

LAW No. 28 of 26 February 2004

REPUBLIC OF SAN MARINO

PROVISIONS ON ANTI-TERRORISM, ANTI-MONEY LAUNDERING AND ANTI-INSIDER TRADING

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

Promulgate and order the publication of this Law approved by the Great and General Council during its sitting of 26 February 2004.

TITLE I

Provisions to counter terrorism and organised crime

Article 1

The following article is added to the Criminal Code:

“Art. 337 *bis*

Associations for the purpose of terrorism or subversion of the constitutional order

1. Anyone promoting, establishing, organising, directing or financing associations that aim at perpetrating violent acts for the purpose of terrorism or subversion of the constitutional order against public or private institutions or bodies either of the Republic, or of a foreign State or international, shall be punished by terms of sixth-degree imprisonment and fourth-degree disqualification from public offices and political rights.
2. Anyone participating in such associations shall be punished by terms of fourth-degree imprisonment and third-degree disqualification from public offices and political rights.
3. Except for cases of participation and support, anyone providing participants in the associations referred to in the preceding paragraphs with assistance or aid in any form shall be punished by terms of second-degree imprisonment and second-degree disqualification from public offices and political rights.
4. The person committing the fact referred to in paragraph 3 above in favour of a close relative shall not be punishable.

Article 2

The first paragraph of Article 6 of the Criminal Code is superseded by the following:

“Anyone committing any of the crimes covered in articles 170, 185, 196, 284, 285, 305, 305 *bis*, 324, 325, 326, 328, 329, 331, 332, 333, 334, 337, 337 *bis*, 338, 339, 341, 342, 343, 344, 346, 347, 400, 401, 403, 403 *bis*, 405 outside the territory of the State shall be subject to the provisions of this Code.”

Article 3

The following period is added to the third paragraph of Article 8 of the Criminal Code:

“In no case shall the crimes committed for the purpose of terrorism or subversion of the constitutional order be deemed political crimes.”

Article 4

The following point is added to the first paragraph of Article 90 of the Criminal Code:

“4) for the purpose of terrorism or subversion of the constitutional order.”

Article 5

The third and fourth paragraphs of Article 147 of the Criminal Code are superseded by the following:

“In case of conviction, the confiscation of the instrumentalities that served or were destined to commit the crime referred to in Article 199 *bis*, or crimes for the purpose of terrorism or subversion of the constitutional order, and of the things being the price, product or profit thereof, shall always be mandatory. Where confiscation is not possible, the judge shall impose an obligation to pay a sum of money equal to the value of the instrumentalities and things referred to above.

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

Article 6

For financial investigations in respect of the crime covered by Article 337 *bis*, the Law Commissioner shall avail himself of the Supervision Department of the Central Bank of the Republic of San Marino.

TITLE II

Additions to Law No. 123 of 15 December 1998

Article 7

Article 199 *bis* of the Criminal Code is superseded by the following:

“Article 199 *bis*
Money laundering

1. Anyone who, except for cases of conspiracy, conceals or disguises or transfers money, or assists or facilitates others in concealing or disguising or transferring money, for the purpose of concealing its true origin, knowing that such money is proceeds obtained from a felony offence, commits the felony of money laundering.
2. Equally, anyone who uses or assists or facilitates the use of money in economic or financial activities, knowing that such money is proceeds obtained through the commission of a felony offence, commits the felony of money laundering.
3. The provisions of this Article shall also apply where the felon, from whom the money derives, is not indictable or punishable, or failing a procedural requirement in respect of such felony offence. Where the predicate offence has been committed abroad, the felony shall nonetheless be criminally

prosecutable under the San Marino law and relevant procedural rules.

4. Any property, as well as legal documents, acts or instruments evidencing title to or interest in such property shall be assimilated to money.”

Article 8

The following paragraphs are added to Article 8 of Law No. 123 of 15 December 1998:

“3. The customer identification, record maintenance and reporting requirements set forth in this Law shall equally apply to Post Offices and to the following activities which, in order to be carried on, remain subject to being duly licensed, authorised, registered, or incorporated:

- a) credit recovery on behalf of third parties;
- b) financial promoters and insurance promoters;
- c) insurance agencies;
- d) real estate agencies;
- e) running of gambling houses and casinos;
- f) custody and transport of cash, securities or values by means of “special security guards”;
- g) management of auction houses or art galleries;
- h) trade in antiques;
- i) trade in, including export and import of, gold for industrial or investment purposes;
- j) manufacturing, mediation of and trade in, including export and import of, precious stones and objects;
- k) as well as to the following natural or legal persons when they perform their professional activities such as:
 - (1) auditors, external accountants and tax advisors;
 - (2) notaries, attorneys and other independent legal and commercial professionals when they participate, whether:
 - a. by assisting in the planning or execution of transactions for their client concerning the:
 - (i) buying and selling of real property or business, industrial, and service entities;
 - (ii) managing of client money, securities or other assets;
 - (iii) opening or management of bank accounts, bearer securities and securities accounts;
 - (iv) organisation of contributions necessary for the creation, operation or management of companies;
 - (v) creation, operation or management of companies, trusts or similar structures;
 - b. or by acting on behalf of and for their client in any financial or real estate transaction.

4. The persons referred to in paragraph 3.k)(1) and (2), shall not be subject to the obligations set forth in the same paragraph with regard to information they receive from or obtain on one of their clients in the course of performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

5. The Supervision Department of the Central Bank of the Republic of San Marino shall issue provisions for the implementation of the customer identification, record maintenance and reporting requirements by the persons referred to in paragraph 3 above.”

Article 9

Article 9.b) of Law No. 123 of 15 December 1998 is superseded by the following:

“b) violation of the customer identification and/or transaction recording obligation by the staff of credit and financial institutions, by the employees of Post Offices, or by the persons referred to in Article 8, paragraph 3.”

TITLE III

Provisions on insider trading and market abuse

Article 10

The following Article is added to the Criminal Code:

“Article 305 bis Misuse of privileged information

1. Anyone holding privileged information by reason of his participation in the capital of a company or by reason of his function, even public, or profession or office who:

- a) buys, sells or conducts other transactions – even through a third party – involving financial instruments by using such privileged information; or
- b) without justified reason, communicates such privileged information, or on the basis of such information advises others to conduct any of the transactions indicated in a) above

shall be punished by terms of second-degree imprisonment, third-degree daily fine and second-degree disqualification from public offices and civil rights.

2. Anyone who, having obtained privileged information either directly or indirectly from any of the persons referred to in paragraph 1, commits any of the facts described in paragraph 1. a), shall be punished by terms of the same penalty.

3. For the purpose of implementing the provisions of paragraphs 1 and 2, privileged information means specific information the content of which is well-defined, not available to the public and concerning financial instruments or issuers of financial instruments which, if made public, would be capable of influencing prices in a significant way.

4. In case of conviction or enforcement of punishment, the confiscation of the instrumentalities, including financial ones, that were used to commit the felony and of the things being the profit thereof, shall always be mandatory, except where such instrumentalities belong to a person not involved in the felony.

5. The provisions of this article shall not apply to transactions carried out on behalf of the State on grounds of economic policy.

Article 11

1. Penalties may be increased by one degree when the facts are committed in the exercise of a business or professional activity subject to authorisation and licensing by the competent public authorities.

2. Penalties may be decreased by one degree by reason of a lower level of wrongfulness of the fact or of the small amount of profits derived.

Article 12

Scope of application

1. The provisions referred to in Articles 305 and 305 *bis* of the Criminal Code shall apply to facts concerning financial instruments negotiated or negotiable on regulated markets of either San Marino or countries of the European Union.

Article 13

Assessment activities

1. The Supervision Department of the Central Bank of the Republic of San Marino shall assess the violations by exercising the powers vested in it by the law in force in respect of all the persons subject to its supervision.

2. For the same purpose, the Supervision Department of the Central Bank of the Republic of San Marino may also:

- a) request information, data or documents from anyone deemed to be informed on the facts, setting the term for disclosure;
- b) hear anyone deemed to be informed on the facts, keeping a verbatim record of any such hearing;
- c) request the cooperation of the law enforcement and the offices of the Public Administration, including the tax administration.

Article 14

Notitia criminis

The Law Commissioner, upon receipt of a *notitia criminis* concerning any of the crimes set forth in Articles 305 and 305 *bis* of the Criminal Code shall avail himself of the Supervision Department of the Central Bank of the Republic of San Marino.

TITLE IV

Special investigation provisions

Article 15

1. Within operations of an investigative nature aimed at identifying and suppressing the felonies referred to in Articles 199 *bis*, 207 and 337 *bis* of the Criminal Code and at acquiring relevant evidence, the Law Commissioner may authorise special agents of the Police Forces to conduct undercover operations, intervene in intermediation activities, simulate the purchasing of goods, materials and things liable to generate illicit proceeds, and take part in any initiative aimed at suppressing the felonies considered in this paragraph.

2. With regard to the acquisition of evidence by means of wire interception and phone tapping, including both wire and mobile telephones, the Congress of State shall submit, within twelve months from the entry into force of this Law, an appropriate draft bill regulating such investigative techniques and providing for relevant procedures.

3. In the cases referred to in paragraph 1 above, the Police Forces shall communicate immediately and solely to the Law Commissioner the outcome of the activities performed. They shall obtain neither copies nor duplicates of the acts concerning such activities, unless expressly authorised to do so by the Law Commissioner. The findings of any investigation under paragraph 1 concerning third parties or parties not involved in the facts under investigation shall be destroyed as soon as their non-involvement is proven. The infringement of these provisions or the dissemination of information gathered in conducting the operations under paragraph 1 shall be punished by terms of second-degree imprisonment together with second-degree disqualification from public offices and political rights.
4. The Law Commissioner may postpone the validation of seizure until the conclusion of the investigation, or delay the issue of preventive detention orders as long as the acquisition of relevant evidence is necessary.
5. Evidence acquired under the provisions of this Article may be used in court proceedings concerning offences connected to the felonies considered in paragraph 1 above.

Article 16

Within operations of an investigative nature aimed at identifying and suppressing the felonies referred to in Articles 199 *bis*, 207 and 337 *bis* of the Criminal Code and at acquiring relevant evidence, the Supervision Department of the Central Bank of the Republic of San Marino may, in case of serious and converging circumstantial evidence, temporarily block or freeze the capitals or other financial resources or assets, as well as any account or business relationship held or maintained with the San Marino banking and financial intermediaries under Law No. 21 of 12 February 1986 and subsequent amendments and Law No. 24 of 25 February 1986. Such temporary blocking or freezing shall be notified within 48 hours to the Law Commissioner who, in turn, shall either lift the provisional measure or order seizure as a precautionary measure within the following 96 hours. Within the same hours the Law Commissioner's order shall be notified to the intermediary concerned and to the Supervision Department of the Central Bank of the Republic of San Marino. Non compliance with the terms above shall make the measure ineffective.

Article 17

The Supervision Department of the Central Bank of the Republic of San Marino shall conduct financial investigations also with the cooperation of the Police Forces – such cooperation being subject to the prior authorisation of the Law Commissioner – who shall report directly to the Supervision Department of the Central Bank of the Republic of San Marino. Where the reported facts have been found such as to potentially constitute a felony under this Law or under Article 207 of the Criminal Code, the Supervision Department of the Central Bank of the Republic of San Marino shall, in turn, report them to the Single Court. Reported facts which have not been found to potentially constitute a felony under this Law or under Article 207 of the Criminal Code shall be closed directly by the Supervision Department of the Central Bank of the Republic of San Marino.

Article 18

Article 3 and the second paragraph of Article 8 of Law No. 123 of 15 December 1998 are repealed.

Article 19

Entry into force

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

Done at Our Residence on 2 March 2004