

The Italian text shall be legally binding

REPUBLIC OF SAN MARINO

DECREE-LAW no.190 of 29 November 2010

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

Having regard to the conditions of necessity and urgency referred to in Article 2, paragraph 2, point b) of Constitutional Law no. 183 of 15 December 2005 and in Article 12 of Qualified Law no. 184 of 12 December 2005 and more precisely:

the need to conform the legislation in force to the OECD standards on transparency and exchange of information in tax matters and the urgency to align with these standards;

Having regard to Decision no. 1 of the State Congress adopted in its sitting of 29 November 2010;

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 CONFORM TO INTERNATIONAL STANDARDS ON
TRANSPARENCY AND EXCHANGE OF INFORMATION**

**TITLE I
AMENDMENTS TO LAW N. 95 OF 18 JUNE 2008**

Article 1
(Amendments to Article 1 Law n. 95 of 18 June 2008)

Article 1 of Law n. 95 of 18 June 2008 is replaced as follows:

“Article 1
(Aims)”

This Law shall regulate the services supervising and monitoring economic activities in order to prevent and counter tax fraud or “The like”, frauds and distortions in trade exchange.

This Law shall also regulate the administrative cooperation and the exchange of information in tax matters with other States in compliance with the international agreements in force between the Republic of San Marino and other Countries.”.

Article 2
(Amendments to Article 11 of Law n. 95 of 18 June 2008)

Article 11 of Law n. 95 of 18 June 2008 is replaced by the following:

“Article 11
(Tasks, functions and powers)”

The Central Liaison Office shall be the national authority responsible for contacting the competent offices and authorities of other Countries for administrative cooperation and the exchange of the information requested in tax matters in compliance with the international agreements in force between the Republic of San Marino and other States. Cooperation with foreign supervisory

authorities over financial systems shall not be within the responsibility of the Office.

The Central Liaison Office shall have the power to access *directly* the information necessary to ensure the types of cooperation and exchange of information referred to in the previous paragraph; it shall also have access to information to prevent and contrast tax frauds and similar offences as well as distortions in economic relations with other Countries. The functions set out in this paragraph are performed regardless of the fact that the behaviours might be criminally relevant.

Bank Secrecy pursuant to Article 36 of Law n. 165 of 17 November 2005 and subsequent amending and supplementing acts, as well as, in general, official secrecy and professional secrecy, cannot be opposed to the Central Liaison Office while performing its functions. Said Office can access directly the information held by financial intermediaries as well.

Those enrolled in the Register of Lawyers and those enrolled in the Register of Accountants (holding a university degree or holding a high school certificate) cannot oppose professional secrecy to the Central Liaison Office, except for the information they receive while performing their task of defending or representing their client during a judicial proceeding or in connection with such proceeding, including advice on initiating or avoiding proceedings, where information is received or obtained before, during or after said proceeding.

The provisions of Law n. 70 of 23 May 1995 shall not apply to the exchange of information activities carried out in implementation of the international agreements in force between the Republic of San Marino and other Countries relating to cooperation in tax matters, without prejudice to the provisions on data confidentiality contained in said Agreements.

The Central Liaison Office shall report about the activity carried out to the Congress of State through the Secretary of State for Finance and the Budget and the Secretary of State for Industry, Handicraft and Trade.

The Head of the Central Liaison Office shall submit a yearly report regarding the activity carried out by the Office to the Great and General Council through the Secretary of State for Finance and the Budget.”.

Article 3

(Amendments to Article 12 of Law of 18 June 2008 N.95)

Article 12 of Law of 18 June 2008 N.95 is replaced as follows:

“Article 12

(Relations with the Offices of the Public Administration and the Police Forces)

In carrying out its functions the Central Liaison Office:

- may avail itself of the cooperation of the Office of Control and Supervision over Economic Activities referred to in Article 3, of the Tax Office and of the Offices of the Public Administration.
- may request the cooperation of the Police Forces, including the Fraud Squad of the Civil Police, for accessing information and documentation held by the affected parties.

The Office of Control and Supervision over Economic Activities, the Tax Office, the Police Forces and the Fraud Squad of the Civil Police, which carries out its service pursuant to Articles 31 and 32 of Law n. 129 of 23 July 2010, as well as all Offices of the Public Administration, are required to respond to the requests in accordance with the procedures established by the Central Liaison Office in order to perform the functions laid down in Article 11.”.

Article 4
(Sanctions)

After Article 13 of Law n. 95 of 18 June 2008, as amended by Law n. 129 of 23 July 2010, the following Article 13 is added:

“Art. 13 bis
(Sanctions)”

Anyone hindering the activities of the Central Liaison Office set out in paragraphs 1 and 2 of Article 11, or not responding to the requests in accordance with the procedures and the terms established by the said Office, or fulfilling them only partially, shall be punished, without prejudice to other sanctions prescribed by the laws in force, with an administrative pecuniary sanction ranging from Euro 1,000.00 to Euro 50,000.00, to be imposed by the Tax Office in the amount determined by the Central Liaison Office.

The administrative pecuniary sanction referred to in the preceding paragraph shall be doubled when the illicit conduct occurs through recourse to fraudulent means. It is not possible to terminate the violation by paying a reduced amount.

The party concerned can lodge an appeal against the sanction before the Administrative Court pursuant to Art. 34 of Law n. 68 of 28 June 1989 and subsequent amendments.

Once the payment deadline has passed, the Tax Office, for the collection of the amounts due, shall avail itself of the tax collection roll pursuant to Law n. 70 of 25 May 2004.

Administrative pecuniary violations as defined by this Law shall be entered into the list that the Administrative Judge of Appeals submits annually for approval pursuant to Article 32 of Law n. 68 of 28 June 1989.”.

Article 5
(Access to information and data)

After Article 15 of Law n. 95 of 18 June 2008, the following Article 15 bis is added:

“Article 15 bis
(Access to information and data)”

The Central Liaison Office shall have complete and unlimited access, also through electronic means, to the data and information available in registers, archives, professional registers kept by the Central Bank, the Financial Intelligence Agency, the Public administrations and Professional Associations.

Without prejudice to what provided for by the preceding paragraph, the data and information kept by the Public Administrations and by the Professional Associations shall be made available to the Central Liaison Office upon a simple and reasoned request in writing made in connection with the aims and functions laid down by Art. 11.

For these same purposes referred to in the preceding paragraph, the Central Liaison Office, upon a simple request, shall have access to registers, archives, data and information kept by the Police Authority and the Single Court, including data regarding criminal records. The data and information regarding judicial activity shall be provided to the Central Liaison Office, upon prior authorization by the judge and only for the tasks assigned to said Office.

The data and information acquired by the Central Liaison Office may be used exclusively for the exercise of the functions set forth by the law.

The Central Liaison Office shall also have access to all information held by the Trust Register Office, in the same way as the subjects identified in Art. 2, paragraph 4 of Delegated Decree n. 50 of 16 March 2010; said Office, while performing its functions, can also directly request the trustee to produce the Book of Events pursuant to Art. 28, paragraph 5 of Law n. 42 of 1 March 2010.”.

Article 6

(Cooperation instruments between the Supervisory Offices over Economic Activities, the Central Bank and the Financial Intelligence Agency)

After 17 of Law n. 95 of 18 June 2008, the following Article 17 bis is added:

“Article 17 bis

(Cooperation instruments between the Supervisory Offices over Economic Activities, the Central Bank and the Financial Intelligence Agency)

A specific Agreement concluded between the Central Liaison Office and the Office for Control and Supervision over Economic Activities, on the one hand, and the Supervision Committee of the Central Bank of the Republic of San Marino, on the other, shall govern:

- the forms of cooperation for investigations into banking and financial aspects pursuant to Article 13 of this law, without prejudice to the provisions of Art. 36, paragraph 5(d) of Law no. 165 of 17 November 2005.
- the reporting procedures, pursuant to Article 7, paragraph 2 of this Law;
- any other reporting procedure for alleged irregularities identified while performing one’s own functions, with respect to the areas within the competence of the other control authority, through reciprocity and without the possibility of invoking official secrecy referred to, respectively, in Art. 17 of this Law and in Article 29 of Law n. 96 of 29 June 2005.

While performing its public functions, the Central Liaison Office shall have access the Personal Data Register, set up through Decree-Law n. 65 of 14 May 2009 and kept with the Central Bank of the Republic of San Marino, by complying with the modalities, procedures, and time-limits to be established by the Central Bank and laid down by the Agreement referred to in the previous paragraph.

The Central Liaison Office and the Office for Control and Supervision over Economic Activities shall cooperate, also by exchanging information with the Financial Intelligence Agency, through specific protocols of understanding.”.

TITLE II AMENDMENTS TO LAW N. 165 OF 17 NOVEMBER 2005

Article 7

(Amendments to Art. 36 of Law n. 165 of 17 November 2005)

Article 36, paragraph 6, letter c) of Law n. 165 of 17 November 2005 and subsequent amending and supplementing acts, is replaced as follows:

“c) communication is being addressed to the parent company, whether a San Marino or of a foreign State with which a relevant agreement referred to in Article 103 is in force, and is directed to comply with the rules concerning consolidated supervision referred to in Part II, Title I, Chapter III of this Law;”.

After paragraph 9 of Article 36 of Law n. 165 of 17 November 2005 and subsequent amending and supplementing acts the following paragraph is added:

“10. Compliance with these bank secrecy provisions exempts the authorized parties, the financial promoters, the insurance agents and intermediaries from abiding by the further provisions of Law n. 70 of 23 May 1995 and subsequent amendments, relating to the protection of confidentiality of information, including the provisions of last paragraph of Article 4.”

Article 8

(Amendments to Art. 156 of Law n. 165 of 17 November 2005)

After paragraph 8 of Article 156 of Law n. 165 of 17 November 2005, the following paragraphs are added:

“9. For relationships within a group already existing at the date of entry into force of this law, communication to foreign parent company pursuant to Article 36, paragraph 6, letter c) for the purposes of consolidated supervision shall be held to be allowed also in the absence of an agreement in force.

10. For the contracts and rights referred to in Article 149, paragraph 1, which, respectively, were concluded and arose before the date of entry into force of this law, the term of ten-year lapsing of rights shall apply from the entry into force of this Law . The general term of thirty years shall apply when said term elapses before the term of ten-years.”.

TITLE III OTHER PROVISIONS

Article 9

(Keeping of tax records)

Article 38 of Law n. 91 of 13 October 1984 shall be replaced as follows:

“Article 38

(Record keeping)

All entries and records required under Section IX, as well as the entries and records required under other tax laws and in any case relevant for assessment purposes, even if in conflict with provisions providing for shorter periods, shall be kept for **five** years, excluding the tax period they refer to, and in any case until the assessments for said tax period are concluded.

Article 10

(Sanctions for violating the obligations provided for in Art. 72 of Law n. 47 of 23 February 2006 and subsequent amendments)

If a company does not comply with one or more of the obligations provided for in Art. 72 of Law n. 47 of 23 February 2006 and subsequent amendments, an administrative pecuniary sanction ranging from Euro 2,000.00 to Euro 15,000.00 shall apply. Said sanction shall be applied by the Office for Control and Supervision over Economic Activities.

In the event of repeated violation of administrative breaches referred to in the previous paragraph, the pecuniary administrative sanction shall be increased up to three times, both for the minimum and for the maximum amount, depending on the seriousness of the infringement.

Anyone who, during the two years prior the last violation, commits the same administrative breach, shall be considered a repeat violator. In such a case, the voluntary cash settlement provided for in Article 33 of Law n. 68 of 28 June 1989 shall not be allowed.

The books and accounting records referred to in Article 72 of Law n. 47 of 23 February 2006 can be deposited with a Lawyer, a Public Notary or an Accountant (holding a university degree or a high school certificate), regularly enrolled in the respective San Marino Register, without prejudice to the obligation to produce these documents to the competent authorities in case of request, assessment, or inspection. Failure to produce the documents shall result in the application of the sanctions referred to in paragraph 1.

Article 11

(Control activities carried out by the Tax Office)

The Tax Office, for the areas within its competence and to perform the functions assigned to it, in addition to the control activities already provided for by special laws, can, on its own initiative or following reports by bodies of the Public Administration authorized by law to request it to:

- summon taxpayers enrolled in the tax registers and economic operators, both individual and as a company, as well as representatives of non-profit organizations to provide clarifications, information and evidence and to supply any document considered necessary;
- access the premises in which economic activities are conducted in order to carry out inspections and controls;
- examine and ascertain the accounting records, the formal papers and documents kept by the companies and by individual economic operators carrying on business activities or who are self-employed;
- request taxpayers to produce original copies of the documents reporting the expenses that can be deducted pursuant to Art. 6 of Law n. 91/1984 and subsequent amending and supplementing acts (*Income Tax*);
- access, in read-only mode, except for when a different authorization is granted, the data and information contained in the registers, archives, databases kept and used by the Public Administration, which can be useful for performing its tasks and functions;
- request public officials an abstract or copy of the documents and formal papers in their possession;
- ask for the assistance of technical experts for issues that require special knowledge.

When the control activities are not carried out on its own initiative, the Tax Office is required to report the findings to the requesting body.

In case of refusal or failure to produce, deliver, or transmit what indicated in paragraph 1, the Tax Office shall apply an administrative pecuniary sanction ranging from Euro 2,000.00 to Euro 15,000.00.

Done at Our Residence, on 29 November 2010

THE CAPTAINS REGENT
Giovanni Francesco Ugolini – Andrea Zafferani

THE SECRETARY OF STATE
FOR INTERNAL AFFAIRS
Valeria Ciavatta