



# REPUBLIC OF SAN MARINO

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

*Having regard to Article 4 of Constitutional Law no. 185/2005 and Article 6 of Qualified Law no. 186/2005;*

*Promulgate and order the publication of the following ordinary law, approved by the Great and General Council in its sitting of 21 July 2009.*

**LAW NO. 104 OF 30 JULY 2009**

## **LAW ON INTERNATIONAL LETTERS ROGATORY RELATING TO CRIMINAL MATTERS**

### **TITLE I GENERAL PROVISIONS**

#### **Art. 1**

*(Primacy of conventions and general international law)*

1. International letters rogatory relating to criminal matters shall be regulated by the rules of the international conventions in force for the Republic of San Marino and of general international law.
2. If such rules are absent or they do not provide otherwise, the following rules shall be applied.

#### **Art. 2**

*(Scope)*

1. This Law shall only apply to proceedings in respect of offences the punishment of which, at the time of the request for judicial assistance, falls within the jurisdiction of the judicial authorities.
2. For the purposes of this Law, international letters rogatory shall concern requests related to criminal proceedings in order to procure evidence or transmit articles to be produced in evidence, records or documents.
3. This Law shall not apply to arrests, the enforcement of verdicts or offences under military law which are not offences under ordinary criminal law.

**Art. 3**

*(General rule of interpretation)*

1. The provisions enshrined in the international conventions in force for the Republic of San Marino and the rules of this Law shall be interpreted in the most favourable sense to international cooperation.

**TITLE II**

**CHAPTER I**

**INTERNATIONAL LETTERS ROGATORY FROM ABROAD**

**Art. 4**

*(Form and content of requests)*

1. Requests for assistance shall indicate as follows:
  - a) the authority making the request and, if different, the authority competent in respect of criminal proceedings;
  - b) the object of and the reason for the request;
  - c) the offence which the requesting State prosecutes;
  - d) a brief summary of the facts, unless the object of the request consists of a request for service;
  - e) where possible, the identity and the nationality of the person concerned, and
  - f) where necessary, the name and address of the person to be served.
2. The request for judicial assistance and annexed documents shall be transmitted accompanied by their translation into Italian.
3. Evidence and documents transmitted pursuant to this Law shall not require any form of authentication.

**Art. 5**

*(Irregular requests)*

1. If the request does not comply with the provisions of the preceding article, or the information contained therein is not sufficient to allow the Republic of San Marino to deal with said request, the Law Commissioner shall request the judicial authorities of the requesting State to modify the request or to complete it with additional information, subject to the special procedure referred to in Article 9 of this Law.
2. If the judicial authorities of the requesting State do not modify the request within the time limit of one year of receipt of the request for additional information, the irregular request shall be filed.

**Art. 6**

*(Transmission of requests)*

1. Without prejudice to the different transmission procedures provided for by the bilateral conventions in force for the Republic of San Marino, the request and annexed documents shall be addressed directly by the judicial authorities of the requesting State to the Single Court of the Republic of San Marino and at the same time a copy thereof shall be sent to the Secretary of State for Justice.

**Art. 7**

*(Judge responsible for letters rogatory received from abroad)*

1. The judge responsible for letters rogatory shall be the Law Commissioner.

**Art. 8**

*(Judicial work)*

1. With the exception of the case of suspension of the request, the Law Commissioner shall rapidly execute the letter rogatory and, in any case, within and not later than 60 days of receipt, by adopting the relevant order of exequatur.
2. In the event of irregular letters rogatory, the time-limit of 60 days envisaged by the preceding paragraph shall run from receipt of the amendments and/or information requested to complete the request.
3. Execution of the request shall be refused:
  - 1) if the acts requested are contrary to the principles enshrined in the Declaration of Citizens' Rights and Fundamental Principles of San Marino constitutional order;
  - 2) if the acts requested are expressly prohibited by law;
  - 3) if the acts requested prejudice the sovereignty, security or other essential interests of the Republic of San Marino;
  - 4) if the request concerns an offence considered a political offence or an offence connected with a political offence in the Republic of San Marino;
  - 5) if the request concerns the same fact and the same person against whom the San Marino judicial authorities have issued a final judgement.
  - 6) if the letter rogatory concerning search or seizure of property is submitted on the basis of offences that are not punishable under both the law of the requesting State and the law of the Republic of San Marino, or if the request is not consistent with the law of San Marino;
  - 7) if the letter rogatory concerns the summons of a witness, expert or defendant before the foreign judicial authorities and the requesting State does not provide any appropriate guarantee in regard to the immunity of the summoned person.

**Art. 9**

*(Reciprocity)*

1. When the request is submitted by a State with which no international conventions exist on these matters, the Law Commissioner shall forward to the Secretary of State for Justice, within 30 days of receipt of the request, a technical report stating whether the request submitted complies with the legal requirements.
2. Further to the decision taken by the Congress of State, the Secretary of State for Justice may refuse to execute the letter rogatory if the requesting State does not provide any adequate guarantee of reciprocity. Further to the decision taken in this regard by the Congress of State, the Secretary of State for Justice shall demand a guarantee of reciprocity from the requesting State, if so required by the circumstances.
3. In the event of an irregular request, the request for additional information shall be submitted subsequent to the Congress's decision whether to grant the cooperation requested.
4. The decision of the Congress of State on the basis of which the execution of a request is accepted or denied to a State with which no international conventions exist on these matters, and the relevant communication of the Secretary of State for Justice cannot be challenged.
5. If the Secretary of State for Justice informs the Law Commissioner that the Republic of San Marino intends to execute a letter rogatory for a State with which no international conventions exist

relating to these matters, the time limit of 60 days referred to in Article 8 of this Law to issue the order of exequatur shall run from receipt of the communication by the Secretary of State.

**Art. 10**  
*(Suspension)*

1. The execution of the letter rogatory shall be suspended by the Law Commissioner by reasoned order, if it is likely to be detrimental to investigations in criminal proceedings pending in the Republic of San Marino.

**Art. 11**  
*(Partial acceptance of the request)*

1. Before rejecting or returning a letter rogatory, the Law Commissioner shall assess, after having consulted with the judicial authorities of the requesting State, where necessary, whether the request may be partially accepted.

**Art. 12**  
*(Principle of speciality)*

1. The Law Commissioner shall grant judicial assistance, by ordering that the results of investigations, information, evidence and documents transmitted are not used or transmitted to third parties by the requesting State for purposes other than those specified in the request without prior consent.

**Art. 13**  
*(Lex loci)*

1. The Republic of San Marino shall execute letters rogatory in the manners provided for by its legislation.
2. The acquisition of copies of documents constitutes seizure.
3. Until the order of exequatur is issued, unless the requesting State requests otherwise, the provisions of Article 5, paragraphs 1 and 2 of Law no. 93 of 17 June 2008 shall apply, without prejudice to Article 30, last paragraph of this Law.

**Art. 14**  
*(Derogations from the principle of lex loci)*

1. If the requesting State expressly requests that witnesses or experts give evidence on oath, the Law Commissioner shall comply with the request only if the law of San Marino does not prohibit it.
2. If the requesting State expressly so requests and the San Marino law envisages it, any other evidence may be acquired in the manners requested.

**Art. 15**  
*(Form of documents requested)*

1. The Law Commissioner shall transmit only certified copies or certified photocopies of records or documents requested.
2. If the requesting State expressly requests the transmission of originals, the request shall be executed only if it is possible. Furthermore, the requesting State shall be required to return them as soon as possible, unless the Republic of San Marino gives them up.

3. The Law Commissioner may delay the handing over of any original records or documents requested, if it requires said records or documents in connection with pending criminal proceedings.

**Art. 16**

*(Information to the requesting State)*

1. On the express request of the requesting State, the Law Commissioner shall inform it of the date and place of execution of the letter rogatory.

**Art. 17**

*(Confidentiality)*

1. Outside what is necessary to execute the request, the requesting State may demand that the Republic of San Marino keeps the facts to which the request refers confidential.

2. If the execution of the request entails under San Marino law to adopt procedural guarantees that are not consistent with the confidentiality requested, the Law Commissioner shall immediately inform the requesting State thereof.

3. If a criminal file is opened in the Republic of San Marino further to the confidential transmission, the provisions of Article 5, paragraphs 1 and 2 of Law no. 93 of 17 June 2008 shall be applied for the sole purposes of international cooperation and for the period of 3 months.

4. If an autonomous criminal file is opened in the Republic of San Marino following the confidential transmission and the competent judge considers that the provisional secrecy regime shall be applied, the provisions and time limits envisaged by Article 5, paragraphs 1 and 2 of Law no. 93 of 17 June 2008 (periods during which any period granted under the previous paragraph is not computed) shall be implemented.

**Art. 18**

*(Expenses)*

1. Ordinary expenses for the execution of the request shall be burdened by the Republic of San Marino.

2. The refunding of the expenses incurred by the attendance of experts and witnesses in the territory of the requested State and the transfer of a person in custody shall be an exception to the general free-of-charge principle.

**Art. 19**

*(Service of writs and records of judicial decisions)*

1. The Republic of San Marino shall effect service of writs and records of judicial decisions which are transmitted for this purpose by the requesting State.

2. If the requesting State expressly so requests, the Law Commissioner shall order that service is effected in one of the manners provided for the service of analogous documents under the domestic law, or in a special manner envisaged by San Marino law.

3. Proof of service shall be given by means of a receipt dated and signed by the person served or by means of a declaration made by the Republic of San Marino that service has been effected and stating the form and date of such service.

4. One or other of these documents shall be sent to the requesting State. If the requesting State so requests, the Republic of San Marino shall state whether service has been effected in accordance with its own law. If service cannot be effected, the reasons shall be communicated immediately by the Law Commissioner to the requesting State.

**Art. 20**

*(Appearance of witnesses and experts)*

1. Without prejudice to contrary provisions contained in the bilateral agreements in force for the Republic of San Marino, a witness or expert who has failed to answer a summons to appear, service of which has been requested, shall not be subjected to any punishment or measure of restraint, unless subsequently he voluntarily enters the territory of the requesting State and is there again duly summoned.

**Art. 21**

*(Refunding of expenses for witnesses or experts)*

1. With the exception of different criteria contained in the bilateral conventions in force for the Republic of San Marino, the allowances to be paid and the travelling and subsistence expenses to be refunded to a witness or expert by the requesting State shall be calculated as from his place of residence and shall be at rates at least equal to those provided for in the scales and rules in force in the country where the hearing is intended to take place.

**Art. 22**

*(Immunity of witnesses or experts)*

1. No witnesses or experts, whatever their nationality, appearing before the judicial authorities of the requesting State in response to a summons, shall be prosecuted or detained or subjected to any other restriction of their personal liberty in the territory of the requesting State for acts or convictions anterior to their departure from the territory of the Republic of San Marino.

2. The immunity provided for in this Article shall cease when the witness or expert, having had the opportunity to leave the territory of the requesting State during a period of fifteen days from the date on which his presence is no longer required by the judicial authorities, has nevertheless remained in the territory, or having left it, has voluntarily returned.

**Art. 23**

*(Service of a summons on a prosecuted person)*

1. A summons to appear relating to a prosecuted person who is in the territory of the Republic of San Marino shall be transmitted to the competent authority of the Republic of San Marino at least 40 days before the date set for appearance.

**Art. 24**

*(Immunity of the prosecuted person)*

1. A person, whatever his nationality, summoned before the judicial authorities of the requesting State to answer for acts forming the subject of proceedings against him, shall not be prosecuted, detained or subjected to any other restriction of his personal liberty for acts or convictions anterior to his departure from the territory of the Republic of San Marino and not specified in the summons.

2. The immunity provided for in this article shall cease when the prosecuted person, having had the opportunity to leave the territory of the requesting State during a period of fifteen days from the date on which his presence is no longer required by the judicial authorities, has nevertheless remained in the territory, or having left it, has returned.

**Art. 25**

*(Appearance of a detained person)*

1. Any detained person whose personal appearance as a witness or for purposes of confrontation is applied for by the requesting State shall be temporarily transferred to the territory of the State where the hearing is intended to take place, provided that he shall be sent back as soon as possible and subject to the provisions relating to the immunity envisaged by Articles 22 and 24 of this Law in so far as these are applicable.
2. Transfer shall be postponed if the presence of the detained person is necessary in criminal proceedings pending in the territory of the Republic of San Marino.
3. In the case provided for in the preceding paragraph and in accordance with the requirements envisaged for the execution of letters rogatory, transit of the detained person through the territory of a third State shall be granted on application, accompanied by all necessary documents and addressed by the Ministry of Justice of the requesting State to the Ministry of Justice of the State through whose territory transit is requested.
4. The transferred person shall remain in custody in the territory of the requesting State and, where applicable, in the territory of the State through which transit is requested.
5. The period of detention served by the detained person who is transferred abroad to take part in the hearing requested shall be computed as a period served for the purposes of the domestic conviction.

**Art. 26**

*(Handing over and return of property)*

1. The Law Commissioner may delay the handing over of any property requested, if said property is necessary in connection with criminal proceedings pending in the Republic of San Marino.
2. Any property handed over in execution of letters rogatory shall be returned by the requesting State to the Republic of San Marino as soon as possible, unless the latter waives the return thereof.

**Art. 27**

*(Exchange of sentences of conviction)*

1. Further to specific requests submitted by competent foreign judicial authorities, the Republic of San Marino shall provide information regarding criminal sentences entered in the judicial records.

**Art. 28**

*(Return of the request)*

1. Subject to the different modalities of direct transmission envisaged in the provisions of the bilateral conventions in force for the Republic of San Marino, letters rogatory shall be returned through the Secretariat of State for Justice, which sends them back to the Ministry of Justice of the requesting State.

## **CHAPTER II APPEALS**

### **Art. 29**

*(Appeal against decision of refusal)*

1. Any reasoned decision of refusal, even partial, of the execution of a letter rogatory may be challenged by the Procuratore del Fisco to the Judge of Third Instance in Criminal Matters on grounds of legality within ten days of service of the decision.

### **Art. 30**

*(Challenge of orders of exequatur)*

1. Orders of exequatur of mere notification shall not be challenged.
2. Without prejudice to the provision enshrined in the preceding paragraph, the Procuratore del Fisco may propose an appeal against the order of exequatur that does not set forth coercive measures on grounds of legality. The appeal shall be submitted in writing to the Judge of Third Instance in Criminal Matters within ten days of receipt of service of the order of exequatur.
3. Any complaint envisaged by domestic law against orders of exequatur establishing coercive measures shall be allowed. The parties involved, through a Lawyer qualified to perform the legal profession in the Republic of San Marino at whom they have to elect legal domicile, and the Procuratore del Fisco may propose a written complaint regarding the fulfilment of the requirements referred to in Title I and Title II, Chapter I of this Law, to the Judge of Appeal in Criminal Matters, within ten days of receipt of service of the order of exequatur.
4. The lodging of appeals referred to in the preceding paragraphs shall suspend the execution of letters rogatory.
5. The Procuratore del Fisco, in the cases referred to in paragraph 2 of this Article, and the Procuratore del Fisco and the parties involved, in the cases referred to in paragraph 3 of this Article, may examine the request for judicial assistance or the parts thereof that are not expressly confidential, in the ten days following the lodging of the appeal. When this period of time elapses, the Law Commissioner shall forward the file to the competent Judge.

### **Art. 31**

*(Procedure in case of complaint)*

1. Within ten days of transmission of the file, the Judge of Appeal in Criminal Matters shall grant a period of ten days to the parties involved and to the Procuratore del Fisco to deposit any final remarks.
2. The Judge of Appeal shall decide on the proposed complaint by order within 15 days of receipt of the final remarks.

### **Art. 32**

*(Direct procedure before the Judge of Third Instance in Criminal Matters)*

1. The appeal of the Procuratore del Fisco against the decision of refusal, even partial, of the execution of the letter rogatory, as well as the appeal lodged against the order of exequatur not establishing coercive measures shall be addressed to the Judge of Third Instance in Criminal Matters, made in writing and it shall contain:



- 1) a clear and detailed description of the facts;
  - 2) any evidence deemed necessary;
  - 3) reasons supporting the instance;
  - 4) clear and detailed indication of the decision requested.
2. The Judge of Third Instance in Criminal Matters shall fix the hearing that shall take place by and not later than the subsequent 20 days.
3. The Procuratore del Fisco may submit further remarks and inferences up to 5 days before the date of the hearing.
4. The Judge of Third Instance in Criminal Matters shall decide by judgement to be deposited within 10 days prior to the date of the hearing.
5. The decision shall be notified to the Procuratore del Fisco. Subsequently, the file shall be forwarded to the Law Commissioner, Judge of Letters Rogatory, in order to implement the measures resulting from the final judgement.

### **Art. 33**

*(Last instance procedure before the Judge of Third Instance in Criminal Matters)*

1. Within 30 days of receipt of service of the order by the Judge of Appeal in Criminal Matters, the parties involved, through a Lawyer qualified to perform the legal profession in the Republic of San Marino at whom they have to elect legal domicile, and the Procuratore del Fisco may propose an appeal to the Judge of Third Instance in Criminal Matters on grounds of legality.
2. The appeal, addressed to the Judge of Third Instance in Criminal Matters and lodged in writing, shall contain:
  - 1) a clear and detailed description of the facts;
  - 2) any evidence deemed necessary;
  - 3) reasons supporting the appeal;
  - 4) clear and detailed indication of the decision requested.
3. The Law Commissioner, Judge of Letters Rogatory, shall order to serve the appeal to all parties involved, the Procuratore del Fisco. Subsequently, he shall transmit the file to the Judge of Third Instance in Criminal Matters.
4. The Judge of Third Instance in Criminal Matters shall grant a period of 10 days to the parties involved and the Procuratore del Fisco to deposit any remark and inference.
5. When the period of time specified in the preceding paragraph elapses, the Judge of Third Instance in Criminal Matters shall fix the date of the hearing, which shall take place within and not later than the subsequent 20 days.
6. The Judge of Third Instance in Criminal Matters shall decide by judgement to be deposited within ten days from the date of the hearing.
7. The judgement shall be notified to the parties involved and the Procuratore del Fisco. Subsequently, the file shall be forwarded to the Law Commissioner, Judge of Letters Rogatory, in order to implement the measures resulting from the final decision of Third Instance.

## **TITLE III LETTERS ROGATORY SENT ABROAD**

### **Art. 34**

*(Transmission of letters rogatory to foreign authorities)*

1. Subject to different provisions enshrined in the international conventions in force for the Republic of San Marino that envisage the direct transmission between judicial authorities, the judge responsible for the investigations, if necessary to carry out the investigations themselves, shall forward to the competent foreign authorities the requests relating to criminal proceedings for the

purpose of procuring evidence, or transmitting evidence, records or documents. Said requests shall be forwarded to the Secretariat of State for Justice, which sends them to the Ministry of Justice of the requested State through diplomatic channels.

2. If the requested State, to execute the letter rogatory, requests a guarantee of reciprocity, the Secretary of State for Justice, upon a decision of the State Congress in this regard, shall grant or not reciprocity to the requested State, in accordance with the limits envisaged by this Law.

### **Art. 35**

*(Limits of use of acts performed by a foreign State)*

1. Without prejudice to the law provisions in force on the validity and usability of acts, the usage of acts of judicial assistance requested and performed abroad in violation of the conditions and limits, if any, established by the foreign State shall be prohibited.

2. All terms for any complaints subsequent to seizures effected in secrecy regime abroad, shall be suspended and they shall start to run from the moment the termination of the secrecy regime is notified to the parties.

3. The parties involved and the Procuratore del Fisco may propose to the Judge of Appeal in Criminal Matters a written complaint against the order of formal evidence acquisition establishing coercive measures on grounds provided for by domestic law. Said complaint shall be submitted within ten days of receipt of service of the order, when the phase conducted in secrecy regime, if any, is terminated. The procedure outlined by Article 31 of this Law shall be applied and, in the event of a further third instance appeal, the procedure referred to in Article 33 of this Law shall be implemented.

### **Art. 36**

*(Temporary immunity of the person summonsed as a witness, expert or defendant)*

1. When the letter rogatory regards a summons to appear as a witness, expert or defendant before San Marino judicial authorities, the person summonsed, if he appears, shall neither be subjected to any form of restriction of his personal liberty in execution of a punishment or a security measure, nor be subjected to any other measure of restraint of personal liberty for facts anterior to service of the summons.

2. The immunity provided for by paragraph 1 shall terminate when the witness, expert or defendant, having had the opportunity to leave the territory of the State for a period of fifteen days from the date when his presence is no longer required by the judicial authorities, has nevertheless remained in the territory, or having left it, has voluntarily returned.

### **Art. 37**

*(Coordination rules)*

1. The following paragraph shall be added to Article 5 of Law no. 93 of 17 June 2008:

“7. In case of secrecy covering preliminary investigations, if the Investigating Judge requests judicial assistance to a foreign Authority, the period of secrecy covering preliminary investigations envisaged in paragraph 3 shall be suspended from the day on which the letter rogatory is sent to the day on which the reply is received.”.

2. The following paragraph shall be added to Article 8 of Law no. 93 of 17 June 2008:

“6. Under Article 36, paragraph 5 of Law no. 165 of 17 November 2005, bank secrecy shall not be invoked in the hearing. Any other law provision in conflict herewith shall be repealed.”.

**Art. 38**  
*(Repeal)*

1. Any rule in conflict with this Law is hereby repealed.

**Art. 39**  
*(Final provisions)*

1. This Law shall enter into force on the 15<sup>th</sup> day following that of its legal publication.

*Done at Our Residence, 30 July 2009*

THE CAPTAINS REGENT  
*Massimo Cenci – Oscar Mina*

SECRETARY OF STATE  
FOR INTERNAL AFFAIRS  
*Valeria Ciavatta*