



# REPUBLIC OF SAN MARINO

The Italian text shall be legally binding

DECREE LAW no. 187 of 26 November 2010  
(*Ratifying Decree Law no. 181 of 11 November 2010*)

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

*Having regard to Decree Law no. 181 of 11 November 2010 “Urgent provisions amending the legislation on the prevention and combating of money laundering and terrorist financing”, promulgated:*

*Having regard to the conditions of need and urgency referred to in Article 2, paragraph 2, letter b) of Constitutional Law no. 183 of 15 December 2005 and in Article 12 of Qualified Law no. 184 of 12 December 2005 and, in particular, the need and urgency to make some amendments to Law no. 92 of 17 June 2008 as well as to the amending and enforcement provisions of said Law and any other directly or indirectly related law, also in the light of the recent guidance given by competent international bodies;*

*Having regard to Congress of State Decision no. 20 adopted in its sitting of 8 November 2010;*

*Having regard to the amendments made to the above-mentioned Decree by the Great and General Council in its sitting of 24 November 2010 at the time of ratifying said Decree;*

*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 Decree Law no. 181 of 11 November 2010 as modified following the amendments approved by the Great and General Council at the time of ratifying said Decree:*

## **URGENT PROVISIONS AMENDING THE LEGISLATION ON THE PREVENTION AND COMBATING OF MONEY LAUNDERING AND TERRORIST FINANCING**

### **TITLE I**

### **ADAPTATION OF NATIONAL LEGISLATION TO THE CONVENTIONS AND INTERNATIONAL STANDARDS FOR THE PREVENTION AND COMBATING OF MONEY LAUNDERING AND TERRORIST FINANCING**

#### **Art. 1**

1. Article 1, paragraph 1, letter b) of Law no. 92 of 17 June 2008 is amended as follows:

“b) “Public administrations”: Secretariats of State (Ministries), the State, Departments, public bodies, state corporations, public administration offices;”.

## **Art. 2**

1. After letter g) of paragraph 1 of Article 4 of Law no. 92 of 17 June 2008, the following sentence is added:

“h) monitoring financial activities carried out on a limited basis, which are not required to fulfil the obligations laid down in this Law, under a specific legal provision.”.

## **Art. 3**

1. Article 12, paragraph 1 of Law no. 92 of 17 June 2008 is amended as follows:

“1. The Agency shall also cooperate by exchanging information with the Police Authority and the National Central Bureau of INTERPOL, by signing ad-hoc memorandums of understanding.”.

## **Art. 4**

1. Article 12, paragraph 7 of Law no. 92 of 17 June 2008, introduced by Article 2 of Decree Law no. 134 of 26 July 2010, is amended as follows:

“7. For the purposes of this Law, the Police Authority shall cooperate, also by exchanging information with foreign counterparts, on the basis of specific cooperation agreements. The Police Authority may also exchange information through the National Central Bureau of INTERPOL.”.

## **Art. 5**

1. Article 13, paragraph 1 of Law no. 92 of 17 June 2008 is amended as follows:

“1. Professional Associations, in the exercise of their functions assigned by their respective memorandums of association, shall promote compliance of their members with the requirements prescribed by this Law.”.

## **Art. 6**

1. Paragraph 3 of Article 14 of Law no. 92 of 17 June 2008 is replaced by the following:

“3. The Agency shall cooperate with the Central Bank, also by exchanging information, on the basis of ad-hoc memorandums of understanding”.

## **Art. 7**

1. Article 15 bis of Law no. 92 of 17 June 2008, introduced by Article 4 of Decree Law no. 134 of 26 July 2010, is replaced by the following:

“Art. 15 – bis  
(*Technical Commission for National Coordination*)

1. The Technical Commission for National Coordination shall be established. Such Commission shall be composed of:

- a) the Magistrate appointed by the Judicial Council, who shall preside over the meetings of the Commission;
- b) the Head Magistrate of the Single Court;
- c) the Director and the Vice Director of the Financial Intelligence Agency;

- d) a member of the Supervision Committee of the Central Bank;
  - e) a representative of the On-Site Inspection Service of the Central Bank;
  - f) the Commanders of the Police Forces;
  - g) two members of the Police Forces responsible for combating money laundering and terrorist financing;
  - h) a representative of the Secretariats of State for Foreign Affairs, Finance and Justice when the Commission meets to perform the tasks referred to in letter b) of paragraph 3 hereunder.
2. The Commission shall meet periodically, upon request of the President or of another member. A verbatim record of the meetings shall be duly taken.
3. The Commission shall perform the following tasks:
- a) coordinating the activity of combating money laundering and terrorist financing carried out by authorities;
  - b) reporting to the Credit and Savings Committee referred to in Article 48, paragraph 4 of Law no. 96 of 29 June 2005 on the tasks performed;
  - c) proposing to the Credit and Savings Committee any useful initiative aimed at effectively preventing and combating money laundering and terrorist financing;
4. According to the items on the agenda, the Commission may invite other representatives of Public Authorities or Offices to attend the meetings.”.

### **Art. 8**

1. Article 19, paragraph 1 of Law no. 92 of 17 June 2008, as amended by Article 6 of Decree Law no. 134 of 26 July 2010, is replaced by the following:
- “1. Non-financial parties shall mean parties carrying out the following activities:
- a) professional office of the trustee in conformity with the trust legislation;
  - b) assistance and advice concerning investment services;
  - c) assistance and advice on administrative, tax, financial and commercial matters;
  - d) credit mediation services;
  - e) real estate mediation services;
  - f) running of gambling houses and games of chance as set forth in Law no. 67 of 25 July 2000 and subsequent amendments;
  - g) offer of games, betting or contests with prizes in money through the Internet and other electronic or telecommunication networks;
  - h) custody and transport of cash, securities or values;
  - i) management of auction houses or art galleries;
  - j) trade in antiques;
  - k) purchase of unrefined gold;
  - l) manufacturing, mediation and trade in precious stones and metals, including export and import thereof;
  - m) selling or rental of registered movable goods.”.

### **Art. 9**

1. Paragraph 4 of Article 21 of Law no. 92 of 17 June 2008 is amended as follows:
- “4. Those enrolled in the Register of Accountants (*holding a university degree or a high school certificate*), as well as the parties referred to in Article 19, paragraph 1, letter c), shall not be required to fulfil customer due diligence and record-keeping requirements in relation to the execution of the mere activity of drafting and/or transmitting income tax returns or the tasks relating to personnel administration.”.

## **Art. 10**

1. After Article 26 of Law no. 92 of 17 June 2008, the following Article is introduced:

“Art. 26 bis

*(Foreign exchange negotiation carried out on an occasional and limited basis)*

1. Legal persons carrying out foreign exchange negotiation on an occasional and limited basis shall not be required to fulfil the obligations envisaged in this Law whenever the following conditions are met:
  - a) the proceeds of this activity do not exceed 250 euro per month and the value of the transactions does not exceed a total of 5,000 euro per month;
  - b) this activity is limited in terms of transactions and in any case it does not exceed 3 transactions per month for each customer;
  - c) this activity is not the main activity and in any case it does not exceed 5% of the total proceeds;
  - d) this activity is merely ancillary to the main activity;
  - e) the main activity is not connected with the reserved activities referred to in Annex 1 to Law no. 165 of 17 November 2005;
  - f) this activity is carried out exclusively for the customers of the main activity and not for the general public.
2. Whenever the activity carried out under the conditions envisaged in the preceding paragraph entails money laundering or terrorist financing risks, the Congress of State may change the above conditions, once the opinion of the Agency has been heard.
3. The Agency shall regulate the forms and ways of monitoring the activity referred to in this Article by issuing relevant Instructions.

## **Art. 11**

1. Article 34 bis of Law no. 92 of 17 June 2008, introduced by Article 15 of Decree Law no. 134 of 26 July 2010, is amended as follows:

“Art. 34 bis

*(Management of records and documents concerning financial parties that have ceased to carry out reserved activities)*

1. Following withdrawal, waiver or lapse of the authorisation to carry out a reserved activity, the financial party shall, even if in ordinary or compulsory winding-up, appoint a person responsible for keeping, for the purposes of this Law, documents and electronic archives for at least five years, or more if requested by the Agency.
2. The person referred to in the preceding paragraph shall satisfy the requests made by the Financial Intelligence Agency concerning existing relationships and/or movements and submit, if requested, the necessary documents.
3. The remuneration due to the person referred to in paragraph 1 above for performing his/her tasks shall be paid by the obliged party. The obliged party shall provide the above-mentioned person with appropriate premises to keep documents and electronic and paper-based archives.
4. The functions performed by the above-mentioned person shall not be incompatible with those of liquidator or commissioner.”.

## **Art. 12**

1. Article 35 of Law no. 92 of 17 June 2008 is amended as follows:

“Art. 35  
(*Anti-money laundering Electronic Archive*)

1. Financial parties shall have computer devices allowing them to respond timely and fully to the Agency’s requests intended to determine whether these financial parties have had business relationships with certain customers during the previous five years and the nature of these relationships.
2. The financial parties referred to in Article 18, paragraph 1, letters a) and b) shall create an anti-money laundering electronic archive.
3. The anti-money laundering electronic archive shall be created and managed according to uniform criteria that are suitable to ensure clarity, completeness, as well as timely and easy access to information. In addition thereto, the archive shall be kept in such a way as to ensure the chronological storage of the information amended or supplemented and the possibility of inferring relevant facts.
4. The Agency shall regulate the characteristics and keeping of the Anti-money electronic archive by issuing relevant Instructions.”.

**Art. 13**

1. Article 38, paragraph 5 of Law no. 92 of 17 June 2008 is amended as follows:  
“5. Professional secrecy and official secrecy cannot be invoked even when the data and information are necessary for the purposes of investigating the offences and administrative violations envisaged by this Law, apart from the cases referred to in paragraph 1.”.

**Art. 14**

1. Article 40, paragraph 1 of Law no. 92 of 17 June 2008 is amended as follows:  
“1. The obliged parties shall adopt adequate measures to ensure the utmost confidentiality of the natural person that has detected the suspicious transaction in accordance with Article 36, paragraph 1, letters a), b) and c)”.

**Art. 15**

1. Article 40, paragraph 7 of Law no. 92 of 17 June 2008 is amended as follows:  
“7. Communication about suspicious transaction reports shall be allowed between financial parties located in the Republic of San Marino which belong to the same group.”.

**Art. 16**

1. Article 43 of Law no. 92 of 17 June 2008 is amended as follows:  
“1. Audit firms and other non-financial parties organised as incorporated businesses shall appoint a compliance officer. This obligation may be derogated from in case of companies whose number of employees does not exceed three. In case of appointment, the provisions referred to in Article 42 shall apply.”.

**Art. 17**

1. After Article 43 of Law no. 92 of 17 June 2008, the following Article is added:

“Art. 43 bis  
(Replacement of the compliance officer)

1. The Agency may order an obliged party to replace its compliance officer if the latter is considered not to sufficiently satisfy the requirements of good repute or not to have sufficient professional skills.”.

**Art. 18**

1. Article 44, paragraph 7 of Law no. 92 of 17 June 2008, as amended by Article 19 of Decree Law no. 134 of 26 July 2010, is amended as follows:

“7. The financial parties shall put in place screening procedures to ensure high professional standards when hiring employees and collaborators, taking into account their role and functions.”.

**Art. 19**

1. Article 45, paragraph 1 of Law no. 92 of 17 June 2008 is amended as follows:

“Art. 45  
*(Requirements for foreign subsidiaries and companies controlled by financial parties)*

1. The financial parties shall ensure that their foreign subsidiaries or controlled foreign companies that mainly carry out an activity corresponding to the reserved activities mentioned in letters A), B), C), D) and E) of Attachment 1 to Law no. 165 of 17 November 2005 comply with requirements equivalent to those set forth in this Law.”.

**Art. 20**

1. Article 49, paragraph 1 of Law no. 92 of 17 June 2008 is amended as follows:  
“The Committee for Credit and Savings, referred to in Law no. 96 of 29 June 2005 and subsequent amendments, has the duty to evaluate requests for unfreezing of funds and economic resources submitted by the parties concerned. The decision shall be adopted without delay.”.

**Art. 21**

1. Article 53 bis, paragraph 2 of Law no. 92 of 17 June 2008, introduced by Article 36 of Decree Law no. 134 of 26 July 2010, is amended as follows:  
“2. If a blocking or seizure order has already been executed, financial parties may inform the customer of the execution of the order, unless the Judicial Authority has placed limitations on such communication.”.

**Art. 22**

1. After Article 60 of Law no. 92 of 17 June 2008, the following Article is introduced:

“Art. 60-bis  
*(Non-compliance with or delay in implementing the blocking provision)*

1. Anyone failing to comply with or delaying the provision with which the Agency orders the blocking referred to in Article 5, paragraph 1, letter d) of this Law shall be punished with first degree imprisonment or second degree daily fine. A pecuniary administrative sanction from

2,000.00 euro to 40,000.00 euro and third degree disqualification shall also apply.

2. If violations are perpetrated by using fraudulent means, the punishments shall be increased by one degree and the pecuniary sanction shall be doubled.”.

### **Art. 23**

1. After Article 60 bis of Law no. 92 of 17 June 2008, the following words are introduced:  
“CHAPTER II – ADMINISTRATIVE VIOLATIONS.”.

### **Art. 24**

1. Article 61 of Law no. 92 of 17 June 2008, as amended by Article 23 of Decree Law no. 134 of 26 July 2010, is replaced by the following:

“Art. 61

*(Violation of customer due diligence requirements)*

1. The violation of the customer due diligence requirements established by this Law shall be punished with a pecuniary administrative sanction from 5,000.00 euro to 70,000.00 euro.

2. If the violation of the customer due diligence requirements is perpetrated by using fraudulent means, the pecuniary administrative sanction shall be doubled.

3. The violation of the abstention requirements set forth in Article 24 shall be punished with a pecuniary administrative sanction from 5,000.00 euro to 80,000.00 euro.

4. Except as provided in Article 54, the violation of the obligations to provide information necessary to comply with customer due diligence requirements shall be punished with a pecuniary administrative sanction from 5,000.00 euro to 80,000.00 euro.

5. If the violation referred to in the paragraphs above hampers, delays or prevents the control on the part of the Supervisory Authority, besides the sanctions envisaged in this Article, the fine referred to in Article 84 of the Criminal Code shall be applied.”.

### **Art. 25**

1. Article 62 of Law no. 92 of 17 June 2008, as amended by Article 24 of Decree Law no. 134 of 26 July 2010, is replaced by the following Article:

“Art. 62

*(Violation of registration and record-keeping requirements)*

“1. The violation of the registration and record-keeping requirements laid down in Article 34 shall be punished with a pecuniary administrative sanction from 5,000.00 euro to 70,000.00 euro. Non-compliance with the obligations referred to in Article 35 shall also be punished with the same administrative sanction.

2. If the violation of registration requirements is perpetrated by using fraudulent means, the pecuniary sanction shall be doubled.”.

### **Art. 26**

1. Article 62 bis of Law no. 92 of 17 June 2008 is repealed.

#### **Art. 27**

1. After Article 62 bis, introduced by Article 25 of Decree Law no. 134 of 26 July 2010, the following words are deleted:  
“CHAPTER II – ADMINISTRATIVE VIOLATIONS.”.

#### **Art. 28**

1. Article 73 of Law no. 92 of 17 June 2008 is replaced by the following:  
“1. For the administrative violations set forth in this Law, the option to correct the violation by paying a lower amount shall not apply.”.

#### **Art. 29**

1. Paragraph 2 of Article 86 of Law no. 92 of 17 June 2008 is repealed.

#### **Art. 30**

1. Articles 87 and 88 of Law no. 92 of 17 June 2008 are repealed.

### **TITLE II FINANCIAL ACTIVITY CARRIED OUT ON AN OCCASIONAL OR VERY LIMITED BASIS**

#### **Art. 31**

1. Article 30 of Decree Law no. 134 of 26 July 2010 is repealed.

### **TITLE III AMENDMENTS TO DELEGATED DECREE NO. 74 OF 19 JUNE 2009 (*Ratification of Delegated Decree no. 62 of 4 May 2009 – Cross-border transportation of cash and similar instruments*)**

#### **Art. 32**

1. Letter c) of paragraph 1 of Article 1 of Delegated Decree no. 74 of 19 June 2009 is repealed.

#### **Art. 33**

1. Article 2, paragraph 2 of Delegated Decree no. 74 of 19 June 2009 is amended as follows:  
“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. The declaration, duly completed, shall be carried by the declarant.  
A copy of the declaration, with acknowledgement of receipt, shall be returned to the declarant, who shall carry such copy with him.  
The obligation to declare shall not have been fulfilled if the information provided is incorrect or incomplete.”.



#### **Art. 34**

1. Article 2, paragraph 4 of Delegated Decree no. 74 of 19 June 2009 is amended as follows:  
“4. The obligation to declare shall also apply to transfers of cash and similar instruments, to and from foreign Countries, carried out by post. Even in such a case, the declaration shall be provided in writing, through the model attached hereto, by delivering it to the Commands or branch offices of the Police Forces within 48 hours of receipt or sending.”.

#### **Art. 35**

1. Article 3 of Delegated Decree no. 74 of 19 June 2009 is replaced by the following:

“Art. 3  
(*Police checks*)

1. During regular border controls, Police officers may verify the identity of persons, as well as inspect and search vehicles, luggage and things in order to ensure that the obligations referred to in Article 2 above are complied with.
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 with money laundering or terrorist financing.
3. Police authorities shall immediately inform the Financial Intelligence Agency of any cross-border movements of gold, precious stones or metals considered to be suspect”.

#### **Art. 36**

1. Article 4, paragraph 1 of Delegated Decree no. 74 of 19 June 2009 is amended as follows:  
“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 euro, with a minimum of 200 euro. If a similar instrument, although bearing the drawer’s signature, does not contain an indication of the amount, the fixed administrative sanction of 200 euro shall be applied for each instrument.”.

#### **Art. 37**

1. Letter c) of paragraph 10 of Article 6 of Delegated Decree no. 74 of 19 June 2009 is deleted.

#### **Art. 38**

1. Article 9, paragraph 1 of Delegated Decree no. 74 of 19 June 2009 is amended as follows:  
“1. Without prejudice to Article 6, paragraph 2 of this Decree, the Police Forces shall transmit a copy of all declarations received under Article 2 above to the Financial Intelligence Agency.”.

#### **Article 39**

1. Article 9, paragraph 3 of Delegated Decree no. 74 of 19 June 2009 is amended as follows:  
“3. By way of derogation from the provision enshrined in paragraph 2 above, the Police Forces 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 related to money laundering and terrorist financing.”.

**TITLE IV**  
**AMENDMENTS TO LAW NO. 93 OF 17 JUNE 2008**

**Art. 40**

1. After paragraph 5 of Article 4 of Law no. 104 of 30 July 2009, the following paragraph is added:

“6. For the offences envisaged by paragraph 1 of Article 147 of the Criminal Code and by the following Articles: 190 (Disclosure of correspondence), 198 (Bad faith administration), 199 ter (Possession of unexplained property), 231 (Child abduction), 231 bis (Abduction of minors abroad), 235 (Ill-treatment of relatives), 287 (Criminal conspiracy), 316 (False information on a company), 388 (Smuggling), 289 (Tax evasion), 394 (Attack on the free exercise of the right to vote), 2 and 3 of Law no. 99 of 7 June 2010 (Issuance, use of false invoices and false statement through the use of false invoices), as well as the offences contained in Law no. 92 of 17 June 2008 and in Law no. 165 of 17 November 2005, the period referred to in paragraph 1 of Article 4 of Law no. 93 of 17 June 2008 shall be 120 days.

7. If the communication can have a serious detrimental impact on investigations, the Investigating Judge, by reasoned decree, may postpone the communication for additional 120 days.

**TITLE V**  
**AMENDMENTS TO LAW NO. 104 OF 30 JULY 2009** (*Law on international letters rogatory relating to criminal matters*) **AS AMENDED BY LAW NO. 128 OF 23 JULY 2010**  
(*Amendments to Law no. 104 of 30 July 2009 - Law on international letters rogatory relating to criminal matters*)

**Art. 41**

1. After paragraph 3 of Article 8 of Law no. 104 of 30 July 2009, the following paragraph is added:

“4. If an interception of communications is requested by a foreign judicial authority through a request for mutual legal assistance, the Investigating Judge, having determined that the requirements laid down in the paragraphs above are met, shall order phone tapping. Once interception operations are concluded, recordings shall be immediately forwarded to the requesting judicial authority.”.

**TITLE VI**  
**AMENDMENTS TO THE CRIMINAL CODE**

**Art. 42**

1. Article 147, paragraph 3 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 167, 168, 168 bis, 169, 177 bis, 177 ter, 194, 195, 195 bis, 195 ter, 196, 199, 199 bis, 204 paragraph 3 number 1, 204 bis, 207, 212, 305 bis, 337 bis, 337

*ter*, 371, 372, 373, 374, 374 *ter* paragraph 1, 388, 389, the offences for the purpose of terrorism or subversion of the constitutional order and the offence 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 corresponding to the value of the instrumentalities and things referred above.”.

**TITLE VII**  
**AMENDMENTS TO LAW NO. 165 OF 17 NOVEMBER 2005 AND SUBSEQUENT**  
**AMENDMENTS**

**Art. 43**

1. Article 37, paragraph 1, letter c) of Law no. 165 of 17 November 2005 is amended as follows:

“c) the combating of financial crime in cooperation with other competent authorities.”.

*Done at Our Residence, on 26 November 2010/1710 since the Foundation of the Republic*

THE CAPTAINS REGENT  
*Giovanni Francesco Ugolini – Andrea Zafferani*

THE SECRETARY OF STATE  
FOR INTERNAL AFFAIRS  
*Valeria Ciavatta*