



# REPUBLIC OF SAN MARINO

**DECREE-LAW no. 90 of 16 June 2014**

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

*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 Article 12 of Qualified Law no. 184 of 15 December 2005 and more precisely:*

*the need to strengthen the fight against corruption and the international cooperation of the Republic of San Marino in this field, while respecting the most recent international standards in this area;*

*the urgency to align with GRECO Recommendations regarding the effective use of special investigative techniques in the context of investigations of corruption offences, the development of legislative mechanisms for the protection of witnesses and the facilitation of reporting of facts or circumstances relevant for the purposes of preventing and combating corruption to competent authorities, as well as the revision and strengthening of the sanctions applicable to accounting offences;*

*Having regard to Congress of State Decision no. 14, adopted during its sitting of 10 June 2014;*

*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 TO PREVENT AND COMBAT CORRUPTION OFFENCES**

### **CHAPTER I AMENDMENTS TO LAW NO. 166 OF 16 DECEMBER 2013**

#### **Art. 1**

1. Letter h), paragraph 1 of Article 139 of Law no. 166 of 16 December 2013 shall be replaced by the following:

"h) failure to comply with the obligations under Title VII: from € 2,000.00 to € 50,000.00, subject to the concurrent application of criminal sanctions. A sanction from € 5,000.00 to € 75,000.00 shall be imposed if the violation of the obligations concerns a legal person. "

#### **Art. 2**

1. The following Article shall be added to Law no. 166 of 16 December 2013:

"Art. 140 bis

*(Offence of failure or irregular keeping or retention of accounting records)*

1. Anyone who fails to keep or retain, in whole or in part, the accounting records prescribed by law for persons carrying out business activities, or who keeps or retains them in an irregular manner, shall be punished with first-degree arrest or second-degree daily fine.
2. Anyone counterfeiting, altering or destroying accounting records or providing false declarations therein, shall be punished with second-degree imprisonment and daily fine. Also second-degree disqualification from a profession or art shall be applied.
3. If the violation referred to in paragraphs 1 and 2 is established, the Police Forces shall provide the Tax Office with all necessary information for the assessment of State taxes and the possible application of administrative sanctions falling within the competence of that Office."

## **CHAPTER II REPORTS AND INVESTIGATIVE MEASURES**

### **Art. 3**

1. For the purposes of preventing and combating the offences referred to in Title IV, Chapter IV of the Criminal Code, any person may report relevant facts or circumstances to the Judicial or Police Authority.
2. The obliged parties referred to in Law no. 92 of 17 June 2008 and subsequent amendments shall report without delay to the Judicial Authority or the Police Authority:
  - a) any transaction - even if not carried out – which, because of its nature, characteristics, size 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, arouses suspicion that the economic resources, money or assets involved in said transaction may derive from the offences referred to in Title IV, Chapter IV of the Criminal Code 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 such offences;
  - c) the funds that the obliged parties know, suspect or have grounds to suspect to be related to corruption or that may be used for purposes of corruption.
3. Those enrolled in the Register of Lawyers and Notaries and in the Register of Accountants (holding a university degree or a high school certificate) may invoke professional secrecy against the Judicial Authority and the Police Authority with respect to the information they acquire while defending and representing their client during judicial or administrative proceedings or in relation to such proceedings, including advice on the possibility that proceedings are commenced or avoided, where the information is received or obtained before, during or after such proceedings.
4. In the cases provided for in the previous paragraph, lawyers and accountants shall have no reporting obligations.
5. Professional secrecy, except for the case provided for in paragraph 3, and official secrecy shall not be invoked against the Judicial Authority and the Police Authority in the exercise of their functions of preventing and combating the offences referred to in Title IV, Chapter IV of the Criminal Code.
6. Professional secrecy and official secrecy shall not be invoked even when the data and information are necessary for the purposes of establishing the offences and administrative violations, apart from the cases referred to in paragraph 3.
7. Reports and disclosures made in accordance with this Article shall not constitute a breach of any restriction on disclosure of data or information resulting from contracts or legislative, statutory, regulatory or administrative provisions, nor of the requirements of confidentiality and professional, official or bank secrecy referred to in Article 36 of Law No. 165 of 17 November 2005. Reports and disclosures, if in good faith, shall not involve liability of any kind.

### **Art. 4**

1. The obliged parties referred to in Law no. 92 of 17 June 2008 and subsequent amendments shall adopt adequate measures to ensure the utmost confidentiality concerning the identity of the natural person that has detected the suspicious transaction in accordance with Article 3.
2. The acts and documents related to the reports shall be kept under the responsibility of the obliged party, its legal representative or one of its delegates.
3. The Judicial and Police Authorities shall adopt appropriate measures to guarantee the confidentiality of the identity of the natural person detecting the suspicious transaction. The

request for information to the obliged party, any requests for further information, as well as exchanges of information relating to reported suspicious transactions shall be made in such a way as to ensure maximum confidentiality of the identity of the person who detected the suspicious transaction.

4. In case of disclosure, report or complaint to the Judicial Authority, the identity of the natural person who detected the suspicious transaction, even if known, shall not be mentioned.

5. The identity of the natural person who detected the suspicious transaction may be revealed only when the Judicial Authority, by reasoned decree, declares it essential for the purposes of investigating the offences prosecuted.

6. The obliged parties shall be prohibited to inform the party concerned and third parties, except in the cases provided for in the following paragraphs, that a suspicious transaction report has been made or that a corruption investigation is being or may be carried out.

7. The disclosure of suspicious transaction reports shall be allowed between financial parties based in the Republic of San Marino which belong to the same group.

8. Such disclosure shall also be permitted between the obliged parties that perform their professional services in an associated form.

9. Any attempt by the obliged parties to dissuade a customer from engaging in an illegal activity shall not constitute a violation of the requirement of secrecy.

#### **Art. 5**

1. For the purposes of establishing the offences for which mandatory confiscation is envisaged under Article 147, paragraph 10, as well as the other offences referred to in Title IV, Chapter IV of the Criminal Code, the Judicial Authority may authorize the use of the investigative techniques mentioned in Law no. 28 of 26 February 2004.

*Done at Our Residence, on 16 June 2014/1713 since the Foundation of the Republic*

THE CAPTAINS REGENT  
*Valeria Ciavatta – Luca Beccari*

THE MINISTER OF  
INTERNAL AFFAIRS  
*Gian Carlo Venturini*