COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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

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San Marino

3rd Compliance report
Annexes – Part 2

24 September 2009

San Marino is a member of MONEYVAL. This compliance report was adopted at MONEYVAL's 30th Plenary Meeting (Strasbourg, 21-24 September 2009). For further information, please refer to MONEYVAL website: http://www.coe.int/moneyval.

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REPUBLIC OF SAN MARINO

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

Having regard to Article 4 of Constitutional Law no. 185/2005 and Article 6 of Qualified Law no. 186/2005;
Promulgate and order the publication of the following Qualified Law approved by the Great and General Council in its sitting of 23 April 2009 with 37 votes in favour, 12 against, 1 abstention and 2 non-voters:

QUALIFIED LAW NO. 1 OF 4 MAY 2009

SPECIAL AND URGENT MEASURES FOR THE APPOINTMENT OF JUDGES

Art. 1
(Recruitment of new Judges)

1. By way of derogation from the recruitment procedures provided for by Law no. 145 of 30 October 2003 and by the Regulation referred to in Article 3, paragraph 6 of the same Law, approved by the Judicial Council on 18 June 2004, considering the urgent need to ensure the regular exercise of jurisdiction, it is hereby ordered that the following Judges are recruited, including the professionals for whom the competition procedures have already been initiated:
- no. 3 Law Commissioner's Clerks (*Uditori Commissariali*)
- no. 1 Law Commissioner
- no. 1 Administrative Judge in the first instance.

Art. 2
(Recruitment requirements)

1. Clerks shall be appointed among San Marino citizens or residents in the Republic of San Marino holding a degree in Law who have passed a qualifying examination to practice as lawyers and notaries, although they have not practiced the legal profession.
2. The Law Commissioner and the Administrative Judge in the first instance shall be appointed among those persons possessing the requirements and qualifications referred to in Article 5 of Qualified Law no. 145 of 30 October 2003.

Art. 3
(Appointment procedures)

1. Appointments shall take place, subject to the passing of an examination before a Committee composed of three members, including a President, appointed by the Parliamentary Committee on Justice Affairs, within ten days from the entry into force of this Law, among Judges of appeal or Judges of superior courts, or among persons having high reputation in the field of law, or among those who have successfully practiced the legal profession. The Secretariat's functions of the Examining Committee shall be performed by the Registrar of the Civil Section of the Single Court.
2. The examination for the appointment of the Clerks, the Law Commissioner and the Administrative Judge in the first instance shall consist of an oral test aimed at verifying the ability of candidates to solve legal problems and their professional skills in the following subjects: civil law and procedure, criminal law and procedure, administrative law, constitutional law and the system of sources of law. The test shall be exclusively oral and shall be carried out according to the modalities, as applicable, referred to in Annex "C" to the Organic Law in force.

Art. 4
(Submittal of applications and completion of the selection procedure)

1. Candidates shall submit the applications for participation in the selection to the Civil Registry of the Single Court within thirty days from the entry into force of this Law. The Secretariat of State for Justice shall ensure that the provisions enshrined in this Law are publicly known and disclosed.

2. Applications shall be accompanied by documents proving that the candidates possess the requirements and qualifications to be admitted to the selection referred to in this Law, as well as by their CVs and any qualifications and publications in law.

Art. 5

(Carrying out of the tests and criteria for the evaluation of the examination and qualifications)

1. The Examining Committee shall meet, in the five days following the deadline for the submittal of applications, in order to admit candidates and fix a date for the oral test, which shall take place in the following 15 days.
2. Candidates obtaining a minimum score of 18/30 in the oral test shall be considered qualified.
3. At the end of the examination of candidates, the Committee shall draw up the ranking lists for the posts to be filled, by adding the score related to the evaluation of the qualifications held by each candidate, calculated according to the modalities referred to in subsequent paragraphs 4 and 5, to the score achieved by the candidate in the oral test.
4. Qualifications may be assigned a maximum score of 4 to be computed according to the following criteria:

1) the qualifications based on which the candidate is admitted to the competition shall be given a score proportionate to the marks obtained in the qualifications, up to a maximum of 2 points;
2) for specializations achieved by attending regular and legally recognised courses of study, 0.50 points may be assigned for specializations in San Marino law and 0.25 points for other relevant specializations, up to a maximum of 1 point;
3) 0.50 points may be assigned for publications concerning San Marino law and 0.25 points for other publications in law, up to a maximum of 1 point.

5. For each year of actual employment spent within the Judiciary in San Marino, or in Countries with systems belonging to the same historical and legal tradition, or as a permanent professor of legal subjects at Universities, 0.25 points may be assigned up to a maximum of 1 point.
6. The aforesaid ranking lists, which are binding, shall be forwarded, together with all examination documents, to the Secretariat of State for Justice. On the basis of such lists, the Secretariat of State for Justice shall inform the winners, specifying when they will start their service, without prejudice to the fact that jurisdictional functions shall be exercised only after the Great and General Council takes note of the appointments during the earliest convenient sitting and the persons appointed take the prescribed oath.

Art. 6

(Trial period and confirmation)

1. The winners of the selection process shall be subject to a trial period referred to in Article 4 of Qualified Law no. 145 of 30 October 2003 and they shall be appointed to an open-ended post with confirmation by the Judicial Council in plenary session, based on the Chief Magistrate's report concerning the fulfilment of the tasks entrusted.
2. The Judicial Council shall decide by recorded vote. No votes shall be cast for confirmation by Judges of inferior courts with respect to those to be confirmed and judges not confirmed.

Art. 7

(Transitional provisions)

1. If, within two years from the entry into force of this Law, it is necessary to make new appointments, which shall be decided upon in compliance with the procedures set forth by Qualified Law no. 145 of 30 October 2003, and provided that it is not decided to appoint Judges sitting on upper courts, it shall be possible to recruit those persons who, according to the selections conducted, are qualified for the post to be filled, in compliance with the ranking lists. This right may be exercised if the number of Judges, resulting from the implementation of this Law, decreases within two years.
2. By way of derogation from Article 5 of Qualified Law no. 145 of 30 October 2003 and within the two-year time limit referred to in paragraph 1, the aforesaid functions may be performed by judges in service who do not meet the seniority requirement in the exercise of the functions envisaged by law, provided that the Judicial Council, meeting in plenary session, considers them to be qualified on the basis of the Chief Magistrate's report on the fulfilment of the tasks entrusted.

Art. 8

(Urgent provisions for criminal proceedings)

1. For the purposes of Article 6, paragraph 2 of Law no. 93 of 17 June 2008, from 1 December 2008 to the date on which the Judges appointed under this Law begin their service the limitation period shall be suspended only for the purposes of calculating the time limit to conduct the preliminary investigation.

Art. 9
(Entry into force)

1. This Law shall enter into force on the fifth day following that of its legal publication.

Done at Our Residence, on 4 May 2009/1708 since the Foundation of the Republic

THE CAPTAINS REGENT
Massimo Cenci – Oscar Mina

ON BEHALF OF THE SECRETARY
OF STATE FOR INTERNAL AFFAIRS
The Secretary of State
ANTONELLA MULARONI

2. Annex 2: Law No. 92 of 17 June 2008 - Provisions on preventing and combating money laundering and terrorist financing

REPUBLIC OF SAN MARINO

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

Having regard to article 4 of Constitutional Law n. 185/2005 and article 6 of Qualified Law n. 186/2005;
Promulgate and order the publication of this Law approved by the Great and General Council during its sitting of June 10, 2008.

LAW N° 92, June 17, 2008 Provisions on preventing and combating money laundering and terrorist financing

TITLE I
GENERAL PROVISIONS

Article 1 (Definitions and scope)

1. For the purposes of this Law, the following definitions apply:
   a) "Agency": the Financial Intelligence Unit referred to in article 2;
   b) "Public administrations": Secretaries of State, Departments, public institutions, state corporations, public administration offices;
   c) "Central Bank": the Central Bank of the Republic of San Marino as defined in Law N° 96 of June 29, 2005 and subsequent amendments;
   d) "shell bank": any entity that carries out activity equivalent to that defined in Annex 1 Law N° 165 of November 17, 2005 incorporated in a jurisdiction in which it has no physical presence and which is unaffiliated with a regulated financial group;
   e) "assets" or "funds": any property, whether tangible or intangible, movable or immovable, including means of payment and credit, any document or instrument, including electronic or digital form, evidencing title to, or interest in such property; economic resources of any nature, tangible or intangible, movable or immovable assets, thus including all accessories, fixtures and returns that may be used to obtain funds, assets or services as well as any other utility specified in the technical Annex to this Law;
   f) "client" or "customers": the natural person, legal person, or entity without legal personality with which the obliged parties, in the field of their activities, execute an occasional transaction or establish a business relationship, or the natural person, legal person, or entity without legal personality to which the obliged parties render a professional service, regardless whether or not payment is made;
   g) "freezing of funds": the prohibition to move, transfer, modify, dispose, use or manage funds or economic resources, to have access to them in such a way as to modify the entity, amount, location, entitlement of rights, ownership, nature, destination or cause any other change that would permit the use of funds or economic resources, including, for mere illustration purposes, portfolio management, sales, leasing, renting or establishment of real rights of guarantee;
   h) "anonymous accounts or accounts in fictitious names": the relationships for which the customer due diligence obligations, in order to guarantee that the financial entity knows the identity of the client in every phase of the relationship with the client itself, are not fulfilled;
   i) "payable-through accounts": transnational bank accounts used directly by the customers to carry out transactions on their own behalf;
   j) "terrorism purposes": 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;
   k) "terrorist financing": 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;

l) “instructions”: the provisions enacted by the Financial Intelligence Agency in the exercising of its functions of prevention and combating money laundering and terrorist financing;

m) “occasional transaction”: any transaction, professional service or action carried out for the customers, outside a business relationship, that involves the transfer or moving also by electronic means of cash or other means of payment;

n) “politically exposed person”: natural persons, foreign citizens, who are or have been entrusted with important public functions abroad during the year preceding the establishment of the business relationship, transaction or professional service, their immediate family members or persons known to be close associates of such persons, as foreseen in the technical Annex to this Law;

o) “business relationship”: any relationship or professional service between an obliged party, regardless of whether payment is required or not, which involves carrying out more than one transaction;

p) “terrorism” or “terrorist act”: 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”:

(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;

r) “beneficial owner”:

(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(s) that, directly or indirectly, owns more than 25% of the voting rights in a company or, at any rate, because of agreements or other reasons, is able to control voting rights equal to said percentage or has 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 the European Union legislation;

2) the natural person(s) who is beneficiary of more than 25% of the property of a foundation, trust or other arrangements with or without legal personality that administers funds; whenever the beneficiaries have not been determined, the natural person(s) in whose principal interest the entity is established or acts;

3) the natural person(s) who is able to control more than 25% of the property of an entity with or without a legal personality **;**

s) “financial intelligence unit”: the central national authority in charge of receiving, requesting, analysing and disseminating to the competent authorities all information relative to preventing and combating money laundering and terrorist financing.

2. With the sole object of the laws regarding preventing and combating money laundering, except as provided in 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 person involved in said activity to evade the legal consequences deriving from his or her actions;

b) concealing or disguising the true nature, origin, location, disposition, movement of property, ownership of the assets or interest in such 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.

TITLE II
COMPETENT AUTHORITIES

Chapter I
FINANCIAL INTELLIGENCE AGENCY

Article 2 (Establishment and purpose)

1. The Financial Intelligence Agency for preventing and combating money laundering and terrorist financing shall be established at the Central Bank.
2. The Agency shall perform the functions assigned to it by this law in complete autonomy and independence.
3. The costs for the staff, structure, organization and functioning of the Agency shall be paid for by the Central Bank. The Agency shall use the resources according to criteria of cost effectiveness and efficiency.
4. The Agency shall prepare annual accounts by the month of May regarding the management of the resources received from the Central Bank during the previous year and a budget document outlining expenses for the following year by the month of September. The annual accounts and budget document shall be sent to the Committee for Credit and Savings. The Committee for Credit and Savings shall evaluate if the resources have been programmed and managed according to the criteria of cost effectiveness and efficiency and then transmit the pertinent documentation to the Central Bank for the fulfilment of its obligations.

Article 3 (Director and Vice Director)

1. The Congress of State, upon proposal by the Committee for Credit and Savings and having heard the opinion of the Central Bank, shall appoint the Director and Vice Director of the Agency choosing among people who have the necessary requisites of professionalism, independence and respectability. The mandate of the Director and Vice Director shall last five years and is renewable only once.
2. The Director and Vice Director can be removed from their offices with the same procedure required for their appointment only if they no longer satisfy the conditions required for the fulfilment of their functions or are guilty of serious deficiencies.
3. The staff of the Agency, while performing the functions set forth in this law, are public officials and are bound by official secrecy.

Article 4 (Functions of the Financial Intelligence Agency)

1. 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.
2. The Agency shall analyze and study financial flows in order to identify and prevent money-laundering and terrorist financing. It shall examine 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.

Article 5 (Powers of the Financial Intelligence Agency)

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.
3. The Agency shall take note of all activities conducted, also in a concise manner, according to the way deemed most suitable. Except as specifically provided in this law, the Agency shall draw up a report on the information acquired in accordance with paragraph 1, letter f).

4. 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 on behalf of the judicial Authority shall be recorded.

Article 6 (Ways and effects of blocking)

1. The measure with which the Agency orders the blocking in accordance with letter d) of article 5 shall be adopted in written form and shall be justified. Except for the terms set forth in subsequent paragraph 5, in case of urgency the written justification may be submitted subsequent to the blocking.
2. The Agency shall communicate the measure to the entity or person who holding the assets, funds or economic resources in the ways deemed most appropriate. The Agency shall also communicate the measure to the interested party except where the communication may prejudice the outcome of the investigation. If the assets are registered as movable or immovable ones, the Agency shall order the blocking to be registered at the State Office in charge of keeping public registries.
3. The assets freezing cannot constitute the object of any act evidencing transfer, title to or use of such assets.
4. Without prejudice to confirmation in accordance with the subsequent paragraph, the blocking measure shall be immediately effective.
5. Within 48 hours from the execution of the block, the measure shall be notified to the judicial Authority, who shall confirm – if requirements are met – the blocking measure within the following 96 hours. Failing such requirements, the judicial Authority shall also lift the block if the reasons for the precautionary measure foreseen in the provision issued by the Agency no longer exist.
6. The provision of the judicial Authority shall be notified to the Agency and to the entity to which the freezing was executed.

7. Such freezing may not exceed 15 days starting from the date of the provision issued by the Agency. This term is established by the judicial Authority in the confirmation provision and is extendable up to 45 days, upon reasoned request of the Agency, where investigations are particularly complex or where cooperation of foreign financial intelligence units is needed. The request for the extension shall be deposited in the offices of the judicial Authority prior to the expiration of the term. The judicial Authority shall grant or deny the extension within 96 hours from the receipt of the request and shall communicate its decision to the Agency and to the entity having the assets, funds or economic resources at its disposal.
8. Prior to the expiration of the terms established in the previous paragraph, the Agency, with a specific report based on the financial investigations conducted, shall indicate to the judicial Authority any data useful to proceed to the seizure or revocation of the freezing. The judicial Authority shall issue its judgment indicating its reasons within the following 96 hours.

9. In case of termination or revocation of the freezing, the judicial Authority shall take the necessary measures in order to return the frozen assets to the party entitled or, in case of registered movable or immovable assets, to cancel the registration of the freezing in the public registries.

10. The provisions of this article shall not prevent the judicial Authority from ordering seizures under judicial rules in force. In this case, the blocking ordered by the Agency shall become null and void.

Article 7 (Communication to the judicial Authority)

1. In case the Agency detects facts that might constitute an offence of money-laundering or terrorist financing, it shall transmit the documents and acts, including the report on the financial investigation conducted, to the judicial Authority without delay. If, upon completion of the financial investigation, no criminal conduct has been ascertained, the Agency shall close the case. The closure of the case does not prevent the carrying out of further investigations should new information be obtained.
2. The Agency may communicate the transmission of the documents or acts to the judicial Authority, or the closure ordered in compliance with the previous paragraph, directly to the obliged reporting party, except when the communication might prejudice the outcome of the investigation or the secrecy of the identity of the reporting person.

Article 8 (Access to information)

1. The Agency shall have 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.

2. Except as provided in the previous paragraph, 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.

3. For these same purposes foreseen in the previous paragraph, 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. 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.

4**.** The data and information acquired by the Agency may be used exclusively for the exercise of the functions set forth in this law.

Article 9 (Official secrecy)

1. All data and information acquired by the Agency are covered by official secrecy even in relations with the Public administrations, without prejudice to cases of communication or exchange of information set forth in this law. Official secrecy cannot be claimed for requests made by the criminal judicial Authority.
2. The Agency shall take steps, also including the use of computerized means, to ensure that the data and information acquired are not accessible by third parties.

Article 10 (Statistical data collection and presentation of annual reports)

1. The Agency shall collect annually the data regarding the activity carried out for the prevention and combating money-laundering and terrorist financing.

2. The Agency shall present an annual report through the Secretary of State for Finance and Budget to the Great and General Council [*Parliament*] every year on the activity carried out for the prevention and combating of money-laundering and terrorist financing.
3. The Agency shall propose to the Congress of State the adoption of measures intended to heighten the effectiveness of the prevention and combating of money-laundering and terrorist financing.

CHAPTER II
NATIONAL COOPERATION

Article 11 (Cooperation with other Authorities and Professional Associations)

1. The Public administrations, Police Authority, Central Bank and Professional Associations shall cooperate with the Agency in the prevention and combating of money-laundering and terrorist financing.

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.
3. The Public Administration, Police Authority, Central Bank and Professional Associations shall provide the Agency with updated data on the obliged parties.

Article 12 (Cooperation with Police Authority)

1. The Agency shall cooperate with the Police Authority and the National Central Office of Interpol, also by exchanging information.
2. The Police Authority, in the fulfilment of its statutory role, may also conduct activities of preventing and combating money laundering and terrorist financing on its own initiative.
3. The information exchanged may be used exclusively for the purpose of preventing and combating money laundering and terrorist financing. The information cannot be communicated to third parties without prior written consent of the Agency and it is covered by official secrecy also regarding those who receive the information.

Article 13 (Competences of Professional Associations)

1. Professional Associations, in the fulfilment of their functions assigned by the respective statutes, shall promote and oversee the compliance with obligations under this law by their members.
2. Professional Associations shall promote the training of their members, employees and collaborators in order that the obligations set forth in this law are correctly observed.

Article 14 (Competences of the Central Bank)

1. The Central Bank, if during the course of its function of supervision over financial entities as referred to in article 18, letters a), d) and e) 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.
2. The Central Bank shall provide the Agency with data regarding financial parties as well as information useful for carrying out financial investigations upon reports of suspicious transactions and for the study of financial movements.
3. The powers for verifying the adequacy of the organizational and procedural structures of the authorized parties remain within the competence of the Central Bank. The Central Bank may enact secondary legislation regarding these parties in accordance with Law N° 165 of November 17, 2005.

Article 15 (Cooperation with the judicial Authority)

1. 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.

CHAPTER III
INTERNATIONAL COOPERATION

Article 16 (Cooperation with foreign financial intelligence units)

1. The Agency shall cooperate with foreign financial intelligence units 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.

2. The Agency, with the aim of regulating the cooperation activity referred to in paragraph 1, may stipulate appropriate protocols of agreement [*Memorandum of Understanding*] and inform the Committee for Credit and Savings about them.
3. The information exchanged may be used by the foreign financial intelligence units 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.
4. The information exchanged cannot be used to initiate or continue administrative, police or judicial investigations without prior written consent by the Agency.
5. The 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.

TITLE III
PREVENTIVE MEASURES

CHAPTER I
PERSONS AND ENTITIES SUBJECT TO OBLIGATIONS

Article 17 (Obliged parties)

1. For the purposes of this law, the following are defined as obliged parties:
a) financial parties;
b) non-financial parties;
c) professionals.
2. Those belonging to the categories referred to in the previous paragraph are specified in the subsequent articles in this chapter.

Article 18 (Financial parties)

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

Article 19 (Non-financial parties)

1. Non-financial parties are defined as parties that provide professional services regarding the following activities:
   a) office of the co-trustee as defined by Law N° 37 of March 17, 2005;
   b) assistance and consultancy on matters of investment services;
   c) assistance and consultancy on tax, financial and commercial matters;
   d) credit brokerage;
   e) real estate brokerage;
   f) running of gambling houses and games of chance as set forth in Law N° 67 of July 25, 2000 and subsequent amendments;
   g) custody and transport of cash, securities or values;
   h) management of auction houses or art galleries;
   i) trade in antiques;
   j) purchase of unrefined gold;
   k) manufacturing, mediation of and trade in, including export and import of precious metals and stones.

Article 20 (Professionals)

1. Professionals are defined as follows:
   a) members of the Registry of Accountants (*holding a university degree or holding an high school certificate*) of the Republic of San Marino;
   b) members of the Registry of External Auditors and Auditing companies and of the Registry of Actuaries of the Republic of San Marino;
   c) members of the Bar Association of Lawyers and Notaries of the Republic of San Marino, when they carry out in name of or on behalf of their clients any financial or real estate transaction, or when they assist a customer in the planning or execution of related transactions, such as:
      1) the transfer of any title of real rights on properties or companies;
      2) the management of currency, financial instruments or other assets of customers;
      3) the opening or management of bank accounts, savings and securities accounts;
      4) the establishment, management or administration of companies, trusts or similar arrangements with or without legal personality;
      5) the organisation of all the steps required to establish, operate or manage companies.

CHAPTER II
OBLIGATION OF CUSTOMER DUE DILIGENCE

Article 21 (Field of application of customer due diligence)

1. The obliged parties shall fulfil the customer due diligence obligations in the following cases:
   a) when establishing a business relationship;
   b) when carrying out occasional transactions or professional services for an amount exceeding 15,000 euros, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
   c) when there is a suspicion of money-laundering or terrorist financing;
   d) when there are doubts about the veracity or adequacy of the information and data previously obtained for the identification of the customer.

2. The financial parties referred to in article 18 shall also fulfil the customer due diligence obligations when they act as intermediaries or are at any rate part of the transfer of money or bearer negotiable instruments, in euros or foreign currency, carried out in any capacity among different entities for a total amount exceeding 15,000 euros.

3. 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.

4. Members enrolled in the Registry of Accountants (*holding a university degree or an high school certificate*) are not required to fulfil the customer due diligence obligations and registration in relation to the execution of the mere activity of drafting or filing income tax returns.

Article 22 (Customer due diligence measures)

1. The fulfilment of customer due diligence obligations shall comprise the carrying out, if needed through employees or collaborators, of the following measures:
   a) identifying the customer and 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;
   b) if necessary, identification of the beneficial owner and taking risk-based and adequate measures to verify the identity;
   c) obtaining information on the purpose and intended nature of the business relationship or occasional transaction;
   d) conducting ongoing monitoring of the relationship with the customer, including scrutiny of transactions undertaken throughout the course of that relationship to ensure that they are compatible with the data and information that the obliged parties have regarding the customer, its economic activities and risk profile, taking into consideration the source of the funds where necessary;
   e) updating documents, data and information acquired during the fulfilment of customer due diligence obligations.

2. Customers are obliged to provide, under their own responsibility, in written form, all data and information required and updated to permit the obliged parties to fulfil their obligations as set forth in this law.

Article 23 (Identifying and verifying the identity of the customer and beneficial owner)

1. The obliged parties shall identify and verify face-to-face, through their employees or collaborators, the identity of the customer and beneficial owner before establishing a business relationship or carrying out a transaction.
2. If the customer is not a natural person, the obliged parties shall verify the actual existence of the power of representation and acquire the data and information necessary to identify and verify the identity of the representatives who are authorized to sign for the transaction to be carried out.
3. 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 use of public registries, lists, acts or documents in the public domain, containing information on the beneficial owners, and request from its customers the pertinent data and information, or obtain information in other ways.
4. Verifying the identity of the customer and beneficial owner may be completed in the shortest time possible after the establishment of a business relationship if it is necessary not to interrupt the normal conduct of the business and when the risk of money-laundering or terrorist financing is low.

5. The non-financial entities that carry out activities set forth in article 19, paragraph 1, letter f) shall identify and verify the identity of the customer immediately on entry [*into gambling houses*], regardless of the amount of gambling chips purchased, sold or exchanged. They shall also register, according to the provisions of article 34, the transactions of purchase or exchange of gambling chips or other means of gambling with a value of 2,000 euros or more.

Article 24 (Obligations of abstention)

1. If the obliged parties are not able to fulfil the obligations of customer due diligence foreseen 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 decide whether the situation should be reported to the Agency.

2. The members enrolled in the Registry of Lawyers and Notaries and Registry of Accountants (*holding a university degree or an high school certificate*) shall not be obliged to apply the provisions of the previous paragraph in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in administrative or judicial proceedings, or concerning such proceedings, including advice on instituting or avoiding proceedings.
3. The obliged parties shall refrain from carrying out transactions when there are reasonable grounds to believe that these transactions could be related to money-laundering or terrorist financing. In these cases, a suspicious transaction report shall be promptly sent to the Agency. Where abstention is not possible because there is a legal obligation to receive the act, or the carrying out of the transaction by its nature cannot be postponed, or where the abstention might hinder ongoing investigations, the obliged parties shall inform the Agency immediately after the carrying out, taking every precaution to identify the destination of the funds transferred during the transaction.

Article 25 (Risk-based approach)

1. The obliged parties are required to fulfil the due diligence on all their customers.
2. The customer due diligence obligations are fulfilled by risk-based verifications which depend on the type of customer, business relationship, occasional transaction, professional service, product or transaction.
3. For the evaluation of the risk, the obliged parties shall evaluate at least the following aspects:
A) with reference to the customer:
    1) the legal status,
    2) the main business activity,
    3) the behaviour at the moment of establishing the business relationship, or carrying out the transaction or professional services,
    4) the residence or registered office of the customer or of the counterpart with particular attention to that do not require equivalent obligations to those set forth in this law;

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

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

Article 26 (Simplified customer due diligence)

1. The obliged parties shall not be subject to the customer due diligence obligations, where the customer is one of the following:

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 N° 165 November 17, 2005, located in a State which requires obligations equivalent to those set forth in this law and imposes supervision and control over compliance with the requirements 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 State which imposes requirements equivalent to those laid down in this law and provides supervision and control over 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 State, as long as this market is subject to regulations consistent with or equivalent to the European Union legislation;
e) domestic public authorities.

2. The obliged parties shall not be subject to the requirements of customer due diligence 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, complementary or similar pension schemes that provide retirement benefits, for which contributions are made by way of deduction from wages and the scheme rules do not permit the transfer of beneficiaries' rights unless after the death of the holder.

3. The Agency may indicate with instructions the categories of entities or products characterized by a low risk of money-laundering or terrorist financing for which customer due diligence does not apply.
4. In the cases described in the previous paragraphs, the obliged parties shall in any case collect data and information sufficient to establish if the customer falls into an exempted category.

Article 27 (Enhanced customer due diligence)

1. The obliged parties, on the basis of a risk assessment, shall take enhanced customer due diligence measures in situations which by their nature can present a higher risk of money-laundering or terrorist financing.
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.

3. In the case foreseen in letter a) of paragraph 2, the obliged parties shall compensate for the higher risk by applying at least one of the following measures:

a) ensuring that the first transfer of funds in relation to the establishment of the business relationship or to the execution of the occasional transaction is carried out through an account opened in the customer's name with a financial entity referred to in article 26, paragraph 1, letters a) and b);
b) verifying the identity of the customer through supplementary documents or information in addition to those requested for a customer that is physically present;
c) taking supplementary measures to verify the documents supplied;
d) requiring certification in relation to the information or documents supplied;
e) requiring a statement of confirmation by a financial party referred to in article 26, paragraph 1, letters a) and b) that has already fulfilled customer due diligence obligations on the customer in question.

4. In the case foreseen in letter b) in paragraph 2, the obliged parties shall do the following:

a) when the obliged parties are organized in a company structure, they shall obtain the approval of the general director or an equivalent figure, or a person authorized by the general director, before establishing a business relationship or carrying out an occasional transaction;
b) they shall take any appropriate measure to establish the source of the funds used in the business relationship or in carrying out the occasional transaction;
c) they shall ensure an ongoing and enhanced control over the relationship with the customer.

5. The financial parties referred to in article 18, letters a), b) and c), that 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, shall adopt the following enhanced customer due diligence measures:
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;
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 written form the respective obligations and responsibilities regarding matters of preventing and combating money laundering and terrorist financing.

6. The financial parties referred to in article 18 letters a) and b) 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.
7. 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, and take measures, if needed, to prevent their use for money-laundering or terrorist financing purposes.

Article 28 (Prohibition to operate with shell banks)

1. The financial parties 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. Relationships that already exist on the date this law enters into force should be closed at the earliest opportunity.

Article 29 (Customer due diligence performed by third parties)

1. In order to fulfil the requirements laid down in article 22, paragraph 1, letters a), b) and c), the obliged parties may rely on third parties with which the customers have business relationships or which the customers have used to carry out an occasional transaction. For this purpose, the third-parties shall issue a suitable statement confirming that they have fulfilled customer due diligence obligations. However, the ultimate responsibility for the identification and verification of the identity of the customer shall remain with the obliged parties.
2. For the purposes of this article, the third-parties shall be financial parties referred to in article 18, paragraph 1, letters a), b) and c) and in article 26, paragraph 1, letters b) and c).
3. The third-parties shall immediately make available to the obliged parties all information required in fulfilling the customer due diligence obligations in accordance with the activities foreseen in article 22, paragraph 1, letters a), b) and c).
4. The information and documents regarding the identification of the customer or of the beneficial owner shall be forwarded, without delay, upon simple request by the obliged parties.
5. The Agency may identify, by means of instructions, other categories of third-parties upon which the obliged parties may rely on in order to avoid the repetition of obligations foreseen in article 22, paragraph 1, letters a), b) and c).

CHAPTER III
ADDITIONAL MEASURES

Article 30 (Prohibition to maintain anonymous accounts or accounts in fictitious names)

1. Except as provided in article 31, financial parties are prohibited to maintain anonymous accounts or accounts in fictitious names.

Article 31 (Limitations on the use of cash and bearer securities)

1. The transfer between different parties of cash and bearer securities referred to in the subsequent paragraphs, when the value of the transaction, also fractioned, is more than 15,000 euros, shall take place exclusively through a party authorized to conduct the reserved activity referred to in letters A), C) or I) of Annex 1 of Law N° 165 of November 17, 2005.
2. Cheques drawn on banks in San Marino or issued by these banks, for individual amounts exceeding that foreseen in the previous paragraph, shall bear the name and surname or the company name of the beneficiary and the clause "non-transferable".
3. The balance of bearer passbooks issued from the date on which this law enters into force shall not be more than 15,000 euros.
4. Bearer passbooks issued before the date on which this law enters into force, whose balance exceeds the 15,000 euro limit, shall be closed or converted into relationships consistent with the provisions of this law by December 31, 2010.
5. Starting on January 1, 2012, it will no longer be possible to issue bearer passbooks and those issued before that date shall be closed or converted.
6. Except as provided in the previous paragraphs, for each deposit or withdrawal, closure or conversion regarding bearer passbooks, banks shall carry out customer due diligence obligations as set forth in article 22, paragraph 1, letters a) and b).

Article 32 (Obligation of communication to the Agency)

1. The obliged parties that detect violations of the provisions referred to in article 31, in the course of their activities, shall inform the Agency without delay.

Article 33 (Special measures for the electronic transfer of funds)

1. The Agency regulates the following with its own instructions:
   a) the data and information that the financial parties, authorized to carry out reserved activity referred to in letter I) of Annex 1 of Law N° 165 November 17, 2005, are required to be obtained about those parties ordering the electronic transfer of funds;
   b) the ways for registering and maintaining these data and information.
2. The financial parties shall deny the transfer of funds when they are not provided with the information referred to in the previous paragraph. If the financial party having received the transfer order fails to provide the information, the financial party to which the transfer order is addressed shall request the information in written form. Where the request is not satisfied, the financial party shall implement the enhanced measures set forth in article 27 and evaluate whether to suspend relations with the financial party that has received the transfer order. The financial party shall forward to the Agency, without delay, a copy of the request for information sent to the counterpart.

CHAPTER IV
REGISTRATION AND REPORTING OBLIGATIONS

Article 34 (Obligations for registering and maintaining documents and information)

1. The obliged parties shall register the data and information required when fulfilling customer due diligence obligations and shall keep the records and copies of the documents obtained for at least five years from the closure of the business relationship or execution of the occasional transaction.
2. The obliged parties shall register and keep the records and registrations of the business relationships and occasional transactions or professional services provided. In particular, they shall register and maintain all original documents or copies admissible in court proceedings, for a period of at least five years from the closure of the business relationship or execution of the transaction or professional service.
3. The data and information referred to in the previous paragraphs shall be registered no later than five days after their acquisition.
4. All the data, information and documents registered and maintained by the obliged parties shall be made available to the Agency without delay for the carrying out of its functions of preventing and combating money laundering and terrorist financing.

Article 35 (Supplementary measures for financial parties)

1. The financial parties 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.

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.

Article 37(Possibility to report)

1. Anyone can report to the Agency facts or circumstances relevant to the preventing and combating of money laundering and terrorist financing.

Article 38 (Safeguarding of professional secrecy)

1. Members of the Registry of Lawyers and Notaries and members of the Registry of Accountants (*holding a university degree or holding an high school certificate*) may invoke professional secrecy, in front of the Judicial Authority, the Financial Intelligence Agency and the Police Authorities, on the information they acquire while defending and representing their client during a judicial or administrative proceeding or in relation to that proceeding, including advice on the eventuality of prosecuting or avoiding a proceeding, where the information is received or obtained before, during or after such proceeding.
2. In the cases provided in the previous paragraph, lawyers and accountants have no reporting obligations.
3. 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.
4. 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.
5. 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.

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 N° 165 November 17, 2005. The suspicious transactions reports and disclosures made in good faith shall not entail liability of any kind.

Article 40 (Confidentiality of the identity of the reporting person and secrecy of the reports)

1. The obliged parties shall adopt suitable measures to ensure the maximum confidentiality of the person that has detected the suspicious transaction in accordance with article 36, paragraph 1, letters a) and b).
2. The acts and documents related to the suspicious transactions reports shall be kept under the responsibility of the obliged party, its legal representative or one of its delegates.
3. The Agency shall adopt appropriate measures to guarantee the confidentiality of the identity of the person that detected the suspicious transaction. Requests for information to the obliged party, and requests for further

investigation, as well as exchange of information related to suspicious transactions reported, shall be made with appropriate ways that guarantee the confidentiality of the person that has detected the suspicious transaction.
4. In case of communication, complaint or report to the Judicial Authority, the identity of the person that has detected this suspicious transaction, even if known, shall not be mentioned.
5. The identity of the person that has detected the suspicious transaction can be revealed only when the Judicial Authority, with a justified decree, declares it essential to the investigation of the offences for which it is proceeding.
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.
7.The communication of the forwarded suspicious transaction reports is permitted among the financial entities located in the Republic of San Marino, belonging to the same group or having business relationships with the same customer, or having executed the transactions reported.
8. Furthermore, the communication is permitted between the obliged parties referred to in article 20 that carry out their professional services in an associated form.
9. Where obliged parties seek to dissuade a customer from engaging in illegal activity, this shall not constitute a violation of the obligation of confidentiality.
10. Where obliged parties disclose information to the party concerned by the freezing provisions ordered by the Agency, if the communication is necessary in connection with the prohibition of transfer, holding or use as referred to in article 6, paragraph 3**,** this shall not constitute a violation of the obligation of confidentiality.

CHAPTER V
PROCEDURES, CONTROLS AND STAFF TRAINING

Article 41 (Control obligations)

1. The obliged parties referred to in article 17 that carry out the activity subject to the obligations set forth in this law, as individuals or associates, as well as legal representatives and those persons that perform management, administration and control functions of the obliged parties organized in a company structure 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.

Article 42 (Functions and powers of the compliance officer)

1. Financial parties, having company status, shall appoint an internal compliance officer in charge of receiving internal suspicious transaction reports, further analysing and forwarding them to the Agency, should he feels reports are grounded on the basis of all the elements in his possession, also inferred from other sources. The suspicious transaction reports shall be forwarded to the Agency without the name of the person who has detected the suspicious transaction in accordance with article 36, paragraph 1, letters a) and b).
2. The compliance officer shall have adequate professional skills and shall be given appropriate powers to carry out the functions referred to in the previous paragraph in full autonomy, including the power to access all information or documents also without authorization.
3. The act of appointment of the compliance officer shall include the specification and evaluation of the requirements of professionalism, as well as the powers conferred. The act of appointment shall be transmitted to the Agency.
4. Until the appointment of the compliance officer, or in case of his absence also temporarily, all his duties and responsibilities related to said function shall be assigned to the legal representative.
5. The compliance officer seeks and obtains information, also through employees and collaborators that at any title, come into contact with the customers or who at any rate know about the business relationships with the customers or the execution of transactions for their benefit.
6. Even in absence of internal suspicious transaction reports, the compliance officer shall analyse the transactions carried out, seek and obtain information and, in the cases set forth in article 36, forward the suspicious transaction report to the Agency.

Article 43 (Compliance officer at non-financial parties)

1. The auditing companies and other non-financial parties may appoint a compliance officer. In case of appointment, the provisions referred to in article 42 shall apply.

Article 44 (Procedures and internal controls)

1. The obliged parties 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.
2. The obliged parties shall inform all employees and collaborators of the obligations set forth in this law and of instructions issued by the Agency. The obliged parties shall inform all employees and collaborators of the measures and procedures adopted for the purpose of preventing and combating money laundering and terrorist financing.
3. The obliged parties shall foster the continuous staff training through participation in specific training programmes on matters of preventing and combating money laundering and terrorist financing.
4. The obliged parties 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.
5. The obliged parties shall be equipped with electronic systems suitable for ensuring the prompt, confidential reception of information sent by the Agency. The information sent by the Agency shall be accessible only to the obliged parties.
6. The financial parties shall extend the obligations referred to in this article to foreign branches.

Article 45 (Obligations of foreign branches and subsidiaries controlled by financial parties)

1. The financial parties shall ensure that their foreign branches or subsidiaries fulfil obligations equivalent to those set forth in this law.
2. In case the legislation of the foreign State does not provide for requirements equivalent to those set forth in the previous paragraph, the financial parties shall give notice to the Agency and Central Bank and adopt supplementary measures to effectively deal with the risk of money laundering or terrorist financing.

TITLE IV
MEASURES FOR PREVENTING, COMBATING AND REPRESSING TERRORIST FINANCING AND THE ACTIVITY OF STATES THAT THREATEN INTERNATIONAL PEACE AND SECURITY

Article 46 (Restrictive measures adopted by the Congress of State)

1. 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, shall adopt without delay a decision outlining restrictive measures, conforming to the resolutions of the United Nations Security Council or one of its Committees. The restrictive measures include the following:
   a) the freezing of funds and economic resources held or controlled, directly or indirectly, by persons, entities or groups included in the list drawn up by the appropriate United Nations Committee;
   b) commercial restrictions, including commercial restrictions on imports or exports and arms embargoes;
   c) restrictions of a financial nature, including financial restrictions or financial assistance and the prohibition of providing financial services;
   d) restrictions of any other nature, including restrictions on technical assistance, flight prohibitions, prohibition of entry or transit, diplomatic sanctions, the suspension of cooperation and the boycotting of sporting events.
2. The decision of the Congress of State can introduce additional restrictive measures or specific provisions related to the resolutions adopted by the United Nations Security Council or one of its Committees.
3. The decision of the Congress of State that orders the enforcement of restrictive measures can provide for derogations of or limitations to the United Nations Security Council resolutions for reasons of public order or interest.
4. Where a resolution of the United Nations Security Council or one of its Committees provides for the adoption, amendment or abrogation of restrictive measures, the Congress of State shall provide by means of a decision for their enforcement in the territory of the Republic of San Marino.

5. The decisions referred to in the previous paragraphs shall be immediately published *ad valvas Palatii* and at the Court, and from that moment they are expected to be known by every one.
6. The decisions are sent to the Agency that shall provide for their transmission to the Judicial Authority, the State Administrations referred to in article 48 and the obliged parties referred to in article 17.

Article 47 (Effects of the freezing of funds and economic resources)

1. Except as provided in article 49, the funds and economic resources subject to freezing cannot constitute the object of any transfer, holding or use.
2. It is prohibited to make funds or economic resources available, directly or indirectly, to subjects included in the lists drawn up by the appropriate Committees of the United Nations or to allocate them for their benefit.
3. The freezing is effective from the date of the adoption of the Congress of State decision.
4. Acts carried out in violation of the prohibitions referred to in the previous paragraphs are null and void.
5. The freezing does not prejudice the effects of any seizure or confiscation proceedings, adopted in the field of proceedings having the same funds or economic resources as their object.
6. The freezing of funds and economic resources, the omission or refusal of financial services deemed in good faith conforming to this law shall not imply any kind of responsibility for the natural person, legal person or entity without legal personality who applies it, neither for its directors nor employees.

Article 48 (Communication obligations)

1. The State Administrations that keep public registries, which have data or information relating to frozen funds or economic resources, shall immediately give notice to the Agency.
2. The Agency shall order to annotate in the public registries the freezing of registered movable and immovable assets.
3. The obliged parties referred to in article 17 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.

Article 49 (Functions of the Committee for Credit and Savings)

1. The Committee for Credit and Savings, under Law N° 96 of June 29, 2005 and subsequent amendments, has the competence to evaluate requests for unfreezing of funds and economic resources presented by the interested parties. The decision shall be adopted within four months from the presentation of the request.
2. In case of abrogation of a freezing measure under article 46, paragraph 4, the Committee for Credit and Savings shall take the necessary actions to return the assets to the rightful owner or, in cases involving registered movable or immovable assets, to annotate the unfreezing order in the public registries.
3. The Committee for Credit and Savings may authorize - upon completion of the procedure referred to in the following paragraph 4 - that the frozen assets or property be used to meet the fundamental needs be accessible of the subjects included in the list referred to in article 46, or of family member, including to pay for foodstuffs, medicines, housing, medical care and legal assistance. The Committee for Credit and Savings may similarly authorize that the frozen assets or property be used to pay taxes and other tax liabilities, mandatory insurance obligations and, bank fees for bank account maintenance.
4. The authorization requested, referred to in the previous paragraph, shall be notified to the competent United Nations Security Council Committee. The authorization cannot be granted if the United Nations Security Council Committee takes a contrary decision.
5. The Committee for Credit and Savings shall formulate proposals to the competent International Organisations for listing persons, entities or groups, on the basis of information provided by the Agency and other national authorities according to the criteria and ways established in the United Nations resolutions.
6. 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.
7. The Agency, Police Authorities, Interpol National Central Office, and Public administrations shall communicate to the President of the Committee for Credit and Savings, by way of derogation from every provision in force on matters of official secrecy, information referring to the functions foreseen in paragraphs 5 and 6. The Judicial Authority shall send to the Committee all information deemed useful for the same purposes, when this communication does not prejudice the ongoing investigations.

8. Whenever, on the basis of information acquired in compliance with the previous paragraphs, there are sufficient elements to formulate proposals of designations to the competent International Organisations and in the meantime there is the risk that the assets to be frozen might be lost, concealed, or used for terrorist financing, the Committee for Credit and Savings shall inform the Agency of this fact, which, whenever there are the conditions foreseen in article 5, paragraph 1, letter d), shall order the freezing of said assets.

9. The Committee shall take action in the same manner also when foreign authorities communicate the adoption of measures of freezing in respect of subjects not included in the lists foreseen in article 46, paragraph 1, letter a). The information and documentation shall immediately be transmitted to the Agency.
10. The Agency shall take the actions set forth in article 5, paragraph 1, also on its own initiative, when it receives from national or foreign authorities evidence that assets derive from terrorist financing or may be used to finance terrorism or activities that threaten international peace or security.

Article 50 (Jurisdictional protection)

1. The interested subject can lodge personally or through a lawyer, an appeal against the restrictive measures ordered by the Congress of State decision and against the provisions adopted by the Committee for Credit and Savings. A jurisdictional appeal is also admitted against the same measures.
2. By way of derogation from article 3 of Law N° 5 of January 25, 1984, the interested subject, if he/she has not designated his/her own defence lawyer or has no defence lawyer, shall be assisted by the public defender also in proceedings before the administrative judge. No compensation shall be owed to the public defender for the professional services provided under this article.

TITLE V
STAFF OF POLICE FORCES
CHAPTER I
Detachment and training of police officials

Article 51 (Assignment of police officials)

1. For the fulfilment of the duties established by the law and international obligations, upon request by the Director and approval by the Congress of State, police officials, who have a specific attitude and preparation in relation to the functions envisaged by this law, may be assigned to the Financial Intelligence Agency, also for limited periods of no less than one year.
2. The police officials shall be selected by the Director of the Agency, in agreement with the investigating judges and the Commanders of the Police Forces, taking into consideration rank, educational degree and experience in the prevention and combating of financial offences.
3. The Commanders of the Police Forces shall guarantee the Agency an adequate number of qualified officials for the fulfilment of the duties assigned by this law.
4. Police officials assigned to the Agency shall be exonerated from duties and obligations deriving from regulations of the Corps to which they belong that are not inherent to judicial police functions, except for exceptional circumstances that shall be notified to the Agency.

Article 52 (Police officials training)

1. The Agency shall contribute to the training of the police officials on matters of financial investigations. For this purpose, it shall promote training through courses and internships of a duration no longer than six months, according to the specific agreement protocols undersigned with the Commanders of the Corps to which they belong.

TITLE VI
SANCTIONS

CHAPTER I
PENAL SANCTIONS

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.

Article 54 (Omitted or false statements regarding customers)

1. Except where the conduct amounts to a more serious crime, anyone who bears false testimony when requested to provide information for applying customer due diligence obligations, shall be punished by terms of second-degree imprisonment and second-degree daily fine.

Article 55 (Disregard of the reporting obligation)

1. Except where the conduct amounts to a more serious crime, anyone who disregards the reporting obligations set forth in article 36, shall be punished by terms of first-degree imprisonment and second-degree daily fine.

Article 56 (Actions intended to prevent reporting)

1. Except where the conduct amounts to a more serious crime, anyone using violence, threatening or giving, offering or promising an advantage for the purpose of delaying or preventing that report of a suspicious transaction, even if not carried out, is transmitted to the Agency or Judicial Authority, shall be punished by terms of second-degree imprisonment and second-degree daily fine.
2. Anyone who uses violence, threatens, offers or promises an advantage, after that the report has been transmitted to the Agency or Judicial Authority, shall be punished by terms of imprisonment of second-degree.

Article 57 (Disregard of the orders and provisions issued by the Agency and Congress of State)

1. Except where the conduct amounts to a more serious crime, anyone who, without justified reason, disregards, delays or hinders the execution of an order, request or provision issued by the Agency under article 5, shall be punished by terms of second-degree imprisonment and second-degree disqualification.
2. The same penalty shall be applied to anyone who disregards the restrictive measures adopted by decision of the Congress of State under article 46.

Article 58 (False or omitted declarations to the Agency)

1. Anyone who, if required by the Agency to provide data or information useful for the investigation, bears false declarations or withholds, entirely or in part, what he/she knows about facts for which he/she has been summoned, shall be punished by terms of second-degree imprisonment.
2. The provisions referred to in the previous paragraph do not apply if the false or reticent declarations are borne by the person who is being investigated.

Article 59 (False information in acts intended for the Agency)

1. Except where the conduct amounts to a more serious crime, anyone who declares or states false information in acts or documents intended for the Agency, shall be punished by terms of second-degree imprisonment.
2. The same penalty shall apply to anyone who provides the Agency with documents containing false information.
3. If the action involves acts or documents to be provided to the Judicial Authority, the penalty shall be a third-degree imprisonment.

Article 60 (Evading measures for freezing funds)

1. Anyone who carries out actions intended to evade measures for freezing funds referred to in article 46, paragraph 1, letter a), shall be punished by terms of imprisonment, daily fine and disqualification of third-degree. Moreover, pecuniary administrative sanctions up to double of the value of the funds or economic resources object of the freezing shall be applied.

CHAPTER II
ADMINISTRATIVE VIOLATIONS

Article 61 (Violation of customer due diligence and registration)

1. The violation of the customer due diligence obligations established by this law shall be punished with pecuniary administrative sanctions from 2,000 to 40,000 euros.
2. If the violation of customer due diligence obligations is carried out using fraudulent means, the pecuniary administrative sanction shall be doubled.
3. The violation of the obligations of abstention set forth in article 24, shall be punished with a pecuniary administrative sanction from 5,000 to 50,000 euros.
4. Except as provided in article 54, the violation of the obligations to provide information for applying customer due diligence obligations, shall be punished with a pecuniary administrative sanction from 3,000 to 50,000 euros.

Article 62 (Violation of the obligation of registration and maintenance)

1. The violation of the obligations of registration and maintenance [of documents and information] set forth in article 34 shall be punished with a pecuniary administrative sanction from 2,000 to 40,000 euros.
2. If the violation of obligation of registration is carried out using fraudulent means, the pecuniary administrative sanction shall be doubled.

Article 63 (Violation of the prohibition to keep anonymous accounts and violation of the limits on the use of currency and bearer securities)

1. The violation of the prohibition to keep anonymous accounts or accounts in fictitious names, shall be punished with a pecuniary administrative sanction of 2,000 to 50,000 euros.
2. The violation of article 31, paragraphs 1 and 2 shall be punished with a pecuniary administrative sanction up to half the amount of each transaction.
3. The violation of the provisions set forth in article 31, paragraphs 3, 4 and 5 shall be punished with a pecuniary administrative sanction up to one half of the balance of the bearer passbook.

Article 64 (Violation of the provisions on matters of freezing funds)

1. Except where the conduct amounts to a more serious crime, the violation of the provisions referred to in article 47, paragraph 1, shall be punished with a pecuniary administrative sanction up to double of the value of the funds or economic resources object of the transfer, holding or use.
2. Except where the conduct amounts to a more serious crime, the violation of the provisions referred to in article 47, paragraph 2, shall be punished with a pecuniary administrative sanction up to double of 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.

Article 65 (Violation of the obligation of communication regarding frozen funds and resources)

1. 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.

Article 66 (Other violations)

1. Except for the criminal and administrative violations referred to in the previous articles, the violation of other provisions envisaged in this law shall be punished with a pecuniary administrative sanction from 200 to 20,000 euros.

Article 67 (Violation of instructions)

1. Except for the administrative and criminal violations envisaged in this law, the violation of the instructions issued by the Agency shall be punished with a pecuniary administrative sanction from 200 to 20,000 euros.

CHAPTER III
RESPONSIBILITY FOR ADMINISTRATIVE VIOLATIONS

Article 68 (Subjective element for administrative violations)

1. In the administrative violations envisaged in this law, each person is responsible for his own actions or omissions, consciously and voluntarily, both fraudulent and negligent.

Article 69 (Complicity of persons)

1. Where one or more persons act in complicity in an administrative violation, each one of them shall be subject to the sanction prescribed for this action.

Article 70 (Joint liability)

1. If the violation is committed by a person subject to another authority, management or control, the person vested with the authority or having the responsibility for the management or control shall be held jointly liable for the payment of the amount owed by the perpetrator of the violation, unless the person proves that he could not have prevented the violation.
2. If the violation is committed by the representative or employee of a legal person or entity without legal personality, by an entrepreneur, or professional in the exercise of his own functions or commissions, the legal person, entity, entrepreneur or professional shall be held jointly liable for the payment of the amount owed by the perpetrator of the violation.
3. In the cases envisaged in the previous paragraphs, anyone who is held jointly liable has the obligation to claim against the perpetrator of the violation.
4. The joint liability referred to in paragraphs 1 and 2 exists even if the perpetrator of the violation has not been identified.

Article 71 (More violations of provisions subject to administrative sanctions)

1. Unless otherwise established by the law, anyone who, through actions or omissions, violates several provisions that set forth administrative sanctions or commits more than one violation of the same provision, shall be subject to the sanction envisaged for the most serious violation, increased up to three times the amount.

Article 72 (Criteria for the application of pecuniary administrative sanctions)

1. In determining the pecuniary administrative sanction established by the law between a minimum and a maximum limit, the seriousness of the violation, the behaviour subsequent to the violation aimed at aggravating or attenuating the consequences of the violations, the behaviour and economic conditions of the perpetrator of the violation shall be taken into account.

Article 73 (Voluntary settlement)

1. For the administrative violations set forth in this law, by way of derogation from article 33, paragraph 1, letter a) of Law N° 68 of June 28, 1989, the offender may exercise the right to voluntary settlement, consisting in the immediate payment of half of the sanction applied in accordance with article 72.

Article 74 (Application of the sanctions)

1. The Agency shall provide for the ascertainment of the administrative violations and application of the sanctions set forth in this law.

CHAPTER IV
INVALIDITY OF ACTS EVIDENCING TITLE TO ASSETS SUSCEPTIBLE TO CONFISCATION

Article 75 (Nullity of the acts evidencing title to assets susceptible to confiscation)

1. Any act - fulfilled in any capacity - evidencing title to assets, funds or economic resources that constitute directly or indirectly the price, product or profits from an offence is null and void, if the person who has received such assets, funds or economic resources knew or should have known that they derived from an offence.
2. "*I Sindaci di Governo*" [*authorities dealing with acts and deeds involving the State*] shall convene the assignor, assignee and any subsequent assignees that are jointly sentenced to the transfer of assets, funds or economic resources to the *Ecc.ma Camera* [*State*], or, if this is not possible, to the payment of an equivalent sum.
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. Any other reciprocal action between the assignor, assignee and any subsequent assignees is guaranteed.
5. Any action is guaranteed to the person damaged by the offence from which the assets, funds, or economic resources are derived.
6. This article shall apply by way of derogation from the general provisions in force regarding matters of contractual invalidity, with the aim of more effectively preventing and combating money-laundering and terrorist financing.

TITLE VII

AMENDMENT TO LEGISLATION IN FORCE

CHAPTER I

SUPPLEMENTS AND AMENDMENTS CONSEQUENT ON INTERNATIONAL CONVENTIONS

Article 76 (Criminal jurisdiction, extradition and confiscation)

1. In article 6 paragraph 1 of the criminal code, after "337 *bis*", introduced in article 2 of Law N° 28 of February 26, 2004, the term "337 *ter*," is added and after "347," the term "374 *ter*" is added.

2. In article 8 paragraph 3 of the criminal code, after the terms "in no case shall be deemed political", introduced in article 3 of Law N° 28 of February 26, 2004, the terms "crimes set forth in articles 337 *bis*, 337 *ter* as well" are added.
3. In article 140 of the criminal code, the following number: "6. Payments of sum in money set forth in article 147 paragraph 3" is added.
4. Article 147, paragraph 3 of the criminal code is replaced by the following:

> "In case of conviction, the confiscation of the instrumentalities that served or were destined to commit the offences 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 the for the purpose of terrorism or subversion of the constitutional order, and of the things being the price, product or profit is always obligatory. Where confiscation is not possible, the judge shall impose an obligation to pay a sum of money equal to the value of the instrumentalities and things referred above".

Article 77 (Property crimes)

1. Article 199 of the criminal code is replaced by the following:

> "*Sale of stolen property* – Apart from cases of complicity to commit an offence, anyone who buys or receives properties knowing that these are proceeds of crime, shall be punished by terms of second-degree imprisonment and second-degree daily fine and third-degree disqualification from public offices and political rights.
> Where a bankruptcy procedure is initiated, the same penalty shall apply to anyone who, for profit making purposes, intervenes to lead others to buy or receive properties which are proceeds of crime, or receives properties owned by individuals or companies knowing that such individuals or company suffer insolvency or buys such properties at a much lower price.

2. After the fourth paragraph in article 199 *bis* of the criminal code, the following paragraphs are inserted:

"Anyone who commits crimes set forth in this article shall be punished by terms of fourth-degree imprisonment, a second-degree daily fine and third-degree disqualification from public offices and political rights.

The penalties may be decreased by one degree based on the amount of money or assets equivalent to them and by the nature of the transactions carried out. The penalties may be increased by one degree when the facts have been committed during the exercise of a commercial-professional activity subject to authorization or certification by the competent Public Authorities.

The judge shall apply the corresponding penalty for the predicate crime, if this is less serious."

3. The first paragraph of article 207 of the criminal code is replaced by the following:

"Anyone who takes or promises, in return for a professional services, an exorbitant interest rate or other advantages or intervenes to lead [someone] to receive or promise to others the aforementioned interests or advantages, shall be punished with a third-degree imprisonment, a second-degree daily fine and third-degree disqualification from public office and political rights.

4. In article 207 paragraph 2 of the criminal code, the terms "by the Office of Banking Supervision" are replaced by the following: "by the Central Bank of the Republic of San Marino."

5. After the third paragraph in article 207 of the criminal code, the following paragraph is added:

"The penalties may be decreased by one degree considering the amount of money or the amount of the interests. The penalties may be increased by one degree when the facts have been committed during the exercise of a commercial-professional activity subject to authorization or certification by the competent Public Authorities or if the offender is a usurer."

Article 78 (Terrorism crimes)

1. The first paragraph in article 337 *bis* of the criminal code is replaced by the following:

"Anyone promoting, establishing, organizing or directing associations that aim at perpetrating violent acts for purposes of terrorism or subversion of the constitutional order, against public or private institutions or bodies either of the Republic of San Marino, of a foreign State or an International Organisation, shall be punished by terms of sixth-degree imprisonment and fourth-degree disqualification from public offices and political rights."

2. After article 337 *bis* of the criminal code, the following article is inserted:

"Article 337 *ter*. *Financing of terrorism* – 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 services, shall be punished by terms of sixth-degree imprisonment and fourth-degree disqualification from public offices and political rights."

Article 79 (Crimes against the public administration)

1. The first paragraph in article 373 of the criminal code is replaced by the following:

"A public official, who receives any undue advantage for himself or others, or accepts the promise of the advantages with the purpose of omitting or delaying or for having omitted or delayed an act of his office or of carrying out or having carried out an act contrary to his official duties, shall be punished by terms of fourth-degree imprisonment and fourth-degree disqualification from public offices and political rights as well as a third-degree daily fine."

2. After article 374 of the criminal code the following articles are inserted:

"374 *bis*. *Instigation of corruption* – Anyone who offers or promises any undue advantage to a public official or public employee, who does not have an official capacity, in order to lead him to omit or delay an act of his office, or to carry out an act contrary to his duties shall be punished, whether the offer or promise has been accepted or not, by terms of third-degree imprisonment and third-degree disqualification from public offices and political rights as well as a second-degree daily fine.

If the offer or promise has been made to lead a public official or public employee, who does not have an official capacity, to carry out an act of his office, whether the offer or promise has been accepted or not, the offender shall be subject to third-degree arrest and a second-degree daily fine.

The penalty referred to in the first paragraph shall be applied to the public official or public employee, who does not have an official capacity, that demands a promise or gift of any advantage from a private citizen for the purposes foreseen in article 373.

The penalty foreseen in the second paragraph shall be applied to the public official or public employee, who does not have an official capacity, that demands a promise or gift of any advantage from a private citizen for the purpose foreseen in article 374."

"374 *ter*. *Embezzlement, extortion, corruption and instigation to corruption of officials from foreign and international public organizations* – The provisions of articles 371, 372, 373 paragraphs 1, 2 and 3, 374 paragraph 1, and 374 *bis* paragraphs 3 and 4, shall be applied to those who exercise functions or activities equivalent to those of a public official or public employee, who does not have an official capacity in the field of foreign or international public organizations as well as officials and agents recruited by contract in foreign or international public organizations.

The provisions of articles 373 paragraph 4, 374 paragraph 2, 374 *bis* paragraphs 1 and 2, shall be applied even if the advantage has been given, offered or promised to persons foreseen in the first paragraph of this article."

Article 80 (Misuse of privileged information)

1. The fourth paragraph in article 305 *bis* of the criminal code is replaced by the following:

"Except as provided in article 147, in case of a conviction, the confiscation of the instrumentalities, including financial ones, that were used to commit the crime, shall always be mandatory, except where they belong to a person not involved in the crime."

CHAPTER II
PROVISIONS ON THE EXTRADITION AND TRANSFER OF PRISONERS OR PERSONS IN CUSTODY

Article 81 (Extradition for terrorist crimes)

1. For crimes of association for purpose of terrorism, terrorist financing as well as any crime committed for the purpose of terrorism, in the absence of specific international treaties, 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.

Article 82 (Transfer of a person abroad)

1. Failing a specific International treaty, where a foreign judicial Authority request - for the purpose of fulfilling procedural requirements related to crimes of association for the purpose of terrorism, terrorist financing, or any other crime perpetrated for terrorist purposes - the presence of a person in custody or serving imprisonment as ordered by the San Marino judicial Authority, the judge may authorize the transfer of said person provided that:

a) the person to be transferred consent thereto freely and consciously;

b) the requesting State adopts the measures deemed as most appropriate for the transfer by the San Marino judicial Authority;

c) the State of destination commits itself to keeping the transferee in custody or prison, unless otherwise requested or allowed by the San Marino judicial;

d) the State of destination commits itself to restitution without delay, in accordance with what previously agreed or decided by the requesting authority and the San Marino authority;

e) the State of destination commits itself not to making restitution subject to extradition of the transferee;

f) the State of destination neither prosecutes, nor imprisons or deprives of liberty the transferee for convictions suffered prior to the date of transfer, unless otherwise allowed by the San Marino judicial authority;

g) the State of destination does not provide for the death penalty.

2. The San Marino judicial authority shall take into due account the imprisonment already served in the State of destination in order to determine the punishment to serve in the Republic of San Marino.

CHAPTER III
AMENDMENT TO THE LAW ON FOREIGNERS

Article 83 (Trafficking in migrants)

1. After article 3 of Law N° 22 of February 24, 2000, the following articles are added:
"3 *bis*. *Trafficking in migrants* – Anyone who, for the purpose of making a profit, direct or indirect, carries out acts intended to obtain the illegal entry of one or more persons into the territory of the Republic of San Marino in violation of the laws in force on foreigners or on residencies and permits of stay, shall be punished by terms of third-degree imprisonment and a second-degree daily fine.
The same penalty shall be applied to anyone who, for the purpose of making a profit, direct or indirect, carries out acts intended to obtain the illegal entry of one or more persons into a State of which the person is not a citizen or not a resident.
The penalties referred to in the previous paragraphs shall be increased by one degree upon the following conditions:
a) if, in order to obtain the illegal entry, the person has been exposed to a risk for his/her life or safety;
b) if, in order to obtain illegal entry or stay, a person has been subjected to inhuman or degrading treatment;
c) if the fact has been committed using counterfeit or altered documents, or at any rate illegally obtained.
If the facts referred to in paragraphs 1 and 2 are carried out for the purpose of recruitment for prostitution, or at any rate for sexual exploitation, or when the facts concern the entry of minors to be used in illegal activity, the imprisonment shall be increased by two degrees and a third degree fine shall be applied.
Apart from the cases envisaged in the previous paragraphs and except where the conduct amounts to a more serious crime, anyone who favours by illegal means the stay of a foreigner in the territory of the Republic of San Marino in order to obtain an undue profit, in violation of the laws in force on foreigners, on residences and permits of stay, shall be punished with imprisonment and a second-degree daily fine.
3 *ter*. *Falsification of travel and identity documents* – Except where the conduct amounts to a more serious crime, anyone who, for the purpose of committing the crime of trafficking in migrants or permitting the commission by third parties, counterfeits or alters a travel or identity document or purchases, receives, possesses, gives up or uses a travel or identity document counterfeited or altered shall be punished by terms of third-degree imprisonment.
3 *quater*. *Confiscation* - In the cases envisaged in articles 3 *bis* and 3 ter, the confiscation of the things that served or were destined to commit the offences shall be always mandatory as well as the things being the price, product or profits. Where confiscation is not possible, the judge shall order an obligation to pay a sum of money equal to the value of the things mentioned above.
Confiscated things or the equivalent sums, shall be allocated to the inland revenue or, where appropriate, destroyed.
3 *quinquies*. *Jurisdiction of San Marino* - Any citizen who commits offences envisaged in articles 3 *bis* and 3 *ter* outside the national territory, is subjected to the laws of San Marino.
The laws of San Marino shall also apply to any foreigner who commits the offences envisaged in articles 3 *bis* and 3 *ter* outside the territory of San Marino if he/she is present in the territory of the State and whenever extradition under the laws of San Marino, treaties and international conventions is not possible.
No proceedings shall be taken towards a citizen or foreigner when one of the following conditions is met:
1) the person has been tried abroad and found innocent;
2) the person who, sentenced abroad, has served the entire sentence handed down, even if less severe than that set forth in this law;
3) the person who, sentenced abroad, has served part of the sentence handed down whenever the sentence that has been served is no less than the minimum penalty set forth in this law."

CHAPTER IV
AMENDMENTS TO PROVISIONS REGARDING POWERS AND FUNCTIONS IN THE FIELD OF COMBATING MONEY LAUNDERING AND TERRORIST FINANCING

Article 84(Special investigative measures and combating of terrorist financing)

1. In article 15, paragraph 1 of Law N° 28 of February 26, 2004, after "337 *bis*", the term: "337 *ter*" is added.
2. Article 17 of Law N° 28 of February 26, 2004 is replaced by the following:
"The Central Bank of the Republic of San Marino shall conduct financial investigations also in cooperation with the Police Forces - subject to the prior authorization of the Commissioner of the Law -

which shall report directly to the Central Bank. Where the reported facts might constitute an offence, the Central Bank shall report them to the Single Court."

Article 85 (Amendments to the statute of the Central Bank)

1. In article 12, paragraph 3 of Law N° 96 of June 29, 2005 and subsequent amendments, the terms "and combating money laundering" are repealed.
2. In article 15, paragraph 2 of Law N° 96 of June 29, 2005 and subsequent amendments, the terms "and as an anti-money laundering unit" are repealed.
3. In article 16, paragraph 3 of Law N° 96 of June 29, 2005 and subsequent amendments, the terms "and its anti-money laundering functions" are repealed.
4. In article 29, paragraph 3 of Law N° 96 of June 29, 2005 and subsequent amendments, after the term "penal sanctions" the following terms "and to the Financial Intelligence Agency in the exercise of its function of prevention and combating of money laundering and terrorist financing" are added.
5. In article 30, paragraph 3 of Law N° 96 of June 29, 2005 and subsequent amendments, the terms "and to the anti-money laundering unit" are repealed.
6. In article 33, paragraph 1 of Law N° 96 of June 29, 2005 and subsequent amendments, letter: "e. the anti-money laundering unit" is repealed.
7. Article 48, paragraph 2 of Law N° 96 of June 29, 2005 and subsequent amendments is replaced by the following:

"The Committee for Credit and Savings will be assigned the functions of directing and guiding the supervision over banking, financial and insurance activities and the promotion of national and international cooperation for effectively preventing and combating money laundering and terrorist financing."

8. After paragraph 3 in article 48 of Law N° 96 of June 29, 2005 and subsequent amendments, the following paragraphs are added:

"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 convene periodically.

5. A Magistrate appointed by the Judicial Council in an ordinary session, the director of the Financial Intelligence Agency or one of his delegates and a representative appointed by the Commanders of the Police Forces shall attend the meetings referred to in the previous paragraph.

6. The President of the 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."

Article 86 (Amendments to the law on companies and banking, financial and insurance services)

1. Article 36, paragraph 5, letter b) of Law N° 165 on November 17, 2005 is replaced by the following:

"to the supervisory authority in the exercise of its function of supervision, and to the Financial Intelligence Agency in the exercise of its functions of preventing and combating money laundering and terrorist financing."

2. In article 37, letter c) of Law N°. 165 of November 17, 2005, after the terms "financial nature" the following terms "in cooperation with other competent authorities" are added.

CHAPTER V
AMENDMENTS ON COMPANY LAW

Article 87 (Assembly of anonymous joint stock companies)

1. Paragraph 2 in article 44 *bis* of Law N° 47 of February 23, 2006 and subsequent amendments is replaced by the following:

"2. The notary 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 ."

2. Paragraph 4 in article 44 *bis* of Law N°. 47 of February 23, 2006 and subsequent amendments is replaced by the following:

"4. The information and documents referred to in paragraph 2 may be acquired by the Judicial Authority at the notary's offices in the context of criminal proceedings and by the Financial Intelligence Agency in the exercise of its functions of preventing and combating money laundering and terrorist financing.
5. The notary shall make use of the documents and information referred to in paragraph 2 to fulfil customer due diligence obligation set forth in the law on preventing and combating money laundering and terrorist financing.
6. The notary may release the information and documents referred to in paragraph 2 also to permit the fulfilment of the customer due diligence obligations by the obliged parties set forth in the law on preventing and combating money laundering and terrorist financing .
7. Apart from the cases set forth in paragraphs 4, 5 and 6, the notary who reveals the identity of the bearers of shares shall be punished according to article 377 of the criminal code."

Article 88 (Fulfilment of the customer due diligence obligations regarding anonymous joint stock companies)

1. Failing to release the documents and information by the notary, under article 44 *bis*, paragraph 6 of Law N°. 47 of February 23, 2006 as amended by article 87 of this law, shall not exonerate the obliged parties from fulfilling customer due diligence obligations.

TITLE VIII
TRANSITORY AND FINAL DISPOSITIONS

Article 89 (Abrogations)

1. The following are abrogated:
   a) article 9 of Law N° 41 of April 25, 1996 "Provisions on currency matters";
   b) articles 6, 8 and 16 Law N° 28 of February 26, 2004 "Provisions on anti-terrorism, anti-money laundering and anti-insider trading";
   c) article 39, paragraph 3 of Law N°. 165 of November 17, 2005 "Law on companies and banking, financial and insurance services";
   d) Decree N° 71 of May 29, 1996 "Provisions on the matter of anti-money laundering";
   e) Law N° 123 of December 15, 1998 "Law on the matter of anti-money laundering and usury";
   f) any provision in contrast with this law.

Article 90 (Delegated decree)

1. The following shall be regulated by delegated decree:
   a) the custody, administration and management of economic resources that are the object of freezing measures;
   b) the controls on the transport of money and similar instruments across transnational borders;
   c) the procedures of closing bearer passbooks that have not been converted within the terms set forth in article 31.

2. Upon proposal by the Agency, other entities and other activities may be identified, by a delegated decree, for being subjected to the obligations set forth in this law.

3. The amounts established in article 26, paragraph 2 may be modified by delegated decree.

Article 91 (Delegated decree for the regulation of the Agency)

1. Within one month from the publication of this law, the Congress of State shall regulate the following by delegated decree:
   a) the requirements of professionalism, independence, and respectability referred to in article 3, as well as the cases of non-compatibility;
b) the legal status and pay of the Agency staff;
c) the functions of the Director and Vice Director of the Agency;
d) the organizational, functional and financial structure of the Agency.

Article 92 (Beginning of effectiveness of the Agency)

1. The Director of the Agency, appointed under article 3, shall inform the Congress of State, through the Secretary of State for Finance and Budget, of the beginning of effectiveness of the Agency.

Article 93 (Transfer of functions regarding financial analysis activity)

1. On the entry into force of this law, the functions and powers on the matter of combating money laundering and terrorist financing assigned to the Central Bank of the Republic of San Marino by the provisions abrogated by this law, shall be transferred to the Agency.
2. Before the communication referred to in article 92, the functions and powers assigned to the Agency by this law shall be carried out by the Central Bank.
3. The information and documents, also in electronic format, regarding the suspicious transaction reports received, any financial analysis carried out and the exchange of information between financial information units, shall be sent in copy by the Central Bank to the Agency within 30 days from the communication referred to in article 92. The Director of the Agency shall confirm that the documents have been delivered.
4. The electronic systems used by the Central Bank for financial analysis and exchange of information, shall be transferred to the Agency within 30 days from the communication referred to in article 92.
5. The Central Bank shall continue to exercise its duties of financial analysis of reports on suspicious transactions received before the communication referred to in article 92, in accordance with the provisions set forth in this law and compatibly with the organizational structure of the Central Bank. For the ongoing analysis on that date, the Central Bank may make use of the electronic systems transferred to the Agency.
6. Within three months from the communication set forth in article 92, the Central Bank shall inform the Agency of the results of the financial analysis of the suspicious transaction reports received before that communication. To this end, the Central Bank shall transmit a copy of the relative documentation to the Agency.
7. The documents and information already acquired by the Central Bank in the exercise of its functions and powers for preventing and combating money laundering, may not be used for other purposes set forth in article 3 of Law N° 96 of June 29, 2005.

8. Until the recruitment of its staff is completed, the Agency shall rely on the employees and officials of the Central Bank, identified by the Director of the Agency, in agreement with the Director of the Central Bank, taking into consideration the operational and functional requirements of both the Agency and the Central Bank.

Article 94 (Technical Annex)

1. For the purpose of identifying the individuals referred to in article 1, paragraph 1, letter n) and the identification of “assets” or “funds” referred to in article 1, paragraph 1, letter e), reference shall be made to the provisions in the Annex to this law.
2. The Annex referred to in the previous paragraph may be modified or integrated by delegated decree.

Article 95 (Timeframe of fulfilments and instructions)

1. The obliged parties are required to fulfil the obligations of customer due diligence, registration and reporting starting from the entry into force of this law.
2. Within six months from the communication referred to in article 92, the Agency shall issue the following instructions:
   a) on the ways for the fulfilment of the obligations referred to in article 22, paragraph 1, letter b);
   b) on the risk-assessment and additional evaluations referred to in article 25;
   c) on the identification to be carried out through third parties and on the way of transmission of documents and information referred to in article 29;
   d) on the information that shall be acquired in case of transfer of funds referred to in article 33;
   e) on the typologies of suspicious transactions and procedures for the examination of operations referred to in article 36;
   f) on the data and information that shall be registered and maintained according to article 34, paragraph 1.
3. Except as provided in article 25, the obliged parties are required to fulfil the obligations referred to in the previous paragraph according to the way set forth in the instructions issued by the Agency.
4. The provisions referred to in the previous paragraphs shall apply also to occasional transactions and professional services which might be ongoing on the entry into force of this law, as well as relationships existing on that date.

5. The Agency shall suggest to the Congress of State, through the Committee for Credit and Savings, the identification of foreign jurisdictions whose system for preventing and combating money laundering and terrorist financing is equivalent to that set forth in international standards. The Congress of State, by decision, shall identify the equivalent jurisdictions.
6. The circulars and standard letters issued by the Central Bank on matters of preventing and combating money laundering and terrorist financing shall continue to be applied, in such that they are compatible, until the issue of the instructions referred to in paragraph 2.

Article 96 (Entry into force)

1. This law shall enter into force three months after its legal publication.

Issued from our Residence, on this day, June 17, 2008

THE CAPTAINS REGENT

Rosa Zafferani – Federico Pedini Amati

THE SECRETARY OF STATE
FOR INTERNAL AFFAIRS
Valeria Ciavatta

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.

Article 2 ("Assets" or "funds" referred to in article 1, paragraph 1, e)

1. The following are considered "assets" or "funds": property of any kind, tangible or intangible, movable or immovable, including means of payment and credit, any document or instrumentalities, even electronic or digital, evidencing title to or interest in such property. The following can be included as an example:
   a) cash, checks, bills of exchange, pecuniary credits and claims on money, payment orders and other means of payment;

b) deposits with banks or financial institutions or other entities, the balance on accounts, credits, bonds of any nature and negotiable securities at public and private levels as well as financial instruments as defined by Law N° 165 on November 17, 2005 and subsequent amendments;
c) interests, dividends and other incomes and increases of values generated by the assets;
d) credits, right of set-off (settlement and clearing), guarantee of any nature and other financial commitments, letters of credit, bills of lading and other certificates representative of assets or goods;
e) documents that demonstrate an interest in funds or economic resources;
f) all other instruments of exports-financing.

3. Annex 3: Law No. 73 of 19 June 2009 - Adjustment of national legislation to international conventions and standards on preventing and combating money laundering and terrorist financing

REPUBLIC OF SAN MARINO

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

Having regard to Article 4 of Constitutional Law no. 185/2005 and Article 6 of Qualified Law no. 186/2005;
Promulgate and order the publication of the following Ordinary Law approved by the Great and General Council in its sitting of 17 June 2009.

LAW NO. 73 OF 19 JUNE 2009

ADJUSTMENT OF NATIONAL LEGISLATION TO INTERNATIONAL CONVENTIONS AND STANDARDS ON PREVENTING AND COMBATING MONEY LAUNDERING AND TERRORIST FINANCING

TITLE I
AMENDMENTS TO THE CRIMINAL CODE

Art. 1
(Value-based confiscation)

1. Paragraph 3 of Article 147 of the Criminal Code shall be superseded by the following:
"In case of conviction, the confiscation of the instrumentalities that served or were destined to commit the crimes referred to in Articles 167, 168, 177 bis, 177 ter, 194, 195, 195 bis, 195 ter, 196, 199 paragraph 1, 199 bis, 204 paragraph 3 number 1, 204 bis, 207, 212, 305 bis, 337 bis, 337 ter, 371, 372, 373, 374 paragraph 1, 374 ter paragraph 1, crimes for the purpose of terrorism or subversion of the constitutional order and the crime referred to in Article 1 of Law no. 139 of 26 November 1997, 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 obligation to pay a sum of money equal to the value of the instrumentalities and things referred to above.".

Art. 2
(Illegal prescription of narcotic drugs)

1. Article 244 of the Criminal Code shall be superseded by the following:

"Article 244
Illegal prescription of narcotic drugs

The medical practitioner or veterinarian who, for the purpose of favouring the violation, issues prescriptions for narcotic drugs or psychotropic substances without there being the need for curative care or in proportions exceeding treatment requirements, shall be punished by terms of third-degree imprisonment and fourth-degree disqualification from exercising the profession.".

TITLE II

AMENDMENTS TO LAW NO. 139 OF 26 NOVEMBER 1997 (SUPPLEMENTS TO PROVISIONS OF THE CRIMINAL CODE AND CODE OF CRIMINAL PROCEDURE FOR OFFENCES RELATED TO NARCOTIC DRUGS, ALCOHOLIC BEVERAGES, HARMFUL OR DANGEROUS SUBSTANCES, PSYCHOTROPIC SUBSTANCES)

Art. 3
(Illicit production, traffic and possession of narcotic drugs)

1. Article 1 of Law no. 139 of 26 November 1997 shall be superseded by the following:

"Anyone who, unauthorised, cultivates, produces, manufactures, extracts, processes, sells, offers, offers for sale, gives up, distributes, trades in, transports, procures for other people, dispatches, passes or dispatches in transit, delivers narcotic drugs for any purpose shall be punished by terms of third-degree imprisonment.

Anyone who, unauthorised, imports, exports, purchases, receives on any terms whatsoever or, in any case, illegally possesses narcotic drugs shall be subject to the same punishment referred to in paragraph 1.

The punishment under paragraph 1 shall also be applied in the event of illicit production or trade in basic chemical substances and precursors to be used in the illicit production of narcotic drugs.

Anyone who, authorised, illegally gives up, places on the market or acts so that other persons place narcotic drugs on the market, or cultivates, produces or manufactures narcotic drugs other than those provided for in the authorisation, shall be punished by terms of fourth-degree imprisonment. If the guilty person practices a health care profession, he/she shall also be subject to fourth-degree disqualification.

Anyone who, unauthorised, holds narcotic drugs not for trading purposes or makes personal use of such drugs shall be punished by terms of second-degree imprisonment. Personal use shall not be punished if prescribed for health reasons or recognised effective by the Social Security Institute.

The punishments envisaged in the preceding paragraphs shall be reduced by one degree for anyone acting to prevent the criminal activity having further consequences, by concretely helping Law Enforcement Authorities or the Judicial Authority to take away significant resources for the perpetration of the offences.".

Art. 4

(Association for the purpose of illicit traffic in narcotic drugs)

1. After Article 2 of Law no. 139 of 26 November 1997 the following article shall be introduced:

"Art. 2 bis

When three or more persons associate for the purpose of committing several offences among those envisaged in Article 1, anyone promoting, establishing, directing, organising or financing the association shall be punished by terms of fourth-degree imprisonment.

Anyone participating in the association shall be punished by terms of third-degree imprisonment.

The punishments provided for in the preceding paragraphs shall be reduced by a maximum of two degrees for anyone having effectively acted to collect evidence of the offence or to take away important resources for the perpetration of the offences from the association.".

TITLE III
CRIMINALISATION OF PIRACY

Art. 5

(Acts of piracy)

1. After Article 195 of the Criminal Code the following articles shall be added:

"Article 195 bis
Acts of piracy on ships and aircrafts

The master or the member of the crew of a ship or an aircraft who, on the high seas or in a place outside the jurisdiction of any State, commits acts of violence, seizure or depredation against a ship or an aircraft, the crew thereof, or persons on board such ship or aircraft shall be punished with fourth-degree imprisonment, disqualification and daily fine. If the offence is committed by a person not belonging to the crew, punishments shall be reduced by one degree.

Article 195 ter
Taking possession of a ship or an aircraft

Anyone taking possession or control of a ship or an aircraft for the purpose of committing the offence referred to in Article 195 bis shall be punished by terms of third-degree imprisonment, disqualification and daily fine. If such acts are committed by the master or a member of the crew, punishments shall be increased by one degree.".

TITLE IV
AMENDMENT TO LAW NO. 92 OF 17 JUNE 2008 (PROVISIONS ON PREVENTING AND COMBATING MONEY LAUNDERING AND TERRORIST FINANCING)

CHAPTER I

Art. 6
(Cooperation with foreign financial intelligence units)

1. Paragraph 5 of Article 16 of Law no. 92 of 17 June 2008 shall be repealed.

Art. 7
(Omitted or false statements regarding customers)

1. Article 54 of Law no. 92 of 17 June 2008 shall be superseded by the following:

"Art. 54
(Omitted or false statements regarding customers)

1. Except where the conduct amounts to a more serious crime, anyone who omits to specify the personal details of the person on whose behalf he carries out the transaction, or provides false information shall be punished by terms of imprisonment or second-degree daily fine.
2. The same punishment envisaged in the preceding paragraph shall also be applied to anyone who does not provide information on the purpose and nature of the business relationship or occasional transaction.".

Art. 8

1. After Article 60 of Law no. 92 of 17 June 2008 the following words shall be deleted:

"CHAPTER II – ADMINISTRATIVE VIOLATIONS".

Art. 9
(Violation of customer due diligence and abstention obligations)

1. Article 61 of Law no. 92 of 17 June 2008 shall be superseded by the following:

"Art. 61
(Violation of customer due diligence and abstention obligations)

1. The violation of customer due diligence obligations established by this law shall be punished by terms of first-degree arrest or second-degree daily fine. A pecuniary administrative sanction from 2,000 to 40,000 Euros shall also be applied.
2. If the violation of customer due diligence obligations is carried out using fraudulent means, the punishments envisaged in the preceding paragraph shall be increased by one degree and the pecuniary administrative sanction shall be doubled.
3. The violation of the obligations of abstention set forth in Article 24 shall be punished by terms of first-degree arrest or second-degree daily fine. A pecuniary administrative sanction from 5,000 to 50,000 Euros shall also be applied.
4. Except as provided in Article 54, the violation of the obligations to provide information for applying customer due diligence obligations shall be punished by terms of first-degree arrest or second-degree daily fine. A pecuniary administrative sanction from 3,000 to 50,000 Euros shall also be applied.".

Art. 10
(Non-compliance with or delay in the fulfilment of registration and maintenance obligations)

1. Article 62 of Law no. 92 of 17 June 2008 shall be superseded by the following:

"Art. 62

(Non-compliance with or delay in the fulfilment of registration and maintenance obligations)

1. Anyone violating the obligations established in Article 34, paragraphs 1, 2 and 3 shall be punished by terms of first-degree arrest or second-degree daily fine. A pecuniary administrative sanction from 2,000 to 40,000 Euros shall also be applied.
2. If the violation of the obligations is carried out using fraudulent means, punishments shall be increased by one degree and the pecuniary sanction shall be doubled.".

Art. 11

1. After Article 62 of Law no. 92 of 17 June 2008, the following words shall be introduced:

"CHAPTER II – ADMINISTRATIVE VIOLATIONS".

Art. 12

1. This Law shall enter into force on the 15th day following that of its legal publication.

Done at Our Residence, on 19 June 2009

THE CAPTAINS REGENT
Massimo Cenci – Oscar Mina

THE SECRETARY OF STATE
FOR INTERNAL AFFAIRS
Valeria Ciavatta

4. Annex 4: Law No. 37 of 17 March 2005 – Trust Act

REPUBLIC OF SAN MARINO

We the Captains Regent
of the Most Serene Republic of San Marino
Promulgate and send to publication the following law approved by the Great and General Council from the session of March 17, 2005

LAW N°. 37 OF 17 MARCH 2005

PART 1
GENERAL CLAUSES

Art. 1

(*Definitions)*

1. With this present law, the following shall be referred to as:
   a) <<Judicial Authority>>: the Judicial Authority of San Marino;
   b) <<Vigilance Authority>>: the Central Bank of the Republic of San Marino;
   c) <<goods>>: any right, power, faculty, or interests susceptible to economic valuation;
   d <<trust property>>: goods which constitute the object of trusts;
   e) <<settlor>>: one who institutes the trust;
   f) <<domicile>>: the place where the person has established the centre of his civil life;
   g) <<law>>: the present law and successive modifications or integrations;
   h) <<residence>>: the place in which a person has his customary abode;
   i) <<Court>>: the Tribunale Unico referred to by the Law of October 30 2003 n.145 and subsequent modifications and integrations;
   j) <<trust with beneficiary>>: the trust enacted in the interest of one or more beneficiaries;
   k) <<purpose trust>>: the trust enacted to fulfill one or more purposes;
   l) <<authorized trustee>>: the authorized trustees in conformity with article 19 of the law;
   m) <<qualified trustee>>: the trustees identified according to article 19, clause 4, of the law;
   n) <<foreign trusts>>: a trust whose applicable law is a law on trusts of foreign nation state;
   o) <<guardian>>: is the subject who exercises control on the actions of the trustee.

Art. 2
(*Notion of a Trust*)

1. There is a trust when a trustee is holder of properties in the interest of one or more beneficiaries, or for a specific purpose.
2. It isn't incompatible with the existence of a trust in which circumstance the settlor holds the office of trustee, or reserves certain prerogatives to himself.
3. The settlor and trustee can be beneficiaries of the trust, but the trustee cannot be the only beneficiary of the trust.
4. The same trust act may institute trusts with beneficiaries and purpose trusts.

Art. 3
(*Sphere of application of the law)*

1. The law applies only to trusts enacted by will of the settlor.

Art. 4
(Regulating law and the recognition of foreign trusts)

1. The individuation of the regulating law and the recognition of foreign trusts created by will of the settlor and put down in writing are governed the Hague Convention of July 1 1985, referring to the law applicable to trusts and to their recognition.

Art. 5
(Jurisdiction of The Republic of San Marino in matters of trust)

1. The jurisdiction of the Judicial Authority in matters of trusts exists when the defendant has his domicile, residence or legal seat in San Marino, the trustee is an authorized trustee, or the trust is administered in San Marino, or the law applicable to the trust is the law of the Republic of San Marino.
2. The jurisdiction of the Judicial Authority can be derogated by a foreign judge if the possibility of derogation is indicated in the trust act, or if it has been stipulated in writing.

PART II
TRUSTS

Title I
TRUST ENACTMENT, DURATION, AND INVALIDITY

Art. 6
(Enactment of the trust)

1. The trust is enacted with a written act. Whenever the act is *inter vivos*, the form of the public or written act is required with the authenticated signature of a notary public, who will thus assert its legality.
2. The elements of the trust which must result from the trust act are:
   a) the will of the settlor in enacting the trust;
   b) the identification of the authorized or qualified trustee;
   c) the identification of trust property or the criteria which lead to the same end;
   d) in the case of a purpose trust, the purpose must be determined, and the guardian identified, or the criteria which lead to the same;
   e) with a trust including beneficiaries, the beneficiaries must be identified, or the criteria which lead to the same;
   f) the criteria regarding the distribution of goods and properties upon the termination of the trust for reasons other than the revocation of the trust.
3. Whenever the trust act fails to identify the trustee, or fails to stipulate the criteria which leads to his identification, the Court shall see to the appointment of one upon the motion of anyone with vested interest.
4. Unless otherwise indicated in the trust act, the trust is irrevocable.

Art. 7
(*Purpose Trust)*

1. The trust act of a purpose trust must contain:
   a) the identification of a determinate purpose or aim, possible to be carried out and not contrary to mandatory law, public order or common decency;
   b) the appointment of a guardian who is under the obligation of respecting the provisions contained in the trust act, or the criteria which lead to the same.

Art. 8
(*Abstract of the trust act*)

1. Within fifteen days of the date in which he recevies the trust act, the trustee must draw up an abstract containing:
   a) the denomination of the trust chosen by the settlor, or, in his place, by the trustee;
   b) the indication of the trust's revocability or irrevocability;
   c) the indication of the trustee and the eventual limitations placed upon his powers;
   d) the date of the trust act and the duration of the trust, if stipulated in the trust act.

e) the regulating law of the trust;
f) one of the following indications:
- "it is a trust act with beneficiaries";
- "it is a purpose trust act";
- "it is a purpose trust act with beneficiaries";
g) the description of the purpose trust.

2. The abstract is to be signed by the trustee with the authenticated signature of a notary public.

Art. 9

(*Registration of trusts by the Republic of San Marino*)

1. A Trust Register of the Republic of San Marino is to be instituted. The Register is kept in the Office of the Trust Register under the supervision of a judge delegated by the Executive Magistrate.
2. The Trust Register is open to the public and certification regarding its results may be issued. A Decree issued by the Governing Captains (Capitani Reggenti) within one hundred and twenty days from the date in which the law comes into effect establishes formalities and registration effects, as well as the holding and consultation of the Trust Register.
3. The notary public who authenticated the signature of the abstract of the trust act shall attend to the deposit within ten days from the date of the authentication at the Office of the Trust Register.
4. The Office manages the registration of the trust in the Register transcribing the abstract and presents the notary public with the certification attesting to the registration of the trust.
5. If the notary public omits the deposit regarding the abstract within the terms indicated in clause 3, the trustee will provide it autonomously within the next successive 10 days.
6. The trustee must request the cancellation of the trust from the Register within twenty days:
a) from the attribution of trust properties to the subjects entitled, following the termination of the trust;
b) from the modification of the regulating law of the trust, the provisions of article 58 nevertheless remaining in force;
c) from the discovery of a nullifying cause regarding the trust act, or from its nullification.
7. The limitations placed upon the powers of the trustee stipulated in the trust act which have not been registered in the Register are not demurrable to third parties acting in good faith.
8. The unsuccessful cancellation of the trust is not demurrable to third parties, unless the latter are knowledgeable of the existence of the cause which required the cancellation of the trust.
9. A sanction penalty of 2.000,00 Euro is exacted on the notary public and trustee who have not seen to the registration of the trust within the terms respectively indicated in clauses 3 and 5. The trustee who omits requesting the cancellation of the trust from the Register with recourse to the conditions indicated in clause 6 is to be subjected to the same pecuniary sanctions.

Art. 10

(*Duration of trust*)

1. The trust comes into effect from the moment in which the trust property is entrusted to the trustee, and cannot last more than one hundred years from the date of the trust act, unless it is a purpose trust.
2. If the trust act with beneficiaries does not determine its duration, or establishes a duration superior to one hundred years, the duration of the trust shall be one hundred years.

Art. 11

(Nullity of the trust)

1. The trust is null and void when:
a) the trust act is contrary to mandatory law, public order or common decency;
b) the trust act is not in accordance with the forms requested by article 6, clause 1, of the law;
c) the requisites indicated in article 6, clause 2, lett. a), b), c), d), e), of the law are missing or are indeterminate;
d) the requisites of article 7 of the law are missing;
e) the trust act has been simulated, or the transferral of property to the trustee has been simulated.
2. In the preceding cases, the nullity may be revoked when its cause has been removed.
3. The trust is further nullified when trust property or a part of it has been used, or is destined to be used, in an act which constitutes a crime, or represents the price, product or profit of such crime.

4. The nullity of the trust can be invoked by anyone concerned, and can also be proposed autonomously by the Court. The relative action is non precriptible.
5. The nullity of the trust does not compromise the position of third parties who in good faith have onerously acquired rights from the trustee after the registration of the trust in the Register referred to in article 9.
6. The nullity of single provisions leads to the nullity of the entire trust act if it emerges that the settlor would not have enacted the trust without the provision of the trust act affected by the nullity.
7. The nullity of single provisions does not lead to nullification of the trust act when the nullified provisions are replaced by law with mandatory norms.
8. It is possible to nullify the trust in the instances foreseen by San Marino law as causes of invalidation of acts characterized by a patrimonial content.

Art. 12
(Trust property)

1. Any property or goods in accordance with the present law can be an object of trust.
2. Objects of trust is that property of which the trustee becomes titular in the exercising of his office, including those deriving from:
   (I) operations put into effect by the trustee, including those regarding investments and disinvestments;
   (II) proceeds and income generated from aforesaid properties.
3. Trust property is also that which represents the profit attained by the trustee owing to acts or omissions eventually carried out in violation of his obligations.
4. A trustee may accept from any interested parties any goods or property that may be added to the trust property without them becoming settlors.

Art. 13
(Patrimonial separation and binding destination)

1. Trust property is to be kept separate from the personal goods and properties of the trustee and from those pertinent to other subjects or other trusts. In particular:
   a) trust property cannot be subject to any actions on the part of personal creditors of the trustee;
   b) in the case of a concurrence of creditors, or concurring procedures of the trustee, trust property is to be separated from the other goods of the trustee and are excluded from the concurrence of his personal creditors;
   c) trust property is not included among those to which the patrimonial regime of the family applies and is not included in the succession of the trustee.
2. The trustee manages and administers trust property in the interest of one or more beneficiaries or for one or more purposes. The trustee is obliged to execute every formality useful to protect the effective character of the binding destination.

Title II
Modification, Revocation and Termination of the Trust

Art. 14
(*Modification of the institutive act of the trust)*

1. The trust act may foresee that provisions herein contained and the choice of a regulating law are modifiable in the interests of the beneficiaries or for the advancement of the purpose of the trust. Whenever such powers have been discerned, the modification is under the power of the subject identified in the trust act upon hearing the opinions of the guardian, where indicated by the law or by the same trust act; in case such identification is lacking, the modifications fall upon the trustee.
2. The trust act with beneficiaries cannot be modified with the result of transforming it into a purpose trust and, likewise, the trust act of a purpose trust cannot be modified with the result of transforming it into a trust with beneficiaries.
3. The modification of the trust act requires the prescribed form relative to article 6, clause 1, of the present law.
4. The trustee will communicate with an authentic copy any modifications of the trust act to the

Trust Register Office with regard to the elements indicated in the abstract pursuant article 8, within fifteen days from the moment in which they take effect or have been received. The office will see to the relative margin annotations of the abstract. Failing this, they are to be non-demurrable to third parties in good faith.
5. The appointment of a new trustee is communicated according to the previous clause by the outgoing trustee or by the remaining trustees. If such communication is lacking, the newly appointed trustee shall request the authorization of the Court to perform said communication .
6. A penalty sanction of 2.000,00 Euros shall be exacted upon the trustee who does not perform the communications in the terms indicated in the preceding clauses.
7. The modification of the trust act does not affect the efficacy of the acts which the trustee validly completed before such modification.

Art. 15

(*Revocation of the trust)*

1. The trust act may indicate that the trust is revocable in its entirety or only in part.
2. The revocation occurs in conformity with the forms required for the modification of the trust act.
3. In the case of partial revocation, which leads to the attribution of property to a specific subject, the trustee sees to the transfer observing the cautionary procedures indicated in clause 2, 3, 4 and 5 of article 17, while guaranteeing the efficacy of the ongoing operations on such properties. 4. Upon the total revocation of the trust, articles 16 and 17 shall be applied. In such a case, save for a different disposition of the trust act, the trustee shall see to the transfer of trust property to the settlor or his successors.
5. The revocation does not compromise the efficacy of acts carried out in conformity with the law and the trust act by the trustee prior to the communication of the revocation.

Art. 16

(Termination of trust)

1. In addition to the causes indicated in the trust act, the trust terminates:
   a) upon expiration of the trust terms;
   b) upon its complete revocation;
   c) upon the attainment of a purpose, or due to the unexpected impossibility to carry it out;
   d) due to the absence of beneficiaries, or subjects who may become so according to the criteria indicated in the trust act;
   e) due to the termination of the trust on the part of the beneficiaries in accordance with article 52, clause 3.
2. The termination does not compromise the efficacy of the acts previously completed by the trustee in conformity with the trust act and the norms of applicable laws.
3. When the trust terminates due to the absence of beneficiaries or subjects that may become so according to criteria indicated in the trust act, and successors to the settlor prove to be absent, trust property is transferred to the Republic of San Marino.

Art. 17

(Distribution of Trust Property)

1. Once a cause for termination of the trust has been realized, the trustee will eventually complete any ongoing operations and will not undertake new operations.
2. Once the inventory regarding trust property and the representation of the patrimonial situation has been drawn up on the date of the terminating cause, the trustee will transfer the trust property to the rightful subjects, according to the critieria established in the trust act. Whenever the trust act does not specify such criteria, the trustee will transfer the residual trust property to the settlor or to his successors, unless the purpose of the trust requires that residual property be destined for analogous purposes.
3. In order to eventually deal with existing liabilities, and with those that will likely manifest after the transfers indicated in the preceding clause, and though he may be uncertain as to their nature and amount, the trustee has the right to retain some trust property, or obtain a suitable guarantee on the part of the subjects to whom he must transfer said property.
4. After the trust property has been transferred to the rightful subjects, creditors with claims of credit unpaid for reasons inherent in the trust can oppose their claims to the trustee, up to the value of the trust property as on the date of its transfer to the beneficiaries.

PART III
SUBJECTS OF THE TRUST

TITLE I
ON THE TRUSTEE

SECTION I
ON THE APPOINTMENT AND PRACTICING AUTHORIZATION OF THE OFFICE

Art. 18

(On the acceptance and rejection of the appointment to the office of trustee)

1. The trustee who is appointed by the trust act may enter his office through an either expressed or tacit acceptance. The acceptance is expressed when it is contained in a written act, or when the appointee takes on the title of trustree in relation to third parties. The acceptance is considered tacit when the appointee carries out an act which necessarily presupposes his will to accept the office.
2. He who intends not to fulfil the office of trustee may refute it explicity with a written statement addressed to the settlor, or to his successors, or to the trustee who already occupies the office.

Art. 19

(*Authorized trustees and qualified trustees)*

1. To be able to practice the office of trustee requires the authorization of the Vigilance Authority, and is subjected to the supervision of the same Authority.
2. Authorization is granted exclusively to banking firms, holding and trust companies, whose company structure can be identified by the Vigilance Authority, and that has its legal and administrative seat in the Republic of San Marino.
3. The Vigilance Authority establishes under its own provisions:
   a) the conditions and formalities to obtain authorization;
   b) the requirements of honourableness and professionalism that must characterize the subjects who carry out administrative, management or supervision functions in the companies or firms which practice the office of trustee;
   c) the requirements of honourableness that must characterize the shareholders of the companies practicing the office of trustee;
   d) the provisions regarding the supervision of the companies which practice the office of trustee, the duties of communication, even in relation to the proxy of functions;
   e) the formalities pertaining to the renunciation of authorization;
   f) the causes of revocation and suspension of authorization;
   g) the formalities pertaining to the holding and consultation of the register of authorized trustees.
4. If no person among the beneficiaries, the settlor, or the guardian of the trust has their residence, domicile, citizenship or legal seat in the Republic of San Marino, or if the purpose of the trust needs not to be realized there, the carrying out in San Marino of acts or operations inherent to the trust is permitted only to the following subjects, having legal and administrative seat outside the borders of the Republic, operating in a regime of reciprocity:
   a) banks;
   b) trust companies;
   c) other investment enterprises, provided that they are:
      - subject to prudential supervision;
      - bound to respect anti-laundering laws;
      - not constituted or administered in nations identified in a special provision by the Vigilance Authority.
5. Notwithstanding that indicated in the preceding clauses, if the trust has a plurality of trustees and at least one of these is an authorized trustee, or, on the grounds of existing presuppositions, a qualified trustee, the office of the trustee may also be held by a physical person. In such a case, the trustees undertake their deliberations unanimously and operate jointly.

Art. 20

(Appointment of a new trustee)

1. The appointment of a new trustee occurs in accordance with the provisions of the trust act, or, in absence of these, on the part of the Court.
2. Save for a provision of the trust act indicating otherwise, whenever the trust has a plurality of trustees, the new trustee is appointed unanimously by the trustees who hold the office. In the case of disagreement, the Court shall see to the appointment.
3. The appointment of the new trustee must be communicated by abstract, with an act formally authenticated to be presented to the Trust Register within fifteen days from the said appointment.

SECTION II
ON THE OBLIGATIONS OF THE TRUSTEE

Art. 21
(In good faith and diligence in execution)

1. The trustee fulfils his obligations and exercises the powers inherent in the office according to good faith and with the diligence of a good *paterfamilias* ('head of the family') who acts and looks after the interests of others.
2. With respect to authorized trustees, or qualified trustees, or other subjects in possession of professional competencies, diligence is assessed with respect to the professional nature of the activity practiced.

Art. 22
(*Tutelage of the integrity of the trust property)*

1. The trustee must ascertain that the trust property is within his titularity. He protects the integrity and the possession of trust property, carrying out all necessary or useful acts to fulfill such end.
2. The trustee must conserve trust property separate from any other good or property in his possession, including those pertaining to other trusts.
3. The trustee must deposit bearer stocks in banks and other deposit places authorized as custodians of values, which are subject to prudential supervision and held in accordance with anti-laundering laws. Clauses 2 and 3 of article 36 are to be applied.

Art. 23
(Management of trust property)

1. Save for provisions of the trust act which indicate otherwise, the trustee manages trust property with the objective of preserving and increasing its value.
2. Acting in compatibility with the provisions of the trust act, the trustee will pursue such objectives diversifying the investment of the trust property and appraising periodically the value of its composition.
3. Prior to proceeding to invest, the trustee will evaluate the opportunity to be advised by subjects equipped with specific professional competencies in matters of patrimonial management.
4. The trust act may limit or exclude the power of the trustee in investing trust property.

Art. 24
(Conflict of interest and patrimonial advantage)

1. Prior to accepting his charge, the appointed trustee must inform the settlor with a *inter vivos* written act of the eventual sources of conflict of which he is aware among his interests under any title with those of the beneficiary, or with the purpose of the trust.
2. The trustee appointed in a will who finds himself in a conflict of interests shall promptly inform the Court, which will take the provisions necessary to protect the interests of the beneficiary, or those of the trust's purpose.
3. Save for provisions of the trust act attibuting specific rights or powers to the trustee, the trustee cannot act under a conflict of interest with the beneficiary, or with the purpose of the trust. In any case the trustee cannot, even through a third person:
   a) acquire the judicial position of beneficiary or accept it as a guarantee;
   b) stipulate acts relative to trust property with himself, with the exception of cases in which he acts as trustee of another trust and this is permitted by the trust act;

c) enter into competition to further his own interests or those of third parties in any activity he performs as trustee;

4. The trustee cannot obtain, for himself or for others, whether directly or indirectly, a patrimonial advantage owing to his office, save for provisions of the law or the trust act which permit otherwise.

Art. 25

(Obligations regarding impartiality)

1. Compatibly with the trust act, if the trust has more than one beneficiary or more than one purpose, the trustee must act impartially.

Art. 26

(Obligation of discretion towards third parties)

1. Save for the dispositions of the law or the trust act, the trustee must not reveal to third parties at any time information of which he is in possession for reason of his office, nor employ it for his own advantage or for that of others.

Art. 27

(*Accounting and inventory)*

1. The trustee keeps the annual accounting records regarding administrative facts which interest trust property and records the results annually in the Book of Events and evaluates its market value according to the formalities and in application of criteria established by a special ordinance of the Capitani Reggenti (Governing Captains) to be issued within 120 days from the date in which the law comes into force.
2. The annotation must take place by March 31 of the following year.
3. The trustee draws up the inventory of trust property, together with a report containing the summary and description of the main modifying events with regard to the consistency and composition of trust property.

Art. 28

(*Communication)*

1. The inventory and the report indicated in article 27 are to be sent to the guardian of the purpose trust and to the guardian of the trust with beneficiaries, wherein one has been nominated.
2. Regarding a trust with beneficiaries, the trustee is obliged to communicate with each beneficiary, regardless of the nature of his right:
   a) news regarding the existence of the trust, of the name and domicile of the trustee, and of the provisions of the trust act which involve such right;
   b) news of all the acts or facts which modify or terminate such right;
   c) upon the request of said beneficiary, within a congruous term, an inventory limited to trust property with respect to which the beneficiary claims a right and the appraisal of its market value in proportion to the right claimed by the beneficiary.
3. In the trust whereby the determination of the beneficiaries is entrusted to the discretionary power of the trustee, the trustee attests to the existence of the trust upon request of the potential beneficiaries specifically identified in the trust act and communicates to them the provisions of the trust act, or eventually further acts, which pertain to a possible benefit.
4. The potential beneficiary who acquires a determined right as a result of the exercise of the discretionary powers indicated in clause 3, shall likewise receive the communications indicated in clause 2.
5. The forms of communication indicated in the preceding clauses does not take place with subjects who represent conceived and unborn children, unless otherwise indicated in the provisions of the trust act.

Art. 29

(Book of Events)

1. The trustee enacts, updates and conserves the Book of Events of the trust, in which he registers in chronological order the acts and events relative to the trust. The following must in all cases be present in the Book of Events:
   a) the trust act;
   b) the description of events regarding the beneficiary and the purpose;
   c) the description of trust property;
   d) the attributions carried out in conformity with the trust act;
   e) the acts of proxy;
   f) the procedures of which the trustee is part in the capacity of his office;
   g) dissent manifested according to articles 31 and 54;
   h) the annual inventory of trust property;
   i) the variations regarding trustees, co-trustees and guardians;
2. The Book of Events is numbered progressively on every page and authenticated on every page by a notary public. With a regent ordinance issued within one hundred and twenty days from the date in which the law comes into effect, the formalities relative to the authentication are established.
3. The Book of Events is to be exhibited, upon request, to the guardian, and to the Judicial Authority, and moreover to the Vigilance Authority according to the provisions regarding supervision in article 19, clause 3, lett.d).
4. The trust act can attribute the right to consult the Book of Events to other subjects.

Art. 30

(*Requirements of publicity)*

1. The trustee will carry out acts that imply requirements of publicity in his role as trustee.

Art. 31

(Obligations of the co-trustees)

1. Each trustee has the right to participate in decisions that require a unanimous or majority vote.
2. If the trust has more than one trustee, unless otherwise stated in the provisions of the trust act, they shall make decisions jointly and unanimously, although each has the power to carry out urgent actions in order to protect the preservation of trust property.
3. If the trustees have the faculty to reach decisions based on a majority vote, the dissenting trustee must annotate his dissension in the Book of Events of the trust.
4. In the case in which the trust may be administered disjointedly, each operation relative to trust property must be communicated in advance to the other trustees. If these latter dissent with respect to the act that the single trustee wishes to carry out, they must annotate such dissent in the Book of Events of the trust.

SECTION III
POWERS OF THE TRUSTEE

Art. 32

(*Powers of the trustee)*

1. The trustee will exercise on the trust property the powers attributed to the holder of the right to manage property and goods in the exclusive interest of others, or in order to pursue a determinate purpose. Save for the provisions regarding article 9, clause 7, the trustee arranges trust property without limitations of kind, and without ever having to justify his powers.
2. The trustee is legitimized to act and to be summoned in court in his role as trustee.

Art. 33

(Powers of consultation)

1. The trustee can seek professional consultation relative to the acts to be carried out in relation to the trust and may confer upon them the task of performing professional services.
2. The trust act may include the possibility for the trustee to consult or obtain the consensus of another subject prior to exercising a specific power.

3. A subject does not become trustee by having only been consulted, or having merely offered services or by refusing his consensus in accordance with the preceding clause.
4. With the presentation of a motivated motion, the trustee who finds himself in a state of uncertainty as a result of the performance of an action inherent in his office, may request the Court to adjudicate on it. Whenever a motion is found to be unsubstantiated, the Court may prohibit that the costs of the procedure be charged on the trust property.

Art. 34

(*Powers of proxy)*

1. Unless otherwise stated in the law or provisions of the trust act, the trustee may delegate his powers with regard to the carrying out of actions or operations relative to the administration of trust property. The following powers may not be delegated under any circumstances:
    a) the power to decide according to which formalities and timing trust property can be attributed;
    b) the power to appoint a new trustee;
    c) the power to delegate.
2. In administering the trust, the trustee may delegate the decisions regarding investments exclusively to banks and to investment enterprises subject to prudential supervision, instituted and administered in nations not included in the provisions regarding Vigilance of article 19, clause 4 of the law, and that will proceed to select the investments according to criteria specified by the trustee in a pertaining document.
3. Proxy granted to more than one subject is to be considered as a joint proxy.
4. Whomever is delegated to exercise powers according to the present article is obliged to respect the same obligations imposed on the trustee according to Section II and III of the present Title.
5. The trustee cannot delegate powers to the beneficiary.
6. The trustee supervises the actions carried out by the delegate and is responsible for the instructions and directives imparted to the latter.
7. The beneficiary or the guardian can act directly against the delegate.
8. If more than one trustee is nominated, each trustee may delegate the execution of his office to other co-trustees, provided that there are at least two. The duration of this delegation can not last beyond one hundred and eighty days and does not take effect if it has been made in order to allow or facilitate the violation of the obligations deriving from the trust on the part of the other trustees.

Art. 35

(Form and content of the act of delegating)

1. The delegation, under penalty of nullity, must:
    a) be in writing and have a specific date;
    b) identify the delegate;
    c) identify the trust;
    d) specify delegated powers;
    e) specify the date in which it comes into effect and the period, or occasion, to which it refers.
2. The trustee cannot grant delegations which include:
    a) the possibility of the delegate to appoint his own substitute;
    b) the exemption of responsiblity of the delegate towards the trustee or beneficiary;
    c) the irrevocability of the delegation;
    d) the possibility for the delegate to act in a conflict of interest with the beneficiary, or the purpose of the trust;
3. If the trust has only one trustee, he is to communicate in writing the delegation, without delay, to the subject who has the power to appoint new trustees.

Art. 36

(Power to deposit the trust property)

1. With the exception indicated in article 22, clause 3, the trustee may deposit trust property exclusively in banks and investment enterprises subject to prudential supervision, instituted and administered in nations not included in the provisions of the Vigilance Authority relative to article 19, clause 4 of the law.
2. The contract must be in written form under penalty of nullity;
3. The trustee cannot stipulate contracts which include:
    a) the right of the depositary to appoint its own substitute;

b) the exoneration of responsibility of the depositary towards the trustee or beneficiary;
c) limitations on the capacity of the depositor in obtaining the restitution of deposited goods at any moment;
d) the power of the depositary to act in a conflicts of interest with the beneficiary, or with the purpose of the trust.

Art. 37
(Powers of insuring trust property)

1. The trustee may insure trust property. Insurance premiums and indemnity may be applied to capital or revenue, as determined by the trustee.

Art. 38
(*Powers of making advance payments on behalf of the beneficiary)*

1. Save for different provisions of the trust act, whenever the trust property is mainly constituted by money, or by easily liquidated goods, the trustee may make advance payments on behalf of a beneficiary in order that the latter may properly confront relevant events of his or her own life.
2. In any case, the trustee must take note of all advances already performed when proceeding to further attributions on behalf of said beneficiary.

Art. 39
(Powers of accumulating revenues and proceeds)

1. With the exception indicated in article 10, the trust act may attribute the trustee with the power to accumulate the revenue and proceeds deriving from trust property in its entirety or only in part, for a determined period.
2. Except for different dispositions of the trust act, the trustee may use the revenues and proceeds deriving from trust property for the maintenance, education or in any case for the advantage of the beneficiary who is a minor.

Art. 40
(*Compensation, costs and expenses of the trustee)*

1. The compensation of the trustee is determined by the trust act and is to be drawn from property trust. The trustee carries out his charge for free whenever the trust act does not foresee or indicate the attribution of compensation to the trustee and the modalities of its determination.
2. The amounts necessary for the payment of expenses and costs sustained by the trustee in the exercise of his office are to be drawn from trust property.
3. The trustee shall pay off the credit accrued for the compensation, expenses and costs due to its office with priority relative to to the beneficiary.

SECTION IV
(CESSATION OF THE TRUSTEE AND TRANSFER OF TRUST PROPERTY)

Art. 41
(*Cessation of the office of trustee)*

1. Other than for the reasons indicated in the trust act, the trustee ceases his office due to:
   a) removal;
   b) renunciation;
   c) substitution by provision of the Judicial Authority;
   d) concurrence of creditors or subjection to other concurring procedures;
   e) revocation of the authorization relative to article 19;
   f) death of or unsuitability of the person to exercise the office for reasons of health;
   g) liquidation;
2. The unsuitability of the person to execute this office for reasons of health is ascertained by a specialized medical college according to the trust act, or, in its absence, by the Court. The college ascertains the unsuitability in presence of an impediment not merely temporary, and such that compromises the ability of the trustee to operate in a lucid and effective manner.

3. The renunciation of his office made by the trustee in order to allow or facilitate the violation on the part of other trustees of obligations deriving from the trust will not have effect.
4. After the emergence of the cause of cessation of the trustee's office, the trustee conserves trust property for the only purpose of attending to its integrity until its transfer to the new trustee.
5. Notwithstanding the preceding clause, the trustee substituted by order of the Judicial Authority, whose authorization indicated in article 19 has been revoked, or deemed unsuitable, shall cease from his office immediately and to all effect.
6. In cases where there are more than one trustee, each one may renounce his office by way of a written communication with a clear and specific date to the remaining trustees. In a trust with beneficiaries, the renunciation of the one and only trustee occurs by way of written communication with a clear and specific date sent to the subject that has the power of appointing new trustees. In a purpose trust, the renunciation of the one and only trustee occurs by way of written communication with a clear and specific date to the guardian.
7. If no authorized or qualified trustee remains, the trustee who fills the office without being so qualified may perform only those acts necessary to preserve the integrity of the trust property, until the collegiate character of the trust has been reinstated with the appointment of a trustee who is authorized, or eventually qualified, in accordance with article 19.

Art. 42

(The transfer of trust property)

1. With the emergence of a cause for his cessation from office, the trustee must without delay carry out the actions necessary in order to give up his title and the possession of trust property to the other trustees, or remaining trustee.
2. In the case of death, or cessation of the trustee from his office due to unsuitability, the heirs, the legal representative, or those who assist him will attend without delay to carrying out the actions indicated in clause 1.
3. In the case of the appointment of a new trustee, the outgoing trustee or the other trustees will carry out without delay the necessary actions which permit him to exercise his rights and powers.

Art. 43

(*Delivery of acts and documents)*

1. Having left his office, the trustee shall deliver without delay all the acts and documents pertaining to the trust to the remaining trustees or to the new trustee.
2. In the event a trustee dies or is deemed unsuitable, the heirs, the legal representative, or the people who assist him shall carry out the actions indicated in clause 1.
3. In the event of the appointment of a new trustee, the other trustees shall transfer to him without delay the acts and documents pertaining to the trust.

SECTION V
(RESPONSIBILITIES OF THE TRUSTEE)

Art. 44

(*Not fulfilling obligations required by the law and the trust act*)

1. If he is unable to prove that the loss was determined by events not attributable to him, the trustee not fulfilling his obligations must compensate for any damage.
2. The damage compensation includes loss of profit and accruing damage.
3. The trustee is not exonerated from responsibility even though the damage may have been compensated in full or in part from profits derived from the non fulfilling of his obligations, unless the profit has been produced with the same act from which the damage derived.
4. The trustee is not responsible for violations committed by others prior to his appointment. He must, in any case, adopt all the appropriate measures to repair any damage deriving from violations which come into his knowledge.
5. Except for the provisions of article 34, clause 6, the trustee is not responsible for the failure of delegated subjects to carry out their office, where the delegation has been conferred in good faith and with the required diligence.

Art. 45

(*Responsibility of co-trustees*)

1. The trustees are held jointly responsible for damage deriving from the violation of laws and of the trust act committed during the practice of their office.
2. The trustee cannot be held responsible for damage caused by a co-trustee when he has transcribed his dissent in the Book of Events of the trust and has immediately communicated this to the subject eventually identified in the trust act, or, in absence of this, to the beneficiary and guardian.
3. In any case, the trustees are held jointly responsible if, upon having knowledge of the violation, they have not done all that they could to impede such action, or eliminate it, or mitigate the damaging consequences.

Art. 46

(Joint responsibility of the beneficiary)

1. The beneficiary who has instigated, requested or authorized the defaulting of office of a trustee is to be held jointly responsible with him.

Art. 47

(The exoneration of responsibility)

1. The provisions of the trust act and the pacts which exclude or limit in advance the responsibility of the trustee for reasons of malice or gross negligence are null and void.
2. The beneficiary, who is capable to act and in full knowledge of the facts, may exonerate the trustee from responsibility for damages made towards him.
3. Given the same conditions, the beneficiary may take upon himself the debit of the trustee responsible for violations committed without malice or gross negligence.
4. The Court may exonerate, even partially, the defaulting trustee from responsibility if he acted in good faith and according to the diligence required, if, when all circumstances have been brought to light, his failing is excusable.

Art. 48

(Prescription)

1. The right to compensation for damages incurred is prescribed in five years from the moment in which the beneficiary may exercise the corresponding claim.
2. If the beneficiary is a minor or temporarily incapacitated, the prescription has effect from the moment in which he becomes of age, or with the cessation of the incapacity.
3. The prescription is interrupted with an injunction or request of payment communicated in writing, or through the recognition of right. The prescription is suspended towards a beneficiary who is a minor or incapacitated, and in the case in which there has been willful and malicious injury of reasons deriving from the trust, until the malice has been disclosed.

Art. 49

(Responsibility of the trustee regarding obligations contracted towards third parties)

1. In assuming obligations towards third parties, the trustee expressly declares to be acting in his capacity as a trustee of a trust; with such surmise, the trustee limits his responsibility to the value of trust property on the date on which the obligations were assumed.
2. In the case in which the trustee, in assuming obligations towards third parties, acts without the declaration indicated in the preceding clause, his responsibility is nonetheless limited to cases of intended malice and gross negligence.
3. With regard to the present article, the settlor, trustee, beneficiary and guardian are not considered to be third parties.

Title III
ON THE BENEFICIARY

Art. 50
(Notion)

1. The beneficiary is the subject in whose interest the trust is instituted.
2. If the trust includes a plurality of beneficiaries, none of whom exist at the moment of the institution of the trust, at least one of these must come to exist within 30 years from the moment in which the trust comes into effect.
3. The trust act may indicate that one or more subjects may be added or excluded from the judicial position of beneficiary, through an act in accordance with the forms indicated in the trust act.
4. The trust act may subject the judicial position of one or more beneficiaries to certain conditions or terms, or may limit or exclude the transfer, be it onerous or free of charge.

Art. 51
(Rights of the beneficiary)

1. In addition to the means of communication indicated in article 28, the beneficiary has the right to a statement of accounts issued at least annually, and may seek access and make copies of acts and documents relative to his rights at any time.
2. The trustee is not obliged to reveal to the beneficiary the reasons as to why he exercised a discretionary power entrusted to him in a certain way, or to communicate acts or documents clarifying such reasons, unless the revelations or communication have been imposed by a judicial decision.

Art. 52
(*Renunciation, deferment of attribution and termination of the trust on behalf of the will of the beneficiaries)*

1. The beneficiary may renounce his judicial position in its entirety or only in part with an act carried out according to the forms indicated in the trust act. The renunciation comes into effect and is irrevocable from the moment in which it is received by the trustee.
2. Except for that stated in different provisions of the trust act, the beneficiary may request in writing the deferment of the transfer of trust property in his favour, or may require that it be carried out in favour of the subject that he indicates.
3. If all the beneficiaries are of age and endowed with acting capacity they may, following a unanimous decision, require the termination of the trust and the transfer of trust property in their favour.

Art. 53
(Acts of disposal of the judicial position of beneficiary to third parties)

1. Except for a different provision of the trust act, the beneficiary may alienate, offer as a guarantee or in any case dispose of his judicial position in its entirety or in part with an act performed according to the forms indicated for the institution of the trust act. Such acts come into effect towards the trustee from the moment that they have been notified to him.
2. Acts pertaining to clause 1, which are contrary to the trust act, are to be considered null and void.
3. If the beneficiary carries out more than one act of disposal towards diverse subjects, the act first notified to the trustee will be effective, even though it may have a posterior date.

Title III
On the Guardian

Art. 54
(The office of the guardian)

1 The trust act of a purpose trust sees to the office of the guardian.
2 The trust act of a trust with beneficaries may see to the office of the guardian.
3. The guardian fulfills his obligations and exercises the powers inherent in his office in

accordance with good faith and with the diligence associated with a good *paterfamilias*. Whenever he has professional competencies to fulfill, his diligence shall be determined with regard to the professional nature of the activities exercised.

4. The trust act may include the remuneration of the guardian. The guardian has the right to the reimbursement of expenses and costs accrued for reasons inherent to his office, save for provisions of the trust act which indicate otherwise.

5. The trust act may confer to the guardian determinate powers, such as the power to:
   a) appoint a new trustee, or add a new trustee to those already existing;
   b) appoint a new guardian, eventually in addition to himself;
   c) remove the trustee from office;
   d) veto the exercising of certain powers of the trustee;
   e) add or remove beneficiaries;
   f) modify the regulating law of the trust;
   g) verify the statement of accounts of the trust;

6. The exercising of powers listed in clause 5 do not confer upon the guardian the office of trustee.

7. The guardian cannot be a beneficiary of the trust.

8. Save for provisions of the trust act indicating otherwise, if there is more than one guardian of the trust they must reach decisions with a majority vote. Each guardian has the right to participate in decisions to be reached either unanimously or with a majority, and must be adequately informed of the object of each decision. The dissenting guardian must annotate his dissension without delay in the Book of Events of the trust.

9. Save for a provision of the law or trust act indicating otherwise, the guardian may not disclose to third parties, under any circumstance, information of which he is in possession for reasons of his office, nor employ them for his own advantage or for that of others.

10. Save for a provision of the trust act indicating otherwise, the outgoing guardian is to appoint his successor. In case he fails to do so, the new guardian shall be appointed by the Court.

11. Articles 41 and 43 of the law are to be applied to the guardian, insofar as they compatible.

PART IV
POWERS OF THE COURT

Art. 55
(Powers of the Court)

1. In addition to the other powers conferred to the Court by the law, the trustee, the beneficiary and the guardian may address a motion to the judge in order to obtain a provisional order regarding:
   (I) the fulfillment of an obligation or the exercising of a power relative to the office of trustee or of the guardian;
   (II) the substitution of the trustee or guardian who has committed a grave violation of the law or the trust act;
   (III) the appointment of a new trustee or new guardian;
   (IV) administrative or provisional acts regarding trust property;

2. The trustee, when he surmises to be appropriate, addresses a motion to the judge in order to be authorized to carry out a useful act not included among his general powers. The Court adjucates accordingly, establishing relative conditions and terms.

3. The subject designated trustee addresses a motion to the judge in order to obtain the provisions indicated in article 24, clause 2.

4. In appointing or substituting a trustee, the judge decides in relation to the custody and transfer of trust property, as well as to pertaining acts and documents.

5. Save for an order from the judge indicating otherwise, the appointed trustee and guardian, in accordance with the present article, have the same rights, obligations and powers as those indicated by the trust act.

6. The judge decides upon the expenses of legal proceedings.

Art. 56
(Cautionary actions)

1. The beneficiary and the guardian who have reason to believe that the trustee is about to omit an obligatory act, or commit an act that violates the law or the trust act, may go to the Court as a cautionary measure to obtain cautionary provisions regarding such action.
2. The introduction of a legal cause upon the subject does not suspend the effects of the cautionary provisions adopted by the Court.

Art. 57
(*Actions regarding separation*)

1. Whenever a trustee has confused trust property with other goods, the trustee who is not responsible for the confusion, the beneficiary or the guardian, have the right to obtain separation. The claim extends to goods or property of any kind with which the original trust property has been eventually substituted, and their proceeds.
2. The actions regarding compensation of damage in conformity with article 44 are to remain secure under any circumstance, as well as any other action available to protect the trust.
3. The action of separation is not to be prescribed.

PART V
PROVISIONS APPLICABLE ONLY TO FOREIGN TRUSTS

Art. 58
(Forms of trust acts and registration of foreign trusts in the Trust Register of the Republic of San Marino)

1. The trust acts of foreign trusts carried out by subjects who are residents or have their domicile in San Marino or by bodies having their administrative seat in San Marino, are subjected to the same requisites of forms indicated in article 6, clause 1, of the law.
2. Foreign trusts with their administrative seat in San Marino must be registered in the proper section of the Trust Register. Article 8 is to be applied, as well as clauses 3,4, 5, and 6 of article 9.

PART VI
PENAL CLAUSES

Art. 59
(Unauthorized practicing of the office of the trustee)

1. Whosoever practices the office of trustee without the authorization of the present law, and outside the cases provided in article 19, clauses 4 and 5, is punishable with second degree arrest or with a fine of 8.000,00 up to 12.000,00 Euro. The violation of article 19, clauses 4 and 5, leads to the same sanctions applied to the non-authorized practice of the office of trustee, save for the application of the subsequent penal provisions.

Art. 60
(Misappropriation or misapplication of trust property)

1. If the trustee misappropriates or in any case misapplies trust property for his own profit or for that of others, the provisions of article 197, clause 3, of the Penal Code shall be applied, substituting for the fourth degree interdiction from the profession or art with the fourth degree interdiction from the office of trustee.

Art. 61
(Conflicts of interest)

1. The trustee who, in order to obtain an unjust profit for himself or for others, acts in a conflict of

interest and brings about patrimonial damage to the beneficiaries of the trust or to subjects destined to receive an advantage from the realization of a purpose trust, is punished with prison confinement of the second degree or with a fine by days of the third degree and a second degree interdiction from the office of trustee.

Art. 62
(Violation of the duty to keep proper statement of accounts)

1. The trustee who omits to keep, entirely or in part, the accounting relative to trust property is punished, whenever such omissions cause patrimonial damage to the benficiaries of the trust or to the subjects destined to receive an advantage from the realization of a purpose trust, with second degree arrest and second degree interdiction from the office of trustee.

Art. 63
(False book entries relative to the trust)

1. The trustee who, with regard to the accounting or inventory relative to trust property, or with book entries relative to the trust which is indicated by the law on the taxation of trusts which are in turn regulated by the law of the Republic of San Marino and administered by authorized trustees, puts forth dates or facts which do not correspond entirely or in part to the truth, or conceals entirely or in part true facts and dates, is punished with second degree prison confinement and with a fine by days as well as with a second degree interdiction from the office of trustee.

PART VII
FINAL CLAUSES

Art. 64
(Requirements on the registration and deposit of acts)

1. While the provisions of article 52 of the Decree of April 26 1995 n. 56 remain in full force, acts drafted or authenticated abroad, before being used in the Republic for the purposes of the present law, must be deposited and conserved by a notary public practicing in the Republic, within thirty days from the date of the act. With the statement of the deposit, the notary asserts its legality.

Art. 65
(Coming into force)

1. The Convention recalled in article 4 of the law has immediate effect only internally from the coming into force of the present law.
2. The present law comes into force on the fifth day from its legal publication.

Dated from our residence, March 22 2005/1704 d.F.R

THE GOVERNING CAPTAINS
Giuseppe Arzilli – Roberto Raschi

STATE SECRETARY FOR
INTERNAL AFFAIRS
Rosa Zafferani

5. Annex 5: Law No. 95 of 18 June 2008 – Re-organization of the supervisory services over economic activities

REPUBLIC OF SAN MARINO

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

Having regard to Article 4 of Constitutional Law no. 185 of 2005 and Article 6 of Qualified Law no. 186 of 2005;
Promulgate and order the publication of the following Ordinary Law approved by the Great and General Council during its session of June 11, 2008.

LAW N°. 95 OF 18 JUNE 2008

RE-ORGANIZATION OF THE SUPERVISORY SERVICES OVER ECONOMIC ACTIVITIES

TITLE 1
OBJECTIVES AND PURPOSES

Art.1
(Aims)

1. This Law regulates the services supervising and monitoring economic activities in order to prevent and counter tax fraud or "The like", frauds and distortions in trade exchange. It shall not apply to the activities referred to in Law No. 165/2005, as they are subject to specific control and supervisory bodies.
2. This Law shall also regulate the administrative cooperation with other States in compliance with the international agreements adopted by the Republic of San Marino.

Art.2
(The like)

1. "The like" shall only refer to the violations which present the same degree of illegality as tax fraud under San Marino legislation.
2. The single cases falling into the categories of "The like" shall be defined in the framework of the international agreements adopted by the Republic of San Marino.

TITLE II
SUPERVISION OF ECONOMIC ACTIVITIES

Art.3
(The Office for Control and Supervision of economic activities)

1. The Office for Control and Supervision of the economic activities exercised by a company shall be established.
2. Until the restructuring of the Public Administration, during which all the aspects concerning the organization and the modalities of recruitment, as well as the requirements, incompatibility and remuneration of the staff shall be defined, the Office shall be established with the following characteristics:
a) it shall be composed of two officials, one of whom being the Head of the Office, both appointed by the Congress of State. Their remuneration and work conditions shall be set upon their appointment;
b) their term of office shall last three years, unless the above mentioned reform occurs before, and they may be re-appointed only once for a further three year term;
c) the Office shall rely on the administrative staff referred to in Article 16 below.

Art.4

(Requirements and incompatibility)

1. The officials entrusted under the preceding Article shall hold a degree in Law, Economics or in Socioeconomic disciplines and have recognised professional experience to be confirmed by a specific curriculum vitae which shall be considered as integral part of the appointment.
2The appointment to the Office shall be incompatible with the position of parliamentarian or executive officer within political parties, trade unions or trade associations.
3. It shall also be incompatible with business activities as well as with positions held within any boards of companies working in the sectors supervised by the Office according to this Law.
4. Incompatibility envisaged in Law No. 41 of 22 December 1972 (Organic Law for State employees) and subsequent amendments and supplements shall also apply.
5. The official being in a position of conflict of interest in relation to an entity supervised shall refrain from covering the position.

Art.5

(Tasks and functions)

1. The Office for Control and Supervision referred to in Article 3 above shall conduct directly or through other Public Offices or State services the activities of preventing, identifying, investigating, countering tax fraud or "The like", frauds and distortions in trade exchange.

2. The Office for Control and Supervision of economic activities shall carry out the activity of controlling and supervising all economic operators organised in companies. In particular, it shall:

- propose actions and report to the competent Bodies and/or Offices on the economic operators having exercised arbitrarily an activity which is essentially different from the one envisaged in the corporate purpose;
- report and propose actions for those activities which, in any way, pursue an objective being in opposition to the State interests, as well as to international conventions and agreements;
- verify that investments in property, immovable goods and shares are aimed at achieving the objective of the business;
- check the amount of the corporate capital of the company with respect to its subscription, deposit and settlement of the losses;
- check that the corporate purpose complies with the laws of the State, as well as the International Conventions and Agreements adopted by the Republic, and report any difference or incompliance with the requirements envisaged to establish the company;
- report the operators which have not started any activity among those set forth in their corporate purpose.

3. The Head of the Office for Control and Supervision of economic activities shall submit every year a report on the activity carried out by the Office to the Great and General Council through the Secretary of State for Industry, Handicraft and Trade.

4. The Office for Control and Supervision of economic activities shall answer for its activity to the Congress of State through the Secretary of State for Industry, Handicraft and Trade and the Secretary of State for Finance and the Budget. Furthermore, it shall report the violations identified as a result of the controls referred to in paragraph 2.
5. If the violations reported are serious, the Congress of State may order the licence to be revoked and is competent to start the procedure for the compulsory winding-up for all companies at the Single Court, under Law No. 47 of 23 February 2006.

Art. 6

(Relations with Public Offices)

1. In order to perform its own functions, the Office for Control and Supervision of economic activities may rely on the cooperation with the Gendarmerie, the Civil Police and the Fortress Guard Uniformed Unit.
2. Public offices are required to provide any documents, information and cooperation requested.
3. The Office for Control and Supervision of economic activities shall have direct access to the data necessary to fulfil its functions, collected by the Tax Office and the Service for Import Supervision.
4. The functions assigned to the Assessment Bodies envisaged by the law on the general income tax shall not be prejudiced. To this end, the Office for Control and Supervision of economic activities shall report to these bodies all relevant information and data obtained while fulfilling its tasks.

Art.7

(Cooperation with the Court and the Supervisory Authorities)

1. Where the Head of the Office for Control and Supervision of economic activities recognises an alleged offence, he has the duty to forward to the Judicial Authority the information and data acquired while performing his function.
2. Where the violations identified concern matters the supervision of which falls within the competence of the Central Bank of the Republic of San Marino – Supervision Service, the Office shall make a relevant report.

Art. 8

(Relations with economic operators)

1. The Office for Control and Supervision of economic activities shall have the power to convene company representatives and request them to submit any documents which could be useful to the fulfilment of its functions.
2. While performing its functions, the Office shall inform the economic operators about the reasons having led to their convocation.
3. The economic operators shall cooperate by allowing the access, if necessary, to premises, means of transport and documents and providing all relevant information.
4. Besides the sanctions envisaged in the legislation in force, the economic operator obstructing the functions of the Office shall be punished with an accessory administrative pecuniary sanction applied by the Office of Industry, Handicraft and Trade amounting from € 1,000 to € 10,000 on the basis of the seriousness of the infraction.

TITLE III

INTERNATIONAL ADMINISTRATIVE COOPERATION

Art. 9

(Central Liaison Office)

1. A Central Liaison Office shall be established.
2. The Office shall be established according to the following features:

a) it shall include two officials, one of whom being the Head of the Office, both appointed by the Great and General Council upon proposal by the Congress of State, which shall establish the remuneration and work conditions;

b) the two officials shall be appointed for a three-year term and may be reappointed only once for a further three-year term;

c) the Office shall be assigned administrative personnel referred to in Article 16 below.

Art.10

(Requirements and incompatibility)

1. The officials appointed according to Article 9 above shall have a university degree in Law, Economics or Socioeconomic disciplines and have recognised professional experience to be confirmed by a specific curriculum vitae which shall be considered as integral part of the appointment.
2. The appointment to the Office shall be incompatible with the position of parliamentarian or executive officer within political parties, trade unions or trade associations.
3. It shall also be incompatible with free-lance or business activity within the Republic of San Marino as well as with positions held within any boards of companies working in the sectors supervised by the Office according to this Law.
4. The official who is in a conflict of interest in relation to an entity supervised by the Office shall refrain from covering the position.

Art.11

(Tasks and functions)

1. The Central Liaison Office shall be the body responsible for contacting the competent offices of other Countries for administrative cooperation with a view to implementing the international agreements adopted by the Republic of San Marino.

2. The Central Liaison Office shall access all the necessary information to prevent and contrast frauds, including tax frauds and "The like" as well as distortions in trade exchange.
3. The Central Liaison Office shall report to the Congress of State through the Secretary of State for Finance and the Budget and the Secretary of State for Industry, Handicraft and Trade.
4. The Head of the Central Liaison Office shall submit a yearly report regarding the activity carried out by the Office to the Great and General Council through the Secretary of State for Finance and the Budget.

Art.12

(Relations with the Office for Control and Supervision)

1. In carrying out its service the Central Liaison Office shall avail of the cooperation of the Office for Control and Supervision referred to in article 3 and, if necessary, directly to the bodies of the Public Administration.

Art.13

(Cooperation with the Central Bank)

1. In carrying out its functions the Central Liaison Office may request the cooperation of the Central Bank of the Republic of San Marino for investigations into banking and financial aspects, without prejudice to the provisions of Law no. 165 of 17 November 2005.

Art.14

(Relations with economic operators)

1. The Central Liaison Office shall have the power to convene company representatives and request them to submit any documents which could be useful to the fulfilment of its functions.
2. While performing its functions, the Office shall inform the economic operators about the reasons having led to their convocation
3. The economic operators shall cooperate by providing all relevant information.
4. The Economic operators may oppose the request by the Office by providing reasonable grounds according to the procedure described below.
5. The Central Liaison Office after receiving a request for administrative assistance shall inform the business who may access the relevant file as well as the request and the documentation transmitted by the competent foreign authority.
6. The information referred to in the previous paragraph is provided through service of notice to the interested party. If service is not possible in the Republic of San Marino, the Central Liaison Office shall request the foreign authority to serve it.
7. Fifteen days following service of notice referred to in the previous paragraph and the interested party failing to provide reasonable grounds for refusal to the Central Liaison Office, the Office shall immediately transmit the information acquired to the competent foreign authority.
8. The Central Liaison Office after receiving a refusal by an economic operator, shall take a well grounded decision informing the interested party about the conditions established by International Agreements providing that the information may be transmitted to the authority requesting it, including documents and records.
9. The interested party may appeal such decision before the Administrative Judge within fifteen days after receiving the decision referred to in the previous paragraph by refusing to provide information which could reveal a market, company, industrial, commercial or professional secret. If not otherwise provided for by the law the provision of Law no. 69 of 28 June 19879 shall apply. Intermediate actions of the proceeding including the decision taken by the Central Liaison Office may be appealed only with the final decision. The decision taken by the Administrative Judge in case of suspension cannot be appealed.
10. The Central Liaison Office shall immediately transmit the information acquired to the requesting State.

Art.15

(Suspension of use of debt declarations)

1. In the framework of the powers conferred upon it in Article 11 above the Central Liaison Office shall report to the relevant bodies of the Public Administration, which shall in turn take the necessary measures, the names of those economic operators against which there is clear and solid evidence that the ongoing transactions with foreign economic operators are fictitious or have been devised with the purpose to elude tax payments in the Republic of San Marino or abroad or to obtain undue tax rebate for export.

2. The Tax Office shall adopt measures to suspend the rebates for export with subsequent interruption of use of debt declarations and shall inform the Central Liaison Office and the Office for Control and Supervision of economic activities.
3. The Congress of State shall regulate the procedure of suspension of use of debt declarations by issuing a specific delegated decree.

TITLE IV
COMMON PROVISIONS

Art.16
(Administrative staff)

1. The Offices referred to in Article 3 and Article 9 are assigned administrative staff selected within the Department for Production Activities and specifically designated to cover the specific positions.
2. While waiting for a reorganisation of Public Administration which should assign specifically appointed staff to the Offices above, these positions will be covered by the personnel already employed within the Public Administration. Staff will be assigned to the Office through relocation from other sectors of the Public Administration.

Art.17
(Professional secrecy)

1. Members and employees of the Offices and all those who in any capacity cooperate with them are bound to professional secrecy and confidentiality on any matters regarding the activity of these Offices and its relations with third parties. All information and records filed with the Offices in the framework of the activities thereof are covered by professional secrecy. The obligation to respect professional secrecy shall not lapse after the end of working relations with the Offices.
2. All those who because of their relations with the Office willingly or unwillingly acquire information regarding the activity thereof shall also be bound to professional secrecy.
3. Professional secrecy cannot be opposed to the Judicial Authority when the information requested is necessary in the framework of investigations over possibly criminal cases.

TITLE V
FINAL PROVISION

Art.18
(Final provisions)

1. With the appointment of the office personnel referred to in Art.3 and Art. 9 above all the functions previously conferred upon the Company Control and Supervision Commission shall be transferred to the Office for Control and Supervision and all the functions previously conferred upon first and second level workgroups for administrative cooperation between Italy and San Marino shall be transferred to the Central Liaison Office.

Art.19
(Repeals)

1. All the provisions in contrast with this Law are repealed, in particular Art. 15 of Law no. 53 of 28 April 1999.

Art.20
(Entry into force)

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

Done at Our Residence, 18 June 2008

THE CAPTAINS REGENT
Rosa Zafferani – Federico Pedini Amati

THE SECRETARY OF STATE
FOR THE INTERNAL AFFAIRS
Valeria Ciavatta

6. Annex 6: Law No. 97 of 20 June 2008 - Prevention and repression of violence against women and gender violence

REPUBLIC OF SAN MARINO

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

Having regard to Article 4 of Constitutional Law no. 185 of 2005 and Article 6 of Qualified Law no. 186 of 2005;

Decree, promulgate and order the publication of the following Ordinary Law approved by the Great and General Council on its sitting of 18 June 2008.

LAW NO. 97 OF 20 JUNE 2008

PREVENTION AND REPRESSION OF VIOLENCE AGAINST WOMEN AND GENDER VIOLENCE

(OMISSIS)

CHAPTER II
AMENDMENTS TO THE CRIMINAL CODE

(OMISSIS)
Art. 7
(*Coercion or maintenance in slavery or servitude*)

Article 167 of the Criminal Code is amended as follows:

"Art. 167
Coercion or maintenance in slavery or servitude

Anyone who exercises on a person powers corresponding to property rights or anyone who enslaves or keeps a person under continuous subjugation, forcing such person to work or have sexual intercourse or to beg or however to any performance entailing exploitation, shall be punished by terms of fifth degree imprisonment and fourth degree disqualification. The reduction into or maintenance in slavery take place when it is carried out with the use of violence, threat, deceit, abuse of authority or exploitation of physical or psychological inferiority, or through the promise or the actual delivery of money or other benefit to those who have authority over the person. The punishment shall be raised by one degree if the crimes referred to in the first paragraph are committed against a minor aged less than 18 years or are aimed at exploiting prostitution or for the purpose of organ removal.".

Art. 8
(*Human Trafficking*)

Art. 168 of the Criminal Code is superseded by the following:

"Human Trafficking
Anyone who trades or however traffics in human beings that are in the conditions referred to in Art. 167, i.e. for the purpose of reducing or maintaining a person in slavery or servitude, induces such person with the use of deceit or forces such person with the use of violence, threat, abuse of authority or exploitation of physical or psychological inferiority or a situation of need, or with the promise or delivery of money or other benefit to the person who has authority over him/her, to enter or stay on or leave the territory of the State or to move within such territory, shall be punished by terms of sixth degree imprisonment and fourth degree disqualification. The punishment shall be raised by one degree if the crimes referred to in the first paragraph are committed against a minor being less than 18 years of age or are aimed at exploiting prostitution or for the purpose of organ removal.".

(OMISSIS)

7. Annex 7: Legge No. 98 del 21 luglio 2009 – Legge sulle intercettazioni (italian version)

REPUBBLICA DI SAN MARINO
Noi Capitani Reggenti
la Serenissima Repubblica di San Marino

Visto l'articolo 4 della Legge Costituzionale n.185/2005 e l'articolo 6 della Legge Qualificata n.186/2005;
Promulghiamo e mandiamo a pubblicare la seguente legge ordinaria approvata dal Consiglio Grande e Generale nella seduta del 20 luglio 2009.

LEGGE 21 LUGLIO 2009 N.98

LEGGE SULLE INTERCETTAZIONI

Art. 1
(L'intercettazione come mezzo per l'acquisizione di prove nel processo penale)

1**.** Ad integrazione di quanto previsto dal Codice di Procedura Penale la presente legge disciplina le intercettazioni come mezzo per la ricerca e l'acquisizione di prove nel processo penale.

Art 2
(Definizione)

1. L'intercettazione consiste nella captazione di comunicazioni riconducibili all'indagato mediante percezione segreta, attuata eventualmente con l'ausilio di strumenti idonei a superare le normali capacità dei sensi, e può avere per oggetto, anche congiuntamente una o più comunicazioni fra il prevenuto ed altri soggetti, in qualunque forma e con qualsiasi mezzo esse siano effettuate.

Art. 3
(Ammissibilità delle intercettazioni)

1**.** L'intercettazione è consentita solamente nei processi penali relativi ai seguenti reati:
1) i misfatti che siano puniti con la pena edittale della prigionia non inferiore, nel minimo, al terzo grado;
2) i misfatti contro l'incolumità, la salute pubblica e l'ambiente naturale;
3) i misfatti in materia di sostanze psicotrope o stupefacenti previsti dall'art. 244 del Codice Penale;
4) i misfatti commessi nell'esercizio dell'attività bancaria, finanziaria e assicurativa, che siano puniti con la pena edittale della prigionia non inferiore, nel minimo, al secondo grado;
5) i misfatti previsti dagli articoli 177, 177 bis, 177 ter, e 177 quater del Codice Penale;
6) il misfatto previsto dall'art. 204 comma 3 del Codice Penale;
7) i misfatti previsti dall'art. 305 e 305 bis del Codice Penale;
8) i misfatti previsti dagli articoli 371, 372, 373, 374, 375, 376 e 377 del Codice Penale;
9) i misfatti commessi per mezzo della posta o del telefono o comunque di tecnologie radiofoniche, informatiche o telematiche;
10) il misfatto previsto dall'art. 169 del Codice Penale;
11) ogni altro misfatto per il quale la legge preveda espressamente la possibilità di adottare tale mezzo di acquisizione di prove.

2**.** Nella determinazione del grado della prigionia, ove ciò sia necessario per stabilire l'ammissibilità dell'intercettazione, ai sensi del primo comma, non si prendono in considerazione gli aumenti e le diminuzioni del grado derivante dalla ricorrenza di circostanze aggravanti o attenuanti, sia generali che speciali.

Art. 4
(Presupposti e contenuti del provvedimento di autorizzazione)

1. Il Giudice Inquirente, quando sussistano gravi indizi di reato e vi siano fondati motivi di ritenere che l'intercettazione sia assolutamente indispensabile per la prosecuzione delle indagini, richiede, con decreto motivato, l'autorizzazione a disporre le operazioni di intercettazione, indicandone specificamente le modalità e la durata, che non può comunque essere superiore a tre mesi.
2. L'autorizzazione è data con decreto motivato dal Giudice Decidente diverso da quello competente a decidere nel merito in base ai normali criteri di assegnazione del lavoro giudiziario o, in sua vece, in caso di assenza, impossibilità, incompatibilità o per altri analoghi motivi, da altro Commissario della Legge designato dal Magistrato Dirigente, che nel processo assume la qualifica di Giudice delle Intercettazioni. Il Giudice Decidente, o in sua vece l'altro Commissario della Legge designato dal Magistrato Dirigente, può stabilire nel decreto

modalità e durata diverse da quelle indicate nella richiesta, per evitare non necessari pregiudizi alla riservatezza delle persone.
3. Il Giudice Inquirente dispone l'intercettazione con decreto, indicando le modalità e la durata delle operazioni, come previste nel decreto di autorizzazione. Qualora la durata sia inferiore a tre mesi, il Giudice delle Intercettazioni può autorizzare, su richiesta, che l'intercettazione, tenuto conto degli esiti conseguiti e del contesto investigativo, si protragga sino al termine massimo di tre mesi complessivi. Su richiesta, il Giudice delle Intercettazioni può eccezionalmente prorogare l'intercettazione sino ad un massimo di altri tre mesi, in presenza di sopravvenuti e specifici elementi. Tali elementi devono essere espressamente indicati nel provvedimento di proroga unitamente ai presupposti indicati nel comma l.
4. Nei casi di urgenza, quando vi è fondato motivo di ritenere che dal ritardo possa derivare grave pregiudizio alle indagini, il Giudice Inquirente dispone l'intercettazione con decreto motivato, in cui deve essere specificato il grave pregiudizio che giustifica l'urgenza dell'intercettazione. Il decreto deve essere comunicato immediatamente e comunque non oltre le ventiquattro ore al Giudice delle Intercettazioni, che, entro quarantotto ore dalla comunicazione, decide sulla convalida con decreto motivato. Se il decreto del Giudice Inquirente non è convalidato, l'intercettazione non può essere proseguita e i risultati di essa non possono essere utilizzati e debbono essere distrutti con le modalità di cui all'articolo 8, comma 2.
5. I termini di cui ai commi 1, 2 e 3 sono raddoppiati quando si procede per misfatti per i quali è prevista la pena della prigionia non inferiore al sesto grado. Le intercettazioni non possono comunque essere protratte oltre il termine massimo previsto per il regime di segretezza temporanea delle indagini di cui all'art 5, terzo comma, della Legge 17 giugno 2008, n. 93.
6. In apposito registro riservato tenuto presso ogni ufficio del Giudice Inquirente sono immediatamente annotati, secondo 1'ordine cronologico, la data e l'ora di emissione nonché la data e l'ora di deposito dei decreti che dispongono, autorizzano, convalidano o prorogano le intercettazioni e, per ciascuna intercettazione, l'inizio e il termine delle operazioni.
7. Il registro di cui al comma che precede è firmato dal Giudice Inquirente ed è vistato dal Giudice delle Intercettazioni per ciascuna intercettazione; esso può essere sottoposto ad ispezione da parte del Magistrato Dirigente, per le verifiche del caso.

Art. 5

(Esecuzione delle operazioni di intercettazione)

l. Il Giudice Inquirente procede alle operazioni personalmente ovvero avvalendosi di un ufficiale di polizia giudiziaria o di altro personale idoneo, indicato nella richiesta.
2. Le comunicazioni oggetto di intercettazione sono captate o rilevate con mezzi tecnici idonei a consentirne la riproduzione e la verifica nonché, ove ciò sia possibile, la trascrizione e la traduzione in altra lingua, la decrittazione o la trasposizione in altro linguaggio.
3. L'intercettazione è effettuata con tutte le cautele idonee ad evitare che l'indagato e /o terzi possano venirne a conoscenza, ma nel rispetto delle norme della presente legge.
4. Le operazioni di intercettazione sono effettuate esclusivamente presso appositi locali all'interno del Tribunale Unico.

Art. 6

(Verbalizzazione delle operazioni di intercettazione)

1. Coloro che provvedono materialmente ad effettuare le intercettazioni redigono verbale delle relative operazioni.
2. Nel verbale è trascritto, anche sommariamente, il contenuto delle comunicazioni oggetto di intercettazione.
3. Il verbale contiene altresì le seguenti indicazioni:
- gli estremi del decreto che ha disposto l'intercettazione;
- la descrizione delle modalità di intercettazione e degli strumenti tecnici utilizzati sia per l'intercettazione che per la registrazione e la riproduzione delle comunicazioni;
- l'annotazione del giorno e dell'ora di inizio e di cessazione delle operazioni di intercettazione;
- i nomi delle persone che hanno preso parte alle operazioni di intercettazione.

Art. 7

(Deposito dei verbali presso il giudice inquirente)

1. Coloro che hanno eseguito le intercettazioni trasmettono immediatamente al Giudice Inquirente i verbali di cui all'articolo che precede, unitamente alle registrazioni audio, informatiche, telematiche o di altro genere, delle comunicazioni, oggetto di intercettazione, non appena le operazioni siano concluse e comunque non oltre la scadenza del termine di ciascun periodo di intercettazione.

2. Il Giudice Inquirente procede ad un’attenta disamina del materiale ricavato dalle intercettazioni allo scopo di individuare gli elementi utili ai fini delle indagini.
3. In attesa del deposito di cui all’articolo che segue, i verbali e le registrazioni sono custoditi nell'archivio riservato delle intercettazioni.

Art. 8

(Deposito e acquisizione dei verbali e delle registrazioni e loro eventuale distruzione)

l. Entro trenta giorni dalla trasmissione delle registrazioni di cui al 1° comma dell’articolo precedente, il Giudice Inquirente deposita presso la cancelleria i verbali e le registrazioni relativi alle intercettazioni che ritiene rilevanti ai fini delle indagini, indicando le ragioni della rilevanza.Sono contestualmente depositati anche i decreti che hanno disposto, autorizzato, convalidato o prorogato l’intercettazione nonché le relative richieste.
2. Le intercettazioni ed i relativi verbali, quando abbiano riguardato casualmente conversazioni, comportamenti o fatti rientranti fra quelli di cui è vietata l’utilizzazione o che si siano rivelati completamente estranei alle indagini o comunque privi di qualunque rilevanza, previo consenso del Giudice delle Intercettazioni, vengono immediatamente distrutti con procedure atte a garantire che non possano essere recuperati o ricostruiti.
3. Il Giudice delle Intercettazioni può autorizzare il Giudice Inquirente a ritardare il deposito di cui al comma 1, non oltre la chiusura della fase istruttoria in regime di temporanea segretezza, qualora dal deposito possa derivare grave pregiudizio per le indagini.

Art. 9

(Esame delle intercettazioni da parte dei difensori)

1. Effettuato il deposito di cui all’articolo precedente, ai difensori delle parti è dato immediatamente avviso che, entro il termine di cui al comma che segue, hanno facoltà:

di esaminare gli atti depositati e quelli custoditi nell'archivio riservato delle intercettazioni;

di ascoltare le registrazioni, ivi comprese quelle custodite nell'archivio riservato delle intercettazioni, ovvero di prendere cognizione dei flussi di comunicazioni informatiche o telematiche;

di avvalersi di un tecnico di loro fiducia nell’esercizio di tali facoltà;

di indicare specificamente al Giudice Decidente le comunicazioni non depositate delle quali chiedono l'acquisizione, enunciando le ragioni della loro rilevanza;

di indicare specificamente al Giudice Decidente le conversazioni depositate che ritengono irrilevanti o di cui sia vietata l'utilizzazione.

2. Gli atti rimangono depositati per il tempo stabilito dal Giudice Inquirente, comunque non inferiore a sessanta giorni dalla notifica della comunicazione di cui al precedente comma 1.
3. Il Giudice delle Intercettazioni, a tutela dell'effettività del diritto di difesa, può autorizzare il difensore ad estrarre copia della documentazione depositata.
4. Scaduto il termine di cui al comma 2, il Giudice delle Intercettazioni, sentite le parti senza formalità, dispone con ordinanza l'acquisizione delle conversazioni che ritiene rilevanti e di cui non è vietata l'utilizzazione.
5. La documentazione depositata della quale il Giudice delle Intercettazioni non ha disposto l'acquisizione è immediatamente restituita al Giudice Inquirente e custodita nell'archivio riservato delle intercettazioni ed eventualmente distrutta ove sia emerso che essa rientri fra quelle di cui all’articolo 8, comma 2.
6. Il Procuratore del Fisco e i difensori delle parti possono estrarre copia delle intercettazioni di cui è stata disposta l'acquisizione e dei relativi verbali.
7. I difensori possono esaminare gli atti e ascoltare le registrazioni custoditi nell'archivio riservato delle intercettazioni, secondo le modalità di cui all'articolo 13, comma 3.
8. In ogni stato e grado del processo, il giudice competente può sempre esaminare, se lo ritiene necessario, gli atti custoditi nell'archivio riservato delle intercettazioni.

Art. 10

(Trascrizione delle registrazioni)

l. Il Giudice delle Intercettazioni, compiute le formalità di cui all'articolo 8, ove sia necessario per la loro intelligibilità, dispone perizia per la trascrizione delle registrazioni ovvero la stampa o la riproduzione, in forma quanto più possibile chiara e comprensibile a tutti, delle informazioni contenute nei flussi di comunicazioni informatiche o telematiche acquisite. Al termine delle operazioni i verbali e le registrazioni utilizzate per lo svolgimento dell’incarico sono immediatamente restituiti al Giudice Inquirente e sono custoditi nell'archivio riservato delle intercettazioni. E' vietata la trascrizione delle parti di comunicazioni riguardanti esclusivamente fatti o circostanze estranei alle indagini. Il Giudice delle Intercettazioni dispone che i nomi o riferimenti identificativi di soggetti estranei alle indagini siano espunti dalle trascrizioni o dalle stampe.
2. Non possono essere utilizzati i risultati delle intercettazioni che, ove possibile, non sono trascritti o stampati o comunque riprodotti in forma intelligibile prima dell'inizio del giudizio.

Art. 11

(Utilizzo delle intercettazioni nel corso della fase istruttoria)

l. Il Giudice Inquirente, al fine di presentare le sue richieste al Giudice delle Intercettazioni, può disporre la trascrizione, anche per riassunto, delle comunicazioni ovvero la stampa in forma intellegibile delle informazioni contenute nei flussi di comunicazioni informatiche o telematiche acquisite, che ritiene rilevanti. Il Giudice Inquirente dispone che la polizia giudiziaria o il consulente tecnico nel procedere alla trascrizione o alla stampa espungano le parti di comunicazioni, sicuramente estranei alle indagini, nonché i riferimenti identificativi di soggetti estranei alle indagini, ove ciò non rechi pregiudizio all'accertamento dei fatti per cui si procede.

2. Il Giudice Inquirente, con la richiesta, trasmette al Giudice delle Intercettazioni i verbali, le registrazioni, le trascrizioni, le stampe e le riproduzioni, che ritiene rilevanti, anche a favore della persona sottoposta alle indagini, e di cui non è vietata l'utilizzazione. Il Giudice delle Intercettazioni può chiedere di esaminare direttamente le registrazioni ed i supporti informatici.

3. Il Giudice delle Intercettazioni dispone l'acquisizione del materiale rilevante per la decisione nel fascicolo del procedimento e la custodia delle altre conversazioni nell'archivio riservato delle intercettazioni. Dopo che la persona sottoposta alle indagini o il suo difensore ha avuto conoscenza del provvedimento, il difensore viene immediatamente avvisato della facoltà di prendere visione delle comunicazioni acquisite e di quelle custodite nell'archivio riservato, al fine di richiedere al Giudice delle Intercettazioni, entro dieci giorni, l'acquisizione delle comunicazioni in precedenza ritenute prive di rilevanza.

Art. 12

(Accesso del Giudice Decidente alla documentazione custodita nell'archivio riservato)

l. Dopo la chiusura della fase istruttoria il Giudice Decidente, competente a decidere nel merito, ai fini della decisione da adottare, può sempre disporre anche d'ufficio l'esame della documentazione custodita nell'archivio riservato delle intercettazioni. All'esito può disporre con ordinanza, previa trascrizione o stampa, l'acquisizione delle intercettazioni in precedenza ritenute prive di rilevanza.

Art. 13

(Archivio riservato delle intercettazioni)

1. Presso la segreteria del Giudice Inquirente è istituito l'archivio riservato delle intercettazioni.

2. L'archivio è tenuto sotto la responsabilità, direzione e sorveglianza del Giudice Inquirente, ovvero di un suo delegato, con modalità idonee ad assicurare la segretezza della documentazione in esso contenuta. Tali modalità devono essere previste da apposito Regolamento adottato mediante Decreto Delegato entro il 31 ottobre 2009, emanato su proposta del Magistrato Dirigente, nel quale debbono essere altresì indicati modi e forme di tenuta del libro delle intercettazioni.

3. Oltre agli ausiliari autorizzati dal Giudice Inquirente, all'archivio possono accedere, nei casi stabiliti dalla legge, il Giudice delle Intercettazioni ed i difensori, questi ultimi nei modi e termini delineati negli articoli che precedono, nonché, dopo la conclusione della fase istruttoria, il Giudice Decidente ed il Procuratore del Fisco, nonché, in fase di reclamo e di appello, il Giudice d'Appello. Ogni accesso è annotato in apposito registro, con l'indicazione della data, dell'ora iniziale e finale dell'accesso e degli atti contenuti nell'archivio di cui è stata presa conoscenza.

Art. 14

(Conservazione della documentazione)

1. I supporti contenenti le copie, le registrazioni audio, informatiche, telematiche o di altro genere, delle comunicazioni, oggetto di intercettazione, unitamente ai relativi verbali sono conservati integralmente nell'archivio riservato delle intercettazioni.

2. Tali supporti, inseriti in apposite custodie numerate e sigillate, sono collocati in un involucro sul quale sono indicati il tipo, l'oggetto e la data dell'intercettazione, i nomi delle persone le cui comunicazioni, sono stati oggetto di intercettazione, il numero del processo penale e il numero che, con riferimento alla registrazione consentita, risulta dal registro delle intercettazioni previsto dall'articolo 4 comma 6.

3. Salvo quanto previsto dall'art. 16 la documentazione concernente le intercettazioni viene conservata nell'archivio riservato delle intercettazioni per il periodo di due anni dalla sentenza non più soggetta ad impugnazione o reclamo, oppure dalla data in cui il decreto di archiviazione non è più reclamabile**.** Decorsi tali termini, il Giudice Decidente dispone la distruzione della documentazione di cui al comma 1 con le modalità di cui al precedente articolo 8, comma 2. Tuttavia, quando la documentazione si è rivelata irrilevante per il procedimento, ove essa non sia già stata distrutta ai sensi di quanto stabilito dallo stesso articolo 8, comma 2, gli interessati possono chiederne la distruzione anticipata a tutela della riservatezza. Sull'istanza il Giudice Decidente provvede con decreto motivato. In tal caso la distruzione anticipata non può essere disposta senza il consenso delle parti.

4. La distruzione deve essere eseguita sotto controllo del Giudice Decidente. Dell'operazione è redatto verbale.

Art. 15

(Utilizzazione in altri procedimenti)

l. Qualora dal contenuto delle intercettazioni emergano notizie utili all'accertamento di altri fatti di reato per i quali è prevista la pena della prigionia non inferiore al sesto grado e per i quali le intercettazioni possano costituire fonti di prova ai sensi della presente legge, il Giudice Inquirente deve trasmettere copia degli atti al Giudice competente a conoscere della fattispecie di reato incidentalmente emersa. È comunque fatta salva la facoltà del Procuratore del Fisco e del difensore della parte civile di chiedere al giudice l'acquisizione ovvero la trasmissione delle risultanze delle intercettazioni ad altro fascicolo processuale aperto per reati per i quali è prevista la pena della prigionia non inferiore al sesto grado.

2. Alla stessa condizione possono essere acquisiti i risultati delle intercettazioni che non sono stati ritenuti rilevanti nel procedimento in cui queste furono disposte. A tal fine il Giudice Inquirente, il Procuratore del Fisco e i difensori del diverso procedimento hanno facoltà di esaminare i supporti contenenti le copie, le registrazioni audio, informatiche, telematiche o di altro genere, delle comunicazioni, oggetto di intercettazione, unitamente ai relativi verbali, custoditi nell'archivio riservato e di chiederne la copia, la trascrizione, la trasposizione e la stampa al Giudice Decidente del procedimento in cui sono parti. Si applicano, in quanto compatibili, le disposizioni degli articoli 9, 10, 11 e 12.

3. Le intercettazioni sono invece sempre utilizzabili, ad istanza della persona prevenuta in altro procedimento, quando il contenuto delle intercettazioni sia utile alla sua difesa.

Art. 16

(Divieti oggettivi di intercettazione e di utilizzazione)

1. Ove le intercettazioni abbiano avuto come oggetto comunicazioni che non rientrino fra le ipotesi previste nel precedente art. 3, o senza l'autorizzazione o la convalida di cui all'articolo 4, queste non possono essere utilizzate.

2. In ogni stato e grado del procedimento il Giudice Inquirente, il Giudice delle Intercettazioni o il Giudice Decidente dispongono che tutta la documentazione delle intercettazioni previste dal comma che precede, sia distrutta, salvo che costituisca corpo del reato.

Art. 17

(Divieti soggettivi di intercettazione e di utilizzazione)

1. Non possono formare oggetto di intercettazione:

- le comunicazioni delle persone tenute al segreto, quando hanno ad oggetto atti o fatti conosciuti per ragione del loro ministero, ufficio o professione, salvo che le stesse persone abbiano deposto sugli stessi fatti o li abbiano in altro modo divulgati;
- le conversazioni o comunicazioni dei Capitani Reggenti;

2. Ove le intercettazioni abbiano avuto come oggetto le comunicazioni rientranti nel divieto di cui al comma 1, queste non possono essere utilizzate.

3. In ogni stato e grado del procedimento il Giudice Inquirente, col consenso del Giudice delle Intercettazioni, o il Giudice Decidente dispongono che tutta la documentazione delle intercettazioni previste dai commi che precedono, sia distrutta, salvo che costituisca corpo del reato.

Art. 18

(Sanzioni)

1. Salvo che il fatto costituisca più grave reato, chiunque esegua intercettazioni in violazione delle disposizioni dettate dalla presente legge è punito con la prigionia di secondo grado**.**

2. Le attività, la documentazione, cartacea, informatica, audiovisiva o di altro genere, ed i materiali relativi alle intercettazioni sono soggetti alle disposizioni dettate dall'articolo 8, comma 1, della Legge 17 giugno 2008, n. 93. Sulle attività, sulla documentazione e sui materiali soggetti a distruzione ai sensi dell'articolo 8, comma 2, e dell'articolo 9, comma 5, della presente legge, il segreto permane anche dopo la pubblicazione del processo.

3. Coloro che eseguono materialmente le operazioni di intercettazione e quanti altri che, su incarico dell'autorità giudiziaria, abbiano occasione di operare sulla documentazione che ne è stata ricavata, ancorché estranei alla Pubblica Amministrazione, sono considerati pubblici ufficiali .

4. I dati informatici raccolti in applicazione della presente legge non sono soggetti alle disposizioni dettate dalla Legge 23 maggio 1995, n. 70.

Art. 19

(Regolamento disciplina modalità tecniche delle intercettazioni)

1. Entro sei mesi dalla entrata in vigore della presente legge, il Congresso di Stato deve emanare un Regolamento con cui disciplina le modalità tecniche di esecuzione delle intercettazioni.

Art. 20

(Abrogazioni)

1. È abrogata ogni norma in contrasto con la presente legge.

Art. 21

(Entrata in vigore)

1**.** La presente legge entra in vigore il giorno 1° gennaio 2010.

Data dalla Nostra Residenza, addì 21 luglio 2009/1708 d.F.R

I CAPITANI REGGENTI
Massimo Cenci – Oscar Mina

IL SEGRETARIO DI STATO
PER GLI AFFARI INTERNI
Valeria Ciavatta

8. Annex 8: Law No. 100 of 22 July 2009 – Provisions on Holding and transfer of bearer shares of anonymous companies

REPUBLIC OF SAN MARINO

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

Having regard to Article 4 of Constitutional Law no. 185/2005 and Article 6 of Qualified Law no. 186/2005;
Hereby promulgate and order the publication of the following ordinary law approved by the Great and General Council in its sitting of 21 July 2009.

LAW no. 100 of 22 July 2009

PROVISIONS ON HOLDING AND TRANSFER OF BEARER SHARES OF ANONYMOUS COMPANIES

Art. 1
(Objectives of the Law)

1. With a view to implementing the principles enshrined in the recommendations of international bodies and for the purpose of preventing and combating money laundering and terrorist financing, this Law shall discipline the holding and transfer of bearer shares of anonymous companies and the exercise of corporate rights.

Art. 2
(Obligation to deposit the shares of anonymous companies)

1. Shareholders of anonymous companies shall deposit the certificates representing their bearer shares with a San Marino notary public. Such obligation shall also be fulfilled by anyone, other than the shareholders, being a holder or owner of bearer share certificates in accordance with the Law.
2. Share certificates shall remain deposited with the notary public, who may deliver them exclusively to the notary public entrusted by the shareholder, or anyone being the holder or owner thereof under the Law, with the task of taking the minutes of the general meeting, together with the certificate attesting the fulfilment of the obligations under this Law referred to in Article 5, only for the exercise of corporate rights and limited to the necessary period of time.
3. Share certificates may be delivered only if the task is entrusted by the person identified in conformity with this Law.
4. There exists no incompatibility for the notary public between the task of depository and that of minute taker of the general meeting.
5. It is made without prejudice to the right of shareholders and anyone holding or owning shares under the Law, to order the depository notary public, at any time, to deliver their own share certificates to another notary public for the deposit referred to in this Article.

Art. 3
(Formalities for due diligence)

1. The notary public shall fulfil due diligence obligations when share certificates are deposited by the shareholder or anyone holding or owning such certificates pursuant to the Law.

Art. 4
(Formalities for the transfer of bearer shares)

1. The transfer of bearer shares shall take place in the form of authenticated private agreement.
2. The private agreement referred to in the preceding paragraph shall be authenticated by the notary public with whom the share certificates have been deposited.
3. Private agreements concerning transfers shall not be registered; they shall be provided with the date certain upon authentication of the notary public and they shall not be available to the parties. Private agreements concerning transfers shall be kept by the depository notary public under strict observance of professional secrecy rules, the violation of which shall be punished according to Article 377 of the Criminal Code.

Art. 5
(Exercise of corporate rights)

1. Besides the requirement for the depository notary public to deliver share certificates to the notary public taking the minutes referred to in paragraph 2 of preceding Article 2, a shareholder or anyone being the holder or owner of share certificates according to the Law, may exercise corporate rights only if a document attesting his/her status has been issued by the depository notary public in conformity with the obligations under this Law. This document shall be kept by the notary public taking the minutes, together with the documents provided for in Article 44 bis of Law no. 47 of 23 February 2006.
2. Once the general meeting has concluded, the notary public taking the minutes shall deliver the share certificates back to the depository notary public within ten days.

Art. 6

(Record keeping requirements by the notary public)

1. Depository notaries public shall record share certificate deposits and deliveries to the party entitled, as indicated in this Law, and share transfers referred to in Article 4 in a specific book authenticated by the Financial Intelligence Agency. Records shall be filed in chronological order for each single company and indicate the percentage of the capital stock represented by the shares held by each shareholder or anyone being the holder or owner thereof pursuant to the Law, as well as the notes concerning the delivery and deposit of share certificates in the case envisaged in paragraph 5 of preceding Article 2.
2. Depository notaries public shall provide information on shareholders or anyone being the holder or owner of share certificates pursuant to the Law, and any document obtained to the Judicial Authority in the course of criminal proceedings and to the Financial Intelligence Agency when fulfilling the tasks of preventing and combating money laundering and terrorist financing.

Art. 7

(Transitory provisions)

1. Shareholders of anonymous companies shall deposit their bearer share certificates with a San Marino notary public by 31 December 2009. Such obligation shall be fulfilled by anyone, other than the shareholders, who holds or owns these assets according to the Law on bearer share certificates.
2. Once this term has expired, notaries public may fulfil the task of minute taker exclusively in application of this Law.
3. Shareholders of anonymous companies who hold registered share certificates, upon conversion of such certificates into bearer certificates, shall immediately deposit them with the same notary public authenticating the issuing signatures. Such obligation shall be fulfilled by anyone, other than the shareholders, who holds or owns registered share certificates converted into bearer shares under the Law.
3. Shareholders or anyone who holds or owns registered share certificates converted into bearer shares under the Law omitting or delaying to deposit their certificates shall be punished with an administrative sanction equal to 10,000 euro to be imposed by the Financial Intelligence Agency. Notaries public shall inform the Financial Intelligence Agency of any violation of this provision, with which they have become acquainted ex officio.

Art. 8

(Repeals)

1. Article 29 of Law no. 47 of 23 February 2006 and any other rule in conflict with this Law shall be repealed.

Art. 9

(Entry into force)

1. This Law shall enter into force on the 15th day following that of its legal publication.

Done at Our Residence, on 22 July 2009

THE CAPTAINS REGENT
Massimo Cenci – Oscar Mina

THE SECRETARY OF STATE
FOR INTERNAL AFFAIRS
Valeria Ciavatta

9. Annex 9: Legge No. 104 del 30 luglio 2009 – Rogatorie internazionali in materia penale (Italian version)

REPUBBLICA DI SAN MARINO
Noi Capitani Reggenti
la Serenissima Repubblica di San Marino

Visto l'articolo 4 della Legge Costituzionale n.185/2005 e l'articolo 6 della Legge Qualificata n.186/2005;
Promulghiamo e mandiamo a pubblicare la seguente legge ordinaria approvata dal Consiglio Grande e Generale nella seduta del 21 luglio 2009.

LEGGE 30 LUGLIO 2009 N.104

LEGGE SULLE ROGATORIE INTERNAZIONALI IN MATERIA PENALE
TITOLO I
DISPOSIZIONI GENERALI

Art. 1
(Prevalenza delle convenzioni e del diritto internazionale generale)

1. Le rogatorie internazionali in materia penale sono disciplinate dalle norme delle convenzioni internazionali in vigore per la Repubblica e dalle norme di diritto internazionale generale.
2. Se tali norme mancano o non dispongono diversamente, si applicano le norme che seguono.

Art. 2
(Ambito di applicazione)

1. La presente legge si applica soltanto ai procedimenti concernenti reati la cui repressione, al momento in cui l'assistenza giudiziaria è domandata, è di competenza delle autorità giudiziarie.
2. Possono essere oggetto di rogatorie internazionali ai fini della presente legge le richieste relative a procedimenti penali che abbiano per oggetto il compimento di atti istruttori o la trasmissione di mezzi di prova, fascicoli o documenti.
3. La presente legge non si applica all'esecuzione delle decisioni di arresto e di condanna né ai reati militari che non costituiscono reati di diritto comune.

Art. 3
(Regola generale di interpretazione)

1. Le disposizioni contenute nelle convenzioni internazionali in vigore per la Repubblica e le norme della presente legge, devono essere interpretate nel senso più favorevole alla cooperazione internazionale.

TITOLO II
CAPO I
ROGATORIE INTERNAZIONALI DALL'ESTERO

Art. 4
(Forma e contenuto della domanda)

1. La domanda di assistenza deve contenere le seguenti indicazioni:
a. l'autorità, dalla quale la domanda emana e se differente, l'autorità competente per il procedimento penale;
b. l'oggetto e il motivo della domanda;
c. il reato per il quale lo Stato richiedente procede;
d. un breve riassunto dei fatti, salvo nel caso in cui l'oggetto della domanda consista in una richiesta di notificazione;
e. nella misura del possibile, l'identità e la nazionalità della persona in causa, e
f. ove occorra, il nome e l'indirizzo del destinatario.
2. La domanda di assistenza giudiziaria e i documenti alla stessa allegati devono essere trasmessi corredati della traduzione in lingua italiana.
3. Gli atti e i documenti trasmessi in applicazione della presente legge sono esenti da qualsiasi formalità di legalizzazione.

Art. 5
(Richieste irregolari)

1. Se la domanda non è conforme alle disposizioni dell'articolo precedente, ovvero le informazioni in essa contenute non sono sufficienti a consentire alla Repubblica di trattare la richiesta medesima, il Commissario della Legge fatta salva la disciplina speciale di cui all'articolo 9 della presente legge, chiede all'autorità giudiziaria dello Stato richiedente, di modificare la domanda o di completarla con ulteriori informazioni.
2. Se l'autorità giudiziaria dello Stato richiedente non provvede al perfezionamento della domanda entro il termine di un anno dal ricevimento della richiesta di integrazione, la domanda irregolare passa all'archivio.

Art. 6

(Trasmissione della domanda)

1. Fatte salve le differenti modalità di trasmissione previste dalle convenzioni bilaterali in vigore per la Repubblica, la domanda ed i documenti ad essa allegati devono essere inviati dall'autorità giudiziaria dello Stato richiedente direttamente al Tribunale Unico della Repubblica e contestualmente inviate per conoscenza al Segretario di Stato per la Giustizia.

Art. 7

(Magistrato competente per le rogatorie dall'estero)

1. Il Giudice delle rogatorie è il Commissario della Legge.

Art. 8

(Attività giurisdizionale)

1. Il Commissario della Legge, eccettuato il caso di sospensione della domanda, dà esecuzione alla rogatoria con celerità, e comunque entro e non oltre 60 giorni dall'avvenuto ricevimento, adottando il relativo decreto di exequatur.
2. In caso di rogatorie irregolari il termine di 60 giorni previsto al comma precedente decorre dal ricevimento delle modifiche e/o informazioni richieste per il perfezionamento della domanda.
3. L'esecuzione della rogatoria è negata:
1) se gli atti richiesti sono contrari ai principi contenuti nella Dichiarazione dei Diritti dei cittadini e dei principi fondamentali dell'ordinamento sammarinese;
2) se gli atti richiesti sono espressamente vietati dalla legge;
3) se gli atti richiesti compromettono la sovranità, la sicurezza o altri interessi essenziali della Repubblica;
4) se la domanda si riferisce a reati considerati dalla Repubblica come reati politici o come reati connessi con reati politici;
5) se la domanda si riferisce al medesimo fatto e contro la stessa persona nei cui confronti sia stata pronunciata sentenza definitiva dell'Autorità giudiziaria sammarinese;
6) se la commissione rogatoria avente ad oggetto perquisizioni o sequestri è avanzata sulla base di reati non punibili secondo la legge dello Stato richiedente e secondo quella della Repubblica o se la richiesta non sia compatibile con la legge sammarinese;
7) se la rogatoria ha ad oggetto la citazione di un testimone, di un perito o di un imputato davanti all'autorità giudiziaria straniera e lo Stato richiedente non offre idonea garanzia in ordine all'immunità della persona citata.

Art. 9

(Reciprocità)

1. Il Commissario della Legge, qualora la domanda provenga da uno Stato con cui non esistono convenzioni internazionali in materia, entro 30 giorni dal ricevimento della domanda invia al Segretario di Stato per la Giustizia, una relazione tecnica attestante il possesso o meno dei requisiti giuridici della richiesta inoltrata.
2. Il Segretario di Stato per la Giustizia, a seguito di deliberazione in tal senso del Congresso di Stato, potrà rifiutare di dar corso alla rogatoria quando lo Stato richiedente non dia idonee garanzie di reciprocità. Il Segretario di Stato per la Giustizia, a seguito di deliberazione in tal senso del Congresso di Stato, qualora le circostanze lo impongano, pretenderà dallo Stato richiedente una garanzia di reciprocità.
3. In caso di domanda irregolare, la richiesta di integrazione verrà inoltrata successivamente alla decisione del Congresso di prestare o meno la collaborazione richiesta.
4. La delibera del Congresso di Stato che accorda o rifiuta l'esecuzione di una domanda ad uno Stato con cui non esistono convenzioni internazionali in materia, così come la relativa comunicazione del Segretario di Stato per la Giustizia, non sono soggette ad impugnazione alcuna.
5. Qualora il Segretario di Stato per la Giustizia comunichi al Commissario della Legge l'intendimento della Repubblica di concedere la rogatoria ad uno Stato con cui non esistono convenzioni internazionali in materia, il termine di 60 giorni di cui all'articolo 8 della presente legge per l'emanazione del decreto di exequatur, decorrerà dal ricevimento della comunicazione del Segretario di Stato.

Art. 10

(Sospensione)

1. L'esecuzione della rogatoria viene sospesa dal Commissario della Legge con decreto motivato se essa possa pregiudicare indagini in procedimenti penali in corso nella Repubblica. Tale sospensione viene comunicata all'autorità giudiziaria dello Stato richiedente.

Art. 11

(Accoglimento parziale della richiesta)

1. Prima di rifiutare o di rinviare la rogatoria, il Commissario della Legge valuta, eventualmente dopo essersi consultato con l'autorità giudiziaria dello Stato richiedente, se la richiesta possa essere accolta parzialmente.

Art. 12

(Principio di specialità)

1. Il Commissario della Legge concede l'assistenza giudiziaria disponendo che i risultati delle indagini, le informazioni, gli atti e i documenti trasmessi non siano, senza previo consenso, utilizzati o trasmessi a terzi dallo Stato richiedente per fini diversi da quelli indicati nella domanda.

Art. 13

(Lex loci)

1. La Repubblica esegue le commissioni rogatorie, nelle forme previste dalla sua legislazione.
2. L'acquisizione di copia di documentazione costituisce sequestro.
3. Fino alla emanazione del decreto di exequatur, trova applicazione, salvo differente richiesta in tal senso avanzata dallo Stato richiedente, la disciplina delineata dall'articolo 5 commi 1 e 2 della Legge 17 giugno 2008 n. 93, fermo restando quanto previsto dall'articolo 30 ultimo comma della presente legge.

Art. 14

(Deroghe al principio della lex loci)

1. Se lo Stato richiedente fa espressa domanda che i testimoni o i periti depongano sotto giuramento, il Commissario della Legge vi darà seguito solo se la legge sammarinese non vi si oppone.
2. Se lo Stato richiedente ne fa espressa domanda e la legge sammarinese le preveda, l'assunzione di ogni altro mezzo di prova può avvenire nelle forme richieste.

Art. 15

(Forma dei documenti richiesti)

1. Il Commissario della Legge trasmette soltanto copie o fotocopie certificate conformi degli atti o dei documenti richiesti.
2. Se lo Stato richiedente domandi espressamente la trasmissione degli atti o dei documenti originali, sarà dato seguito alla domanda solo se possibile e con obbligo dello Stato richiedente di restituirli nel più breve termine possibile, salvo che la Repubblica non vi rinunci.
3. Il Commissario della Legge può posticipare la consegna di atti o documenti di cui è stata chiesta la trasmissione in originale, se gli sono necessari per un procedimento penale in corso.

Art. 16

(Informazioni allo Stato richiedente)

1. Se lo Stato richiedente ne fa espressa domanda, il Commissario della Legge lo informa della data e del luogo d'esecuzione della commissione rogatoria.

Art. 17

(Riservatezza)

1. Al di fuori di quanto è necessario per dare esecuzione alla domanda, lo Stato richiedente può esigere che la Repubblica mantenga riservati i fatti oggetto della richiesta.
2. Se l'esecuzione della domanda comporti per la legge sammarinese l'adozione di garanzie processuali incompatibili con l'esigenza di riservatezza richiesta, il Commissario della Legge lo comunica immediatamente allo Stato richiedente.
3. Qualora a seguito della trasmissione riservata venga aperto in Repubblica un fascicolo penale, trova applicazione per esclusivi motivi di cooperazione internazionale e per il periodo di 3 mesi, la disciplina delineata dall'articolo 5 commi 1 e 2 della Legge 17 giugno 2008 n. 93.
4. Qualora a seguito della trasmissione riservata venga aperto in Repubblica un autonomo fascicolo penale ed il giudice competente ritenga applicabile il regime di temporanea segretezza, trovano piena applicazione la

disciplina ed i termini previsti dall'articolo 5 commi 1 e 2 della Legge 17 giugno 2008 n. 93, termini nei quali non si computa l'eventuale periodo accordato ai sensi del comma precedente.

Art. 18

(Spese)

1. Le spese ordinarie d'esecuzione della richiesta sono a carico della Repubblica.
2. Fanno eccezione al generale principio di gratuità il rimborso delle spese relative all'intervento di periti e testi sul territorio dello Stato richiesto e del trasferimento di persone detenute.

Art. 19

(Notifica di atti processuali e di decisioni giudiziarie)

1. La Repubblica provvede alla notifica degli atti processuali e delle decisioni giudiziarie che le sono trasmesse a questo scopo dallo Stato richiedente.
2. Se lo Stato richiedente ne fa espressa domanda, il Commissario della Legge dispone la notifica in una delle forme previste dalla legislazione interna per trasmissioni analoghe o in una forma speciale comunque prevista dalla legislazione sammarinese.
3. La prova della notifica avviene mediante una ricevuta datata e firmata dal destinatario o mediante una dichiarazione della Repubblica accertante il fatto, la forma e la data della consegna.
4. L'uno o l'altro di questi documenti viene trasmesso allo Stato richiedente. Su domanda dello Stato richiedente, la Repubblica preciserà se la notifica è stata effettuata conformemente alla sua legge. Se la consegna non ha avuto luogo, il Commissario della Legge ne comunicherà immediatamente il motivo allo Stato richiedente.

Art. 20

(Comparizione di testi e periti)

1. Fatte salve le disposizioni in senso contrario contenute in convenzioni bilaterali in vigore per la Repubblica, il teste o il perito che non ottemperi a una citazione a comparire di cui è stata chiesta la trasmissione, non può essere sottoposto ad alcuna sanzione o misura di coercizione, salvo che si rechi poi spontaneamente sul territorio dello Stato richiedente e che ivi sia regolarmente citato di nuovo.

Art. 21

(Rimborso spese per i testi o i periti)

1. Ad eccezione di differenti criteri contenuti in convenzioni bilaterali in vigore per la Repubblica, le indennità da versare e le spese di viaggio e di soggiorno da rimborsare al teste o al perito dallo Stato richiedente, sono calcolate, a partire dal luogo di residenza e sono accordate secondo aliquote almeno uguali a quelle previste nelle tariffe e nei regolamenti in vigore nel paese ove l'audizione deve aver luogo.

Art. 22

(Immunità dei testi o dei periti)

1. Nessun teste o perito, qualsiasi cittadinanza esso abbia, che in seguito a una citazione compaia davanti alle autorità giudiziarie dello Stato richiedente, può essere perseguito o detenuto o sottoposto ad alcuna altra limitazione della sua libertà personale sul territorio dello Stato richiedente per fatti o condanne anteriori alla sua partenza dal territorio della Repubblica.
2. L'immunità prevista nel presente articolo cessa quando il teste o il perito, avendone avuta la possibilità, non ha lasciato il territorio dello Stato richiedente trascorsi quindici giorni dal momento in cui la sua presenza non è più richiesta dall'autorità giudiziaria ovvero, avendolo lasciato, vi ha fatto volontariamente ritorno.

Art. 23

(Termini di citazione relativi alla persona perseguita)

1. La citazione a comparire di una persona perseguita che si trovi sul territorio sammarinese deve pervenire all'autorità competente della Repubblica almeno 40 giorni prima della data stabilita per la comparizione.

Art. 24

(Immunità della persona perseguita)

1. Nessuna persona, qualsiasi cittadinanza essa abbia, citata davanti alle autorità giudiziarie dello Stato richiedente affinché risponda di fatti, per i quali è oggetto di perseguimento, potrà essere perseguita, detenuta o sottoposta ad alcun'altra limitazione della sua libertà personale per fatti o condanne anteriori alla sua partenza dal territorio della Repubblica e non indicati nella citazione.
2. L'immunità prevista nel presente articolo cessa quando la persona perseguita, avendone avuta la possibilità, non ha lasciato il territorio dello Stato richiedente trascorsi quindici giorni dal momento in cui la sua presenza non è più richiesta dall'autorità giudiziaria ovvero, avendolo lasciato, vi ha fatto volontariamente ritorno.

Art. 25

(Comparizione della persona detenuta)

1. Qualsiasi persona detenuta, di cui lo Stato richiedente domanda la comparsa personale in qualità di teste o per l'esecuzione di un confronto, sarà trasferita temporaneamente sul territorio dello Stato ove l'audizione deve aver luogo, con obbligo di riconsegna nel più breve termine e fatte salve le disposizioni relative alle immunità previste dagli articoli 22 e 24 della presente legge nella misura in cui le stesse possano essere applicate.
2. Il trasferimento viene rinviato se la presenza della persona detenuta è necessaria in un procedimento penale in corso sul territorio della Repubblica.
3. Nel caso previsto al paragrafo precedente e nel rispetto dei requisiti previsti per l'esecuzione delle rogatorie, il transito della persona detenuta attraverso il territorio di uno Stato terzo, sarà concesso su domanda corredata di tutti i documenti utili e trasmessa dal Ministero di Giustizia dello Stato richiedente al Ministero di Giustizia dello Stato richiesto del transito.
4. La persona trasferita dovrà restare in detenzione sul territorio dello Stato richiedente e, dato il caso, sul territorio dello Stato richiesto del transito.
5. Il periodo di detenzione scontato dalla persona detenuta trasferita all'estero per procedere all'audizione richiesta, viene computato come periodo espiato ai fini della condanna interna.

Art. 26

(Consegna e restituzione di oggetti)

1. Il Commissario della Legge potrà posticipare la consegna di oggetti di cui è stata chiesta la trasmissione, se gli stessi sono necessari per un procedimento penale in corso nella Repubblica.
2. Gli oggetti che sono trasmessi in esecuzione di una commissione rogatoria, devono essere restituiti il più presto possibile dallo Stato richiedente alla Repubblica, salvo che questa vi rinunci.

Art. 27

(Scambi di sentenze di condanna)

1. La Repubblica, a seguito di richieste specifiche provenienti dalle autorità giudiziarie straniere competenti, fornisce informazioni in merito alle sentenze penali annotate nel casellario giudiziario.

Art. 28

(Restituzione della domanda)

1. Le commissioni rogatorie, fatte salve le differenti modalità di trasmissione diretta previste dalle disposizioni delle convenzioni bilaterali in vigore per la Repubblica, vengono restituite tramite la Segreteria di Stato alla Giustizia che provvede a rispedirle al Ministero di Giustizia dello Stato richiedente.

CAPO II
RICORSI

Art. 29

(Ricorso avverso il decreto di diniego)

1. Il decreto motivato di diniego, anche parziale, dell'esecuzione della rogatoria potrà essere oggetto di ricorso per motivi di legittimità al Giudice per la Terza Istanza Penale, da parte del Procuratore del Fisco entro il termine di 10 giorni dall'avvenuta notifica del decreto.

Art. 30

(Impugnazioni avverso i decreti di exequatur)

1. I decreti di exequatur di sola notifica non possono essere oggetto di ricorso.
2. Avverso il decreto di exequatur che non dispone misure coercitive, fatta salva la disciplina prevista dal comma precedente, il Procuratore del Fisco può proporre per motivi di legittimità, ricorso in forma scritta al Giudice per la Terza Istanza Penale entro il termine di dieci giorni dal ricevimento della notifica del decreto di exequatur.
3. Sono ammessi tutti i reclami previsti dal diritto interno avverso i decreti di exequatur che dispongono misure coercitive. Gli interessati, tramite un Avvocato abilitato all'esercizio della professione forense nella Repubblica presso il quale devono eleggere domicilio legale, ed il Procuratore del Fisco, possono proporre reclamo in forma scritta circa la sussistenza dei requisiti di cui al Titolo I ed al Titolo II Capo I della presente legge, al Giudice delle Appellazioni Penali entro il termine di dieci giorni dal ricevimento della notifica del decreto di exequatur.
4. La presentazione dei ricorsi di cui ai commi precedenti, sospende l'esecuzione della rogatoria.
5. Il Procuratore del Fisco nei casi di cui al comma secondo del presente articolo ed il Procuratore del Fisco e gli interessati nei casi di cui al comma terzo del presente articolo, potranno prendere visione nei successivi dieci giorni dalla presentazione del ricorso, della richiesta di assistenza giudiziaria o delle parti di essa non

espressamente riservate. Decorso tale termine il Commissario della Legge trasmette il fascicolo al Giudice competente.

Art. 31

(Procedura in caso di reclamo)

1. Entro il termine di dieci giorni dalla trasmissione del fascicolo, il Giudice delle Appellazioni Penali concede il termine di dieci giorni agli interessati ed al Procuratore del Fisco per il deposito di eventuali memorie conclusionali.
2. Il Giudice delle Appellazioni decide sul reclamo proposto con ordinanza entro il termine di quindici giorni dal giorno del ricevimento delle memorie conclusionali.

Art. 32

(Procedura diretta dinanzi al Giudice per la Terza Istanza Penale)

1. Il ricorso del Procuratore del Fisco avverso il decreto di diniego anche parziale dell'esecuzione della rogatoria nonché quello presentato avverso il decreto di exequatur che non dispone misure coercitive, deve essere indirizzato al Giudice per la Terza Istanza Penale, redatto in forma scritta e contenere:
1) una chiara e dettagliata esposizione dei fatti;
2) i riferimenti probatori ritenuti necessari;
3) le motivazioni in diritto a sostegno dell'istanza;
4) l'indicazione chiara e circostanziata della decisione richiesta.
2. Il Giudice per la Terza Istanza Penale fissa l'udienza di discussione che si terrà entro e non oltre i venti giorni successivi.
3. Il Procuratore del Fisco, può presentare ulteriori memorie e deduzioni fino a cinque giorni prima di quello fissato per l'udienza di discussione.
4. Il Giudice per la Terza Istanza Penale decide con sentenza che deve essere depositata entro dieci giorni dall'udienza di discussione.
5. La sentenza viene notificata al Procuratore del Fisco. Il fascicolo viene poi trasmesso al Commissario della Legge, Giudice delle rogatorie, per l'esecuzione dei provvedimenti quali risultanti a seguito della definitiva sentenza.

Art. 33

(Procedura di ultimo grado dinanzi al Giudice per la Terza Istanza Penale)

1. Entro il termine di 30 giorni dal ricevimento della notifica dell'ordinanza del Giudice delle Appellazioni Penale, gli interessati, tramite un Avvocato abilitato all'esercizio della professione forense nella Repubblica di San Marino presso il quale devono eleggere domicilio legale, ed il Procuratore del Fisco, possono proporre per motivi di legittimità ricorso al Giudice di Terza Istanza Penale.
2. Il ricorso, indirizzato al Giudice per la Terza Istanza Penale e redatto in forma scritta, deve contenere:
1) una chiara e dettagliata esposizione dei fatti;
2) i riferimenti probatori ritenuti necessari dal ricorrente;
3) le motivazioni in diritto a sostegno dell'istanza;
4) l'indicazione chiara e circostanziata della decisione richiesta.
3. Il Commissario della Legge, Giudice delle rogatorie, dispone la notifica del ricorso a tutti gli interessati, al Procuratore del Fisco, eseguite le quali trasmette il fascicolo al Giudice per la Terza Istanza Penale.
4. Il Giudice per la Terza Istanza Penale accorda agli interessati ed al Procuratore del Fisco, il termine di dieci giorni per il deposito di eventuali memorie e deduzioni.
5. Decorso il termine di cui al comma precedente il Giudice per la Terza Istanza Penale fissa l'udienza di discussione che dovrà tenersi entro e non oltre i venti giorni successivi.
6. Il Giudice per la Terza Istanza Penale decide con sentenza che deve essere depositata entro dieci giorni dall'udienza di discussione.
7. La sentenza viene notificata agli interessati e al Procuratore del Fisco. Il fascicolo viene poi trasmesso al Commissario della Legge, Giudice delle rogatorie, per l'esecuzione dei provvedimenti quali risultanti a seguito della definitiva sentenza di Terzo Grado.

TITOLO III
ROGATORIE ALL'ESTERO

Art. 34

(Trasmissione di rogatorie ad autorità straniere)

1. Fatte salve le differenti disposizioni contenute nelle convenzioni internazionali in vigore per la Repubblica che prevedono la trasmissione diretta fra autorità giudiziarie, il magistrato titolare delle indagini qualora ciò sia

necessario per lo svolgimento delle stesse, inoltra alle autorità straniere competenti le richieste relative ai procedimenti penali che abbiano per oggetto il compimento di atti istruttori o la trasmissione di mezzi di prova, fascicoli o documenti, trasmettendo le stesse alla Segreteria di Stato alla Giustizia la quale provvede all'inoltro per via diplomatica, al Ministero di Giustizia dello Stato richiesto.
2. Qualora lo Stato richiesto, per dare corso alla richiesta di rogatoria, richieda una garanzia di reciprocità, il Segretario di Stato per la Giustizia, previa delibera congressuale in tal senso, nel rispetto dei limiti previsti dalla presente legge, garantisce o meno la reciprocità allo Stato richiesto.

Art. 35

(Limiti di utilizzazione degli atti compiuti da uno Stato estero)

1. Fermo quanto stabilito dalle disposizioni di legge vigenti circa la validità e utilizzabilità di atti, non è consentita l'utilizzazione degli atti d'assistenza giudiziaria richiesti e compiuti all'estero in violazione delle condizioni e limiti eventualmente posti dallo Stato estero.
2. Tutti i termini per eventuali reclami conseguenti ai sequestri avvenuti all'estero in regime di segretezza, sono sospesi e cominciano a decorrere dalla comunicazione alle parti della cessazione del regime di segretezza.
3. Avverso il decreto di formale acquisizione probatoria che dispone misure coercitive, gli interessati ed il Procuratore del Fisco, possono proporre per i motivi previsti dal diritto interno, reclamo in forma scritta al Giudice delle Appellazioni Penali entro il termine di dieci giorni dal ricevimento della notifica del decreto, conclusa l'eventuale fase svolta in regime di segretezza. Si applica la procedura delineata dall'articolo 31 della presente legge e, in caso di ulteriore ricorso in terza istanza, quella prevista dall'articolo 33 della presente legge.

Art. 36

(Immunità temporanea della persona citata quale teste, perito o imputato)

1. Nei casi in cui la rogatoria ha ad oggetto la citazione di un testimone, di un perito o di un imputato davanti all'autorità giudiziaria sammarinese, la persona citata, qualora compaia, non può essere sottoposta a restrizione della libertà personale in esecuzione di una pena o di una misura di sicurezza né assoggettata ad altre misure restrittive della libertà personale per fatti anteriori alla notifica della citazione.
2. L'immunità prevista dal comma 1 cessa qualora il testimone, il perito o l'imputato, avendone avuta la possibilità, non ha lasciato il territorio dello Stato trascorsi quindici giorni dal momento in cui la sua presenza non è più richiesta dall'autorità giudiziaria ovvero, avendolo lasciato, vi ha fatto volontariamente ritorno.

Art. 37

(Norme di coordinamento)

1. All'articolo 5 della Legge 17 giugno 2008 n.93 è aggiunto il seguente comma:
"7. In caso di segretezza dell'istruttoria, qualora il Giudice inquirente richieda assistenza giudiziaria ad un'Autorità estera, il termine di segretezza dell'istruttoria previsto al comma terzo, è sospeso dal giorno dell'invio della rogatoria al giorno in cui perviene la risposta.".
2. All'articolo 8 della Legge 17 giugno 2008 n.93 è aggiunto il seguente comma:
"6. Ai sensi dell'articolo 36, comma 5 della Legge 17 novembre 2005 n.165, il segreto bancario non può essere opposto nel dibattimento. E' abrogata ogni altra contraria disposizione di legge."

Art. 38

(Abrogazioni)

1. È abrogata ogni norma in contrasto con la presente legge.

Art. 39

(Disposizioni finali)

1. La presente legge entra in vigore il quindicesimo giorno successivo a quello della sua legale pubblicazione.

Data dalla Nostra Residenza, addì 30 luglio 2009/1708 d.F.R

I CAPITANI REGGENTI
Massimo Cenci – Oscar Mina

IL SEGRETARIO DI STATO
PER GLI AFFARI INTERNI
Valeria Ciavatta

10. Annex 10: Law No. 92 of 17 June 2008 (Consolidated Text)

Law 92 of 17 June 2008
as amended by Law 73 of 19 June 2009

PROVISIONS ON PREVENTING AND COMBATING MONEY LAUNDERING AND TERRORIST FINANCING

UNOFFICIAL TEXT

NOTICE

The purpose of this document, issued by the Financial Intelligence Agency – FIA of the Republic of San Marino, is to facilitate consultation of Law 92 of 17 June 2008 as further amended, as stated below. It is not an official text, and the Financial Intelligence Agency of the Republic of San Marino assumes no liability for any errors or omissions. The official text of the Laws of the Republic of San Marino can be found in the *Bollettino Ufficiale* or on the Internet website, www.consigliograndeegenerale.sm.

Law 92 of 17 June 2008
as amended by Law 73 of 19 June 2009

PROVISIONS ON PREVENTING AND COMBATING MONEY LAUNDERING AND TERRORIST FINANCING

TITLE I
GENERAL PROVISIONS

Article 1

(Definitions and scope)

1. For the purposes of this Law, the following definitions apply:
   a) "Agency": the Financial Intelligence Unit referred to in article 2;
   b) "Public administrations": Secretaries of State, Departments, public institutions, state corporations, public administration offices;
   c) "Central Bank": the Central Bank of the Republic of San Marino as defined in Law N° 96 of June 29, 2005 and subsequent amendments;
   d) "shell bank": any entity that carries out activity equivalent to that defined in Annex 1 Law N° 165 of November 17, 2005 incorporated in a jurisdiction in which it has no physical presence and which is unaffiliated with a regulated financial group;
   e) "assets" or "funds": any property, whether tangible or intangible, movable or immovable, including means of payment and credit, any document or instrument, including electronic or digital form, evidencing title to, or interest in such property; economic resources of any nature, tangible or intangible, movable or immovable assets, thus including all accessories, fixtures and returns that may be used to obtain funds, assets or services as well as any other utility specified in the technical Annex to this Law;
   f) "client" or "customers": the natural person, legal person, or entity without legal personality with which the obliged parties, in the field of their activities, execute an occasional transaction or establish a business relationship, or the natural person, legal person, or entity without legal personality to which the obliged parties render a professional service, regardless whether or not payment is made;
   g) "freezing of funds": the prohibition to move, transfer, modify, dispose, use or manage funds or economic resources, to have access to them in such a way as to modify the entity, amount, location, entitlement of rights, ownership, nature, destination or cause any other change that would permit the use of funds or economic resources, including, for mere illustration purposes, portfolio management, sales, leasing, renting or establishment of real rights of guarantee;
   h) "anonymous accounts or accounts in fictitious names": the relationships for which the customer due diligence obligations, in order to guarantee that the financial entity knows the identity of the client in every phase of the relationship with the client itself, are not fulfilled;
   i) "payable-through accounts": transnational bank accounts used directly by the customers to carry out transactions on their own behalf;
   j) "terrorism purposes": 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;
   k) "terrorist financing": 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;
   l) "instructions": the provisions enacted by the Financial Intelligence Agency in the exercising of its functions of prevention and combating money laundering and terrorist financing;
   m) "occasional transaction": any transaction, professional service or action carried out for the customers, outside a business relationship, that involves the transfer or moving also by electronic means of cash or other means of payment;
   n) "politically exposed person": natural persons, foreign citizens, who are or have been entrusted with important public functions abroad during the year preceding the establishment of the business

relationship, transaction or professional service, their immediate family members or persons known to be close associates of such persons, as foreseen in the technical Annex to this Law;

o) "business relationship": any relationship or professional service between an obliged party, regardless of whether payment is required or not, which involves carrying out more than one transaction;

p) "terrorism" or "terrorist act": 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":
   (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;

r) "beneficial owner":
   (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(s) that, directly or indirectly, owns more than 25% of the voting rights in a company or, at any rate, because of agreements or other reasons, is able to control voting rights equal to said percentage or has 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 the European Union legislation;
      2) the natural person(s) who is beneficiary of more than 25% of the property of a foundation, trust or other arrangements with or without legal personality that administers funds; whenever the beneficiaries have not been determined, the natural person(s) in whose principal interest the entity is established or acts;
      3) the natural person(s) who is able to control more than 25% of the property of an entity with or without a legal personality **;**

s) "financial intelligence unit": the central national authority in charge of receiving, requesting, analysing and disseminating to the competent authorities all information relative to preventing and combating money laundering and terrorist financing.

2. With the sole object of the laws regarding preventing and combating money laundering, except as provided in 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 person involved in said activity to evade the legal consequences deriving from his or her actions;

b) concealing or disguising the true nature, origin, location, disposition, movement of property, ownership of the assets or interest in such 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.

TITLE II
COMPETENT AUTHORITIES

CHAPTER I

FINANCIAL INTELLIGENCE AGENCY

Article 2

(Establishment and purpose)

1. The Financial Intelligence Agency for preventing and combating money laundering and terrorist financing shall be established at the Central Bank.

2. The Agency shall perform the functions assigned to it by this law in complete autonomy and independence.

3. The costs for the staff, structure, organization and functioning of the Agency shall be paid for by the Central Bank. The Agency shall use the resources according to criteria of cost effectiveness and efficiency.

4. The Agency shall prepare annual accounts by the month of May regarding the management of the resources received from the Central Bank during the previous year and a budget document outlining expenses for the following year by the month of September. The annual accounts and budget document shall be sent to the Committee for Credit and Savings. The Committee for Credit and Savings shall evaluate if the resources have been programmed and managed according to the criteria of cost effectiveness and efficiency and then transmit the pertinent documentation to the Central Bank for the fulfilment of its obligations.

Article 3

(Director and Vice Director)

1. The Congress of State, upon proposal by the Committee for Credit and Savings and having heard the opinion of the Central Bank, shall appoint the Director and Vice Director of the Agency choosing among people who have the necessary requisites of professionalism, independence and respectability. The mandate of the Director and Vice Director shall last five years and is renewable only once.

2. The Director and Vice Director can be removed from their offices with the same procedure required for their appointment only if they no longer satisfy the conditions required for the fulfilment of their functions or are guilty of serious deficiencies.

3. The staff of the Agency, while performing the functions set forth in this law, are public officials and are bound by official secrecy.

Article 4

(Functions of the Financial Intelligence Agency)

1. 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.

2. The Agency shall analyze and study financial flows in order to identify and prevent money-laundering and terrorist financing. It shall examine 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.

Article 5

(Powers of the Financial Intelligence Agency)

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.

3. The Agency shall take note of all activities conducted, also in a concise manner, according to the way deemed most suitable. Except as specifically provided in this law, the Agency shall draw up a report on the information acquired in accordance with paragraph 1, letter f).

4. 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 on behalf of the judicial Authority shall be recorded.

Article 6

(Ways and effects of blocking)

1. The measure with which the Agency orders the blocking in accordance with letter d) of article 5 shall be adopted in written form and shall be justified. Except for the terms set forth in subsequent paragraph 5, in case of urgency the written justification may be submitted subsequent to the blocking.

2. The Agency shall communicate the measure to the entity or person who holding the assets, funds or economic resources in the ways deemed most appropriate. The Agency shall also communicate the measure to the interested party except where the communication may prejudice the outcome of the investigation. If the assets are registered as movable or immovable ones, the Agency shall order the blocking to be registered at the State Office in charge of keeping public registries.

3. The assets freezing cannot constitute the object of any act evidencing transfer, title to or use of such assets.

4. Without prejudice to confirmation in accordance with the subsequent paragraph, the blocking measure shall be immediately effective.

5. Within 48 hours from the execution of the block, the measure shall be notified to the judicial Authority, who shall confirm – if requirements are met – the blocking measure within the following 96 hours. Failing such requirements, the judicial Authority shall also lift the block if the reasons for the precautionary measure foreseen in the provision issued by the Agency no longer exist.

6. The provision of the judicial Authority shall be notified to the Agency and to the entity to which the freezing was executed.

7. Such freezing may not exceed 15 days starting from the date of the provision issued by the Agency. This term is established by the judicial Authority in the confirmation provision and is extendable up to 45 days, upon reasoned request of the Agency, where investigations are particularly complex or where cooperation of foreign financial intelligence units is needed. The request for the extension shall be deposited in the offices of the judicial Authority prior to the expiration of the term. The judicial Authority shall grant or deny the extension within 96 hours from the receipt of the request and shall communicate its decision to the Agency and to the entity having the assets, funds or economic resources at its disposal.

8. Prior to the expiration of the terms established in the previous paragraph, the Agency, with a specific report based on the financial investigations conducted, shall indicate to the judicial Authority any data useful to proceed to the seizure or revocation of the freezing. The judicial Authority shall issue its judgment indicating its reasons within the following 96 hours.

9. In case of termination or revocation of the freezing, the judicial Authority shall take the necessary measures in order to return the frozen assets to the party entitled or, in case of registered movable or immovable assets, to cancel the registration of the freezing in the public registries.

10. The provisions of this article shall not prevent the judicial Authority from ordering seizures under judicial rules in force. In this case, the blocking ordered by the Agency shall become null and void.

Article 7

(Communication to the judicial Authority)

1. In case the Agency detects facts that might constitute an offence of money-laundering or terrorist financing, it shall transmit the documents and acts, including the report on the financial investigation conducted, to the judicial Authority without delay. If, upon completion of the financial investigation, no criminal conduct has been ascertained, the Agency shall close the case. The closure of the case does not prevent the carrying out of further investigations should new information be obtained.

2. The Agency may communicate the transmission of the documents or acts to the judicial Authority, or the closure ordered in compliance with the previous paragraph, directly to the obliged reporting party, except when the communication might prejudice the outcome of the investigation or the secrecy of the identity of the reporting person.

Article 8

(Access to information)

1. The Agency shall have 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.

2. Except as provided in the previous paragraph, 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.

3. For these same purposes foreseen in the previous paragraph, 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. 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.

4**.** The data and information acquired by the Agency may be used exclusively for the exercise of the functions set forth in this law.

Article 9

(Official secrecy)

1. All data and information acquired by the Agency are covered by official secrecy even in relations with the Public administrations, without prejudice to cases of communication or exchange of information set forth in this law. Official secrecy cannot be claimed for requests made by the criminal judicial Authority.

2. The Agency shall take steps, also including the use of computerized means, to ensure that the data and information acquired are not accessible by third parties.

Article 10

(Statistical data collection and presentation of annual reports)

1. The Agency shall collect annually the data regarding the activity carried out for the prevention and combating money-laundering and terrorist financing.

2. The Agency shall present an annual report through the Secretary of State for Finance and Budget to the Great and General Council [*Parliamen*t] every year on the activity carried out for the prevention and combating of money-laundering and terrorist financing.

3. The Agency shall propose to the Congress of State the adoption of measures intended to heighten the effectiveness of the prevention and combating of money-laundering and terrorist financing.

CHAPTER II
NATIONAL COOPERATION

Article 11

(Cooperation with other Authorities and Professional Associations)

1. The Public administrations, Police Authority, Central Bank and Professional Associations shall cooperate with the Agency in the prevention and combating of money-laundering and terrorist financing.

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.

3. The Public Administration, Police Authority, Central Bank and Professional Associations shall provide the Agency with updated data on the obliged parties.

Article 12

(Cooperation with Police Authority)

1. The Agency shall cooperate with the Police Authority and the National Central Office of Interpol, also by exchanging information.

2. The Police Authority, in the fulfilment of its statutory role, may also conduct activities of preventing and combating money laundering and terrorist financing on its own initiative.

3. The information exchanged may be used exclusively for the purpose of preventing and combating money laundering and terrorist financing. The information cannot be communicated to third parties without prior written consent of the Agency and it is covered by official secrecy also regarding those who receive the information.

Article 13

(Competences of Professional Associations)

1. Professional Associations, in the fulfilment of their functions assigned by the respective statutes, shall promote and oversee the compliance with obligations under this law by their members.

2. Professional Associations shall promote the training of their members, employees and collaborators in order that the obligations set forth in this law are correctly observed.

Article 14

(Competences of the Central Bank)

1. The Central Bank, if during the course of its function of supervision over financial entities as referred to in article 18, letters a), d) and e) 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.

2. The Central Bank shall provide the Agency with data regarding financial parties as well as information useful for carrying out financial investigations upon reports of suspicious transactions and for the study of financial movements.

3. The powers for verifying the adequacy of the organizational and procedural structures of the authorized parties remain within the competence of the Central Bank. The Central Bank may enact secondary legislation regarding these parties in accordance with Law N° 165 of November 17, 2005.

Article 15

(Cooperation with the judicial Authority)

1. 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.

CHAPTER III

INTERNATIONAL COOPERATION

Article 16

(Cooperation with foreign financial intelligence units)[1]

1. The Agency shall cooperate with foreign financial intelligence units 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.

2. The Agency, with the aim of regulating the cooperation activity referred to in paragraph 1, may stipulate appropriate protocols of agreement [*Memorandum of Understanding*] and inform the Committee for Credit and Savings about them.

[1] As amended by art. 6 of Law No. 73 of 19 June 2009

3. The information exchanged may be used by the foreign financial intelligence units 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.

4. The information exchanged cannot be used to initiate or continue administrative, police or judicial investigations without prior written consent by the Agency.

TITLE III

PREVENTIVE MEASURES

CHAPTER I

PERSONS AND ENTITIES SUBJECT TO OBLIGATIONS

Article 17

(Obliged parties)

1. For the purposes of this law, the following are defined as obliged parties:
a) financial parties;
b) non-financial parties;
c) professionals.

2. Those belonging to the categories referred to in the previous paragraph are specified in the subsequent articles in this chapter.

Article 18

(Financial parties)

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

Article 19

(Non-financial parties)

1. Non-financial parties are defined as parties that provide professional services regarding the following activities:
   a) office of the co-trustee as defined by Law N° 37 of March 17, 2005;
   b) assistance and consultancy on matters of investment services;
   c) assistance and consultancy on tax, financial and commercial matters;
   d) credit brokerage;
   e) real estate brokerage;
   f) running of gambling houses and games of chance as set forth in Law N° 67 of July 25, 2000 and subsequent amendments;
   g) custody and transport of cash, securities or values;
   h) management of auction houses or art galleries;
   i) trade in antiques;
   j) purchase of unrefined gold;
   k) manufacturing, mediation of and trade in, including export and import of precious metals and stones.

Article 20

(Professionals)

1. Professionals are defined as follows:
   a) members of the Registry of Accountants (*holding a university degree or holding an high school certificate*) of the Republic of San Marino;
   b) members of the Registry of External Auditors and Auditing companies and of the Registry of Actuaries of the Republic of San Marino;
   c) members of the Bar Association of Lawyers and Notaries of the Republic of San Marino, when they carry out in name of or on behalf of their clients any financial or real estate transaction, or when they assist a customer in the planning or execution of related transactions, such as:
      1) the transfer of any title of real rights on properties or companies;
      2) the management of currency, financial instruments or other assets of customers;
      3) the opening or management of bank accounts, savings and securities accounts;
      4) the establishment, management or administration of companies, trusts or similar arrangements with or without legal personality;
      5) the organisation of all the steps required to establish, operate or manage companies.

CHAPTER II

OBLIGATION OF CUSTOMER DUE DILIGENCE

Article 21

(Field of application of customer due diligence)

1. The obliged parties shall fulfil the customer due diligence obligations in the following cases:
   a) when establishing a business relationship;
   b) when carrying out occasional transactions or professional services for an amount exceeding 15,000 euros, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
   c) when there is a suspicion of money-laundering or terrorist financing;
   d) when there are doubts about the veracity or adequacy of the information and data previously obtained for the identification of the customer.

2. The financial parties referred to in article 18 shall also fulfil the customer due diligence obligations when they act as intermediaries or are at any rate part of the transfer of money or bearer negotiable instruments, in euros or foreign currency, carried out in any capacity among different entities for a total amount exceeding 15,000 euros.

3. 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.

4. Members enrolled in the Registry of Accountants (*holding a university degree or an high school certificate*) are not required to fulfil the customer due diligence obligations and registration in relation to the execution of the mere activity of drafting or filing income tax returns.

Article 22

(Customer due diligence measures)

1. The fulfilment of customer due diligence obligations shall comprise the carrying out, if needed through employees or collaborators, of the following measures:

a) identifying the customer and 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;
b) if necessary, identification of the beneficial owner and taking risk-based and adequate measures to verify the identity;
c) obtaining information on the purpose and intended nature of the business relationship or occasional transaction;
d) conducting ongoing monitoring of the relationship with the customer, including scrutiny of transactions undertaken throughout the course of that relationship to ensure that they are compatible with the data and information that the obliged parties have regarding the customer, its economic activities and risk profile, taking into consideration the source of the funds where necessary;
e) updating documents, data and information acquired during the fulfilment of customer due diligence obligations.

2. Customers are obliged to provide, under their own responsibility, in written form, all data and information required and updated to permit the obliged parties to fulfil their obligations as set forth in this law.

Article 23

(Identifying and verifying the identity of the customer and beneficial owner)

1. The obliged parties shall identify and verify face-to-face, through their employees or collaborators, the identity of the customer and beneficial owner before establishing a business relationship or carrying out a transaction.

2. If the customer is not a natural person, the obliged parties shall verify the actual existence of the power of representation and acquire the data and information necessary to identify and verify the identity of the representatives who are authorized to sign for the transaction to be carried out.

3. 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 use of public registries, lists, acts or documents in the public domain, containing information on the beneficial owners, and request from its customers the pertinent data and information, or obtain information in other ways.

4. Verifying the identity of the customer and beneficial owner may be completed in the shortest time possible after the establishment of a business relationship if it is necessary not to interrupt the normal conduct of the business and when the risk of money-laundering or terrorist financing is low.

5. The non-financial entities that carry out activities set forth in article 19, paragraph 1, letter f) shall identify and verify the identity of the customer immediately on entry [*into gambling houses*], regardless of the amount of gambling chips purchased, sold or exchanged. They shall also register, according to the provisions of article 34, the transactions of purchase or exchange of gambling chips or other means of gambling with a value of 2,000 euros or more.

Article 24

(Obligations of abstention)

1. If the obliged parties are not able to fulfil the obligations of customer due diligence foreseen 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 decide whether the situation should be reported to the Agency.

2. The members enrolled in the Registry of Lawyers and Notaries and Registry of Accountants (*holding a university degree or an high school certificate*) shall not be obliged to apply the provisions of the previous paragraph in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in administrative or judicial proceedings, or concerning such proceedings, including advice on instituting or avoiding proceedings.

3. The obliged parties shall refrain from carrying out transactions when there are reasonable grounds to believe that these transactions could be related to money-laundering or terrorist financing. In these cases, a suspicious transaction report shall be promptly sent to the Agency. Where abstention is not possible because there is a legal obligation to receive the act, or the carrying out of the transaction by its nature cannot be postponed, or where the abstention might hinder ongoing investigations, the obliged parties shall inform the Agency immediately after the carrying out, taking every precaution to identify the destination of the funds transferred during the transaction.

Article 25

(Risk-based approach)

1. The obliged parties are required to fulfil the due diligence on all their customers.

2. The customer due diligence obligations are fulfilled by risk-based verifications which depend on the type of customer, business relationship, occasional transaction, professional service, product or transaction.

3. For the evaluation of the risk, the obliged parties shall evaluate at least the following aspects:
A) with reference to the customer:
1) the legal status,
2) the main business activity,
3) the behaviour at the moment of establishing the business relationship, or carrying out the transaction or professional services,
4) the residence or registered office of the customer or of the counterpart with particular attention to that do not require equivalent obligations to those set forth in this law;

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

Article 26

(Simplified customer due diligence)

1. The obliged parties shall not be subject to the customer due diligence obligations, where the customer is one of the following:
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 N° 165 November 17, 2005, located in a State which requires obligations equivalent to those set forth in this law and imposes supervision and control over compliance with the requirements 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 State which imposes requirements equivalent to those laid down in this law and provides supervision and control over 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 State, as long as this market is subject to regulations consistent with or equivalent to the European Union legislation;
e) domestic public authorities.

2. The obliged parties shall not be subject to the requirements of customer due diligence 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, complementary or similar pension schemes that provide retirement benefits, for which contributions are made by way of deduction from wages and the scheme rules do not permit the transfer of beneficiaries' rights unless after the death of the holder.

3. The Agency may indicate with instructions the categories of entities or products characterized by a low risk of money-laundering or terrorist financing for which customer due diligence does not apply.

4. In the cases described in the previous paragraphs, the obliged parties shall in any case collect data and information sufficient to establish if the customer falls into an exempted category.

Article 27

(Enhanced customer due diligence)

1. The obliged parties, on the basis of a risk assessment, shall take enhanced customer due diligence measures in situations which by their nature can present a higher risk of money-laundering or terrorist financing.

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.

3. In the case foreseen in letter a) of paragraph 2, the obliged parties shall compensate for the higher risk by applying at least one of the following measures:
a) ensuring that the first transfer of funds in relation to the establishment of the business relationship or to the execution of the occasional transaction is carried out through an account opened in the customer's name with a financial entity referred to in article 26, paragraph 1, letters a) and b);
b) verifying the identity of the customer through supplementary documents or information in addition to those requested for a customer that is physically present;
c) taking supplementary measures to verify the documents supplied;
d) requiring certification in relation to the information or documents supplied;
e) requiring a statement of confirmation by a financial party referred to in article 26, paragraph 1, letters a) and b) that has already fulfilled customer due diligence obligations on the customer in question.

4. In the case foreseen in letter b) in paragraph 2, the obliged parties shall do the following:
a) when the obliged parties are organized in a company structure, they shall obtain the approval of the general director or an equivalent figure, or a person authorized by the general director, before establishing a business relationship or carrying out an occasional transaction;
b) they shall take any appropriate measure to establish the source of the funds used in the business relationship or in carrying out the occasional transaction;
c) they shall ensure an ongoing and enhanced control over the relationship with the customer.

5. The financial parties referred to in article 18, letters a), b) and c), that 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, shall adopt the following enhanced customer due diligence measures:
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;
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 written form the respective obligations and responsibilities regarding matters of preventing and combating money laundering and terrorist financing.

6. The financial parties referred to in article 18 letters a) and b) 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.

7. 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, and take measures, if needed, to prevent their use for money-laundering or terrorist financing purposes.

Article 28

(Prohibition to operate with shell banks)

1. The financial parties 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. Relationships that already exist on the date this law enters into force should be closed at the earliest opportunity.

Article 29

(Customer due diligence performed by third parties)

1. In order to fulfil the requirements laid down in article 22, paragraph 1, letters a), b) and c), the obliged parties may rely on third parties with which the customers have business relationships or which the customers have used to carry out an occasional transaction. For this purpose, the third-parties shall issue a suitable statement confirming that they have fulfilled customer due diligence obligations. However, the ultimate responsibility for the identification and verification of the identity of the customer shall remain with the obliged parties.

2. For the purposes of this article, the third-parties shall be financial parties referred to in article 18, paragraph 1, letters a), b) and c) and in article 26, paragraph 1, letters b) and c).

3. The third-parties shall immediately make available to the obliged parties all information required in fulfilling the customer due diligence obligations in accordance with the activities foreseen in article 22, paragraph 1, letters a), b) and c).

4. The information and documents regarding the identification of the customer or of the beneficial owner shall be forwarded, without delay, upon simple request by the obliged parties.

5. The Agency may identify, by means of instructions, other categories of third-parties upon which the obliged parties may rely on in order to avoid the repetition of obligations foreseen in article 22, paragraph 1, letters a), b) and c).

CHAPTER III

ADDITIONAL MEASURES

Article 30

(Prohibition to maintain anonymous accounts or accounts in fictitious names)

1. Except as provided in article 31, financial parties are prohibited to maintain anonymous accounts or accounts in fictitious names.

Article 31

(Limitations on the use of cash and bearer securities)

1. The transfer between different parties of cash and bearer securities referred to in the subsequent paragraphs, when the value of the transaction, also fractioned, is more than 15,000 euros, shall take place exclusively through a party authorized to conduct the reserved activity referred to in letters A), C) or I) of Annex 1 of Law N° 165 of November 17, 2005.

2. Cheques drawn on banks in San Marino or issued by these banks, for individual amounts exceeding that foreseen in the previous paragraph, shall bear the name and surname or the company name of the beneficiary and the clause “non-transferable”.

3. The balance of bearer passbooks issued from the date on which this law enters into force shall not be more than 15,000 euros.

4. Bearer passbooks issued before the date on which this law enters into force, whose balance exceeds the 15,000 euro limit, shall be closed or converted into relationships consistent with the provisions of this law by December 31, 2010.

5. Starting on January 1, 2012, it will no longer be possible to issue bearer passbooks and those issued before that date shall be closed or converted.

6. Except as provided in the previous paragraphs, for each deposit or withdrawal, closure or conversion regarding bearer passbooks, banks shall carry out customer due diligence obligations as set forth in article 22, paragraph 1, letters a) and b).

Article 32

(Obligation of communication to the Agency)

1. The obliged parties that detect violations of the provisions referred to in article 31, in the course of their activities, shall inform the Agency without delay.

Article 33

(Special measures for the electronic transfer of funds)

1. The Agency regulates the following with its own instructions:
   a) the data and information that the financial parties, authorized to carry out reserved activity referred to in letter I) of Annex 1 of Law N° 165 November 17, 2005, are required to be obtained about those parties ordering the electronic transfer of funds;
   b) the ways for registering and maintaining these data and information.

2. The financial parties shall deny the transfer of funds when they are not provided with the information referred to in the previous paragraph. If the financial party having received the transfer order fails to provide the information, the financial party to which the transfer order is addressed shall request the information in written form. Where the request is not satisfied, the financial party shall implement the enhanced measures set forth in article 27 and evaluate whether to suspend relations with the financial party that has received the transfer order. The financial party shall forward to the Agency, without delay, a copy of the request for information sent to the counterpart.

CHAPTER IV

REGISTRATION AND REPORTING OBLIGATIONS

Article 34

(Obligations for registering and maintaining documents and information)

1. The obliged parties shall register the data and information required when fulfilling customer due diligence obligations and shall keep the records and copies of the documents obtained for at least five years from the closure of the business relationship or execution of the occasional transaction.

2. The obliged parties shall register and keep the records and registrations of the business relationships and occasional transactions or professional services provided. In particular, they shall register and maintain all original documents or copies admissible in court proceedings, for a period of at least five years from the closure of the business relationship or execution of the transaction or professional service.

3. The data and information referred to in the previous paragraphs shall be registered no later than five days after their acquisition.

4. All the data, information and documents registered and maintained by the obliged parties shall be made available to the Agency without delay for the carrying out of its functions of preventing and combating money laundering and terrorist financing.

Article 35

(Supplementary measures for financial parties)

1. The financial parties 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.

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.

Article 37

(Possibility to report)

1. Anyone can report to the Agency facts or circumstances relevant to the preventing and combating of money laundering and terrorist financing.

Article 38

(Safeguarding of professional secrecy)

1. Members of the Registry of Lawyers and Notaries and members of the Registry of Accountants (*holding a university degree or holding an high school certificate*) may invoke professional secrecy, in front of the Judicial Authority, the Financial Intelligence Agency and the Police Authorities, on the information they acquire while defending and representing their client during a judicial or administrative proceeding or in relation to that proceeding, including advice on the eventuality of prosecuting or avoiding a proceeding, where the information is received or obtained before, during or after such proceeding.

2. In the cases provided in the previous paragraph, lawyers and accountants have no reporting obligations.

3. 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.

4. 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.

5. 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.

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 N° 165 November 17, 2005. The suspicious transactions reports and disclosures made in good faith shall not entail liability of any kind.

Article 40

(Confidentiality of the identity of the reporting person and secrecy of the reports)

1. The obliged parties shall adopt suitable measures to ensure the maximum confidentiality of the person that has detected the suspicious transaction in accordance with article 36, paragraph 1, letters a) and b).

2. The acts and documents related to the suspicious transactions reports shall be kept under the responsibility of the obliged party, its legal representative or one of its delegates.

3. The Agency shall adopt appropriate measures to guarantee the confidentiality of the identity of the person that detected the suspicious transaction. Requests for information to the obliged party, and requests for further investigation, as well as exchange of information related to suspicious transactions reported, shall be made with appropriate ways that guarantee the confidentiality of the person that has detected the suspicious transaction.

4. In case of communication, complaint or report to the Judicial Authority, the identity of the person that has detected this suspicious transaction, even if known, shall not be mentioned.

5. The identity of the person that has detected the suspicious transaction can be revealed only when the Judicial Authority, with a justified decree, declares it essential to the investigation of the offences for which it is proceeding.

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.

7.The communication of the forwarded suspicious transaction reports is permitted among the financial entities located in the Republic of San Marino, belonging to the same group or having business relationships with the same customer, or having executed the transactions reported.

8. Furthermore, the communication is permitted between the obliged parties referred to in article 20 that carry out their professional services in an associated form.

9. Where obliged parties seek to dissuade a customer from engaging in illegal activity, this shall not constitute a violation of the obligation of confidentiality.

10. Where obliged parties disclose information to the party concerned by the freezing provisions ordered by the Agency, if the communication is necessary in connection with the prohibition of transfer, holding or use as referred to in article 6, paragraph 3**,** this shall not constitute a violation of the obligation of confidentiality.

CHAPTER V

PROCEDURES, CONTROLS AND STAFF TRAINING

Article 41

(Control obligations)

1. The obliged parties referred to in article 17 that carry out the activity subject to the obligations set forth in this law, as individuals or associates, as well as legal representatives and those persons that perform management, administration and control functions of the obliged parties organized in a company structure 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.

Article 42

(Functions and powers of the compliance officer)

1. Financial parties, having company status, shall appoint an internal compliance officer in charge of receiving internal suspicious transaction reports, further analysing and forwarding them to the Agency, should he feels reports are grounded on the basis of all the elements in his possession, also inferred from other sources. The suspicious transaction reports shall be forwarded to the Agency without the name of the person who has detected the suspicious transaction in accordance with article 36, paragraph 1, letters a) and b).

2. The compliance officer shall have adequate professional skills and shall be given appropriate powers to carry out the functions referred to in the previous paragraph in full autonomy, including the power to access all information or documents also without authorization.

3. The act of appointment of the compliance officer shall include the specification and evaluation of the requirements of professionalism, as well as the powers conferred. The act of appointment shall be transmitted to the Agency.

4. Until the appointment of the compliance officer, or in case of his absence also temporarily, all his duties and responsibilities related to said function shall be assigned to the legal representative.

5. The compliance officer seeks and obtains information, also through employees and collaborators that at any title, come into contact with the customers or who at any rate know about the business relationships with the customers or the execution of transactions for their benefit.

6. Even in absence of internal suspicious transaction reports, the compliance officer shall analyse the transactions carried out, seek and obtain information and, in the cases set forth in article 36, forward the suspicious transaction report to the Agency.

Article 43

(Compliance officer at non-financial parties)

1. The auditing companies and other non-financial parties may appoint a compliance officer. In case of appointment, the provisions referred to in article 42 shall apply.

Article 44

(Procedures and internal controls)

1. The obliged parties 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.

2. The obliged parties shall inform all employees and collaborators of the obligations set forth in this law and of instructions issued by the Agency. The obliged parties shall inform all employees and collaborators of the measures and procedures adopted for the purpose of preventing and combating money laundering and terrorist financing.

3. The obliged parties shall foster the continuous staff training through participation in specific training programmes on matters of preventing and combating money laundering and terrorist financing.

4. The obliged parties 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.

5. The obliged parties shall be equipped with electronic systems suitable for ensuring the prompt, confidential reception of information sent by the Agency. The information sent by the Agency shall be accessible only to the obliged parties.

6. The financial parties shall extend the obligations referred to in this article to foreign branches.

Article 45

(Obligations of foreign branches and subsidiaries controlled by financial parties)

1. The financial parties shall ensure that their foreign branches or subsidiaries fulfil obligations equivalent to those set forth in this law.

2. In case the legislation of the foreign State does not provide for requirements equivalent to those set forth in the previous paragraph, the financial parties shall give notice to the Agency and Central Bank and adopt supplementary measures to effectively deal with the risk of money laundering or terrorist financing.

TITLE IV
MEASURES FOR PREVENTING, COMBATING AND REPRESSING TERRORIST FINANCING AND THE ACTIVITY OF STATES THAT THREATEN INTERNATIONAL PEACE AND SECURITY

Article 46

(Restrictive measures adopted by the Congress of State)

1. 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, shall adopt without delay a decision outlining restrictive measures, conforming to the resolutions of the United Nations Security Council or one of its Committees. The restrictive measures include the following:

a) the freezing of funds and economic resources held or controlled, directly or indirectly, by persons, entities or groups included in the list drawn up by the appropriate United Nations Committee;
b) commercial restrictions, including commercial restrictions on imports or exports and arms embargoes;
c) restrictions of a financial nature, including financial restrictions or financial assistance and the prohibition of providing financial services;
d) restrictions of any other nature, including restrictions on technical assistance, flight prohibitions, prohibition of entry or transit, diplomatic sanctions, the suspension of cooperation and the boycotting of sporting events.

2. The decision of the Congress of State can introduce additional restrictive measures or specific provisions related to the resolutions adopted by the United Nations Security Council or one of its Committees.

3. The decision of the Congress of State that orders the enforcement of restrictive measures can provide for derogations of or limitations to the United Nations Security Council resolutions for reasons of public order or interest.

4. Where a resolution of the United Nations Security Council or one of its Committees provides for the adoption, amendment or abrogation of restrictive measures, the Congress of State shall provide by means of a decision for their enforcement in the territory of the Republic of San Marino.

5. The decisions referred to in the previous paragraphs shall be immediately published *ad valvas Palatii* and at the Court, and from that moment they are expected to be known by every one.

6. The decisions are sent to the Agency that shall provide for their transmission to the Judicial Authority, the State Administrations referred to in article 48 and the obliged parties referred to in article 17.

Article 47

(Effects of the freezing of funds and economic resources)

1. Except as provided in article 49, the funds and economic resources subject to freezing cannot constitute the object of any transfer, holding or use.

2. It is prohibited to make funds or economic resources available, directly or indirectly, to subjects included in the lists drawn up by the appropriate Committees of the United Nations or to allocate them for their benefit.

3. The freezing is effective from the date of the adoption of the Congress of State decision.

4. Acts carried out in violation of the prohibitions referred to in the previous paragraphs are null and void.

5. The freezing does not prejudice the effects of any seizure or confiscation proceedings, adopted in the field of proceedings having the same funds or economic resources as their object.

6. The freezing of funds and economic resources, the omission or refusal of financial services deemed in good faith conforming to this law shall not imply any kind of responsibility for the natural person, legal person or entity without legal personality who applies it, neither for its directors nor employees.

Article 48

(Communication obligations)

1. The State Administrations that keep public registries, which have data or information relating to frozen funds or economic resources, shall immediately give notice to the Agency.

2. The Agency shall order to annotate in the public registries the freezing of registered movable and immovable assets.

3. The obliged parties referred to in article 17 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.

Article 49

(Functions of the Committee for Credit and Savings)

1. The Committee for Credit and Savings, under Law N° 96 of June 29, 2005 and subsequent amendments, has the competence to evaluate requests for unfreezing of funds and economic resources presented by the interested parties. The decision shall be adopted within four months from the presentation of the request.

2. In case of abrogation of a freezing measure under article 46, paragraph 4, the Committee for Credit and Savings shall take the necessary actions to return the assets to the rightful owner or, in cases involving registered movable or immovable assets, to annotate the unfreezing order in the public registries.

3. The Committee for Credit and Savings may authorize - upon completion of the procedure referred to in the following paragraph 4 - that the frozen assets or property be used to meet the fundamental needs be accessible of the subjects included in the list referred to in article 46, or of family member, including to pay for foodstuffs, medicines, housing, medical care and legal assistance. The Committee for Credit and Savings may similarly authorize that the frozen assets or property be used to pay taxes and other tax liabilities, mandatory insurance obligations and, bank fees for bank account maintenance.

4. The authorization requested, referred to in the previous paragraph, shall be notified to the competent United Nations Security Council Committee. The authorization cannot be granted if the United Nations Security Council Committee takes a contrary decision.

5. The Committee for Credit and Savings shall formulate proposals to the competent International Organisations for listing persons, entities or groups, on the basis of information provided by the Agency and other national authorities according to the criteria and ways established in the United Nations resolutions.

6. 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.

7. The Agency, Police Authorities, Interpol National Central Office, and Public administrations shall communicate to the President of the Committee for Credit and Savings, by way of derogation from every provision in force on matters of official secrecy, information referring to the functions foreseen in paragraphs 5 and 6. The Judicial Authority shall send to the Committee all information deemed useful for the same purposes, when this communication does not prejudice the ongoing investigations.

8. Whenever, on the basis of information acquired in compliance with the previous paragraphs, there are sufficient elements to formulate proposals of designations to the competent International Organisations and in the meantime there is the risk that the assets to be frozen might be lost, concealed, or used for terrorist financing, the Committee for Credit and Savings shall inform the Agency of this fact, which, whenever there are the conditions foreseen in article 5, paragraph 1, letter d), shall order the freezing of said assets.

9. The Committee shall take action in the same manner also when foreign authorities communicate the adoption of measures of freezing in respect of subjects not included in the lists foreseen in article 46, paragraph 1, letter a). The information and documentation shall immediately be transmitted to the Agency.

10. The Agency shall take the actions set forth in article 5, paragraph 1, also on its own initiative, when it receives from national or foreign authorities evidence that assets derive from terrorist financing or may be used to finance terrorism or activities that threaten international peace or security.

Article 50

(Jurisdictional protection)

1. The interested subject can lodge personally or through a lawyer, an appeal against the restrictive measures ordered by the Congress of State decision and against the provisions adopted by the Committee for Credit and Savings. A jurisdictional appeal is also admitted against the same measures.

2. By way of derogation from article 3 of Law N° 5 of January 25, 1984, the interested subject, if he/she has not designated his/her own defence lawyer or has no defence lawyer, shall be assisted by the public defender also in proceedings before the administrative judge. No compensation shall be owed to the public defender for the professional services provided under this article.

TITLE V
STAFF OF POLICE FORCES

CHAPTER I

DETACHMENT AND TRAINING OF POLICE OFFICIALS

Article 51

(Assignment of police officials)

1. For the fulfilment of the duties established by the law and international obligations, upon request by the Director and approval by the Congress of State, police officials, who have a specific attitude and preparation in relation to the functions envisaged by this law, may be assigned to the Financial Intelligence Agency, also for limited periods of no less than one year.

2. The police officials shall be selected by the Director of the Agency, in agreement with the investigating judges and the Commanders of the Police Forces, taking into consideration rank, educational degree and experience in the prevention and combating of financial offences.

3. The Commanders of the Police Forces shall guarantee the Agency an adequate number of qualified officials for the fulfilment of the duties assigned by this law.

4. Police officials assigned to the Agency shall be exonerated from duties and obligations deriving from regulations of the Corps to which they belong that are not inherent to judicial police functions, except for exceptional circumstances that shall be notified to the Agency.

Article 52

(Police officials training)

1. The Agency shall contribute to the training of the police officials on matters of financial investigations. For this purpose, it shall promote training through courses and internships of a duration no longer than six months, according to the specific agreement protocols undersigned with the Commanders of the Corps to which they belong.

TITLE VI
SANCTIONS

CHAPTER I
PENAL SANCTIONS

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.

Article 54

(Omitted or false statements regarding customers)[2]

1. Except where the conduct amounts to a more serious crime, anyone who omits to specify the personal details of the person on whose behalf he carries out the transaction, or provides false information shall be punished by terms of imprisonment or second-degree daily fine.
2. The same punishment envisaged in the preceding paragraph shall also be applied to anyone who does not provide information on the purpose and nature of the business relationship or occasional transaction.

Article 55

(Disregard of the reporting obligation)

1. Except where the conduct amounts to a more serious crime, anyone who disregards the reporting obligations set forth in article 36, shall be punished by terms of first-degree imprisonment and second-degree daily fine.

Article 56

(Actions intended to prevent reporting)

1. Except where the conduct amounts to a more serious crime, anyone using violence, threatening or giving, offering or promising an advantage for the purpose of delaying or preventing that report of a suspicious transaction, even if not carried out, is transmitted to the Agency or Judicial Authority, shall be punished by terms of second-degree imprisonment and second-degree daily fine.

2. Anyone who uses violence, threatens, offers or promises an advantage, after that the report has been transmitted to the Agency or Judicial Authority, shall be punished by terms of imprisonment of second-degree.

Article 57

(Disregard of the orders and provisions issued by the Agency and Congress of State)

1. Except where the conduct amounts to a more serious crime, anyone who, without justified reason, disregards, delays or hinders the execution of an order, request or provision issued by the Agency under article 5, shall be punished by terms of second-degree imprisonment and second-degree disqualification.

2. The same penalty shall be applied to anyone who disregards the restrictive measures adopted by decision of the Congress of State under article 46.

Article 58

(False or omitted declarations to the Agency)

1. Anyone who, if required by the Agency to provide data or information useful for the investigation, bears false declarations or withholds, entirely or in part, what he/she knows about facts for which he/she has been summoned, shall be punished by terms of second-degree imprisonment.

2. The provisions referred to in the previous paragraph do not apply if the false or reticent declarations are borne by the person who is being investigated.

[2] As amended by art. 7 of Law No. 73 of 19 June 2009

Article 59

(False information in acts intended for the Agency)

1. Except where the conduct amounts to a more serious crime, anyone who declares or states false information in acts or documents intended for the Agency, shall be punished by terms of second-degree imprisonment.

2. The same penalty shall apply to anyone who provides the Agency with documents containing false information.

3. If the action involves acts or documents to be provided to the Judicial Authority, the penalty shall be a third-degree imprisonment.

Article 60

(Evading measures for freezing funds)

1. Anyone who carries out actions intended to evade measures for freezing funds referred to in article 46, paragraph 1, letter a), shall be punished by terms of imprisonment, daily fine and disqualification of third-degree. Moreover, pecuniary administrative sanctions up to double of the value of the funds or economic resources object of the freezing shall be applied.

Article 61

(Violation of customer due diligence and abstention obligations)[3]

1. The violation of customer due diligence obligations established by this law shall be punished by terms of first-degree arrest or second-degree daily fine. A pecuniary administrative sanction from 2,000 to 40,000 Euros shall also be applied.
2. If the violation of customer due diligence obligations is carried out using fraudulent means, the punishments envisaged in the preceding paragraph shall be increased by one degree and the pecuniary administrative sanction shall be doubled.
3. The violation of the obligations of abstention set forth in Article 24 shall be punished by terms of first-degree arrest or second-degree daily fine. A pecuniary administrative sanction from 5,000 to 50,000 Euros shall also be applied.
4. Except as provided in Article 54, the violation of the obligations to provide information for applying customer due diligence obligations shall be punished by terms of first-degree arrest or second-degree daily fine. A pecuniary administrative sanction from 3,000 to 50,000 Euros shall also be applied.

Article 62

(Non-compliance with or delay in the fulfilment of registration and maintenance obligations)[4]

1. Anyone violating the obligations established in Article 34, paragraphs 1, 2 and 3 shall be punished by terms of first-degree arrest or second-degree daily fine. A pecuniary administrative sanction from 2,000 to 40,000 Euros shall also be applied.
2. If the violation of the obligations is carried out using fraudulent means, punishments shall be increased by one degree and the pecuniary sanction shall be doubled.

[3] As amended by art. 9 of Law No. 73 of 19 June 2009
[4] As amended by art. 10 of Law No. 73 of 19 June 2009

CHAPTER II

ADMINISTRATIVE VIOLATIONS

Article 63

(Violation of the prohibition to keep anonymous accounts and violation of the limits on the use of currency and bearer securities)

1. The violation of the prohibition to keep anonymous accounts or accounts in fictitious names, shall be punished with a pecuniary administrative sanction of 2,000 to 50,000 euros.

2. The violation of article 31, paragraphs 1 and 2 shall be punished with a pecuniary administrative sanction up to half the amount of each transaction.

3. The violation of the provisions set forth in article 31, paragraphs 3, 4 and 5 shall be punished with a pecuniary administrative sanction up to one half of the balance of the bearer passbook.

Article 64

(Violation of the provisions on matters of freezing funds)

1. Except where the conduct amounts to a more serious crime, the violation of the provisions referred to in article 47, paragraph 1, shall be punished with a pecuniary administrative sanction up to double of the value of the funds or economic resources object of the transfer, holding or use.

2. Except where the conduct amounts to a more serious crime, the violation of the provisions referred to in article 47, paragraph 2, shall be punished with a pecuniary administrative sanction up to double of 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.

Article 65

(Violation of the obligation of communication regarding frozen funds and resources)

1. 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.

Article 66

(Other violations)

1. Except for the criminal and administrative violations referred to in the previous articles, the violation of other provisions envisaged in this law shall be punished with a pecuniary administrative sanction from 200 to 20,000 euros.

Article 67

(Violation of instructions)

1. Except for the administrative and criminal violations envisaged in this law, the violation of the instructions issued by the Agency shall be punished with a pecuniary administrative sanction from 200 to 20,000 euros.

CHAPTER III

RESPONSIBILITY FOR ADMINISTRATIVE VIOLATIONS

Article 68

(Subjective element for administrative violations)

1. In the administrative violations envisaged in this law, each person is responsible for his own actions or omissions, consciously and voluntarily, both fraudulent and negligent.

Article 69

(Complicity of persons)

1. Where one or more persons act in complicity in an administrative violation, each one of them shall be subject to the sanction prescribed for this action.

Article 70

(Joint liability)

1. If the violation is committed by a person subject to another authority, management or control, the person vested with the authority or having the responsibility for the management or control shall be held jointly liable for the payment of the amount owed by the perpetrator of the violation, unless the person proves that he could not have prevented the violation.

2. If the violation is committed by the representative or employee of a legal person or entity without legal personality, by an entrepreneur, or professional in the exercise of his own functions or commissions, the legal person, entity, entrepreneur or professional shall be held jointly liable for the payment of the amount owed by the perpetrator of the violation.

3. In the cases envisaged in the previous paragraphs, anyone who is held jointly liable has the obligation to claim against the perpetrator of the violation.

4. The joint liability referred to in paragraphs 1 and 2 exists even if the perpetrator of the violation has not been identified.

Article 71

(More violations of provisions subject to administrative sanctions)

1. Unless otherwise established by the law, anyone who, through actions or omissions, violates several provisions that set forth administrative sanctions or commits more than one violation of the same provision, shall be subject to the sanction envisaged for the most serious violation, increased up to three times the amount.

Article 72

(Criteria for the application of pecuniary administrative sanctions)

1. In determining the pecuniary administrative sanction established by the law between a minimum and a maximum limit, the seriousness of the violation, the behaviour subsequent to the violation aimed at aggravating or attenuating the consequences of the violations, the behaviour and economic conditions of the perpetrator of the violation shall be taken into account.

Article 73

(Voluntary settlement)

1. For the administrative violations set forth in this law, by way of derogation from article 33, paragraph 1, letter a) of Law N° 68 of June 28, 1989, the offender may exercise the right to voluntary settlement, consisting in the immediate payment of half of the sanction applied in accordance with article 72.

Article 74

(Application of the sanctions)

1. The Agency shall provide for the ascertainment of the administrative violations and application of the sanctions set forth in this law.

CHAPTER IV

INVALIDITY OF ACTS EVIDENCING TITLE TO ASSETS SUSCEPTIBLE TO CONFISCATION

Article 75

(Nullity of the acts evidencing title to assets susceptible to confiscation)

1. Any act - fulfilled in any capacity - evidencing title to assets, funds or economic resources that constitute directly or indirectly the price, product or profits from an offence is null and void, if the person who has received such assets, funds or economic resources knew or should have known that they derived from an offence.

2. "*I Sindaci di Governo*" [*authorities dealing with acts and deeds involving the State*] shall convene the assignor, assignee and any subsequent assignees that are jointly sentenced to the transfer of assets, funds or economic resources to the *Ecc.ma Camera* [*State*], or, if this is not possible, to the payment of an equivalent sum.

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. Any other reciprocal action between the assignor, assignee and any subsequent assignees is guaranteed.

5. Any action is guaranteed to the person damaged by the offence from which the assets, funds, or economic resources are derived.

6. This article shall apply by way of derogation from the general provisions in force regarding matters of contractual invalidity, with the aim of more effectively preventing and combating money-laundering and terrorist financing.

TITLE VII

AMENDMENT TO LEGISLATION IN FORCE

CHAPTER I

SUPPLEMENTS AND AMENDMENTS CONSEQUENT ON INTERNATIONAL CONVENTIONS

Article 76

(Criminal jurisdiction, extradition and confiscation)

1. In article 6 paragraph 1 of the criminal code, after "337 *bis*", introduced in article 2 of Law N° 28 of February 26, 2004, the term "337 *ter*," is added and after "347," the term "374 *ter*" is added.

2. In article 8 paragraph 3 of the criminal code, after the terms “in no case shall be deemed political”, introduced in article 3 of Law N° 28 of February 26, 2004, the terms “crimes set forth in articles 337 *bis*, 337 *ter* as well” are added.

3. In article 140 of the criminal code, the following number: “6. Payments of sum in money set forth in article 147 paragraph 3” is added.

4. Article 147, paragraph 3 of the criminal code is replaced by the following:

“In case of conviction, the confiscation of the instrumentalities that served or were destined to commit the offences 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 the for the purpose of terrorism or subversion of the constitutional order, and of the things being the price, product or profit is always obligatory. Where confiscation is not possible, the judge shall impose an obligation to pay a sum of money equal to the value of the instrumentalities and things referred above”.

Article 77

(Property crimes)

1. Article 199 of the criminal code is replaced by the following:

“*Sale of stolen property* – Apart from cases of complicity to commit an offence, anyone who buys or receives properties knowing that these are proceeds of crime, shall be punished by terms of second-degree imprisonment and second-degree daily fine and third-degree disqualification from public offices and political rights.

Where a bankruptcy procedure is initiated, the same penalty shall apply to anyone who, for profit making purposes, intervenes to lead others to buy or receive properties which are proceeds of crime, or receives properties owned by individuals or companies knowing that such individuals or company suffer insolvency or buys such properties at a much lower price.

2. After the fourth paragraph in article 199 *bis* of the criminal code, the following paragraphs are inserted:

“Anyone who commits crimes set forth in this article shall be punished by terms of fourth-degree imprisonment, a second-degree daily fine and third-degree disqualification from public offices and political rights.

The penalties may be decreased by one degree based on the amount of money or assets equivalent to them and by the nature of the transactions carried out. The penalties may be increased by one degree when the facts have been committed during the exercise of a commercial-professional activity subject to authorization or certification by the competent Public Authorities.

The judge shall apply the corresponding penalty for the predicate crime, if this is less serious.”

3. The first paragraph of article 207 of the criminal code is replaced by the following:

“Anyone who takes or promises, in return for a professional services, an exorbitant interest rate or other advantages or intervenes to lead [someone] to receive or promise to others the aforementioned interests or advantages, shall be punished with a third-degree imprisonment, a second-degree daily fine and third-degree disqualification from public office and political rights.

4. In article 207 paragraph 2 of the criminal code, the terms “by the Office of Banking Supervision” are replaced by the following: “by the Central Bank of the Republic of San Marino.”

5. After the third paragraph in article 207 of the criminal code, the following paragraph is added:

“The penalties may be decreased by one degree considering the amount of money or the amount of the interests. The penalties may be increased by one degree when the facts have been committed during the exercise of a commercial-professional activity subject to authorization or certification by the competent Public Authorities or if the offender is a usurer.”

Article 78

(Terrorism crimes)

1. The first paragraph in article 337 *bis* of the criminal code is replaced by the following:

"Anyone promoting, establishing, organizing or directing associations that aim at perpetrating violent acts for purposes of terrorism or subversion of the constitutional order, against public or private institutions or bodies either of the Republic of San Marino, of a foreign State or an International Organisation, shall be punished by terms of sixth-degree imprisonment and fourth-degree disqualification from public offices and political rights."

2. After article 337 *bis* of the criminal code, the following article is inserted:
"Article 337 *ter*. *Financing of terrorism* – 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 services, shall be punished by terms of sixth-degree imprisonment and fourth-degree disqualification from public offices and political rights."

Article 79

(Crimes against the public administration)

1. The first paragraph in article 373 of the criminal code is replaced by the following:
"A public official, who receives any undue advantage for himself or others, or accepts the promise of the advantages with the purpose of omitting or delaying or for having omitted or delayed an act of his office or of carrying out or having carried out an act contrary to his official duties, shall be punished by terms of fourth-degree imprisonment and fourth-degree disqualification from public offices and political rights as well as a third-degree daily fine."

2. After article 374 of the criminal code the following articles are inserted:
"374 *bis*. *Instigation of corruption* – Anyone who offers or promises any undue advantage to a public official or public employee, who does not have an official capacity, in order to lead him to omit or delay an act of his office, or to carry out an act contrary to his duties shall be punished, whether the offer or promise has been accepted or not, by terms of third-degree imprisonment and third-degree disqualification from public offices and political rights as well as a second-degree daily fine.
If the offer or promise has been made to lead a public official or public employee, who does not have an official capacity, to carry out an act of his office, whether the offer or promise has been accepted or not, the offender shall be subject to third-degree arrest and a second-degree daily fine.
The penalty referred to in the first paragraph shall be applied to the public official or public employee, who does not have an official capacity, that demands a promise or gift of any advantage from a private citizen for the purposes foreseen in article 373.
The penalty foreseen in the second paragraph shall be applied to the public official or public employee, who does not have an official capacity, that demands a promise or gift of any advantage from a private citizen for the purpose foreseen in article 374."
"374 *ter*. *Embezzlement, extortion, corruption and instigation to corruption of officials from foreign and international public organizations* – The provisions of articles 371, 372, 373 paragraphs 1, 2 and 3, 374 paragraph 1, and 374 *bis* paragraphs 3 and 4, shall be applied to those who exercise functions or activities equivalent to those of a public official or public employee, who does not have an official capacity in the field of foreign or international public organizations as well as officials and agents recruited by contract in foreign or international public organizations.
The provisions of articles 373 paragraph 4, 374 paragraph 2, 374 *bis* paragraphs 1 and 2, shall be applied even if the advantage has been given, offered or promised to persons foreseen in the first paragraph of this article."

Article 80

(Misuse of privileged information)

1. The fourth paragraph in article 305 *bis* of the criminal code is replaced by the following:
"Except as provided in article 147, in case of a conviction, the confiscation of the instrumentalities, including financial ones, that were used to commit the crime, shall always be mandatory, except where they belong to a person not involved in the crime."

CHAPTER II

PROVISIONS ON THE EXTRADITION AND TRANSFER OF PRISONERS OR PERSONS IN CUSTODY

Article 81

(Extradition for terrorist crimes)

1. For crimes of association for purpose of terrorism, terrorist financing as well as any crime committed for the purpose of terrorism, in the absence of specific international treaties, 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.

Article 82

(Transfer of a person abroad)

1. Failing a specific International treaty, where a foreign judicial Authority request - for the purpose of fulfilling procedural requirements related to crimes of association for the purpose of terrorism, terrorist financing, or any other crime perpetrated for terrorist purposes - the presence of a person in custody or serving imprisonment as ordered by the San Marino judicial Authority, the judge may authorize the transfer of said person provided that:
a) the person to be transferred consent thereto freely and consciously;
b) the requesting State adopts the measures deemed as most appropriate for the transfer by the San Marino judicial Authority;
c) the State of destination commits itself to keeping the transferee in custody or prison, unless otherwise requested or allowed by the San Marino judicial;
d) the State of destination commits itself to restitution without delay, in accordance with what previously agreed or decided by the requesting authority and the San Marino authority;
e) the State of destination commits itself not to making restitution subject to extradition of the transferee;
f) the State of destination neither prosecutes, nor imprisons or deprives of liberty the transferee for convictions suffered prior to the date of transfer, unless otherwise allowed by the San Marino judicial authority;
g) the State of destination does not provide for the death penalty.
2. The San Marino judicial authority shall take into due account the imprisonment already served in the State of destination in order to determine the punishment to serve in the Republic of San Marino.

CHAPTER III

AMENDMENT TO THE LAW ON FOREIGNERS

Article 83

(Trafficking in migrants)

1. After article 3 of Law N° 22 of February 24, 2000, the following articles are added:
"3 *bis*. *Trafficking in migrants* – Anyone who, for the purpose of making a profit, direct or indirect, carries out acts intended to obtain the illegal entry of one or more persons into the territory of the Republic of San Marino in violation of the laws in force on foreigners or on residencies and permits of stay, shall be punished by terms of third-degree imprisonment and a second-degree daily fine.
The same penalty shall be applied to anyone who, for the purpose of making a profit, direct or indirect, carries out acts intended to obtain the illegal entry of one or more persons into a State of which the person is not a citizen or not a resident.
The penalties referred to in the previous paragraphs shall be increased by one degree upon the following conditions:
a) if, in order to obtain the illegal entry, the person has been exposed to a risk for his/her life or safety;
b) if, in order to obtain illegal entry or stay, a person has been subjected to inhuman or degrading treatment;
c) if the fact has been committed using counterfeit or altered documents, or at any rate illegally obtained.

If the facts referred to in paragraphs 1 and 2 are carried out for the purpose of recruitment for prostitution, or at any rate for sexual exploitation, or when the facts concern the entry of minors to be used in illegal activity, the imprisonment shall be increased by two degrees and a third degree fine shall be applied.

Apart from the cases envisaged in the previous paragraphs and except where the conduct amounts to a more serious crime, anyone who favours by illegal means the stay of a foreigner in the territory of the Republic of San Marino in order to obtain an undue profit, in violation of the laws in force on foreigners, on residences and permits of stay, shall be punished with imprisonment and a second-degree daily fine.

3 *ter*. *Falsification of travel and identity documents* – Except where the conduct amounts to a more serious crime, anyone who, for the purpose of committing the crime of trafficking in migrants or permitting the commission by third parties, counterfeits or alters a travel or identity document or purchases, receives, possesses, gives up or uses a travel or identity document counterfeited or altered shall be punished by terms of third-degree imprisonment.

3 *quater*. *Confiscation* - In the cases envisaged in articles 3 *bis* and 3 ter, the confiscation of the things that served or were destined to commit the offences shall be always mandatory as well as the things being the price, product or profits. Where confiscation is not possible, the judge shall order an obligation to pay a sum of money equal to the value of the things mentioned above.

Confiscated things or the equivalent sums, shall be allocated to the inland revenue or, where appropriate, destroyed.

3 *quinquies*. *Jurisdiction of San Marino* - Any citizen who commits offences envisaged in articles 3 *bis* and 3 *ter* outside the national territory, is subjected to the laws of San Marino.

The laws of San Marino shall also apply to any foreigner who commits the offences envisaged in articles 3 *bis* and 3 *ter* outside the territory of San Marino if he/she is present in the territory of the State and whenever extradition under the laws of San Marino, treaties and international conventions is not possible.

No proceedings shall be taken towards a citizen or foreigner when one of the following conditions is met:

1) the person has been tried abroad and found innocent;

2) the person who, sentenced abroad, has served the entire sentence handed down, even if less severe than that set forth in this law;

3) the person who, sentenced abroad, has served part of the sentence handed down whenever the sentence that has been served is no less than the minimum penalty set forth in this law."

CHAPTER IV

AMENDMENTS TO PROVISIONS REGARDING POWERS AND FUNCTIONS IN THE FIELD OF COMBATING MONEY LAUNDERING AND TERRORIST FINANCING

Article 84

(Special investigative measures and combating of terrorist financing)

1. In article 15, paragraph 1 of Law N° 28 of February 26, 2004, after "337 *bis*", the term: "337 *ter*" is added.

2. Article 17 of Law N° 28 of February 26, 2004 is replaced by the following:

"The Central Bank of the Republic of San Marino shall conduct financial investigations also in cooperation with the Police Forces - subject to the prior authorization of the Commissioner of the Law - which shall report directly to the Central Bank. Where the reported facts might constitute an offence, the Central Bank shall report them to the Single Court."

Article 85

(Amendments to the statute of the Central Bank)

1. In article 12, paragraph 3 of Law N° 96 of June 29, 2005 and subsequent amendments, the terms "and combating money laundering" are repealed.

2. In article 15, paragraph 2 of Law N° 96 of June 29, 2005 and subsequent amendments, the terms "and as an anti-money laundering unit" are repealed.

3. In article 16, paragraph 3 of Law N° 96 of June 29, 2005 and subsequent amendments, the terms "and its anti-money laundering functions" are repealed.

4. In article 29, paragraph 3 of Law N° 96 of June 29, 2005 and subsequent amendments, after the term “penal sanctions” the following terms “and to the Financial Intelligence Agency in the exercise of its function of prevention and combating of money laundering and terrorist financing” are added.

5. In article 30, paragraph 3 of Law N° 96 of June 29, 2005 and subsequent amendments, the terms “and to the anti-money laundering unit” are repealed.

6. In article 33, paragraph 1 of Law N° 96 of June 29, 2005 and subsequent amendments, letter: “e. the anti-money laundering unit” is repealed.

7. Article 48, paragraph 2 of Law N° 96 of June 29, 2005 and subsequent amendments is replaced by the following:

“The Committee for Credit and Savings will be assigned the functions of directing and guiding the supervision over banking, financial and insurance activities and the promotion of national and international cooperation for effectively preventing and combating money laundering and terrorist financing.”

8. After paragraph 3 in article 48 of Law N° 96 of June 29, 2005 and subsequent amendments, the following paragraphs are added:

“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 convene periodically.

5. A Magistrate appointed by the Judicial Council in an ordinary session, the director of the Financial Intelligence Agency or one of his delegates and a representative appointed by the Commanders of the Police Forces shall attend the meetings referred to in the previous paragraph.

6. The President of the 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.”

Article 86

(Amendments to the law on companies and banking, financial and insurance services)

1. Article 36, paragraph 5, letter b) of Law N° 165 on November 17, 2005 is replaced by the following:

“to the supervisory authority in the exercise of its function of supervision, and to the Financial Intelligence Agency in the exercise of its functions of preventing and combating money laundering and terrorist financing.”

2. In article 37, letter c) of Law N°. 165 of November 17, 2005, after the terms “financial nature” the following terms “in cooperation with other competent authorities” are added.

CHAPTER V

AMENDMENTS ON COMPANY LAW

Article 87

(Assembly of anonymous joint stock companies)

1. Paragraph 2 in article 44 *bis* of Law N° 47 of February 23, 2006 and subsequent amendments is replaced by the following:

“2. The notary 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 .”

2. Paragraph 4 in article 44 *bis* of Law N°. 47 of February 23, 2006 and subsequent amendments is replaced by the following:

"4. The information and documents referred to in paragraph 2 may be acquired by the Judicial Authority at the notary's offices in the context of criminal proceedings and by the Financial Intelligence Agency in the exercise of its functions of preventing and combating money laundering and terrorist financing.

5. The notary shall make use of the documents and information referred to in paragraph 2 to fulfil customer due diligence obligation set forth in the law on preventing and combating money laundering and terrorist financing.

6. The notary may release the information and documents referred to in paragraph 2 also to permit the fulfilment of the customer due diligence obligations by the obliged parties set forth in the law on preventing and combating money laundering and terrorist financing .

7. Apart from the cases set forth in paragraphs 4, 5 and 6, the notary who reveals the identity of the bearers of shares shall be punished according to article 377 of the criminal code."

Article 88

(Fulfilment of the customer due diligence obligations regarding anonymous joint stock companies)

1. Failing to release the documents and information by the notary, under article 44 *bis*, paragraph 6 of Law N°. 47 of February 23, 2006 as amended by article 87 of this law, shall not exonerate the obliged parties from fulfilling customer due diligence obligations.

TITLE VIII
TRANSITORY AND FINAL DISPOSITIONS

Article 89

(Abrogations)

1. The following are abrogated:
   a) article 9 of Law N° 41 of April 25, 1996 "Provisions on currency matters";
   b) articles 6, 8 and 16 Law N° 28 of February 26, 2004 "Provisions on anti-terrorism, anti-money laundering and anti-insider trading";
   c) article 39, paragraph 3 of Law N°. 165 of November 17, 2005 "Law on companies and banking, financial and insurance services";
   d) Decree N° 71 of May 29, 1996 "Provisions on the matter of anti-money laundering";
   e) Law N° 123 of December 15, 1998 "Law on the matter of anti-money laundering and usury";
   f) any provision in contrast with this law.

Article 90

(Delegated decree)

1. The following shall be regulated by delegated decree:
   a) the custody, administration and management of economic resources that are the object of freezing measures;
   b) the controls on the transport of money and similar instruments across transnational borders;
   c) the procedures of closing bearer passbooks that have not been converted within the terms set forth in article 31.

2. Upon proposal by the Agency, other entities and other activities may be identified, by a delegated decree, for being subjected to the obligations set forth in this law.

3. The amounts established in article 26, paragraph 2 may be modified by delegated decree.

Article 91
(Delegated decree for the regulation of the Agency)

1. Within one month from the publication of this law, the Congress of State shall regulate the following by delegated decree:

a) the requirements of professionalism, independence, and respectability referred to in article 3, as well as the cases of non-compatibility;

b) the legal status and pay of the Agency staff;

c) the functions of the Director and Vice Director of the Agency;

d) the organizational, functional and financial structure of the Agency.

Article 92

(Beginning of effectiveness of the Agency)

1. The Director of the Agency, appointed under article 3, shall inform the Congress of State, through the Secretary of State for Finance and Budget, of the beginning of effectiveness of the Agency.

Article 93

(Transfer of functions regarding financial analysis activity)

1. On the entry into force of this law, the functions and powers on the matter of combating money laundering and terrorist financing assigned to the Central Bank of the Republic of San Marino by the provisions abrogated by this law, shall be transferred to the Agency.

2. Before the communication referred to in article 92, the functions and powers assigned to the Agency by this law shall be carried out by the Central Bank.

3. The information and documents, also in electronic format, regarding the suspicious transaction reports received, any financial analysis carried out and the exchange of information between financial information units, shall be sent in copy by the Central Bank to the Agency within 30 days from the communication referred to in article 92. The Director of the Agency shall confirm that the documents have been delivered.

4. The electronic systems used by the Central Bank for financial analysis and exchange of information, shall be transferred to the Agency within 30 days from the communication referred to in article 92.

5. The Central Bank shall continue to exercise its duties of financial analysis of reports on suspicious transactions received before the communication referred to in article 92, in accordance with the provisions set forth in this law and compatibly with the organizational structure of the Central Bank. For the ongoing analysis on that date, the Central Bank may make use of the electronic systems transferred to the Agency.

6. Within three months from the communication set forth in article 92, the Central Bank shall inform the Agency of the results of the financial analysis of the suspicious transaction reports received before that communication. To this end, the Central Bank shall transmit a copy of the relative documentation to the Agency.

7. The documents and information already acquired by the Central Bank in the exercise of its functions and powers for preventing and combating money laundering, may not be used for other purposes set forth in article 3 of Law N° 96 of June 29, 2005.

8. Until the recruitment of its staff is completed, the Agency shall rely on the employees and officials of the Central Bank, identified by the Director of the Agency, in agreement with the Director of the Central Bank, taking into consideration the operational and functional requirements of both the Agency and the Central Bank.

Article 94

(Technical Annex)

1. For the purpose of identifying the individuals referred to in article 1, paragraph 1, letter n) and the identification of "assets" or "funds" referred to in article 1, paragraph 1, letter e), reference shall be made to the provisions in the Annex to this law.

2. The Annex referred to in the previous paragraph may be modified or integrated by delegated decree.

Article 95

(Timeframe of fulfilments and instructions)

1. The obliged parties are required to fulfil the obligations of customer due diligence, registration and reporting starting from the entry into force of this law.

2. Within six months from the communication referred to in article 92, the Agency shall issue the following instructions:

a) on the ways for the fulfilment of the obligations referred to in article 22, paragraph 1, letter b);
b) on the risk-assessment and additional evaluations referred to in article 25;
c) on the identification to be carried out through third parties and on the way of transmission of documents and information referred to in article 29;
d) on the information that shall be acquired in case of transfer of funds referred to in article 33;
e) on the typologies of suspicious transactions and procedures for the examination of operations referred to in article 36;
f) on the data and information that shall be registered and maintained according to article 34, paragraph 1.

3. Except as provided in article 25, the obliged parties are required to fulfil the obligations referred to in the previous paragraph according to the way set forth in the instructions issued by the Agency.

4. The provisions referred to in the previous paragraphs shall apply also to occasional transactions and professional services which might be ongoing on the entry into force of this law, as well as relationships existing on that date.

5. The Agency shall suggest to the Congress of State, through the Committee for Credit and Savings, the identification of foreign jurisdictions whose system for preventing and combating money laundering and terrorist financing is equivalent to that set forth in international standards. The Congress of State, by decision, shall identify the equivalent jurisdictions.

6. The circulars and standard letters issued by the Central Bank on matters of preventing and combating money laundering and terrorist financing shall continue to be applied, in such that they are compatible, until the issue of the instructions referred to in paragraph 2.

Article 96
(Entry into force)

1. This law shall enter into force three months after its legal publication.

Issued from our Residence, on this day, June 17, 2008

THE CAPTAINS REGENT

Rosa Zafferani – Federico Pedini Amati

THE SECRETARY OF STATE
FOR INTERNAL AFFAIRS
Valeria Ciavatta

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.

Article 2

("Assets" or "funds" referred to in article 1, paragraph 1, e)

1. The following are considered "assets" or "funds": property of any kind, tangible or intangible, movable or immovable, including means of payment and credit, any document or instrumentalities, even electronic or digital, evidencing title to or interest in such property. The following can be included as an example:

a) cash, checks, bills of exchange, pecuniary credits and claims on money, payment orders and other means of payment;
b) deposits with banks or financial institutions or other entities, the balance on accounts, credits, bonds of any nature and negotiable securities at public and private levels as well as financial instruments as defined by Law N° 165 on November 17, 2005 and subsequent amendments;
c) interests, dividends and other incomes and increases of values generated by the assets;
d) credits, right of set-off (settlement and clearing), guarantee of any nature and other financial commitments, letters of credit, bills of lading and other certificates representative of assets or goods;
e) documents that demonstrate an interest in funds or economic resources;
f) all other instruments of exports-financing.

11. Annex 11: Law No. 47 of 23 February 2006 – Corporate Law (Consolidated Text)

CONSOLIDATED TEXT
as ensued after the amendments and/or integrations made with
DELEGATE DECREE N° 130 of 11 December 2006 and N° 33 of 20 February 2008

TITLE I

GENERAL PROVISIONS

SECTION I
DEFINITIONS AND GENERAL ASPECTS

Art.1 (most recently superseded with Delegate Decree no. 33 of 20 February 2008)

(Definitions)

11. The below listed terms have the following meanings in this law:
1) "Law" stands for this law, its successive amendments and integrations;
2) "Register" stands for the Register of Companies envisaged in article 6;
3) "Register of Auditors" stands for the register of Auditors established by Law N° 146 of 27 October 2004;
4) "Trust Company" stands for the company authorized to conduct the reserved business indicated by the letter C of Annex 1 to Law N° 165 of 17 November 2005;
5) "Holdings" stands for shares or equities;
6) "Registrar" stands for the Court Registrar who holds the Register;
7) "Subsidiary Companies" means companies controlled by another company, as established by article 11, sub-section 2), of Law N° 102 of 20 July 2004;
8) "Associated Companies" are companies over which another company exercises a considerable influence, this meaning when at least one fifth of the votes in the shareholders' meeting may be exercised;
9) "Unfit Party" stands for a an natural person who:

a) has been sentenced, with a definitive penal sentence, to a term of imprisonment of not less than three months for offences against property committed during the past fifteen years;

b) has been sentenced, with a definitive penal sentence, to a term of imprisonment of not less than two years for different offences from those indicated under the previous letter a), committed during the past fifteen years;

c) is subjected to a procedure for settlement with creditors or an equivalent procedure governed by foreign law that is either in progress or concluded less than fifteen years ago, or a legal entity that:

a) is subjected to a procedure for settlement with creditors or compulsory liquidation due to insolvency or equivalent procedures also governed by foreign law that are either in progress or concluded less than fifteen years ago;

b) is subjected to voluntary liquidation as a result of winding-up proceedings;.».

10) "Certification" means:

a) if the term refers to a juridical person, the "Certificate of Registration" of that party;

b) if the term refers to a natural person, the General Penal Record Certificate issued in accordance with Law 13 September 1906.

11) "Holding Companies" stands for companies authorized to conduct reserved business in accordance with Law N° 165 of 17 November and that are governed by this law.

12) "Formal control of documentation" by the Registrar means verification exclusively of the existence of the formal requirements in documentation, of the presence of documents containing administrative authorisations

necessary according to the nature and the location in which the activity represented by the corporate purpose is performed, of Certification, of the absence of the conditions for the integration of the definition of Unfit Party, and of the production of the other documents required specifically by the Law for the recording of records and data in the Register.

2. The Certification of non-resident parties or those without headquarters in the Republic of San Marino must be substantially equivalent to that indicated under number 10 of the previous sub-section

. With reference to natural persons, the certification that attests to the inexistence of the status of Unfit Party will be considered substantially equivalent. With reference to juridical persons, the certification showing the contents of the Certificate of Registration and that this certification has been issued by the party responsible for keeping the Register of Companies in the country in which the juridical person has its headquarters, will be considered substantially equivalent. The competent Commissioner of Law may issue circulars in order to identify the equivalences on a general scale or to give further details about the way the substantial equivalence of the Certification is evaluated.

The evaluation of the matters indicated in the Penal Record Certificate must take into account the causes for extinction of the offence, the causes for extinction of the penal effects of the sentence, rehabilitation and the provisions that are more favourable to the offender in the Penal Code, in the laws that implement and integrate the Penal Code and in the other laws and decrees of the Republic. In the case where the foreign State does not issue certificates with characteristics similar to those specified by the Law, the Certification is replaced by a declaration of the competent Consular Authority, which must also indicate the existence of any other replacement documents issued by the foreign State Authorities.

3. The natural persons who reside in the Republic of San Marino and the San Marinese citizens may substitute the Certification with a solemn affirmation issued in compliance with the formalities established by Law N° 105 of 21 October 1988. 105.

4. The Certification, in the form of an original or a conforming copy, must not bear a date more than six months prior to the date on which it is presented to the Registrar's office or exhibited to a notary when the company is established».

Art.2

(Types of Company)

1. Companies with registered offices in the territory of the Republic of San Marino are subject to San Marinese law and, if their scope is business esercised for the purpose of sharing the profits amongst the partners, they must be established in accordance with one of the types governed by the law.

2. The provisions concerning companies that exercise the activities indicated in Laws N° 165 of 17 November 2005 and N° 168 of 22 November 2005 remain valid, as do the provisions governing the cooperative companies and other companies governed by special laws for which this law cannot be applied in relation to the differently regulated part.

3. Participation by the State or by other Public Authorities in joint-stock companies established in the Republic does not lead to derogation from the provisions established by this law.

4. The companies governed by this law must be established in one of the following forms:
a) partnerships:
- unlimited partnerships;
b) companies with share capital:
- joint-stock companies;
- public limited companies;
- limited liability companies.

5. After issue of the authorization indicated in the following article 16, other types of company more able to achieve the business purpose are permitted so long as their aim is to accomplish interests that are worthy of being safeguarded and that are not in contrast with public order.

6. Both natural and juridical persons can be partners of companies with share capital.

Art.3

(Societies among professional persons)

1. Persons who exercise non-subordinate professions in accordance with Law N° 28 of 20 February 1991 and successive amendments and integrations, can establish a society so as to conduct together the professional activity for which they are authorized, to coordinate the intellectual activities of their different specializations and provide services and commodities connected or simply supplementary to the professional activities of the individual partners, without the need for the authorization indicated in the following article 16.

2. These societies and the activities of the partners are governed by the laws concerning unlimited partnerships, as well as the relevant provisions for conducting intellectual professions, in general, and individual professions, insofar as they are compatible.

3. The society can be established with a number of partners no higher than one fifteenth of the persons registered in the rolls to which the partners belong. In the case of interprofessional societies, the calculation is made in relation to all the rolls of all the partners.

4. The business name must contain the names of at least two of the partners, indicate the activity of the society and must be followed by the words "society among professional persons".

5. The names of all the partners must be indicated in the correspondence, documents and communications of the society.

6. The professional assignment is understood to have been undertaken by the society even when entrusted to a single partner and the partners must make the fact that they belong to the society known when they accomplish their professional assignments. Professional secrecy and confidentiality are the duties of all the partners, who must make sure that they are also complied with by the collaborators, subordinates and the employees of the society.

7. The customers, opposite parties and the public administration authorities must be informed that the professional persons belong to a society among professional persons.

8. When it comes to the professional assignments already in progress when the society is established, notification must be made the first time the office is exercised after the society has been established.

9. The laws governing the tariffs of the profession of the party who performed the assignment apply to the work supplied by the society in relation to fees, allowances and expenses. If the work is carried out by several partners, the fee established for one single professional person is applied unless different agreements are reached with the customer. Indications for determining the fees the society is due are given by the Council of the Order or by the professional Board to which the professional person who carried out the work belongs. Interprofessional jobs must be explicitly requested or established with the customer. In this case, the work is evaluated separately and is entitled to separate fees, otherwise the fee for a single professional person is due and with application of a single tariff.

10. The professional activities conducted by the partners give rise to all the obligations and rights established by the social security and fiscal laws governing the various different professions. Contributions of an objective nature are due to the same extent as applied to the jobs done by single professional persons.

11. The services rendered by societies among professional persons must be carried out personally by the partners aided, if necessary, by collaborators and assistants.

12. The civil liability deriving from the professional activities conducted by the individual partners is at the charge of the society among professional persons, without prejudice to the internal relations with regard to any recourse, if applicable.

13. The society must stipulate an adequate insurance contract to cover the damages indicated in the previous sub-section and must notify the details to customers who so request.

14. The professional persons who are part of a society among professional persons must only render their services on behalf of the society. They are not allowed to take part in more than one society among professional persons.

15. The rolls of the orders and professional boards established and governed in accordance with Law N° 28 of 20 February 1991 and successive amendments and integrations contain, for the registered persons involved, indications about the capacity as member of a society among professional persons.

16. In relation to registered persons who are members of societies among professional persons, the professional orders and boards exercise the powers and functions esablished by Law N° 28 of 20 February 1991 and successive amendments and integrations, concerning the individual professional persons themselves. In particular, they safeguard the dignity of the profession and ensure compliance with the principles of professional deontology applicable to the accomplishment of the activity as a society.

17. Violation of the terms of the partnership can lead to disciplinary measures.

18. A partner who is cancelled or struck off from his rolls will be automatically excluded from the society.

19. If a partner is suspended from exercising his profession, or if a partner is guilty of serious breach or is incapable of carrying out his tasks, his exclusion from the society, in the absence of explicit indications in the articles of association, is deliberated by the majority of the partners, not counting the partner to exclude amongst these, and comes into effect once thirty days have elapsed from the date on which the excluded partner is notified of the decision.

20. Unless established differently by the deed of partnership, the provisions laid down by the following article 38 governing the withdrawal of partners are applied, insofar as they are compatible, when a partner is turned out of a society and the relative share capital is liquidated.

21. If the society comprises two partners, the exclusion of one is pronounced by the Commissioner of Law upon the request of the other partner, without prejudice to the fact that procedures for winding up the society must begin should the number of partners fail to be re-established within three months.

22. The partner may withdraw from the society, even when established for a fixed term, with no less than six months prior notice in agreement with the other partners.

23. Unless established differently by the deed of partnership, the provisions laid down by the following articles 37 and 38 are applied when a partner withdraws from a society and the relative share capital is liquidated.

24. Business or entrepreneurial activities cannot be conducted by societies among professional persons. The society can invest in securities and can possess registered real estate and movable property directly used for running its activity. Transfer, in favour of the society, of instrumental contracts drawn up by the individual professional persons during the accomplishment of their professions prior to becoming a partner of a society, may take place within one year from the partner in question having entered the society or from the establishment of this latter, by means of simple notification sent by the society by registered letter to the contracting party without this latter being entitled to object.

25. The society among professional persons must keep the accounts envisaged in article 72.

Art.4

(Liability for the obligations of the company)

1. In unlimited partnerships, all the parners are answerable jointly, severally and unlimitedly for the company’s obligations and agreements to the contrary are of no effect in relation to third parties.

2. Only the company is answerable with its proprietory equities for the obligations of joint-stock companies.

Art.5

(Business name)

1. The type of undertaking must always be indicated in the business name.

2. The business name of ordinary partnerships must contain the name of one or more of the partners.

Art.6 (most recently superseded with Delegate Decree no. 33 of 20 February 2008)

(Register of Companies)

1. A Register of Companies is instituted, held by the Court Registrar, for entering the below-listed details of each company:
- details of the memorandum of association and the authorization of the State Congress when required by special laws and by any subsequent authorization measures or their revocation;
- registered office and any successive variations;
- subscribed and paid-up capital, and any variations;
- corporate purpose and any successive variations;
- the personal particulars of the legal representatives of the company, of the directors, the auditors, any external auditing parties that may have been nominated and the liquidators, along with a list of their powers;
- the date on which the balance sheet was approved;
- details of measures concerning any transformations, mergers or divisions;
- measures taken by the judicial authorities concerning the liquidation of the company, granting of periods of grace, or opening of proceedings for composition with creditors, as well as all other measures that the Judicial Authorities consider it necessary to indicate;
- existence of a sole partner, if the company has not issued bearer shares;
- existence of company holdings lodged as collateral;
- existence of seizures or distraints on shares.

2. Unless different provisions have been established by law, the details indicated in the previous sub-section are entered in the Register upon the request of the directors or liquidators, provided with the relative documents.

3. All the minutes of the meetings of the companies must also be filed with the Registrar's office that deal with the resolutions relating to approval of the financial statements, the introduction of changes to the articles of association and charter and to appointments of company offices or the conferring of assignments to statutory auditors and auditing firms, within the term of thirty days from the registration or, if the deliberations are not subject to this formality, from the date of the meeting, without prejudice to the different terms established by the law.».

4. Until they have been entered in the Register, modifications made to the details indicated in sub-section 1 cannot prevail against third parties unless proof is given that these latter were aware of the same. The minutes of meetings, applications, certificates, registration provisions and in general all the corporate documentation contained in the company folder at the Court can be created, transmitted, deposited, communicated, notified, held and safeguarded in electronic format, in the manner and with the guarantees that will be established with an appropriate regulation of the Congress of State.

5. The Register can also be held with computer instruments, according to the methods that will be established by appropriate regulations.

6. The Register is public and can be freely examined by anyone.

7. In order to register the company in the Register, Certifications concerning partners, directors, auditors, external bodies charged with auditing nominated at the moment of the company formation must in any case be deposited at the Registrar's office.

8. The Certifications of those who hold offices in the company, as well as the external party charged with auditing and possibly nominated, must be filed with the Registrar's office if the office is confirmed or if a replacement has been made, and is the condition for obtaining registration in the Register.

9. Where registration with professional rolls or orders or special registers is required in order to take office, a certificate of registration issued by the organization that holds the rolls or register must also be filed with the Registrar's office.

10. The directors, statutory auditors, external auditors and auditing enterprises must declare, in the annual balance sheet statement of their respective competence or attached to the same and under their personal responsibility, that they still possess the subjective and objective statuses envisaged by the law for taking up their respective offices.

Art.7

(Indications in correspondence and announcements)

«1.[5] The following details must appear in the correspondence, documents, announcements and securities issued or drawn up by each undertaking:

- the corporate name, type and registered offices of the company;

- the date and registration number in the Register;

- the subscribed and paid-up capital;

- if the company is being wound up;

- if there is a sole partner.».

Art.8 (most recently superseded with Delegate Decree no. 33 of 20 February 2008)

(Registered Office)

1. The registered office of the company must have been established in the territory of the Republic of San Marino.

2. All notifications and communications are considered to have been made with full effect to the registered office indicated in the articles of association; in the event of the impossibility of contacting the registered office, ascertained by the Legal Official, notification is validly given through affixing *ad valvas Palatii* (on the doors of the Government Building).

Art.9 (most recently superseded with Delegate Decree no. 33 of 20 February 2008)

(Corporate purpose)

1. The corporate purpose must be lawful, possible, determined, and must include activities that are consistent with each other.

Art.10 (most recently amended by Delegate Decree no. 33 of 20 February 2008)

(Contributions and payments)

1. In joint-stock companies, the value of the contributions cannot be less, as a whole, than the total amount of the corporate capital.
2. The contributions must be made in money, unless specified differently in the articles of association.
3. At least half of the company's initial corporate capital contributions must be made within sixty clear days from the date of registration in the Register and, if in money, must be paid into a San Marinese banking establishment. If the company is established with a unilateral deed, all the contributions must be made in money and be paid within sixty clear days after the date of registration in the Register.
4. The effective payment of the contributions is certified by a declaration issued by the legal representative according to the formalities and in compliance with the comminatory clauses envisaged by article 3 of Law N° 105 of 21 October 1988, to be filed with the Registrar's office by the directors within thirty days of the actual payment.
5. In any case, the payment of all the contributions must be requested by the directors and fulfilled within three years following the date on which the company is entered in the Register.
6. Failure to pay the contributions within the terms envisaged herein represents a cause for dissolution of the company, which must be wound up, without prejudice to the matters established by the following article 11. If the directors fail to act, liquidation can be arranged as of right. For this reason, the Commissioner of Law

[5] As superseded by Art. 5 of Delegate Decree No. 130 of 11 Dec. 2006.

previously gives the directors a term of not more than sixty days in which to file the documentation attesting to payment of the contributions, or for calling a special meeting in order to adopt the necessary decisions.

7. Besides money, all assets susceptible to economic evaluation can be conferred, but not work or services or personal rights of enjoyment. Such contributions must in any case be declared at the same time as the memorandum of association is executed or when a resolution to increase the capital is passed.

8. The partner who confers a credit is answerable for the insolvency of the debtor.

9. The partner is liable to the same obligations for the conferred assets as he would have been had he had sold them.

10. Those who confer contributions in kind or credits must present the sworn report of an auditor or an auditing company registered in the register of auditors, or of a professional person registered with a San Marinese professional order. The sworn report cannot be compiled by persons who are ineligible as auditors according to the matters established by article 60. The report must contain a description of the assets or credits conferred, an indication as to the evaluation criteria used and a declaration that their value is at least equal to the value for which they were conferred. The report must be attached to the memorandum of association or to the resolution to increase the capital.

11. Besides the contribution, to be made in compliance with the memorandum of association or the resolution to increase the capital, each partner is debtor towards the company for accessory services other than money. The articles of association determine the contents, duration, formalities and fees for such services, and establish particular sanctions in the case of non-compliance Holdings for which accessory services are obligatory cannot be transferred without the directors' consent and, if they are shares, they must be registered.

Unless provided for otherwise by the memorandum of association, the previous obligations can only be modified with the consent of all the partners.

12. In partnerships, the partner is obliged to make the contributions established in the partnership agreement. Failing this, it is to be presumed that the partners are obliged to confer, to an equal extent amongst them, such as is necessary for achieving the business purpose."

Art.11

(Default of the partner)

1. If the partner fails to fulfil the payments due after thirty days have elapsed from the request, the directors, if they do not consider it worthwhile to bring an action for performance against the partner, offer the share of the defaulting partner to the other partners who have fulfilled their obligations, in proportion to their own share, for a corresponding amount no less than the contributions still due. In the absence of offers from the other partners who are not in arrears, the directors must declare the defaulting partner excluded by right, withholding the encashed sums, without prejudice to reimbursement of the greater damages.

2. The unsold shares must be written off by means of a corresponding reduction of the company's capital.

3. The director's request to fulfil the payment must be made at the same time and under the same conditions to all the partners in default.

4. The partner who is in arrears with the payments may not exercise the right to vote.

5. Insofar as it is compatible, this article also applies to partners who have not fulfilled the accessory services.

Art.12 [6]

(Sole partner)

«1. Joint-stock companies may have a sole partner when they are established, as may all the holdings be accumulated by a single party. In joint-stock companies, the accumulation of all the holdings under a single party does not imply their release.

2. The sole partner exercises the powers and rights ascribed by the law or the articles of association to the partners or to the meeting.

3. The existence of the sole partner of a joint-stock company that has not issued bearer shares must be entered in the Register.

[6] As superseded by Art. 7 of Delegate Decree No. 130 of 11 Dec. 2006.

4. If the company is insolvent, the sole partner is unlimitedly answerable for the obligations of the company that arise during the period in which he alone possesses all the shares when:

a) the request for registration of the existence of the sole partner in the Register has not been submitted within the terms established by article 20 of the Law for filing the memorandum of association if the undertaking is established with a unilateral deed, or

b) the request for registration of the existence of the sole partner in the Register has not been submitted within the terms established by articles 26, sub-section 2, and 28, sub-section 3 of the Law, if all the holdings are successively accumulated by one single party, or

c) the corporate capital has not been entirely paid up within the term of sixty days from the date on which the company established with a unilateral deed is entered in the Register or within the term of sixty days from the date on which all the holdings are successively accumulated by one single party.

5. In partnerships, failure to maintain the number of the partners is a cause for winding up the society unless the number is re-established within the successive three months.».

Art.13 [7]

(Total corporate capital)

«1. The total corporate capital cannot be less than:

1) € 25,500.00 (twentyfivethousandfivehundred euros) in limited liability companies;

2) € 77,000.00 (seventyseventhousand euros) in joint-stock companies;

3) € 256,000.00 (twohundredfiftysixthousand euros) in public limited companies.».

Art.14 (most recently amended by Delegate Decree no. 33 of 20 February 2008)

(Reduction of the corporate capital)

1. If the corporate capital has been reduced by more than one third, the directors and, in their default, the board of auditors or the sole auditor, must call the meeting without delay in order to take the appropriate measures and, if the losses are not promptly made good, the meeting must reduce the corporate capital without prejudice to the limits established by law.

2. Reduction of the corporate capital must also be deliberated if the shares of partners who exercise their right of withdrawal must be reimbursed, if envisaged by the articles of association or by the law, or also if a defaulting partner is turned out.

3. Moreover, a reduction of the corporate capital can be deliberated when it is in excess in relation to the business purpose. The deliberation can only be made once ninety days have elapsed from the date on which the measure was entered in the Register, so long as no creditor has opposed the measure within that term

4. The meeting that must deliberate upon reducing the corporate capital, when this is obligatory, may be called by the Commissioner for Law by right or upon the request of anyone to whom it may be of interest, when the party obliged to do so in accordance with sub-section 1, fails to take the necessary steps.

5. If the meeting, called in compliance with the preceding sub-sections, fails to adopt the measures established by law, the Commissioner for Law, upon the request of the directors, the auditors, of anyone interested or by right, will reduce the capital to the extent of the losses resulting from the balance sheet, with a decree to be entered in the Register.

6. If, owing to a loss exceeding one third of the capital, this is reduced to below the minimum allowed by law, the directors must call the meeting for the measures indicated in article 106, sub-section 1, point 4), within the term established therein within the term established therein.

[7] As superseded by Art. 8 of Delegate Decree No. 130 of 11 Dec. 2006.

Art.15

(Capital increase)

1. A capital increase, or issue of convertible bonds, cannot be deliberated until the previously subscribed corporate capital has been entirely paid up.

2. In the case of breach of the previous sub-section, the directors are jointly and severally responsible for the damages sustained by the partners and third parties. This without prejudice to the obligations undertaken by subscribing the shares issued in violation of the previous sub-section.

[8]«3. The meeting may increase the corporate capital by entering as capital, the reserves and other funds entered in the balance sheet, insofar as they are available. In this case, the newly issued holdings must have the same characteristics as those in circulation and must be assigned free of charge to the partners in proportion to those they possess. In public limited companies and joint-stock companies, the capital can also be increased by increasing the face value of the shares.».

SECTION II

ESTABLISHMENT AND MODIFICATIONS TO THE ARTICLES OF ASSOCIATION

Art.16 (most recently amended by Delegate Decree no. 33 of 20 February 2008)

(Authorizations and conditions for establishment)

«1. The following conditions are required in order to establish a company with share capital:
1) the capital must have been entirely subscribed;
2) the authorizations must have been obtained, and the conditions required by the special laws for establishing the company in relation to its particular scope must have been complied with;
3) the provisions established by Law concerning contributions must have been complied with;
4) none of the partners who are natural persons must be Unfit Parties.
2. Sub-section 1 is applied for the establishment of a partnership, insofar as it is compatible.
3. An irrevocable prior official authorization, namely authorization from the State Congress, must be obtained in order to establish public limited companies, the companies indicated in article 2, sub-section 5, companies for which it is explicitly envisaged by special laws, companies whose business contains activities or commodity sectors envisaged in the decree described in the successive sub-section 6.
4. Notwithstanding compliance with article 9, the companies mentioned in the previous sub-section, with the exception of public limited companies, may modify their business purpose without authorization as long as the modification does not concern economic activities or product sectors included in the decree mentioned in the following sub-section 6.
5. Authorization must be requested from the State Congress by means of an application accompanied by a rough business plan that is convincing, from the objective and subjective aspects, as to its reliability and compatibility with the economic-social requirements of the Republic. When it grants the authorization, the State Congress has the right to impose limits and conditions so as to guarantee that the business plan is correctly executed.
6. If the matter is urgent, or to prevent the social-economic context of the Republic from becoming distorted, the need for authorization from the State Congress can be established by official decree so as to establish companies whose corporate purpose comprises particular business activities or commodity sectors.
7. The official decree can dictate specific rules for the business activities and commodity sectors indicated in the decree envisaged in the previous sub-section».

Art.17 (most recently amended by Delegate Decree no. 33 of 20 February 2008)

(Participation of Trust Companies)

«1. Upon acceptance of the trust assignment, those Trust Companies which, on the basis of this trust assignment, establish undertakings and acquire or possess their holdings, must obligatorily procure prior Certification with

[8] As superseded by Art. 10 of Delegate Decree No. 130 of 11 Dec. 2006.

regard to the grantors and declare, respectively in the articles of association of the company or during purchase of the holding, the trust nature of their intervention, referencing the details of the authorisation to exercise the reserved activity.
2. Trust Companies may not establish undertakings, acquire or possess their holdings on the basis of a trust assignment if the Certification shows that the grantor is an Unfit Party.
3. Since this activity is reserved to holding companies, it remains subject to the regulatory and surveillance powers of the Central Bank of the Republic of San Marino.
4. In the cases in the first subsection, the existence of the sole partner and the related regulations as in article 12, are to be understood as referring to the grantor and not to the trust company.

Art.18

(Form of the memorandum of association)

1. The memorandum of association of an undertaking must be in the form of a public deed.

Art.19

(Contents of the memorandum of association)

1. The memorandum of association must indicate:
1) the type of company;
2) the corporate name;
3) the duration;
4) the registered offices;
5) the business purpose;
6) the total corporate capital;
7) the surname and first name, date and place of birth, residence and citizenship of all the natural persons, or the corporate name, date and place of estabishment, registered offices and number of registration in the company register for the juridical persons who have taken part as partners in drawing up the memorandum of association or in the name of whom it has been drawn up;
8) the share allocated to each partner;
9) the subscription of the entire capital;
10) the contributions of each partner;
11) the value ascribed to contributions in kind and the relative evaluation criteria;
12) the regulations concerning the composition and powers of the bodies of the company, indicating those concerning the administration and those that represent the undertaking;
13) the rules according to which the profits must be distributed;
14) the nomination of the first members of the bodies of the company;
15) an indication of the regulations governing the way the company is run;

2. In joint-stock companies and public limited companies, the memorandum of association must also contain the number and face value of the shares, whether they are registered or bearer shares, their characteristics and the formalities according to which they are issued and circulated.

3. For unlimited partnerships, the memorandum of association must also indicate the rules according to which the profits must be distributed and each partner's portion of the profits and losses.

4. The articles of association contain the regulations governing the bodies of the company and the company itself. Even when they are a separate deed, the articles of association are an integral part of the memorandum of association.

Art.20 [9]

(Filing of the memorandum of association and registration in the Register)

«1. The notary who has received the memorandum of association of the company and has checked to make sure that the conditions established by Law have been fulfilled, must file an authentic copy of the document with the

[9] As superseded by Art. 14 of Delegate Decree No. 130 of 11 Dec. 2006.

Registrar's office within thirty days from the date of registration, attaching the documents that attest to the existence of the conditions envisaged by the Law.

2. If the notary fails to file the document within the aforementioned term, each partner or director may do so at the company's charge.

3 . The company must be registered in the Register at the same time as the memorandum of association is filed.

4. Having solely checked to make sure that the documentation is regular from the formal aspect, the Registrar enters the company in the Register within 10 days from the requested registration, or issues a motivated refusal to be notified to the party who requested the registration.

5. If the Registrar refuses to enter the company in the Register, or fails to register it within the term indicated in the previous sub-section, the notary or, failing this, the director or each partner, may apply to the Commissioner of Law within thirty days from haing received notification of the refusal, or from the expiry of the term within which the Registrar should have issued the measure. In this case, the Commissioner of Law, having checked to make sure that the conditions required by Law have been fulfilled, issues a decree that orders the company to be entered in the Register. In the event of a refusal to enter the company in the Register, the decree issued by the Commissioner of Law is subject to a claim before the Justice of Appeal within the thirty days following the notification.

6 . Registration of the company in the Register is notified to the Office of Industry, Commerce and Crafts by the Registrar within 15 days from the date on which the formality takes place.».

Art. 21

(Effects of the registration and acquisition of the legal status)

1. Once it has been registered in the Register, the undertaking acquires a legal status that lasts until it is cancelled.

2. Those who acted are unlimitedly, jointly and personally responsible towards third parties for the operations accomplished in the name of the company prior to its registration. The promoting sole partner and those amongst the partners who, in the memorandum of association or with a separate deed, have decided, authorized or allowed the operation to be accomplished are also jointly, unlimitedly and personally responsible. Different agreements cannot prevail against third parties.

3. Issue of shares or transfer of holdings before the company has been registered are null.

4. Once the legal status has been acquired, the equities of the company become separate from the estate of the partners.

5. The company's creditors cannot act on the estate of the unlimitedly and jointly responsible partners without having first acted on the company's equities.

6. In partnerships, the particular creditors of the unlimitedly responsible partners cannot act on the company's equities but if the assets of the debtor partner are unable to cover the personal debts incurred, the creditor may ask for the debtor's share to be liquidated and the share must be liquidated within three months from the request, without prejudice to the deliberation to wind up the company.

[10]«7. Without prejudice to the matters established by article 148 of Law N° 165 of 17 November 2005, acquisition of the legal status does not authorize the purchase of real estate in the territory of the Republic, the acceptance of donations or inheritances or the obtainment of legacies without authorization from the Council of XII.».

Art.22 (most recently amended by Delegate Decree no. 33 of 20 February 2008)

(Modifications to the articles of association)

1. Resolutions that modify the articles of association must be made in a public deed. Within thirty days from the date on which the deed is registered and having ascertained that the conditions established by law have been complied with, the notary who draws up the need applies for it to be registered in the Register and attaches any

[10] As superseded by Art. 15 of Delegate Decree No. 130 of 11 Dec. 2006.

authorizations and documents required at the same time as it is filed. Having solely checked to make sure that the documentation is formally correct, the Registrar enters the resolution in the Register.

2. If the notary considers that the conditions established by the law have not been fulfilled, he will notify the directors of the matter immediately and in any case, not beyond that term. Within the following thirty days, the directors and, in their absence, each partner at the company's charge, may apply to the Commissioner of Law. In this case, the Commissioner of Law, having checked to make sure that the conditions required by Law have been fulfilled, approves the resolutions and orders their registration in the Register. The decree issued by the Commissioner of Law is subject to a claim before the Justice of Appeal within the thirty days following the notification.

3. When a company is established, the partners may decide that one or more of the clauses in the articles of association may only be modified unanimously.

4. Modifications to the partnership agreement in partnerships may only be made with the consent of all the partners, unless different agreements have been reached.

«Art.22 bis [11]

(Invalidity of the company)

1. Once it has been entered in the Register, the invalidity of a company can only be declared, upon the request of anyone to whom it may be of interest, in the following circumstances:

a) failure to draw up the memorandum of association in the form of a public deed;

5) illegality of the business purpose;

c) failure to obtain authorization from the State Congress, in the cases where it is required by law;

d) absence, in the memorandum of association, of all indications concerning the business name of the company, the contributions, the total capital, the business purpose.

2. The declaration of invalidity does not impair the efficacy of the actions accomplished in the name of the company after it has been entered in the Register and the partners are not released from their obligation to contribute until all the company's creditors have been satisfied.

3. Invalidity cannot be declared when its cause has been eliminated and this elimination has been published by an entry in the Register.

4. The sentence that declares invalidity contains the order to terminate and liquidate the company and must be entered in the Register.».

SECTION III

SHARES AND BONDS

IN COMPANIES WITH SHARE CAPITAL

Art.23
(Principles)

1. In limited liability companies, the holding ascribed to each partner represents the extent to which he participates in the company capital and includes the body of rights to which the partner is entitled.

2. In public limited companies and joint-stock companies, participation is represented by shares, which must be of equal value and which grant their possessors equal rights for homogeneous categories of shares.

[11] As supplemented by Art. 17 of Delegate Decree No. 130 of 11 Dec. 2006.

Art.24
(General provisions)

1. The articles of association may envisage different categories of holdings. When different categories of holdings or shares are created, the company may freely determine their contents in accordance with the limits established by law, but all the holdings or shares belonging to the same category must grant equal rights.

2. Participation in companies with share capital is freely transferrable, unless established differently by the articles of association. The articles of association may also limit the extent to which they can be transferred and in that case, if the provisions they establish actually prevent the share capital from being transferred, the partner may exercise the right to withdraw in accordance with the formalities established by article 37.

3. If the holdings or shares are transferred, the transferor is responsible, jointly and severally with the purchaser, for the payments still due, for a period of three years from the date on which the transfer transaction is registered in the stock ledger.

4. If a holding is subject to joint ownership, the rights of the owners are exercised by a common representative. If the common representative has not been nominated, the declarations and communications made by the company to one of the joint owners are efficacious in relation to both. The joint owners of a holding are jointly and severally answerable to the obligations deriving from the holding itself.

5. [12] The holdings and the shares may be pledged and enjoyed in usufruct. In these cases and unless agreed differently, the right to voting belongs to the secured creditor and to the beneficial owner, while the right of option belongs to the partner, who must pay the necessary sums. If payments are requested in relation to the holding, in the case of pledging, the partner must pay the necessary sums and, in default, the arrearage rules are applied; the beneficial owner must fulfil the payments, without prejudice to his right to restitution when the period of usufruct terminates. The directors enter the pledge or usufruct in the stock ledger without delay upon the request of the secured creditor, or the beneficial owner, or the partner. In relation to issued registered shares, the pledge is lodged by consigning the relative share certificates to the creditor and by virtue of a public deed or private agreement with authenticated signatures, duly noted on both the share certificate and in the Register. In relation to holdings and shares that have not yet been issued, the pledge is lodged by noting it in the stock ledger and in the Register by virtue of a public deed or private agreement with authenticated signatures. Usufruct of shares or holding is established according to the respectively envisaged formalities, so long as they are valid in relation to the company.

6.[8] Holdings and shares can be sequestered and expropriated; the Judge's provision is entered in the Register. The holding is attached by notifying the debtor and the legal representative while seizure of issued shares must also include dispossession. The directors will note down the matter in the stock ledger without delay. The provision of the Judge who orders the holding to be sold must be notified to the company.

7.[8] If the holding or shares are sequestered or seized, the right to vote and the other administrative rights are exercised by the party indicated in the relative measures established by the Judge.».

8. Unless there are different indications in the measures established by the judge or on the document, administrative rights differing from the ones indicated in this article belong, in the case of pledge or usufruct, to the secured creditor or beneficial owner, while they are exercised by the keeper in the case of sequester or seizure.

Art.25
(Holdings)

1. The face value of the holding is determined in Euros and in a percentage of the company capital. Unless established differently by the articles of association, the holding is determined in proportion to the partner's contribution.

Art.26
(Transfer of the holding)

[12] Par. 5, 6 and 7 as superseded by Art. 18 of Delegate Decree No. 130 of 11 Dec. 2006.

1. Transfer of holdings between living parties either free of charge or by sale, must be stipulated in the form of a public deed o authenticated private agreement.

2.[13] An authentic copy of the deed of assignment of the holding must be filed with the Registrar's office within thirty days of its registration and in any case, no later than sixty days from the date of stipulation, by and under the responsibility of a notary who has received the deed itself or who has authenticated the signatures. When not attached, the Certification of the transferee must be filed with the Registrar's office along with the transfer deed, and must bear the same date as this latter or a prior date. Transfers in favour of Unfit Parties are null.».

3. Transfer of holdings is of effect in relation to the company from the moment it is entered in the stock ledger, as established in the following sub-section.

4. Registration of the transfer in the stock ledger takes place, upon request of the entitled party, after the deed of transfer has been exhibited.

Art.27
(Shares)

1. The shares can be represented by multiple share certificates.

2. The share is indivisible.

3.[14] The shares must indicate:

1) the corporate name, the registered offices and duration of the company;

2) the date of the memorandum of association and the registration number in the Register;

3) the face value of the shares and the total corporate capital.».

4. The shares must be undersigned by the legal representative of the company and by the auditors. Undersigning by mechanical reproduction is considered valid so long as the original has been filed with the Registrar's office.

5. The face value of each share issued by the company must correspond to an arithmetical fraction of the company capital.

6. The shares cannot be issued for a lower amount than their face value.

7. Bearer shares may not be issued nor may registered shares be converted into bearer shares before the entire company capital has been paid up.

8. Lost or stolen registered shares are written off in compliance with the laws governing written off bills of exchange.

Art.28 [15]
(Transfer of registered shares)

«1. Registered shares must be transferred by means of a public deed or authenticated private agreement. If the shares have been issued, they must also be endorsed and the endorsement authenticated by a notary, without prejudice to the fact that the transfer has effect on the company when it has been registered in the stock ledger.

2. The endorsee who proves to be the owner according to a continual series of endorsements is entitled to have the transfer entered in the stock ledger.

3. An authentic copy of the deed of assignment must be filed with the Registrar's office within thirty days of its registration and in any case, no later than sixty days from the date of stipulation, by and under the responsibility of a notary who has received the deed itself or who has authenticated the signatures. When not attached, the Certification of the transferee must be filed with the Registrar's office along with the transfer deed, and must bear the same date as this latter or a prior date. Transfers in favour of Unfit Parties are null.

[13] As superseded by Art. 19 of Delegate Decree No. 130 of 11 Dec. 2006.
[14] As superseded by Art. 20 of Delegate Decree No. 130 of 11 Dec. 2006.
[15] As superseded by Art. 21 of Delegate Decree No. 130 of 11 Dec. 2006.

4. Registration of the transfer in the stock ledger takes place, upon request of the entitled party, after the deed of transfer has been exhibited.

5. Usufruct of registered shares only prevails against third parties if noted on the shares themselves and in the stock ledger.».

Art.29

(Transfer of bearer shares)

1. Bearer shares are transferred by consignment.

«Art. 29 bis [16]

(Loss, destruction or theft of bearer shares)

«1. If bearer shares are lost, stolen or destroyed, the owner, after reporting the matter to the Police, may apply to the Commissioner of Law to have this latter, with a measure posted *ad valvas* and notified to the legal representative of the company, ask the current bearer to bring the documents to the Court Registrar's office within the term of thirty days from the date of posting. Should no one have brought back the share documents within that term, the directors may issue new certificates in favour of the claimant without any responsibility in relation to the current possessor who may only assert his rights in relation to the claimant in the ordinary judicial forms, without prejudice to the fact that, in that case, and unless established differently by the Judge, the claimant exercises shareholder rights.».

Art.30

(Own holdings or shares)

1. Limited liability companies can in no way underwrite or purchase their own holdings.

2. Public limited companies and joint-stock companies cannot underwrite their own shares.

3. As long as they have been entirely released, the purchase of own shares is only allowed within the limits of the distributable profits and the available reserves resulting from the last, regularly approved, balance sheet.

4. The purchase must be authorized by a resolution by the meeting, which establishes the relative formalities, particularly indicating the maximum number of shares to purchase, the maximum term for which the authorization remains valid, the minimum consideration and the maximum consideration.

5. In no case may the face value of the shares purchased as indicated in the previous sub-sections exceed one fifth of the company capital.

6. The directors may only dispose of the purchased shares after obtaining authorization from the meeting, which must establish the relative formalities.

7. So long as the shares remain the property of the company, the right to the profits and the right of option are ascribed in proportion to the other shares. The right to voting is suspended, but the own shares are still computed in the capital for the purpose of calculating the meeting's constitutive and decisional quorums.

8. An unavailable reserve, equal to the amount of own shares entered as assets in the balance sheet, must be formed and maintained until the shares are transferred or annulled.

9. In no case may companies grant loans or provide guarantees for purchasing or underwriting their own holdings. Neither may their own holdings be accepted as guarantees through trust companies or third parties.

10. Actions accomplished in breach of sub-sections 1, 2, 3, 4, 6 and 8 are invalid. Should own shares exceeding the limit established in sub-section 5 be purchased, the invalidity is limited to purchase of the excess shares.

[16] As supplemented by Art. 22 of Delegate Decree No. 130 of 11 Dec. 2006.

Art.31

(Bonds)

1. The meetings of public limited companies and joint-stock companies may resolve to collect fresh capital by issuing registered bonds or bearer bonds.

2. Bonds are credit instruments that include the right to restitution of the capital and payment of the interests without attributing any of the rights ascribed to the partners. The companies may issue subordinate bonds which, in certain circumstances, are only reimbursed after the rights of all the company's other creditors have been satisfied; unredeemable bonds without expiry that ascribe the mere payment of interest to the underwriter and not restitution of the capital; cum warrant obligations whereby, in addition to the right to restitution of the capital and payment of the interests, the underwriter is also entitled to purchase or underwrite other securities under previously established conditions and to grant the right itself to third parties.

3. The meeting's deliberation concerning the issue of bonds cannot be made until authorization has been obtained from the Central Bank of the Republic of San Marino.

4. The overall value of all the issued bonds cannot exceed double the company capital and the available reserves as shown by the last balance sheet approved.

5. The meeting can decide to issue bonds convertible into shares, determining the exchange ratio, the period and method of conversion. The company must contextually resolve to increase the company capital for the amount corresponding to the shares to which the conversion applies.

6. During the first month of each six-month period, the directors will issue the shares due to the bond-holders who requested the conversion during the previous half-year. Within the next month, the directors must file a certification attesting to the increase in the company's capital corresponding to the face value of the shares issued, for entry in the Register.

7. Until the terms established for the conversion have elapsed, the company may neither decide to voluntarily reduce the company capital nor to modify the provisions in the articles of association concerning distribution of the profits unless the possessors of convertible bonds have been given the right, by means of a registered letter sent at least ninety days prior to convocation of the meeting, to exercise the right of conversion within the term of thirty days from receipt of the registered letter itself.

8. If the capital is increased by appropriation to reserves and reduction of capital through losses, the exchange ratio is modified in proportion to the extent of the increase or reduction.

Art.32

(Contents of the bonds)

1. The bonds must be undersigned by the legal representative of the company and by the auditors and must indicate:
1) the corporate name, the business purpose and registered offices of the company and the registration number in the Register;
2) the corporate capital;
3) the date of the meeting's resolution and details of the authorization from the Central Bank of the Republic of San Marino;
4) the overall amount of the issued bonds, the face value of each, the rate of interest and the payment and reimbursement formalities;
5) whether the bonds are guaranteed and if so, how;
6) a description of the type of bond, with an indication of its main characteristics.

2. In addition to the matters established in the previous sub-section, bonds that can be converted into shares must indicate the exchange ratio and the conversion formalities.

SECTION IV

PARTNERS RIGHTS AND DUTIES

Art.33 [17]

(Right to profits and liquidation quota)

«1. Every holding ascribes the right to a proportional part of the really obtained profits, distribution of which has been approved by the meeting, and of the net equity resulting from the liquidation; participation in the losses should be calculated to the same extent.

2. The agreement by which a partner is totally excluded from the profits or losses is invalid.».

Art.34

(Voting right)

1. Ordinarily, each share entitles the legitimate bearer to voting rights. The holdings entitle the possessor to at least one vote at the meeting; if the holding is a multiple of a Euro, the partner is entitled to one vote for each Euro.

2. Voting rights can be excluded at the time of issue for particular categories of shares or holdings.

Art.35

(Rights to information)

1. All partners are entitled to receive information about the economical-financial and operational progress of the company and, in companies without a board of auditors or single auditor, each non-director partner is entitled to freely consult the relative documents, also with the assistance of his experts.

«2.[18] In any case, the partners are always entitled to examine the stock ledger and the book of minutes and resolutions of the meeting, and to obtain a copy.».

3. If the director fails to allow the partner to exercise the right, this latter is entitled to apply to the Commissioner of Law, who will adopt the measures indicated in article 66, in compliance with the cross-examination principle.

Art.36

(Right to manage)

1. The administration of partnerships is the responsibility of each partner, severally from the others, without prejudice to different provisions established by the articles of association which, unless brought to the knowledge of third parties, cannot prevail against them.

2. Non-partners can also be nominated as directors in joint-stock companies.

Art.37

(Partner's right to withdrawal)

1. Unless established differently by the articles of association, in partnerships, each partner may withdraw at any time from the company when this is not established for a fixed term, or when he has a just cause for withdrawing.

2. The right to withdrawal exists in joint-stock companies and partnerships when:

[17] As superseded by Art. 23 of Delegate Decree No. 130 of 11 Dec. 2006.
[18] As superseded by Art. 24 of Delegate Decree No. 130 of 11 Dec. 2006.

- the company decides to transform its type or when there is a substantial modification to the business purpose;
- it is envisaged by the articles of association;
- it is envisaged by law or by special laws.

3. Withdrawal is notified to the directors or, in partnerships, to the other partners, by means of a registered letter with return receipt attached and, in the cases indicated in the first sub-section in relation to partnerships alone, with 3 months prior notice. Unless established differently by the articles of association, the share must be liquidated within the successive thirty days.

Art.38

(Liquidation in the case of withdrawal)

1. The withdrawing partners are entitled to receive a sum of money equivalent to the value of the holding they possess.

2. Unless established differently by the articles of association, this value is determined by taking into account the market value at the time withdrawal is declared. In the event of disagreement, the value is determined with reference to the average net equity resulting from the balance sheets of the part three years or, if the company has been established for less than three years, from the balance sheets approved since its establishment.

Art.39

(Death and exclusion of partners in partnerships)

1. Unless established differently by the articles of association, if one of the partners in a partnership dies, the surviving partners must liquidate the share to the heirs unless they prefer to terminate the company or continue it with the heirs and these latter agree.

2. A partner may be excluded owing to serious non-fulfilment of the obligations deriving from law and the partnership agreement, owing to interdiction and incapacitation of the partner. The partner who has worked for the company or conferred something to the benefit of this latter may also be excluded owing to sudden unfitness to carry out the work or owing to deterioration of the thing due to causes not ascribable to the directors. Lastly, a partner who undertakes to transfer the property of something with a contribution may be excluded if this something has spoilt before ownership has been acquired by the company.

3. Exclusion is deliberated by the majority of the partners, the partner to be excluded not being amongst these, and comes into effect once thirty days have elapsed from the relative notification to the excluded partner. Within this term, the excluded partner may present an appeal against the decision to the Commissioner of Law, who may suspend its enforcement. If the society consists of two partners, the exclusion of one of them is pronounced by the Commissioner of Law, upon the request of the other partner.

4. The partner in relation to whom proceedings for composition with creditors have been opened is excluded by right as is one whose particular creditor has obtained liquidation of the holding.

5. The provisions established by article 38 apply to liquidating the deceased partner’s share to the heirs and to the excluded partner.

Art.40

(Right of option)

1. In order to deliberate a capital increase by issuing new holdings, the partners’ meeting must offer the newly issued or underwritten holdings as an option to the partners, in proportion to the holdings that each partner possesses. This same meeting also establishes the terms and formalities for exercising the right of option, without prejudice to the fact that the terms for exercising this right must run from the day on which the minutes of the meeting are filed with the Registrar’s office and cannot be less than ten days.

2. So long as they make a contextual request, those who exercise the right of option have a right of pre-emption to purchase the holdings for which the option has not been exercised.

3. The right of option does not include newly issued holdings which, according to the deliberation to increase the capital, must be released by means of assets in kind.

4. When the right of option is excluded, the issue price of the holdings must be determined according to the value of the net assets.

5. The sums received by the company for the issue of holdings at a higher price than their face value, thereby including those deriving from the conversion of bonds, must be put to a dedicated reserve.

Art.41
(Veto on competition in partnerships)

1. The partner of a partnership may neither, without the permission of the other partners, exercise, on his own behalf or on the behalf of others, an activity that is in competition with that of the company nor take part as an unlimitedly responsible partner in another competitor company.

2. Permission presumes that accomplishment of the activity or participation in another society already existed and that the other partners were aware of the matter.

TITLE II

ORGANIZATION OF JOINT-STOCK COMPANIES

SECTION I

THE MEETING

Art.42

(The Meeting)

1. The partners' meeting is the decision-making body in which the company's intentions are formed.

2. The resolutions adopted by the meeting in accordance with the law and the provisions established by the articles of association, bind all the partners even those not present at the meeting or dissenters.

Art.43
(Competences of the meeting)

1. The meeting meets at least once a year, within five months from the closure of the business year, and possesses competence in relation to:
1) approving the balance sheet;
2) modifying the memorandum of association and the articles of association;
3) nominating and annulling the directors, statutory auditors, external auditors and auditing companies;
4) determining the remuneration of the directors, statutory auditors, external auditors and auditing companies;
5) exercising an action relating to liability in relation to the directors, statutory auditors, external auditors or the auditing company;
6) issuing bonds;
7) transforming, dividing, merging and liquidating, as well as nominating, annulling and determining the powers of the liquidators;
8) all other matters pertaining to company management reserved to its competence by law, by the articles of association or submitted to it by the directors for examination.

Art.44
(Operation of the meeting)

1. The meeting is called by the directors of the company.

2. The articles of association establish the regulations that govern the formalities, convocation procedures and operation of the meeting, thereby including the voting formalities.

3. In any case, the articles of association must establish that:
1) the meeting must be held in the territory of the Republic;
2) the convocation must contain the complete list of subjects on the agenda;
«3)[19] the convocation to the meeting must be sent to the partners' domicile by registered letter at least eight days before the meeting itself. For public limited companies with bearer shares, the meeting is called by means of a notice posted *ad valvas* at the Court at least twenty days prior to the date fixed for the meeting. In joint-stock companies, the articles of association can provide for the meeting to be called by means of a convocation notice posted *ad valvas* at the Court at last twenty days prior to the date fixed for the meeting. Without prejudice to the convocation formalities established by law, the articles of association can establish that the partners also be informed of the convocation by other means of communication. Convocation to the meeting by posting the notice *ad valvas* may only occur in the cases authorized by law.».

4) the meeting must also be called upon the request of a minority of al least 1/5 of the company capital;
5) there must be at least two different convocations to each meeting and the quorum for constituting the meeting and for the validity of the resolutions made must be indicated for each;
6) the resolutions made by the meeting are validly adopted by this latter in second convocation with the favourable vote of as many partners as represent at least the majority of the company capital present at the meeting. The articles of association may provide for a larger legal number for adopting determined deliberations;
7) all partners who have been registered in the Stock Ledger at least five days before the date of the meeting are entitled to come to these latter and, if bearer shares are issued, this right also extends to all those who produce the shares at the meeting;
8) the partners' ability to have themselves represented is conditioned by the issue of a written personal proxy valid for single meetings, that cannot be granted to directors, statutory auditors, external auditors or employees of the company;
9) all the resolutions must appear in the minutes which, if not drawn up by a notary, must be undersigned by all the partners present;
10) voting concerning persons can be made by secret ballot if this is requested by a number of partners to be determined;
11) the meeting is in any case validly constituted and authorized to deliberate even on subjects that are not on the agenda, or without the convocation formalities and with the exclusion of approval of the balance sheet, when all those who are entitled to vote are present so long as no one objects to dealing with the subjects;
12) if the directors fail to call the meeting upon the request of the minority indicated under N° 4), each partner may ask the Commissioner of Law to call the meeting itself and to designate the person who must act as its chairman;
13) the right to vote cannot be exercised by partners who, on their own behalf or that of third parties, have interests in conflict with those of the company.

«Art 44 *bis* **(most recently superseded by Delegate Decree no. 33 of 20 February 2008 and by Art. 87 of Law no. 92 of 17 June 2008)**

(Meeting of the public limited company with bearer shares)

1. Notwithstanding the provisions indicated in art. 44, sub-section 2, number 9, the minutes of the meetings of public limited companies with bearer shares must be drawn up by a San Marinese notary. The minutes must identify the shares or multiple certificates present by indicating the number as shown by the register of shareholders, unless all of the share capital is present; apart from unanimous votes, they must also indicate the shares or multiple certificates that expressed an opposing vote, by indicating the number as shown in the register of shareholders.
*2.The assigned notary must**:**
a) identify the bearer of the shares and verify his identity;
b) acquire a copy of the identity document of each bearer of the shares;

19 As superseded by Art. 25 of Delegate Decree No. 130 of 11 Dec. 2006.

c) draw up a separate deed that indicates the date of the meeting, the identity of the participants and the capital represented by each;

d) keep a copy of the deed and identity documents for at least five years from the cessation of the professional relationship with the same company.».

3. The duties indicated in sub-section 2 are official deeds for the notary, in accordance with article 378 of the penal code.

*4. **The information and documents mentioned in sub-section 2 can be acquired from the notary by the Legal Authority in the context of criminal proceedings and by the Financial Information Agency in carrying out functions for the prevention and combating of money laundering and financing of terrorism.**

5. The notary is responsible for keeping the documentation even in the case of cessation of the activity. In the event of the death of the notary, if another colleague has not been appointed, the President of the Order of Lawyers and Notaries shall appoint a notary, who shall take responsibility for keeping the documents for the remaining term."

*as superseded by article 87 par. 1 of Law no. 92 of 17 June 2008.

Art.45 (most recently superseded by Delegate Decree no. 33 of 20 February 2008)

(Objections to the meeting's resolutions)

1. The absent or dissenting partners, the directors and the auditors may apply to the Commissioner of Law against illegitimate resolutions made by the meeting in order to ask for them to be annulled of have the impugned deliberations urgently suspended. The petition must be filed with the Registrar's office within the term of ten days from the date on which the copy of the minutes of the meeting is filed; in the absence of filing, the petition must be proposed within ten days from the moment at which the petitioner became aware of the resolution, as long as this is not more than two years after the same resolution.

2. If the objection appears to be seriously founded prima facie the Commissioner of Law may issue a decree to temporarily suspend the resolution, possibly demanding the objecting partner or partners to pay a sum for the expenses and, if necessary, a guarantee deposit

3. The decree is officially notified at the expense of the objecting parties, the directors and the auditors, and note of it is made in the Register

4. Within thirty days of the notification and so long as the company has not commenced proceedings for confirmation of the challenged resolution, the objecting parties must start an accusatory procedure in order to have the resolution annulled; otherwise the objection will be considered to have definitively become void.

5. All the reasons for the impugnment of the same resolution are decided with the same ruling.

6. The annulment cannot be pronounced if the impugned deliberation is substituted with another resolution conforming to the law, without prejudice to the fact that the expenses for the impugnment proceedings are at the charge of the company

7. Annulment of the resolutions does not damage the right of third parties in good faith.

Art. 46

(Invalidity of the meeting's resolutions)

1. The meeting's deliberations whose subject is impossible or unlawful are invalid.

«2.[20] Invalidity can be asserted by anyone who has interest in the matter.».

3. The provisions of the ordinary cognizance process apply.

[20] As superseded by Art. 27 of Delegate Decree No. 130 of 11 Dec. 2006.

SECTION II

DIRECTORS

Art.47

(Powers of the directors)

1. The directors are empowered to accomplish all the actions that are necessary or useful for pursuing the business purpose, with the exception of those for which the law or the articles of association require the deliberation of the meeting.

Art.48

(Causes of ineligibility and annulment)

1. The following parties cannot be elected to the office of director and, if elected, fall from office:
1) Unfit Parties, or
2) parties who have been sentenced for the facts envisaged by article 56, sub-section 9.

2. The articles of association can also envisage causes of incompatibility, limits and criteria for plurality of offices.

Art.49

(Nomination of the directors and administration formalities)

1. In partnerships, each partner possesses administration powers, which are exercised severally, without prejudice to different agreement that ascribes these powers to one or more of the partners which, in order to prevail against third parties, must be made public by an entry in the Register.

2. In joint-stock companies, the directors are nominated by the meeting and, for the first period of office, are nominated in the memorandum of association.

3. If the administration of joint-stock companies is ascribed to several persons, these form the board of directors, the operation of which must be governed by dedicated statutory regulations as established by the successive article 50.

4. If the articles of association or the meeting so allow, the board of directors may delegate part of its powers to an executive committee formed by some of its members or by one or more managing directors. In any case, the proxy may not include powers concerning the drawing up of the balance sheet and the fulfilments required if the company capital is reduced owing to losses.

Art.50

(Operation of the board of directors)

1. The articles of association must contain the regulations that govern the formalities, convocation procedures and operation of the board of directors. In any case, they must ensure:
«1) [21] that the board is validly constituted with the absolute majority of its members and that the resolutions are made with the favourable vote of the majority of the directors present, without prejudice to the fact that the articles of association can envisage larger constitutive and decisional quorums, also for single resolutions;».

2) that proxies are not allowed;
3) that the resolutions must appear in minutes drawn up and signed by the chairman and by the compiling secretary;
4) that deliberations concerning persons must be adopted by secret ballot if this is required, in compliance with procedures to be established by the articles of association.

[21] As superseded by Art. 28 of Delegate Decree No. 130 of 11 Dec. 2006.

2. The articles of association may envisage board of directors' meetings by means of videoconferences or teleconferences, if the minutes are drafted by a notary. In this case, the articles of association must also require that:

1) the chairman and the compiling secretary be in the Republic of San Marino;
2) each of the participants be able to identify the others, and to take part in real time in the discussion;
3) each of the participants be able to examine, receive and transmit documentation concerning the meeting.

Art.51

(Duration of the office of director)

«1.[22] In joint-stock companies, the office of director may be granted for a period of up to three years, renewable.».

2. The directors can also be annulled before the term expires, without prejudice to the director's right to reimbursement of damages if the annulment takes place without just cause.

«3.[23] The directors may waive their office by giving written notification to the other directors or, failing this, to the board of auditors, if nominated, or to the partners.».

4. If the resigning director is a member of the board of directors, his waiver may have immediate effect if the majority of the board remains in office.

5. If the majority of the directors no longer remain in office during of business year, the remaining ones must immediately call the meeting in order to replace the missing ones.

6. If the sole director or all the directors no longer remain in office, the meeting for nominating the director or the entire board must be urgently called by the board of auditors or by the sole auditor, when nominated, or can be called by each partner.

7. The nomination of new directors is limited to the date on which the re-integrated board expires.

8. Expiry of the directors due to the end of their term of office takes effect from the time at which the administration body was reconstituted.

Art.52

(Power of representation)

1. The power of representation through which the company acquires rights, undertakes obligations and goes to law, belongs to the directors within the limits established by the articles of association.

2. In companies administered by a board of directors, the power of representation belongs to the chairman, unless established differently by the articles of association.

«3.[24] The power of representation also belongs to the managing directors or to the Chairman of the Executive Committee if nominated, within the limits of the proxy granted him.».

Art.53

(Extension of the power of representation)

1. The directors who represent the company may accomplish all actions that are part of the business purpose except for the limitations established by law or by the articles of association.

2. Failure to comply with the limits deriving from the business purpose or the articles of association cannot prevail against third parties in good faith.

[22] As superseded by Art. 29 of Delegate Decree No. 130 of 11 Dec. 2006.
[23] As superseded by Art. 30 of Delegate Decree No. 130 of 11 Dec. 2006.
[24] As superseded by Art. 31 of Delegate Decree No. 130 of 11 Dec. 2006.

Art.54

(Veto on competition and conflict of interests)

1. The directors may not become unlimitedly responsible partners in competitor companies. Neither may they exercise an activity that is in competition on their own behalf or on behalf of third parties without authorization from the meeting.

2. The director must inform the other directors and the auditors of all interests that, on his own behalf or on behalf of third parties, he may have in a determined operation of the company, indicating their nature, the terms, the origin and the extent; if he is the managing director, he must also abstain from accomplishing the operation and assign it to the board of directors; if he is the sole director, he must provide information about it during the first meeting to be held.

3. In the cases envisaged by the previous sub-section, the deliberation of the board of directors must adequately motivate the reasons why the operation is convenient for the company.

4. Resolutions made with the determinant vote of the director in conflict of interests that may damage the company may be impugned by absent or dissenting directors and by the auditors within ten days from the date of the resolution itself. All this without prejudice to the rights acquired in good faith by third parties in relation to actions accomplished in order to execute the deliberation.

5. Contracts concluded by directors who represent the company, on their own behalf or on behalf of third parties, in conflict of interests with the company, can be annulled upon the request of the company if the conflict was known or recognizable by the third party.

Art.55

(Impugnment of the resolutions of the board of directors)

1. The absent or dissenting director, the board of auditors or the single auditor, may impugn resolutions of the board of directors that have not been made in accordance with the law; article 45 applies insofar as it is compatible.

Art.56

(Directors' liabilities)

1. The directors must fulfil the obligations imposed by the law, the memorandum of association and the articles of association, and are jointly and severally responsible for managing the company in compliance with the rules governing the assignment, without prejudice to the provisions established in the next article and without detriment to the penal sanction.

2. In particular, they are answerable for:
1) regular accounting and keeping of the corporate books;
«2)[25] prudent supervision of company management;».

3) ensuring that the financial statements comply with the principles established by article 75;
4) ensuring that the dividends comply with the provisions established by article 33;
5) diligent implementation of the resolutions taken by the meeting and any provisions established by the Judicial Authorities;
6) damages to the company caused by use, to their own advantage or that of third parties, of data, information or business opportunities of which they may become aware during the accomplishment of their duties.

3. Equal liabilities belong to the managers of the company within the scope of their tasks.

4. The directors are liable towards the company's creditors for failure to comply with obligations concerning the preservation of the entirety of the corporate equities. The creditors' action relating to liability can be exercised when the corporate equities are insufficiently able to pay off their credits.

[25] As superseded by Art. 32 of Delegate Decree No. 130 of 11 Dec. 2006.

5. The directors are also personally liable towards the partners and towards third parties who have been damaged by their culpable or fraudulent actions.

6. The company's action relating to liability promoted against the directors with a deliberation by the meeting can be adopted when the financial statements are presented even when not indicated in the order of business.

7. Deliberation of the liability action leads to revocation of the office of the directors against whom it is proposed, so long as the resolution is made with the favourable vote of at least one fifth of the company capital. In this case, the meeting will arrange for their substitution.

8. The company may abstain from exercising the action relating to liability and may come to terms, so long as the waiver and transaction are approved by an explicit resolution by the meeting and provided that as many partners as represent at least one fifth of the company capital do not vote against the motion. The waiver cannot prevail against the company's creditors, while the transaction can only be impugned by these if the essential elements of the Paulian action.

9. Directors, statutory auditors, external auditors, liquidators and executives subjected to criminal proceedings for facts pertaining to their office or for other facts of serious penal importance, may be suspended from their tasks by a provision from the same authority or office responsible for the assignment of tasks. Condemnation for the facts indicated in the previous sub-section leads to the definitive fall from office and the inability to carry out the functions of director, liquidator, statutory auditor, external auditor or executive for the term established by the sentence.

Art.57 (most recently superseded with Delegate Decree no. 33 of 20 February 2008)

(Limits to the directors' liability)

1. The liability of the directors concerns the actions or omissions they make from the day they take office to the one in which they are substituted by other directors or liquidators.
2. The director who, being blameless, does not take part in the deliberation or who had his motivated disagreement with the decisions resulting from the minutes registered in these latter without delay, is not responsible for the decisions of the board
3. The directors are not liable towards the company for damages deriving from failure to fulfil the duties imposed by written delegation on the managing directors and the executive committee.

SECTION III

AUDITORS

Art.58

(Nomination, termination and revocation)

1. Nomination of the sole auditor is obligatory:
- in public limited companies;
- in joint-stock companies;
- in the companies described in article 2, sub-section 5;
- in limited liability companies when:
a) the company capital exceeds €77,000.00 (seventyseventhousand Euros), or
b) the proceeds from sales and services have exceeded €2,000,000 (twomillion Euros) for two consecutive business years.

2. In the companies mentioned in sub-section 1, nomination of the board of auditors is obligatory when the proceeds of sales and services of the companies indicated in sub-section 1 have exceeded the value of €7,300.00 (sevenmillionthreehundredthousand Euros) for two consecutive business years.

«3.[26] If, the two consecutive business years, the overall proceeds from sales and services is less than the limits indicated in the previous subsections, nomination of the auditing body, if it had previously become obligatory, now ceases to be so. In that case, the auditors fall from office ex lege with the approval of the financial

[26] As superseded by Art. 33 of Delegate Decree No. 130 of 11 Dec. 2006.

statements pertaining to the business year in which the obligatoriness of their nomination ceases to be of effect; the meeting is obliged to take note of their fall from office.».

4. The auditors are nominated for the first time in the memorandum of association and successively by the meeting, without prejudice to the relevant matters established by special laws.

5. The auditors remain in office for three business years and terminate on the date of the meeting called for approval of the financial statements pertaining to the third business year of their office.

6. Expiry of the auditors due to the end of their term of office, waiver of the assignment and their fall from office take effect from the time they are substituted by the meeting.

7. The auditor's office is renewable, freely relinquishable, but can only be revoked for just cause.

8. The deliberation to revoke the assignment must be approved with a decree issued by the Commissioner of Law, having heard the party in question.

9. The auditor who, without justified reason, fails, during a business year to take part in a meeting or in two meetings of the board of auditors or the board of directors or the executive committee, falls from office.

Art.59

(Substitution)

1. In the case of death, waiver or revocation of one or more of the auditors, the partners' meeting must be immediately called so as to arrange for their substitution.
The newly nominated auditors expire along with those already in office.

Art.60

(Causes of ineligibility and revocation)

1. The following parties cannot be elected to the office of auditor and, if elected, fall from office:
- Unfit Parties;
- spouses, relations or similar within the fourth degree, of the directors of the company;
- persons in some way bound to the company by employment relations or by continuative or periodic relations of an advisory nature or concerning the rendering of services, or other relations concerning the equities that compromise the independence of the candidate;
- persons who have been cancelled or struck off the professional rolls;
- parties who have been sentenced for the facts envisaged by article 56, sub-section 9, of the law;
  who have been cancelled or suspended from the Register of Certified Public Accountants when registration in that Register is for them a requirement for being elected as auditor;
- persons who are directors in participant companies or related undertakings.

2. The articles of association can envisage causes of incompatibility, limits and criteria for plurality of offices.

Art.61 (most recently superseded by Delegate Decree no. 33 of 20 February 2008)

(Composition of the board of auditors and requisites of the sole auditor)

1. When its establishment is obligatory, the board of auditors comprises three or five members.
2. At least two of the members must be registered with the Register of Certified Public Accountants
3. If the remaining members are not registered in that Register, they must be registered with the Order of Chartered Accountants, the Board of Commercial Accountants, the Bar Association or Order of Notaries. Registration with foreign orders and boards or the authorizations to practice these professions obtained abroad, are considered equivalent: for this purpose, the foreign certificates and declarations will be considered equivalent to the San Marinese ones when they demonstrate that the established requisites exist
4. The majority of the members of the board of auditors must reside in the Republic
5. The chairman of the board of auditors is nominated by the meeting.
6. The sole auditor, when his nomination is obligatory, must reside in the Republic and must be registered in the Register of Certified Public Accountants.

Art.62 (most recently superseded by Delegate Decree no. 33 of 20 February 2008)

(Meetings of the board of auditors)

1. The board of auditors must meet at least once each quarter.
2. Minutes must be drawn up during the board of auditors' meetings, then be transcribed in the book envisaged by article 72, sub-section 4, point 6) and undersigned by all the participants
3. The board is regularly constituted with the majority of its members and deliberates by the majority votes of those present
4. The auditor is entitled to have his dissent noted in the minutes.

Art.63

(Duties and powers of the board of auditors or the sole auditor)

1. The sole auditor or the board of auditors must
1) supervise, to ensure compliance with the law, the articles of association and the principles of correct administration by the bodies of the company;
2) audit the accounts when a person charged with auditing has not been nominated;
3) take part in the partners' meetings and in the meetings of the board of directors and executive committee;
4) express obligatory, although not binding, written opinions before actions that modify the company capital are accomplished;
5) express their disagreement to the directors in relation to actions or facts, calling upon them to comply with the law, the articles of association and their duties of diligence, informing them of the need for determined obligations, making comments to be added to the minutes of the board of directors' meeting;
6) call the meeting and make the publications prescribed by law in the event of the directors' omission or unjustified delay;
7) call the meeting, after having notified the directors, if, during the accomplishment of their assignment, they become aware of very serious blameworthy;
8) fulfil the other obligations and duties required by law.

2. The auditor can, at any time:
1) proceed with inspections and controls;
2) ask the administrators for information, also with reference to related undertakings, about the trend of the corporate dealings or about certain business;
3) exchange information with the corresponding bodies of the subsidiary and associated companies concerning the administrating and auditing systems and about the general trend of the corporate business dealings.

3. In the presence of the board of auditors, the powers indicated in sub-section 2 can be exercised by single auditors without the need for any proxy from the board of auditors itself. The decisions pertaining to the measures to undertake after these powers have been exercised must be made by the board of auditors.

4. The assessments, investigations, audits and inspections, decisions or deliberations of the sole auditor, the members of the board of auditors or the board of auditors itself, must be registered in the book envisaged by article 72, sub-section 4, point 6).

Art.64

(Liability)

1. The auditors must accomplish their duties in a professional way and with the diligence required by the nature of their office; they are responsible for the truth of their declarations and must treat the facts and documents about which they become aware during their tasks as confidential.

2. The auditors are liable towards the company, the partners and third parties, jointly and severally with the directors, for the facts and omissions of these latter when the damage would not have been produced if they had supervised in compliance with the obligations pertaining to their office.

3. The company's action relating to liability is started by a resolution of the meeting. The provisions established by article 56 apply insofar as they are compatible.

Art.65

(Reporting to the auditors)

1. Every partner can report facts they consider blameworthy to the board of auditors or to the sole auditor who, if the report is made by as many partners as represent one fifth of the company capital, must investigate the reported facts without delay and present their conclusions and any proposals to the meeting, calling this immediately if the report appears to be founded and, in the presence of the pertinent requirements, submit the report to the Court in accordance with article 66.

Art.66

(Reporting to the Court)

1. If the suspicion that the directors have committed serious irregularities in their management able to cause damage to the company is founded, the sole auditor or the board or auditors or as many partners as represent one fifth of the company capital may report these serious irregularities to the Commissioner of Law.

2. Having heard the directors, the sole auditor or the members of the board of auditors, or the reporting partners, and having acquired all the appropriate information and accomplished the brief investigations required, the Commissioner of Law may order an inquiry to be carried out at the company's charge, also employing experts nominated by right; he may also require the reporting partners to lodge a deposit for the expenses and possible reimbursement of damages.

3. If the reported irregularities exist, the Commissioner of Law, according to the emerging circumstances, may arrange for the urgent measures that appear most able to limit the effects of these irregularities, issue every provision able to eliminate the irregularity and, when necessary, so as to ensure that the company continues to be managed. For this purpose, he may call the meeting for the consequent deliberations and nominate a receiver after annulling the directors in office.

4. The receiver is charged with ordinary administration. Any actions other than ordinary administration that may be required in order to prevent irreparable prejudice to the company must be authorized by the Commissioner of Law. He may bring the company's action relating to liability against the directors and auditors and, if the company is insolvent, present requests for starting proceedings for composition with creditors even in the absence of a resolution by the meeting.

5. Before his assignment terminates, the receiver calls and chairs the meeting for the nomination of new directors and auditors or for proposing to wind up the company if a cause for this exists. The receiver files the report of the management with the Court, along with the notice of convocation.

SECTION IV

EXTERNAL AUDITORS

Art.67

(Auditing of the accounts)

1. The meeting of companies that are obliged to nominate the auditing body may nominate an external party registered in the Register of Certified Public Accountants established with the Secretary of State for Industry, to audit the accounts of the company. In that case, auditing the accounts is not one of the duties of the statutory auditing body.

2. In companies for which it is obligatory to nominate an auditing firm, in accordance with special laws, this firm must be registered in the Register indicated in the previous sub-section.

Art.68

(Accounts auditing functions)

1. The external auditor or auditing company charged with auditing the accounts:
1) checks, during the business year and at least once every quarter, to make sure that the company's accounts are kept in a regular way and that the accounting records appraise the management affairs correctly;
2) checks to make sure that the annual balance sheet corresponds to the accounting results and assessments made and that it complies with the pertinent laws;
3) expresses an opinion about the annual balance sheet in a dedicated report;
4) exchanges information with the board of auditors or the sole auditor, of importance for the accomplishment of their respective tasks.

2. The external auditor or the auditing company charged with auditing the accounts may ask the directors for documents or information required for the audits and can carry out inspections. He reports the activities accomplished in a dedicated book envisaged by article 72, sub-section 4, point 7) kept in the company's registered office or in a different place if so established by the articles of association.

3. When the accounts are audited by the sole auditor or by the board of auditors, the audits accomplished are reported in the book envisaged by article 72, sub-section 4, point 6) and the opinion about the annual balance sheet is expressed in the report indicated in article 83, sub-section 2.

Art.69

(Granting and revocation of the mandate)

1. The accounts auditing assignment is granted by the meeting.

2. The mandate lasts for three business years and expires on the date of the meeting called for approval of the financial statements pertaining to the third business year of the office.

3. The mandate can be renewed twice and can only be granted again to the same auditor or auditing company after the task has been assigned to another auditor or auditing company for at least three business years.

4. The mandate can only be revoked for just cause, after the opinion of the sole auditor or the board of auditors has been heard.

5. The deliberation to revoke the assignment must be approved with a decree issued by the Commissioner of Law, having heard the party in question.

Art.70

(Causes of ineligibility and annulment)

1. The following parties cannot be charged with auditing the accounts and, if nominated, fall from office:
1) the auditors of the company or the companies in which these have holdings or of those that have holdings in the company itself, or
2) those who are in the conditions of ineligibility envisaged by article 60.

2. In the case of auditing companies, the provisions established by this article apply with reference to the directors and parties charged with auditing.

Art.71

(Liability)

1. The parties charged with auditing the accounts are subject to the provisions of article 64 and are liable in relation to the company, the partners and third parties for the damages deriving from failure to accomplish their duties.

2. In the case of auditing companies, the parties who audit the accounts are jointly and severally liable along with the company itself.

TITLE III

DOCUMENTATION OF THE COMPANY AND OF THE FINANCIAL STATEMENTS

Art.72

(Statutory corporate books and accounting records)

1. Companies must keep the journal book of original entries, the inventory ledger and the book of depreciable assets.

2. The original copies of the incoming correspondence and invoices and copies of the outgoing correspondence and invoices must also be kept in an orderly way for each operation.

3. The books and documents indicated in the previous sub-sections must remain in the registered offices of the company and must be kept in compliance with Directory LXXI of Book II of the Charters.

4. The company must also keep:
«1)[27] the stock ledger, in which the number of holdings or shares, the personal details of the holders of the registered shares and holdings must be indicated as well as the relative transfers and encumbrances;».

2) the book of bonds, which must indicate the number and amount of the bonds issued and those discharged, the details mentioned in article 32 for each bond issue, the name and surname of the holders of the registered bonds as well as the relative transfers and encumbrances:
3) the book of minutes and resolutions of the meeting;
4) the book of minutes and resolutions of the board of directors;
5) the book of minutes and resolutions of the executive meeting;
6) the book of minutes and, respectively, the deliberations or the decisions of the board of auditors and the sole auditor;
7) the accounting audit book of the external auditors, only if auditing the accounts is not the duty of the statutory body of auditors.

5. The books indicated in the previous sub-section must be kept in the registered offices of the company for its entire duration, in compliance with Directory LXXI of Book II of the Charters.

6. Before they can be used, all the books must be endorsed by the Registry Office, with an indication, at the beginning or end of the volume, as to the number of pages of which the books are composed.

Art.73

(The balance sheet)

1. The balance sheet is the document with which the directors, for each business year that coincides with the calendar year, outline the assets, liabilities and financial situation of the company and the operating result of the business year.

Art.74

(Drawing up of the balance sheet)

1. The balance sheet must be drawn up with clarity by the directors and must truthfully and correctly represent the assets, liabilities and financial situation of the company and the operating result of the business year.

2. The business year coincides with the calendar year.

3. The balance sheet comprises the following documents:

[27] As superseded by Art. 34 of Delegate Decree No. 130 of 11 Dec. 2006.

1) the statement of assets and liabilities, which indicates the assets, the liabilities and the net equity of the company;
2) the profit and loss account, which indicates the costs and proceeds of the year and which shows the final profit or loss result of the business year;
3) the balance sheet statement, which provides all the details able to ensure that the items in the previous documents are easier to understand and which contains information about the management.

4. The documents mentioned in the previous sub-section form a single inseparable whole.

5. If the information required by specific legal provisions is insufficiently able to give a truthful and correct representation, additional information required for this purpose must be provided.

6. If, in exceptional cases, application of a provision in the following articles is incompatible with the truthful and correct representation, then that provision must not be applied. The balance sheet statement must motivate the exception and must indicate its influence on the assets, liabilities and financial situation of the company and on the operating result.

7. The balance sheet must be drawn up in Euro units without decimal figures, with the exception of the balance sheet statement, which can be drawn up in thousands of Euros.

Art.75

(Principles for drawing up the balance sheet)

1. The following principles must be complied with when the balance sheet is drawn up:
1) the items must be evaluated with caution and with the prospect of continuing with the business, as well as by taking into account the economic function of the item in the assets or liabilities considered;
2) only the profits achieved on the closing date of the business year may be indicated;
3) the evaluation criteria may not be changed from one business year to the next;
4) the income and charges of the business year must be taken into account, regardless of the date on which they are encashed or paid;
5) the risks and losses of the business year must be taken into account, even when they are known after the business year has closed;
6) the components of the individual items must be evaluated separately.

2. In exceptional cases, the directors may depart from the principles mentioned in the previous sub-section.

3. The balance sheet statement must motivate the exception and must indicate its influence on the way the assets, liabilities and financial situation of the company and the operating result, are represented.

Art.76

(Structure of the statement of assets and liabilities and the profit and loss account)

1. Without prejudice to the provisions established by special laws for companies that exercise particular activities, all the items envisaged in articles 77 and 79 must be entered separately in the statement of assets and liabilities and in the profit and loss account.

2. The items preceded by Arabic numerals may be divided to a further extent, without eliminating the overall item and the corresponding amount when this is useful or necessary, also in relation to the activity exercised, in order to make the balance sheet more comprehensible.

3. Other items must be added when their contents are not included in any of those established by articles 77 and 79.

4. The amount of the previous year’s corresponding item must be indicated for each item of the statement of assets and liabilities and the profit and loss account. If the items are not comparable, those pertaining to the previous business year must be adapted. The incomparability and adaptation or the impossibility of this must be reported and commented in the balance sheet statement.

5. It is forbidden to offset the items (method of gross presentation).

Art.77

(Contents of the statement of assets and liabilities)

1. The statement of assets and liabilities must be drawn up in compliance with the following layout:

ASSETS

A) Credits v/s partners for payments still due

B) Fixed assets:

I - Intangible assets:

1) installation and expansion costs;
2) research, development and advertising costs;
3) rights to industrial patents and rights to use original works;
4) concessions, licenses, trademarks and similar rights;
5) goodwill, if acquired at a charge;
6) immobilizations in progress and advances;
7) sundry fixed assets.

Total.

II - Tangible assets:

1) land and buildings;
2) plant and machinery;
3) industrial and commercial equipment;
4) sundry assets;
5) immobilizations in progress and advances.

Total.

III - Long-term investments, with separate indications for each credit item, of the amounts receivable within the next business year.

1) holdings in:
   a) subsidiary companies;
   b) associated companies;
   c) holding companies;
   d) other companies;
2) accounts receivable:
   a) v/s subsidiary companies;
   b) v/s associated companies;
   c) v/s holding companies;
   d) v/s others;
3) other securities;
4) own shares, also indicating the overall face value.

Total.

Total fixed assets (B);

C) Floating assets:

I - Inventories:

1) raw, subsidiary and expendable materials;
2) products being manufactured and semi-processed products;
3) work in progress to order;
4) finished products and goods;
5) advances.

II - Accounts receivable, with separate indications for each item, of the amounts receivable within the next business year.

1) v/s customers;
2) v/s subsidiary companies;
3) v/s associated companies;
4) v/s holding companies;
5) fiscal credits;
d) v/s others;

Total.

III - Financial assets that are not long-term investments:

1) holdings in subsidiary companies;
2) holdings in associated companies;
3) holdings in holding companies;
4) sundry holdings;

5) other securities;
6) own shares;

Total.

IV - Liquid assets:

1) bank and postal deposits;
2) cash and paper holdings;

Total.

Total floating assets

D) Accrued income and deferred charges.

Total Assets

LIABILITIES

A) Net equity:

I - Corporate capital.

II - Share premium reserves.

III - Revaluation reserves.

IV - Statutory reserves.

V - Reserves for own shares portfolio.

VI - Other reserves, indicated separately.

VII - Profit (loss) carried forwards.

VIII - Profit (loss) of the business year.

Total.

B) Provisions for risks and charges:

1) for taxation;
2) sundry provisions;

Total.

C) Staff leaving indemnity.

D) Accounts payable, with separate indications for each item, of the amounts payable beyond the next business year.

1) bonds;
2) convertible bonds;
3) amounts owed to partners for financing;
4) amounts owed to banks;
5) amounts owed to other financiers;
6) advances;
7) amounts owed to suppliers;
8) debts represented by credit instruments;
9) amounts owed to subsidiary companies;
10) amounts owed to associated companies;
11) amounts owed to holding companies;
12) fiscal debts;
13) amounts owed to social security institutes;
14) sundry debts;

Total.

E) Accrued liabilities and deferred income.

Total Liabilities

2. The guarantees furnished directly and indirectly must be indicated at the end of the statement of assets and liabilities, with a distinction amongst fidejussions, sureties, other personal sureties and collateral and indicating separately, for each type, the guarantees furnished in the interests of subsidiary and associated and holding companies, and companies subjected to the control of these latter; the other memorandum accounts must also be indicated.

Art.78

(Provisions concerning the individual items of the statement of assets and liabilities)

1. The equity items designed for lasting use must be entered amongst the fixed assets.

2. Holdings in other subsidiary or associated companies that are not less than those established by article 1 points 7) and 8) are presumed to be locked up.

3. The provisions for risks and charges are for covering certain or probable losses or debts of a determined nature, of which, however, either the amount or the date of the contingent item are unspecified when the balance sheet is closed.

4. Receivables corresponding to income of the business year but receivable in successive years must be entered under the accrued income item; accounts payable corresponding to costs of the business year that will be sustained during successive years must be entered under the accrued liabilities item. The costs, to be considered suspended, that have been sustained within the date on which the business year closed but which pertain to successive business years, must be entered under the deferred charges item; the income, to be considered suspended, obtained within the date on which the business year closed but which pertains to successive business years, must be entered under the deferred income item.

5. Only portions of costs and income common to several business years, the entity of which varies as time goes by, are attributable to those items.

Art.79

(Contents of the profit and loss account)

1. The profit and loss account must be drawn up in compliance with the following layout:

A) Value of the production:

1) proceeds from sales and services rendered;
2) inventory variation of products being manufactured, semi-processed and finished products;
3) variation of work in progress to order;
4) increases in fixed assets for internal implementations;
5) other income and proceeds, with separate indication of the contributions during the business year;

Total.

B) Production costs:

6) for raw, subsidiary, expendable materials and goods;
7) for services;
8) for enjoyment of third party assets;
9) for the personnel:
   a. salaries and wages;
   b. social security charges;
   c. staff leaving indemnity;
   d. sundry costs;
10) depreciation and devaluations:
   a) depreciation of intangible assets;
   b) depreciation of tangible assets;
   c) other devaluations of fixed assets;
   d) devaluation of doubtful debts in the floating assets;
11) inventory variation of raw, subsidiary, expendable materials and goods;
12) provision for bad debts
13) sundry provisions;
14) sundry operating charges;

Total.

Difference between production value and costs (A-B)

C) Financial proceeds and charges:

15) proceeds from holdings, with separate indication of those pertaining to subsidiary and associated companies;
16) sundry financial proceeds:
   a) from receivables entered under the fixed assets, with separate indication of those from subsidiary and associated companies and those from holding companies;
   b) from securities entered under the fixed assets that do not constitute holdings;
   c) from securities entered under the floating assets that do not constitute holdings;
   d) from proceeds other than the previous ones, with separate indication of those from subsidiary and associated companies and those from holding companies;
17) Interest and other financial charges, with separate indication of those v/s subsidiary and associated companies and those v/s holding companies;

Total (15 + 16 - 17)

D) Adjustment of financial asset values:
18) revaluations:
a) of holdings;
b) of long-term investments that are not holdings;
c) of securities entered under the floating assets that do not constitute holdings;
19) devaluations:
a) of holdings;
b) of long-term investments that are not holdings;
c) of securities entered under the floating assets that do not constitute holdings;
Total of the adjustments (18 - 19)
E) Extraordinary proceeds and charges:
20) extraordinary proceeds;
21) extraordinary charges;
Total of the extraordinary items (20 - 21)
Result prior to taxation (A - B +- C +- D +- E)
22) income tax of the business year;
23) profit (loss) of the business year.

Art.80

(Entry of income, proceeds, costs and charges)

1. The income and proceeds, the costs and charges, must be indicated net of returns, discounts, allowances and premiums as well as the taxation directly connected with the sale of products and services.

Art.81

(Balance sheet evaluation criteria)

1. The following criteria must be complied with when the balance sheet is evaluated:
1) the fixed assets are entered at their purchasing or production cost. The purchasing cost also includes the accessory costs. The production cost includes all the costs directly attributable to the product;
2) the cost of the tangible and intangible assets whose use is limited as to time, must be systematically amortized in each business year in relation to their residue possibility of use. Any changes in the depreciation criteria and the coefficients applied must be motivated in the balance sheet statement.
3) the fixed asset that, on the date the balance sheet is closed, is durably of a lower value than that determined according to numbers 1) and 2), must be entered at that lower value; this cannot be maintained in the successive balance sheets if the reasons for the adjustment made are no longer valid. For fixed assets consisting of holdings in subsidiary or associated companies that are entered for a higher value than that deriving from application of the evaluation criteria envisaged in the successive number 4), the difference must be motivated in the balance sheet statement.
4) instead of the criterion indicated in number 1), fixed assets consisting of holdings in subsidiary or associated companies can be evaluated, with reference to one or more amongst those companies, for an amount equal to the corresponding fraction of the net equity resulting from the last balance sheet of the companies themselves, after the dividends have been deducted. When the holding is entered for the first time according to the net equity method, the purchasing cost that is higher than the corresponding value of the net equity resulting from the last balance sheet of the subsidiary or associated company may be entered in the assets, so long as the relative reasons are indicated in the balance sheet statement. The difference, for the part attributable to depreciable assets or goodwill, must be depreciated. During the successive business years, the increased values deriving from application of the net equity method in relation to the value indicated in the previous year’s balance sheet, are entered in a non-distributable reserve.
5) the receivables must be entered according to their probable realization value.
6) inventories, securities and financial assets that are not fixed assets are entered at their purchasing or production price calculated according to number 1), or at the value deducible from the market trend, if less. This value cannot be maintained in the successive balance sheets if the reasons are no longer valid. The distribution costs cannot be computed in the production cost;
7) the cost of replaceable goods can be calculated with the weighted average method or with the: “first in, first out” or “last in, first out” methods. If the value obtained differs in an appreciable way from the costs in force when the balance sheet is closed, the difference must be indicated, per categories of goods, in the balance sheet statement;
8) works in progress to order can be entered on the basis of their contractual values accrued with reasonable certainty.

«2.[28] Value adjustments and provisions can be made in compliance with the fiscal laws.».

Art.82

(Contents of the balance sheet statement)

1. Besides the matters established by other provisions, the balance sheet statement must indicate:
1) the corporate situation and the management trend as a whole;
2) important facts that have occurred after closure of the business year;
3) the foreseeable management developments;
4) the criteria used for evaluating the balance sheet items and value adjustments;
5) the fixed asset movements, specifying for each item: the cost, the previous revaluations, depreciations and devaluations, the acquisitions, movements from one item to the next, the sales made during the business year, the revaluations, depreciations and devaluations made during the business year;
6) the composition of the items: "installation and enlargement costs" and "research, development and advertising costs" as well as the reasons for the entry and the respective depreciation criteria;
7) the variations to the other assets and liabilities items; in particular, the formation and utilizations for the net equity items, for the reserve funds and for the staff leaving indemnity;
8) the list of holdings, possessed either directly or through trust companies or third parties, in subsidiary and associated companies, indicating for each the business name, the registered offices, the capital, the net equity, the profit or loss of the last business year, the holding possessed and the value attributed in the balance sheet or the corresponding credit;
9) separately for each item, the amount of receivables and payables with a residual maturity of more than five years and the debts depending on real securities with a specific indication as to the nature of the guarantees;
10) any significant effects caused by variations in the currency exchanges that may have occurred after the business year was closed;
11) the composition of the "accrued income and deferred charges" and "accrued expenses and deferred income" items, and the "other funds" item of the statement of assets and liabilities, when their amount is appreciable;
12) the overall financial charges ascribed to the business year at the values entered in the assets of the statement of assets and liabilities, separately for each item;
13) the commitments that do not appear in the statement of assets and liabilities with information about their nature and the memorandum accounts;
14) the amount of proceeds from holdings other than dividends;
15) division of the interests and other financial charges regarding bonded loans, sums owed to banks and others;
16) the composition of the "extraordinary proceeds" and "extraordinary charges" items in the profit and loss account;
17) the average number of employees;
18) the fees due to directors and auditors;
19) the securities, financial instruments or other values issued by the company, specifying their number and the rights they attribute;
20) financing from partners of the company, divided as to term;

[29]«21) the reasons for the adjustment of balance sheet values and the provisions made in accordance with the fiscal laws, along with the relative amounts.».

Art.83 (most recently superseded by Delegate Decree no. 33 of 20 February 2008)

(Auditors' report and filing of the balance sheet)

1. The balance sheet must be sent to the directors, to the sole auditor or board of auditors, along with the supplementary notes, at least thirty days prior to the date fixed for the meeting that must discuss it.
2. The sole auditor or the board of auditors must report to the meeting about the results of the business year and the actions accomplished in fulfilment of their duties. They must also make comments and proposals concerning the balance sheet and its approval, particularly if they have exercised derogation under article 75, sub-section 2. A similar report is prepared by the auditor or by the auditing firm, if appointed.

[28] As superseded by Art. 35 of Delegate Decree No. 130 of 11 Dec. 2006.
[29] As superseded by Art. 36 of Delegate Decree No. 130 of 11 Dec. 2006.

3. The balance sheet with supplementary notes and the report prepared by the auditor or by the auditing form if appointed, must be filed with the Registry at least twenty clear days before the meeting convened for the approval thereof. The partners are entitled to receive a copy of all the documentation from the directors.

Art.84

(Publication of the balance sheet)

1. Within thirty days from the date on which it is approved, which must take place within five months from the date on which the business year closes, an authentic copy of the minutes approving the balance sheet, to which all the documents indicated in article 83 must be attached, must be filed by the directors with the Registrar's office.

Art.85

(Balance sheet in the abridged form)

1. Companies may draw up the balance sheet in the abridged form when, during the first business year or successively, for two consecutive business years, they have not exceeded two of the following limits:
1) total assets in the statement of assets and liabilities: €3,650,000.00 (threemillionsixhundredfiftythousand Euros);
2) proceeds from sales and services rendered: €7,300,000.00 (sevenmillionthreehundredthousand Euros);
3) average number of employees during the business year: 50 (fifty) persons.

2. In the abridged balance sheet, the statement of assets and liabilities only includes the items indicated in article 77 with capital letters and Roman numerals; the amounts receivable and accounts payable beyond the next business year must be indicated separately in item CII of the assets and D of the liabilities.

3. The profit and loss account of abridged balance sheets only includes the items indicated with capital letters and Arabic numbers in article 79.

4. The indications requested by numbers 6), 8), 9), 15), 16), 17), 18) and 20) in article 82 are omitted from the balance sheet statement.

5. Companies which, in accordance with this article, draw up their balance sheets in the abbreviated form must draw them up in the ordinary form when they have exceeded two of the limits indicated in the first sub-section for the second consecutive business year.

TITLE IV

EXTRAORDINARY OPERATIONS

SECTION I

TRANSFORMATION

Art.86

(Transformation)

1. The resolution to transform a company must appear in a public deed and must contain the indications required by law for the memorandum of association and the articles of association of the type of company adopted. It must be entered in the Register in accordance with the formalities prescribed for the memorandum of association.

2. The company maintains the rights and obligations prior to the transformation.

3. Transformation of a partnership into a joint-stock company or transformation of a joint-stock company into another with less capital cannot take place without the creditors' consent or without a relative assessment to be acquired by the directors and which must show that there are no impediments to the transformation.

Art.87

(Partners' liabilities)

1. Transformation of a company with unlimited liability partners does not release these latter from their liability towards the company's obligations prior to entry of the resolution to convert the company in the Register, if there is nothing to show that the company's creditors have consented to the transformation.

2. Consent is presumed if the creditors, to whom the resolution to transform the company has been notified by registered letter, have not explicitly disagreed with the matter within the term of thirty days from the notification.

Art.88

(Allocation of shares and holdings)

1. In the transformation, each partner is entitled to be allocated a number of shares or holdings in proportion to the value of his participation as resulting from the last balance sheet approved.

SECTION II

MERGER

Art.89

(Forms of merger)

1. Merger by incorporation is the operation by which one or more companies transfer, through discontinuance without liquidation, the entire capital and reserves as well as all the assets and liabilities to the other company by attributing holdings or shares of the incorporating company to the partners of the incorporated company and, if necessary, with an adjustment in ready money no higher than ten percent of the face value of the attributed shares or holdings or, in the absence of a face value, of their accounting parity.

2. Merger by establishment of a new company is the operation by which several companies transfer, through their discontinuance without liquidation, the entire capital and reserves to the newly established company by attributing holdings or shares of the new company to the partners and, if necessary, with an adjustment in ready money no higher than ten percent of the face value of the attributed shares or holdings or, in the absence of a face value, of their accounting parity.

3. Neither companies subjected to proceedings for composition with creditors nor companies being liquidated may take part in the merger.

Art.90

(Merger project)

1. The directors of companies taking part in a merger must draw up a merger project showing:
1) the type, the denomination or business name, the registered offices of the companies taking part in the merger;
2) the memorandum of association of the new company produced by the merger or of the incorporating company, along with any modifications deriving from the merger;
3) the rate of exchange of the shares or holdings, as well as any adjustment in ready money;
4) the formalities for attributing the shares or holdings of the company resulting from the merger or of the incorporating company;
5) the date on which these shares or holdings participate in the profits;
6) the date from which the companies participating in the merger enter the balance sheet of the company resulting from the merger or of the incorporating company;
7) the way particular categories of holdings may be treated.

2. The adjustment in ready money indicated under number 3) of the previous sub-section may not be more than 10% of the face value of the shares or holdings assigned.

3. The merger project must be filed for registration in the Register.

4. At least thirty days must elapse between the date on which the project is registered and the date fixed for the decision about the merger, unless the partners waive this term with unanimous consent.

Art.91

(Financial position)

1. The directors of the companies taking part in the merger must draw up the statement of assets and liabilities of the companies themselves with reference to a date no more than one hundred-twenty days prior to the date on which the merger project is filed in the registered offices of the company.

2. The financial position must be drawn up in compliance with the laws governing the annual balance sheet.

3. The statement of assets and liabilities can be substituted with the balance sheet of the last business year if this has been closed no more than six months prior to the filing date indicated in the first sub-section.

Art.92

(Directors' report)

1. The directors of the companies that take part in the merger must draw up a report that illustrates and justifies, from the juridical and economic aspects, the merger project and particularly the exchange ratio adopted for the shares and holdings.

2. The report must include the criteria used for determining the exchange ratio.

3. The report must also include any evaluation difficulties encountered.

Art.93

(Experts' report)

1. One or more experts on behalf of each company must draw up a report about the congruousness of the exchange ratio used for the shares and holdings, indicating:
1) the method or the methods used for determining the exchange ratio proposed and the values resulting from the application of each;
2) any evaluation difficulties encountered.

«2.[30] The report must also contain an opinion as to the adequacy of the method or methods used for determining the exchange ratio and about the relative importance ascribed to each in determining the value adopted. The expert or experts must have been registered for at least five years in the rolls of professional accountants or chartered accountants. Each expert is entitled to obtain, from the companies taking part in the merger, all the information and documents required for his assessment.».

3. The expert is answerable for the damages sustained by the companies taking part in the merger, to their partners and to third parties.

Art.94

(Filing of deeds)

1. A copy of the following documents must remain filed in the registered offices of the companies taking part in the merger during the thirty days prior to the meeting and until the merger has been deliberated:
1) the merger project, with the directors' reports indicated in article 92 and the experts' reports indicated in article 93;
2) the balance sheets of the last three business years of the companies taking part in the merger, along with the reports of the directors and board of auditors or the sole auditor if nominated and the reports of the external auditor and the auditing company if nominated;
3) the statements of assets and liabilities of the companies taking part in the merger drawn up as indicated in article 91.

[30] As superseded by Art. 37 of Delegate Decree No. 130 of 11 Dec. 2006.

2. The partners are entitled to examine and obtain a copy of all these documents.

Art.95

(Merger resolution)

1. The merger must be deliberated by each of the companies that take part by approval of the relative project.

2. The merger resolution must be filed for registration in the Register within thirty days along with the documents indicated in article 93.

Art.96

(Creditors' objection)

1. The merger may only be accomplished once sixty days have elapsed from the date on which the resolutions of the participating companies are registered, so long as the respective creditors have given their consent prior to the fulfilments envisaged by article 90, sub-sections 3 and 4, or that the creditors who have not given their consent have been paid, or that the corresponding sums have been deposited in a San Marinese credit institute.

2. During the aforementioned term, the creditors indicated in the first sub-section are entitled to object.

3. Despite the objection, the Commissioner of Law may arrange for the merger to take place after the company has furnished suitable guarantees.

Art.97

(Bonds)

1. Holders of bonds may lodge objections as established by article 96.

2. Holders of convertible bonds must be allowed, by means of registered letter, at least ninety days prior to publication of the merger project, to exercise their rights to conversion within the term of thirty days after having received the relative notification.

3. Holders of convertible bonds who have not exercised their rights to conversion must be provided with equivalent rights to those they possessed before the merger.

Art.98

(Merger deed)

1. The merger must take place by public deed.

2. The merger deed must in any case be filed with the Registrar's office for registration in the Register, by a notary or by the directors of the company formed by the merger or by those of the incorporating company, within thirty days, The deed of the company formed by the merger or the incorporating company cannot be filed before those of the companies that take part in the merger.

Art.99

(Effects of the merger)

1. The company produced by the merger or the incorporating company take over the rights and obligations of the terminated companies.

2. The merger has effect when the last registration indicated in article 98 has been made.

3. However, a successive date can be established in mergers by incorporation.

4. Prior dates can also be established for the effects referred to in article 90, sub-sections 1 points 5) and 6).

Art.100

(Veto on assignment of shares and holdings)

1. The company produced by the merger may not assign holdings in substitution of those of the companies that take part in the merger possessed, also through trust companies or third parties, by the companies themselves.

2. The incorporating company may not assign holdings in substitution of those of the incorporated companies possessed, also through trust companies or third parties, by the incorporated companies themselves or by the incorporating company.

Art.101

(Incorporation of entirely possessed companies)

1. The provisions established by article 90, sub-section 1, points 3), 4), 5) and by articles 92 and 93 do not apply to mergers through incorporation of one company into another that possesses all the shares or holdings of the former company.

SECTION III

DIVISION

Art.102

(Forms of division)

1. A company that divides assigns all its equities to several, already existing or newly established companies, or part of its equities, in that case also to one single company, and the relative holdings to its partners.

2. An adjustment in ready money is allowed, so long as it does not exceed ten percent of the face value of the holdings attributed. By unanimous consent, certain partners need not be allocated holdings in one of the companies resulting from the division, but holdings in the divided company.

3. Neither companies subjected to proceedings for composition with creditors nor companies being liquidated may take part in the division.

Art.103

(Division project)

1. The directors of the companies that take part in the division draw up a project containing the details indicated in article 90, sub-section 1, as well as an exact description of the corporate equity components to assign to each of the companies resulting from the division and the adjustment in ready money if necessary.

2. If the destination of a component of the assets is not inferred by the project it, supposing that the entire equity of the divided company is assigned, is distributed amongst the companies formed by the division in proportion to the amount of net equity allocated to each of them, as evaluated for the purposes of determining the exchange ratio; if the company's corporate equity is only partially assigned, this component remains the pertinence of the transferor company.

3. In relation to components of the liabilities whose destination is not inferred by the project, the companies formed by the division are jointly and severally answerable in the first case and the divided company and the companies formed by the division in the second case. Joint liability is limited to the effective value of the net equity ascribed to each company formed by the division.

4. The criteria adopted for distributing the holdings of the companies formed by the division must be indicated in the division project. If the project envisages allocations of holdings to partners that are not in proportion to their original holdings, the project itself must include the right of the partners who do not approve the division to have their holdings purchased for a fee determined in the same way as the criteria used for withdrawal, indicating the parties at whose charge the obligation to purchase has been placed.

5. The division project must be filed in compliance with article 90, sub-sections 3 and 4.

Art.104

(Applicable laws)

1. The directors of the companies taking part in the division must draw up the statement of assets and liabilities and the descriptive report in accordance with articles 91 and 92.

2. The directors' report must also illustrate the criteria used for distributing the holdings and indicate the effective value of the net equity assigned to the companies resulting from the division as well as that remaining in the divided company.

3. Article 93 applies to the division; the report envisaged therein is not required when the division takes place by establishing one or more new companies and criteria for attributing the shares or holdings differing from the proportional method have not been envisaged.

4. With the unanimous consent of the partners of the companies taking part in the division, the directors may be exonerated from drawing up the documents envisaged in the previous sub-sections.

5. Articles 94, 95, 96, 97, 98, 99 and 100 also apply to the division. All references to mergers in those articles are understood to also refer to divisions.

Art.105

(Effects of the division)

1. The division has effect from the date on which the last of the registrations pertaining to the deed of division has been entered in the Register. However, a successive date may also be established except in the case of divisions accomplished by establishing new companies. Prior dates can also be established for the effects referred to in article 90, sub-section 1 points 5) and 6).

2. Any of the companies formed by the division may fulfil the publication formalities pertaining to the divided company.

3. Each company is jointly and severally liable, within the limits of the effective value of the net equity it has been assigned or that has remained in it, for any debts of the divided company that have not been paid by the company to which they belong.

TITLE V

WINGING-UP AND LIQUIDATION OF THE COMPANIES

Art.106

(Causes for winding-up)

1. The company is wound-up and is liquidated:
1) once its term has expired;
2) once its business purpose has been achieved or when it has become impossible to achieve it;
3) when it has become impossible for the company to operate;
4) when the corporate capital has been reduced to below the legal minimum, unless the company immediately deliberates its transformation or re-integration of the corporate capital to within the legal limits;
5) following a resolution by the meeting;
6) if the licence to carry out the business is withdrawn;

2. The company is also wound-up for the other causes envisaged by the law and the articles of association.

Art.107

(New operations)

1. The directors cannot carry out new operations when a fact that causes the company to be wound-up occurs. Otherwise, the directors who act are jointly, severally and unlimitedly answerable for the damages sustained by the company, by the partners, by the creditors and by third parties.

Art.108

(Liquidation)

1. If a cause for winding up the company occurs, the directors must call the meeting that nominates the liquidators.

2. If the articles of association do not specify the way in which the company's net worth is to be liquidated, if the partners are not in agreement with the way it is to be determined or if the directors fail to call the meeting within thirty days from the date on which the cause that determined the dissolution occurred, liquidation will be carried out by the liquidators nominated by the Commissioner of Law by right or upon the request of anyone who has an interest in the matter.

3. For serious reasons, the Commissioner of Law, by right or upon the request of anyone who has an interest in the matter, may annul the mandate assigned to the liquidators even when they have been nominated by the company, and may proceed by nominating their substitutes.

Art.109

(Powers of the liquidators)

1. The liquidators may dispose of and convert the corporate assets, they may accept payments and encash credits, go to law on behalf of the company, come to terms and compromise, so long as they acquire the authorization of the Commissioner of Law for operations concerning real estate.

2. The liquidators cannot accomplish operations or start proceedings in the name of the company beyond the actions strictly required in order to conclude the liquidation process. The prior authorization of the Commissioner of Law is always required if business activities of use for the liquidation process, must be managed.

3. The liquidators must fulfil their duties in a professional way and with the diligence required by the nature of their mandate and the liability for damages deriving from failure to comply with these duties is governed by article 56.

Art.110

(Revocation of the state of liquidation)

1. The company may revoke the liquidation before distribution of the assets has begun, by a resolution from the meeting.

Art. 111 (most recently superseded by Delegate Decree no. 33 of 20 February 2008)

(Procedure)

1. Within six months of their appointment, the liquidators must submit a report and a plan defining all the debts in the order of precedence required by law
2. The liquidators must annually present a report that highlights the key facts of the procedure. However, the period between registration of the resolution of the meeting for liquidation or of the Law Commissioner's provision that orders it, and the preparation of the final liquidation balance sheet constitutes a single tax period; the liquidators, therefore, present the income declaration for this period in compliance with the tax regulations in force.
3. At the end of the operations for liquidation of assets, the liquidators present the final report with a plan for distributing any residual amounts to the shareholders. The final report must be filed with the Registry, where it

must remain available to those interested for thirty days; the filing of the report must be made known by posting ad valvas Palatii (on the doors of the Government Building) and in the tables of the Government Building.
4. If, within thirty days of the time-limit referred to in the paragraph above, opposition is submitted to the distribution plan through summons of the liquidator, the Commissioner of Law decides and issues a ruling on the matter. Oppositions must be combined and decided upon in the same proceedings, in which all the shareholders and creditors concerned may take part. The ruling is also binding on non-participants
5. If no opposition is submitted or if the opposition submitted is rejected, the plan is approved through a decree and the measure of the Commissioner of Law immediately renders the plan executive.
6. The liquidators convene the shareholders' meeting for approval of the final financial statements for liquidation, drafted on the basis of the executive plan. After approval, they make the payments to creditors and pay the remainder to the shareholders.

7. Once all their duties have been fulfilled, the liquidators must request cancellation of the company from the Register; after cancellation, the company ceases to exist
8. Even when the company has ceased to exist, after cancellation, unsatisfied company creditors may demand their credit from partners, up to the sums collected by the latter on the basis of the financial statements for liquidation, if non-payment is their fault.

Art. 112

(Depositing of uncollected sums)

1. Sums due to partners and creditors which are not collected by those entitled to them must be deposited at a San Marino credit institute, with indication of the name and surname of the partner, the creditor or the number of shares, if these are bearer shares. Sums remaining uncollected over the following three years are transferred to the government.

Art. 113

(Lodging of corporate books)

1. The corporate books must be lodged and kept for five years in the places and with the guarantees laid down by law; anyone may examine them, paying the expenses in advance.

SECTION VI

STATE OF CRISIS

Art. 114

(Temporary state of crisis)

1. A company having temporary difficulties in fulfilling its obligations, if there are proven possibilities of recovering it, may ask the Commissioner of Law, for a period not exceeding two years together, for:
   1) control of management of the company and administration of its assets to protect the interest of creditors, and
   «2)[31] the measure contemplated by article 20 of Law N° 17 of 15 November, 1917.»

2. If the application is accepted and the measures granted, the Commissioner of Law may also determine the charges, terms and conditions deemed appropriate to safeguard the rights of company creditors and the economic and corporate assets constituted of the enterprise as a whole.

3. The supervisor of the moratorium is appointed by the Commissioner of Law and answers to creditors for the work performed; remuneration is due from the company and must be paid as a pre-deduction.

4. The expenses sustained by company directors, during the period of the moratorium, cannot be considered as judicial expenses or those from composition with creditors, pursuant to and under article 17, N° 1, of the Mortgage Law.

[31] As amended by Art. 38 of Delegate Decree No. 130 of 11 Dec. 2006.

5. If proceedings for composition with creditors are opened, the debts contracted by the company during the period of the moratorium are treated in the same way as those which arose prior to the moratorium.

Art. 115

(State of insolvency)

1. Compulsory winding up is ordered by the Commissioner of Law, on request of a director, an auditor or a company creditor, or even officially, when the company is clearly in a state of insolvency and the prerequisites for starting composition with creditors do not exist.

2. If compulsory winding-up is declared on request of a creditor, although it is temporarily insolvent, the company may request the moratorium referred to in the article above.

3. The measure ordering temporary winding-up contains appointment of the official liquidator, is noted on the Register and is published *ad valvas Palatii* and in the Tables at the Government Building.

4. From the date of publication, all judicial procedures pending against the company are suspended and no others may be started; also, debts are considered as falling due on that date and will not accrue interest during the procedure.

5. In the measure ordering compulsory winding up, the Commissioner of Law assigns a peremptory time-limit for company creditors to submit documented claims for placement of their credit to the Registrar's office.

6. On the basis of the corporate books and accounting records and creditors' claims, the liquidator prepares a distribution plan, taking into account preferential credit, and lodges it at the Registrar's office, where it remains available to those concerned for sixty days from the date of notice of its lodging being affixed at the Government Building and the Court.

7. If any opposition is submitted against the distribution plan, provided this is submitted through summons of the liquidator within thirty days of the time-limit referred to in the paragraph above, the Commissioner of Law will pass a single and final sentence on this in summary proceedings. If no opposition is submitted against the plan, it is approved through an order, which is immediately executive.

8. Insofar as they are compatible and for the parts not expressly governed herein, the regulations on voluntary winding up are applied.

SECTION VII

MISCELLANEOUS PROVISIONS

Art. 116

(Disputes)

1. Companies incorporated in accordance with this law are subject to the exclusive and irrevocable competent jurisdiction of the judicial authorities of San Marino for disputes arising between partners and the company, those relating to relations deriving from the partnership deed in which the company is the defendant and for those concerning liability against directors, auditors, auditing firms and managers of the company and between them and the company.

2. The Articles of Association, in the case of internal relations, or individual contracts, in the case of relations with third parties, may freely include arbitration clauses on any disputes. Arbitration must take place within the territory of the Republic of San Marino in all cases.

3. No arbitration clause may be included in employment contracts.

Art. 117

(Statute of limitations)

«1.[32] All actions relating to management of the company and all actions for liability against directors, auditors, auditing firms, managers and liquidators, and all actions aimed at having the company or company resolutions declared invalid, become statute-barred two years after the date of occurrence of the act which gave rise to the dispute.»

2. If the action is based on a deed which should have been entered on the Register or lodged at the Registrar's office and this has not taken place, the period starts from the day when the petitioner becomes aware of this.

3. The statute of limitations on the actions referred to in this article is suspended through an extra-judicial notice in writing.

4. The statute of limitations remains suspended for as long as the directors, auditors, auditing firm, managers and liquidators against which the action is brought remain in office.

5. If the company is subject to composition with creditors, the statute of limitations on the actions referred to in the paragraph above starts from the date when composition begins.

ART. 118

(Appeals)

1. An appeal may be submitted to the Court of Civil Appeals against all measures of voluntary jurisdiction adopted by the Commissioner of Law in application of this law.

2. The appeal suspends effectiveness of the appealed measure, unless otherwise decided by the appeal judge.

3. The deed containing the charge must be submitted to the Court through the defence counsel, together with the motives and with the documents proving the interest of the appellant and the grounds of the claim, within thirty days of notification of the measure.

4. The appeal referred to in this article is subject to the tax on voluntary jurisdiction appeals.

5. No further or different means of appeal against the measures referred to in this article are permitted.

6. All disputes are governed by ordinary regulations on civil disputes.

SECTION VIII
PROVISIONAL AND FINAL REGULATIONS

Art. 119

(Abrogated regulations)

1. The following are abrogated:
- Law N° 68 of 13 June, 1990, with subsequent modifications and additions thereto, with the exclusion of article 4 (Non-commercial associations and foundations: notion and basic regulations);
- articles 7, 8, 8-bis, 9, 9-bis, 10, 10-bis, 10-ter, 11, 11-bis, 12, 12-bis, 13, 14, 16, 19, 20, 21, of Law N° 53 of 28 April, 1999, with subsequent modifications and additions thereto;
- Decree N° 9 of 1 February, 2002, in the incompatible parts;
- article 1, paragraph 2, N° 3 and article 3, last paragraph of Decree N° 3 of 31 January, 1924;
- articles 62 and 63 of Law N° 165 of 18 December, 2003.

2. Any legal requirement not expressly mentioned in the law and in contrast with any requirement thereof is to be intended as abrogated.

[32] As superseded by Art. 39 of Delegate Decree No. 130 of 11 Dec. 2006.

Art. 120 [33]
(Transitory regulations)

«1. Companies entered on the Register at the date when the Law comes into force must adapt their Articles of Association to the new provisions contained therein by 31 May, 2008, lodging an authenticated copy of the revised version of the Articles of Association, approved by the shareholders' meeting, at the Registrar's office.»

2. After this date, companies which have not adapted their Articles of Association are wound up and must be subjected, by right, to liquidation procedures. In the case of inertia, the Commissioner of Law, for this purpose, assigns a maximum time-limit of sixty days for lodging the documentation confirming adaptation of the Articles of Association to the law, or proceeds by calling of a specific partners' meeting for adopting of the resolutions necessary for this purpose.

3. In companies for which, according to law, appointment of an auditor is no longer obligatory at the date of entry into force of the Law, the auditors leave office from 31 December, 2005, without affecting the power of the shareholders' meeting to extend the appointment in compliance with the minimum legal requisites. The shareholders' meeting is required to confirm the end of their mandate. The effects of activities performed by the auditor prior to entry into force of the Law are unaffected in all cases. An auditor who leaves office in accordance with this paragraph is exempted from carrying out all subsequent obligations, including those referred to in article 83 of the Law.»

4. On preparing the 2006 financial statements, it is not necessary to indicate the amount of the corresponding item for the previous year.

"Art. 120 bis (most recently superseded by Delegate Decree no. 33 of 20 February 2008)
(Rules of Coordination)

1. Companies incorporated pursuant to article 12, paragraph 5, of Law N° 68 of 13 June, 1990 , are subject to the Law, notwithstanding the provisions of article 2, paragraph 2 of the same Law. Nevertheless, in the case of winding up, the partner holding the license which incorporated the company, or the partner to whom the majority stake was transferred prior to entry into force of the Law, maintains the right to reacquire ownership of the license, provided they still possess the requisites.
2. Companies incorporated prior to entry into force of the Law are subject to the obligation referred to in article 10, paragraph 5, calculating the three-year time-limit for payment of all contributions starting from entry into force of the Law Confirmation of payment of the contributions must be lodged by the directors at the Registrar's office within 60 days of payment.
3. Companies incorporated with the approval of the State Congress prior to entry into force of the Law may alter the corporate purpose solely with the approval of the State Congress, unless they intend to be subject themselves to the regulations of article 9 of the Law or unless the modification consists in a mere elimination of activities or product sectors from the corporate purpose.
4. In joint-stock companies with a sole partner entered in the Register prior to entry into force of the Law, the sole partner acquires the benefit of limited liability starting from the moment when he has fulfilled the obligations contemplated by article 12 of the Law, without affecting the unlimited liability for obligations arising prior to this.
5. For companies entered on the Register prior to entry into force of the Law, indication of the date of entry on the Register, where contemplated by law, is replaced by the indication of the date of legal recognition.

Art. 121 (most recently superseded by Delegate Decree no. 33 of 20 February 2008)
(Revisions)

«1. The requirements of the Law may be altered through an official decree within a maximum of twenty-four months from the date of publication thereof.

2. Without affecting the specific requirements of Law N° 168 of 22 November, 2005 regarding subjective and objective requisites required of those who intend to incorporate a trading company, through a delegate decree to

[33] As superseded by Art. 40 of Delegate Decree No. 130 of 11 Dec. 2006.

be issued within two years of entry into force of the Law, the procedures on incorporation of companies contained in Law N° 168 of 22 November, 2005 will be harmonised with the new requirements of this law .».

Art. 122
(Entry into force)

1. This law enters into force on the one hundred and eightieth day after that of its legal publication.

Issued from our Residence, on this day, 2 March, 2006/1705 since the Foundation of the Republic

THE CAPTAINS REGENT

Claudio Muccioli – Antonello Bacciocchi

THE SECRETARY OF STATE
FOR INTERNAL AFFAIRS
Rosa Zafferani

12. Annex 12: Law no. 165 of 17 november 2005 on Companies and banking, financial and insurance services (extract – art. 13)

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Art. 13
(Minimum requirements)

1. The supervisory authority will issue authorisation for the exercise of reserved activities provided that the following conditions are satisfied:
   a) the draft Memorandum of Association is drawn up in compliance with the criteria laid down by the supervisory authority;
   b) the legal type of capital company adopted is as established by the supervisory authority with regard to the reserved activities for whose exercise authorisation is being requested;
   c) the registered office and administrative seat is established in the territory of the Republic;
   d) the corporate capital is not less than the amount laid down by the supervisory authority;
   e) an escrow deposit has been lodged with Sanmarinese banks with a view to the subsequent payment of the corporate capital at the time of incorporation, the deposit being for an amount no less than the amount established by the supervisory authority;
   f) the owners of substantial holdings who are subject to the obligation of authorisation pursuant to article 17 will satisfy the requirements as to good repute and such other requirements as will ensure sound and prudent management, as established by the supervisory authority;
   g) no close links exist that might impede the exercise of the supervisory functions;
   h) the company members referred to in article 15 satisfy the requirements referred to in paragraph 1 of that article;
   i) a business plan is presented defining the appropriate asset, human, organisational and technological resources for the activities it intends to perform, as well as other documents and reports as established by the supervisory authority.

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13. Annex 13: Delegated decree 31 October 2008 no.136 - Transitory Regulations relating to Bearer Passbooks

REPUBLIC OF SAN MARINO

DELEGATED DECREE 31 October 2008 no.136

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

Having regard to article 90, paragraph 1, point c), of Law no. 92 of 17 June 2008;
Having regard to the decision no. 3 of the State Congress adopted in the sitting of 29 October 2008;
Having regard to article 22 of Qualified Law no.184 of 15 December 2005;
Having regard to article 5, paragraph 3, of Constitutional Law no. 185/2005 and the articles 8 and 10, paragraph 2, of Qualified Law no.186/2005;
We promulgate and send for publishing the following delegated decree:

TRANSITORY REGULATIONS RELATING TO BEARER PASSBOOKS

Article 1
(Area of application)

1. This delegated decree applies to:
a) bearer passbooks with a balance greater than € 15,000 that have not been closed or regularised by 31 December 2010;
b) bearer passbooks, regardless of the amount of the deposit recorded in them, that are still active on 1 January 2012.

Article 2
(Obliged subject)

1. Obliged subjects within the meaning of these regulations are all the San Marino banks, that is, all subjects authorised to carry on reserved activity identified by letter A of Annex 1 to Law no. 165 of 17 November 2005.

Article 3
(Recording existing statements)

1. The subjects in article 2 above must record, on 31 December 2010 and 31 December 2011, the savings deposit statements that fall under this regulation pursuant to article 1 above.

Article 4
(Ex lege closing)

1. Existing deposits represented by bearer passbooks that have not been closed or regularised by 31 December 2010, where the balance, including interest, is greater than € 15,000, shall be closed for all legal purposes as of 1 January 2011.
2. Existing deposits represented by bearer passbooks that have not been closed by 31 December 2011, regardless of the balance reported in the passbook, shall be closed for all legal purposes as of 1 January 2012.
3. This sums present in the passbooks on the date that are closed ex lege will be accounted for in the appropriate liabilities account up do the date of effective return to the rightful owner.
4. The rules specified by Law no. 92 of 17 June 2008 shall apply, for all purposes, to the operation of payment of the balance of the passbook closed ex lege 92.

Article 5
(Economic conditions of the closed deposit)

1. Closed deposits shall be non-interest bearing from the date of closure; the sum must be returned for the same nominal amount at that date.

Article 6

(Time Limits)

1. The right to the return of sums arising from closed deposits is prescribed within the limits specified by article 149 of Law no. 165 of 17 November 2005, starting from the date on which the book was closed ex lege. Once the time limits have expired, the bank is obliged to pay sums that have not been returned into the special depositors' protection guarantee fund.

Article 7

(Regularisation and conversion)

1. "Regularisation" of bearer passbooks, within the meaning of article 4 of this decree, takes place when the related balance is carried to a sum that does not exceed the threshold provided for by the rules in force.
2. "Conversion" of bearer passbooks as specified by article 31 of Law no. 92 of 17 June 2008, means the making out of an open bearer passbook to a name or to the bearer, ordered by the owner and noted on the passbook, or the opening of a new passbook or other named bank statement, at the same time and as a result of the closing of the bearer passbook.

Done at Our Residence, 31 October 2008/1708 since the Foundation of the Republic

THE CAPTAINS REGENT
Ernesto Benedettini – Assunta Meloni

THE SECRETARY OF STATE
FOR INTERNAL AFFAIRS
Valeria Ciavatta

14. Annex 14: Delegated decree 31 October 2008 no.137 - Regulations for the safekeeping, administration and management of frozen economic resources

REPUBLIC OF SAN MARINO

DELEGATED DECREE 31 October 2008 no.137

We theCaptains Regent
of the Most Serene Republic of San Marino

Having regard to article 90, paragraph 1, point a), of Law no. 92 of 17 June 2008;
Having regard to the decision no. 4 of the State Congress adopted in the sitting of 29 October 2008;
Having regard to article 22 of Qualified Law no.184 of 15 December 2005;
Having regard to article 5, paragraph 3, of Constitutional Law no. 185/2005 and the articles 8 and 10, paragraph 2, of Qualified Law no.186/2005;
We promulgate and send for publishing the following delegated decree:

REGULATIONS FOR THE SAFEKEEPING, ADMINISTRATION AND MANAGEMENT OF FROZEN ECONOMIC RESOURCES

Article 1
(Communications of freezing provisions to the Civil Judge)

1. The decision with which the State Congress stipulates the freezing of funds or economic resources is communicated by the Financial Intelligence Agency to the Law Commissioner.
2. The Agency communicates to the Law Commissioner any further provision, data or information relating to the frozen funds or economic resources, as well as to the transactions and dealings that can be linked back, directly or indirectly, to persons, bodies or groups included in the lists drawn up by the relevant United Nations Committees.

Article 2
(Administrator of the funds and resources subject to freezing)

1. The Law Commissioner, should the funds and resources subject to freezing be located in the territory of the Republic, shall declare, with his own decree, the procedure of administration of the assets freezes open and shall nominate an administrator.
2. With this or a subsequent decree, the Law Commissioner shall adopt the provisions that he may deem appropriate for the purposes of safekeeping as specified in article 47 of Law no. 92 of 17 June 2008, including acts aimed at delivery of the material availability of the assets to the administrator.

Article 3
(Administrator of the funds and resources)

1. The administrator has the task of providing for the safekeeping, conservation and administration of the seized assets also during any possible appeal actions, under the direction of the Law Commissioner, also in order not to reduce, where possible, the profitability of the assets.
2. The administrator shall be chosen from among those registered in the rolls of Lawyers and Notaries, Accountants and Tax Advisors.
3. The following may not be nominated as administrators: those against whom the seizure has been ordered, those holding the assets and resources subject to freezing or in any case those to whom they are available, the spouse, relatives, in-laws and persons living with them, or the persons sentenced to a penalty that involves prohibition, even temporary, from public office.

Article 4
(Acts of extraordinary administration)

The administrator may not carry out acts of extraordinary administration without the authorisation of the Law Commissioner.

Article 5
(Administration report)

1. The administrator must, within one month of being nominated, present the Law Commissioner with a detailed report on the status and consistency of the frozen funds and resources and subsequently, with the frequency

established by the Law Commissioner, with a periodic administration report, presenting, if requested, the justifying documents.
2. The administrator must also inform the Law Commissioner of the existence of any other funds or resources that can be linked to those against whom freezing was ordered, of which he may become aware.

Article 6

(Duties of the Administrator)

The Administrator must perform tasks of his office diligently and, in the event of failure to observe of his duties, can be revoked by the Law Commissioner at any time and subject to a hearing.

Article 7

(Administration costs)

The costs necessary or useful for the safekeeping and administration of the assets shall be borne by the administrator by withdrawing sums obtained by him from management of the assets. If this is not possible, the costs shall be advanced by the State.

Article 8

(Revocation or exemption from freezing)

1. The administration of the funds and resources ceases in the event of abrogation of the freezing order or acceptance of the request for exemption from freezing in accordance with articles 46, paragraph 4, and 49, paragraph 1, of Law no. 92 of 17 June 2008. 92.
2. In the case of partial abrogation or exemption, the administration shall proceed for the excess.
3. Also in the case of revocation or exemption from freezing, the administration of the funds and resources does not cease where the funds or resources have been subjected to locking in accordance with article 5, letter d) of Law no. 92 of 17 June 2008 or to seizure by the criminal Legal Authority, after the administration procedure has been opened. Revocation of the locking or seizure, or confiscation of the funds and resources shall result in cessation of the administration.
4. The provisions with which the locking or seizure of assets already subject to freezing is ordered are immediately sent to the Law Commissioner with civil functions. In the same way, the provisions for revoking the locking or seizure and the decisions with which confiscation of funds and resources is ordered shall be transmitted immediately.

Article 9

(Closure of administration)

1. The Law Commissioner, where the conditions specified in article 8 apply, shall set the Administrator a term of no more than 30 days for depositing of the management report, and, having assumed the provisions as mentioned in article 10, he shall decree the closing of the administration.

Article 10

(Remuneration for the Administrator and administration expenses)

1. The sums for payment of the administrator's remuneration and for reimbursement of administration expenses are inserted in the management report.
2. The Law Commissioner settles the remuneration owing to the Administrator by decree.
3. If the confiscation of funds and resources is ordered, the sums for the payment of the administrator's remuneration and for administration expenses are extracted from the confiscated assets. If these assets are not sufficient in order to pay such expenses, the necessary sums shall be advanced, in whole or in part, by the State.

Done at Our Residence, 31 October 2008/1708 since the Foundation of the Republic

THE CAPTAINS REGENT
Ernesto Benedettini – Assunta Meloni

THE SECRETARY OF STATE
FOR INTERNAL AFFAIRS
Valeria Ciavatta

15. Annex 15: Delegated decree 28 November 2008 no. 146 on Regulations of the Financial Intelligence Agency

REPUBLIC OF SAN MARINO

DELEGATED DECREE no.146 of 28 November 2008
(Ratification of Delegated Decree no. 135 of 31 October 2008)

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

Having regard to Delegated Decree no. 135 of 31 October 2008 "Regulations of the Financial Intelligence Agency" promulgated:
Having regard to article 91 of Law no.92 of 17 June 2008;
Having regard to the decision no. 2 of the State Congress adopted in the sitting of 29 October 2008;
Having considered that the adoption of the decree in question becomes obligatory and bound within the times by Law 92/2008;
Having regard to the amendments made to the aforementioned decree during its ratification by the Great and General Council in the sitting of 25 November 2008;
Having regard to articles 30, paragraph 2, and 31, paragraph 2, of Law no. 31 of 18 February 1998;
Having regard to articles 8 and 9, paragraph 5, of Qualified Law no. 186/2005;
We promulgate and send for publishing the final text of Delegated Decree no. 135 of 31 October 2008, as modified by the amendments approved by the Great and General Council during its ratification:

REGULATIONS OF THE FINANCIAL INTELLIGENCE AGENCY

Article 1
(Logistical independence, custody and protection of data)

1. The Financial Intelligence Agency, established at the Central Bank of the Republic of San Marino, shall operate in separate premises made available by the Central Bank for the exclusive use of the same Agency.
2. The Agency shall avail of the equipment, support services, computer and communication systems made available by the Central Bank for the exclusive use of the Agency in order to ensure the correct, autonomous and efficient performance of the functions assigned by law.
3. The Agency shall adopt suitable measures to guarantee, with maximum effectiveness, that the documents, data, and information acquired, as well as the computer systems, are accessible only to the authorised personnel of the Agency.

Article 2
(Requirements of professionalism for the Director and Vice Director)

1. The Director and the Vice Director, appointed by the State Congress in accordance with article 3 of Law no. 92 of 17 June 2008 must possess following requirements of professionalism:
a. a degree in economic, legal or banking science disciplines;
b. knowledge of the financial system and financial analysis skills gained through appropriate professional experience;
c. knowledge of the systems for preventing and combating money laundering and the financing of terrorism.
2. The Director and the Vice Director must themselves ensure that they remain updated on combating money laundering and the financing of terrorism, also through participation in specific courses.

Article 3
(Requirements of honourability for the Director and Vice Director)

1. Nobody who has been sentenced, even not definitively, for a non-negligent offence to detention or to prohibition from public offices for a period of no less than year may be nominated as Director and Vice Director and, if nominated, the assignment shall be terminated.
2. The Director and the Vice Director, if subject to criminal proceedings for acts inherent to their office or for other acts of serious criminal importance, may be suspended from office by a provision of the State Congress.
3. In the case where the suspension regards both the Director and the Vice Director, the functions assigned to them shall be performed by the official of the highest level and with the greatest seniority.

4. The Director and the Vice Director shall be removed by the State Congress in the cases provided for by article 3, paragraph 2 of Law no. 92 of 17 June 2008, in the cases provided for by article 4, or in the case where they have committed or omitted acts in a situation of conflict of interest, pursuant to article 5, or where they have damaged the reputation of the office or the prestige of the Agency.

Article 4

(Requirements of independence for the Director and Vice Director)

1. The office of Director and Vice Director is incompatible with:
a. the position of partner, director, manager, statutory auditor, official, employee, auditor of the subjects designated by article 17 of Law no. 92 of 17 June 2008 of subjects designated in other States;
b. performing one of the activities specified in articles 18 letters d), e), f), 19 and 20 of Law no. 92 of 17 June 2008;
c. assignments of a political nature;
d. carrying out any other assignment, commitment, professional or advisory activity.
2. From the acceptance of the nomination, all current employment or assignments shall cease.
3. If an employee of the Central Bank is nominated as Director or Vice Director, in exception to the previous paragraph, from the acceptance of the nomination, the functions performed at the same Central Bank shall cease.
4. In accepting the nomination, the Director and Vice Director must declare any interests in companies that carry out any of the activities specified by article 17 of Law no. 92 of 17 June 2008.
5. These interests must be disposed of within 30 days of assuming office.

Article 5

(Conflicts of interest of the Director and Vice Director)

1. In carrying out their functions, the Director and the Vice Director must refrain from initiating acts or making decisions in a situation of conflict of interest.
2. A conflict of interest pursuant to the previous paragraph arises when the Director or the Vice Director, in performing their assigned functions, are called upon to perform acts that have a specific impact on their property, on that one a spouse, relatives or in-laws to the second degree, or on businesses, companies or similar bodies in which they have a direct or indirect interest.
3. The Director who finds himself in a situation of conflict of interest shall immediately inform the Vice Director of this, who shall, exclusively and without hierarchical restriction, assume the jurisdiction to perform the functions assigned to the Agency in relation to the acts or decisions due to which the Director's conflict of interest arises.
4. If a situation of conflict of interest concerns the Vice Director, he shall, regardless of the assignment of delegations, immediately inform the Director of said situation.
5. In the case where the conflict of interest regards both the Director and the Vice Director, the functions shall be performed by the official of the highest level and with the greatest seniority.
6. The provisions of this article do not exclude the application of the civil, criminal or administrative rules in force, whenever they may be applicable.

Article 6

(Regulatory and remunerative framework for the Director and Vice Director)

1. The regulatory treatment provided for by the work contract of the management officials of Central Bank shall apply to the Director and to the Vice Director; the remunerative treatment and framework shall be defined by the nomination measure.

Article 7

(Functions of the Director and the Vice Director)

1. The Director shall be responsible for the operations of the Agency, the activity of which he shall plan, manage and control in full autonomy. The Director shall adopt the provisions relating to the functions assigned to the Agency, with the right to delegate the Vice Director.
2. The Director shall coordinate and controls the operations of the personnel of the Agency, for whom he shall promotes training and updating on matters regarding the prevention and combating of money laundering and the financing of terrorism.
3. The Director shall produce an appropriate report proposing the personnel structure of the Agency and modifications thereto to the Credit and Savings Committee, with due considerations to the specific operational

and organisational requirements of the Agency. The Credit and Savings Committee, having heard the Board of Management of the Central Bank, shall establish whether the personnel meets the criteria of economy, proportionality, efficiency and effectiveness and, if the report is approved, shall send it to the Central Bank for so that it can fulfil its obligations.
4. The Director of the Agency shall supervise the personnel and shall present the Board of Management of the Central Bank with the information and assessments regarding personnel for decisions on hiring, promotion and other contractual conditions.
5. The Director shall govern the organisation and operation of the Agency with independent provisions.
6. The Vice Director shall assist the Director in the carrying out his functions. Should the Director be impeded or absent, his functions shall be carried out by the Vice Director.

Article 8

(Employees)

1. The personnel of the Agency shall be hired according to the procedures and with application of the contracts in force at the Central Bank and is structured according to professionalism, level of responsibility and autonomy, functions and duties carried out.
2. Personnel must be selected in such a manner as to guarantee the complete independence of the Agency.
3. Personnel may also be hired on a fixed term contract, in compliance with the rules in force and the provisions specified in the contracts of the personnel of the Central Bank.
4. The transfer of personnel from the Central Bank to the Agency and vice versa is governed by agreement between the Director of the Agency and the General Director of the Central Bank, holding account of the operational and functional requirements of the Agency and the Central Bank.
5. The personnel of the Agency shall report directly and exclusively to the Director and the Vice Director.
6. The personnel of the Agency may not assume any other assignment or employment, carry on any other professional or advisory activity or cover assignments of a political nature.

Article 9

(Personnel from external transfers)

1. The Agency may avail of employed personnel from Public Administrations who possess the skills and requirements of professionalism and experience necessary to carry out the specific functions or duties.
2. The transfer of employees of Public Administrations, compatible with the approved staffing plan, shall be arranged following a justified request from the Director of the Agency, subject to acceptance on the part of the Director of the Public Administration in question.
3. The legal and economic treatment provided for by the contracts of employees and officials of the Central Bank shall be applied to personnel on transfer from Public Administrations for the full duration of their transfer; the burden shall fall on the Central Bank. The service performed at the Agency is equivalent, to the full effect of the law, with that performed at the Administrations of origin. Transferred personnel are entitled to be readmitted to the job that they held before.
4. The service performed by police personnel of police applied at the Agency in compliance with article 51 of Law no. 92 of 17 June 2008is equivalent , to the full effect of the law, to that performed at the respective Headquarters of origin. The related costs shall be sustained by the Administration of origin.

Article 10

(Central Bank personnel and transfer of functions)

1. Within a month of the nomination, the Director of the Agency, in agreement with the General Director of the Central Bank, shall identify the personnel of the Central Bank that the Agency will use in completing the personnel structure.
2. The General Director of the Central Bank and the Director of the Agency shall ensure the functional and rapid transfer of the functions as specified in article 93 of Law no. 92 of 17 June 2008.

Article 11

(Observance of official secrets)

1. Transferred personnel, in compliance with article 9, are obliged to comply with official secrecy regarding their Administrations and Headquarters of origin.
2. The Director, the Vice Director and the personnel of the Agency are obliged to comply with official secrecy also in regard to the Central Bank.

3. The obligation of secrecy regarding all information that may come to light in the performance of functions or duties carried out at the Agency must be observed even after the assignment or employment is terminated.

Article 12

(Costs estimate document)

1. The cost estimate document pursuant to article 2, paragraph 4 of Law no. 92 of 17 June 2008 shall specify and quantify of the financial and instrumental resources necessary for the subsequent year, established according to criteria of economy, proportionality, efficiency and effectiveness.
2. The Director of the Agency shall present the document to the Credit and Savings Committee.
3. The Credit and Savings Committee, having obtained the opinion of the Board of Management of the Central Bank and having performed the assessments specified by article 2 paragraph 4 of Law no. 92 of 17 June 2008, shall send the document with its resolution to the Central Bank.
4. The Board of Management of the Central Bank, having received the cost estimate document, shall record an appropriate item of expenditure in its Financial Statements.
5. Should any additional financial resources become necessary in order to guarantee the operation of the same Agency, the Director of the Agency may request a change to the cost estimate document in the same manner as described in this article.

Article 13

(Directors' report)

1. The directors' report, signed by the Director of the Agency, contains the overall outline of the financial and instrumental resources used by the Agency in the previous year and illustrates the items of expenditure incurred in detail. The report is sent to the Credit and Savings Committee which, with its resolution, sends it to the Board of Management of the Central Bank.

Article 14

(Operational independence and performance of financial investigations)

1. The Agency performs the tasks assigned to it by Law regarding the prevention and combating of money laundering and the financing of terrorism in full autonomy and independence.
2. The Agency shall perform the investigation functions specified in article 4, paragraph 1, letter b) of Law no. 92 of 17 June 2008, by performing the financial analysis and investigation of reports received and of the data and the information that it has at hand.
3. To perform the financial investigation function, the Agency shall exercise the powers under article 5, paragraph 1, letters a), b), c) and f) of Law no. 92 of 17 June 2008. It shall also enjoy the powers provided for by articles 8, 11, 12, 14 and 16 of Law no. 92 of 17 June 2008.

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 Legal 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.
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.

Done at Our Residence, 28 November 2008/1708 since the Foundation of the Republic

THE CAPTAINS REGENT
Ernesto Benedettini – Assunta Meloni

THE SECRETARY OF STATE
FOR INTERNAL AFFAIRS
Valeria Ciavatta

16. Annex 16: Delegated decree 19 June 2009 no. 74 on Cross-border transportation of cash and similar instruments

REPUBLIC OF SAN MARINO

DELEGATED DECREE 19 June 2009 no.74

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

Having regard to Delegated Decree no. 62 of 4 May 2009 "Cross-border transportation of cash and similar instruments" promulgated:
Having regard to Article 90, paragraph 1, point b) of Law no. 92 of 17 June 2008;
Having regard to Decision no. 14 of the Congress of State, adopted in the sitting of 14 April 2009;
Having regard to the amendments introduced to the aforesaid decree during the ratification thereof by the Great and General Council in its sitting of 16 June 2009;
Having regard to Articles 8 and 9, paragraph 5 of Qualified Law no. 186/2005;
Promulgate and order the publication of the final text of Delegated Decree no. 62 of 4 May 2009, as amended by the Great and General Council on the occasion of its ratification:

RATIFICATION OF DELEGATED DECREE NO. 62 OF 4 MAY 2009 - CROSS-BORDER TRANSPORTATION OF CASH AND SIMILAR INSTRUMENTS

Article 1
(Definitions)

1. For the purposes of this Decree, the following definitions shall apply:
a) Financial Intelligence Agency: the Financial Intelligence Agency referred to in Article 2 of Law no. 92 of 17 June 2008 ("Provisions on Preventing and Combating Money Laundering and Terrorist Financing");
b) Police Forces: the Gendarmerie Corps, the Civil Police Corps and the Fortress Guard Uniformed Unit;
c) Financial Parties: the parties referred to in Article 18, paragraph 1, letters a) and b) of Law no. 92 of 17 June 2008;
d) cash: banknotes and coins in Euro or other currency;
e) similar instruments: bearer-negotiable instruments, including travellers cheques, cheques, bills of exchange and payment orders, issued to the bearer or without endorsement restrictions, instruments issued in a form such that the related title is transferred on delivery as well as signed instruments that do not specify the name of the beneficiary or which specify a fictitious beneficiary.

Article 2
(Transfers of money, securities and stocks and shares to and from foreign Countries)

1. Any natural person entering or leaving the territory of the Republic of San Marino shall be required to declare the transport of cash and similar instruments in Euro or foreign currencies for a total amount exceeding € 10,000 or the equivalent value.
2. The declaration, made in writing, shall be filed in compliance with the model attached to this Delegated Decree; it shall be submitted to the Commands or branch offices of the Police Forces.
As an alternative, the declaration may be submitted to the Financial Parties referred to in Article 1.
In all cases, a copy of the declaration, with acknowledgement of receipt, shall be returned to the declarant, who shall carry such copy with him.
The obligation of declaration shall not be fulfilled if the information provided is incorrect or incomplete.
3. The obligation of declaration shall not apply to transfers by postal orders or promissory notes, or giro cheques, bank cheques or bank drafts, which specify the name of the beneficiary and the clause "non-negotiable" and are drawn on or issued by authorised parties under Law no. 165 of 17 November 2005, or drawn on or issued by foreign parties that mainly carry out an activity falling under the reserved activities indicated in Attachment 1 to Law no. 165 of 17 November 2005, established in a State applying obligations equivalent to those set forth by this Decree and imposing supervision and control over compliance with such obligations for the purposes of preventing and countering money laundering and terrorist financing.
4. The obligation of declaration shall also apply to transfers of cash and similar instruments, to and from foreign Countries, carried out by post. Even in such case, the declaration shall be provided in writing, through the model

attached hereto, to the post office at the time of shipment, or within 48 hours following receipt. The post office shall send a copy of the declaration signed by the declarant to the Financial Intelligence Agency within the following 5 days. Sundays and holidays shall not be included in computing the time limits.

Article 3
(Police checks)

1. In carrying out regular border controls, Police personnel may verify the identity of persons and conduct inspections on vehicles and luggage, in order to ensure that the obligations referred to in Article 2 are fulfilled.
2. Police authorities shall also subject persons, vehicles and their contents to control measures, if there are reasonable grounds to believe that the transportation of cash or similar instruments is connected to money laundering or terrorist financing.

Article 4
(Administrative violations)

1. Anyone failing to file the declaration or providing inaccurate or incomplete information shall be punished with an administrative sanction up to 40% of the amount transferred or attempted to be transferred, exceeding the equivalent value of € 10,000, with a minimum of € 200.
2. The pecuniary administrative sanction shall be applied even if the facts are envisaged as an offence by another provision of this Decree or other laws.
3. If the administrative violation is connected to an offence, the Financial Intelligence Agency shall separately prosecute the administrative violation.

Article 5
(Omitted and false declaration on the personal details of the beneficiary)

1. Unless the act constitutes a more serious offence, anyone who in making the declaration provided for in Article 2 omits to provide the personal details of the person on whose behalf they are transferring cash or similar instruments to and from foreign Countries or provides false information shall be punished by terms of imprisonment or second degree arrest or with a third degree daily fine.

Article 6
(Seizure)

1. When the provisions envisaged by Article 2 of this Decree are violated, cash and similar instruments transferred or attempted to be transferred exceeding the equivalent value of € 10,000 shall be subject to administrative seizure.
2. Police officers shall draw up an official report on the seizures made and the declarations submitted by the persons involved, who shall be invited to sign the official report and shall be entitled to receive a copy thereof. A copy of the official report shall be forwarded to the Financial Intelligence Agency. Police personnel shall deposit the sums or the assets seized with the Financial Intelligence Agency within the next working day.
3. By means of the official report referred to in paragraph 2, or a separate deed, the violations which can be punished with administrative sanctions shall be claimed and the provisions under Article 33 of Law no. 68 of 28 June 1989 shall be applied.
4. Seizure shall be executed within the limit of 40% of the amount exceeding € 10,000.
5. Seizure shall be executed without the limit specified in paragraph 4 of this Article when the object of the seizure is indivisible.
6. Seizure shall be executed without the limit specified in paragraph 4 also when, owing to the nature and amount of the assets transferred or attempted to be transferred, the related value in Euro cannot be easily assessed at the time of seizure. In such case, seized assets exceeding the limit specified in paragraph 4 shall be returned to the persons entitled within thirty days of the date on which seizure was executed.
7. The interested party may obtain return of cash, instruments and securities seized by depositing collateral equal to the maximum amount of the applicable administrative sanction with the State Treasury. The collateral may be replaced by a guarantee in the same amount provided by a bank operating in the Republic of San Marino.
8. The provisions for return referred to in previous paragraphs shall be established by the Financial Intelligence Agency.

9. The interested parties may lodge an appeal against the seizure order to the Financial Intelligence Agency under Article 12 of Law no. 68 of 28 June 1989.
10. Cash or similar instruments subject to seizure under paragraph 1 of this Article shall be returned to the persons entitled when:
a) the interested party demonstrates that one of the conditions envisaged by Article 2, paragraph 3 of this Decree applies;
b) they are not retained as payment of the administrative sanction provided for by Article 4 of this Decree;
c) the author of the violation is deceased.
11. Cash and similar instruments seized shall guarantee, with preference over any other credit, the payment of the pecuniary administrative sanctions applied.
12. The Financial Intelligence Agency shall order the return of cash and similar instruments seized, which are not retained as payment of the administrative sanction referred to in Article 4 of this Decree, to the persons entitled requesting them within five years from the date of seizure.

Article 7
(Ascertainment of violations)

1. The Financial Intelligence Agency shall ascertain the administrative violations and apply the sanctions envisaged by this Decree.
2. The provisions referred to in Title VI, Chapter III of Law no. 92 of 17 June 2008 (Provisions on Preventing and Combating Money Laundering and Terrorist Financing) shall be applied.

Article 8
(Voluntary settlement)

1. The person charged with the violation referred to in Article 4 of this Decree, by way of derogation from Article 33, paragraph 1, letter a) of Law no. 68 of 28 June 1989, may exercise the right to voluntary settlement, which consists in the immediate payment equal to 10% of the money or similar instruments exceeding the threshold of € 10,000, with a minimum of € 200.
2. The payment shall be executed, in the modalities specified in the provision for the ascertainment of the violation, within 20 days of its notification. The Financial Intelligence Agency shall order the return of money or similar instruments within ten days following receipt of proof of payment.
3. When the payment of the administrative sanction is made simultaneously with the official report by Police officers, the seizure referred to in Article 6, paragraph 4 of this Decree shall not be executed. Police officers shall deposit the equivalent amount with the State Treasury within the next working day.
4. Voluntary settlement shall not be allowed when cash or similar instruments transferred or attempted to be transferred exceed the value of € 250,000.

Article 9
(Communication to the Financial Intelligence Agency)

1. Without prejudice to Article 6, paragraph 2 of this Decree, Police Forces and Financial Parties shall transmit a copy of all declarations received under Article 2 to the Financial Intelligence Agency.
2. The transmission of declarations to the Financial Intelligence Agency, carried out every month, shall take place within the tenth day following the reference month.
3. By way of derogation from the provision enshrined in paragraph 2, Police Forces and Financial Parties shall forward, within the next working day, a copy of the declarations referred to in paragraph 1 of this Article in the event of facts and circumstances from which it is inferred that sums of cash are connected to money laundering and terrorist financing.

Article 10
(National and International Cooperation)

1. All data and information acquired by the Financial Intelligence Agency under this Delegated Decree may be exchanged with other competent national Authorities, when facts and circumstances arise from which it is inferred that sums of cash or similar instruments are connected to money laundering and terrorist financing.
2. The Financial Intelligence Agency may also exchange the information acquired with foreign financial intelligence units, under Article 16 of Law no. 92 of 17 June 2008.

Article 11

(Repeals)

1. This Delegated Decree shall completely supersede Delegated Decree no. 138 of 31 October 2008, which is therefore repealed.

Done at Our Residence, on 19 June 2009

THE CAPTAINS REGENT
Massimo Cenci – Oscar Mina

THE SECRETARY OF STATE FOR INTERNAL AFFAIRS
Valeria Ciavatta

1 - DICHIARAZIONE DI TRASFERIMENTO DI DENARO CONTANTE O STRUMENTI ANALOGHI
DI IMPORTO COMPLESSIVO SUPERIORE AL CONTROVALORE DI € 10.000 (Decreto Delegato 19 giugno 2009 n. 74)
***- Declaration for the transfer of cash or similar instruments exceeding the equivalent of € 10.000**

2 - ENTRATA NEL TERRITORIO SAMMARINESE ☐
** entry in San Marino*

3 - USCITA DAL TERRITORIO SAMMARINESE ☐
** exit from San Marino*

4 - DICHIARANTE **** person submitting declaration***

5 - Cognome
** - Family Name*

6 - Nome
** - First name*

7 - Cod. identificativo soggetto (es. ISS, cod. Fisc., ecc.)
** - Identification code*

8 - Sesso ☐ M ☐ F
** sex*

9 - Luogo di nascita
** - Place of birth*

Per in nati all'estero indicare solo lo Stato ** - People born abroad state country only*

10 - Data di nascita
** - Birth date*

11 - Cittadinanza
** - Citizenship*

12 - Stato di residenza
** - Country of residence*

13 - Indirizzo / CAP
** - Address / Zip code*

solo per i residenti a San Marino ** - for San Marino residents only*

14 - SOGGETTO PER CONTO DEL QUALE IL TRASFERIMENTO VIENE EFFETTUATO (se diverso dal dichiarante)
**** PARTY ON WHOSE BEHALF THE TRANSFER IS MADE (if other than person submitting declaration)***

15 - Cognome o Ragione Sociale
** - Family Name or Company name*

16 - Nome
** - First name*

17 - Stato e città di residenza o sede legale
** - Country and town of residence or registered office*

I residenti all'estero devono indicare solo lo Stato ** - Residents abroad must declare only the country*

18 - Cod. identificativo soggetto (es. ISS, COE, ecc.)
** - Identification code*

19 - Sesso ☐ M ☐ F
** sex*

20 - Luogo di nascita
** - Place of birth*

21 - Data di nascita
** - Birth date*

22 - Cittadinanza
** - Citizenship*

23 - DENARO CONTANTE O STRUMENTI ANALOGHI
**** - CASH OR SIMILAR INSTRUMENTS***

24 - TIPO ** Type*	25 - VALUTA e PAESE ** Currency and Country*	26 - IMPORTO o VALORE NOMINALE * Amount or Nominal value

1/2

27 - INFORMAZIONI SUL TRASFERIMENTO DEL DENARO CONTANTE O STRUMENTI SIMILARI
**** INFORMATION ON THE TRANSFER OF CASH OR SIMILAR INSTRUMENTS***

a. - Origine (es. risparmi, vendita immobili, proventi di operazioni commerciali...)
** - Origin (i.e. savings, sale of real estates, proceeds of commercial activity*

b. - Destinatario (se diverso dal dichiarante)
** - Final recipient (if other than person submitting declaration)*

b.1. - Cognome o Ragione Sociale
** - Family Name or Company name*

b.2. - Nome
** - First name*

b.3. - Nazionalità
** - Nationality*

b.4. - Cod. identificativo soggetto (es. ISS, COE, ecc...)
** - Identification code*

c. - Utilizzo previsto (es. spese turistiche, acquisto immobili, acquisto merci)
** - Intended use (i.e. tourism, purchase of real estates, purchase of goods)*

d. - Itinerario seguito
** - Itinerary*

d.1. - Paese di partenza
** - Country of origin*

d.2. - Eventuali paesi di passaggio
** - Other country crossed (if any)*

d.3. - Paese di destinazione
** - Country of final destination*

e. - Mezzo di trasporto utilizzato
** - Means of transportation*

☐ Stradale */ by road* ☐ Altro */ other*

28 - Data
** - Date* _____

29 - Firma
** - Signature* _____

Data _____ Ora _____

TIMBRO

RISERVATA ALL'UFFICIO RICEVENTE

17. Annex 17: Decreto consiliare no. 28 del 16 marzo 2009 - Ratifica della Convenzione europea di estradizione (Italian version)

REPUBBLICA DI SAN MARINO

DECRETO CONSILIARE 16 marzo 2009 n.28

Noi Capitani Reggenti
la Serenissima Repubblica di San Marino

Visto il combinato disposto dell'articolo 5, comma 3, della Legge Costituzionale n.185/2005 e dell'articolo 11, comma 2, della Legge Qualificata n. 186/2005;
Vista la delibera del Consiglio Grande e Generale n.44 del 4 marzo 2009;
ValendoCi delle Nostre Facoltà;
Promulghiamo e mandiamo a pubblicare:

RATIFICA DELLA CONVENZIONE EUROPEA DI ESTRADIZIONE, FATTA A PARIGI IL 13 DICEMBRE 1957, E DELLE RELATIVE DICHIARAZIONI E RISERVE

Art.1

Piena ed intera esecuzione è data alla Convenzione Europea di Estradizione fatta a Parigi il 13 dicembre 1957 (Allegato "A") e alle relative dichiarazioni e riserve (Allegato "B") fatte rispettivamente ai sensi dell'articolo 6, par.1, punti a) e b), come indicato nella dichiarazione all'articolo 1, e dell'articolo 26 della Convenzione medesima.

Art.2

La Convenzione di cui all'articolo 1 entrerà in vigore in conformità a quanto disposto dall'articolo 29, par. 2 e 3, della Convenzione medesima.

Dato dalla Nostra Residenza, addì 16 marzo 2009/1708 d.F.R.

I CAPITANI REGGENTI
Ernesto Benedettini – Assunta Meloni

IL SEGRETARIO DI STATO
PER GLI AFFARI INTERNI
Valeria Ciavatta

18. Annex 18: Decreto consiliare no. 29 del 16 marzo 2009 – Ratifica della convenzione Europea di assistenza giudiziaria in materia penale (Italian version)

REPUBBLICA DI SAN MARINO

DECRETO CONSILIARE 16 marzo 2009 n.29

Noi Capitani Reggenti
la Serenissima Repubblica di San Marino

Visto il combinato disposto dell'articolo 5, comma 3, della Legge Costituzionale n.185/2005 e dell'articolo 11, comma 2, della Legge Qualificata n. 186/2005;
Vista la delibera del Consiglio Grande e Generale n.44 del 4 marzo 2009;
ValendoCi delle Nostre Facoltà;
Promulghiamo e mandiamo a pubblicare:

RATIFICA DELLA CONVENZIONE EUROPEA DI ASSISTENZA GIUDIZIARIA IN MATERIA PENALE, FATTA A STRASBURGO IL 20 APRILE 1959, E DELLE RELATIVE DICHIARAZIONI E RISERVE

Art.1

Piena ed intera esecuzione è data alla la Convenzione Europea di Assistenza Giudiziaria in materia penale, fatta a Strasburgo il 20 aprile 1959 (Allegato A), e delle relative dichiarazioni e riserve (Allegato B) fatte rispettivamente a mente degli articoli 5, par.1, 7, par.3, 15, par.6, 16, par.
2, 24, 26, par.4 e 23 della Convenzione medesima.

Art.2

La Convenzione di cui all'articolo 1 entrerà in vigore in conformità a quanto disposto dall'articolo 27, par. 2 e 3, della Convenzione medesima.

Dato dalla Nostra Residenza, addì 16 marzo 2009/1708 d.F.R.

I CAPITANI REGGENTI
Ernesto Benedettini – Assunta Meloni

IL SEGRETARIO DI STATO
PER GLI AFFARI INTERNI
Valeria Ciavatta

19. Annex 19: Decree-Law No. 65 of 14 May 2009 on Intermediation of the Central Bank for the purposes of interbank data transmission between San Marino and Italy

REPUBLIC OF SAN MARINO

DECREE-LAW NO. 65 OF 14 MAY 2009

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

Having regard to the conditions of necessity and urgency referred to in Article 2, paragraph 2, point b) of Constitutional Law no. 183 of 15 December 2005 and in Article 12 of Qualified Law no. 184 of 12 December 2005 and, more precisely, the necessity and urgency to implement an efficient information exchange system between San Marino and Italian banks in suitable times to continue, without interruption, to have access to the Italian payment system;
Having regard to Decision no. 2 of the Congress of State, adopted in the sitting of 11 May 2009;
Having regard to Article 5, paragraph 2 of Constitutional Law no. 185/2005 and Articles 9 and 10, paragraph 2 of Qualified Law no. 186/2005;
Promulgate and order the publication of the following decree-law:

INTERMEDIATION OF THE CENTRAL BANK FOR THE PURPOSES OF INTERBANK DATA TRANSMISSION BETWEEN SAN MARINO AND ITALY

Art. 1
(Purposes and definitions)

1. This Decree shall be adopted in order to allow Italian intermediaries to continue providing payment services to San Marino banks, considering the need for Italian counterparts to fulfil customer due diligence requirements in relation to customers of San Marino banks who carry out transactions settled in the Italian payment system.
2. For the purposes of this Decree, the following meanings shall be applied to the expressions used herein:
a. “Customer Database”: a computer database created, managed and maintained by the Supervisory Authority and containing the identification data of customers of San Marino banks;
b. “banking activity”: the activity referred to in section A of Attachment 1 to Law no. 165/2005;
c. “Supervisory Authority”: the Central Bank of the Republic of San Marino;
d. “intermediary banks”: Italian banks having an agreement with the Supervisory Authority, which provide, on an agreement basis, payment services to San Marino banks and customers thereof;
e. “Implementing Regulation”: a regulation issued by the Supervisory Authority to implement the provisions enshrined in this Decree;
f. “payment services”: transmission and execution of payment orders by means of money transfers, checks, direct debit, as well as issue of bank drafts and payment cards on the Italian payment system;
g. “customer due diligence”: due diligence conducted under Article 18 and, when the conditions apply, under Article 28 of Italian Legislative Decree no. 231 of 21 November 2007.

Art. 2
(Scope)

1. The provisions of this Decree shall apply to the parties authorised to undertake banking activity in the Republic of San Marino.

Art. 3
(Establishment and management of the Customer Database containing identification data)

1. The Supervisory Authority shall be responsible for the management of a Customer Database containing the identification data of customers, their beneficial owners (if they are different from the customers), and any delegated parties which request San Marino banks to provide payment services relying on the Italian payment system for amounts exceeding the threshold specified in the Implementing Regulation issued by the Supervisory Authority under following paragraph 3. The Customer Database shall also contain identification data regarding any party to be qualified as a mere bearer of the above-mentioned requests.

2. The service shall consist in establishing the Customer Database, obtaining identification data from San Marino banks, updating the database, keeping the data recorded for a period of ten years and sending such data to the intermediary banks requiring them to fulfil customer due diligence obligations.
3. By issuing the Implementing Regulation, the Supervisory Authority shall regulate the organisation and functioning of the service referred to in this Decree. The issued provisions shall be aimed at ensuring the proper acquisition, management, consultation, maintenance and security of data, as well as the traceability of data corrections made by San Marino banks.
4. The San Marino bank having sent the data shall be the only responsible for the correctness, completeness and timeliness of the information forwarded to the Supervisory Authority.

Art. 4
(Obligations of data transmission)

1. Beginning from 20 May 2009, San Marino banks shall be required to send to the Supervisory Authority all data referred to in paragraph 1 of the preceding Article, in compliance with the procedures and time limits laid down by the Implementing Regulation.
2. San Marino banks shall be required, however, to directly provide intermediary banks with any additional information and/or document requested by intermediary banks themselves to supplement the identification data contained in the Customer Database, provided that the request is consistent with the fulfilment of customer due diligence obligations and in line with what established in the agreements and convention concluded between intermediary banks and the Supervisory Authority.
3. The Supervisory Authority may carry out on-site inspections and checks in order to ascertain San Marino banks' compliance with this Decree and the Implementing Regulation.
4. Failure to comply with these provisions and the Implementing Regulation shall be punished in accordance with Law no. 165/2005 and subsequent implementing acts.

Art. 5
(Transmission of data from the Supervisory Authority to intermediary banks)

1. The Supervisory Authority shall forward to intermediary banks the identification data received by San Marino banks. Data shall be transmitted in compliance with the specific techniques agreed between the Supervisory Authority and intermediary banks.
2. If data are incomplete or they have not been received within the time limits envisaged in the Implementing Regulation, without prejudice to Article 4, paragraph 3, the Supervisory Authority shall inform the San Marino bank, which shall make the relevant corrections.

Art. 6
(Costs)

1. The Implementing Regulation shall set forth the criteria for the reallocation of the costs due to the establishment and management of the Customer Database to San Marino banks, within the limits of the direct costs borne by the Supervisory Authority.

Art. 7
(Outsourcing of functions)

1. For the technical IT part being instrumental to the management of the Customer Database, the Supervisory Authority may rely on qualified computer suppliers who shall meet the necessary professional requirements and be able to ensure adequate levels of service and confidentiality of the identification data contained in the Customer Database.

Art. 8
(Performance of functions)

1. The Supervisory Authority shall not stop the service referred to in this Decree unless previously decided by the Committee for Credit and Savings.

Art. 9
(Final provision)

1. All activities involving the collection, processing, transmission – even outside the territory of the Republic of San Marino – and keeping of personal data, which are carried out by San Marino banks, the Supervisory Authority and intermediary banks and are related to the implementation of this Decree, shall be excluded from the application of the provisions referred to in Law no. 70 of 23 May 1995.

Done at Our Residence, on 14 May 2009

THE CAPTAINS REGENT
Massimo Cenci – Oscar Mina

THE SECRETARY OF STATE
FOR INTERNAL AFFAIRS
Valeria Ciavatta

20. Annex 20: Council of The Twelve Decision no. 30 of 27 May 2009

DECISION No.30

27 May 2009

Adoption of measures aimed at preventing and countering money laundering and terrorist financing for associations, foundations and other organisations subject to the supervision of the Council of the Twelve

Their Excellencies the Captains Regent inform that the Recommendations of the FATF (Financial Action Task Force) on countering terrorist financing and focusing on the *non-profit* sector - considered in the Republic of San Marino as the sector where associations, foundations and other organisations subject to the supervision of the Council of the Twelve operate, attach great importance to adequate awareness, coordination and monitoring of the aforesaid entities;

in addition, they inform that the Moneyval Committee of the Council of Europe has recommended many times, during the various evaluation rounds and in the reports consequently adopted, that such measures should also be introduced in the Republic of San Marino, thus negatively evaluating the current lack of basic regulations;

finally, they inform that the Financial Intelligence Agency, recently established, has submitted concrete proposals in order to implement the aforesaid Recommendations of the FATF and Moneyval and avoid, as far as possible, that such negative assessments are reported again.

THE COUNCIL OF THE TWELVE

Sharing what is expressed above

decides

- to contact the Council of Associations and the most representative volunteer associations in order to promote, together with the Financial Intelligence Agency, an awareness-raising and information campaign on the risk of money laundering and terrorist financing associated to the non-profit sector, addressed to all San Marino associations, foundations and other organisations;
- to adopt a Protocol of Understanding between the Council of the Twelve, the Judge of Supervision and the Financial Intelligence Agency in order to introduce coordination mechanisms to ensure the national and international exchange of information on money laundering and terrorist financing in relation to San Marino associations or foundations;
- to carry out a study on the funding sources of associations, foundations and other organisations in cooperation with the Financial Intelligence Agency;
- to prepare a questionnaire to be sent to all associations, foundations and other organisations, in cooperation with the Financial Intelligence Agency, in order to analyze the risks of abuse of the non-profit sector and its vulnerability to money laundering and terrorist financing, with the possibility to conduct regular controls;

mandates

the Bureau of the Great and General Council to arrange anything necessary to implement the points decided above, in agreement with the Financial Intelligence Agency, and to report regularly to the Council of the Twelve;

also orders

- that associations, foundations and the other organisations shall register data and information regarding funding and funds received and the use thereof. Data, information and relevant documents shall be kept for at least 5 (five) years from the date on which funds were granted or the transaction relating to the use of funds was conducted. These data and information shall be kept by associations, foundations and the other non-profit organisations and be provided, upon written request, to the Judge of Supervision for supervisory functions and to the Financial Intelligence Agency to perform the functions assigned by Law no. 92 of 17 June 2008. To this end, associations, foundations and the other organisations shall fill in the prospectus “Detailed Funding and Uses”, Attachment no. 1 to this Decision;
- that every year associations, foundations and the other non-profit organisations shall also deposit with the Judge of Supervision the balance sheet and the prospectus “Summary of Funding and Uses”, Attachment no. 2 to this Decision.

21. Annex 21: Congress of State Decision no. 2 of 6 October 2008 - Provisions for implementing the measures adopted by the United Nations Security Council against persons and organisations linked to Osama Bin Laden, to the "Al -Qaïda" group or to the Taleban

CONGRESS OF STATE

Secretary of State for Internal Affairs

Sitting of: 6 OCTOBER 2008 Decision No. 2

Subject: Provisions for implementing the measures adopted by the United Nations Security Council against persons and organisations linked to Osama Bin Laden, to the "Al -Qaïda" group or to the Taleban

THE CONGRESS OF STATE

having heard the references of the Secretary of State for Foreign Affairs, Foreign Policies and Economic Planning, of the Secretary of State for Finance and the Budget, the Postal Service and Relationships with the AASFN, regarding the measures adopted through the Resolutions from the United Nations Security Council in order to combat terrorism, the financing thereof and the activity of countries that threaten international peace and security;

confirming the commitment to pursue and strengthen international cooperation in order to combat terrorism, to prevent and suppress the financing thereof, to safeguard national and international security as well as the integrity and solidity of San Marino's economic and financial system;

having regard to decree no. 125 of 10 December 2001, which enforces the International Convention for the Suppression of Financing of Terrorism, established in New York on 9 December 1999;

having regard to the Resolutions of the United Nations Security Council, in particular Resolutions no. 1267 (1999), no. 1333 (2000), no. 1373 (2001), no. 1390 (2002), no. 1455 (2003), no. 1526 (2004), no. 1617 (2005), no. 1735 (2006) and no. 1822 (2008), recorded in the acts of the current sitting, regarding persons and organisations linked to Osama Bin Laden, to the "Al-Qaïda" group or to the Taleban;

having regard to article 46 of Law no. 92 of 17 June 2008 "Provisions for preventing and combating money laundering and the financing of terrorism";

having considered the necessity of updating the provisions adopted with decision no. 1 of 5 November 2001,

orders

the following restrictive measures:
- freezing of the funds and the economic resources held or controlled, directly or indirectly, by persons, bodies or groups included on the list based on the decisions of the Sanctions Committee (Resolution no. 1267 of 1999) regarding Al-Qaïda/Taleban, as specified in Annex 1 to this decision, in the full and updated version as at 26 September 2008;

- prohibition on transferring funds, giving financial assistance or, directly or indirectly, making funds or economic resources available to the natural persons or legal entities, to the groups or the organisations specified in Annex 1;

- prohibition on entry and stay in the San Marino territory for those persons included in the list in Annex 1;

- prohibition on the supply, sale and mediation of armaments of any type, including weapons and ammunition, vehicles and equipment, paramilitary equipment as well as of related accessories and replacement parts to the physical persons and legal entities, or to the groups and organisations included in Annex 1;

- prohibition on the supply of assistance or technical consultancy linked to military activities to the

natural persons and legal entities, or to the groups or organisations included in Annex 1.

Charges

the designated authorities and public administrations to comply and ensure compliance with the provisions of this decision and to make sure that they are carried out. Failure to observe the provisions of this decision shall be punished pursuant to Articles 57 and 60 of Law no. 92 of 17 June 2008.

Mandates

the Executive Secretariat of the Congress of State to see to the immediate publication of this decision, in the manner specified by article 46, paragraph 5 of Law no. 92 of 17 June 2008.

THE SECRETARY OF STATE
(signed Valeria Ciavatta)

Extract from the summary of proceedings issued for the use of: the Most Excellent Regency, the Secretaries of State, the Central Bank, the Single Court, the Gendarmerie Headquarters, the Guards of the Fortress Headquarters, the Civil Police Headquarters, the National Central Interpol Office, the Tax Office Directorate, the Financial Intelligence Agency.

22. Annex 22: Congress of State Decision no. 3 of 6 October 2008 - Provisions for implementing the measures adopted by the United Nations Security Council against the Islamic Republic of Iran

CONGRESS OF STATE

Secretariat of State for Internal Affairs

Sitting of: 6 OCTOBER 2008 Decision No.3

Subject: Provisions for implementing the measures adopted by the United Nations Security Council against the Islamic Republic of Iran

THE CONGRESS OF STATE

having heard the references of the Secretary of State for Foreign Affairs, Foreign Policies and Economic Planning, of the Secretary of State for Finance and the Budget, the Postal Service and Relationships with the AASFN, regarding the measures adopted through the Resolutions from the United Nations Security Council in order to combat the activity of countries that threaten international peace and security;

having regard, in particular, to Resolutions no. 1737 (2006), no. 1747 (2007) and no. 1803 (2008) of the United Nations Security Council adopted against the Islamic Republic of Iran, an Italian translation of which is attached to this decision, and reconfirmed with Resolution no. 1835 adopted on 27 September 2008;

having regard to article 46 of Italian Law no. 92 of 17 June 2008 “Provisions for preventing and combating money laundering and the financing of terrorism”;

having considered the necessity of strengthening international cooperation in order to combat the activity of countries that threaten international peace and security and of safeguarding the integrity and solidity of San Marino's economic and financial system;

having considered the necessity of updating the provisions adopted with decision no. 8 of 3 August 2007,

orders

the following measures in implementation of the aforementioned Resolutions no. 1737 (2006), no. 1747 (2007) and no. 1803 (2008) of the United Nations Security Council adopted against the Islamic Republic of Iran:
- prohibition on the supply, sale, mediation or transfer, directed or indirect, of goods, equipment or any other material including technologies and software intended for the Islamic Republic of Iran, which may be useful, in whole or in part, to Iranian activities in the area of enrichment of uranium, resumption of the preparation of uranium, of heavy water or the development of transport systems for nuclear weapons;

- prohibition on the supply of services of any kind, including financial assistance, mediation services and technical consultancy, as well as the granting of financial means and investments related to the supply, sale, transit, manufacture or use of goods for the purposes specified above;

- freezing of the funds and economic resources held or controlled by the persons and entities included in the complete list updated at September 2008, as provided in Annex 1 to this decision;

- prohibition on entry and stay in the San Marino territory for those persons included on the list in the previously mentioned Annex 1, in compliance with decisions of the competent Committee of the United Nations Security Council.

Charges

the designated authorities and public administrations to comply and ensure compliance with the provisions of this decision and to make sure that they are carried out.

Failure to observe the provisions of this decision shall be punished pursuant to Articles 57 and 60 of Law no. 92 of 17 June 2008.

Mandates

the Executive Secretariat of the Congress of State to see to the immediate publication of this decision, in the manner specified by article 46, paragraph 5 of Law no. 92 of 17 June 2008.

THE SECRETARY OF STATE
(signed Valeria Ciavatta)

Extract from the summary of proceedings issued for the use of: the Most Excellent Regency, the Secretaries of State, the Central Bank, the Single Court, the Gendarmerie Headquarters, the Guards of the Fortress Headquarters, the Civil Police Headquarters, the National Central Interpol Office, the Tax Office Directorate, the Financial Intelligence Agency.

23. Annex 23: Congress of State Decision no. 9 of 26 January 2009 - List of Countries, Jurisdictions and Territories whose system to prevent and combat money laundering and terrorist financing is considered equivalent to international standards

CONGRESS OF STATE

Secretariat of State for Internal Affairs

Sitting of: 26 JANUARY 2009 Decision no. 9

Subject: List of Countries, Jurisdictions and Territories whose system to prevent and combat money laundering and terrorist financing is considered equivalent to international standards

THE CONGRESS OF STATE

Having heard the reference of the Secretary of State for Finance and the Budget and Relations with the Philatelic and Numismatic State Corporation;

Having considered that, under Article 95, paragraph 5 of Law no. 92 of 17 June 2008, the Congress of State, by decision, shall identify foreign Jurisdictions whose system for preventing and combating money laundering and terrorist financing is equivalent to that set forth in international standards;

Having regard to Note no. 09/0062 of the Financial Intelligence Agency dated 20 January 2009;

Having heard the opinion of the members of the Committee for Credit and Savings;

Having acknowledged the guidelines recently adopted at international level by the Committee on the Prevention of Money Laundering and Terrorist Financing established within the European Union;

Under Article 95, paragraph 5 of Law no. 95 of 17 June 2008 (Provisions on Preventing and Combating Money Laundering and Terrorist Financing),

identifies

the following list of foreign Countries, Jurisdictions and Territories whose system for preventing and combating money laundering and terrorist financing is considered equivalent to that set forth in international standards:

Member Countries of the European Union

- Austria
- Belgium
- Bulgaria
- Cyprus
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- United Kingdom
- Czech Republic
- Romania
- Slovakia
- Slovenia
- Spain

- Sweden
- Hungary

Member Countries of the European Economic Area

- Iceland
- Liechtenstein
- Norway

Countries which are not members of the European Union

- Argentina
- Australia
- Brazil
- Canada
- Japan
- Hong Kong
- Mexico
- New Zealand
- Russian Federation
- Singapore
- United States of America
- Republic of South Africa
- Switzerland

Other Countries/Jurisdictions/Territories

- Dutch Antilles (Dutch overseas territory)
- Aruba (Dutch overseas territory)
- Mayotte (French overseas collectivity)
- New Caledonia (French overseas collectivity having a special statute)
- French Polynesia (French overseas collectivity)
- Wallis and Futuna (French overseas collectivity)
- Jersey
- Guernsey
- Isle of Man

specifies

that the list of Countries, Jurisdictions and Territories indicated above may be regularly updated, upon proposal of the Financial Intelligence Agency, on the basis of the information available at international level or according to the decisions taken in this regard within the European Union

entrusts

the Financial Intelligence Agency with the task of releasing this Decision, as far as possible, to all obliged parties referred to in Article 17 of Law no. 92 of 17 June 2008.

THE SECRETARY OF STATE

Extract from the summary of proceedings issued for the use of: Their Excellencies the Captains Regent, the Secretaries of State, the Central Bank – the Financial Intelligence Agency, the Committee for Credit and Savings

24. Annex 24: Congress of State Decision no. 55 of 2 February 2009 - Amendment to the "Regulation governing the keeping of the electronic Register of Legal Persons" referred to in Article 63 of Law no. 165 of 18 December 2003

CONGRESS OF STATE

Secretariat of State for Internal Affairs

Sitting of: 2 FEBRUARY 2009 Decision no. 55

Subject: Amendment to the "Regulation governing the keeping of the electronic Register of Legal Persons" referred to in Article 63 of Law no. 165 of 18 December 2003

THE CONGRESS OF STATE

having heard the references of the Secretary of State for Justice, Information, Research and Relations with the Township Councils;

having regard to its previous Decision no. 55 of 25 October 2004 and the attached "Regulation governing the keeping of the electronic Register of Legal Persons";

having considered that under Article 26 of Law no. 47 of 23 February 2006, as amended by Decree no. 130 of 11 December 2006, which requires that the deeds of transfer of holdings and shares shall be filed with the Registrar's office of the Single Court, the examination of the folder allows to verify the corporate structure; furthermore, at present the Registrar shall issue the relevant certifications in compliance with the provisions and measures taken by the Chief Magistrate on 3 February 2003, Ref. no. 34/D/03;

having considered that the Secretariats of State and the Public Offices involved, the Judicial Authority, the Supervising Authorities of the Central Bank and over economic activities, the Financial Intelligence Agency, as well as the Police Forces performing the functions of judicial police need to have timely access to the data concerning the company structure;

having considered that Article 6 of Law no. 47 of 23 February 2006 (regulating the contents of the public Register of Companies) does not indicate the members' names among the data which shall be entered in the public register,

authorises

the Registrar's Office of the Single Court to indicate the data related to the members of limited liability companies and joint-stock companies in a special section of the Register of Companies, to which only the above-mentioned Authorities shall be granted access;

orders

that the following paragraph is added to Article 4 of the "Regulation governing the keeping of the electronic Register of Legal Persons": "No restriction shall be applied to the investigation activities and inquiries carried out or ordered by the Secretariats of State and the Public Offices involved, the Judicial Authority, the Supervising Authorities of the Central Bank and over economic activities, the Financial Intelligence Agency and the Police Forces performing the functions of judicial police."

Acknowledges

that separate databases on members shall also be created for all registers related to legal persons (associations, foundations, cooperatives, consortiums, etc.), which are kept at the Registrar's Office of the Single Court. These databases shall be set up with the same characteristics and consultation modalities as the ones for companies.

Mandates

the Office of Economic Planning, Data Processing and Statistics and the Chief Magistrate of the Single Court to take any necessary action falling within their competence.

Extract from the summary of proceedings issued for the use of: Their Excellencies the Captains Regent, the Secretaries of State, the Department Coordinators, the Control and Supervision Commission referred to in Article 15 of Law no. 53 of 28 April 1999, the Office for Control and Supervision of economic activities and the Central Liaison Office referred to in Law no. 95 of 18 June 2008, the Supervision Division of the Central Bank of the Republic of San Marino, the Financial Intelligence Agency, the Guarantor for the Protection of Personal Data, the Public Institution for Gaming Activities, the Office for International Economic Relations, the Single Court, the Office of Economic Planning, the Office of Industry, the Tax Office, the Registration Office, the Direction of the Labour Office, the State Lawyers' Office, the Gendarmerie Headquarters, the Civil Police Headquarters, the Fortress Guard Headquarters.

25. Annex 25: Congress of State Decision no. 34 of 16 February 2009 - Awarding of a Contract for Consulting and Assistance Services in Drafting Regulations on Non-profit Associations, Foundations and Entities to Mr. M.S., J.D.

CONGRESS OF STATE

Secretariat of State for Internal Affairs

Sitting of: 16 FEBRUARY 2009 Decision no. 34

Subject: Awarding of a Contract for Consulting and Assistance Services in Drafting Regulations on Non-profit Associations, Foundations and Entities to Mr. M.S., J.D.

THE CONGRESS OF STATE

Having heard the report of the Secretary of State for Justice, Information, Research and Relations with the Township Councils regarding the need for adoption of appropriate regulations enabling the Republic of San Marino to adjust to the Recommendations expressed by international bodies (FATF-OECD, Moneyval-Council of Europe);

Having taken note of the need to introduce new regulations on non-profit Associations, Foundations and Entities, which shall ensure accountability and transparency of this sector and protect it from any abuse aimed at terrorist financing,

entrusts

Mr. M.S., J.D. with the task of preparing a Draft Law and report thereto, defining:

- specific rules on the obligation for registering financing transactions, whose sources shall be adequately controlled and registered, both for private and public funding;
- clear coordination for the exchange of information between Supervisory Authorities.

The above-mentioned Draft Law shall also be in line with similar regulations in force in other Countries and be submitted to the competent Secretary within 45 days from the signature of the relevant Contract.

Mr. M.S. will receive €. 6,000.00 as flat-rate payment. This sum will be calculated in Budget Item 1-1-1345, called "Studies, consultations and various assistance services of the Congress of State", of the current financial year.

mandates

the Reporting Secretary of State to sign the relevant Contract with Mr. M.S. according to the text referred to in the records of this sitting.

This decision shall be sent to the Directorate-General of Public Finance – Central Supervisory Service for its legal authorisation.

THE SECRETARY OF STATE

Extract of minutes for use by: Their Excellencies the Captains Regent, the Secretaries of State, the Directorate-General of Public Finance, the General Accounting Office, the Department of Internal Affairs, the Department of Justice, Mr. M.S., J.D.

26. Annex 26: Delibera Congresso di Stato n. 1 del 20 aprile 2009 - Sostituzione della lista consolidata allegata alla Delibera n. 2 del 6 ottobre 2008 (Italian version)

CONGRESSO DI STATO

Seduta del: 20 APRILE 2009/1708 d.F.R. Delibera n.1 Pratica n.1165

Oggetto: Sostituzione della lista consolidata allegata alla delibera n. 2 del 6 ottobre 2009

IL CONGRESSO DI STATO

sentito il riferimento del Segretario di Stato per gli Affari Esteri, gli Affari Politici, le Telecomunicazioni e i Trasporti e del Segretario di Stato per le Finanze e il Bilancio, i Rapporti con l'AASFN;
vista la propria delibera n. 2 del 6 ottobre 2008 "Disposizioni in esecuzione delle misure adottate dal Consiglio di Sicurezza delle Nazioni Unite nei confronti di persone e di organizzazioni legate a Osama Bin Laden, al gruppo "Al -Qaïda" o ai Talibani";
tenuto conto che in data 15 aprile u.s. il Consiglio di Sicurezza delle Nazioni Unite ha modificato ed aggiornato la lista delle persone e delle organizzazioni legate a Osama Bin Laden, al gruppo "Al -Qaïda" o ai Talibani,

dispone

che l'elenco di cui all'Allegato 2 alla citata delibera, erroneamente indicato quale Allegato 1 nella medesima delibera, sia sostituito dalla versione allegata alla presente.

Manda

nel contempo tutte le autorità preposte ad osservare e a fare osservare le presenti disposizioni.

Invita

le amministrazioni dello Stato che curano la tenuta dei pubblici registi e tutti i soggetti designati ai sensi della Legge 17 giugno 2008 n. 92, per la regolare consultazione dell'elenco consolidato aggiornato e ad ogni utile fine di pubblicità, a visitare il sito internet ufficiale del Comitato delle Nazioni Unite: http://www.un.org/sc/committees/1267/consolist.shtml.

Manda infine

alla Segreteria Esecutiva del Congresso di Stato di provvedere alla immediata pubblicazione della presente delibera, nei modi indicati all'art. 46, comma 5 della Legge del 17 giugno 2008 n. 92.

IL SEGRETARIO DI STATO

Estratto del processo verbale rilasciato ad uso: dell'Ecc.ma Reggenza, dei Signori Segretari di Stato, della Banca Centrale, del Tribunale Unico, del Comando Gendarmeria, del Nucleo Guardia di Rocca, del Comando Polizia Civile, dell'Ufficio Centrale Nazionale Interpol, dell'Ufficio Tributario, dell'Agenzia di Informazione Finanziaria, dell'Ufficio di Controllo e Vigilanza sulle attività economiche, dell'Ufficio Centrale di Collegamento, dell'Ufficio Registro e Ipoteche, dell'Ufficio Registro Automezzi, dell'Ufficio Industria, Artigianato e Commercio, dell'Ufficio di Stato Brevetti e Marchi, dell'Autorità per la Aviazione Civile e la Navigazione Marittima

27. Annex 27: Congress of State Decision no. 17 of 11 May 2009 - Cooperation of Law Enforcement Authorities in Preventing and Countering Money Laundering and Terrorist Financing

CONGRESS OF STATE

Secretariat of State for Internal Affairs

Sitting of: 11 May 2009 Decision no. 17

Subject: Cooperation of Law Enforcement Authorities in Preventing and Countering Money Laundering and Terrorist Financing

THE CONGRESS OF STATE

Having heard the reports by the Secretary of State for Foreign Affairs, Political Affairs, Telecommunications and Transport, the Secretary of State for Internal Affairs and Civil Protection, and the Secretary of State for Finance and the Budget and the Relations with the Philatelic and Numismatic State Corporation on the activities implemented by the enlarged Committee for Credit and Savings;

Having regard to FATF Recommendation no. 27, under which States should ensure "that designated law enforcement authorities have responsibility for money laundering and terrorist financing investigations";

Having considered that the Government is resolved to take steps to ensure that the Republic of San Marino will receive a positive assessment in September with regard to compliance with recommendations and International standards relating to the prevention and the fight against money laundering and terrorist financing;

Having considered the need to implement the provision referred to in Article 12, paragraph 2 of Law no. 92 of 17 June 2008, in the part stating that "the Police Authority, in the fulfilment of its statutory role, may also conduct activities of preventing and combating money laundering and terrorist financing on its own initiative";

Having heard the report by Mrs. Rita Vannucci, in her capacity as Judge belonging to the Committee for Credit and Savings;

Having regard to the note which the Commanders of Police Forces have sent to Mrs. Rita Vannucci, where they agree with the identification of the personnel chosen for the functions indicated below.

appoints

as members of the Police Forces cooperating with the Investigating Judge, to whom they shall exclusively respond in the prevention and suppression of money laundering, terrorist financing and financial crimes:

- for the GENDARMERIE: Vice-Brigadier Gianluca Menicucci; Corporal Graziano Valli;
- for the CIVIL POLICE: Inspector Paolo Francioni and Inspector Paolo Morri;
- for the GUARDIA DI ROCCA (FORTRESS GUARD): Sergeant Major Livio Lettoli and Sergeant Giuseppe Simoncini.

In order to conclude investigations rapidly and effectively, the Investigating Judge may rely on the aforesaid officials; furthermore, he may rely on any other person belonging to Police Forces if necessary to carry out the tasks and investigations assigned. Priority shall be given to these investigations rather than duties or tasks concerning other issues and the designated officials shall exclusively respond to the Investigating Judge in this regard.

Furthermore, all personnel of the Law Enforcement Authorities shall have the duty to conduct investigations of their own initiative, aimed at preventing and countering money laundering and terrorist financing:

1. when, in the exercise of ordinary functions, they suspect that proceeds are generated from an offence. In this case, they may also ask for the cooperation of the Financial Intelligence Agency in order to obtain any relevant financial analysis;
2. when they carry out investigations related to offences which might constitute predicate offences for money laundering. In this event, they shall conduct their investigations not only to identify the offender and the offence itself, but also to search for the location of illicit proceeds and to establish whether the illegal proceeds have been used to commit other offences.

the Commanders of Law Enforcement Authorities to give the relevant implementing orders.

THE SECRETARY OF STATE

Extract of minutes for use by: Their Excellencies the Captains Regent, the Secretaries of State, the Secretariat of State for Foreign Affairs, Secretariat of State for Internal Affairs, the Secretariat of State for Finance, to the Commanders of Law Enforcement Authorities, the Single Court, the Judge being a member of the Committee for Credit and Savings and of the Financial Intelligence Agency

28. Annex 28: Congress of State Decision no. 6 of 29 May 2009 - Establishment of a Technical Commission for National Coordination

CONGRESS OF STATE

Secretariat of State for Internal Affairs

Sitting of: 29 May 2009 Decision no. 6

Subject: Establishment of a Technical Commission for National Coordination

THE CONGRESS OF STATE

Having heard the report of the Secretary of State for Foreign Affairs, Political Affairs, Telecommunications and Transport and the Secretary of State for Finance and the Budget and Relations with the Philatelic and Numismatic State Corporation regarding the activities implemented by the enlarged Committee for Credit and Savings;

Having considered the recommendations of the Moneyval Committee of the Council of Europe on the occasion of the Third Evaluation Round and the subsequent reports aimed at verifying compliance with international standards,

With a view to implementing Articles 11, 12, 14 and 15 of Law no. 92 of 17 June 2008;

establishes

a Technical Commission for National Coordination entrusted with the task of assisting the Committee for Credit and Savings in order to identify and develop technical lines of action which may contribute to enhancing the effectiveness and efficiency of legislation to combat money laundering and international terrorist financing. The Commission is established at the Financial Intelligence Agency, which shall be responsible for all operational administrative duties thereof.

appoints

as members of the Technical Commission for National Coordination:

- Mrs. RV, designated Law Commissioner, Single Court;
- Mr. PG, Collaborator of the Secretariat of State for Foreign Affairs, Political Affairs, Telecommunications and Transport and the Secretariat of State for Finance and the Budget and Relations with the Philatelic and Numismatic State Corporation;
- Mr. NV, Director of the Financial Intelligence Agency;
- Mr. NM, Vice Director of the Financial Intelligence Agency;
- Mrs. GU, Legal Expert of the Financial Intelligence Agency;
- no. 1 member of the Supervision Committee representing the Central Bank of the Republic of San Marino;
- no. 2 members representing the Law Enforcement Authorities and selected by the Investigating Judge and the Director of the Financial Intelligence Agency in compliance with the criteria envisaged by Article 51 of Law no. 92 of 17 June 2008;

invites

the Supervision Committee of the Central Bank, the Law Commissioner Rita Vannucci and the Director of the Financial Intelligence Agency to identify the members of the Technical Commission for National Coordination;

entrusts

the Technical Commission for National Coordination with the task of regularly reporting to the enlarged Committee for Credit and Savings with regard to the legislative and administrative interventions and the actions, even corrective, deemed necessary to improve the effectiveness of the measures aimed at preventing and

combating money laundering and terrorist financing and to achieve full compliance with relevant international standards.

THE SECRETARY OF STATE
(signed Valeria Ciavatta)

Extract of minutes for use by: Their Excellencies the Captains Regent, the Secretaries of State, the Central Bank, the Single Court, the Command of the Gendarmerie, the Guardia di Rocca (Fortress Guard) Unit, the Command of the Civil Police, the National Central Bureau of INTERPOL, the Financial Intelligence Agency.

29. Annex 29: Congress of State Decision no. 13 of 29 May 2009 - Provisions on the Register of Trusts

CONGRESS OF STATE

Secretariat of State for Internal Affairs

Sitting of: 29 May 2009 Decision no. 13 File no. 1694

Subject: Provisions on the Register of Trusts

THE CONGRESS OF STATE

having heard the Secretary of State for Foreign Affairs, Political Affairs, Telecommunications and Transports, the Secretary of State for Finance and Budget and Relations with the Philatelic and Numismatic State Corporation, the Secretary of State for Industry, Handicraft and Commerce and the Secretary of State for Justice, Information, Research and Relations with the Township Councils;

having seen Articles 8 and 9 of Law no. 37 of 17 March 2005 and Decree no. 86 of 10 June 2005 establishing the content and keeping methods of the Register of Trusts;

whereas the need has been identified for the competent Secretariats of State and Public Offices, the Judicial Authority, the Supervising Authorities of the Central Bank and the Authorities monitoring productive activities, the Financial Intelligence Agency and Law Enforcement Authorities responsible for combating money laundering and terrorist financing to have access to data on the settlor and the beneficiaries of the trusts;

having seen the verbatim record of the Judge exercising supervision over the trusts dated 27 January 2009,

establishes

that the data on the settlor and the beneficiaries of the trusts, including any changes thereof, be recorded by the Office for Industry, Handicraft and Commerce, in its capacity as Office of the Trust Register, in a separate section of such register, which may be consulted only by the above mentioned Authorities.

Authorises that

such data be requested by the Office of the Trust Register from the trustee and the notary public with a separate act, authenticated by notary public, which shall be deposited according to the same terms and conditions provided for in Article 9 of Law no. 37 of 17 March 2005. With regard to newly established trusts and any changes to existing trusts, this act shall be deposited together with the abstract provided for in Article 8 of Law no. 37 of 17 March 2005, while, in case of already existing trusts, it shall be deposited within ten days from the date of the request made by the Office of the Trust Register.

Mandates

the Office for Industry, Handicraft and Commerce, in its capacity as Office of the Trust Register, to do anything falling within its competence.

THE SECRETARY OF STATE

Abstract from the minutes for use by: Their Excellencies the Captains Regent, the Secretaries of State, the Judge exercising supervision over the trusts, the Supervision Division of the Central Bank, the Financial Intelligence Agency, the Command of the Gendarmerie, the Guardia di Rocca (Fortress Guard) Unit, the Command of the Civil Police, the Office of Industry.

30. Annex 30: Delibera Congresso di Stato n. 44 del 8 giugno 2009 (Italian version)

CONGRESSO DI STATO

Seduta del: 8 GIUGNO 2009/1708 d.F.R. **Delibera n.44**

Oggetto: **Modifiche alla lista consolidata allegata alla delibera n. 1 del 20 aprile 2009**

IL CONGRESSO DI STATO

sentiti i riferimenti del Segretario di Stato per gli Affari Esteri, gli Affari Politici, le Telecomunicazioni e i Trasporti e del Segretario di Stato per le Finanze e il Bilancio, i Rapporti con l'AASFN in merito alle disposizioni della risoluzione del Consiglio di Sicurezza 1267 del 1999;

vista la propria precedente delibera n. 2 del 6 ottobre 2008 "Disposizioni in esecuzione delle misure adottate dal Consiglio di Sicurezza delle Nazioni Unite nei confronti di persone e di organizzazioni legate a Osama Bin Laden, al gruppo "Al - Qaïda" o ai "Talibani" e la propria precedente delibera n. 1 del 20 aprile 2009 "Sostituzione della lista consolidata allegata alla delibera n. 2 del 6 ottobre 2008",

recepisce

le modifiche, comunicate dal Comitato per le Sanzioni su "Al-Qaida" e "Talebani" del Consiglio di Sicurezza in data 20 aprile 2009, 27 maggio 2009 e 3 giugno 2009, all'elenco di cui all'allegato 2 alla delibera n. 1 del 20 aprile 2009, che vengono poste agli atti.

Manda

nel contempo a tutte le autorità preposte di osservare e di fare osservare le presenti disposizioni.

Invita

le amministrazioni dello Stato che curano la tenuta dei pubblici registi e tutti i soggetti designati ai sensi della Legge 17 giugno 2008 n. 92, per la regolare consultazione dell'elenco consolidato aggiornato e ad ogni utile fine di pubblicità, a consultare il sito internet ufficiale del Comitato delle Nazioni Unite http://www.un.org/sc/committees/1267/consolist.shtml.

Manda infine

alla Segreteria Esecutiva del Congresso di Stato di provvedere alla immediata pubblicazione della presente delibera, nei modi indicati all'art. 46, comma 5 della Legge 17 giugno 2008 n. 92.

Estratto del processo verbale rilasciato ad uso: dell'Ecc.ma Reggenza, dei Signori Segretari di Stato, della Banca Centrale, del Tribunale Unico, del Comando Gendarmeria, del Nucleo Guardia di Rocca, del Comando Polizia Civile, dell'Ufficio Centrale Nazionale Interpol, dell'Ufficio Tributario, dell'Agenzia di Informazione Finanziaria, dell'Ufficio di Controllo e Vigilanza sulle attività economiche, dell'Ufficio Centrale di Collegamento, dell'Ufficio Registro e Ipoteche, dell'Ufficio Registro Automezzi, dell'Ufficio Industria, Artigianato e Commercio, dell'Ufficio di Stato Brevetti e Marchi, dell'Autorità per la Aviazione Civile e la Navigazione Marittima, della Segreteria Esecutiva del Congresso di Stato

31. Annex 31: Delibera Congresso di Stato n. 22 del 3 Agosto 2009 - Modifiche alla lista consolidata allegata alla delibera n. 1 del 20 aprile 2009 (Italian version)

CONGRESSO DI STATO

Seduta del: 3 AGOSTO 2009/1708 d.F.R. Delibera n.22 Pratica n.2441

Oggetto: Modifiche alla lista consolidata allegata alla delibera n. 1 del 20 aprile 2009

IL CONGRESSO DI STATO

sentiti i riferimenti del Segretario di Stato per gli Affari Esteri, gli Affari Politici, le Telecomunicazioni e i Trasporti e del Segretario di Stato per le Finanze e il Bilancio, i Rapporti con l'AASFN in merito alle disposizioni della risoluzione del Consiglio di Sicurezza 1267 del 1999;
viste le proprie precedenti delibere n. 2 del 6 ottobre 2008, n. 1 del 20 aprile 2009 e n. 44 dell'8 giugno 2009,

recepisce

le modifiche, comunicate dal Comitato per le Sanzioni su Al-Qaida e Talebani del Consiglio di Sicurezza in data 18 giugno 2009, 29 giugno 2009, 17 luglio 2009 e 20 luglio 2009, all'elenco di cui all'Allegato 2, alla delibera n. 1 del 20 aprile 2009, che vengono poste agli atti.

Manda

a tutte le Autorità preposte di osservare e fare osservare le presenti disposizioni.

Invita

le amministrazioni dello Stato che curano la tenuta dei pubblici registi e tutti i soggetti designati ai sensi della Legge 17 giugno 2008 n. 92, per la regolare consultazione dell'elenco consolidato aggiornato e ad ogni utile fine di pubblicità, a consultare il sito internet ufficiale del Comitato delle Nazioni Unite http://www.un.org/sc/committees/1267/consolist.shtml.

Manda infine

alla Segreteria Esecutiva del Congresso di Stato di provvedere alla immediata pubblicazione della presente delibera, nei modi indicati all'art. 46, comma 5, della Legge del 17 giugno 2008 n. 92.

IL SEGRETARIO DI STATO

Estratto del processo verbale rilasciato ad uso: dell'Ecc.ma Reggenza, dei Signori Segretari di Stato, della Banca Centrale, del Tribunale Unico, del Comando Gendarmeria, del Nucleo Guardia di Rocca, del Comando Polizia Civile, dell'Ufficio Centrale Nazionale Interpol, dell'Ufficio Tributario, dell'Agenzia di Informazione Finanziaria, dell'Ufficio di Controllo e Vigilanza sulle attività economiche, dell'Ufficio Centrale di Collegamento, dell'Ufficio Registro e Ipoteche, dell'Ufficio Registro Automezzi, dell'Ufficio Industria, Artigianato e Commercio, dell'Ufficio di Stato Brevetti e Marchi, dell'Autorità per la Aviazione Civile e la Navigazione Marittima,

32. Annex 32: Instruction 2008-01 - Operating rules and procedural aspects of the fight against money laundering and financing of terrorism

Preface

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

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

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

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

Article 1 – Definitions

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

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

Article 2 – Information and documentation to be requested from individuals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a) name of the company, agency, office or service of the public administration;
b) address of the registered office and the administrative office, where these do not coincide, telephone number and, if available, fax number and e-mail address;
c) activities performed;
d) scope and nature of the relationship/operation;
e) general details, type and details of the identity document of the individuals who are authorised to operate within the relationship.

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

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

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

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

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

Article 6- Registration and filing of information and identification documents

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

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

Article 7 - Notification of a suspicious operation

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

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

Article 8 - Feed-back

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

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

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

In compliance with the requirements of the Resolutions of the State Congress no. 1 of 15 November, 2001, “Requirements on monitoring and fighting financing of international terrorism”, and no. 8 of 3 August, 2007,

"Application of United Nations Security Council Resolutions 1737 (2006) and 1747 (2007)", the Central Bank periodically transmits lists of those subject to restrictive measures by international bodies

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

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

Article 10 - Veto on remote contracting

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

Article 11 - Entry into force

This Instruction comes into force on 30 June, 2008.

San Marino, 12 June, 2008

ANNEX A - Notification Form

NOTIFICATION FORM

PART I - DATA ON THE NOTIFICATION AND THE NOTIFYING PARTY

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

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

1. Number of the parties notified:

(A) Number of individuals : _____

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

(C) Number of public administrations: _____

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

A) INDIVIDUAL

1. Personal details: (attach a copy of the identity document) Surname Name	
2. Date of birth ☐☐ / ☐☐ / ☐☐☐☐	
3. Place of birth	
4. Nationality	

5. Residence (Address)

Street name and number	
Post Code Castle/Municipality/ Province	
Domicile	
Other information	

6. Profession	

7. Scope and nature of the relationship or operation	

8. Identity document:

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

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

1 Name or corporate name	

2. Legal status

3. Date of incorporation

/ /

4. Registered office (address)

Street name and number

Post Code

Castle/Municipality/ Province

Domicile

Other information

5. Economic activity

6. economic operator code or other identification code

7. Scope and nature of the relationship or operation

8. Person who operates on behalf of the company or organisation

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

Surname

Name

8.2. Date of birth

/ /

8.3. Place of birth

8.4. Nationality

8.5 Identity document (type)

Details of the document

Date of issue

/ /

Date of expiry

/ /

9. Person authorised to operate within the relationship

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

Surname

Name

9.2. Date of birth

/ /

9.3. Place of birth

9.4. Nationality

9.5 Identity document (type)

Details of the document

Date of issue

/ /

Date of expiry

/ /

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

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

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

1. Other information on the operation or operativity notified:

PART IV – MOTIVES OF THE NOTIFICATION

33. Annex 33: Instruction no. 2008-03 - Identification, verification and assessment of "critical transactions"

Preface

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

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

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

Article 1 – Definitions

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

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

Article 2 – General principle

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

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

Article 3 – Verification and assessment of critical transactions

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

- the information and documentation requested at the time of opening the ongoing relationship or the execution of the occasional transaction pursuant to Instruction no. 2008-01;
- the items specified in Article 25, paragraph 3 of the Law;
- any other relevant information.

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

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

Article 4 – Duties of the appointed officer

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

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

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

The written report must have the following minimum structure:

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

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

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

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

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

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

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

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

Article 6 – Exclusion and reporting

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

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

Article 7 – Powers of investigation

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

Article 8 – Entry into force

This Instruction shall enter into force on 15 December 2008.

San Marino, 10 November 2008

34. Annex 34: Instruction no. 2008-04 - Specific measures for the electronic transfer of funds

Introduction

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

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

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

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

Article 1 - Definitions

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

Article 2 – Information on the payer

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

   a) name and surname or, if a legal person, full name or business name;
   b) address of residence or domicile or, if a legal person, address of the registered office;
   c) current account number or, if the transfer of funds takes place without debiting a current account, the unique identifier.

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

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

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

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

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

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

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

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

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

Article 6 – Batch file transfers

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

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

Article 7 – Exceptions

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

    a) transfers of funds deriving from the negotiation of truncated cheques;
    b) transfers of funds deriving from the use of credit or debit cards provided that the payee has an agreement with the payment service provider permitting payment for the provision of goods and services and such transfers of funds carry a unique identifier;
    c) transfers of funds where the payer uses an ATM point to withdraw cash from his or her own account using a credit or debit card, provided that such transfers of funds carry a unique identifier;
    d) the payee is a public administration and the transfer of funds is made for the payment of duties, taxes, financial penalties or other charges in the Republic of San Marino;
    e) the payer and the payee are both payment service providers acting on their own behalf;
    f) where there is a debit transfer authorisation between two parties permitting payments between them through accounts, provided that a unique identifier accompanies the transfer of funds.

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

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

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

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

Article 9 – Obligations on the intermediate payment service provider

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

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

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

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

Article 11 – Entry into force

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

San Marino, 24 November 2008

35. Annex 35: Instruction no. 2008-05 - Operating rules and procedural aspects of the fight against money laundering and financing of terrorism

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

Preface

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

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

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

Article 1 – Obliged parties

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

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

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

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

Article 3 – Derogations

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

Article 4 - Entry into Force

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

36. Annex 36: Instruction no. 2009-02 – Duties to inform foreign counterparts

Preface

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

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

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

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

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

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

Scope

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

Article 1 - Addressees

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

Article 2 – Definitions

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

Article 3 – Obligations to inform foreign counterparts

In all cases in which the designated subject in terms of article 17 of Law No. 92/2008 - in exercising its activities and for the purposes of creating continuing relations or to carry out occasional transactions or to provide professional activities- establishes a relationship with a foreign counterpart falling compelled under its legislation to obligations similar to those under the provisions of Law No. 92/2008 binds the designated San Marino subjects who are obliged to provide on request of the foreign counterpart (including express reference to the requirement to fulfil the obligations of client identification imposed by local legislation to counter money laundering and financing of terrorism), all information requested,

provided that this is equivalent or in any case compatible with the terms of article 22 of Law No. 92/2008, and necessary and essential to establish a continuing relationship or to carry out an occasional transaction or to provide a professional service.

Article 4 – Equivalent Jurisdictions

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

Article 5 – Entry into force

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

San Marino, 6 February 2009

37. Annex 37: Instruction no. 2009-03 - Risk assessment and other evaluations referred to in Article 25 of Law no. 92 of 17 June 2008

Preface

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

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

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

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

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

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

A) with reference to the customer:

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

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

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

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

Article 1 – Addressees

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

Article 2 – Definitions

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

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

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

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

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

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

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

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

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

The consistency of the transaction with the whole information available for the obliged party establishes whether the business relationship or the occasional transaction is justified by the business activity of the customer. Obliged parties shall assign a Higher Potential Risk or a Lower Potential Risk to customers according to all information and data available to them; in other words, they shall not rely exclusively on the specific documents collected, but they shall employ any useful source (such as information obtained from the press or other mass media or by facts which are known in the territory or in the professional context where the obliged party operates). Considering the preventive purpose of the legislation, even simple indications may be taken into account.

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

Article 5 – Level of riskiness

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

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

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

Article 6 – Implementation of a risk-based approach

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

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

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

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

Article 7 – Entry into force

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

San Marino, 22 May 2009

38. Annex 38: Instrucion no. 2009-04 - Identification to be carried out through third parties and ways of transmission of documents and information referred to in Article 29 of Law no. 92 of 17 June 2008

Preface

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

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

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

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

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

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

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

Article 1 – Addressees

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

Article 2 – Definitions

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

Article 3 – Customer's consent

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

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

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

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

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

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

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

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

Article 5 – Ways to transmit the certification

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

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

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

Article 7 – Ongoing monitoring

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

Therefore, at any moment the obliged party may request information and documents related to the identification of the customer or the beneficial owner to the third party issuing the certification. Under Article 29, paragraph 4 of Law no. 92/2008, the third party shall be required to forward this information and documents without delay, upon simple request by the obliged party. If the third party refuses to provide these data, the obliged party shall inform the Financial Intelligence Agency.

Article 8 – Entry into force

This Instruction shall enter into force on 1 June 2009.

San Marino, 22 May 2009

39. Annex 39: Instruction no. 2009-05 - Ways for the fulfilment of the obligations referred to in article 22, paragraph 1, letter b) of Law no. 92 of 17 June 2008

Preface

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

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

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

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

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

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

Article 1 – Addressees

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

Article 2 – Definitions

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

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

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

1. the customer being a natural person acts on his own behalf and the obliged party, on the basis of the information held, has no grounds to doubt that; in this case, more precisely, the verification of the identity of the beneficial owner is performed by carrying out the verification of the identity of the customer;
2. the conditions envisaged by law apply according to which obliged parties shall not be subject to customer due diligence obligations (Article 26 of Law no. 92/2008);
3. the customer of the San Marino obliged party is a bank or a financial institution located in Countries included in the so-called white list drafted by the Member States of the European Union;
4. the parties referred to in previous points 2 and 3 are not direct customers of obliged parties, but they are intermediaries of participants in a company or entity with or without legal personality which is a customer of San Marino obliged parties;

5. the conditions under which the obliged party may rely on third parties to perform customer due diligence procedures apply (Article 29 of Law no. 92/2008 and FIA Instruction no. 2009-04).

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

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

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

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

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

The following case shall be considered as a example:

Customer: Company A, with the following members:
B, natural person owning 4%,
C, legal person owning 26%,
D, legal person owning 70%.
C's members:
E, natural person owning 50%,
F, natural person owning 50%.
D's members:
G, natural person owning 50%,
H, natural person owning 40%,
I, natural person owning 10%.

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

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

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

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

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

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

Article 7 – Entry into force

This Instruction shall enter into force on 1 June 2009.

San Marino, 22 May 2009

40. Annex 40: Instruction no. 2009-06 - Requirements of customer due diligence, record keeping and suspicious transaction reporting for the professional practitioners referred to in article 20 of Law no. 92 of 17 June 2008

Preface

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

Purposes

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

TITLE I
GENERAL PROVISIONS

Article 1 - Definitions

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

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

Article 2 - Requirements to be fulfilled

The Professional Practitioners must fulfil the following requirements:

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

Article 3 - Addressees of the customer due diligence requirements

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

a) Members of the Register of Chartered and Certified Accountants of the Republic of San Marino;

b) Members of the Register of Independent Auditors and Auditing Firms and the Register of Actuaries of the Republic of San Marino;

c) Members of the Register of Lawyers and Notaries of the Republic of San Marino, when they carry out any financial or real estate transactions in the name or on behalf of their customers or when they assist their customers in the planning and execution of transactions relating to the:

1) Transfer of any form of property rights over immovable goods or enterprises;

2) Management of customer money, securities or other assets;

3) Opening or management of bank, savings or securities accounts;

4) Creation, operation or management of trusts, companies or similar structures, with or without legal personality;

5) Organisation of the contributions necessary for the creation, operation or management of companies.

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

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

TITLE II
CUSTOMER DUE DILIGENCE REQUIREMENTS

CHAPTER I
GENERAL PRINCIPLES

Article 4 - Content of the customer due diligence requirements

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

a) identification of the customers and verification of their identity on the basis of an unexpired identification document or, when this is not possible, on the basis of documents and information obtained from a reliable and independent source;

b) if necessary, the identification of the beneficial owner and the adoption of adequate measures commensurate to the risk to verify the beneficial owner's identity;

c) acquisition of information on the purpose and nature of the continuous relationship or the occasional transaction;

d) ongoing monitoring of the continuous relationship, verifying that the transactions concluded over the course of the entire relationship are consistent with the data and information that the Professional Practitioner has on the customers, their economic activities and their risk profile, including, where necessary, the source of funds;

e) update of the documents, data and information acquired for the fulfilment of the customer due diligence requirements.

Article 5 - Scope of the customer due diligence requirements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 9 - Risk based approach

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

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

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

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

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

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

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

Article 11 - Identification of the beneficial owner

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

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

Article 12 - Determination of the beneficial owner

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

Article 13 - Timescales

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 19 - Requirements for the customer

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

TITLE III
RECORDING OF THE DATA AND THE INFORMATION

Article 20 - General principles / introduction

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

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

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

Article 21 - Anti-money laundering register

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

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

The Professional Practitioners may also record the data and information in a register maintained in electronic form. In such case the Professional Practitioners must ensure the continuity and updating of the records, the

inability to amend or delete the records without keeping a trace of the actions taken, and the reconstructability of the historical data and the chronological order of the records.

The Register must contain at least the following information:

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

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

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

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

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

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

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

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

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

Article 22 - Timescales for recording

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

Article 23 - Customer Record Card

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

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

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

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

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

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

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

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

TITLE IV
CONTROLS

Article 24 - Ongoing control

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

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

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

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

- periodically request in writing from the customer - on a timescale to be established on the basis of the assessment of the current risk profile - the confirmation or the change in the information held by the Professional Practitioner;
- establish automatic mechanisms for the update of the data, for example noting:
    - the expiry of the identification documents,
    - the date of the renewal of the term of office of company officers;
    - any deadlines connected to agreements or deeds;
    - other items considered useful by the Professional Practitioner;
- arrange meetings with the customer when critical situations arise (entry into the high-risk category);
- training personnel so that they can provide information useful for the assessment of the risk profile;

- record all the information acquired during the preliminary meetings and the performance of the professional services.

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

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

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

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

Article 25 - Internal controls

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

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

TITLE V
REPORTING REQUIREMENTS

Article 26 - Suspicious transaction reporting

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

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

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

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

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

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

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

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

Article 27 - Return flow of information

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

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

Article 28 - Countering terrorist financing

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

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

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

Article 29 - Entry into force

This Instruction shall enter into force on 6 June 2009.

San Marino, 27 May 2009

Annexes:

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

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

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

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

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

Transactions of indeterminate or indeterminable value

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

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

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

- real estate purchases and sales, even when subject to suspensive or get-out clauses
- real estate purchases and sales with title retention agreement
- exchange of property rights
- deeds aimed at the establishment and/or transfer of building, perpetual lease, usufruct, use, residing and easement rights

- mortgages and other banking agreements
- income and annuities
- division of communal property with adjustment
- buyback deed for real estate held on financial lease
- transfer of financial lease agreement involving real estate to other financial companies
- donation of real estate
- deed of assignment of shares of a housing cooperative
- advanced assignment of real estate
- sale of corporate equities
- general members' meetings leading to resolutions for capital increases, reductions or surpluses, or for the discharge of bonds
- deeds of company merger or split

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

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

Annex 'B' – Reporting form

SUSPICIOUS TRANSACTION REPORTING FORM
FOR PROFESSIONAL PRACTITIONERS

PART I - DETAILS OF THE REPORT AND THE REPORTING PERSON

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

3. Professional Firm: and address	

4. Contacts for the Professional Practitioner:

Surname and Name: _____

Place and date of birth:_____

Telephone: (_____) _____

Fax: (_____) _____

E-mail: _____

5. Membership category of the reporting person:

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

PART II - IDENTIFICATION DETAILS AND DOCUMENTS OF THE PERSONS REPORTED

1. Number of persons reported:

(A) Number of natural persons: _____

(B) Number of companies and entities with or without legal personality: _____

(C) Number of public administrations: _____

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

A) NATURAL PERSON

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

Surname

Name

2. Date of Birth ☐☐ / ☐☐ / ☐☐☐☐

3. Place of birth

4. Nationality

5. Residency (Address)

Street/Road and House/Street number

Postcode

Municipality/Province

Domicile

Other information

6. Profession

7. Purpose and nature of the relationship or transaction

8. Identification document

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

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

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

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

7. Purpose and nature of the relationship or transaction

8. Person acting on behalf of the company or entity

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

Surname	
Name	

8.2. Date of Birth ☐☐ / ☐☐ / ☐☐☐☐

☐☐ / ☐☐ / ☐☐☐☐

8.3. Place of Birth

8.4. Nationality

8.5 Identification document (Type)

Document details

Issue date ☐☐ / ☐☐ / ☐☐☐☐

Expiry date ☐☐ / ☐☐ / ☐☐☐☐

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

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

Surname

Name

9.2. Date of Birth

☐☐ / ☐☐ / ☐☐☐☐

9.3. Place of Birth

9.4. Nationality

9.5 Identification document (Type)

Document details

Issue date

☐☐ / ☐☐ / ☐☐☐☐

Expiry date

☐☐ / ☐☐ / ☐☐☐☐

PART III - DETAILS AND INFORMATION ON THE REPORTED TRANSACTION

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

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

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

PART IV – GROUNDS FOR THE REPORT

Place, date

Signature and stamp of the Professional Practitioner

Annex 'C' – Example indicators of anomaly

INDICATORS OF ANOMALY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Indicators of anomaly for all categories of transactions:

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

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

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

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

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

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

5. Indicators of anomaly for real estate transactions:

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

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

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

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

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

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

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

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

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

- none of the shareholders or directors are resident in the place where the registered office is located,

- the shareholders or directors are unknown and resident in different locations,
- other factors are involved that make the transaction suspicious.

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

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

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

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

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

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

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

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

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

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

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

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

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

41. Annex 41: Instruction no. 2009-07 - Typologies of suspicious transactions and procedures for the examination of transactions referred to in article 36 of Law no. 92 of 17 June 2008

Purposes

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

Article 1 – Addressees

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

Article 2 – Definitions

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

Article 3 – General principles

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

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

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

Article 4 – When a "suspicion" arises

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

Article 5 – Context of suspicious transaction reports

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

Article 6 – Unusual transactions

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

Article 7 – The compliance officer

The compliance officer, referred to in Article 42 of Law no. 92/2008, is the person responsible for receiving, analysing and forwarding, if necessary, suspicious transaction reports to the Financial

Intelligence Agency. He shall have adequate professional skills and contribute to the training of employees on such matters.

Article 8 – Internal suspicious transaction reports

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

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

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

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

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

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

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

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

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

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

Article 10 – In-depth report by the compliance officer

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

<u>1) Information on the report:</u>
c) place and date of drawing up the report;
d) name and surname of the compliance officer drawing it up;
e) Name and surname, function or service/structure to which the internal reporting person belongs.

<u>2) Information and data on customers:</u>

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

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

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

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

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

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

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

The suspicious transaction report referred to in Article 36 of Law no. 92/2008 shall be forwarded to the Financial Intelligence Agency both by e-mail (by using the relevant form to be downloaded every time from the website www.aif.sm, section "suspicious transaction reports"), and in hard copy through a letter sent by recorded delivery to the Agency's seat[34], by printing the form sent by e-mail; in this regard, the Technical Annex contains all information to properly fill in and forward the suspicious transaction report .

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

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

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

Article 12 –Suspicious transaction reports in a verbal form

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

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

Article 13 – Other information

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

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

Article 14 – Documents to be enclosed with the reporting form

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

Article 15 – Assessments and conducts following a suspicious transaction report

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

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

Article 16 – Confidentiality of suspicious transaction reports

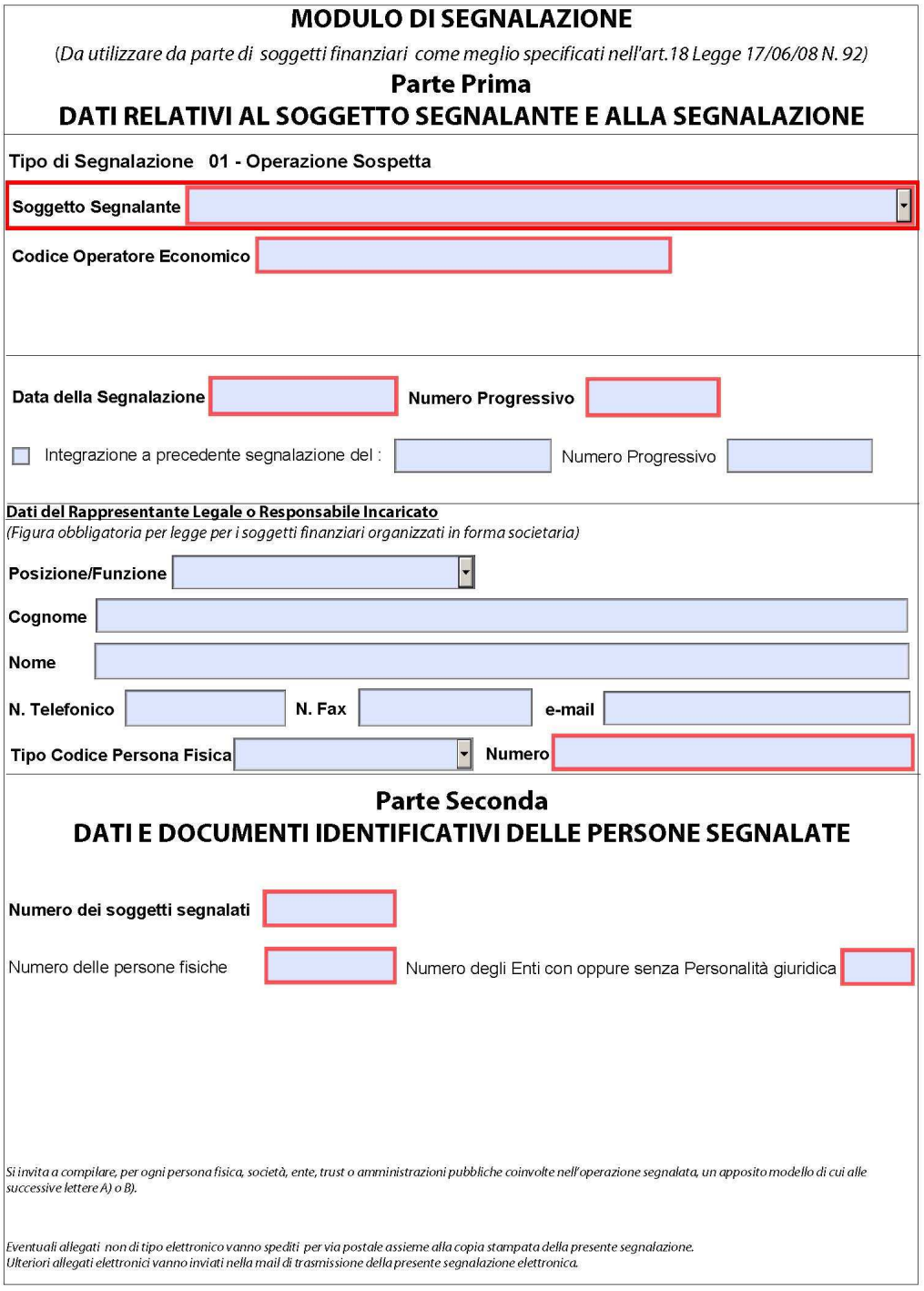
The criminal sanction referred to in Article 53 of Law no. 92/2008 concerns the violation of confidentiality, both in the context of a procedure of internal reporting and in the context of suspicious transaction reports referred to in former Article 24, paragraph 1, and Article 36.
The confidentiality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

Article 17 – Entry into force and repeals

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

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

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



MODULO DI SEGNALAZIONE

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

Parte Prima
DATI RELATIVI AL SOGGETTO SEGNALANTE E ALLA SEGNALAZIONE

Tipo di Segnalazione 01 - Operazione Sospetta

Soggetto Segnalante

Codice Operatore Economico

Data della Segnalazione **Numero Progressivo**

☐ Integrazione a precedente segnalazione del : Numero Progressivo

Dati del Rappresentante Legale o Responsabile Incaricato

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

Posizione/Funzione

Cognome

Nome

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

Tipo Codice Persona Fisica **Numero**

Parte Seconda
DATI E DOCUMENTI IDENTIFICATIVI DELLE PERSONE SEGNALATE

Numero dei soggetti segnalati

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

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

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

Sezione "A1"
DATI E DOCUMENTI IDENTIFICATIVI DELLE PERSONE FISICHE

Cognome

Nome

Data di Nascita | Luogo | Nazionalità

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

Castello/Comune/Provincia | Nazione

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

Tipo di professione | Rischio Potenziale sulla Professione

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

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

Tipologia di documento: | Numero

Data Emissione | Data Scadenza | Luogo di Emissione

Altre informazioni

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

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

Denominazione o Ragione Sociale

Forma Giuridica | Rischio Potenziale sulla Natura Giuridica

Tipo Codice Identificativo | Numero:

Sede Legale

Via e Numero Civico | C.A.P.

Comune(Provincia)/Castello | Nazione

Sede Operativa

Via e Numero Civico | C.A.P.

Comune(Provincia)/Castello | Nazione

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

Altre Informazioni sul soggetto segnalato

Prevalente attività svolta | Rischio Potenziale su attività

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

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

Cognome

Nome

Data di nascita | Luogo | Nazionalità

Tipo collegamento con l'ente segnalato

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

Tipologia di documento: | Numero

Luogo di emissione | Data Emissione | Data Scadenza

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

Altre informazioni

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

Tipologia di rapporto

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

Periodo di operatività sospetta dal | al | Data di estinzione

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

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

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

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

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

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

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

Cognome

Nome | Tipo collegamento

Data di nascita | Luogo | Nazionalità

Cognome

Nome | Tipo collegamento

Data di nascita | Luogo | Nazionalità

Cognome

Nome | Tipo collegamento

Data di nascita | Luogo | Nazionalità

Cognome

Nome | Tipo collegamento

Data di nascita | Luogo | Nazionalità

Cognome

Nome | Tipo collegamento

Data di nascita | Luogo | Nazionalità

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

Tipologia di operazione occasionale

Data di operazione | Indice di rischiosità Istr. 03/2009 Art. 5

Eventuali dati sul Presentatore dei soggetti segnalati

Cognome

Nome

Tipo Codice Identificativo | Numero

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

Cognome

Nome | Tipo collegamento

Data di nascita | Luogo | Nazionalità

Cognome

Nome | Tipo collegamento

Data di nascita | Luogo | Nazionalità

Cognome

Nome | Tipo collegamento

Data di nascita | Luogo | Nazionalità

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

Sezione "E1"
MOTIVI DELLA SEGNALAZIONE

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

Sezione "F1"
INDICI DI ANOMALIA

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

Sezione "F1"
(segue) INDICI DI ANOMALIA

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

Stampa modulo

Invia tramite posta elettronica

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

MODULO DI SEGNALAZIONE SEMPLIFICATA

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

Parte Prima
DATI RELATIVI AL SOGGETTO SEGNALANTE E ALLA SEGNALAZIONE

Tipo di Segnalazione 02 - Segnalazione semplificata di Operazione Sospetta

Soggetto Segnalante

Tipo Codice Identificativo **Numero:**

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

Data della Segnalazione **Numero Progressivo**

☐ Integrazione a precedente segnalazione del : Numero Progressivo

Parte Seconda
DATI E DOCUMENTI IDENTIFICATIVI DELLE PERSONE SEGNALATE

Numero dei soggetti segnalati

Numero delle persone fisiche

Numero degli Enti con oppure senza Personalità giuridica

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

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

Sezione "A1"
DATI E DOCUMENTI IDENTIFICATIVI DELLE PERSONE FISICHE

Cognome

Nome

Data di Nascita | Luogo | Nazionalità

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

Castello/Comune/Provincia | Nazionalità

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

Tipo di professione | Rischio Potenziale sulla Professione

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

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

Tipologia di documento: | Numero

Data Emissione | Data Scadenza | Luogo di Emissione

Altre informazioni

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

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

Denominazione o Ragione Sociale

Forma Giuridica | Rischio Potenziale sulla Natura Giuridica

Tipo Codice Identificativo | Numero:

Sede Legale

Via e Numero Civico | C.A.P.

Comune(Provincia)/Castello | Nazione

Sede Operativa

Via e Numero Civico | C.A.P.

Comune(Provincia)/Castello | Nazione

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

Altre Informazioni sul soggetto segnalato

Prevalente attività svolta | Rischio Potenziale su attività

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

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

Cognome

Nome

Data di nascita | Luogo | Nazionalità

Tipo collegamento con l'ente segnalato

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

Tipologia di documento: | Numero

Luogo di emissione | Data Emissione | Data Scadenza

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

Altre informazioni

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

Tipologia di operazione occasionale

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

Eventuali dati sul Presentatore dei soggetti segnalati

Cognome

Nome

Tipo Codice Identificativo | Numero

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

Cognome

Nome | Tipo collegamento

Data di nascita | Luogo | Nazionalità

Cognome

Nome | Tipo collegamento

Data di nascita | Luogo | Nazionalità

Cognome

Nome | Tipo collegamento

Data di nascita | Luogo | Nazionalità

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

Sezione "E1"
MOTIVI DELLA SEGNALAZIONE

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

Sezione "F1"
INDICATORI DI ANOMALIA

Indicatori di anomalia generici

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

Indicatori di anomalia connessi al comportamento del cliente

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

Indicatori di anomalia connessi al profilo economico-patrimoniale del cliente

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

Sezione "F2"
INDICATORI DI ANOMALIA (segue)

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

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

Indicatori di anomalia relativi a tutte le categorie di operazioni

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

Indicatori di anomalia relativi ad operazioni immobiliari

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

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

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

Sezione "F3"
INDICATORI DI ANOMALIA (segue)

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

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

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

Stampa modulo

Invia tramite posta elettronica

42. Annex 42: Instruction no. 2009-08 - Enhanced due diligence procedures for customers resident or located in countries, jurisdictions or territories subject to strict monitoring

Preface

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

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

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

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

Article 1 – Addressees

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

Article 2 – Definitions

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

For the purposes of this Instruction, the expression **"Countries, jurisdictions or territories subject to strict monitoring"** shall refer to Countries, jurisdictions or territories against which the international organisations[35] involved in preventing and combating money laundering and terrorist financing issue public statements or other measures.

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

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

Should the addressees of this Instruction wish to establish business relationships or carry out occasional transactions with said customers or counterparts, enhanced customer due diligence requirements shall be adopted in compliance with the rules and principles laid down in Article 27 of Law no. 92 of 17 June 2008.

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

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

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

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

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

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

Article 6 – Obligations of abstention

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

Article 7 – Repeal

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

Article 8 – Entry into Force

This Instruction shall enter into force on 6 August 2009.

San Marino, 5 August 2009

43. Annex 43: Instruction no. 2009-09 - Obligations of customer due diligence, data registration and suspicious transaction reporting to be fulfilled by "non-financial parties" referred to in article 19 of Law no. 92 of 17 June 2008

Preface

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

Purposes

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

TITLE I
GENERAL PROVISIONS

Article 1 - Definitions

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

In addition, the following expressions shall mean:

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

Article 2 - Obligations to be fulfilled

Non-financial Parties shall fulfil the following obligations:

6) customer due diligence obligations;
7) recording obligations;
8) reporting obligations;
9) control obligations;
10) requirements for the adoption of internal procedures and controls.

Article 3 - Addressees of obligations

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

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

TITLE II
CUSTOMER DUE DILIGENCE OBLIGATIONS

CHAPTER I
GENERAL PRINCIPLES

Article 4 - Scope of customer due diligence obligations

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

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

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

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

Article 5 – Content of customer due diligence obligations

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

a) identification of customers and verification of their identity on the basis of an unexpired identification document or, when this is not possible, on the basis of documents and information obtained from a reliable and independent source;
b) if necessary, the identification of the beneficial owner and the adoption of adequate measures commensurate with the risk to verify the beneficial owner's identity;
c) acquisition of information on the purpose and nature of the business relationship or the occasional transaction;

d) ongoing monitoring of the business relationship, verifying that the transactions concluded over the course of the entire relationship are consistent with the data and information the Non-financial Party has on customers, their economic activities and risk profile, including, if necessary, the source of funds;
e) update of documents, data and information acquired for the fulfilment of customer due diligence obligations.

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

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

Article 7 - Exemptions to the application of due diligence obligations

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

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

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

Article 8 – Risk-based approach

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

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

Article 9 - Identification and verification of the identity of customers

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

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

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

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

Article 10 - Identification of the beneficial owner

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

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

Article 11 - Determination of the beneficial owner

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

Article 12 - Timeline

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d) name of the business, entity, office or department of public administrations;
e) address of the registered office and the administrative seat, if different;
f) activity conducted.

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

Article 18 - Updating of acquired data, information and documents

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

Article 19 – Customer's obligations

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

TITLE III
RECORDING OF DATA AND INFORMATION

Article 20 - General principles / introduction

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

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

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

Article 21 - Anti-money laundering register

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

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

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

The Register shall contain at least the following information:

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

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

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

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

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

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

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

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

Article 23 - Timeline for registration

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

Article 24 - Customer Record Card

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

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

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

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

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

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

TITLE IV
CONTROLS

Article 25 - Ongoing control

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

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

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

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

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

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

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

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

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

Article 26 - Internal controls

Non-financial Parties shall perform internal controls to verify the correct fulfilment of anti-money laundering obligations.

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

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

TITLE V
REPORTING OBLIGATIONS

Article 27 - Suspicious transaction reporting

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

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

Article 28 - Countering terrorist financing

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

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

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

Article 29 - Entry into Force

This Instruction shall enter into force on 1 September 2009.

San Marino, 5 August 2009

44. Annex 44: Istruzione n. 2009-10 (bozza) - Dati e informazioni che devono essere registrati e conservati ai sensi dell'articolo 34, comma 1 della legge 17 giugno 2008 n.92 (Italian version)

Premessa

Il presente provvedimento viene emanato in attuazione dell'articolo 95, comma 2, lettera f), della Legge 17 giugno 2008 n. 92, secondo il quale l'Agenzia di Informazione Finanziaria deve emanare istruzioni sui dati e sulle informazioni che devono essere registrati e conservati in osservanza dei disposti di cui all' articolo 34, comma 1 della medesima legge.

TITOLO I
DISPOSIZIONI GENERALI

Articolo 1 – Destinatari

I soggetti finanziari di cui all'articolo 18 della Legge 17 giugno 2008 n. 92.

Articolo 2 – Definizioni

Ai fini della presente Istruzione valgono le definizioni di cui alla Legge n. 92/2008.

Inoltre, si intende per:

"altri rapporti continuativi": rapporti contrattuali di durata che consentono di disporre la movimentazione di mezzi di pagamento (quali, ad esempio : concessione di finanziamenti sotto qualsiasi forma, rilascio di garanzie e gli impegni di firma, emissione e gestione di carte di pagamento);

"conti": in tale locuzione si includono i conti correnti ed i conti analoghi. Vi vengono esclusi i conti transitori utilizzati in attesa di imputazione delle operazioni sul rapporto di destinazione finale e i conti di natura analoga (a titolo esemplificativo e non esaustivo si possono citare i conti debitori e creditori diversi, su cui sono registrati rapporti di credito e debito verso clienti originati da transazioni occasionali);

"depositi": in questo termine si comprendono i depositi a risparmio bancari, la custodia e l'amministrazione di strumenti finanziari anche in forma dematerializzata, i depositi vincolati e le cassette di sicurezza e i depositi chiusi;

"esecutore": soggetto che esegue operazioni per conto di altro soggetto.

"registro antiriciclaggio": applicativo informatico ove i soggetti finanziari registrano in ordine cronologico l'accensione/estinzione dei rapporti continuativi e le operazioni effettuate dalla clientela, mediante l'applicazione di criteri stabiliti dalla normativa vigente.

"mezzi di pagamento": il denaro contante, gli assegni bancari e postali, gli assegni circolari e gli altri assegni a essi assimilabili o equiparabili quali gli assegni di traenza, i vaglia postali, gli ordini di accreditamento o di pagamento, le carte di credito e le altre carte di pagamento, le polizze assicurative trasferibili, le polizze di pegno e ogni altro strumento che permetta di trasferire, movimentare o acquisire, anche per via telematica, fondi, valori o disponibilità finanziarie;

"operazione": la trasmissione e la movimentazione di mezzi di pagamento di importo superiore a € 15.000;

"operazione frazionata": operazione unitaria sotto il profilo economico e recante lo stesso segno di contabilizzazione (dare o avere), posta in essere attraverso più operazioni effettuate in momenti diversi ed in un circoscritto periodo di tempo fissato in sette giorni continuativi. L'obbligo di registrazione di singole partite per la formazione di un cumulo che superi la soglia di registrazione unitaria, è fissato per importi a decorrere da € 5.000.

Articolo 3 – Rapporti continuativi

Gli obblighi di registrazione sussistono in sede di accensione, variazione e chiusura di rapporti continuativi, siano essi nominativi o al portatore.

Sono soggetti a registrazione i rapporti continuativi costituiti da "conti", da "depositi" o da "altri rapporti continuativi".

La presenza di un titolare effettivo va rilevata come autonoma registrazione sotto forma di legame con il soggetto intestatario del rapporto continuativo.

La presenza di una o più deleghe ad operare su un rapporto va registrata come un autonomo rapporto continuativo.

Fermo restando l'obbligo di registrazione dell'operazione eseguita, non costituiscono rapporto continuativo :

1. la sottoscrizione di quote di organismi di investimento collettivi o di quote di fondi pensione;
2. l'investimento in pronti contro termine;
3. la sottoscrizione di certificati di deposito, di prestiti obbligazionari, di titoli del debito pubblico e di titoli analoghi;
4. l'investimento in strumenti finanziari derivati;
5. la concessione di finanziamenti sotto qualsiasi forma, qualora effettuata a valere su un conto corrente preesistente presso lo stesso soggetto erogante ed avente come intestatario il soggetto finanziato;
6. l'emissione di carte di pagamento accessorie al conto corrente di cui il titolare della carta risulta intestatario.
7. l'accensione di rapporti accessori o strumentali connessi con la prestazione di servizi di investimento di cui all'Allegato 1, lettera D, della LISF;
8. l'acquisto di crediti effettuato nell'ambito di operazioni di cartolarizzazione da parte di società veicolo a tale scopo costituite;

Articolo 4 – Operazioni

Gli obblighi di registrazione sussistono per ogni operazione, anche frazionata, disposta dal cliente, che comporti la trasmissione e la movimentazione di mezzi di pagamento di importo pari o superiore a € 15.000.

Gli obblighi di registrazione sussistono anche – per i soggetti autorizzati all'esercizio delle attività riservate di cui alle lettere A), C) o I) dell'Allegato 1 della Legge 17 novembre 2005 n. 165 – quando intervengono nei trasferimenti di cui all'art. 31, comma 1, della Legge 92/2008, per importi superiori a € 15.000.

Articolo 5 – Operazioni frazionate

Nella registrazione delle operazioni frazionate sono da includere le ulteriori operazioni frazionate effettuate nella medesima giornata in cui si supera la soglia di € 15.000.

I soggetti finanziari devono adottare misure organizzative per conoscere le operazioni eseguite dal cliente presso tutti i punti operativi

TITOLO II
REGISTRAZIONE DEI DATI E DELLE INFORMAZIONI

Articolo 6 – Il Registro Antiriciclaggio

L'articolo 34 della Legge 17 giugno 2008 n. 92 prevede che i soggetti designati registrino i dati e le informazioni acquisiti per adempiere gli obblighi di adeguata verifica della clientela; i medesimi soggetti devono inoltre registrare le scritture e le registrazioni dei rapporti continuativi e delle operazioni occasionali.

I dati e le informazioni di cui al comma precedente devono essere registrati entro e non oltre il quinto giorno successivo alla loro acquisizione.

I dati, le informazioni, le scritture e le registrazioni innanzi specificate devono essere conservati, nei termini stabiliti dalla vigente normativa, dalla chiusura del rapporto continuativo o dalla esecuzione dell'operazione occasionale.

Analogo termine è previsto per la conservazione dei documenti acquisiti per adempiere agli obblighi di adeguata verifica e per i documenti originali o le copie aventi analoga efficacia probatoria relativi alle operazioni svolte nell'ambito dei rapporti continuativi ovvero svolte in forma occasionale.

Fermo restando che gli obblighi innanzi richiamati erano già presenti e disciplinati con la previgente normativa antiriciclaggio, con la presente Istruzione viene istituito il REGISTRO ANTIRICICLAGGIO che, per i soggetti finanziari, dovrà essere obbligatoriamente gestito a mezzo di sistemi informatici.

Articolo 7– Caratteristiche del Registro Antiriciclaggio

Il Registro è formato e gestito a cura di ciascun destinatario, secondo gli standard e le compatibilità informatiche stabilite dalla presente Istruzione.

Il sistema di registrazione elettronico adottato deve assicurare la continuità e l'integrità nella tenuta registro, deve garantire l'impossibilità di apportare modifiche o cancellazioni senza che ne sia tenuta traccia, e deve salvaguardare la ricostruibilità della serie storica e cronologica delle registrazioni.

Al fine di assicurarne la riservatezza, i Soggetti Finanziari devono predisporre gli opportuni profili di sicurezza per l'accesso ai dati registrati nel Registro.

Per la tenuta del registro, i Soggetti Finanziari possono avvalersi di un autonomo centro di servizi, avente sede nella Repubblica di San Marino, purchè sia loro assicurato l'accesso diretto e immediato al registro stesso e fatte salve le specifiche responsabilità previste dalla Legge.

In ogni caso, deve essere assicurata l'unità logica del registro, la sua separatezza da altri registri tenuti dal medesimo soggetto, anche avvalendosi dei medesimi supporti hardware.

I soggetti finanziari devono istituire idonee misure di controllo interno atte ad assicurare la corretta tenuta e funzionalità del Registro nonché assicurare l'adeguata formazione dei dipendenti e collaboratori per garantire gli adempimenti previsti nella presente Istruzione.

Articolo 8 – Dati e informazioni da acquisire e registrare

Ai fini dell'obbligo di registrazione, debbono essere inseriti nel registro antiriciclaggio i seguenti dati e informazioni:

a) con riferimento ai rapporti continuativi:
la data (di apertura, variazione o chiusura), il numero del rapporto, i dati identificativi del cliente intestatario del rapporto, unitamente ai dati identificativi dei soggetti delegati a operare per conto del cliente nonché dell'eventuale titolare effettivo;

b) con riferimento all'operazione:
la data, il punto operativo in cui è stata disposta, il codice causale dell'operazione (sintetica e descrittiva), l'importo (con evidenza della parte in contanti), i dati identificativi del cliente e dell'eventuale esecutore; il numero del rapporto continuativo eventualmente utilizzato ed eventualmente il numero che identifica e collega fra di loro le operazioni frazionate.

Si precisa che l'obbligo di registrazione dei rapporti continuativi e delle operazioni disposte deve intendersi applicabile anche ai soggetti finanziari clienti, ad esclusione dei rapporti interbancari (c.d. conti reciproci) e relative movimentazioni, ovvero dei rapporti di proprietà, e relative movimentazioni.

Nelle operazioni eseguite sulla base di ordini di pagamento, debbono essere altresì registrate le seguenti informazioni aggiuntive: nome, cognome o denominazione sociale, sede o paese estero del beneficiario, denominazione e ubicazione del punto operativo dell'intermediario finale presso il quale deve essere effettuato l'accredito dell'importo o il pagamento e, ove noti, numero del rapporto e indirizzo del beneficiario.

Nelle operazioni eseguite sulla base di ordini di accreditamento, debbono essere altresì registrate le seguenti informazioni aggiuntive: nome, cognome o denominazione sociale, sede o paese estero dell'ordinante, denominazione e ubicazione del punto operativo dell'intermediario presso il quale è stato disposto l'ordine e, ove noti, numero del rapporto e indirizzo dell'ordinante.
Nel caso in cui un'operazione sia stata eseguita per conto di un soggetto diverso dal titolare di un rapporto, devono essere acquisiti il nome e cognome o denominazione sociale nonché sede o paese estero di tale soggetto. In assenza di tale dato nella disposizione di pagamento, i soggetti finanziari devono valutare se astenersi dall'eseguire l'operazione, ovvero se provvedere alla segnalazione di operazione sospetta.

Per le operazioni disposte da intermediari localizzati in paesi il cui le norme e i presidi antiriciclaggio non sono ritenuti equivalenti, ai sensi delle vigenti disposizioni, va altresì registrato il soggetto per conto del quale l'operazione è effettuata. In assenza di tale dato nella disposizione di pagamento, i soggetti finanziari devono valutare se astenersi dall'eseguire l'operazione, ovvero se provvedere alla segnalazione di operazione sospetta.

Articolo 9 – Modalità della registrazione

I soggetti finanziari registrano le operazioni disposte dalla clientela secondo le causali previste nel proprio sistema informatico, opportunamente raccordate con la lista delle causali analitiche allegate alla presente Istruzione.

I dati e le informazioni acquisite ai fini dell'obbligo di registrazione devono essere tempestivamente inserite nel registro antiriciclaggio, e comunque entro e non oltre il quinto giorno lavorativo successivo alla loro acquisizione.

Ai fini della registrazione delle operazioni frazionate, il termine di cui al comma precedente decorre dalla data della prima operazione oggetto di cumulo.

Nella registrazione delle operazioni cumulative deve essere evidenziata, mediante apposita valorizzazione di un campo specifico, l'eventuale parte in contanti. Al riguardo, si precisa che ai fini della corretta registrazione delle operazioni eseguite in contante, devono essere prese in considerazione solamente quelle che riflettono una movimentazione fisica delle banconote.

Si precisa inoltre che è consentito ai soggetti finanziari registrare come operazioni eseguite con contante c.d. virtuale unicamente quei movimenti effettuati da un medesimo cliente mediante trasferimento tra rapporti allo stesso intestati ovvero a seguito di prelevamento finalizzato ad eseguire altra operazione per cassa.

La registrazione degli importi espressi in valuta estera vanno effettuate nel controvalore in euro al tasso di cambio del giorno di effettiva negoziazione ovvero, in assenza di negoziazione, al tasso di cambio del giorno dell'operazione; in ogni caso deve essere conservata evidenza della valuta estera in cui l'operazione è espressa.

Qualora vi sia la necessità di rettificare dati e informazioni già registrate occorre evidenziare con chiarezza i cambiamenti apportati conservando evidenza dell'informazione precedente. Si chiarisce che tale fattispecie d'intervento deve essere considerata straordinaria e assolutamente residuale e che è vietato cancellare logicamente i movimenti, ancorché errati. Inoltre, è necessario conservare apposita evidenza cartacea a giustificazione degli interventi effettuati, assumendo eventuali richieste o autorizzazioni a suffragio delle modifiche apportate al Registro.

Articolo 10 – deroghe all'obbligo di registrazione

Non sono soggette agli obblighi di registrazione i rapporti e i trasferimenti di fondi eseguiti dall'Ecc.ma Camera e gli Uffici della Pubblica Amministrazione allargata, nonché i pagamenti effettuati alla Banca Centrale ai sensi della Legge 25 maggio 2004 n. 70.

TITOLO III
CONSERVAZIONE DEI DOCUMENTI

Articolo 11 – Fascicolo cliente

Fatti salvi gli obblighi di registrazione disciplinati dai precedenti articoli, l'art. 34 della Legge 92/2008 dispone, in particolare, che i soggetti designati (ivi compresi pertanto i soggetti finanziari) conservino i documenti originali o le copie aventi analoga efficacia probatoria ai fini dell'assolvimento degli obblighi di adeguata verifica della clientela per un periodo di almeno cinque anni dalla chiusura del rapporto continuativo o dall'esecuzione dell'operazione occasionale.

Tale adempimento andrà pertanto – come peraltro già oggi in uso presso i medesimi soggetti finanziari – assolto mediante l'istituzione di un apposito fascicolo per ogni singolo cliente o rapporto.

Fatte salve le norme relative alla documentazione da acquisire ai fini dell'accensione di un rapporto continuativo o dell'esecuzione di una operazione occasionale, il fascicolo cliente o rapporto, sia esso persona fisica o giuridica, deve contenere almeno:

a) copia del documento di identità del cliente in corso di validità alla data di identificazione (tale documento va aggiornato solo in caso di variazioni sostanziali dei dati in esso contenuti ovvero per scadenza del medesimo);
b) eventuale copia di un documento contenente gli estremi del codice ISS o di altro codice identificativo se il cliente è una persona fisica;
c) copia del certificato di vigenza o documento equipollente se il cliente è una persona giuridica;

d) documentazione attestante i poteri di rappresentanza (es. delibera assembleare, procura speciale, ecc.);
e) originale della scheda utilizzata ai fini dell'assolvimento degli obblighi di adeguata verifica;
f) documentazione in base alla quale è stata verificata la possibilità di applicare obblighi semplificati di adeguata verifica, ovvero obblighi rafforzati di adeguata verifica;
g) eventuale attestazione ex articolo 29 della Legge 92/2008 (adeguata verifica della clientela attraverso soggetti terzi);
h) copia dei contratti sottoscritti dal cliente;
i) dichiarazione del cliente sull'identità del titolare effettivo ed eventuale ulteriore documentazione richiesta dal soggetto designato per individuare il titolare effettivo dell'operazione occasionale o rapporto continuativo;
j) dichiarazione del cliente su scopo e natura dell'operazione occasionale o rapporto continuativo;
k) annotazioni del soggetto finanziario riguardanti il profilo del cliente;
l) ogni altro documento o annotazione che il soggetto designato ritenga opportuno conservare ai fini della normativa di prevenzione e contrasto del riciclaggio e del finanziamento del terrorismo, quali ad esempio, stampe da database esterni inerenti gli accertamenti svolti per appurare l'assenza di pregiudizievoli o l'iscrizione del soggetto in liste terrorismo, Persone Politicamente Esposte, liste della criminalità organizzata, ecc..

Il fascicolo potrà essere tenuto in parte anche elettronicamente qualora prontamente reperibile all'interno del sistema informativo del soggetto finanziario, ad eccezione della modulistica firmata dal cliente che troverà necessariamente spazio in un archivio cartaceo.

Articolo 12 – Entrata in vigore
Le disposizioni di cui alla presente Istruzione si applicano ai rapporti continuativi e alle operazioni posti in essere a partire dal XXXXXXXX. Eventuali necessità di deroga dovranno essere inoltrate all'Agenzia e adeguatamente motivate.

San Marino, _____ 2009

Allegato: lista delle causali analitiche

Causale Interna Operatore	Causale analitica	Descrizione causale analitica	operazione eseguita su conto		operazione eseguita per cassa	
			segno	Voce	segno	Voce
	3	Versamento contante a mezzo sport. Autom. o cassa continua	A	2		
	4	Versamento di contante a mezzo sport. autom. altro istituto	A	2		
	5	Prelevamento a mezzo sport. autom. Stesso intermediario	D	3		
	6	Accredito per incassi con addebito in c/c preautorizzato	A	12		
	7	Accredito per incassi con addebito in c/c non preaut. o per cassa	A	12		
	10	Emissione assegni circolari e titoli similari vaglia	D	9	D	9
	13	Addebito per estinzione assegno	D	5		
	14	Cedole, dividendi e premi estratti	A	26	D	27
	15	Rimborso finanziamenti (mutui, prestiti personali etc.)	D	23	A	22
	26	Disposizione a favore di ...	D	17	D	17
	29	Accrediti o incasso RI.BA	A	12	D	13
	30	Accrediti o incasso effetti al S.B.F.	A	12	D	13
	31	Effetti ritirati	D	13	A	12
	32	Effetti richiamati	D	13	A	12
	44	Addebito o pagamento per utilizzo credito documentario su estero	D	19	A	18
	47	Accredito o incasso per utilizzo credito doc. su Italia	A	18	D	19
	48	Bonifico a favore d'ordine e conto	A	16	A	16
	51	Emissione assegni turistici	D	9	D	9
	52	Prelevamento con moduli di sportello	D	3		
	53	Addebito per utilizzo credito doc. su Italia	D	19	A	18
	56	Ricavo effetti o assegni in lire e/o valuta estera al d.i.	A	12	D	13
	64	Accrediti o incasso effetti presentati allo sconto	A	12	D	13
	72	Accredito o incasso per utilizzo credito documentario da estero	A	18	D	19
	79	Disposizione di giro conto da altro interm.	A	16		
	79	Disposizione di giro conto a altro interm.	D	17		
	81	Accensione riporto titoli	A	36		
	82	Estinzione riporto titoli	D	37		
	84	Titoli scaduti o estratti	A	26	D	27
	91	Prelevamento a mezzo sport. aut. di altro intermediario	D	3		
	A1	Incasso assegno circolare			D	7
	A2	Incasso proprio assegno	D	3		
	A3	Cambio assegni di terzi			D	1
	A7	Erogazione finanziamenti diversi e prestiti personali	A	22	D	23
	A8	Prelievi a valere su crediti semplici			D	3
	AA	Bonifico dall'estero	A	16	A	16
	AA	Bonifico per l'estero	D	17	D	17
	AF	Disposizione giro tra conti diversamente intestati (stesso intermediario)beneficiario	A	16		
	AF	Disposizione giro tra conti diversamente intestati (stesso intermediario)ordinante	D	17		
	B7	Disposizione di giro conto (stesso intermediario) - ordinante	D	79		
	B8	Disposizione di giro conto (stesso intermediario) – beneficiario	A	78		
	BA	Vendita a pronti titoli e diritti di opzione	A	26	D	27
	BB	Acquisto a pronti titoli e diritti di opzione	D	27	A	26
	BE	Sottoscrizione titoli e/o Fondi Comuni	D	43	A	38
	BF	Rimborso titoli e/o Fondi Comuni	A	42	D	39
	BI	Erogazione finanziamento import	A	22	D	23
	BL	Rimborso finanziamento import	D	23	A	22
	BM	Erogazione finanziamento export	A	22	D	23
	BN	Rimborso finanziamento export	D	23	A	22
	BP	Incasso rimesse documentate da o per l'estero	A	18	D	19
	BQ	Pagamento rimesse documentate da o per l'estero	D	19	A	18
	BR	Ritiro titoli allo sportello			D	51
	BS	Consegna titoli allo sportello			A	50
	BT	Rimborso su libretti di risparmio			D	11
	BU	Deposito su libretti di risparmio			A	10
	BV	Estinzione certificati di deposito, Buoni Fruttiferi	A	42	D	39
	BZ	Emissione certificati di deposito, Buoni Fruttiferi	D	43	A	38
	C0	Vendita d'oro e metalli preziosi	A	68	D	69
	C1	Trasferimento titoli tra dossier (uscita)	D	53		
	C2	Trasferimento titoli tra dossier (immissione)	A	52		
	C3	Trasferimento titoli da altro Istituto	A	56		
	C4	Trasferimento titoli a altro Istituto	D	57		
	C5	Immissione dossier titoli a fronte conto divers. Intestato	A	58		
	C6	Uscita dossier titoli a fronte conto divers. Intestato	D	59		
	C7	Versamento o consegna di contante e/o titoli al portatore da parte di banche o succursali situate all'estero	A	62	A	62
	C8	Prelievo o ritiro di contante e/o titoli al portatore da parte di banche o succursali situate all'estero	D	63	D	63
	C9	Acquisto d'oro e metalli preziosi	D	69	A	68
	D0	Conversione banconote in euro			A	70
	D1	Versamento di contante	A	2		
	D2	Versamento di titoli di credito	A	4		
	D3	Versamento titoli di credito con resto	A	4		
	D4	Versamento assegno circolare	A	6		
	D5	Versamento titoli di credito e contante	A	8		
	D6	Accredito o incasso per contratti derivati	A	32	D	33
	D7	Addebito o pagamento per contratti derivati	D	33	A	32
	D8	Estinzione polizze assicurative ramo vita	A	48	D	47
	D9	Sottoscrizione polizze assicurative ramo vita	D	49	A	46
	DA	Incasso tramite POS	A	72		
	DA	Insoluti RI.BA.	D	73	A	72
	DA	Pagamento o disposizione a mezzo sport. aut.	D	73		
	DA	Effetti insoluti o protestati	D	73		
	DA	Pagamento tramite POS	D	73		
	DA	Pagamento per utilizzo carte di credito	D	73	A	72
	DA	Pagamenti diversi	D	73	A	72
	DA	Assegni bancari insoluti o protestati	D	73		
	DA	Incasso in contante note spesa vouchers			D	73
	DA	Incasso di documenti su Italia	A	72	D	73
	DA	Pagamento di documenti su Italia	D	73	A	72
	DA	Storni RI.BA. (a credito)	A	72	D	73
	DA	Storni RI.BA. (a debito)	D	73	A	72
	DA	Aumento di capitale e/o operazioni societarie	A	72	D	73
	DA	Aumento di capitale e/o operazioni societarie	D	73	A	72
	DA	Locazione (fitto, leasing ecc.) e premi ass. (escluso ramo vita)	D	73	A	72
	DB	Vendita banconote estere contro euro	A	74	A	74
	DC	Acquisto banconote estere contro lire euro	D	75	D	75
	DD	Disposizioni di incasso preautorizzato impagate	D	79		
	DD	Pagamento utenze	D	79	A	78
	DD	Commissioni	D	79	A	78
	DD	Imposte e tasse	D	79	A	78
	DD	Canone cassette sic. e custodia valori	D	79	A	78
	DD	Contributi assicurativi e previdenziali	D	79	A	78
	DD	Diritti di custodia e amministrazione titoli	D	79	A	78
	DD	Accredito/incasso per emolumenti	A	78	D	79
	DD	Disposizione per emolumenti	D	79		
	DD	Esecuzione mandati di pagamento	A	78	D	79
	DD	Assegno copertura garantita	D	79	A	78
	DD	Restituzione di assegni o vaglia irregolari	D	79		
	DD	Esecuzione reversali di incasso	D	79	A	78
	DD	Accrediti o incasso per sconto effetti diretti	A	78	D	79
	DD	Competenze di sconto	D	79		
	DD	Spese	D	79	A	78
	DD	Valori bollati	D	79	A	78
	DD	Costo libretto assegni	D	79	A	78
	DD	Commissioni e spese su operazioni in titoli	D	79	A	78
	DD	Commissioni e spese su operazioni estero	D	79	A	78
	DD	Interessi e competenze (a credito)	A	78	D	79
	DD	Interessi e competenze (a debito)	D	79	A	78
	DE	Estinzione carte prepagate	A	28	D	83
	DF	Emissione carte prepagate	D	29	A	82
	U1	Trasferimento di denaro contante e titoli al port. ex art.31 L.92/2008 (cedente)			A	66
	U1	Trasferimento di denaro contante e titoli al port. ex art.31 L.92/2008 (ricevente)			D	67
	U2	Consegna di mezzi di pagamento (esclusi ordini di accreditamento/pagamento) da parte di clientela - per inter. non banc.			A	80
	U2	Ritiro di mezzi di pagamento (esclusi ordini di accreditamento/pagamento) da parte di clientela - per inter. non banc.			D	81
	U3	Versamento contante < 15.000 euro	A	76		
	U4	Prelevamento contante < 15.000 euro	D	77		

45. Annex 45: CBSM Regulation No. 2006-03 - Collective Investment Services Regulations

Article 49:

Article 49 – System of internal controls.

1. The SG shall ensure that they have the professionalism, the tools, and the procedures necessary to quantify, manage, and curb all risks, whether those which they themselves incur (primarily attributable to the category of operational and reputational risks), and the risk associated with the assets they administer.

The SG perform an assessment to determine whether they should establish their own risk management unit at the internal level, separate from the operational units, with the risk management unit entrusted with risk management functions; or they will decide whether they should rely on external (including groupbased) structures, having due regard for the criteria specified for the outsourcing of corporate functions.

If the FUNDS administered by the SG invest in over-the-counter financial derivatives, the risk management function will need to have procedures for measuring and managing connected risks and will need to perform precise and independent assessments of such instruments on a daily basis. The board of directors shall specify the procedures by which and frequency with which the [unit performing the] risk management function will report to senior management and to the board of directors itself concerning the work done and the results achieved.

2. SG shall have an internal auditing structure that is independent, including hierarchically speaking, from the operational structures; the manager responsible shall be appointed by the board of directors and he/she shall have the skills and facilities necessary to perform internal auditing functions, including in light of the complexity of the corporate mechanisms characteristic of the SG.

Alternatively, SG may perform an assessment to decide whether to avail themselves of an external structure (including group-based) having due regard for the criteria specified for the outsourcing of corporate functions.

At all events, the persons responsible for performing these activities, in order to be able to perform the requisite inspections must have access to all the corporate structures as well as to auditing-related information on the proper performance of outsourced corporate functions.

The internal auditing unit shall be responsible inter alia for performing supervision functions in regard to:

a) conducting periodic assessments of the comprehensiveness, functionality, and adequacy of control systems;
b) ensuring compliance with codes of conduct and transparency in the performance of activities;
c) ensuring enforcement of the principle of demarcation between the management of various FUNDS;
d) maintaining accounting records;
e) exchanging flows of information among the various corporate units and between the SG and the other parties involved in service delivery;
f) ensuring the adequacy of technological facilities and the professional skills of employees responsible for corporate IT systems, including in cases in which such systems are outsourced;
g) ensuring that the operations of the outsourcer meet the standards established under the appointment

agreement;

h) ensuring compliance with rules and regulations governing AML/CFT and other financial offenses.

i) The results of the periodic inspections and the proposed organizational and procedural improvements identified by the internal auditing unit shall be brought to the attention of the board of directors which shall examine them at special meetings at which the board of statutory auditors shall be present.

3. By January 31 each year, the manager responsible for the internal audit function shall prepare:

a) an annual report illustrating the inspections and the audits carried out, their findings, and any proposals and suggestions;

b) a plan for the inspections scheduled for the current year.

The above-mentioned documents shall be subject to review by the board of directors, with assessments by the board of statutory auditors.

46. Annex 46: CBSM Regulation No. 2007-07 - Governing of Savings and Banking Activity

Article VII.IX.6:

Article *VII.IX.6 Internal auditing*.

1. In the performance of Internal Auditing Activities, the internal auditing structure shall:
   a) not report, within the chain of command, to any manager of operational units;
   b) have staff that are qualitatively and quantitatively well-equipped to perform the necessary tasks;
   c) have access to all the banks' activities whether performed at HQ or at regional offices and at any vendors;
   d) analyze corporate processes, assessing their functional adeguacy and the reliability of supervisory mechanisms;
   e) in particular, verify the reliabity of information systems, including IT and accounting systems;
   f) verify the various operating units' compliance with the limits specified by the mechanisms for the delegation of authority, while ensuring the full and correct utilization of the available information on the various activities;
   g) verify that in the delivery of services, the relevant procedures ensure compliance with current laws and provisions regarding demarcation between administrative and accounting functions, the firewall (*separazione patrimoniale*) for customer assets, and the rules of behaviour referred to in Part X of these Regulations;
   h) perform periodic tests on the functioning of operating and internal control procedures;
   i) take steps to ascertain the correctness of operating procedures, including with reference to specific irregularities;
   j) carry out investigations specifically requested by the Board of Directors, by the Head of the Executive Structure, or by the Board of Auditors;
   k) verify that any anomalies identified in the operation and functioning of the control mechanisms have been removed;
   l) monitor:
      1) the proper maintenance of accounting records and the orderly and reliable management of all corporate documents;
      2) the exchange of flows of information between corporate units and between the bank and other parties involved in the delivery of services;
      3) the sufficiency of the technological installations and corporate IT systems, including in the event that such systems are outsourced;
      4) the extent to which vendors' operations meet the standards prescribed in the out-sourcing agreement.

2. The internal auditing manager shall:
   a) be appointed and removed from office pursuant to decisions adopted by the Board of Directors;

b) at regular intervals (at least quarterly), report to the Board of Directors, Board of Auditors, and the Head of the Executive Structure on the work performed and results achieved;

c) be able to ensure that his/her own auditing functions can extend to the highest levels of the corporate organization, including senior management, and shall be report on his/her work directly to the Board of Directors.

3. Internal auditing activities shall be governed by appropriate internal regulations approved by the Board of Directors.

Article X.V.1:

Article *X.V.1 Ban on entering into contracts using long-distance communication technologies.*

1. Banks may not enter into contracts with customers through recourse to long-distance communication technologies.

47. Annex 47: CBSM Regulation No. 2008-01 - Governing of Insurance Companies Life's Branch

Article 48:

Article 48 – System of internal controls.

1. The Insurance company shall ensure that they have the professionalism, the tools, and the procedures necessary to quantify, manage, and curb all risks, including the actuary risks. The Insurance company perform an assessment to determine whether they should establish their own risk management unit at the internal level, separate from the operational units, with the risk management unit entrusted with risk management functions; or they will decide whether they should rely on external (including groupbased) structures, having due regard for the criteria specified for the outsourcing of corporate functions.
These unit or structures avail themselves with the actuary mentioned in the article 51 for the correct data survey, in particular for those costs of the Insurance company and for their trend, which are used by the actuary.

2. Insurance company shall have an internal auditing structure that is independent, including hierarchically speaking, from the operational structures; the manager responsible shall be appointed by the board of directors and he/she shall have the skills and facilities necessary to perform internal auditing functions, including in light of the complexity of the corporate mechanisms characteristic of the Insurance company.
Alternatively, Insurance company may perform an assessment to decide whether to avail themselves of an external structure (including group-based) having due regard for the criteria specified for the outsourcing of corporate functions.
At all events, the persons responsible for performing these activities, in order to be able to perform the requisite inspections must have access to all the corporate structures as well as to auditing-related information on the proper performance of outsourced corporate functions.
The internal auditing unit shall be responsible inter alia for performing supervision functions in regard to:

j) conducting periodic assessments of the comprehensiveness, functionality, and adequacy of control systems;
k) ensuring compliance with codes of conduct and transparency in the performance of activities;
l) maintaining accounting records;
m) exchanging flows of information among the various corporate units and between the SG and the other parties involved in service delivery;
n) ensuring the adequacy of technological facilities and the professional skills of employees responsible for corporate IT systems, including in cases in which such systems are outsourced;
o) ensuring that the operations of the outsourcer meet the standards established under the appointment agreement;
p) ensuring compliance with rules and regulations governing AML/CFT and other financial offences.

The results of the periodic inspections and the proposed organizational and procedural improvements identified by the internal auditing unit shall be brought to the attention of the board of directors which shall examine them

at special meetings at which the board of statutory auditors shall be present.

3. By January 31 each year, the manager responsible for the internal audit function shall prepare:

c) an annual report illustrating the inspections and the audits carried out, their findings, and any proposals and suggestions;

d) a plan for the inspections scheduled for the current year;

e) documents shall be subject to review by the board of directors, with assessments by the board of statutory auditors.

48. Annex 48: CBSM Recommendation No. 2009-01 - Interpretation of Article 36, paragraph 6 of Law no. 165/2005

Recommendation no. 2009-01

INTERPRETATION
of Article 36, paragraph 6 of Law no. 165/2005

Introduction

The evolution of international standards to prevent and counter money laundering and terrorist financing, which have been introduced and implemented in the national legislations of the different Countries, may require the intermediaries establishing a relationship with San Marino banks and other financial institutions to obtain from them any necessary information to fulfil the obligations contained in the AML legislation in force in their Countries or, when this information is not provided, to refuse to carry out the transaction requested.
Granted that the intermediary that conducts the transaction, in whole or in part, shall be considered a third party under Article 36 of Law no. 165/2005, some San Marino financial businesses have asked this supervisory authority to clarify the aspects concerning the acceptance of information requests in relation to the observance of banking secrecy, which is monitored by this Authority under paragraph 9 of the aforementioned article.

Purposes

In order to encourage San Marino financial institutions to adopt correct and uniform procedures, the Supervisory Authority has decided to use the interpretative instrument referred to in Article 40 of Law no. 165/2005, by issuing a relevant Recommendation.

Contents

As it is known, paragraph 6 of Article 36 of Law no. 165/2005 lists a series of cases and situations in which the disclosure of data covered by banking secrecy to third parties does not constitute a violation of the prohibition referred to in paragraph 1 of the above-mentioned Article.
Among these cases, those described in letters a) and c) are particularly significant for the purposes of this Recommendation.
When the transaction requested by the customer to the San Marino authorised party shall be carried out, in whole or in part, by banks or other financial intermediaries or, in any case, by parties which shall comply with the AML provisions in force in their own Countries, the situation described in letter c) occurs, provided that the communication to the above-said third parties is "necessary" to execute the customer's request.
For all the other cases in which the requirement of "necessity" does not occur, the disclosure to third parties, however, may not constitute a violation of banking secrecy if the customer, as the party concerned, has given a specific written declaration of consent to the data. This clearly shows that banking secrecy is not of binding nature in relation to the powers of disposition recognised by the law to the party concerned.
However, it is reiterated that, in particular in case of transactions requested in the context of contractual relationships existing before the current legislative framework entered into force, business relationships with customers shall be based on transparency, properness and diligence rules, under Article 66 of Law no. 165/2005, adequately informing customers in order to limit the risk of disputes.

San Marino, 30 January 2009

49. Annex 49: CBSM Regulation No. 2009-02 – Amendement no.1 to the Register of Authorised parties

Article 3:

Article 3 – General part

1. The Register shall contain information regarding the following parties:
a) authorised parties;
b) subsidiaries of foreign parties authorised to exercise reserved activities;
c) foreign parties authorised to exercise reserved activities under the regime of the provision of services without establishment.

2) For authorised parties, the following information shall be specified:
a) the corporate or business name;
b) the legal type;
c) the registered office;
d) the administrative seat, if other than the registered office;
e) the date and number of registration in the Company Register;
f) the economic operator code;
g) the auditing company;
h) the corporate capital subscribed and paid in;
i) the company members;
j) the list of subsidiaries in the Republic of San Marino;
k) the list of subsidiaries and representative offices abroad;

3. For subsidiaries of foreign parties, the following information shall be specified:
a) the corporate or business name;
b) the main office of the subsidiary;
c) the registered office of the mother company;
d) the endowment fund of the subsidiary;
e) senior management of the subsidiary;
f) the list of the branches of the subsidiary in the Republic of San Marino.

4. For foreign parties authorised to exercise reserved activities under the regime of the provision of services without establishment, the following information shall be specified:
a) the corporate or business name;
b) the registered office of the mother company;

5. For each of the parties referred to in paragraph 1, the following information shall also be provided:
a) the date and number of registration in the Company Register;
b) the list of reserved activities and branches of reserved activities for the exercise of which the authorised party has obtained the relevant authorisation;
c) whether the party is being subject to extraordinary administration procedure, suspension of administrative bodies, suspension of authorisation and the dates on which such procedures will be applied and concluded;
d) any authorisation for the exercise of the office of Trustee under Article 151 of the LISF;
e) any registration in the Register of Insurance Intermediaries.

6. For banks, the following information shall also be included:
a) the shareholders registered in the stock ledger, owners of participations in the corporate capital exceeding 5%;
b) the latest approved financial statement with any accompanying report and certification.

50. Annex 50: Regolamento BCSM n. 2009-03 del 19 Maggio 2009 in materia di trasmissione interbancaria di dati tra San Marino e l'Italia (Italian version – annexes excluded)

PARTE GENERALE

Art. 1 – Definizioni

1. Ai fini del presente Regolamento si intendono per:

a) "**Archivio Anagrafico**" o "**DBBCSM**": archivio costituito, gestito e tenuto in modalità informatica dalla Banca Centrale, alimentato con i dati identificativi relativi alla clientela di banche tramitate;

b) "**Banca Centrale**" o "**BCSM**": la Banca Centrale della Repubblica di San Marino;

c) "**banche tramitanti**": le banche italiane, convenzionate con la Banca Centrale, che prestano, su base pattizia, servizi di pagamento a favore di banche tramitate e della loro clientela;

d) "**banche tramitate**": le banche sammarinesi che, nella prestazione di servizi di pagamento alla propria clientela, ricorrono al sistema dei pagamenti italiano;

e) "**cliente**": qualsiasi soggetto, persona fisica, ente (inclusi i trust e le fondazioni), società, anche fiduciaria e/o anonima, per come disciplinata dalla Legge del Paese ove è costituita che instaura rapporti continuativi o compie operazioni con le banche tramitate;

f) "**dati identificativi**":

- per le persone fisiche: nome, cognome, luogo e data di nascita, indirizzo di residenza, codice fiscale (se residente in Italia), codice ISS (se residente a San Marino), numero di passaporto (se residente in paesi terzi rispetto all'Italia e a San Marino);
- per le persone giuridiche: denominazione sociale, indirizzo della sede legale, Partita IVA (se la sede legale è stabilita in Italia), Codice Operatore Economico (se la sede legale è stabilita a San Marino), codice identificativo adottato nel paese straniero (se la sede legale è stabilita in paesi terzi rispetto all'Italia e a San Marino);

g) "**Decreto**": Decreto-Legge 14 maggio 2009, n. 65 denominato "Intermediazione di Banca Centrale ai fini della trasmissione interbancaria dei dati tra San Marino e l'Italia";

h) "**documento di identificazione**": ogni documento contenente la fotografia e l'indicazione di tutte le generalità di una persona fisica, rilasciato da una pubblica autorità italiana o sammarinese; per generalità di una persona si intendono nome, cognome, luogo e data di nascita e indirizzo di residenza. Per i soggetti non residenti in Italia o nella Repubblica di San Marino, il documento di identificazione è costituito esclusivamente dal passaporto;

i) "**flusso anagrafico**": record contenente i dati identificativi dei clienti, dei loro titolari effettivi, ove presenti e non coincidenti nonché degli eventuali soggetti delegati e/o dei meri latori;

j) "**flusso asimmetrico**": record contenente i dati e le informazioni specificate nella scheda tecnica allegata che la banca tramitata invia alla banca tramitante e alla Banca Centrale;

k) "**giorno operativo**": giorno lavorativo bancario secondo il calendario nazionale italiano e comunque non festivo a San Marino;

l) "**mero latore"** o **"presentatore**": persona fisica che presenta alla banca tramitata aderente una disposizione operativa a valere su un rapporto continuativo, previamente sottoscritta e autorizzata da parte del titolare del rapporto stesso o di un suo delegato. Sono esclusi da tale definizione i vettori professionali, cioè i soggetti che svolgano le attività di ritiro, trasporto e consegna per conto terzi in forma imprenditoriale;

m) "**normativa italiana in materia di antiriciclaggio e di contrasto al terrorismo**": rispettivamente, il D. Lgs. 21 novembre 2007 n. 231 e il D. Lgs. n. 22 giugno 2007 n. 109, inclusi i relativi provvedimenti attuativi;

n) "**operazione di pagamento**": qualsiasi disposizione di trasferimento di somme, di disponibilità finanziarie e/o altri valori, anche incorporato in titoli di credito, nominativi o al portatore, di importo pari o superiore a 5.000 euro (cinquemila euro). Sono in ogni caso esclusi i trasferimenti di denaro contante in quanto non oggetto di tramitazione per l'incasso;

o) "**Rete Interbancaria Sammarinese (RIS)**": infrastruttura telematica di trasmissione di informazioni tra gli operatori del sistema dei pagamenti sammarinese;

p) "**servizi di pagamento**": la tramitazione e il regolamento sul sistema dei pagamenti italiano delle operazioni di pagamento a mezzo bonifici, assegni, addebiti diretti o incassi commerciali, nonché i servizi di emissione di assegni circolari e carte di pagamento;

q) "**soggetto delegato**": il soggetto legittimato, secondo le norme bancarie vigenti, dal titolare del rapporto a compiere atti dispositivi a valere sul rapporto stesso;

r) "**soggetti interessati**": soggetti i cui dati identificativi possono essere censiti nell'archivio anagrafico tenuto dalla Banca Centrale. Rientrano in tale definizione i clienti, i titolari effettivi, i soggetti delegati e i meri latori;

s) "**verifica della clientela**": verifica effettuata ai sensi dell'articolo 18 e, ove ne ricorrano i presupposti, dell'articolo 28 del Decreto Legislativo italiano n. 231 del 21 novembre 2007.

2. Nei successivi articoli, le parole che richiamano le presenti definizioni sono riportate in carattere maiuscoletto.

Art. 2 - Finalità

1. Il presente regolamento, emanato ai sensi dell'art. 3, comma 3 del DECRETO, è volto a disciplinare le modalità di corretta alimentazione dell'ARCHIVIO ANAGRAFICO gestito dalla BANCA CENTRALE da parte delle BANCHE TRAMITATE.

Art. 3 – Soggetti destinatari delle informazioni

1. I DATI IDENTIFICATIVI presenti nell'ARCHIVIO ANAGRAFICO saranno trasmessi dalla BANCA CENTRALE unicamente alle BANCHE TRAMITANTI appositamente convenzionate con la BANCA CENTRALE medesima che prestano SERVIZI DI PAGAMENTO alle BANCHE TRAMITATE e/o alla loro clientela, al fine di consentire alle prime di adempiere agli obblighi previsti dalla NORMATIVA ITALIANA IN MATERIA DI ANTIRICICLAGGIO E DI CONTRASTO AL TERRORISMO.

Art. 4 – Profili organizzativi

1. E' rimessa alla responsabilità dei competenti organi aziendali delle BANCHE TRAMITATE l'adozione di tutti i necessari presidi organizzativi volti ad assicurare la completezza, la correttezza e la tempestività dei FLUSSI ASIMMETRICI e ANAGRAFICI inviati alla BANCA CENTRALE e, limitatamente ai FLUSSI ASIMMETRICI, alle BANCHE TRAMITANTI.

2. I rilevanti rischi operativi insiti nelle attività di censimento, estrazione, verifica e inoltro dei dati identificativi dei SOGGETTI INTERESSATI richiedono la tempestiva rilevazione, da parte della struttura di risk management di cui all'art. VII.IX.8 del Regolamento n. 2007-07, delle eventuali anomalie e/o disfunzioni che possono pregiudicare il puntuale rispetto sia delle disposizioni di cui al DECRETO e al presente Regolamento sia degli impegni contrattuali assunti con le BANCHE TRAMITANTI.

3. L'osservanza del rigoroso rispetto delle disposizioni contenute nel DECRETO e nel presente Regolamento, sono oggetto di verifica da parte della struttura di compliance, di cui all'art. VII.IX.7 del Regolamento n. 2007-07, delle BANCHE TRAMITATE.

4. La struttura di Internal Auditing, di cui all'art. VII.IX.6 del Regolamento n. 2007-07, è tenuta ad accertare l'affidabilità complessiva delle procedure interne adibite all'esecuzione delle attività richiamate al secondo comma, l'adeguatezza dei sistemi informativi utilizzati e la completezza dei controlli di primo e secondo livello. Gli esiti dei controlli effettuati sono comunicati, con cadenza trimestrale, alla BANCA CENTRALE, entro la fine del mese successivo a ciascun trimestre solare; la prima comunicazione deve avvenire entro il 31 luglio 2009.

Art. 5 – Obblighi di certificazione

1. Le BANCHE TRAMITATE devono trasmettere, entro il giorno 15 di ogni mese, al Servizio Vigilanza Informativa della BANCA CENTRALE una certificazione di conformità – a firma del capo della struttura esecutiva – dei dati contenuti nei FLUSSI ASIMMETRICI e ANAGRAFICI trasmessi nel mese precedente con le evidenze in possesso della banca segnalante.

Art. 6 – Informativa ai soggetti interessati

1. Al fine di assicurare un'idonea informativa ai SOGGETTI INTERESSATI in ordine al trattamento dei DATI IDENTIFICATIVI inseriti nell'ARCHIVIO ANAGRAFICO e trasmessi alle BANCHE TRAMITANTI, le BANCHE TRAMITATE sono tenute ad affiggere in ciascun locale aperto al pubblico quanto riportato nell'allegato A.

2. Analoga informativa andrà resa nell'ambito delle comunicazioni periodiche inviate dalle BANCHE TRAMITATE alla propria clientela ai sensi dell'art. X.IV.15 e ss. del Regolamento della BANCA CENTRALE 2007-07.

Art. 7 – Aspetti operativi e condizioni economiche

1. Gli aspetti operativi del servizio di gestione dell'ARCHIVIO ANAGRAFICO sono stabiliti dalla BANCA CENTRALE e riportati nell'apposita "Scheda Tecnica".

2. Le BANCHE TRAMITATE sono tenute, ai sensi dell'art. 6 del DECRETO, a contribuire al sostenimento dei costi diretti sopportati dalla BANCA CENTRALE per la prestazione del servizio di gestione dell'ARCHIVIO ANAGRAFICO, come indicato nella "Scheda Tecnica".

3 Le modifiche apportate alla "Scheda Tecnica" sono oggetto di apposita comunicazione alle BANCHE TRAMITATE e di pubblicazione sul sito Internet della BANCA CENTRALE ed hanno effetto decorsi dieci giorni di calendario dalla data della relativa comunicazione, da effettuarsi a mezzo di lettera raccomandata con A.R.

Art. 8 – Integrazioni

1. Per tutto quanto non disciplinato all'interno del presente Regolamento si rinvia al DECRETO.

2. Gli allegati A (Informativa da rendere alla clientela) e B (Scheda Tecnica) costituiscono parte integrante del presente Regolamento.

Art. 9 – Periodo di vigenza

1. Ai sensi degli articoli 4 e 8 del DECRETO, il presente Regolamento entra in vigore il 20 maggio 2009 e, fatto salvo per gli obblighi di decennale conservazione dei DATI IDENTIFICATIVI presenti nell'ARCHIVIO ANAGRAFICO, cessa di produrre effetti su conforme delibera del Comitato per il Credito ed il Risparmio.

51. Annex 51: Letter of Excecutive Magistrate dated 20 November 2008

REPUBLIC OF SAN MARINO

CIVIL AND CRIMINAL COURT

San Marino, 20 November 2008

Ref. No. 400 MD/PV/08

To
Criminal Registrar
Actuaries responsible for the criminal section

_____

OMISSIS, I am requesting to elaborate annual statistics on proceedings related to money laundering and terrorist financing offences (statistics should also indicate the predicate offences, seizure and confiscation measures, amounts, etc.), as well as on letters rogatory received regarding the above-mentioned offences (also related to predicate offences and their execution times) as of 31 December 2008.
The above-indicated data shall be disclosed and published every time new proceedings are initiated (or seizures or confiscations are carried out), or letters rogatory are received. Beginning from 1 January 2009, a registry of letters rogatory submitted to foreign countries shall also be established, highlighting the data concerning the letters rogatory for money laundering or terrorist financing offences (also reporting the predicate offences and the execution times).
In view of creating criminal registries in electronic format, it should be possible to acquire the aforesaid data anytime and therefore attention should be paid to this particular aspect while developing the program.
I avail myself of this opportunity to express to you my best regards.

The Executive Magistrate

52. Annex 52: Letter of Judge of Supervision on Trust dated 18 February 2009

REPUBLIC OF SAN MARINO

ADMINISTRATIVE COURT

San Marino, 18 February 2009

Ref.: 12/2009/GV

To the Director of the Office of Industry,
Handicraft and Trade, Mrs. Maria Gabriella Granaroli

THE JUDGE OF SUPERVISION

Having regard to Law no. 37 of 17 March 2005;
Having regard to Decree no. 86 of 10 May 2005;

With reference to the concept of confidentiality and the publicity of the Register of Trusts, the extent of which has been subject to evaluations and analyses, I am pleased to underline the following, for clarification purposes:

- the confidentiality of the registrations referred to in Article 3 of Decree no. 86/2005, which seems to be in contradiction with point 2) of Article 9 of Law no. 37/2005 – stating that the Register of Trusts is public – shall be evaluated in the light of point 7) of Article 4 of Decree no. 86/2005.

I would like to specify that, in line with the *modus operandi* of this office, confidentiality requirements shall apply when the information requested, if divulged, may cause a threat to national security, exercising of national sovereignty, continuity and correctness of international relations, protection of public order and crime suppression and prevention.

Having said that,

I RECOMMEND

to follow the same *modus operandi* in order to verify that none of the aforementioned circumstances arise, by applying point 1) of Article 3 of Decree no. 86/2005 and identifying the persons who have access to the Register of Trusts.

Best regards,

THE JUDGE OF SUPERVISION

53. Annex 53: Letter to Mr Gurria – OECD Secretary-General

San Marino, 24 March 2009

Ref. 3244/AA/27

Distinguished Mr. Gurría,

I have the honour to refer to letter Ref. 3007/AA/27 dated 4 April 2000 in which the Republic of San Marino, sharing the OECD principles, took on a series of concrete commitments aimed at adopting all the necessary measures to eliminate harmful tax competition of its system. This commitment has allowed the Republic of San Marino to be listed among cooperative jurisdictions.

In line with the commitment made, the Republic of San Marino has actively taken part in the OECD global forums on effective exchange of information, which led to the definition of the OECD model TIEA in 2002. Furthermore, since 2002 San Marino has pursued a policy aimed at signing agreements on avoidance of double taxation in compliance with the OECD model.

Although not a member of the Organisation for Economic Co-operation and Development, in the last decade the Republic of San Marino has conducted an effective and comprehensive reform of its own constitutional order, by adopting important international standards and regulations, aimed at ensuring transparency of its economic system, with particular emphasis on the financial sector:

- in 2004 it signed an agreement with the European Union establishing measures equivalent to those defined in Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments;
- it has started a radical reform of the regulations of its financial system; this reform resulted in the establishment of the Central Bank of the Republic of San Marino in 2005, set up according to modern international principles;
- it has started a reform process of its legislation to combat money laundering and international terrorist financing, in line with FATF and MONEYVAL Recommendations. This process led to the adoption of Law no. 92/2008 and the relevant implementing Decrees, as well as to the establishment of a Financial Intelligence Agency having direct access to bank and financial information and being able to exchange information even on matters covered by bank secrecy and/or related to anonymous companies;
- in June 2008, by virtue of Law no. 95/2008, a Central Liaison Office (CLO) was established. It shall be the body responsible for contacting the competent offices of other Countries for administrative cooperation with a view to implementing the international agreements adopted by the Republic of San Marino. This Office, which will be fully operational starting from 2 April 2009, can have access to any necessary information to prevent and counter tax fraud, "The like", frauds and distortions in trade exchange.

The above-mentioned measures and the other initiatives undertaken have been notified to the OECD in response to the regular requests for updated information on the current state of domestic legislation, in order to verify whether it is consistent with the achievement of the so-called *Level Playing Field*.

While taking account of the aforementioned process still underway and reiterating San Marino's commitment to supporting the strengthening of international cooperation on tax matters, the San Marino Government has also decided to adopt the OECD standard on administrative assistance in tax matters within the conventions for the avoidance of double taxation to be negotiated, in compliance with Article 26 of the OECD 2005 Model Convention.

To confirm this intention, two Agreements will be signed between San Marino and Italy on the occasion of the visit of the Italian Minister of Foreign Affairs to San Marino, scheduled for 31 March 2009. These Agreements, concerning economic cooperation and financial cooperation respectively, contain a commitment to re-negotiating in short times the agreement on double taxation, concluded in due course, by adjusting it to the aforesaid standards.

While hoping that, through the intentions expressed in this Note, the Republic of San Marino will continue to be considered a cooperative jurisdiction in relation to international tax cooperation, I avail myself of this opportunity to express to you the assurances of my highest esteem and consideration.

Antonella Mularoni
Secretary of State for Foreign Affairs

Mr. **Angel Gurría**,
OECD Secretary-General,
= PARIS =
_____

54. Annex 54: Letter to Police Forces Commanders

A. Z.
Commander of the Gendarmerie

A. V.
Commander of the Civil Police

M. C.
Commander of the Fortress Guard – Uniformed Unit

_____

San Marino, 19 May 2009

Ref. no. 09/0658

Subject: Delegated Decree no. 62 of 4 May 2009 (*Cross-border Transportation of Cash and Similar Instruments*) – operational aspects related to checks carried out by Police Forces

As you know, the Delegated Decree mentioned above was issued in the past days. It replaces and repeals previous Delegated Decree no. 138 of 2008.

The new decree sets forth that:

1. Any natural person entering or leaving the territory of the Republic of San Marino and transporting cash or similar instruments shall make a written declaration;
2. the written declaration shall be submitted to the Commands or branch offices of Police Forces, or to financial parties (banks and financial companies).

Whereas there are no physical borders constantly guarded between San Marino and Italy and the branch offices of Police Forces and Financial Parties are not located at the State borders, the Financial Intelligence Agency considers necessary to provide indications and clarifications in relation to the operational modalities of the checks that Police Forces shall carry out.

In this regard, in compliance with the purposes of the Delegated Decree and, more generally, with relevant international standards, the Financial Intelligence Agency specifies that when persons (entering or leaving the Republic of San Marino) are stopped, they shall be asked whether they transport cash or similar instruments for amounts or equivalent values exceeding in total € 10,000=.

In case of an affirmative answer, such persons shall show to Police Forces a declaration form duly completed, though, obviously, not bearing the deposit stamp (this case only applies to persons entering San Marino).

In such case, Police Forces shall verify that the data and information provided in the declaration model are complete and they shall request the person to state (even orally) where the written declaration will be deposited.

In this event, Police Forces shall note the declarations and statements made by the persons (namely where they will deposit the written declaration) and they shall transmit them to the Agency according to the modalities and time limits provided for by Article 9 of the Delegated Decree.

When a person stopped for checks while entering the Country has not previously filled in the declaration model or has filed the declaration in an incomplete or incorrect manner, articles 6 and 8 of the Delegated Decree shall be applied.

In such cases, therefore, Police Forces shall not be satisfied with declarations provided by the person stopped while entering San Marino, which contain a commitment (general or specific) to subsequently depositing the declaration with one of the parties referred to in Article 2, paragraph 2 of Delegated Decree no. 62/2008.

If leaving the territory, the person stopped for checks shall necessarily have a copy of the declaration bearing the stamp of the party receiving the declaration; otherwise, articles 6 and 8 of the Decree shall be applied.

You are invited to provide your personnel with relevant instructions, without prejudice to the fact that the Financial Intelligence Agency is available for any information or clarification you may need in this regard.

Further indications will be provided by the Financial Intelligence Agency on the occasion of the AML/CTF training course to be held next June and organised by the Agency in cooperation with you.

Regards,

Nicola Veronesi
Director of the Financial Intelligence Agency

55. Annex 55: Lettera Ufficio Industria ai trustee e avvocati (Italian version)

Prot. n. Borgo Maggiore, 25 Giugno 2009/2008 d.F.R.

Spett/le
Trustee del …….
Sede

Ill.mo Sig.
Avv. ……
Sede

Dovendo istituire, secondo il disposto della delibera del Congresso di Stato n. 13 del 29 Maggio 2009, una sezione separata del Registro del Trust ove indicare i dati relativi al disponente ed ai beneficiari dei Trust già iscritti nel Registro - Sezione che sarà ad uso esclusivo delle Autorità di cui alla delibera richiamata.

Con la presente si invitano quanti in indirizzo a trasmettere informazioni di cui sopra mediante la presentazione di specifico atto, autenticato dal notaio, entro dieci giorni dal ricevimento della presente.

Rimanendo a disposizione per ogni ulteriore informazione si coglie l'occasione per porgere i migliori saluti .

MGG/ll

Il Dirigente

56. Annex 56: Letter meeting association and no-profit entities

San Marino, 13 July 2009

Ref. no. 37614/GC/mm

- COUNCIL OF ASSOCIATIONS
- ASSOCIATION OF REAL ESTATE AGENTS OF THE REPUBLIC OF SAN MARINO
- SAN MARINO ONCOLOGICAL ASSOCIATION
- SAN MARINO MYCOLOGICAL ASSOCIATION
- SAN MARINO MULTIPLE SCLEROSIS ASSOCIATION
- SAN MARINO SOCIETY OF CARDIOLOGY
- SAN MARINO ASSOCIATION AGAINST LEUKEMIA AND MALIGNANT HEMOPATHIES
- CONGREGATION OF JEHOVAH'S WITNESSES FOR THE REPUBLIC OF SAN MARINO
- ROTARY SOLIDARITY
- SMILE PROJECT ASSOCIATION
- CUORE – VITA ASSOCIATION
- SAN MARINO BANKING ASSOCIATION
- CHARITY WITHOUT BORDERS ASSOCIATION
- FINANCIAL AND FIDUCIARY COMPANIES ASSOCIATION – ASSOFIN
- SAN MARINO SPORTS ASSOCIATION FOR THE PHYSICALLY DISABLED - ATTIVA-MENTE
- UNION AND MUTUAL AID SOCIETY
- ASSOCIATION OF SAN MARINO VOLUNTARY BLOOD AND ORGAN DONORS
- COLLEGE OF ACCOUNTANTS
- ASSOBANK
- SAN MARINO OPERATORS IN THE REAL ESTATE SECTOR – ASSOIM
- SOCIAL SERVICES FUND

Subject: Meeting on anti-money laundering and combating terrorist financing

Further to the third Evaluation Report by the MONEYVAL Committee of the Council of Europe (31 March – 4 April 2008), Institutions have carried out a comprehensive analysis of San Marino AML/CFT regime, aimed at concretely improving and enhancing the effectiveness of all resources and factors used to counter such offences, as well as at taking all adequate legislative actions to adjust the relevant legislation in force.

Among the sectors involved, particular attention is paid to the non-profit sector, where Associations, Foundations and Entities established for social, educational, religious and solidarity purposes operate, playing a central role in the global economy and in many national economic and social systems.

Unfortunately, such entities are not exempt from the attempts to be abused by terrorist organisations: indeed, it has been noticed at an international level that these organisations often use the non-profit sector as a channel to raise funds and finance their activities.

Law no. 92 of 17 June 2008 has established the San Marino Financial Intelligence Agency (FIA) for the prevention and countering of money laundering and terrorist financing. Such agency is making concrete proposals in order to implement FATF's (Financial Action Task Force) and MONEYVAL's Recommendations which attach much importance to adequate awareness, coordination and control of said entities.

The Council of the Twelve, a body responsible for the supervision of Associations, Foundations and Non-Profit Organisations, has also adopted a number of concrete measures to coordinate the action of the institutions and bodies involved in combating money laundering and terrorist financing.

By means of Decision no. 30 of the sitting of 27 May 2009, the Council of the Twelve entrusted this Bureau with the task of "*contacting the Council of Associations and the most representative voluntary associations in order to promote – in cooperation with the Financial Intelligence Agency – an awareness-raising and information campaign on the risk of money laundering and terrorist financing associated with the non-profit sector, addressed to all San Marino associations, foundations and other non-profit organisations*", with a view to making them aware of the phenomenon and adopting all necessary measures to counter it.

In order to implement such decision, it has been agreed, together with the Financial Intelligence Agency, to arrange an information meeting with the above-mentioned Associations – which are considered to be the most representative by this Bureau and the Financial Intelligence Agency – to launch the aforesaid awareness-raising campaign and provide information on the measures to be adopted.

The meeting will take place at the Financial Intelligence Agency's seat (Strada di Paderna n.2, 47895 Fiorina, c/o Centro Fiorina 4° piano) on **Thursday, July 23, 2009 at 5:00 p.m.**

We thank you for you cooperation and look forward to receiving a kind confirmation of your presence. To this end, you are kindly requested to contact the Bureau of the Great and General Council at the number 0549-882736.

While being confident that you will actively participate, I avail myself of this opportunity to express my best regards.

THE DIRECTOR

57. Annex 57: Lettera Segreteria Istituzionale – campagna sensibilizzazione associazioni (Italian version)

San Marino, 7 agosto 2009/1708 d.F.R.

Prot.n.37784/GC/mm

Spett.li
ASSOCIAZIONI

Spett.le
AGENZIA INFORMAZIONE FINANZIARIA

LORO SEDI

Oggetto: Campagna di sensibilizzazione e informazione sul rischio di riciclaggio e finanziamento al terrorismo associato al settore non profit, rivolta a tutte le Associazioni, Fondazioni ed altri Enti sammarinesi

A seguito del terzo Rapporto di Valutazione da parte del Comitato MONEYVAL del Consiglio d'Europa (31 marzo – 4 aprile 2008), le Istituzioni hanno proceduto ad un'analisi generale del sistema di lotta al riciclaggio e al finanziamento del terrorismo nel nostro Stato, finalizzata ad un concreto miglioramento, anche da un punto di vista dell'efficacia, di tutte le risorse ed i fattori impiegati per mettere in atto tale contrasto e all'introduzione di opportuni interventi normativi al fine di adeguare la vigente legislazione in materia.

Tra gli ambiti interessati, particolare rilevanza assume il settore *non profit*, nel quale operano Associazioni, Fondazioni ed Enti istituiti per scopi sociali, educativi, religiosi, solidaristici e che svolgono un ruolo fondamentale nell'economia mondiale e in numerosi sistemi economici e sociali nazionali.

Tali organismi, purtroppo, non sono immuni dai tentativi di sfruttamento da parte delle organizzazioni terroristiche: si è riscontrato, infatti, a livello internazionale, che tali organizzazioni utilizzano spesso il settore *non profit* come canale per raccogliere fondi e finanziare le proprie attività.

La Legge 17 giugno 2008 n.92 ha istituito a San Marino l'Agenzia di Informazione Finanziaria (AIF) per la prevenzione e il contrasto del riciclaggio e del finanziamento del terrorismo, la quale sta formulando proposte concrete al fine di dare seguito alle raccomandazioni del GAFI (Gruppo di Azione Finanziaria Internazionale) e del MONEYVAL, che attribuiscono una particolare importanza ad un'adeguata sensibilizzazione, coordinamento e controllo dei suddetti enti.

Anche il Consiglio dei XII, organo preposto alla vigilanza di Associazioni, Fondazioni e Enti senza scopo di lucro, ha adottato una serie di misure concrete al fine di coordinare l'azione delle istituzioni e degli organismi interessati nel contrasto al riciclaggio e al finanziamento al terrorismo.

Con deliberazione n.30 della seduta del 27 maggio u.s., il Consiglio dei XII ha incaricato l'Ufficio scrivente di *"contattare la Consulta delle Associazioni e le Associazioni di Volontariato maggiormente rappresentative al fine di promuovere - congiuntamente all'Agenzia di Informazione Finanziaria - una campagna di sensibilizzazione e di informazione sul rischio di riciclaggio e di finanziamento del terrorismo associato al settore non profit, rivolta a tutte le associazioni, fondazioni ed altri enti sammarinesi"*, al fine di renderli consapevoli del fenomeno e di adottare tutti i provvedimenti opportuni per contrastarlo.

Per dar seguito a tale decisione, congiuntamente all'Agenzia di Informazione Finanziaria, in data 23 luglio u.s. ha avuto luogo un primo un incontro informativo con alcune Associazioni - ritenute maggiormente rappresentative dall'Ufficio scrivente e dall'Agenzia di Informazione Finanziaria - per avviare la suddetta campagna di sensibilizzazione e anticipare le misure che si intendono adottare.

Con la presente alleghiamo il materiale informativo, già consegnato alle Associazioni presenti all'incontro di cui sopra, e più precisamente:

- documento del Presidente del GAFI che introduce le 9 Raccomandazioni Speciali ed il Piano d'Azione per la lotta al finanziamento al terrorismo;
- traduzione dell'Introduzione alla VIII Raccomandazione Speciale rivolta alle Organizzazioni senza scopo di lucro;
- Nota Interpetativa alla stessa Raccomandazione;
- traduzione delle Migliori Pratiche stilate dal GAFI per combattere l'abuso delle Organizzazioni senza scopo di lucro;
- le Quaranta Raccomandazioni redatte dal GAFI per la lotta al riciclaggio e la finanziamento del terrorismo;
- la delibera del Consiglio dei XII n. 30 della seduta del 27 maggio u.s..

La suddetta delibera prescrive, inoltre, di *"avviare uno studio sulle fonti di finanziamento di Associazioni, Fondazioni ed altri Enti con la collaborazione dell'Agenzia di informazione Finanziaria"* disponendo che gli Enti stessi *"provvedano alla registrazione dei dati e delle informazioni relativi ai finanziamenti e ai fondi ricevuti e al loro utilizzo"*.

Al fine di rendere più agevole la raccolta dei dati e delle informazioni relativi alle fonti di finanziamento, il Consiglio dei XII ha predisposto alcuni schemi che – opportunamente compilati da ciascuna Associazione, Fondazione ed Ente – costituiranno i prospetti dei finanziamenti e degli impieghi in forma dettagliata e riassuntiva, custoditi presso gli Enti stessi ed accessibili solo dal Giudice di Sorveglianza e dall'Agenzia di Informazione Finanziaria, previa richiesta scritta.

Tali prospetti – allegati alla delibera sopraindicata – saranno oggetto di invio separato e successivo alla presente.

RingraziandoVi per la cortese attenzione e collaborazione, l'occasione mi è gradita per porgere i miei più distinti saluti.

IL DIRIGENTE

58. Annex 58: Lettera del Segretario di Stato per le Finanze a Generale Guardia di Finanza (Italian version)

Segreteria di Stato per le Finanze
Il Segretario di Stato

San Marino, 25 agosto 2009/1708 d.F.R.

Prot.n. 2773

Signor Generale,

faccio seguito all'incontro tenutosi a Roma il 4 giugno u.s. presso il Comando Generale della Guardia di Finanza e ai successivi scambi di e-mail avvenuti tra il Colonnello Corrado Pillitteri, capo ufficio cooperazione internazionale - economica e il Vice Direttore dell'Agenzia di Informazione Finanziaria (AIF), Dott. Nicola Muccioli. Al riguardo, confermo l'interesse delle Autorità sammarinesi a formare propri funzionari appartenenti ai Corpi di Polizia e all'AIF mediante la partecipazione a corsi tenuti dalla Guardia di Finanza.

Di seguito si riportano alcuni temi di interesse:

- Controlli per il rispetto della normativa antiriciclaggio e di prevenzione e contrasto del finanziamento del terrorismo;
- Analisi ed approfondimento delle operazioni sospette di riciclaggio e di finanziamento del terrorismo;
- Accesso, acquisizione ed analisi della documentazione bancaria, finanziaria e societaria;
- Tecniche investigative speciali;
- Controlli su strada.

Nella circostanza si ipotizza la partecipazione di 10/15 persone per approfondire le tematiche sopra elencate secondo le modalità e i tempi che si riterranno opportuni.

Ai fini organizzativi e per i successivi contatti, si indicano come referenti per le Autorità sammarinesi, la Dott.ssa Rita Vannucci, Commissario della Legge del Tribunale Unico che tratta le indagini relative al riciclaggio e il Dott. Nicola Muccioli, Vice Direttore dell'Agenzia di Informazione Finanziaria, dei quali si riportano di seguito i recapiti: Dott.ssa Vannucci Tel. XXXXX - mail: XXXXXX e Dott. Muccioli Tel. XXXXXXX- mail: XXXXXXX

Nel rimanere in attesa di un cortese riscontro, colgo l'occasione, Signor Generale, per porgerLe distinti saluti.

FIRMATO : - Gabriele Gatti -

_____

Ill.mo Signor
Generale B. R. M. R.
Capo II Reparto
Comando Generale Guardia di Finanza
Roma

59. Annex 59: Report of investigating Judge on AML/CFT prosecutions

Report on the provisions preventing and combating money laundering and terrorist financing implemented by the Court, to be submitted to the Moneyval Committee of the Council of Europe for the evaluation of the effectiveness of AML/CFT legislation

There is no doubt that the judicial activity performed by the Court allows to check the concrete implementation of the new AML/CFT law and, therefore, to evaluate the effectiveness thereof. For this reason, worth is commenting on the STRs received.

Since 23 September 2008, when the new Law entered into force, the San Marino Court has received 13 STRs, which have given rise to relevant proceedings. In particular:

1) Criminal proceedings no. 204/2009: on 18 February 2009 the Financial Intelligence Agency reported a suspected case of money laundering, under Article 7 of Law no. 92 of 17 June 2008 ("communication to the Judicial Authority of facts that might constitute an offence of money laundering"). The Financial Intelligence Agency had been informed of the unusual transaction by the bank involved by means of a written report, in compliance with Article 36 of the aforesaid Law ("Reporting obligations"). The financial institution reported to the Financial Intelligence Agency that, as a consequence of the monitoring of business relationships envisaged by the new AML legislation (Article 44 of Law no. 92/2008, "internal controls"), it had noted that a customer, although the sole proprietorship and the company he owned (with offices in Italy) had been closed down, he continued to deposit many out-of-town cheques into his current account. In addition, some days prior to this investigation, the customer had withdrawn a large sum of money (€ 850,000) and opened 68 bearer passbooks, all of them slightly inferior to the threshold provided for by Article 31 of Law no. 92/2008 (limitations on the use of cash). After receiving the report, the Financial Intelligence Agency requested information about the persons reported to its Italian counterpart performing AML functions (FIU), under Article 16 of Law no. 92/2008 ("international cooperation with foreign financial intelligence units").

When I received the relevant acts and documents, I convened a meeting with the personnel of the Financial Intelligence Agency and the Judicial Police that are entrusted with AML investigations and we examined together the case: the Financial Intelligence Agency reported about the financial analysis (generation of the proceeds, examination of the cheques, withdrawals, banking relationship); in my capacity as a judge, I outlined, in legal terms, the unlawful conduct of the reported persons emerging from the financial analysis with regard to the formulation of the offence envisaged by Article 199bis of the criminal code. The Judicial Police planned the investigations to be carried out (investigations regarding the persons reported in the territory of this State, criminal background check, reports, any contact with residents). Besides analysing the concrete case and establishing the investigative strategies, one of the purposes of the meeting was to provide Police officials with training on financial investigation matters (as provided for by Articles 51 and 52 of Law no. 92/2008 – assignment and training of Police officials).

At the end of the preliminary investigations no contact or link was found with the San Marino community. Since it is well-known that the National Anti-mafia Directorate, established in Rome, receives suspicious reports related to organised crime, I forwarded a request for international cooperation to the National Anti-mafia Public Prosecutor in order to: obtain information on the persons (Italian citizens resident and with business activities in Italy); ascertain any contact with criminal organisations; know if in Italy there were any pending criminal

proceedings, on the basis of which a request for cooperation could be submitted to establish any relevant predicate offence. We are waiting for a reply.

2) Criminal proceedings no. 314/2008: on 24 November 2008 the Financial Intelligence Agency reported, under Article 7 of Law no. 92/2008 ("communication to the Judicial Authority of facts that might constitute an offence of money laundering"), that a retired person, being a San Marino citizen and resident in the Republic, was holder of a current account where from 1 January 2006 to 28 August 2008 he had received several transfers from a German company for an overall amount of € 1,176,377.43. Every time a transfer was paid on his current account, some days later he withdrew cash for amounts slightly inferior to the transfers. The bank involved had transmitted a STR to the Financial Intelligence Agency, under Article 36 of the above-mentioned Law ("reporting obligations"). When I received the relevant acts and documents, I convened the officials of the Financial Intelligence Agency and of the Police Forces to examine the case and I outlined, in legal terms, the unlawful conduct under Article 199bis. Besides analysing the concrete case and establishing the investigative strategies, one of the purposes of the meeting was to provide Police officials with training on financial investigation matters (as provided for by Articles 51 and 52 of Law no. 92/2008 – assignment and training of Police officials). Since the case involved a San Marino citizen residing in this Country, we decided to apply a special investigative technique through observation, shadowing and control of the person. This strategy has allowed to ascertain that he had withdrawn money from the bank and transferred it to his house. The Police have not found any contact with third parties. The observation procedure is still underway.

3) Criminal proceedings no. 58/2009: on 14 January 2009 the Central Bank submitted a report for fraud and money laundering offences against unknown persons who had advertised the possibility to issue loans in an Internet web-site, using the name of a San Marino fiduciary company. The Inspectors of the Central Bank conducted any necessary investigation and have ascertained that the San Marino company is not involved in the facts. On the basis of the case file as its stands, the fact may be related to the alleged offence of unlawful exercise of reserved activity and fraud. The Gendarmerie are still conducting investigations to identify the unknown persons and the mobile-phone subscription indicated in the web-site.

4) Criminal proceedings no. 6/09: upon a request for financial information received by the Financial Intelligence Unit of Slovenia (Article 16 of Law no. 92/2008 "cooperation with foreign financial intelligence units") and by the National Central Office of INTERPOL (Article 12 of Law no. 92/2008 "cooperation of the Agency with Interpol"), the Financial Intelligence Agency reported to the Court under Article 7 of Law no. 92/2008 ("communication to the Judicial Authority of facts that might constitute an offence of money laundering") some suspicious transactions carried out in the context of a business activity. The holders of the accounts credited transfers and cheques supported by invoices and then they withdrew cash. This procedure was carried on although the activities declared had formally been terminated (but actually they were continued by new companies). After receiving the report, I convened the officials of the Financial Intelligence Agency and the Police Forces to carry out a joint analysis of the transactions with regard to the unlawful conducts suited to allege the offence of money laundering and I outlined, in legal terms, the unlawful conduct under Article 199 bis; on that occasion, the Police did not exclude alleged tax fraud (punishable according to domestic legislation) committed by the same persons, by examining the invoices. For this reason, I entrusted the Financial Intelligence Agency and the Police with the conduction of more detailed controls and the submittal of a joint report in the end. Besides analysing the concrete case and establishing the investigative strategies, one of the purposes of the

meeting was to provide Police officials with training on financial investigation matters (as provided for by Articles 51 and 52 of Law no. 92/2008 – assignment and training of Police officials).

We are waiting for the report by the Financial Intelligence Agency and the acquisition of banking documents in order to present a request for legal assistance to an Italian Public Prosecutor's Office which, according to press news, investigates the same facts.

5) Criminal proceedings no. 333/2009: on 19 March 2009 the Financial Intelligence Agency submitted a report to the Court against a person under Article 7 of Law no. 92/2008 ("communication to the Judicial Authority of facts that might constitute an offence of money laundering"). The Financial Intelligence Agency had received written information of the unusual transaction from the bank involved, under Article 36 of the above-mentioned Law ("reporting obligations"). The financial institution reported to the Financial Intelligence Agency that a person had physically presented himself to the counters of the bank and submitted a certificate of deposit to be cashed. In compliance with Articles 21 and 22 of Law no. 92/2008 ("customer due diligence obligations") the bank fulfilled the relevant customer due diligence obligations and ascertained that the certificate had been issued upon request by an individual, who had just been sentenced for fraud in Italy, and a woman. The third person who had presented himself to the bank of San Marino to cash the certificate was the brother of the woman sentenced for money laundering.

After being informed about the case, the Financial Intelligence Agency carried out financial investigations concerning the suspicious transaction reported and ordered the obliged party to provide the banking documents (Article 4 of Law no. 92/2008 "Powers of the Financial Intelligence Agency"); finally, it ordered the block of the certificate of deposit (Articles 5 and 6 of Law no. 92/2008 "blocking of assets, funds and other economic resources"). When the documents were forwarded to the Court, as Investigating Judge I confirmed the measure adopted by the Financial Intelligence Agency. Since the proceeds had been generated from money laundering, I ordered the **seizure of the amount of money equal to € 155,776.21** for the purposes of confiscation (Article 76 of Law no. 92/2008 "confiscation"). I immediately gave notice of the offence and since the defendant was an Italian citizen residing in Italy, I submitted a request for legal assistance on criminal matters in order to trace the defendant, notify the charge and request the Italian Judicial Authority to directly question the accused. We are waiting for a reply.

6) Criminal proceedings no. 330/2008: on 13 November 2008 the Financial Intelligence Agency submitted a report to the Court against two individuals under Article 7 of Law no. 92/2008 ("communication to the Judicial Authority of facts that might constitute an offence of money laundering") who were already investigated in internal proceedings for fraud. After receiving the report, I entrusted the Financial Intelligence Agency with the conduction of a financial analysis of the suspicious transaction. When the analysis was concluded, the Financial Intelligence Agency informed that it had not identified any anomalies with regard to the transaction and it had reported it only because the persons involved were under investigation. The case has been closed.

7) Criminal proceedings no. 175/2008: in the framework of preventing and countering money laundering (Article 12 of Law no. 92/2008 "activities carried out by the Police Authority on its own initiative"), the Gendarmerie reported that some persons from Naples who were relatives of an individual sentenced for the offence of extortion in Italy and employed in a San Marino company had opened a commercial activity in the Republic of San Marino through San Marino citizens; soon afterwards the activity was sold. Having received the report, I entrusted the Gendarmerie with the conduction of further investigations. I also informed the Financial

Intelligence Agency of the case of alleged money laundering (article 15 of Law no. 92/2008 "cooperation with the Judicial Authority") and ordered the Financial Intelligence Agency to cooperate with the Judicial Police (Article 12 of Law no. 92/2008 "cooperation of the Financial Intelligence Agency with the Police Authority") to carry out a financial analysis of the banking relationships, verify the purchase and sale contracts of the business activity, the payment modalities and the origin of money, and to obtain the relevant documents concerning the purchase and sale of the immovable property from public Offices. This week I will request the cooperation of the National Anti-mafia Public Prosecutor's Office in Rome to ascertain any contact of the persons reported with criminal organizations.

I am waiting for a reply of the Financial Intelligence Agency.

8) Criminal proceedings no. 374/2008: further to information in the press regarding an investigation promoted by the Public Prosecutor's Office of Milan for the offence of drug trafficking, the Financial Intelligence Agency carried out a check and control and ascertained that the same persons under investigation in Italy and the persons connected to them had established banking relationships in the Republic of San Marino; in the context of these relationships, the transactions executed involved cash withdrawal and deposit. Under Article 7 of Law no. 92/2008, the Financial Intelligence Agency submitted a report to the Court. After receiving the relevant documents, I convened the officials of the Financial Intelligence Agency and the Police Forces. I outlined, in legal terms, the unlawful conduct under Article 199 bis of the Criminal Code and entrusted them with the task of conducting further investigations and verifying supporting documents. Besides analysing the concrete case and establishing the investigative strategies, one of the purposes of the meeting was to provide Police officials with training on financial investigation matters (as provided for by Articles 51 and 52 of Law no. 92/2008 – assignment and training of Police officials).

We are waiting for a reply.

With regard to these facts, I have already accepted a request for legal assistance submitted by the Public Prosecutor's Office of Milan. The request is being executed.

9) Criminal proceedings no. 67/08: at the end of the activity carried out in my capacity as Judge entrusted with the assessment and execution of letters rogatory received, I came to know that a person from Poland, investigated for fraud by the Polish Judicial Authority, had entrusted a Polish friend with the establishment of a banking relationship in San Marino where the proceeds of the fraud had flowed. The woman told the Polish investigators she had come to San Marino only to open and close the account that was actually managed by the person investigated. After the pre-trial investigation I ordered the registration of a criminal case against the woman for the offence of money laundering and I submitted a request for legal assistance on criminal matters in order to: ascertain that the amount credited to the account held by the woman was related to fraud; report whether the woman was under investigation for fraud; if not, question the woman upon notification of the charge for money laundering.

We are waiting for a reply.

10) Criminal proceedings no. 316/2008: further to information in the press regarding an investigation for fraud promoted by the Public Prosecutor's Office of Florence, the Financial Intelligence Agency carried out an inspection and ascertained that the same persons under investigation in Italy held positions in a fiduciary company of San Marino. While examining the operation of the company, the Financial Intelligence Agency found that, in execution of trust mandates assigned by parties linked to the Italian citizens under investigation,

money flowed in cash and then was transferred to a foreign company. Under Article 7 of Law no. 92/2008 ("communication to the Judicial Authority of facts that might constitute an offence of money laundering"), the Financial Intelligence Agency made a report to the Court. After receiving the documentation, I convened the officials of the Financial Intelligence Agency and the Police Forces who were entrusted with the task of further investigating the case and verifying supporting documents. Besides analysing the concrete case and establishing the investigative strategies, one of the purposes of the meeting was to provide Police officials with training on financial investigation matters (as provided for by Articles 51 and 52 of Law no. 92/2008 – assignment and training of Police officials). Further to the meeting, we realised there were analogies with the facts investigated by the Public Prosecutor's Office of Florence. Therefore, I submitted an international letter rogatory to establish whether the sums flowed in the fiduciary relationships of the San Marino company were proceeds of the fraud for which the persons were investigated.

We are waiting for a reply.

Moreover, the Financial Intelligence Agency was entrusted with the collection of information by its foreign counterpart to acquire data and information related to the owner of the foreign company.

We are waiting for a reply.

11) Criminal proceedings no. 227/09: at the end of the activity carried out in my capacity as Judge responsible for the assessment and execution of letters rogatory received, I came to know that properties of cultural interest being the proceeds of a theft in Italy were in San Marino for auction. The owner of the auction house reported he had bought the aforesaid objects 20 years before, although he was not able to provide suitable and relevant documents. The objects were seized and returned to Italy. The Italian judge responsible for the inquiry informed he would request an assessment of the objects. Therefore, a case file was opened for the offence of money laundering and/or sale of stolen property and a letter rogatory was forwarded to the Italian Prosecutor's Office to request a copy of the technical assessment, question the persons who, according to the owner of the auction house, would have provided him the objects in order to determine whether they had been sold to the auction house.

We are waiting for reply.

12) Criminal proceedings no. 255/2008: in my capacity as Judge responsible for the assessment and execution of letters rogatory received, I came to know that some Italian citizens under investigation for fraud had issued proxies to withdraw money in favour of a San Marino fiduciary company. Further to the execution of the letter rogatory (responded), I came to know that the amounts belonging to the persons investigated had been transited to a trust mandate held by the legal representative of the fiduciary company; furthermore, the persons involved had not signed any trust mandate. Upon reception of the documents, I convened a meeting with the personnel of the Financial Intelligence Agency and the Judicial Police dealing with investigations related to money laundering and we examined together the case. As a judge, I outlined in legal terms the unlawful conduct had by the persons under investigation and emerging from the documents obtained by the fiduciary company, with regard to the formulation of the money laundering offence envisaged in Article 199 bis of the criminal code. I entrusted the Financial Intelligence Agency with the task of forwarding a financial report indicating the exact personal details of the persons involved, the acquisition of banking documents, and I delegated the Police to investigate these individuals.

A reply is being waited for.

13) Criminal proceedings no. 95/2009: the San Marino judge received a request for cooperation submitted by the American agency "Immigration and Customs Enforcement (ICE)" to carry out undercover money laundering transactions to be executed in the Republic of San Marino. The Investigating Judge authorised specialised agents of the Police Forces to intervene in intermediation activities, simulate the purchasing of goods and to take part in any initiative aimed at suppressing money laundering (Article 15 of Law no. 28 of 26 February 2004 – "Special Investigative Techniques"). The requesting Authority informed of the interruption of the activity, which therefore has been suspended.

Judge Rita Vannucci

San Marino, 28 May 2009

60. Annex 60: Draft Law – Liability of legal person for offence

LIABILITY OF LEGAL PERSON FOR OFFENCE
Draft Law

Title I
General provisions

Art. 1
(Scope)

1. In the cases envisaged by this Law, a legal person shall be liable for administrative offences resulting from the perpetration of offences committed, attempted or failed in the Republic of San Marino, on its own behalf or to its advantage, by one of its bodies or anyone performing representative, management, administration and control functions.
2. Anyone performing representative, management, administration and control functions of the legal person shall adopt a document outlining the organizational model and identifying the risks of commission of offences in the framework of the activity of the legal person and management measures aimed at preventing said risks.
3. The organizational model referred to in the preceding paragraph, which shall be kept confidential, without prejudice to the Judicial Authority's power to obtain a copy thereof in the event of criminal proceedings, shall be deposited with the Office for Control and Supervision of economic activities. Such office shall deal with the preventive control on legitimacy and merit in order to assess the properness of said document.
4. The organizational model, the procedures for adoption and deposit with the Office referred to in the preceding paragraph, as well as preventive control criteria and content shall be regulated, by issuing a Delegated Decree within 90 days from the entry into force of this Law.
5. Liability of the legal person shall not apply if the offence, committed by the parties referred to in paragraph 1, was committed by fraudulently evading the measures referred to in the organizational model adopted by the legal person.
6. Criminal liability of the legal person shall be excluded, if the offence was committed exclusively in the interest of third parties. In such a case, third legal persons in the interest of which the offence was committed shall be answerable.
7. The provisions of this Law shall not apply to the State and non-economic public entities.

Art. 2
(Cases of liability of legal person for offence)

1. Criminal liability referred to in paragraph 1 of the preceding Article shall apply in relation to the offences referred to in Articles 168, 177 bis, 177 ter, 177 quater, 199, 199 bis, 207, 244, 271, 3 05, 337 bis, 337 ter, 372, 373, 374, 374 bis, 374 ter, 377, 401 of the Criminal Code, Article 134 of Law no. 165 of 17 November 2005, Articles 3 bis, 3 ter, 3 quater, 3 quinquies of Law no. 22 of 24 February 2000 in the text introduced by Article 83 of Law no. 92 of 17 June 2008.
2. Liability of the legal person shall apply even when the offender has not been identified or cannot be charged.

Art. 3
(Regulations to be applied)

1. Liability of the legal person envisaged by this Law is regulated by the provisions of the criminal law. Jurisdiction and decisions concerning the administrative offences of legal person shall be assigned to the Judge dealing with the offences from which the administrative offences derive, in compliance with the provisions of criminal procedure, in so far as they are consistent therewith.
2. The judgement delivered under this Law can be challenged, by using the same means allowed for the offence from which the administrative offence derives.
3. Liability of the legal person shall lapse after seven years from perpetration of the offence from which said liability derives. With regard to the limitation period, the provisions referred to in Articles 56 and following of the Criminal Code shall be applied.

Art. 4
(Representation of the legal person)

1. The legal representative *pro tempore* of the legal person, to whom the procedural provisions regarding the defendant shall apply, in so far as they are applicable, shall appear in the criminal proceedings for the ascertainment of the liability of the legal person referred to in this Law.
2. Criminal liability of the legal person shall not exclude the personal liability of the legal representative for the offences from which the liability of the legal person derives.
3. The legal person which has not appointed or does not have anymore a chosen lawyer shall be assisted by a court-appointed lawyer.

Art. 5
(Transfer of business, transformation, merger, division, dissolution and winding-up of the legal person)

1. The transfer of business or a branch, the transformation, merger, division, dissolution and winding-up of the legal person shall not exclude the application of the punishments envisaged by Article 7.
2. In the event of the transfer of business or a branch thereof to which the organisational unit where the offence was committed belongs, liability rests with the transferring legal person. Pursuant to civil law, the transferee shall be jointly and severally liable to pay the pecuniary sanction.
3. In the event of transformation, the such transformed legal person shall be answerable; in case of merger, the acquiring legal person or the legal person resulting from the merger shall be answerable; in the event of division, liability lies with both legal persons.
4. If the legal person dissolves, the winding-up procedure shall not be concluded when the company ceases to exist, if the pecuniary sanction is not paid.

Title II
Precautionary measures, sanctions and other effects deriving from liability for offence and enforcement thereof

Art. 6
(Precautionary measures against legal person)

1. When there are concrete elements to consider that the legal person is liable under this Law, the Judicial Authority may apply, pending criminal proceedings, the suspension of the licence concerning the activity of the legal person as a precautionary measure.
2. The provision, which is immediately enforceable, can be challenged under and by virtue of Article 56 of the Code of Criminal Procedure.
3. For the purpose of protecting public interests or the interests of employees, the judge, instead of ordering the suspension referred to in paragraph 1 of this Article, can appoint a legal agent to carry on the activity throughout the entire period of application of the precautionary measure.
4. Such agent shall preferably be appointed from among the professionals belonging to the Bar Association or the Accountants' Association. An unjustified refusal of the assignment for reasons not related to incompatibilities shall be punished under Article 380 of the Criminal Code. The assignment shall be remunerated on the basis of existing fees.

Art. 7
(Applicable sanctions and criteria for the determination thereof)

1. The sanctions to be applied for administrative offences of legal persons deriving from crime shall include:
1) pecuniary administrative sanction;
2) disqualification;
3) revocation of authorisations, licences or grants concerning the activity and the rights deriving therefrom.

2. In the decision on the sanction(s) to be applied and the application thereof, the judge shall take account of: the seriousness of the conduct, degree of liability of the entity, amount of damage caused and any other prescription enshrined in this Law.

Art. 8
(Pecuniary administrative sanctions)

1. When the liability of the legal person is recognised, the judge may apply a pecuniary administrative sanction from € 3,000 to € 500,000, to be calculated according to the criteria referred to in paragraph 2 of Article 7.
2. The amount of the pecuniary administrative sanction shall also be determined on the basis of the economic and asset status of the legal person, in order to ensure the effectiveness of the sanction applied.

Art. 9
(Disqualification)

1. When the liability of the legal person is recognised, the judge may apply disqualification for a period from three months to one year.
2. Disqualification of the legal person shall entail:
a) exclusion from grants, funding, contributions or State benefits;
b) revocation of grants, funding, contributions or State benefits already provided;
c) inability to contract with the Public Administration.

Art. 10
(Revocation)

1. When the liability of the legal person is recognised, the judge may order to revoke authorisations, licences or grants concerning the activity and the rights deriving therefrom, if the legal person was intentionally established to commit an offence or was used mainly for this purpose.
2. The provisions referred to in Articles 85 and following of Law no. 165 of 17 November 2005 shall be applied, in so far as they are consistent, to the companies exercising the reserved activities referred to in the aforesaid Law.

Art. 11
(Confiscation)

1. When the liability of the legal person is recognised, the judge may apply, where appropriate, the provision regarding confiscation referred to in Article 147 of the Criminal Code.
2. When the conditions referred to in Article 6, paragraph 1 apply, the judge may order the seizure of anything which may be subject to confiscation under the preceding paragraph. This measure, which is immediately enforceable, can be challenged under and by virtue of Article 56 of the Code of Criminal Procedure.

Art. 12
(Enforcement Judge)

1. The function of executing the administrative sanctions applied to the legal person under this Law shall be performed by the Law Commissioner acting as the Criminal Enforcement Judge.
2. The enforcement judge shall also have jurisdiction to hear any issue related to the execution of the administrative sanction applied to the legal person.
3. When the judge shall enforce the sanction of disqualification, if the conditions laid down in Article 6, paragraph 3 apply, he may appoint a legal agent to carry on the activity of the legal person throughout the entire period of application of the sanction, through the modalities referred to in Article 6, paragraphs 3 and 4.

Title III
Criminal and administrative offences

Art. 13
(Offence due to non-compliance with disqualification sanctions)

1. Except where the conduct amounts to a more serious offence, anyone who violates the obligations or the prohibitions related to such sanction or measure, while carrying out the activity of the legal person on which a disqualification sanction is imposed, shall be punished by terms of first-degree imprisonment.

Art. 14

(Administrative violation for omitted elaboration of the organizational model)

1. Failure to adopt and deposit the organizational model within the time limits referred to in the Delegated Decree envisaged by Article 1, paragraph 4, shall be punished with a pecuniary administrative sanction from € 5,000 to € 50,000, imposed by the Office for Control and Supervision of economic activities.

Art. 15
(Administrative precautionary measure for omitted elaboration of the organizational model)

1. Without prejudice to the sanction envisaged by Article 10, the legal person which does not adopt and deposit the organisational model within the time limits referred to in the Delegated Decree envisaged by Article 1, paragraph 4, shall also be subject to the precautionary measure of suspension of the activity licence imposed by the Office for Control and Supervision of economic activities up to the time the situation is rectified.

Title IV
Final provisions

Art. 16
(Repeals)

1. Any provision in conflict with this Law shall be repealed.

Art. 17
(Entry into force)

1. This Law shall enter into force on the 15th day following that of its legal publication.

61. Annex 61: Memorandum of understanding for the prevention and countering of money launderign and terrorist financing in the non-profit sector

MEMORANDUM OF UNDERSTANDING
FOR THE PREVENTION AND COUNTERING OF MONEY LAUNDERING AND TERRORIST FINANCING
IN THE NON-PROFIT SECTOR

*****

BETWEEN

THE HONOURABLE COUNCIL OF THE TWELVE OF THE REPUBLIC OF SAN MARINO, AS THE BODY SUPERVISING THE ADMINISTRATION OF FOUNDATIONS AND RECOGNISED NON-COMMERCIAL COMPANIES,

THE JUDGE OF SUPERVISION OVER ASSOCIATIONS, FOUNDATIONS AND NON-PROFIT ORGANIZATIONS AND

THE FINANCIAL INTELLIGENCE AGENCY

WHEREAS

- the Republic of San Marino attaches great importance to the fact that the conducts of all parties involved in combating money laundering and terrorist financing are based on the highest level of transparency and cooperation so that the obligations deriving from international best practices can be fulfilled;

- Law no. 92 of 17 June 2008 has strengthened a process of deep reform of San Marino legislation aimed, inter alia, at encouraging the international community to recognise San Marino's compliance with international standards against money laundering and terrorist financing;

- in the spirit of said law, one of the main objectives is to strengthen the measures and instruments useful to prevent and counter money laundering and terrorist financing, in accordance with the commitments undertaken by the Republic of San Marino at international level;

- under Law no. 73 of 19 June 2009, domestic legislation shall be adjusted to international Conventions and standards for the prevention and fight against money laundering and terrorist financing;

- the Great and General Council has started the parliamentary procedure for the draft law "Law on non-profit associations and foundations", aimed at fully recognising and protecting the organisations and entities working in the non-profit sector;

- Special Recommendation VIII of the FATF (Financial Action Task Force) establishes that "Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused: 1) by terrorist organisations posing as legitimate entities; 2) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; 3) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.

NOTING THAT

in the sitting of 27 May 2009, the Council of the Twelve decided to adopt measures aimed at preventing and combating money laundering and terrorist financing for associations, foundations and the other entities subject to its own supervision, and a Memorandum of Understanding with a view to introducing coordination mechanisms to ensure a national and international exchange of information on money laundering and terrorist financing in relation to San Marino associations or foundations;

HEREBY AGREE AS FOLLOWS:

Article 1 – Awareness raising and information about the problem of terrorist financing
The Parties commit themselves to regularly informing the entities of the non-profit sector, also by sending relevant documents and materials, of instructions, measures and recommendations issued in this regard at a national and supranational level, with a view to encouraging initiatives aimed at highlighting the non-profit sector's vulnerability to the risks of being abused for the financing of terrorism. The Parties also commit themselves to informing the members of this sector of the measures they can adopt to protect themselves from any abuse.

Article 2 – Transparency
With a view to promoting the utmost transparency, the Judge of Supervision and the Financial Intelligence Agency shall have direct and unrestricted access to the information contained in the Register held at the Single Court, as laid down by Article 4 of the "Regulation governing the keeping of the electronic Register of Legal Persons", as amended by Congress of State's Decision no. 55 of 2 February 2009.

The Judge of Supervision undertakes to request that Associations, Foundations and other Non-profit Organisations inform him of any change in the data recorded in the Register.

The Judge of Supervision commits himself to authorising the Honourable Council of the Twelve and the staff of the Financial Intelligence Agency to have access to the electronic Register to perform the functions assigned to them by the existing laws. Any access shall be noted in a relevant paper-based register, specifying: the date of access, the person and the entity requested. The Access Register shall be kept in a safe place and third parties shall not have access to it.

Article 3 – Reporting
The Honourable Council of the Twelve of the Republic of San Marino, through the Bureau of the Great and General Council, and the Judge of Supervision over Associations, Foundations and Non-profit Organizations, commit themselves to immediately reporting to the Financial Intelligence Agency when there is a suspicion or there are reasonable grounds to suspect that an entity of the non-profit sector:
a) may be used as a front for a terrorist organisation to collect funds,
b) may be exploited as a conduit for terrorist financing;
c) may conceal or execute in a non-transparent way the transfer of funds or assets intended for legitimate purposes but used for the benefit of terrorists or terrorist organisations;
d) may be involved in facts or circumstances for which the reporting obligation referred to in Article 36 of Law no. 92 of 17 June 2008 shall be fulfilled.

Article 4 – Supervision and control
The Judge of Supervision and the Financial Intelligence Agency commit themselves to regularly controlling records of the data and information on the financing and funds received and the use thereof.
The Judge of Supervision and the Financial Intelligence Agency also commit themselves to informing the Honourable Council of the Twelve, through the Bureau of the Great and General Council, on the results of the controls and checks conducted.

Article 5 – Analysis on the sources of funding and use of funds
The Honourable Council of the Twelve of the Republic of San Marino, through the Bureau of the Great and General Council, the Financial Intelligence Agency and the Judge of Supervision over Associations and Foundations (Non-profit Organisations) undertake the commitment to carrying out an analysis of the non-profit sector in order to analyse the risks of the abuse of this field of activity and the vulnerability of said sector to money laundering and terrorist financing.

The study shall be regularly updated, on the basis of new international standards.

To this end, the Parties commit themselves to jointly preparing a questionnaire to be sent to all Associations, Foundations and Non-profit Organisations.

Article 6 – National and international cooperation
For the purposes of this Memorandum and with a view to promoting effective national and international cooperation and updating the measures designed to prevent and counter money laundering and terrorist financing, the Financial Intelligence Agency informs the Technical Commission for National Coordination, established by the Congress of State through Decision no. 6 of 29 May 2009, about the analysis on the sources of funding and use of funds, as well as the results of controls and the supervision activity.

The Agency undertakes to timely inform the Honourable Council of the Twelve, through the Bureau of the Great and General Council, and the Judge of Supervision of any international initiative aimed at preventing and combating money laundering or terrorist financing related to associations, foundations and other non-profit organisations.

Article 7 - Duration
This Memorandum, which the Parties hereby sign, shall be effective for 12 months from the date of its signing. It shall be tacitly renewed upon expiration, unless otherwise agreed by the Parties.

San Marino, on 14 September 2009

For the COUNCIL OF THE TWELVE

For the FINANCIAL INTELLIGENCE AGENCY

The Judge of Supervision

62. Annex 62: Questionnaire regarding adjustments to AML/CFT laws and regulations

Sec	no.	Question	Answer
		General section ***– Data of the declaring Financial Party***	
0	1	Name of the declaring Financial Party:	*open answer*
0	2	Registered office of the declaring Financial Party:	*open answer*
0	3	Economic Operator Code of the declaring Financial Party:	*open answer*
0	4	Name and Surname of the Director-General, or the person holding an equivalent position, who fills in and signs the questionnaire:	*open answer*
0	5	Name and Surname of the Compliance Officer who assists the Directorate-General in filling in the questionnaire and signs it:	*open answer*
0	6	Date on which the questionnaire has been filled in:	*day/month/year*
0	7	What procedure/integrated IT program is used by the declaring Financial Party to carry out its ordinary activity (specify the name of the program and the supplying/producing company)?	*open answer*
		Section 1 ***– Internal procedures and controls for the purposes of combating money laundering and terrorist financing***	*Art. 44 l. 92/2008*
1	1	Has the financial party adopted policies and procedures in line with the obligations envisaged by l. 92/2008 for the purpose of preventing and countering money laundering and terrorist financing?	YES, NO
1	2	If yes, what are such policies and procedures?	*open answer or N/A*
1	3	Have these policies and procedures been formalised in an internal regulation?	yes, no, N/A
1	4	If yes, when was this internal regulation issued?	*open answer or*

			N/A
1	5	If the internal regulation has been issued, have all employees and collaborators been informed thereof?	yes, no, N/A
1	6	Does the financial party provide its customers with services that do not require to establish a face-to-face business relationship (i.e. *web-banking*, credit cards, automatic teller machines cash dispensers)?	yes, NO
1	7	If yes, what are these services?	*open answer or N/A*
1	8	With regard to such services or, more in general, to the technological developments concerning the activities carried out, has the financial party adopted specific policies or procedures so that these technological developments cannot be misused for money laundering and terrorist financing purposes?	YES, NO, N/A
1	9	Has the financial party disseminated the AML legislation and the Financial Intelligence Agency's Instructions to all its employees and collaborators?	YES, NO
1	10	If yes, how (by e-mail, internal circulars, service orders, paper-based documents, etc.)?	*open answer or N/A*
1	11	Has the financial party promoted ongoing training of its personnel also through specific training programs for the prevention and fight against money laundering and terrorist financing?	YES, NO
1	12	If yes, how many internal training courses have been held; and, for each of them, how many employees and collaborators have been taken part in?	*open answer, none or N/A*
1	13	If yes, how many external courses have been attended; for each of them, how many employees and collaborators have taken part in?	*open answer, none or N/A*
1	14	Has the financial party developed and arranged adequate internal controls in order to prevent and counter the involvement in business relationships or transactions which are connected to money laundering or terrorist financing ?	YES, NO

1	15	If yes, how many and what are they? (Briefly describe the types of controls)	*open answer or N/A*
1	16	Is the financial party equipped with IT or telematic devices suitable to ensure timely and confidential receipt of communications from the Agency?	YES, NO
1	17	If yes, what are these instruments?	*open answer or N/A*
1	18	Are the communications from the Agency accessed only by the addressee financial parties?	YES, NO
1	19	Add any additional information, data or observations considered useful by the financial party.	*open answer or none*
		Section 2 ***– Simplified customer due diligence obligations***	*Art. 26 l. 92/2008*
2	1	Has the financial party informed all employees and collaborators performing the specific function of the simplified customer due diligence obligations to be applied in the cases envisaged by Art.26 para.1 letters a) and b)?	YES, NO
2	2	If yes, how (i.e. by internal regulation, internal circular, service order, delivery of the law or Instruction with signature acknowledging receipt, forwarding of the law or Instruction by e-mail, etc.)?	*open answer or N/A*
2	3	Has the financial party adopted specific procedures in order to collect sufficient data and information to establish whether customers fall within the exempted case?	YES, NO
2	4	If yes, what are such procedures?	*open answer or N/A*
2	5	If yes, which data and information have been collected?	*open answer or N/A*

2	6	Add any additional information, data or observations considered useful by the financial party.	*open answer or none*
		Section 3 – ***Customers not physically present***	*Art. 27 l. 92/2008*
3	1	Has the financial party informed all employees and collaborators of the enhanced customer due diligence obligations if customers are not physically present when a business relationship is established or an occasional transaction is executed?	YES, NO
3	2	If yes, how (i.e. by internal regulation, internal circular, service order, delivery of the law or Instruction with signature acknowledging receipt, forwarding of the law or Instruction by e-mail, etc.)?	*open answer or N/A*
3	3	Has the financial party adopted specific procedures in order to take additional measures to prevent the risk?	YES, NO
3	4	If yes, what procedures?	*open answer or N/A*
3	5	Has the financial party ever established business relationships (or carried out occasional transactions) with customers not physically present?	YES, NO
3	6	If yes, how many and what are these relationships?	*open answer or N/A*
3	7	If business relationships have been established or occasional transactions have been executed with/for customers not physically present, which one of the following measures compensating for the higher risk has been adopted:	
3	7.1	ensuring that the first transfer of funds related to the establishment of the business relationship or to the execution of the occasional transaction has been carried out through an account opened in the customer's name with a financial entity referred to in Art. 26 para 1, letters a) and b).	YES, NO, N/A
3	7.2	verifying the identity of the customer through supplementary documents or information in addition to those requested for a customer that is physically present.	YES, NO, N/A

3	7.3	If yes, which ones?	*open answer or N/A*
3	7.4	Supplementary measures have been adopted to verify the documents supplied.	YES, NO, N/A
3	7.5	If said supplementary measures have been adopted, what are such measures?	*open answer or N/A*
3	7.6	A certification regarding the information or documents supplied has been obtained.	YES, NO, N/A
3	7.7	A statement of confirmation by a financial party referred to in article 26, paragraph 1, letters a) and b) that has already fulfilled customer due diligence obligations on the customer in question has been obtained.	YES, NO, N/A
3	8	Has the financial party developed and organised specific internal controls to verify that all employees and collaborators fulfil enhanced customer due diligence obligations when customers are not physically present?	YES, NO
3	9	If yes, how many and what are they? (briefly describe the type of controls)	*open answer or N/A*
3	10	If yes, briefly describe the results of the control activity.	*open answer or N/A*
3	11	Add any additional information, data or observations considered useful by the financial party.	*open answer or none*
		Section 4 ***– Politically Exposed Person (PEP)***	*Art. 27 l. 92/2008*
4	1	Has the financial party informed all employees and collaborators of the enhanced customer due diligence obligations if the customer is a politically exposed person (*PEP*)?	YES, NO
4	2	If yes, how (i.e. by internal regulation, internal circular, service order, delivery of the law or Instruction with signature acknowledging receipt, forwarding of the law or Instruction by e-mail, etc.)?	*open answer or N/A*

4	3	Has the financial party adopted specific procedures in order to establish whether the customer is a politically exposed person (*PEP*)?	YES, NO
4	4	If yes, what are they?	*open answer or N/A*
4	5	How many are and what positions are held by the persons delegated by the Director General or an equivalent figure to authorise the establishment of a business relationship or the execution of an occasional transaction with a PEP?	*open answer or none*
4	6	If the procedures adopted by the financial party have outlined that the customer is a PEP, have specific measures been adopted to establish the origin of the funds used in the business relationship or in the execution of the occasional transaction?	YES, NO, N/A
4	7	If yes, what are they?	*open answer o N/A*
4	8	If the procedures adopted by the financial party have outlined that the customer is a PEP, is the business relationship with the customer subject to ongoing and enhanced control?	SI, NO, N/A
4	9	If yes, how?	*open answer or N/A*
4	10	Have the customers already acquired on the date of entry into force of Law no. 92/2008 been subject to controls in order to establish if the financial party has business relationships with *PEPs*?	YES, NO
4	11	Has the financial party developed and organised specific internal controls to verify that all employees and collaborators fulfil enhanced customer due diligence obligations in case of *PEPs*?	YES, NO
4	12	If yes, how many and what are they? (Briefly describe the type of controls)	*open answer or N/A*
4	13	If yes, briefly describe the results of the control activity.	*open answer or*

			N/A
4	14	Add any additional information, data or observations considered useful by the financial party.	*open answer or none*
		Section 5 ***– Foreign Financial Parties***	*Art. 27 l. 92/2008 - Instruction 2009/01*
5	1	Has the financial party informed all employees and collaborators of the enhanced due diligence obligations which shall be applied if business relationships are established (or occasional transactions are executed) with (for) financial parties located in non-equivalent countries (namely countries which are not included in the list of equivalent countries, approved by Decision of the Congress of State) or financial parties located in Countries, Jurisdictions or Territories subject to strict monitoring under former Instruction no. 2009/01?	YES, NO
5	2	If yes, how (i.e. by internal regulation, internal circular, service order, delivery of the law or Instruction with signature acknowledging receipt, forwarding of the law or Instruction by e-mail, etc.)?	*open answer or N/A*
5	3	Has the financial party adopted specific procedures to collect sufficient data and information to establish whether the customers fall within the cases where enhanced customer due diligence obligations shall be fulfilled?	YES, NO
5	4	If yes, what are these procedures?	*open answer or N/A*
5	5	If yes, what data and information have been collected?	*open answer or N/A*
5	6	Has the financial party made a sort of "screening" of the foreign financial parties with which it has established business relationships in order to assess whether they are located in non-equivalent Countries or in Countries, Jurisdictions or Territories under strict monitoring?	YES, NO
5	7	If yes, when?	*open answer or N/A*

5	8	If said checks have been conducted, how many and what are the relationships which have been demonstrated to fall within such case ? (specify the name of the party, the business activity conducted - banking/financial/fiduciary/etc. – and the State, Country, Jurisdiction or territory to which it belongs).	*open answer or N/A*
5	9	If said checks have been conducted, specify if the following enhanced customer due diligence measures have been taken against such foreign parties:	
5	9.1	Has information been collected in relation to the respondent foreign party, which is sufficient to fully understand the nature of its activities and to establish, on the basis of the information publicly available, its reputation and the quality of supervision to which it is subject?	YES, NO, N/A
5	9.2	If such information has been collected, what kind of information is it and how has it been collected?	*open answer or N/A*
5	9.3	Have the adequacy and effectiveness of controls applied to the respondent party been evaluated in relation to AML/CTF matters?	YES, NO, N/A
5	9.4	If such assessment has been carried out, how has it been implemented and what are the results thereof?	*open answer or N/A*
5	9.5	Has the Director General or a person holding an equivalent position or a delegated person granted the relevant authorisation before establishing the business relationship or carrying out the occasional transaction?	YES, NO, N/A
5	9.6	Has the foreign financial party specified in writing its respective obligations and responsibilities regarding matters of preventing and combating money laundering and terrorist financing?	YES, NO, N/A
5	10	Has the financial party verified whether the foreign financial parties with which it has business relationships, if they are established in non-EU Countries, use so-called “payable-through accounts” referred to in Law no. 92/2008, art. 1, para 1, lett. i)?	YES, NO, N/A
5	11	If yes, how many foreign respondent parties not located in the EU and having established a business relationship with the declaring financial party use payable.-through accounts?	*open answer, none or N/A*

5	12	If the respondent party located in a non EU Country with which the declaring financial party has business relationships uses through-payable accounts, please specify whether the following checks have been conducted:	
5	12.1	Has the respondent party located in a State which is not member of the EU declared to have verified the identity of customers having direct access to payable-through accounts?	YES, NO, N/A
5	12.2	Has the respondent party located in a State which is not member of the EU declared to have performed ongoing customer due diligence?	YES, NO, N/A
5	12.3	Has the respondent party located in a State which is not member of the EU declared to be able to provide relevant customer due diligence data to the financial party, upon request?	YES, NO, N/A
5	13	Has the financial party developed and organised specific internal controls in order to verify whether all employees and collaborators fulfil enhanced customer due diligence obligations in case of foreign financial parties located in non-equivalent Countries or in States under strict monitoring?	YES, NO
5	14	If yes, how many and what are they? (Briefly describe the type of controls)	*open answer or N/A*
5	15	If yes, please briefly describe the results of the control activity.	*open answer or N/A*
5	16	Add any additional information, data or observations considered useful by the financial party.	*open answer or none*
		Section 6 ***- Customers located in Countries, Jurisdictions or territories under strict monitoring***	*Instruction 2009/01*

6	1	Has the financial party informed all employees and collaborators of the enhanced customer due diligence obligations to be applied when business relationships are established (or occasional transactions are carried out) with (for) customers located in Countries, Jurisdictions or territories under strict monitoring by the FATF or the Moneyval (former Instruction no. 2009/01) or when customers request to execute transactions in favour of persons/entities located in such countries or when transactions are received by persons/entities located in such countries?	YES, NO
6	2	If yes, how (i.e. by internal regulation, internal circular, service order, delivery of the law or Instruction with signature acknowledging receipt, forwarding of the text of the law or Instruction by e-mail, etc.)?	*open answer or N/A*
6	3	Has the financial party adopted specific procedures with a view to collecting data and information which are sufficient to establish whether customers(or the parties in favour of which transactions are requested or the parties requesting transactions in favour of the financial party's customers) may fall within the cases in which enhanced customer due diligence obligations shall be fulfilled (Art. 4-5, Instruction 2009/01)?	YES, NO
6	4	If yes, what are these procedures?	*open answer or N/A*
6	5	If yes, what data and information have been collected?	*open answer or N/A*
6	6	Has the financial party carried out an analysis on the existing customers in order to establish whether there are customers located in States under strict monitoring?	YES, NO
6	7	If yes, when?	*open answer or N/A*
6	8	If said checks have been conducted, how many and what are the relationships which have been demonstrated to fall within such case ? (specify the name of the party, the business activity conducted - and the State to which it belongs).	*open answer, none or N/A*

6	9	If said checks have been conducted and there are customers falling within the aforesaid case, have enhanced customer due diligence measures been taken against such foreign parties?	YES, NO, N/A
6	10	If yes, what enhanced customer due diligence measures have been adopted?	*open answer or N/A*
6	11	Has the financial party developed and organised specific internal controls to verify that all employees and collaborators fulfil enhanced customer due diligence obligations when customers are located in Countries, territories or jurisdictions under strict monitoring?	YES, NO
6	12	If yes, how many and what are they? (briefly describe the type of controls)	*open answer or N/A*
6	13	If yes, briefly describe the results of the control activity.	*open answer or N/A*
6	14	Add any additional information, data or observations considered useful by the financial party.	*open answer or none*
		Section 7 ***- Shell Banks***	*Art. 28 l. 92/2008*
7	1	Has the financial party informed all employees and collaborators on the prohibition to operate with shell banks?	YES, NO
7	2	If yes, how (i.e. by internal regulation, internal circular, service order, delivery of the text of the law or Instruction with signature acknowledging receipt, forwarding of the text of the law or Instruction by e-mail, etc.)?	*open answer or N/A*
7	3	Has the financial party adopted measures and/or procedures to collect data and/or information which are sufficient to establish whether the customer is not a shell bank or a foreign party that is known for authorising shell banks to use its accounts?	YES, NO

7	4	If yes, what are they?	*open answer or N/A*
7	5	Has the financial party made a sort of screening of the foreign financial parties with which it has established business relationships or carries out occasional transactions in order to establish if they may be considered shall banks or parties which are known for authorising shell banks to use their own accounts?	YES, NO
7	6	If yes, when?	*open answer or N/A*
7	7	If said checks have been conducted, how many and what are the relationships which have been demonstrated to fall within such case?	*open answer or none*
7	8	If said checks have been conducted and the relationships have been proved to fall within such case, have the existing relationships been closed at the earliest opportunity?	YES, NO, N/A
7	9	Add any additional information, data or observations considered useful by the financial party.	*open answer or none*
		Section 8 ***– Registration and maintenance of documents and information***	*Articles 34-35 l. 92/2008*
8	1	What IT instrument is used to record data and information acquired in order to fulfil customer due diligence obligations?	*open answer or none*
8	2	What IT instrument is used to register and keep the records and registrations of business relationships and occasional transactions?	*open answer or none*
8	3	Have adequate procedures been adopted to comply with the registration time limits envisaged by former Article 34, paragraph 3?	YES, NO
8	4	If yes, what are these procedures?	*open answer or N/A*

8	5	What IT instruments are available to the financial party in order to timely and fully respond to the requests of the Financial Intelligence Agency aimed at establishing whether in the last five years the party has had relationships with certain customers and the nature of such relationships?	*open answer or none*
8	6	Add any additional information, data or observations considered useful by the financial party.	*open answer or none*
		Section 9 ***– Identification and evaluation of critical transactions***	*Instruction 2008/03*
9	1	Has the financial party defined and formalised adequate criteria, in relation to its activity, in order to identify and assess so-called “critical transactions” ?	YES, NO
9	2	Has the document containing such criteria been approved by the administrative body of the financial party?	YES, NO, N/A
9	3	If yes, when?	*open answer or N/A*
9	4	Has the document containing such criteria been transmitted to all employees and collaborators?	YES, NO, N/A
9	5	If yes, how (i.e. by notification, internal regulation, internal circular, service order etc.)?	*open answer or N/A*
9	6	Is the financial party equipped with IT instruments useful to facilitate the identification and assessment of said transactions?	YES, NO
9	7	If yes, what are these instruments?	*open answer or N/A*

9	8	How many critical transactions have been identified and then assessed by using the criteria established and IT devices, where appropriate?	*open answer or none*
9	9	Has the compliance officer prepared a written report on the activity carried out after having assessed the critical transaction identified?	YES, NO, N/A
9	10	If one or more written reports have been prepared on the activity carried out, have they been drawn up on the basis of the template envisaged by Article 5 of Instruction no. 2008/03 and signed by the Compliance Officer?	YES, NO, N/A
9	11	If one or more written reports have been prepared on the activity carried out and they are the results of an internal communication, has a copy thereof been sent to the reporting entities?	YES, NO, N/A
9	12	Has the financial party adopted suitable measures to ensure the highest level of confidentiality of the internal communication received and the content of the report?	YES, NO, N/A
9	13	If yes, what are said measures?	*open answer or N/A*
9	14	If critical transactions have been identified and assessed, how many of them have been reported to the Financial Intelligence Agency?	*open answer or none or N/A*
9	15	If critical transactions have been identified, assessed and reported to the Agency, has a copy of the report of the Compliance Officer been attached thereto?	YES, NO, N/A

9	16	Add any additional information, data or observations considered useful by the financial party.	*open answer or none*
		Section 10 ***– Internal reports and Compliance Officer's activity***	*Artt. 40-42 l. 92/2008*
10	1	Has the financial party issued an internal regulation (or similar document) concerning the modalities through which employees and collaborators forward internal reports to the Compliance Officer?	YES, NO
10	2	If yes, has this document been forwarded to all employees and collaborators?	YES, NO, N/A
10	3	Has the financial party, in any case, defined the procedures to be followed with reference to internal reports, although they have not been formalised yet?	YES, NO
10	4	If yes, what are they?	*open answer or N/A*
10	5	What measures have been adopted to ensure the maximum confidentiality of the identity of the reporting person who has detected the suspicious transaction?	*open answer or none*
10	6	What (IT) instruments are used by the compliance officer or are available to him/her, for the purpose of further analysing internal reports and assessing whether there are reasonable grounds to subsequently forward them to the Agency?	*open answer or none*
10	7	How many internal reports have been received by the compliance officer ?	*open answer or none*
10	8	If the compliance officer has received internal reports, which offices/services have forwarded them (specify the number for each service /office – commercial, cashier, branch director, directorate offices, etc.)	*open answer or N/A*
10	9	If the compliance officer has received internal reports, how many have been filed?	*open answer, none or N/A*

10	10	If the compliance officer has received internal reports, how many have been reported to the Financial Intelligence Agency?	*open answer, none or N/A*
10	11	If the compliance officer has received internal reports, how much time does it take, on an average, to analyse an internal report or how much time passes between the date on which the internal report is forwarded by the reporting entity and the compliance officer's decision to file or forward it to the Agency?	*open answer or N/A*
10	12	Is the compliance officer vested with adequate powers to perform, autonomously and independently, the functions assigned by law?	YES, NO
10	13	Has the compliance officer the power to have access to any information or document without being required to request the authorization?	YES, NO
10	14	If the compliance officer has forwarded reports to the Agency, how many of them have been the result of analysis carried out on his/her own initiative?	*open answer, none or N/A*
10	15	Add any additional information, data or observations considered useful by the financial party.	*open answer or none*
		Section 11 **– *Assessment of the risk to be associated with customers***	*Instruction 2009/03*
11	1	Has the financial party informed all employees and collaborators on the obligations provided for by Instruction no. 2009/03 regarding the assessment of the risk associated with customers, business relationships or occasional transactions?	YES, NO
11	2	If yes, how (i.e. by internal regulation, internal circular, service order, delivery of the text of the law or Instruction with signature acknowledging receipt, forwarding of the text of the law or Instruction by e-mail, etc.)?	*open answer or N/A*
11	3	Has the financial party adopted specific procedures for the purpose of classifying customers according to the different risk levels envisaged by Instruction no. 2009/03?	YES, NO
11	4	If yes, what are they?	*open answer or*

			N/A
11	5	Has the financial party examined the customers that already were acquired on the date of entry into force of Instruction no. 2009/03, according to the criteria established?	YES, NO
11	6	Has the party started reviewing existing customers in order to determine their profile according to the criteria specified in Instruction no. 2009/03?	YES, NO
11	7	If yes, is this activity still underway or has it been concluded?	*open answer or N/A*
11	8	If business relationships have been established (or occasional transactions have been carried out) with HIGH RISK customers, have enhanced customer due diligence measures been taken in relation to them?	YES, NO, N/A
11	9	If business relationships have been established (or occasional transactions have been carried out) with customers associated with MEDIUM, LOW or LIMITED risk, are there any specific procedures or controls to fulfil monitoring and ongoing control obligations every 6 months, one year or two years respectively?	YES, NO, N/A
11	10	If yes, what are these procedures?	*open answer or N/A*
11	11	Has the financial party developed and organised specific internal controls in order to verify that all employees and collaborators fulfil risk profile obligations for new customers?	YES, NO
11	12	If yes, how many are they? (briefly describe the type of controls)	*open answer or N/A*
11	13	If yes, briefly describe the results of the control activity.	*open answer or*

			N/A
11	14	Add any additional information, data or observations considered useful by the financial party.	*open answer or none*
		Section 12 **– *Foreign subsidiaries***	*Art. 45 l. 92/2008*
12	1	Has the financial party foreign subsidiaries ?	YES, NO
12	2	If yes, how many are they and in what countries are they located?	*open answer or N/A*
12	3	If yes, has the financial party adopted specific procedures in order to ensure that its foreign subsidiaries fulfil obligations equivalent to those envisaged by Law no. 92/2008?	YES, NO, N/A
12	4	If yes, what are they?	*open answer or N/A*
12	5	If the legislation of the foreign Country where the subsidiary is located does not provide for equivalent obligations, has the financial party adopted additional measures to address money laundering and terrorist financing risks?	YES, NO, N/A
12	6	If yes, what are they?	*open answer or N/A*
12	7	If the legislation of the foreign Country where the subsidiary is located does not provide for equivalent obligations, has the financial party informed the Financial Intelligence Agency and the Central Bank?	YES, NO, N/A
12	8	Add any additional information, data or observations considered useful by the financial party.	*open answer or none*
		Section 13 **– *Restrictive measures***	*Articles 46-48 l. 92/2008*

13	1	Has the financial party informed the competent personnel on the persons, entities or groups against which the Congress of State has adopted restrictive measures, in compliance with the resolutions of the United Nations Security Council or one of its Committees (anti-terrorism lists), and the consequent reporting obligations under former Article 48?	YES, NO
13	2	If yes, how (i.e. by internal regulation, internal circular, service order, delivery of the text of the law or Instruction with signature acknowledging receipt, forwarding of the text of the law or Instruction by e-mail, etc.)?	*open answer or N/A*
13	3	Has the financial party adopted specific procedures with a view to establishing whether the customer is included in the list of persons, entities or groups against which restrictive measures have been adopted?	YES, NO
13	4	If yes, what are they?	*open answer or N/A*
13	5	Add any additional information, data or observations considered useful by the financial party.	*open answer or none*
		Section 14 (only for parties which operate as "payment service providers ") ***– Electronic transfers of funds***	*Instruction 2008/04*
14	1	Has the financial party informed all employees and collaborators on the obligations envisaged by Financial Intelligence Agency's Instruction no. 2008/04 regarding "special measures for electronic transfers of funds"?	YES, NO
14	2	If yes, how (i.e. by internal regulation, internal circular, service order, delivery of the text of the law or Instruction with signature acknowledging receipt, forwarding of the text of the law or Instruction by e-mail, etc.)?	*open answer or N/A*
14	3	Has the financial party adopted specific procedures to fulfil the different duel diligence and registration obligations enshrined in such Instruction according to the case whether said party operates as a payment service provider of the originator, of the beneficiary or as an intermediate provider?	YES, NO
14	4	If yes, what are they?	*open answer or N/A*

14	5	Are all transfers of funds accompanied by the basic information referred to in Article 2 of said Instruction (taking account of the exemptions and simplifications envisaged by Articles 5-7)?	YES, NO
14	6	Has all information referred to in Article 2 and related to the originator been verified by the payment service provider of the originator through the modalities envisaged by Article 3 of the above-mentioned Instruction (taking account of the exemptions and simplifications laid down by articles 5-7)?	YES, NO
14	7	Has the payment service provider of the beneficiary, with reference to the information regarding the originator, verified that the relevant fields envisaged by the message system have been filled in (taking account of the exemptions and simplifications laid down by articles 5-7)?	YES, NO
14	8	Have there been any cases since the entry into force of the law in which the payment service provider of the beneficiary found that the information regarding the originator was incomplete?	YES, NO
14	9	If yes, has the payment service provider of the beneficiary rejected the transfer of funds and requested, at the same time, in writing the integration of missing information?	YES, NO, N/A
14	10	If yes, have there been any cases in which the request was not satisfied?	YES, NO, N/A
14	11	If the request was not satisfied, were enhanced obligations applied under former Article 27 of Law no. 92/2008?	YES, NO, N/A
14	12	Have there been cases (envisaged by Art. 8 of the aforesaid Instruction) which have entailed the limitation or termination of professional relationships with a specific payment service provider?	YES, NO
14	13	If yes, how many and what are these payment service providers?	*open answer or N/A*
14	14	Add any additional information, data or observations considered useful by the financial party.	*open answer or none*

	Section 15 ***– Cross-border transportation of cash or similar instruments***	*Delegated Decree no. 74/2009*

15	1	Has the financial party informed all employees and collaborators on the modalities to receive the statements and declarations concerning the cross-border transportation of cash or similar instruments under former Article 2 of Delegated Decree no. 74/2009, and on the consequent reporting obligations?	YES, NO
15	2	If yes, how (i.e. by internal regulation, internal circular, service order, delivery of the text of the law or Instruction with signature acknowledging receipt, forwarding of the text of the law or Instruction by e-mail, etc.)?	*open answer or N/A*
15	3	Has the financial party adopted specific procedures to collect declarations, acknowledge receipt thereof to the declarant and forward a copy to the Agency?	YES, NO
15	4	If yes, what are these procedures?	*open answer or N/A*
15	5	Add any additional information, data or observations considered useful by the financial party.	*open answer or none*
		Section 16 ***– Bearer passbooks***	*Art. 31 l. 92/2008*
16	1	Has the financial party informed all employees and collaborators on the obligations envisaged by Art. 31, paragraph 3 of Law no. 92/2008, that is the prohibition to exceed the amount of € 15,000.00 as balance of bearer passbooks issued beginning from 23 September 2008?	YES, NO
16	2	If yes, how (i.e. by internal regulation, internal circular, service order, delivery of the text of the law or Instruction with signature acknowledging receipt, forwarding of the text of the law or Instruction by e-mail, etc.)?	*open answer or N/A*
16	3	Has the financial party adopted specific procedures to verify that the balance of bearer passbooks issued from 23 September 2008 does not exceed the amount of 15,000.00?	YES, NO
16	4	If yes, what are these procedures?	*open answer or N/A*

16	5	Has the financial party informed all employees and collaborators on the obligations envisaged by Art. 31, paragraph 6 of Law no. 92/2008? Namely the CDD obligations – only letters a) e b) – to be fulfilled for each deposit, withdrawal or conversion regarding bearer passbooks?	YES, NO
16	6	If yes, how (i.e. by internal regulation, internal circular, service order, delivery of the text of the law or Instruction with signature acknowledging receipt, forwarding of the text of the law or Instruction by e-mail, etc.)?	*open answer or N/A*
16	7	Has the financial party adopted specific procedures in order to fulfil due diligence obligations under former Art. 31, paragraph 6?	YES, NO
16	8	If yes, what are these procedures?	*open answer or N/A*
16	9	Has the financial party developed and organised specific internal controls to verify that all employees and collaborators fulfil the obligations referred to in former Article 31, paragraphs 3 and 6?	YES, NO
16	10	If yes, how many and what are they? (briefly describe the type of controls)	*open answer or N/A*
16	11	If yes, briefly describe the results of the control activity.	*open answer or N/A*
16	12	Add any additional information, data or observations considered useful by the financial party.	*open answer or none*
		Section 17 ***– Relationships with con Associations and Foundations***	*No ref.*
17	1	Does the Financial Party have (or has established since the entry into force of the law) relationships with Associations?	YES, NO
17	2	If yes, how many are the Associations based on San Marino law and those based on foreign law with which relationships have been established?	*open answer or N/A*

17	3	Does the Financial Party have (or has established since the entry into force of the law) relationships with Foundations?	YES, NO
17	4	If yes, how many are the Foundations based on San Marino law and those based on foreign law with which relationships have been established?	*open answer or N/A*
17	5	In the framework of the relationships, if any, with Associations and/or Foundations, have funds been transferred, since the beginning of the year and in relation to a single relationship, to non-San Marino banks for amounts exceeding € 50,000.00?	YES, NO, N/A
17	6	If yes, specify for each Country the amount transferred (in Euros).	*open answer or N/A*
17	7	Have occasional transactions of fund transfers been carried out to a foreign Country upon request of Associations and/or Foundations?	YES, NO
17	8	If yes, specify for each Country the amount transferred (in Euros).	*open answer or N/A*
17	9	Has the financial party verified that the operation of any Association and/or Foundation in line with its activities?	YES, NO, N/A
17	10	Add any additional information, data or observations considered useful by the financial party.	*open answer or none*

63. Annex 63: Congress of State Decision no. 20 of 14 September 2009 on bank secrecy provision

Decision of the Congress of State on 14 September 2009 on bank secrecy provision

Unofficial translation

State Congress

Sitting of 14 September 2009
Decision no.: 20

Subject: Amendment to Law no. 165 of 17 November 2005 "Law on Companies and Banking, Financial, and Insurance Services"

THE STATE CONGRESS

Having heard the reports by the Secretary of State for Foreign Affairs, Political Affairs, Telecommunications and Transport and the Secretary of State for Finance, the Budget and Relations with the Philatelic and Numismatic State Corporation;

Having considered the commitments undertaken by the Republic of San Marino at international level in order to ensure forms of cooperation in financial and tax matters;

Having regard to the need to implement the necessary legislative measures and actions to ensure an effective exchange of information, as envisaged by the international agreements signed by the Republic of San Marino;

Confirming the commitment to further developing and strengthening international cooperation with a view to countering financial crimes and promoting economic cooperation;

Having regard to Article 36 of Law no. 165 of 17 November 2005 "Law on Companies and Banking, Financial, and Insurance Services",

adopts

the text of the law "Amendments to Law no. 165 of 17 November 2005 - Law on Companies and Banking, Financial, and Insurance Services" referred to in the records of this sitting.

Mandates

the reporting Secretaries of State to initiate the relevant parliamentary procedure.

THE SECRETARY OF STATE

64. Annex 64: Proposal of the draft Law on banking secrecy provision (Amendment of the article 36 of the Law No.165/2005)

Unofficial translation

Amendments to Law no. 165 of 17 November 2005 "Law on companies and banking, financial and insurance services"

Article 1

Article 36, paragraph 1 of Law no. 165 of 17 November 2005 shall be superseded by the following: "1. By "bank secrecy" is meant the prohibition on authorised parties to reveal to third parties, without the written authorisation of the party concerned, the data and information acquired in the exercise of the reserved activities referred to in Attachment 1.".

Article 2

Article 36, paragraph 2 of Law no. 165 of 17 November 2005 shall be superseded by the following: "2. The directors, internal and external auditors, actuaries and employees of any type and grade, including those on placements or in periods of vocational training, outside consultants, company representatives, liquidators, commissioners, members of the oversight committee of the authorised parties will be bound by the obligation of banking secrecy.".

Article 3

Article 36, paragraph 4 of Law no. 165 of 17 November 2005 shall be superseded by the following: "4. The obligation of banking secrecy covering the data and information referred to in paragraph 1 will also be binding on natural persons or the directors, employees, internal and external auditors of the companies to which the authorised parties have outsourced functions and, consequently, disclosed such data and information.".

Article 4

Article 36, paragraph 5 of Law no. 165 of 17 November 2005 shall be superseded by the following: "5. Banking secrecy may not be evoked against the following parties in the exercise of their public functions:

a) the judicial criminal authority;

b) the Central Bank of the Republic of San Marino;

c) the Financial Intelligence Agency;

d) the Tax Office;

e) the Office for Control and Supervision of the economic activities and the Central Liaison Office;

f) the other San Marino public bodies and offices responsible for the direct exchange of information with foreign counterparts in accordance with the International Agreements in force.".

Article 5

Article 36, paragraph 6 of Law no. 165 of 17 November 2005 shall be superseded by the following: "6. No breach of banking secrecy will be deemed to have occurred if:

a) communication to third parties is necessary in order to fulfil obligations arising from a contract to which the interested person is a party or in order to comply, before the conclusion of the contract, with that person's specific, express requests;

b) communication to third parties takes place in the context of a litigation between the interested person and the authorised party. In this case, communication to third parties may regard any relationship between the parties, even if it is not the subject-matter of the dispute;

c) communication to third parties takes place in the context of a litigation for the dissolution of common property between spouses, in order to acquire information necessary to liquidate the credits deriving from the community of the residual part.

d) communication is being made to the parent company, whether a San Marino or a foreign one, and is directed to comply with the rules and provisions concerning the consolidated supervision referred to in Part II, Title I, Chapter III of this Law;

e) communication is being made to parties carrying out the reserved activity referred to in section H of Attachment 1, who are so authorised according to the present law, and its subject is the information strictly necessary in arriving at a proper assessment of the risks and to fulfil obligations entered into in the exercise of that reserved activity;

f) communication is directed towards the performance of the services described in articles 50 and 51 and complies with the provisions of those articles.".

Article 6

Article 36, paragraph 7 of Law no. 165 of 17 November 2005 shall be superseded by the following:
"7. In the event of the decease of the party concerned or the opening of insolvency or interdictory or disqualification proceedings against him, the heir, receiver in insolvency, tutor and guardian respectively, together with those persons commissioned to draw up an inventory of the assets of the incompetent or disqualified party, may obtain the data and information covered by banking secrecy, also covering the period prior to the death or judicial measure by which they have been appointed.".

65. Annex 65: Congress of State Decision no. 2805 of 14 September 2009 on bearer passbooks

Unofficial translation
State Congress

Sitting of 14 September 2009
Decision no.: 2
Pratica n.2805

Subject: Project of Law: DISPOSITION RELATING TO BEARER PASSBOOKS

THE STATE CONGRESS

Having heard the reports by the Secretary of State for Foreign Affairs, Political Affairs, Telecommunications and Transport and the Secretary of State for Finance, the Budget and Relations with the Philatelic and Numismatic State Corporation on the closure of bearer passbooks and on recommendations of the Moneyval experts;

Having heard the report by the Secretary of State for Justice, Information and Research on the adoption of legislative acts that will permit San Marino to comply with recommendations of international organizations (FATF-OCSE and Moneyval Council of Europe;

Reiterating the efforts to continue and strengthening the international cooperation for contrasting money laundering and terrorism and to guarantee the national and international security and the integrity and solidity of the San Marino economic and financial system;

Read the article 31 of the Law No.92 of 17 June 2008 "Provisions on preventing and combating money laundering and terrorist financing";

Read the Delegate Decree 31 October 2008 No.136 "Transitory regulations relating to bearer passbooks";

Considering the necessity to modify the disposition already adopted on bearer passbooks,

adopts

the text of the law "disposition relating to bearer passbooks" referred to in the records of this sitting.

Mandates

the reporting Secretaries of State to initiate the relevant parliamentary procedure.

THE SECRETARY OF STATE

66. Annex 66: Law Decree no. 136 of 22 September 2009 on bearer passbooks

Courtesy Translation

REPUBBLIC OF SAN MARINO

LAW – DECREE no.136 of 22 September 2009

WE THE CAPTAINS REGENT
of the Most Serene Republic of San Marino

Having regard to the conditions of necessity and urgency referred to in Article 2, paragraph 2, point b) of Constitutional Law no. 183 of 15 December 2005 and in Article 12 of Qualified Law no. 184 of 12 December 2005 and precisely:

- *the need to strengthen the safety and soundness of San Marino economic and financial system and international cooperation provided by the Republic of San Marino in combating money laundering and terrorist financing, as well as in protecting national and international security;*
- *the urgency to implement immediately the relevant rules and provisions, also in view of the forthcoming assessment of San Marino banking and financial system by the Moneyval Assembly ;*

Having regard to Decision no. 1 of the State Congress adopted in its sitting of 22 September 2009;
Having regard to Article 5, paragraph 2 of Constitutional Law no. 185/2005 and Articles 9 and 10, paragraph 2 of Qualified Law no. 186/2005;
Promulgate and order the publication of the following decree-law:

URGENT PROVISIONS ON BEARER PASSBOOKS

Article 1

1. As from the entry into force of this law-decree, new bearer passbooks shall no longer be issued.

Article 2

1. All bearer passbooks, regardless of their balance, shall be closed or converted to nominative accounts by 30 June 2010. In this regard, the provisions set forth in Decree no.136 of 31 October 2008 shall apply.

Article 3

1. As from the entry into force of this law-decree, no deposits on bearer passbooks shall be allowed.

2. Without prejudice to Article 2, bearer passbooks shall be closed or converted to nominative accounts when the first withdrawal transaction is carried out. On that occasion customer due diligence requirements, referred to in Articles 21 and 22 of Law no.92 of 17 June 2008, shall be fulfilled.

Article 4

1. Withdrawals, closure or conversion of bearer passbooks of over € 15,000 shall be reported to the Compliance Officer as potential suspicious transactions, also for the purposes referred to in Article 36 of Law n.92 of 17 June 2008.

Article 5

1. The Financial Intelligence Agency shall carry out specific on-site inspections aimed at verifying the proper fulfilment of the obligations set forth in this law-decree.

Article 6

1. Any violation of the obligations envisaged by paragraph 2 of Article 3 of this decree shall be punished under Article 61 of Law no. 92 of 17 June 2008, as amended by Law no. 73 of 19 June 2009.

2. Any other violation of the obligations set forth in this law-decree shall be punished by terms of an administrative sanction from € 10,000 to € 50,000 imposed by the Financial Intelligence Agency.

Article 7

1. Any provision in contrast with this law-decree is repealed.

Done at Our Residence, on 22 September 2009

THE CAPTAINS REGENT
Massimo Cenci – Oscar Mina

THE SECRETARY OF STATE
FOR INTERNAL AFFAIRS
Valeria Ciavatta

67. Annex 67: Additional information on recent measures

San Marino Authorities give notice of the most recent measures adopted by the Country.

Concerning the agreements on sharing of tax information according to the new OECD standards:
To date San Marino has

- Finalized and signed:
  - 3 DTAs (Belgium, Hungary, Malta)
  - 3 TIEAs (Faeroes Islands, Monaco, Samoa)
- Initialled and will sign very soon:
  - 7 DTAs [Austria (to be signed on 18/09/09), Greece, Italy, Liechtenstein (to be signed on 23/09/09), Luxembourg (to be signed on 18/09/09), Libya and Romania]
  - 5 TIEAs [Andorra (to be signed on 21/09/09), France (to be signed on 22/09/2009), Greenland (signing expected next week), Iceland and Norway]

San Marino has currently close contacts with Azerbaijan, Croatia, Cyprus, Malaysia and Portugal to conclude or update DTAs, in line with OECD standards.
San Marino is also in contact with Argentina, Australia, Bahamas, Denmark, Finland, Germany, Poland, Spain, Sweden and United Kingdom to conclude TIEAs.

4 TIEAs have been finalized and approved by the Government of San Marino, on the basis of the proposals received from the following countries: Cayman Islands, Gibraltar, Guernsey and Jersey. These countries need a letter of entrustment by the Government of the United Kingdom in order to be authorized to sign the above mentioned TIEAs.