment of the reputation of their office or the reputation of the Agency.

	Adopted by article 7, para 3 of the Delegate Decree No. 135/2008 Adopted by article 8, para 1 and 2 of the Delegate Decree No. 135/2008 Delegate Decree No. 135/2008, article 10, para 1 CBSM Internal Order (ANNEX 23) And Flow (ANNEX 20) Delegate Decree No. 135/2008, article 8, para 4 Delegate Decree No. 135/2008, article 8, para 5 Adopted by Delegate Decree No.135/2008, article 7, para 1 and 2	<u>Independence with regard to staff recruiting</u> The Director of the Agency proposes to the CCS the human resources he needs for the activity. The Committee only evaluates if the staff required is consistent with requirements of proportionality, efficiency and effectiveness and, after approval of the proposal, sends it to the Central Bank to fulfil its obligation. The Agency staff shall be employed according to the procedures and applying the work contracts in force at the Central Bank. Conditions and remunerations shall be established according to professional experience, level of responsibility and autonomy, functions and tasks. Staff shall be recruited in such a way as to guarantee full autonomy of the Agency. In order to provide immediately the Agency with a sufficient number of human resources, and until the staff recruiting of the Agency is completed: "Within a month following his appointment, the Director of the Agency shall designate in agreement with the Director-General of the Central Bank the staff employed at the Central Bank to be assigned to the Agency". Since 24 November 2008, 5 people (in addition to the Director and the Vice Director) have been moved from the Central Bank to he Agency. Further movements of staff, from Central Bank and Agency, are possible in the future. The agreement of Agency Director is always necessary. The transfer of staff from the Central Bank to the Agency and from the Agency to the Central Bank shall be agreed between the Director of the Agency and the Director-General of the Central Bank, due consideration being given to operational and functional needs of the Agency and the Central Bank. <u>Independence of staff from the Central Bank or other institutions</u> The Agency staff shall be directly accountable and responsible only to the Director and the Vice-Director.

	Adopted by articles 2-5 of the Delegate Decree No.135/2008 Adopted by article 4 of the Delegate Decree No.135/2008 Adopted by article 5 of the Delegate Decree No. 135/2008	<u>Functional independence</u> The Director is responsible for the activity of the Agency. He plans, directs and controls the activity of the Agency in full autonomy. The Director shall adopt measures regarding the functions conferred upon the Agency. He may delegate the Vice Director. The Director shall coordinate and control the activity of the Agency staff. He shall promote training and refresher courses in the field of prevention of and fight against money laundering and terrorist financing. <u>Independence, autonomy and conflicts of interest of Director and Vice Director.</u> The Decree introduces a set of rules in order to avoid any undue influence, or conflict of interest, with regard to Director and Vice Director <u>Independence requirements of Director and Vice Director</u> The office of Director and the office of Vice Director are incompatible with: a. the participation as a shareholder, administrator, director, internal auditor, official, employee or auditor of any of the designated parties referred to in Article 17 of Law no. 92 of 17 June 2008 or of designated parties in other Countries; b. the exercise of any of the activities listed in Article 18 letters d), e), f), Article 19 and Article 20 of Law no. 92 of 17 June 2008; c. political offices; d. any other office, employment, professional or consultancy activity. In accepting the appointment they shall resign any position they may hold. If an employee of the Central Bank is appointed Director or Vice-Director, by way of derogation from the preceding subparagraph, as from acceptance of the appointment the functions performed at the Central Bank shall end. In accepting the appointment the Director and Vice Director shall disclose any interests they may hold in companies carrying out any of the activities referred to in Article 17 of Law no. 92 of 17 June 2008. Such interests shall be transferred within 30 days following appointment." <u>Conflict of interest of the Director and the Vice-Director</u> In exercising their functions, the Director and the Vice-Director shall abstain from performing acts and taking decisions in case of a conflict of interest. According to the preceding subparagraph there is a conflict of interest when the Director and the

	Adopted by article 9 of the Law No.92/2008 Adopted by article 11 of the Delegate Decree No.135/2008 Adopted by article 1, para 3 of the Delegate Decree No.135/2008 Adopted by article 10 of the Law No. 92/2008	Vice Director, in exercising the functions conferred upon them, are called to perform acts specifically affecting their property or the property belonging to their spouse, their relative or kindred up to the second degree, or a business, a company or a similar entity in which they directly or indirectly have an interest. The Director who is in a conflict of interest shall immediately inform the Vice-Director who shall take over, with exclusive rights and regardless of hierarchical order, the responsibility to exercise the functions conferred upon the Agency with respect to those acts or decisions regarding which the Director is in a conflict of interest. If a conflict of interest affects the Vice-Director, regardless of any delegation of powers that may have been granted, he shall immediately inform the Director. If the conflict of interest affects both the Director and the Vice-Director, their functions shall be exercised by the official of higher level and seniority. The provisions envisaged by this article shall not preclude the application of civil, criminal or administrative regulations in force, if that is the case. <u>Independence and institutional secret</u> The staff that has been detached according to Article 9 of the Law No.92/2008 shall observe institutional secrecy in all cases including with respect to their Administrations and Commands of origin. The Director, Vice-Director and Agency staff shall observe official secrecy in all cases including with respect to the Central Bank. The obligation to maintain secrecy with respect to all details acquired during the fulfilment of functions or tasks at the Agency shall continue to apply even after office or job termination. <u>Data and information protection</u> The Agency shall adopt measures aimed at effectively guaranteeing that documents, data and information acquired as well as computer systems will be accessible only to the staff authorized by the Agency. <u>Annual Report and collection of statistic data</u> According to article 10 of the Law No.92/2008, the Agency report annually to the Great and General Council (Parliament of San Marino) on its activities; to this aim, the Agency collects information and data, and release reports which include statistics, typologies, trends and other information.

		Procedures to disclose financial analysis to the Judicial Authority Article 7 of the Law No.92/2008 regulates the procedure to disclose the results of the analysis executed by the Agency to the Judicial Authority in case of suspicion of money-laundering or terrorist financing as well as its filing. The archiving of the case does not prevent the carrying out of further investigations should new information be obtained Para 2 of the same article provides for feedbacks to the reporting entities or persons. Consultation with the government In order to ensure the effectiveness of the AML/CFT framework of San Marino, the Agency proposes to the Congress of State (Government of San Marino) to adopt specific measures (see article 10 para 3 of the Law No.92/2008) and designate countries or jurisdictions in line with international standards as far as the correct implementation of the preventive measures is concerned. (see article 95 para 5 of the Law No.92/2008) National and International cooperation The national cooperation between the Agency and other authorities (i.e. the Central Bank, the Judiciary and the Police Authorities) as well as professional orders is prescribed in articles 11, 12, 13, 14 and 15 of the Law No.92/2008. The international cooperation between the Agency and foreign FIUs is prescribed in article 16 of the Law No.92/2008. Implementing the restrictive measures of the UN Resolutions The Agency is also involved in the implementation of the restrictive measures contained in the UN Resolutions under article 46 and the subsequent ones of the Law No.92/2008
Also, the authorities could give consideration as to whether an additional committee is necessary to be maintained at a higher level with an oversight/ policy role and if so, it is recommended that they review carefully both its composition and functions. In particular the authorities should ensure that its composition is	Adopted by article 85, para 8 of the Law No.92/2008	As recommended by the Moneyval experts according to international standards, the San Marino authorities have assigned to the Credit and Savings Committee the function to promote national and international cooperation for effectively preventing and combating money laundering and terrorist financing. According to the Article 85 para 8 of the Law No.92/2008, the Credit and Saving Committee, chaired by the Secretary of State for the Finance, shall convene periodically. The meetings will be attended by a Judge, the director of the Financial Intelligence Agency or one

balanced and transparent, and that it does not call into question the ability of the FIU to exercise full operational independence.		of his delegates and a representative appointed by the Commanders of the Police Forces. According to items on the agenda, the Chairman can invite to the meeting representatives of Professional Associations, Public administrations, and the obliged parties envisaged by the Law No.92/2008
There is no mandatory reporting obligation of suspicious transactions related to FT (with the exception of lists of designated or suspected terrorists) and this should be urgently established.	Adopted by article 36 of the Law No.92/2008	Article 36 of the Law No.92/2008 requires "obliged parties" to report transactions and facts related to ML and FT. ***Article 36*** ***(Reporting obligations)*** *1. The obliged parties shall report the following to the Agency without delay:* *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.* *2. If the report is made in a verbal form, the obliged party shall forward a written report to the Agency without delay, providing all the data and information required to conduct the financial investigation.*
The Central Bank should ensure that all financial institutions and other reporting entities are provided with comprehensive and up to date guidance regarding the manner of reporting and the procedures.	Adopted by FIA Instruction 2008-05 of 24 November 2008 (ANNEX 16)	The FIA Instruction No.2008-05 extends to all the "financial parties" (as defined in article 18 of the Law 92/2008) the directions already disseminated in the previous CBSM Instruction No.2008-01. The FIA Instruction No.2008-05 includes several rules of conduct (with regard to opening of continuous relationship or concluding occasional operations) and indicates the procedure for notifying a suspicious transaction.
A standardised STR reporting format should also be developed for all reporting entities.	Implemented by CBSM Instruction No.2008-01 of 12 June 2008 and by FIA Instruction 2008-05 of 24 November 2008	CBSM Instruction contains a reporting form and specific provisions for the reporting procedure. FIA Instruction No.2008-05 extends the use of the form to all the "financial parties" referred to in article 18 of the Law 92/2008. The reporting form contains the following elements:

	(ANNEX 16)	- details of the reporting entities and details of the compliance officer; - information and data on the customer; - information and data on the transactions; - reasons of suspiciousness; - documents attached.
The legal framework and basis should be reviewed to provide the FIU access in a timely manner, be it directly or indirectly, to the relevant financial, administrative and law enforcement information which it needs to properly undertake its functions.	Adopted by article 8, para 1 and 2 of the Law No. 92/2008 Adopted by article 11, para 2 of the Law No. 92/2008 Adopted by article 14, para 1 of the Law No. 92/2008 Adopted by article 15 of the Law No. 92/2008 Adopted by article 9 of the Law No. 92/2008	Many articles of the Law N° 92/2008 ensure that the Agency can receive and obtain adequate information. According to article 8 para 1 and 2, the Agency shall have access to the data and information available in public registries, archives, professional rolls kept by the Central Bank, Public administrations and Professional Associations. Data and information are immediately made available to the Agency, upon simple motivated request. The Agency, upon simple request, shall have access to registries, archives, data or information kept by police Authorities or by the Single Court, including data regarding criminal record According to article 11, para 2, The Public Administration, Police Authority, Central Bank and Professional Associations shall provide, upon motivated request by the Agency, the data and information in their possession, useful for the prevention and combating of money-laundering and terrorist financing. According to article 14, para 1, if the Central Bank, detects violations of this law or facts or circumstances that might be related to money-laundering and terrorist financing, shall inform the Agency in written form without delay. "Except as provided in article 5, paragraph 4, the judicial Authority, when it has reasonable grounds to believe that offences of money-laundering or terrorist financing have been committed through transactions executed by the obliged parties, shall inform the Agency." <u>Confidentiality of the information</u> Under Article 9 of the Law No.92/2008, the information obtained or acquired by the Agency is covered by official secrecy with the exception of the cases of disclosure or exchange of information provided for by this law. Official secrecy cannot be opposed to the criminal judicial authority.

Also, the authorities should take the necessary implementing measures to ensure that the access to information held by all reporting entities can be obtained by the FIU.	Adopted by article 5 of the Law No.92/2008	On the basis of the powers indicated in article 5, para 1, letter a) and b) of the Law No.92/2008, the Financial Intelligence Agency obtains the information necessary to perform its functions from all reporting entities and persons. In order to perform the functions attributed by this law and for the purpose of preventing and combating money-laundering and terrorist financing, the Agency, through its reasoned request in writing, has the following powers: *a) to order the obliged parties to exhibit or hand over documents, also in original copy, or to communicate data and information, according to the ways and terms established by the Agency;* *b)to ask the Central Bank or Public Administration to communicate data or information, or to exhibit or hand over any formal papers or documents according to the ways and terms established by the Agency.*
The San Marino authorities should take all necessary measures to ensure that the FIU information held is securely protected and to address the concerns expressed in relation to access to such information by other Central Bank personnel other than the staff of the AML Service and the members of the Supervision Committee. In particular, the evaluators believe that the current procedures for handling the correspondence of the AML Service should be reviewed to ensure that information received and communicated to the FIU is securely protected and disseminated. The evaluators recommend the FIU to publish periodic reports containing information regarding its activities, information on typologies and trends in ML and FT. In the context of San	Adopted by article 9 of the Law No.92/2008 Adopted by Delegate Decree N° 135/2008, article 1, para 3 Adopted by article 3 para 3 of the Law No.92/2008	According to Article 9 of the Law No.92/2008, all data and information acquired by the Agency are covered by official secrecy even in relation to the Public Administration. The Agency shall implement security measure, including ICT instruments and procedures, to ensure that the data and information obtained by the Agency are not accessible by third parties. The Agency shall adopt measures aimed at effectively guaranteeing that documents, data and information acquired as well as computer systems will be accessible only to the staff authorized by the Agency. Under Article 3 para 3 of the Law No.92/2008, the Agency's staff, in the exercise of the functions set forth by this law, are public officials and are bound by official secrecy. At present the Agency is located within the building of the Central Bank, in office exclusively used by the Agency. In the near future the Agency will move into a new premises. The Agency has its own administrative staff that handles the correspondence and any other documents which refers to the activity of the Agency. Correspondence and documents are directly received by Agency's staff, without any contact form Central Bank staff. All correspondence and documents are kept in Agency's offices. The Agency has its own switchboard, telephone and fax lines.

Marino and the staff shortage, the evaluators recommend either that the FIU issues its own report or otherwise includes it in a specific section of the annual Central Bank report.	Article 10 of the Law No.92/2008	ICT database, servers and programs have been separated by the Central Bank ICT network: only Agency's staff can access them. Public Reports According to article 10 of the Law No.92/2008, the Financial Intelligence Agency shall: 1) collect annually the data concerning the activity carried out to prevent and combat money laundering and terrorist financing; 2) submit a report, through the Secretariat of State for Finance and Budget, to the Great and General Council every year (San Marino Parliament). The report shall be focused on the activity carried out to prevent and counter money laundering and terrorist financing.
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		
On October 15, the AML Service of the Central Bank has published a report for the activities carried out in the 2007 and first semester of 2008 (ANNEX 30) Beginning of effectiveness of the Agency On October 2008, the Congress of State (Government of San Marino) appointed the Director and the Vice Director of the Financial Intelligence Agency (San Marino FIU) On November 19, 2008, the Director of the Agency has informed the Congress of State, through the Secretary of State for Finance, of the beginning of effectiveness of the Agency (24 November 2008). ANNEX 21 Staff As of 24 November 2008, the staff of the Agency comprises 7 people; they are former employees and officials of the Central Bank, included the Director and the Vice Director of the Agency. Four persons have experience in AML activities and financial supervision (one is an IT expert and 1 an administrative employee and 2 are analysts). The Agency intend to recruit other 4/5 qualified persons with specific experience on AML activities in the next future). ANNEX 21 and 23		

Recommendation 27- Law enforcement authorities Rating: PC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
It is strongly advised that the San Marino law enforcement authorities start playing a more active role in AML/CFT efforts. Indeed a more pro-active approach should be adopted in investigating and prosecuting money laundering, putting focus more on the financial aspects of major proceeds generating crimes as a routine part of the investigation.	Articles 12 para 2, 51 and 52 of the Law. No.92/2008	According to para 2 of Article 12 of the Law, the Police Authority, in the exercise of its competences, shall conduct, also of its own initiative, the activity of preventing and combating money laundering and terrorist financing. Moreover, under para 2 of article 5, the Agency may rely on police personnel. The Law extends the traditional cooperation between the Police Authorities and the Judicial Authority to the Agency: the Agency itself shall contribute to the training of the police personnel on matters of financial investigations. (see article 52)
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		
The data provided in the ANNEXES 33 and 34 demonstrate the activity of the Law Enforcement Agencies involved in the investigations		

Recommendation 30 - Resources, integrity and training Rating: PC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. The evaluators recommend that the authorities should conduct an assessment of the staff needs of the FIU, separately from those of the Central Bank, and that they take the necessary measures to ensure that the FIU is given sufficient staff to fulfill its tasks at the desired level.	Adopted by Law No.92/2008 and by Delegate Decree No. 135/2008 Adopted by Delegate Decree No. 135/2008, article 7, para 3 Delegate Decree No. 135/2008, article 8, para 1 and 2 Delegate Decree No. 135/2008, article 10, para	The Law No.92/2008 and the Delegate Decree No.135/2008 have introduced a set of rules in order to give the Financial Intelligence Agency adequate independence and autonomy with regard to number of staff to be hired, quality of staff to be hired, exclusive control by Director of the Agency on Agency staff. The Director of the Agency proposes to the Committee for Credit and Saving the list of human resources he needs for the activity. The Committee only evaluates if the staff required is consistent with requirements of economy, proportionality, efficiency and effectiveness and, after approval of the proposal, sends it to the Central Bank to fulfil its obligation. Before the end of December the Director of the Agency will send his proposal, with the list of staff needed, to the Committee. In the meanwhile, in order to allow the Agency to start immediately its activity with adequate staff (quantity and quality of human resources), since 24 November the Central Bank has assigned 5 persons, in addition to Director and Vice Director of the Agency, to the Agency. The persons have been chosen in order to provide the Agency with people skilled in inspections and regulations, in organization and ICT, and in secretarial tasks. The Agency intends to recruit other 4/5 skilled persons with specific experience on AML/CFT activities. *"The Agency staff shall be employed according to the procedures and applying the work contracts in force at the Central Bank. Conditions and remunerations shall be established according to professional experience, level of responsibility and autonomy, functions and tasks. Staff shall be recruited in such a way as to guarantee full autonomy of the Agency."* In order to provide immediately the Agency with a sufficient number of human resources, and until the staff recruiting of the Agency is completed: *"Within a month following his appointment, the Director of the Agency shall designate in*

	1 Delegate Decree No. 135/2008, article 8, para 4 Delegate Decree No. 135/2008, article 8, para 5	*agreement with the Director-General of the Central Bank the staff employed at the Central Bank to be assigned to the Agency".* Since 24 November 2008, 5 people (in addition to the Director and the Vice Director) have been moved from the Central Bank to he Agency. Further movements of staff, from Central Bank and Agency, are possible in the future. The agreement of Agency Director is always necessary. *"The transfer of staff from the Central Bank to the Agency and from the Agency to the Central Bank shall be agreed between the Director of the Agency and the Director-General of the Central Bank, due consideration being given to operational and functional needs of the Agency and the Central Bank."* *"The Agency staff shall be directly accountable and responsible only to the Director and the Vice-Director."*
2. Furthermore, the practice of using Central Bank personnel to undertake FIU duties should be abandoned.	Adopted by Law No.92/2008 an by Delegate Decree No. 135/2008 Delegate Decree No. 135/2008, article 8, para 5 and 6.	The staff already assigned to the Agency allows it to carry out its functions in complete independence and autonomy. The skills of people assigned to the Agency covers both the core activity of the Agency and the operative supporti it needs (organizational, ICT, secretarial). No personnel of the Central Bank undertakes Agency's duties. The personnel of the Agency (either assigned by the Central Bank or other institution, or specifically hired for the Agency) will refer only and directly to the Director or the Agency. The Decree states: *"The Agency staff shall be directly accountable and responsible only to the Director and the Vice-Director."*
3. Law enforcement officials should be provided with adequate and relevant AML/CFT training in order to enhance their skills regarding ML and FT issues;	Adopted by articles 5, 12, 51 and 52 of the Law No. 92/2008	According to para 2 of Article 12 of the Law No.92/2008, the Police Authority, in the exercise of its competences, shall conduct, also of its own initiative, the activity of preventing and combating money laundering and terrorist financing. Under para 2 of article 5 of the Law No.92/2008, the Agency may rely on police personnel. In order to increase the experience of Police Authorities in the field of financial investigation, the Law envisages the possibility for the Agency to rely on police officials for limited periods of time,

		not less than one year (see article 51 of the Law No.92/2008). The training provided to law enforcement agents is also indicated in article 52 of the Law No.92/2008. For this purpose, the Financial Intelligence Agency shall promote training through courses and internships lasting no longer than six months, according to specific agreement protocols signed with the Commanders of the Corps to which they belong.
4. To ensure effectiveness of the new supervisory framework, and in particular compliance with the AML/CFT international standards, the level of available resources should be reviewed in order to ensure that adequate resources are assigned to facilitate the carrying out of sufficiently detailed onsite and offsite supervision	Adopted by article 7, para 3 of the Delegate Decree No. 135/2008 Adopted by article 9 of the Delegate Decree No 135/2008 Adopted by article 51 of the Law No.92/2008	The Director of the Agency proposes to the Committee for Credit and Saving the list of human resources he needs for the activity. The Committee only evaluates if the staff required is consistent with requirements of economy, proportionality, efficiency and effectiveness and, after approval of the proposal, sends it to the Central Bank to fulfil its obligation. Before the end of December the Director of the Agency will send his proposal, with the list of staff needed, to the Committee. In the meanwhile, in order to allow the Agency to start immediately its activity with adequate staff (quantity and quality of human resources), since 24 November the Central Bank has assigned 5 persons, in addition to Director and Vice Director of the Agency, to the Agency. The persons have been chosen in order to provide the Agency with people skilled in inspections and regulations, in organization and ICT, and in secretarial tasks. The Agency intends to recruit other 4/5 skilled persons with specific experience on AML/CFT activities Furthermore, the Agency may employ staff from the Public administration meeting the necessary requirements in terms of professional experience. Also, upon request by the Director of the Agency and approval by the Congress of State, police officials with a specific attitude and preparation may be assigned to the Agency
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		
Since 24 November the Central Bank has assigned 5 persons, in addition to Director and Vice Director of the Agency, to the Agency. The persons have been chosen in order to provide the Agency with people skilled in inspections and regulations, in organization and ICT, and in secretarial tasks. The Agency intends to recruit other 4/5 skilled persons with specific experience on AML/CFT activities.		

Recommendation 31 - National co-operation Rating: PC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
Operational co-operation between the Judiciary and the AML Service should be further fostered.	Adopted by Article 85 of the Law No.92/2008	Co-ordination on AML/CFT matters between national authorities and the private sector is prescribed in article 85 of the Law introducing paragraphs 4, 5 and 6 to article 48 of the Statutes of the Central Bank (Law No. 96 of 29 June 2005) according to which: *"4. For the purpose of promoting national and international cooperation for effectively combating money laundering and terrorist financing, the Committee for Credit and Savings shall meet periodically.* *5. A Magistrate appointed by the Judicial Council in an ordinary session, the director of the Financial Information Agency or one his delegates, and a representative appointed by the Commanders of the Corps of police shall attend the meetings referred to in the previous paragraph.* *6. The President of the Committee, according to the items on the agenda, can invite to the meeting representatives of Professional Associations, Public Administrations, and persons designated by the law regarding matters of preventing and combating money laundering and terrorist financing."* These provisions are enforced in order to ensure an on-going dialogue between the authorises involved in AML/CFT matters.
It is recommended that the relevant authorities develop a mechanism at national level facilitating co-operation, co-ordination and consultation concerning the development and implementation of AML/CFT policies and legislation leading to a clear national strategy.	Adopted by Articles 10, 85 and 95 of the Law No.92/2008	The Law No. 92/2008 assigns to the Credit and Saving Committee the function of national co-ordination of the measures that competent authorities shall implement in order to prevent and contrast ML and TF. The meetings of Credit and Saving Committee, chaired by the Secretary of State for Finance are attended by a Magistrate the director of the Financial Intelligence Agency or one of his delegates and a representative appointed by the Commanders of the Police Forces. As regards the mechanism of the Agency to assist policy makers, article 10 para 3 of the Law requires the Agency to propose to the Congress of State (Government of San Marino) the adoption of measures aimed at improving the effectiveness of the prevention and combating of

		money laundering and terrorist financing. The Agency also presents to the Congress of State a list of countries whose AML/CTF systems are in line with AML/CFT international standards in order to correctly implement the CDD requirements (see article 95, para 5 of the Law No.92/2008).
The authorities should also consider establishing mechanisms for consultation between competent authorities, the financial sector and other sectors, including DNFPB, that are subject to AML/CFT requirements.	Adopted by article 85 of the Law No.92/2008	The recommendation has been adopted, actually, under article 85 of the Law No.92/2008, the Chairman of the Credit and Saving Committee, according to items on the agenda, can invite to the meeting representatives of Professional Associations, Public administrations, and the obliged parties envisaged by the law on preventing and combating money laundering and terrorist financing.
San Marino should ensure that the competent authorities review the effectiveness of the AML/CFT system on a regular basis.	Adopted by article 85 of the Law No.92/2008	The provision of the Article 82 para 8 of the Law No.92/2008 requires the Credit and Saving Committee to meet periodically is a clear mandate to establish regular meetings for the competent national authorities.
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		

Recommendation 32 - Statistics Rating: PC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. San Marino should ensure that the competent authorities review the effectiveness of the AML/CFT system on a regular basis.	Articles 10 para 3 and 85 para 7 of the Law No.92/2008	The article 10, paragraph 3 of Law No. 92/2008 sets forth that the Financial Intelligence Agency proposes to the Congress of State to adopt measures aimed at heightening the effectiveness of the prevention and combating of money laundering and terrorist financing. Moreover, the above-mentioned Law (article 85, paragraph 7 of the Law No.92/2008) assigns to the Committee for Credit and Savings the functions of directing and guiding in order to ensure the effective prevention and countering of money laundering and terrorist financing. Therefore, the effectiveness of the AML/CFT system may be reviewed on a regular basis, also by taking into consideration the changes affecting international standards and regulations.
2. More comprehensive statistics in relation to money laundering cases should be kept, which include for instance information on whether confiscation was ordered, information on the underlying predicate offences and information as to whether the ML offence was prosecuted autonomously or together with the predicate offence, so as to assist future analysis of the effectiveness of the money laundering criminalisation.	Letter of the Executive Magistrate on 20 November 2008 ANNEXES 24 and 25 Prosecution for ML cases ANNEX 38	On November 20, 2008 the Executive Magistrate has ordered the Criminal Registrar (Officials responsible for the criminal section) to collect, maintain and update information and data on the activities of the Court as regards ML and TF matters, included data on investigations, prosecutions and MLA. ANNEXES 24 and 25 As regard to the investigating activites on ML cases, the ANNEX 38 contains the updated informaiton of this activities.
3. A more comprehensive system of statistics eliminating the shortcomings indicated in the report should be organised. This would also assist in determining trends and effectiveness.		Please see above

4. Statistics on STRs and other disclosures concerning physical cross-border transportation or currency of bearer negotiable instruments should be kept.	ANNEX 36 on STR ANNEX 35 on cash cross-border transportation	The statistics on STRs are collected, maintained and updated by the Financial Intelligence Agency. The ANNEX 36 illustrates the STRs received in the 2008 During the ordinary controls at the borders of the Republic of San Marino, the competent law enforcement agencies identified and controlled 2301 people in the period July-November 2008. Since the regulations referred to in Delegated Decree no. 138 of 31 October 2008 ("Cross-border transportation of cash and similar instruments") entered into force on 1 November 2008, 49 controls have been carried out, aimed at verifying the cross-border transportation of cash. No violations of the above-mentioned regulations resulted from these controls. Statistics on cash cross-border transportation (ANNEX 35) have been provided by the Police Forces involved in this activities.
5. Annual comprehensive statistics should be kept in relation to ML cases	ANNEX 38	The prosecutions are described in the ANNEX 38
6. Statistics should be maintained on the number of cases, amounts and property frozen, seized, confiscated related to ML, FT, criminal proceeds or underlying predicate offences	Prosecution for ML cases ANNEX 38	Please see reply on point 2
In the context of MLA 7. Comprehensive statistics should be kept on an annual basis (outgoing and incoming MLA requests); statistics concerning mutual legal assistance should include also information about the predicate offence(s) and the average time of response	MLA ANNEX 39	The statistics on Mutual Legal Assistance are described in the ANNEX 39
In the context of extradition 8. Comprehensive statistics should be kept related to incoming and outgoing requests for ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused and the time required to		Requests for extradition have been neither received nor submitted.

respond.		
In the context of other forms of co-operation 9. The FIU should keep detailed statistical data showing in particular their response times and whether the requests were fulfilled in whole or in part or were incapable of being fulfilled. It is also advised that statistical information is kept in relation to the numbers and types of spontaneous disclosures made by the FIU.	Former AML Service of the CBSM has published data and information on its activities ANNEX 30 Statistic 2008 on STRs ANNEX 36	<u>Former AML Service of the CBSM</u> On October 15, the AML Service of the Central Bank has published a report for the activates carried out in the 2007 and first semester of 2008. ANNEX 30 <u>Financial Intelligence Agency</u> According to the article 10 of the Law No.92/2008, the Financial Intelligence Agency collects annually the data regarding the activity carried out for the prevention and combating money-laundering and terrorist financing. The statistics on STRs for 2008 are described in the ANNEX 36
10. Statistics on international police co-operation and on formal requests for assistance made or received by supervisors relating to or including AML/CFT including whether it was granted or refused.	INTERPOL ANNEX 34	As regard international police co-operation the San Marino National Central Office of Interpol collect data and information on its activities. The statistics of the exchange of information between Interpol Offices are attached in the Annex 34 of this document.
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		

Recommendation 33 - Legal persons – beneficial owners Rating: PC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. It is recommended that San Marino reviews its legislation with a view to taking measures to ensure wider transparency as to legal persons. In particular:		
2. San Marino should consider abolishing anonymous companies.	Article 19, para 1, number. 7 of Law No. 47 of 23 February 2006 (ANNEX 03) Articles 21, 22 (b), 34 and 87 of the Law No.92/2008	Under article 19, para 1, number. 7 of Law No. 47 of 23 February 2006, the memorandum of association shall indicate the name and surname, date and place of birth, domicile and nationality of all individuals having taken part as members or on whose behalf the memorandum of association has been drafted. This rule is applied to all companies, including anonymous companies. Article 21, para 3 of Law N°92/2008 states that: "The professionals referred to in article 20 and non-financial parties referred to in article 19 shall also fulfil the customer due diligence obligations when the transaction is of an undetermined or non-definable amount. The establishment, management or administration of a company, trust or other arrangements with or without legal personality constitutes in any case a transaction of a non-definable value." Consequently, the obliged parties are required to identify the customer and the beneficial owner under article 22, as well as to record the relevant data under article 34. With specific reference to anonymous companies (article 87 (1) of the said Law), the notary in the occasion of meeting of the share holders shall: a) identify the bearer of the shares and verify his/her identity; b) acquire a copy of the identity document for each bearer; c) draw up a separate act which indicates the date of the assembly, the identity of the participants and the capital represented by each participant; d) keep copies of the acts and identity documents required for at least five years from the closure of the professional relationship with the company.

		The information and data acquired by the notary shall be disclosed to the Judicial Authority the Financial Intelligence Agency in the exercise of its functions of preventing and combating money laundering and terrorist financing (Article 87 (2) of said Law. Further mechanism are being evaluated by the competent authorities to assure enhanced transparency.
3. The Register of Companies should include identification data of natural persons being shareholders of a company or owning/controlling the legal person-shareholder of the company.	Article 26 of Law No. 47/2006 as emended by Delegate Decree No. 49 of 19 March 2008 ANNEX 03	Under article 26 of Law No. 47/2006 as amended by Delegated Decree No. 49 of 19 March 2008, any share assignment shall be stipulated by a public deed being deposited with the Court's Register and noted in the share register.
4. The requirement to identify shareholders when establishing a company should refer also to beneficial owners (natural persons owning or controlling the legal person buying shares in a company).		In compliance with CDD obligations, the Bar Association has issued to its members some provisions which envisage, inter alia, the identification of any beneficial owner (FORM A "Customer Profile).
5. San Marino should consider introducing a clear procedure to access the information kept in the Register of Companies, notably as to time limits set to be granted access to the relevant documents.	Article 6 para 1 of the Law No. 47 of the 23 February 2006 (Company Law)	The Article 6 para 1 of the Law No.47/2006 indicates the information contained in the Register of Companies: *"1. The data which is entered in the Register for each company is as follows :* - *the details of the memorandum of association* - *the Congress of State's authorisation, where required by special legislation, and any subsequent license granted or withdrawn;* - *the registered office and any subsequent changes thereof;* - *the issued and paid-up capital stock and any changes therein;* - *the corporate purpose and any subsequent changes therein;* - *the name of the legal representative or representatives, directors, auditors, external auditors or auditing firms where appointed, liquidators, specifying their relevant powers;* - *the date of balance sheet approval;* - *any formal business transformation, merger or splitting;* - *any order issued by the judicial authority concerning winding-up, granting of a moratorium, starting of bankruptcy proceedings and any other order the judicial authority deems useful to have reported;*

	Letter of 20 November 2008, Ref. 401 (ANNEX 25)	- *the presence of a single shareholder where the company has not issued bearer shares;* - *the existence of pledged shares;* - *the seizure or foreclosure of shares or stakes."* The Executive Magistrate of the Single Court, through a letter dated 20 November 2008, formalised the provisions, already in force, to authorise the consultation in real time of the Register of Companies, which shall be immediately made available to any person requesting it.

Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable

Adoption of Law No. 95 of 18 June 2008 "Re-organisation of the supervisory services over economic activities" (ANNEX 02)

The above-mentioned Law regulates the re-organisation of the supervisory services over economic activities.
It provides for an ongoing monitoring of the economic activities carried out by companies set up in any form; this function is performed by a competent office established by the aforementioned law.
The law allows to have access to any document on the commercial exchange of goods and services.
The ongoing monitoring and access to documents allow to constantly check that all regulations (including AML/CFT legislation) are observed and complied with.
The activity regulated by the above-said law was already conducted, though not on an ongoing basis, under administrative provisions and it resulted in the control and check of 42 companies in 2007 and 24 companies in the first 6 months of 2008. This activity was performed by the Company Control and Supervision Commission. According to its functions, the Commission reported 2 companies to the Single Court for alleged aggravated fraud. Another body called "Working Group at the First Level of Administrative Cooperation", the functions of which were absorbed by Law No. 95 of 18 June 2008, controlled 31 companies in 2008 and reported 3 of them, on 22 September 2008, to the AML Service, (now FIA) for alleged violation of AML legislation.

Recommendation 34 - Legal arrangements – beneficial owners Rating: NC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. San Marino authorities should take additional steps to ensure that legislation on trusts require additional information on the beneficial ownership and control of trusts and other legal arrangements. More specifically:	Law 17 March 2005 No.37	Law No.37/2005 contains specific provisions on: - Enacted with a written act (Article 6) - Registration of trusts (Article 9) - Supervision on trustee (Article 19) - Book of events (Article 29) The Decree No.86/2005 includes provision on: - Access to the public register of trusts (Article 1)
- A clear definition of beneficial ownership should be provided in the legislation, notably as to trusts' beneficiaries.	Article 1 para 1 letter r) of the Law No.92/2008 Article 6 of the Law No. 37 of 17 March 2005 on Trust	Under the provisions of the Law on Trust (No.37/2005), the notary public is the person in charge of enacting the trust with a written act which shall contain several information, including the identity of the settlor and the beneficiary (article 6 of Law No.37/2005 on Trust). Moreover, as established in the San Marino Trust legislation, trustees shall be only banks and financial companies duly authorized by the Central Bank. According to the provisions of the Law on Trust, the trustee shall draw up an abstract of the trust act enacted by the notary public in order to deposit it for its publication on the Trust Register. Under the procedure mentioned above, the financial institutions authorized to operate as trustees as well as the notary public are the only persons/entities having information on trusts. They are subject to the AML/CFT legislation and therefore apply the definition of Beneficial Owner herein contained. This information can be obtained by the Agency in order to perform its functions, as indicated in article 5 of the Law. Article 1 para 1 letter r) of the Law No.92/2008 contains the definition of "beneficial owner".

<table>
<tr><td>- It should be clearly stated in the legislation that information accessible in the Trust Register should include details on settlors, administrators, and trustee; this information should include details also on individuals owning or controlling legal persons acting as beneficiaries, settlors or trustees.</td><td>Article 8 of the Law No.37/2005 on Trust</td><td>The information to be contained in the Trust Register is set forth in article 8 of Law No.37/2005 on Trust.

The information on beneficiaries and settlors is held by the notary who enacted the written act of the trust and by the trustee.</td></tr>
<tr><td>- The relation between the public nature of the Trust Register, accessible to anybody (under article 9.3 of the Trust law and article 4 of Decree No. 86/2005) and the confidentiality of registered information (article 3 of Decree No. 86/2005) should be clarified.</td><td>Article 4 of the Delegate Decree No. 86/2005</td><td>Article 4 of Delegated Decree No. 86/2005 provides for a written request to have access to or ask for certifications from the Trust Register.
The request is executed, without any formal procedure, within 10 days.</td></tr>
<tr><td>2. The reference to reasons to request access to the Register made by article 4.3 of Decree No. 86/2005 should also be clarified.</td><td>Article 8 of Law No.37/2005 on Trust

Decree No.86/2005 on Trust Register</td><td>Under Article 8 of Law No.37/2005 on Trust and Decree No.86/2005 on Trust Register, the Trust Register is kept at the Office for Industry, Handicraft and Commerce under the supervision of a Judge appointed by the Executive Magistrate.

Updated information

<table><tr><td>Year</td><td>Number of registered Trust</td></tr><tr><td>2005</td><td>0</td></tr><tr><td>2006</td><td>4</td></tr><tr><td>2007</td><td>2</td></tr><tr><td>2008 November</td><td>6</td></tr></table></td></tr>
<tr><td colspan="3">Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft “other enforceable means” and other</td></tr>
</table>

relevant initiatives) if applicable

Recommendation 35 - Conventions/ Special Recommendation I - Implementation of United Nations instruments Rating: PC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. San Marino should take immediate steps to ratify and implement fully the Palermo Convention.	Law No.97/2008 ANNEX 03-bis	The Republic of San Marino will ratify the Palermo Convention as soon as possible. Moreover, the San Marino Criminal Code and other relevant provisions already cover various aspects of the Palermo Convention, such as Association to commit offences (Art. 287 CC), Criminalisation of Laundering proceeds of crime (Art. 199 and 199 bis CC), Criminalisation of corruption, Detection and cross-border control of transportation of currency and bearer negotiable instruments, Smuggling in migrants and trafficking in persons, specially women and children – introduced by law n. 97 of 20 July 2008 "Prevention and punishment of violence against women and on gender basis" – [See the annex…].
2. The evaluators' earlier recommendations apply equally to the effective implementation of the Vienna Convention and the Terrorist Financing Convention, in terms of incrimination of the ML and FT offences, criminal liability of legal persons, cooperation arrangements, special investigation methods, the detection of physical cross-border transport and to the implementation of the UN Security Council resolutions.	Adopted and implemented by Law No.92/2008	Incrimination of ML The Law No. 92/2008 (article 1, para 2) clarifies the notion of money laundering for the purposes of the AML/CFT legislation. The Article 1 para 2 letter c) incorporates in the notion of money laundering the acquisition, possession or use of property as prescribed by the Vienna Convention. Incrimination of FT The Law No.92/2008 contains specific provision related to the financing of terrorism. - "terrorism" is defined in the article 1, letter p); - "purposes of terrorism" is defined in the article 1, letter j); - "terrorist financing" is contained in the article 1, letter k); - "terrorist" is set forth in the article 1, letter q). The following offences are now prescribed in the Criminal Code: - "terrorist association" : article 337 bis of the Criminal Code, introduced by article 1 of the Law No.28/2004;

		- "terrorist financing": article 337 ter of the Criminal Code, introduced by article 78 para 2 of the Law No.92/2008 ; - "extradition procedure": article 81 of Law No.92/2008; - "transfer of terrorists abroad": article 82 of Law No.92/2008; - "freezing of funds": articles 5 and 46 of the Law No. 92/2008. <u>Special investigation methods</u> Under Law No.28/2004, law enforcement authorities apply, under judicial authorization, special investigative techniques, such as controlled deliveries and undercover operations, Under Article 15 of the Law No.28/2004 as amended by Article 84 of the Law No.92/2008 the Law Commissioner (Judge) may authorise special agents of the Police Forces to conduct undercover operations, intervene in intermediation activities, simulate the purchasing of goods, materials and things aimed at suppressing the offences under articles 199bis (money-laundering), 207 (usury), 337bis (terrorist association) and 337ter (terrorist financing) of the Criminal Code. <u>Detection of physical cross-border transport</u> The Decree Delegated 31 October 2008 No.138 introduces a disclosure system in order to detect the physical transportations of currencies and bearer negotiable instruments. <u>Implementation of the UN Security Council Resolutions</u> The article 46 and following ones of the Law No.92/2008 set forth specific provisions for the implementation of the restrictive measures contained in the UN Security Council Resolutions. In compliance with the international obligations assumed by the Republic of San Marino to combat terrorism, terrorist financing and the activity of States that threaten international peace and security, the Congress of State, upon proposal by the Secretary of State for Foreign Affairs and the Secretary of State for Finance and Budget, has adopted on 6 October 2008 the decision n. 2 outlining restrictive measures, conforming to the resolutions - n. 1267 (1999), 1333 (2000), 1373 (2001), 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1735 (2006), 1822 (2008) -. The mentioned decision n.2 of Congress of State contains in its Annex the list of individuals, entities and other groups likely to be linked directly or indirectly with Osama Bin Laden, Al-Qaida or any other terrorist group.
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		
Adoption of the Decree Delegated of 31 October 2008 No.138 on cross-border transportation of cash and bearer negotiable instruments. On October 2008, the restrictive measures contained in the UN Security Council Resolutions have been implemented by the Congress of State Decisions (Decision No.2 and 3 of 6 October 2008) according to the rule of procedures set forth in the article 46 and following ones of the Law No.92/2008.		

Recommendation 36 - Mutual legal assistance (MLA)/ Recommendation SR.V - International co-operation Rating: PC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. Given the absence of clear and specific national provisions on mutual legal assistance which detail the process of receiving and executing MLA requests, the evaluators recommend that consideration is given to introducing such provisions in legislation. This would also have the advantage of clarifying the process for both domestic and foreign practitioners.	Data of the Court ANNEX 38	The rogatory letter are examinated in 7 days (average time) after being received by the San Marino Court.
2. Also, it is recommended to clarify in legislation that there is no possibility to oppose secrecy or confidentiality rules to the competent authorities requesting any information in the context of foreign mutual legal assistance requests, with the exception of legal professional privilege or legal professional secrecy rules.	Adopted by article 38 of the Law No.92/2008	Under Art. 38 of the Law No. 92/2008 it is stipulate that: *"Professional secrecy may not be invoked in front of the Judicial Authority, the Agency, and Police Authorities in pursuance of their functions on preventing and combating money laundering and terrorist financing, except for the case provided in the first paragraph.* *Official secrecy may not be invoked in front of the Judicial Authority, the Agency, and the Police Authorities in pursuance of their functions on preventing and combating money laundering and terrorist financing.* *Professional secrecy and official secrecy may not be invoked even when the data and information are necessary for the investigation of offences and administrative violations set forth in this law."* Professional privilege or secrecy may be opposed only if the information sought was acquired while providing the client with legal assistance. Under article 36 para 5 of the Law No.165/2005 (LISF), bank secrecy can not be invoked against

		the Criminal Judicial Authority, the Supervisory Authority and the Financial Intelligence Agency in the performing of counter-terrorism and anti-money laundering functions.
3. The authorities should also consider devising and applying mechanism for determining the best venue for prosecution of defendants in the interest of justice in cases that are subject to prosecution in more than one country.		On the occasion of the ratification of the European Convention on Mutual Assistance in Criminal Matters and the relative legislation implementing it, the authorities will consider devising and applying the mechanism for determining the best venue for prosecution of defendants in cases that are subject to prosecution in more than one country.
4. The deficiencies identified in the ML and FT offence should be remedied to enable full compliance with the dual criminality ruled requests. San Marino officials may consider legislating to render mutual legal assistance in the absence of dual criminality, at least for less intrusive and non compulsory measures.		The dual criminality requirement is met even if the conduct for which legal assistance is sought is criminalized in a different category or with a different denomination under the law of the requesting State, e.g. technical differences do not prevent the rendering of assistance.
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		

Recommendation 39 – Extradition/ Recommendation SR.V - International co-operation Rating: PC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1.The application of dual criminality may create an obstacle to extradition in cases involving ML/FT activities that are not properly criminalised in San Marino. The authorities should review the current legislation to ensure that there are no legal impediments to render assistance where the conduct underlying the offence is criminalised. The evaluators reiterate in this context their previous recommendations related to the review of the criminalisation of ML and FT.	Adopted by Article 81 and 82 of the Law No.92/2008	The Law No. 92/2008 contains specific provisions regarding the extradition of persons held or subject to preventive detention for crimes of terrorism. Money laundering and terrorist financing are extraditable offences (under Art. 8 of the Criminal Code).
2. As regards extradition, it is recommended that: - San Marino ratifies the European Convention on Extradition as soon as possible;		This issue will be addressed as soon as possible
- Extradition proceedings may incur in undue delays since requests are first tackled at a political level. This will cause delays. It is suggested that a body or authority, not solely at political level, deals with such requests. It is suggested that this body could be composed of elements coming from the	Adopted by Article 81 and 82 of the Law No.92/2008	The Law No. 92/2008 contains specific provisions regarding the extradition of persons held or subject to preventive detention for crimes of terrorism. Money laundering and terrorist financing are extraditable offences (under Art. 8 of the Criminal Code).

Judiciary and Ministry of Justice.		
- Clear and detailed procedures on procedural and evidentiary aspects are established.	Adopted by Article 81 and 82 of the Law No.92/2008	The Law No. 92/2008 contains specific provisions regarding the extradition of persons held or subject to preventive detention for crimes of terrorism. Money laundering and terrorist financing are extraditable offences (under Art. 8 of the Criminal Code).
-studies be undertaken to establish whether: □ it is feasible to establish an office or central authority that deals solely with extradition and mutual legal assistance; □ simplified procedures of extradition should be in place to allow direct permission of extradition requests between appropriate ministries; □ it is appropriate to allow extraditions solely on the strength of a warrant of arrest or judgement; - simplified procedure for extradition for consenting persons who waived formal extradition proceedings be allowed		Please see the reply above
3. The authorities should ensure that the current framework enables to extradite individuals charged with the financing of terrorism, terrorist acts or terrorist organisations.		As stated in the article 81 of Law No.92/2008, the extradition of a person who is in the territory of the Republic of San Marino is regulated by the International Convention for the repression of terrorism held in New York on December 9, 1999 and ratified with Decree N° 125 of December 10, 2001. The provisions set forth in article 8 paragraph 2, nos. 1, 2 and 3 of the criminal code shall apply.
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		

Recommendation 40 - Other forms of co-operation / Recommendation SR.V - International co-operation Rating: PC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
The evaluators recommend that the authorities review the AML/CFT legislation in order to eliminate any uncertainties related to the scope of co-operation of the FIU with foreign counterparts. They recall in this context the comments made regarding the necessity to establish the identity of the FIU in legislation and as part of the reinforcement of its organisational autonomy within the Central Bank, they recommend that specific provisions be adopted which detail the capacities of the FIU in this context in accordance with recommendation 40.	Adopted by article 16 of the Law No.92/2008	According to the article 16 of the Law No.92/2008, the Agency cooperates with foreign financial intelligence units on the basis of reciprocity including the exchange of information. The foreign FIUs shall guarantee the same conditions of confidentiality of the information, as assured by the Financial Intelligence Agency. The Agency, with the aim of regulating the cooperation activity referred to in paragraph 1, may stipulate appropriate protocols of agreement [MOUs] and inform the Committee for Credit and Savings about them. The information exchanged may be used by the foreign FIUs for investigations aimed exclusively at combating money-laundering and terrorist financing. Furthermore, the information may not be sent to third parties without prior written consent by the Agency and is covered by official or professional secrecy. The information exchanged cannot be used to initiate or continue administrative, police or judicial investigations without prior written consent by the Agency. The protocols of agreement (MOUs) or conditions of reciprocity shall provide that the foreign FIU informs the Agency whether international judicial assistance procedures have been initiated in relation to a fact being the subject of a request for information. In this case, the Agency shall not exchange the information, unless otherwise ordered by the judicial Authority of San Marino.
San Marino authorities should consider to adopt relevant provisions regarding disclosing of professional secrecy also for other entities (e.g. DNFBPs).	Adopted by article 38 of the Law No.92/2008	According to the article 38 of the Law No.92/2008, no professional confidentiality may be invoked in regards to the Judicial Authority, Agency, and Police Authorities in the performance of their functions related to the prevention and combating of crimes of money laundering and terrorism financing, except for lawyers who are ascertaining the legal position of a client or representing a client in legal proceedings.
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		

Special Recommendation II - Criminalization of terrorist financing Rating: PC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. The evaluators recommend that terrorist financing should be criminalised as an autonomous offence in the Criminal Code.	Adopted by article 78 of the Law No.92/2008	Article 337ter of the Criminal Code (introduced by article 78 (2) of Law No. 92/2008) criminalizes as an autonomous offence the terrorism financing and punishes - by terms of 6th degree imprisonment and fourth-degree disqualification (2-5 years) from public offices and political rights - "*anyone who by any means, even through another person, receives, collects, detains, gives up, transfers or conceals funds intended to be used, in full or in part, in order to carry out one or more terrorist acts or to economically support terrorist individuals or groups, or provides them with a financial service or other connected*".
2. The authorities should ensure that this offence is reconciled with all the aspects of the United Nations International Convention for the Suppression of the Financing of Terrorism and explicitly covers all the essential criteria in SR. II and the requirements of the Interpretative Note. In particular:		Please refer to the replies below
- the definition should expressly include the financing of individual	Adopted by article 78 of the Law No.92/2008	Article 337 ter of the Criminal Code clearly establishes that the concept of "financing" of terrorism is not limited to the financing of terrorist association but it is also extended to the

terrorists and all offences defined as terrorist offences in the Annex to the TF convention and not be limited to the financing of terrorist associations;		financing of individual terrorists.
- it is recommended to define the terms "terrorism", "terrorist act", "terrorist", in the legislation of San Marino;	Adopted by article 1 para 1 of the Law No.92/2008	The terms "terrorism", "terrorist act" and "terrorist " have been defined in Art. 1 (p) (q) (j) of Law 92/2008. In particular: « p) "terrorism" or "terrorist act" means any conduct, contrary to the constitutional order, the rules of international law and statutes of International Organizations, aimed at seriously injuring people or things, so as to compel the institutions of the Republic of San Marino, of a foreign State or International Organization to carry out or refrain from carrying out any act, or to intimidate the population or part of it, or to destabilize or destroy the political, constitutional, economic or social institutions of the Republic of San Marino, of a foreign State or International Organization; *q) "terrorist" means:* *(I) any individual perpetrating or attempting to perpetrate an act as defined under letter p) of this paragraph;* *(II) any group set up in the form of an association as defined under article 337 bis of the criminal code;* *(III) any entity acting on behalf of, or directed by, said individuals or groups that has been funded, even partly, with proceeds obtained from, or generated by, assets directly or indirectly held or controlled by said individuals or groups;* j) "terrorism purposes" means the proposition to influence the institutions or intimidate the population or part of it, to destabilize or overthrow the political, constitutional, economic, or social institutions of the Republic of San Marino, of a foreign State or of an International Organization, in contrast with the constitutional order, the rules of international law and the statutes of International Organizations.»
- there should also be a definition of the concept of financing, including with regard to the type of funds and assets which can serve the purpose of financing terrorism;	Adopted by article 1 para 1 (e) (k) and article 78 para 2 of the Law No.92/2008	Article 1, letter k) of the Law No.92/2008 defines "terrorist financing" as "except as provided in article 337 ter of the criminal code, any activity intended, by any means, to collect, provide, intermediate, deposit, keep or endow funds or economic resources, regardless of how they were obtained, destined to be used, in full or in part, in order to carry out or promote one or more offences for terrorist purposes, regardless of the actual use of the funds or economic resources to carry out said offences". Article 1, letter e) of the Law No.92/2008 defines "assets" or "funds" as "any property, whether tangible or intangible, movable or immovable, including means of payment and credit, any

		document or instrument, even 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". Any act preparatory to terrorist financing (fund raising, instructions imparted on the use of funds, etc.) carried out prior to the actual transfer of assets to a group or association of terrorists is punishable as attempted or failed offence. The provisions set forth in Articles 26 and 27 of the CC apply to any type of serious offence.
- criminal liability for FT should extend to legal persons and such persons should be subject to effective, proportionate and dissuasive criminal sanctions for FT.	Law No.92/2008	The Article 337 ter of the CC – inserted by Article 78 (2) of Law No.92/2008 San Marino authorities envisage to implement a legislative provision concerning the criminal liability of legal persons. However, the Law No.92/2008 provides for a joint liability of the entity for the administrative violations committed by its representatives or employees. This joint liability integrates the one established in civil law for the unlawful acts committed by the representative or employee of a legal person.
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		

Special Recommendation III - Freezing and confiscating terrorist assets Rating: PC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. The authorities should clarify the framework for the conversion into San Marino law of designations under UNSCR 1267 and in the context of UNSCR 1377 and designate a national authority to consider requests for designations under UNSCR 1373.	Adopted by articles 46-50 and 85 para 8 of the Law No.92/2008 Implemented by Congress of State Decisions 6 October 2008 No. 2 and No.3. ANNEXES 9 and 10	The restrictive measures enshrined in the UNSC Resolutions are implemented in the Republic of San Marino according to the procedures set forth in articles from 46 to 50 of the Law No.92/2008. ANNEXES 9 and 10 The designating authority for UNSCR is the Committee for Credit and Saving under article 49 and article 85 para 8 of the Law No.92/2008. The latter integrates article 48 and article 3 of Law No.96 of 29 June 2005 (Statutes of the Central Bank by which the Credit and Saving Committee is regulated). The article 49 of the Law No.92/2008 prescribes the functions of the Credit and Saving Committee for the implementation of the restrictive measures of the UNSC Resolutions. According to the new procedures for the implementation of the restrictive measures contained in the UNSC resolutions, the Congress of State has implemented the provisions of the article 46 and following ones of the Law No.92/2008 by issuing Decision No.2 on Resolutions 1267(1999) and following ones on Taliban and Decision No. 3 on Resolutions 1737 (2006) and following ones.
2. It should also be clarified that once the Supervision Department has communicated designations, immediate checks should be performed.	Adopted by article 46 and article 48 of the Law No.92/2008	The decisions of the Congress of Stare are sent to the Financial Intelligence Agency that provides for their transmission to the Judicial Authority, the State Administrations referred to in article 48 and the obliged parties referred to in article 17 of the Law No.92/2008. ANNEXES 9 and 10 The State Administrations that keep public registries, which have data or information relating to frozen funds or economic resources, give immediately notice to the Agency. The Agency orders to annotate in the public registries the freezing of registered movable and immovable assets.

		The obliged parties referred to in article 17 of the Law No. 92/2008 shall do the following: *a) notify the Agency of the measures applied in accordance with this law, indicating the subjects involved, the amount and nature of the funds and economic resources, within 15 days from the adoption of the Congress of State decision, or from the date of the possession 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;* *c) notify the Agency, on the basis of the information provided by it, of transactions and business relationships as well as any other data or information with reference to subjects that may be included in the lists in accordance with article 49, paragraph 5 of the Law No.92/2008.*
3. The authorities should also ensure that the mechanism applies to all targeted funds or other assets as described in the UN resolutions of individuals, groups and legal entities. Given the gaps in the incrimination of the offence of financing of terrorism, the court based system for freezing appears to be of limited assistance for the effectiveness of the system.	Adopted by articles 46 and 49 of the Law No.92/2008	The freezing of assets, funds and economic resources are one of the restrictive measures as indicated in the article 46 of the Law No.92/2008 whose implementation is prescribed in the following articles. The definition of assets, funds and economic resources against which freezing measures should be applied is set forth in the article 1 para 1, letter e) of the Law No.92/2008. That article also contains the definition of "freezing". The effects freezing measures are prescribed in the article 47 of the Law No.92/2008. The judicial protection against restrictive measures is set forth in the article 50 of the Law No.92/2008.
4. The authorities should establish a clear and publicly known procedure for de-listing and unfreezing requests; and appropriate procedures authorizing access to frozen funds for necessary basic expenses, payment of certain fees, service charges or extraordinary expenses.	Articles 49 and 50 of Law No.92/2008	The Article 49 para 6, states that: "The Committee for Credit and Savings shall formulate proposals to the competent International Organisations, according to the criteria and ways established in the United Nations resolutions, for de-listing, also on the basis of requests presented by the interested parties." <u>Authorization to frozen assets</u>. The authorization to access to frozen assets, funds and economic resources is described in the article 49 of the Law No.92/2008 <u>Unfreezing requests</u> The requests for unfreezing the assets, funds and economic resources are prescribed in the article

		50 of the Law No.92/2008 for the same circumstances of the UNSC Resolutions
5. The supervisory authority should be actively checking compliance with SR III and the legal framework for imposing administrative sanctions should be reviewed to adequately enable it to sanction failure to comply with the obligations.	Articles 57-67 of the Law No.92/2008	Criminal Sanctions shall apply for: 1) *Disregard of the orders by the Congress of State*, sets forth in the Article 57 of the Law No.92/2008: anyone who disregards the restrictive measures adopted by decision of the Congress of State under article 46 is punished by terms of second-degree imprisonment and second-degree disqualification. 2) *Evading measures for freezing funds*, sets forth in the Article 60 of the Law No.92/2008: Whoever carries out acts intended to evade measures for freezing funds (referred to in article 46, paragraph 1, letter a) is punished with imprisonment, penalty calculated in days and third-degree disqualification. Moreover, pecuniary administrative sanctions up to double the value of the funds or economic resources object of the freezing shall be applied." Administrative Sanctions 1) *Violation of the provisions on matters of freezing funds* sets forth in the Article 64 of the Law No.92/2008: Except when the fact constitutes a more serious offence, the violation of the provisions referred to in article 47, paragraph 1 is punished with a pecuniary administrative sanction up to double the value of the funds or economic resources object of the transfer, disposition or use. Except when the fact constitutes a more serious offence, the violation of the provisions referred to in article 47, paragraph 2 shall be punished with a pecuniary administrative sanction up to double the value of the funds or economic resources made available directly or indirectly to persons, entities or groups included in the list drawn up by the appropriate Committee of the United Nations or allocated in favour of such persons, entities or groups. 2) *Violation of the obligation of communication regarding frozen funds and resources* sets forth in the Article 65 of the Law No.92/2008: Except where the conduct amounts to a more serious crime, the violation of the provisions referred to in article 48 shall be punished with a pecuniary administrative sanction from 500 to 25,000 euros.
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		
Congress of State Decisions no.2 and 3 of 6 October 2008 (ANNEXES 9 and 10)		

Special Recommendation IV - Suspicious transaction reporting Rating: NC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. San Marino authorities are urged to set out in law or regulation a direct mandatory obligation for financial institutions to report to the FIU when it suspects or has reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism.	Article 36 of the Law No.92/2008	Article 36 explicitly covers the requirements for reporting entities to transmit to the Agency STRs related to FT.
2. San Marino should ensure that there is a requirement in law or regulation that all suspicious transactions, including attempted transactions, are reported regardless of the amount of the transaction.	Article 36 of the Law No.92/2008	Article 36 of the Law covers attempted transactions.
3. Also, such a reporting requirement should apply regardless of whether they are thought, among other things, to involve tax matters.		The reporting requirements apply in all cases where the obliged parties arise suspicion that the transaction or attempted transaction may derive from money laundering or terrorism financing or may be used to commit such offences, regardless of any reason that generates or might generate the transaction of the funds.
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		

Recommendation SR.VI - AML requirements for money/value transfer services Rating: NC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
Although San Marino authorities pointed out that in respect of AML requirements connected to the provision of MVT services, San Marino post offices comply with the rules applicable to the Italian postal service, domestic AML/CFT implementing provisions legislation should be adopted as soon as possible in order to meet the requirements of Special Recommendation VI, criteria 1 to 6.	Article 18 letter c), article 21 para 2 of the Law No.92/2008 Article 53-60 (criminal sanctions) and 61-67 (administrative sanctions) of the Law No.92/2008 ANNEX 01	Post offices shall apply CDD measures when they establish business relationships or carry out occasional transactions and when they act as an intermediary or are at any rate part of the transfer of currency or bearer negotiable instruments, in euros or foreign currency, carried out in any capacity among different entities for a total amount that exceeds 15,000 euros. Please see the reply to Recommendation 17 and the ANNEX 29 and 37
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		
The Financial Intelligence Agency is drafting AML/CFT Instructions for San Marino Post Office. (ANNEX 18)		

Recommendation SR.VII - Wire transfer rules Rating: NC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. The provisions of SR VII on wire-transfers are not directly addressed in law or regulation. While in practice some measures are taken that cover certain limited elements of SR.VII, the San Marino authorities should introduce requirements to ensure that complete originator information is included in outgoing wire transfers and that beneficiary financial institutions adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by account number and address information.	Adopted by Article 33 of the Law No.92/2008 Implemented by FIA Instruction No.2008-04 (ANNEX 15)	*As regards wire transfers, article 33 of the Law No.92/2008 prescribes that financial institutions, when they execute transfers of funds, shall obtain and transfer specific information on the ordering customer. This information on the ordering customer shall be kept registered in the records of the financial institution.* *Financial institutions shall deny the transfer of funds when they are not provided with the information referred to in the previous paragraph. When the financial institution that has received the transfer order omit to provide the information, the financial entity to which the transfer order is addressed shall request the information in writing. If the request is not satisfied, it shall activate the enhanced measures prescribed in article 27 of the Law No.92/2008 and evaluate whether to suspend relations with the financial institution that has received the transfer order. The financial institution shall forward to the Financial Intelligence Agency (San Marino FIU), without delay, a copy of the request for information sent to the counterpart.* The FIA Instruction No.2008-04 indicates the information that financial institutions are required to obtain on the customer, specifies the measures to adopt in order to verify the identity of the ordering customers and the procedures to implement in case of missing or incomplete information on ordering customers. Exceptions are also indicated in the FIA Instruction. FIA Institution set forth the record keeping requirements for the information on the ordering customers.
2. The CBSM should introduce measures to effectively monitor compliance with any requirements introduced in relation to wire transfers. There should be specific sanctions in	Articles 61-67 of the Law No.92/2008	Violation of CDD measures is punished under article 61 and the subsequent ones. Violation of the provisions of the Law and the Agency's Instructions referred to in article 33, is punished according to articles 66 and 67 of the Law.

relation to obligations under SR.VII.		
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		
On October, 24 2008, The Financial Intelligence Agency according to the article 21 and 95 of the Law No.92/2008, has issued Instruction No.2008-04. (ANNEX 15) The FIA Instruction 2008-04 specifies the requirements that financial institutions shall comply with in case of executing wire transfers in application of the SR VII by FATF and EU Regulation No.1781/2006. The FIA Instruction contains specific provisions on: - Information on ordering customer (article 2) and verification of the information (articles 3 and 4); - Transfers of funds within the Republic of San Marino (article 5); - Batch file transfers and information on ordering customer (article 6); - Exceptions on wire transfers (article 7); - Missing or incomplete information on ordering customer (article 8); - Obligations on the intermediary payment service providers for the transmission of the information on ordering customer (article 9); - Record keeping requirements (article 10) The FIA Instruction No.2008-04 will enter into force on February, 1 2009.		

Recommendation SR.VIII - Non-profit organisations Rating: NC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
1. The San Marino authorities should review the adequacy of laws and regulations related to NPOs as well as the sector's potential vulnerabilities to abuses for the financing of terrorism and make any necessary changes to the laws and regulations.		A review of the non-profit sector is under way and a draft law regulating the activity related to non profit organizations in compliance with international standards will be submitted shortly to the Government. In any case, the non-profit organizations and their activities are already subject to the supervision of the Court, notably through the Judge of Supervision over Non-Profit Organizations. Based on the deposit of both budgets and balance sheets, and any reported change decided by the meeting or occurred in the board of directors, the Judge of Supervision verifies every year whether the funds have been used as planned and in accordance with the by-laws. He also verifies the existence and validity of the association's purpose or object. These records are available to the competent authorities. The information concerning such entities and associations is public and available to the competent authorities. The acts by which legal recognition is granted or termination declared are published in the Official Journal of the Republic of San Marino. Under par. 7 of Art. 4 of Company Law No. 68/1990 "The Council of XII shall control and supervise the way in which recognised foundations and non-commercial associations are operated, and may appoint a special commissioner where deemed necessary and essential for the proper functioning or termination of the entity."
2. The authorities should also develop an effective outreach program with the NPO sector.		San Marino Authorities are reviewing the non-profit sector in order to submit a draft law regulating the activity related to non profit organizations in compliance with international standards.

3. A number of measures have been taken, as a matter of practice and by analogy to the existing requirements for companies, which led to the collection of certain information on registered entities, though there is no legal requirement in legislation for this purpose. The authorities should promote effective supervision and monitoring and ensure that there is a clear legal basis which enables them to require NPOs to maintain information on the purpose and objectives of their activities, on the identity of persons who own, control or direct their activities (including senior officers, board members and trustees). Appropriate measures should also be in place to sanction violations of oversight measures.		Further to checks and controls carried out by the Judge of Supervision, a non-profit foundation was subject to formal winding-up through decree issued by the same Judge on 22 February 2008, in order to prevent it from conducting its activity which didn't comply with the relative regulations and its by-laws. Furthermore, 3 non-profit Associations are currently subject to strict monitoring and control from the Judge of Supervision, because their activities do not seem to comply with the relevant legislation.
4. The evaluators were not made aware of any legal requirement for NPOs to maintain for a period of at least 5 years records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objective of the organisation. Such a requirement should be introduced in law or regulation.		
5. San Marino authorities should also		Further to checks and controls carried out by the Judge of Supervision, a non-profit foundation

raise awareness of the SR VIII among existing supervisory authorities engaged with the NPO sector and to define a clear and effective coordination mechanism between NPO supervisory authorities, law enforcement agencies, FIU/Central Bank.		was subject to formal winding-up through decree issued by the same Judge on 22 February 2008, in order to prevent it from conducting its activity which didn't comply with the relative regulations and its by-laws. Furthermore, 3 non-profit Associations are currently subject to strict monitoring and control from the Judge of Supervision, because their activities do not seem to comply with the relevant legislation.
6. Furthermore appropriate contacts points and procedures should be established to respond to international requests for information regarding particular NPOs that are suspected of FT or other forms of terrorist support.		The San Marino authorities which shall respond to international requests for information are the Judicial Authority, INTERPOL and the Financial Intelligence Agency, according to the procedures established by national regulations.
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		

Recommendation SR.IX - Cross Border Declaration & Disclosure Rating: NC		
Recommended action	**Relevant provision adopted and/or measures implemented (if any) to address the identified deficiencies and date**	**Description of measure(s) taken or being taken to address the deficiency identified and implement the recommendation**
It is strongly recommended that the San Marino authorities review the implementation of Special Recommendation IX as a whole and take the necessary steps as soon as possible to ensure that all criteria are adequately satisfied.	Adopted by Delegate Decree n. 138 of 31 October 2008 ANNEX 07 Statistic on control ANNEX 35	The Parliament has delegated the Government to regulate, through a delegate decree, the controls on the cross-border transportation of currency and similar instruments. The Delegate Decree n. 138 "Transport of currency and similar instruments across transnational borders", upon article 90 (1) (b) of the Law n.92/2008, was adopted on 31 October 2008.[See the annex 07] The above mentioned Decree introduced a formal obligation: any person entering or leaving San Marino carrying currency or securities exceeding €10.000, has to make a disclosure to the Police agents, upon request (Art.2). Where there is a false disclosure or a refusal, the person will be liable to a fine equivalent to 25% of the value represented by the cash exceeding € 10.000, with a minimum fine of € 200 (Art. 4). Where any cash has not been declared, the Police agents shall seize the undeclared amount in excess of €10.000 and inform the Financial Investigation Agency (Art.6).
Description of any other related changes since the first compliance report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives) if applicable		