



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

*Hereby promulgate and order the publication of the following Law, approved by the
Great and General Council during its sitting of 26 February 2004.*

TITLE I

Provisions on anti-terrorism and anti-organised crime

Art. 1

1. The following Article shall be added to the Criminal Code:

"Art. 337 bis

Associations with purposes of terrorism or subversion of the constitutional order

1. Anyone promoting, establishing, organising, directing or financing associations that aim at perpetrating violent acts for purposes of terrorism or subversion of the constitutional order, against public or private institutions or bodies of the Republic, of a foreign State or international public or private institutions or bodies 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 with fourth-degree imprisonment and third-degree disqualification from public offices and political rights.

3. Except for cases of participation and aiding and abetting, 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 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 is not punishable."

Art. 2

1. The first paragraph of Article 6 of the Criminal Code shall be replaced by the following:

"The provisions of this Code shall apply to anyone committing, outside the territory of the State, one of the criminal offences referred to 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."

Art. 3

1. The following sentence shall be added to paragraph 3 of Article 8 of the Criminal Code:

"Under no circumstances shall the criminal offences committed for purposes of terrorism or subversion of the constitutional order be considered political."

Art. 4

1. The following point shall be added to the first paragraph of Article 90 of the Criminal Code:

"4) for purposes of terrorism or subversion of the constitutional order."

Art. 5

1. Paragraphs 3 and 4 of Article 147 of the Criminal Code shall be replaced by the following:

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

Confiscated properties or equivalent sums shall be allocated to the State budget or, where appropriate, destroyed."

Art. 6

1. For financial investigations concerning the criminal offences referred to in Article 337 bis of the Criminal Code, the Law Commissioner shall resort to the Supervisory Department of the Central Bank of the Republic of San Marino.

TITLE II

Integrations to Law no. 123 of 15 December 1998

Art. 7

1. Article 199 bis of the Criminal Code shall be replaced by the following Article:

"Article 199 bis

Money laundering

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

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

3. The provisions of this Article also apply when the criminal offender from whom the proceeds were received is not indictable or punishable, or failing any of the conditions for the criminal offence to be proceeded against. Where the predicate offence was committed abroad, it shall be criminally prosecutable and punishable also in San Marino legal system.

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

Art. 8

1. The following paragraphs shall be added to Article 8 of Law no. 123 of 15 December 1998:

"3. The identification, registration and reporting requirements referred to in this Law shall also apply to Post Offices and to the following activities, the operation of which shall continue to be subject to the holding of licenses, authorisations and entries in registers:

- a) credit recovery on behalf of third parties;
- b) financial and insurance promoters;
- c) insurance agencies;
- d) real estate brokerage agencies;
- e) operation of casinos and games of chance;
- f) custody and transport of cash, securities or values by means of "special security guards";
- g) operation of auction houses or art galleries;
- h) trade in antiques;
- i) trade, including export and import, in gold for industrial or investment purposes;
- j) manufacture, brokerage and trade, including export and import, of precious objects and stones;
- k) as well as to the following legal or natural persons when acting in the exercise of their professional activity:

- 1. auditors, external accountants and tax consultants;

- 2. notaries, lawyers and other legal and business professionals, when providing their services:

- a. by assisting their customers in the planning or implementation of operations relating to:

- i) the purchase and sale of real estate or commercial, industrial and service businesses;

- ii) the management of customers' money, financial instruments or other assets;

- iii) the opening or management of bank accounts, bearer instruments and securities accounts;

- iv) the organisation of contributions necessary for the establishment, management or administration of companies;

- v) the establishment, management or administration of companies, fiduciary mandates or the like;

- b. by acting in the name and on behalf of their customer in any financial or real estate transaction.

4. The parties referred to in k.1) and k.2) of the same paragraph shall not be required to comply with the requirements envisaged in the third paragraph with respect to the information they receive by, or obtain on their customers while defending or representing them during judicial proceedings or in relation to such proceedings, including advice on the possibility to initiate or avoid proceedings, where such information is received or obtained before, during or after such proceedings.

5. The Supervisory Department of the Central Bank of the Republic of San Marino shall issue provisions implementing the identification, registration and reporting requirements for the parties referred to in paragraph 3 above."

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Art. 9

1. Letter b) of Article 9 of Law no. 123 of 15 December 1998 shall be replaced by the following:

"b) violation of identification and/or registration requirements by the personnel of the credit institution, the personnel of the financial company, the personnel of Post Offices or by the other parties referred to in paragraph 3 of Article 8."

TITLE III

Provisions on insider trading and market manipulation concerning financial instruments

Art. 10

1. The following Article shall be added to the Criminal Code:

"Art. 305 bis

Insider trading

1. Second-degree imprisonment, third-degree daily fine and second-degree disqualification from public offices and civil rights shall be applied to anyone who, possessing inside information - being a company shareholder, performing a function, including a public one, exercising a profession or holding an office:

a) buys, sells or carries out other operations concerning financial instruments, including through third parties, by using such information;

b) without any justified reason, discloses the information or advises others, on the basis of such information, to carry out any of the operations referred to in letter a).

2. The same punishment shall also be imposed on anyone who, having directly or indirectly obtained inside information from the parties referred to in paragraph 1, commits any of the acts referred to in letter a) of said paragraph.

3. For the purposes of applying the provisions of paragraphs 1 and 2, inside information shall mean specific information having a precise content concerning financial instruments or issuers of financial instruments, which has not been made public and which, if made public, would be likely to significantly influence the price.

4. In case of conviction or imposition of the punishment, the confiscation of the instrumentalities, including financial ones, that were used to commit the crime and of the assets constituting the profit thereof shall always be ordered, except where they belong to a person not involved in the crime.

5. The provisions of this Article shall not apply to operations carried out on behalf of the State for reasons related to economic policy."

Art. 11

1. The punishments may be increased by one degree when the acts have been committed in the exercise of a professional business activity subject to an authorisation or qualification granted by the competent public authorities.

2. They may be reduced by one degree if the seriousness of act committed or the extent of the profit derived therefrom are low.

Art. 12

(Scope of application)

1. The provisions of Articles 305 and 305 bis of the Criminal Code shall apply to acts concerning financial instruments traded or admitted to trading on regulated markets in San Marino or in the countries of the European Union.

Art. 13

(Investigation activities)

1. The Supervisory Department of the Central Bank of the Republic of San Marino shall carry out investigation activities concerning the violations using the powers conferred on it by the legislation with regard to the parties subject to its supervision.

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

- a) request information, data or documents from any person who appears to be informed of the facts, setting a time-limit for the disclosure of such information;
- b) hear any person who appears to be informed of the facts and draw up a report thereof;
- c) resort to the collaboration of law enforcement agencies and Public Administration Offices, including tax administration.

Art. 14

(Notitia criminis)

1. When the Law Commissioner becomes aware of any of the crimes provided for in Articles 305 and 305 bis of the Criminal Code, he/she shall resort to the Supervisory Department of the Central Bank of the Republic of San Marino.

TITLE IV

Special investigation provisions

Art. 15

1. In the context of investigative operations aimed at identifying and suppressing the crimes 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 crimes envisaged in this paragraph.

2. With regard to the acquisition of evidence by means of interception of communications on telematic and telephone networks, both fixed and mobile, the Congress of State shall submit, within twelve months from the entry into force of this Law, an appropriate draft law regulating such investigative techniques and providing for the 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 investigative operation 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 with second-degree imprisonment, together with second-degree disqualification from public offices and political rights.

4. The Law Commissioner may postpone the validation of the 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 with those considered in paragraph 1 above.

Art. 16

1. In the context of the investigative operations aimed at identifying and repressing the offences provided for in Articles 199 bis, 207 and 337 bis of the Criminal Code and at obtaining relevant evidence, the Supervisory Department of the Central Bank of the Republic of San Marino may, in case of serious and consistent evidence, block or temporarily freeze the funds or other financial resources or assets deposited with San Marino banking and financial intermediaries pursuant to Law no. 21 of 12 February 1986 and subsequent amendments and Law no. 24 of 25 February 1986, as well as any relationship or account held with the same intermediaries. Within forty-eight hours, the above-mentioned blocking or temporary freezing measures shall be transmitted to the Law Commissioner who, within the following ninety-six hours, if the conditions are met, shall validate them by ordering the lifting of the block or temporary freezing or by ordering the adoption of the precautionary measure of seizure. Within the same period, the measure adopted by the Law Commissioner shall be notified to the intermediary concerned and to the Supervisory Department of the Central Bank of the Republic of San Marino. The deadline referred to above shall be complied with, under penalty of nullity of the measure.

Art. 17

Subject to prior authorisation of the Law Commissioner, the Supervisory Department of the Central Bank of the Republic of San Marino shall conduct financial investigations also in cooperation with the police forces, which shall report directly to the Supervisory Department of the Central Bank of the Republic of San Marino. Whenever the latter identifies facts that might constitute a criminal offence under this Law and Article 207 of the Criminal Code, it shall report them to the Single Court. In case of reports for which no facts have been found that could constitute a crime pursuant to the aforementioned Law and Article 207 of the Criminal Code, the relevant dossier shall be filed directly by the Supervisory Department of the Central Bank of the Republic of San Marino.

Art. 18

Articles 3 and 8, second paragraph, of Law no. 123 of 15 December 1998 shall be repealed.

Art. 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 2004/1703 since the Foundation of the Republic.

The Captains Regents

Giovanni Lonfernini - Valeria Ciavatta