



REPUBLIC OF SAN MARINO

DELEGATED DECREE no. 21 of 3 February 2020

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

*Having regard to Article 10 of Law no. 154 of 03 October 2019;
Having regard to Congress of State decision no. 7, adopted during its sitting of 29 January 2020;
Having regard to Article 5, paragraph 3 of Constitutional Law no. 185/2005 and to Articles 8 and 10, paragraph 2 of Qualified Law no. 186/2005;
Promulgate and order the publication of the following Delegated Decree:*

ALIGNMENT OF NATIONAL LEGISLATION WITH INTERNATIONAL STANDARDS AND CONVENTIONS ON THE PREVENTION AND COMBATING OF MONEY LAUNDERING AND TERRORIST FINANCING

Art. 1

(Amendments to Article 1 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. Letter e), paragraph 1 of Article 1 of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:
“e) assets or funds: assets or funds as defined by Article 1, paragraph 1, letter c) of Law no. 57 of 29 March 2019 and its subsequent amendments and by Article 1 of the Technical Annex to the same Law.”.
2. In Article 1, paragraph 1 of Law no. 92/2008 and subsequent amendments, after letter b), the following letter shall be added:

“b bis) virtual assets: digital representations of assets which can be traded or transferred digitally and can be used for payment or investment purposes. Virtual assets shall not include digital representations of fiat currencies, transferable securities or other financial assets.”.
3. In Article 1, paragraph 1 of Law no. 92/2008 and subsequent amendments, after letter s), the following letter shall be added:

s)
“s bis) virtual asset service providers: any natural or legal person who, on a professional basis, i.e. when receiving remuneration in any form or manner, carries out one or more of the following activities or transactions in the name or on behalf of another natural or legal person:
i) exchange between virtual assets and fiat currencies;
ii) exchange between one or more forms of virtual assets;
iii) transfer of virtual assets;

- iv) custody and/or administration of virtual assets or tools that allow to have control over virtual assets;
 - v) participation and provision of financial services related to the offer and/or sale of a virtual asset of an issuer.”.
4. The first sentence of paragraph 2 of Article 1 of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:
- “2. For the purposes of the legislation on the prevention and combating of money laundering only, except as provided in Articles 199 and 199 - *bis* of the Criminal Code, the following conduct, when committed intentionally, may be regarded as money laundering, even if committed abroad.”.

Art. 2

(Amendments to Article 6 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. In paragraph 2 of Article 6 of Law no. 92 of 17 June 2008 and subsequent amendments the following sentence shall be repealed: “The Agency shall also communicate the measure to the party concerned except where the communication may prejudice the results of the investigation”.

Art. 3

(Amendments to Article 16-novies of Law no. 92 of 17 June 2008 and subsequent amendments)

1. In letters a) and b) of paragraph 1 of Article 16-novies of Law no. 92 of 17 June 2008 and subsequent amendments, the words “250 euro” shall be replaced by “150 euro”.
2. Paragraph 2 of Article 16-novies of Law no. 92 of 17 June 2008 and subsequent amendments shall be repealed.
3. In paragraph 3 of Article 16-novies of Law no. 92 of 17 June 2008 and subsequent amendments, the words “100 euro” shall be replaced by “50 euro”.

Art. 4

(Amendments to Article 18 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. Letter c) of paragraph 1 of Article 18 of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:
- “c) Poste San Marino S.p.A. when offering the postal financial services described in Article 3 paragraph 1 letter c) of the Articles of Association of Poste San Marino S.p.A. referred to in Annex A) to Delegated Decree no. 22 of 26 February 2015;”.

Art. 5

(Amendments to Article 19 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. Letters a), c), e), g) of paragraph 1 of Article 19 of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:
- “a) trust or company service providers other than financial institutions;
- c) real estate agents, even when they act as intermediaries in the lease of real estate, but only in relation to transactions for which the monthly rent is equal to or greater than 10,000 euro;
- e) entities carrying out the activity of custody and transport of cash, works of art, securities or values;

g) entities who carry out the activity of auction house, art gallery, trade in antiques or in any case works of art, if the value of the transaction or a series of transactions connected with each other is equal to or greater than 10,000 euro;”.

2. After letter g *ter*) of paragraph 1 of Article 19 of Law no. 92 of 17 June 2008 and subsequent amendments the following letter shall be added:

“g *quater*) service providers in the field of virtual assets.”.

Art. 6

(Amendments to Article 27 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. Letter c) of paragraph 1 of Article 18 of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:

“c) in cases of higher risks that have been identified by obliged entities in the framework of the self-assessment of the risks referred to in Article 16 *quinquies*, as well as in cases when the risk profile is high;”.

Art. 7

(Amendments to Article 27-bis of Law no. 92 of 17 June 2008 and subsequent amendments)

1. Paragraph 4 *bis* of Article 27-bis of Law no. 92 of 17 June 2008 and subsequent amendments shall be repealed.

Art. 8

(Amendments to Article 34 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. Paragraph 2 of Article 34 of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:

“2. Obligated entities shall register and keep the supporting evidence and records of business relations, relevant transactions, occasional transactions, services provided, correspondence and results of every analysis carried out. In particular, they shall register and keep original documents or copies having the same evidentiary effects for a period of at least five years following the carrying out of the transaction or the provision of the service.”.

Art. 9

(Amendments to Article 34-bis of Law no. 92 of 17 June 2008 and subsequent amendments)

1. Paragraph 1 of Article 34-bis of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:

“1. Following withdrawal, waiver or lapse of the authorisation to carry out a reserved activity, the financial institution shall, even if in ordinary or compulsory administrative winding-up, appoint a person responsible for keeping, for the purposes of this Law, documents and electronic archives for at least five years. In such cases, the retention period shall start on the date of cancellation from the Register of Authorised Entities pursuant to Law no. 165 of 17 November 2005 and subsequent amendments and additions. In cases of transactions for en bloc disposal of assets and liabilities, pursuant to Article 52 of Law no. 165 of 17 November 2005 or other special laws, the retention period shall start on the date on which the en bloc sale takes effect”.

Art. 10

(Amendments to Article 42 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. In paragraph 5 *bis* of Article 42 of Law no. 92 of 17 June 2008 and its subsequent amendments, the words "shall report directly" shall be replaced by the words "shall be part of the staff".

Art. 11

(Amendments to Article 57 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. In the text of letter a) of paragraph 1 of Article 57 of Law no. 92 of 17 June 2008 and subsequent amendments the following part shall be repealed: "The same punishment shall be imposed on anyone not complying with the restrictive measures adopted under Article 46".

Art. 12

(Amendments to Article 61 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. Reference to Article 24-*bis* of Law no. 92 of 17 June 2008 and subsequent amendments shall be repealed.

Art. 13

(Amendments to Article 74 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. Paragraph 6 of Article 74 of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:

"6. The alleged violations shall be notified in accordance with Article 17, paragraphs 1 and 2 of Law no. 100 of 29 July 2013. Persons residing abroad may have an address for service in the Republic of San Marino when they take office or when are hired as employees or when a consultancy or collaboration relation starts and promptly notify the Agency thereof. In the absence of the aforesaid communication, any notification shall be deemed validly made at the address for service of the obliged entity."

2. Letter c), paragraph 10 of Article 74 of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:

"c) analyse all evidence acquired during investigation and filed with the records of the sanction procedure. On the basis of the counterarguments and documents submitted by the parties concerned and of all information collected, the Agency shall also carefully assess the alleged violations, the seriousness thereof and the personal liability, in accordance with the criteria set forth in the preceding Article 72, paragraph 1."

Art. 14

(Amendments to Article 1 of the Technical Annex to Law no. 92 of 17 June 2008 and subsequent amendments)

1. After paragraph 4 of Article 1 of the Technical Annex to Law no. 92 of 17 June 2008 and subsequent amendments, the following paragraph 4 *bis* shall be added:

“4 bis The Department of Finance and Budget shall coordinate the publication and updating of a list indicating exactly the functions which, in accordance with national legislative, regulatory and administrative provisions, shall be considered prominent public offices for the purposes of this Article.”.

Art. 15

(Amendments to Article 1-bis of the Technical Annex to Law no. 92 of 17 June 2008 and subsequent amendments)

1. Paragraph 6 of Article 1-bis of the Technical Annex to Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:

“6. In case the customer is a trust, the beneficial owners shall be:

- a) the settlor(s);
- b) the trustee(s);
- c) the protector(s), if any;
- d) the beneficiaries, or where the persons benefiting from the trust have yet to be determined, the category of persons in whose main interest the trust is set up or operates;
- e) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means.”.

Art. 16

(Repeal of Article 2 of the Technical Annex to Law no. 92 of 17 June 2008 and subsequent amendments)

1. Article 2 of the Technical Annex to Law no. 92 of 17 June 2008 and subsequent amendments shall be repealed.

Art. 17

(Amendments to Article 3 of the Technical Annex to Law no. 92 of 17 June 2008 and subsequent amendments)

1. Article 3 of the Technical Annex to Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:

“1. The data, information, documents and statistics referred to in Article 16 ter shall include at least the following:

- a) data measuring the size and importance of the different sectors which fall within the scope of this Law, including the number of natural persons and entities, and economic importance of each sector.
- b) data measuring the reporting, investigation and judicial phases of the national AML/CFT regime, including the number of suspicious transaction reports made to the Agency, the follow-up given to those reports and, on an annual basis, the number of cases investigated, the number of persons prosecuted, the number of persons convicted for money laundering or terrorist financing offences, the types of predicate offences, where such information is available, and the value in Euro of property that has been frozen, seized or confiscated;
- c) if available, data identifying the number and percentage of reports resulting in further investigation, together with the annual report of the Agency to obliged entities detailing the usefulness and follow-up of the reports they presented;

- d) data regarding the number of cross-border requests for information that were made, received, refused and partially or fully answered by the Agency, broken down by counterpart country;
- e) the human resources allocated to the Agency to carry out the tasks referred to in Article 4 of this Law;
- f) the number of on-site and off-site supervisory actions, the number of violations detected on the basis of the supervisory actions and the administrative sanctions applied by the Agency.”.

Done at Our Residence, on 3 February 2020/1719 since the Foundation of the Republic

THE CAPTAINS REGENT
Luca Boschi – Mariella Mularoni

THE MINISTER OF
INTERNAL AFFAIRS
Elena Tonnini

