



REPUBLIC OF SAN MARINO

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

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

Hereby promulgate and order the publication of the following Ordinary Law, approved by the Great and General Council during its sitting of 3 May 2012:

LAW NO. 51 OF 11 MAY 2012

PROVISIONS TO COMBAT ORGANISED CRIME

Article 1

The following articles are added after Article 287 of the Criminal Code:

"Article 287 bis
(mafia-type criminal association)

1. Anyone belonging to a mafia-type association composed of three or more persons shall be punished with fifth degree imprisonment and with third degree disqualification from public offices, political rights, profession or art.
2. Anyone promoting, directing or organising a mafia-type association shall be punished with sixth degree imprisonment and with fourth degree disqualification from public offices, political rights, profession or art.
3. An association is of the mafia-type when the criminal activities carried out by its associates are planned to commit offences in San Marino or abroad, to make use of these offences, of the intimidation deriving from bonds of association and of the power over others and code of silence which arise from that intimidation, for the purposes of acquiring the power to control public or private economic activities, gaining unjust enrichment or advantage for itself or others, or impeding or obstructing the free exercise of political rights.
4. Anyone who, with a view to procuring votes for him/herself or for others in elections, requests or accepts to receive electoral support from persons belonging to a mafia-type association, shall be punished with fourth degree imprisonment and with third degree disqualification from public offices, political rights, profession or art.
5. If the economic activities of which the associates intend to acquire or maintain the control are financed, totally or partially, with the price, product or profit of offences, the punishments established in the preceding paragraphs shall be increased by one degree.
6. In case of armed association, the punishments established in the preceding paragraphs shall be increased by one degree.

7. The provisions contained in this Article shall apply also to any locally denominated associations, including foreign, which, by making use of the intimidation deriving from bonds of association, pursue objectives corresponding to those of mafia-type associations.

Article 287 ter
(assistance to associates and to the association)

1. Anyone who, apart from the cases envisaged in Article 287 bis or of aiding and abetting, provides shelter, meals, hospitality, transport means, communication instruments to any person belonging to the association shall be punished with third degree imprisonment and with third degree disqualification from public offices, political rights, profession or art.
2. The punishment of imprisonment shall be increased by one degree if the assistance is provided on a continuous basis.
3. Anyone who commits the fact in favour of his/her descendent, ascendant or spouse shall not be punished.

Article 287 quater
(special aggravating and mitigating circumstances)

1. In case of offences committed by making use of the conditions provided for in Article 287 bis or with a view to facilitating the activities carried out by the associations envisaged in the same Article, the punishment shall be increased by two degrees.
2. For the offences indicated in Article 287 bis and for offences committed by making use of the conditions provided for in said Article, or with a view to facilitating the activities carried out by the associations envisaged in the same Article, the punishment may be reduced by a maximum of two degrees if the accused endeavours to prevent the criminal activity being carried further, by effectively contributing to establishing the facts and identifying the perpetrators of the offences.
3. Mitigating circumstances, other than those envisaged in paragraph 2 above, which are concurrent with the aggravating circumstance under paragraph 1 above, may not be considered as equivalent or prevailing with respect to the latter and reductions of the punishment shall apply to the total punishment resulting from the increase due to said aggravating circumstance."

Article 2

The following paragraph 3 is added to Article 362 of the Criminal Code ("*Aiding and abetting*"):

"When the assistance is provided to one or more persons belonging to a criminal association under Article 287 bis of the Criminal Code, the judge may increase the punishment of imprisonment by one degree. The punishment may be increased by two degrees if the assistance is provided on a continuous basis."

Article 3

1. Reference to Article 287 bis, ter and quater is added to paragraph 3 of Article 147 of the Criminal Code ("*Confiscation*") after the reference to Article 249.
2. After Article 5 of Law no. 93 of 17 June 2008, the following Article is added:

"Article 5 bis
(secrecy regime for the offence of mafia-type association)

1. If proceedings are commenced for the offences envisaged in Article 287 bis or for aggravated offences under the first paragraph of Article 287 quater of the Criminal Code, the

secrecy regime of investigations shall last for as long as necessary to perform the requested acts and shall not exceed 12 months, with another six-month extension possible.

2. Without prejudice to what envisaged in the preceding paragraph, the other provisions of Article 5 of Law no. 93 of 17 June 2008 shall apply to the proceedings for the offences indicated in paragraph 1."

Article 4

1. To supplement what envisaged in the Code of Criminal Procedure, it is hereby established that, in a proceeding regularly entered in the registers of the Court Registry and during investigations for the offence of mafia-type criminal association, the Investigating Judge may issue and add to the case-file a reasoned decree with which he/she authorises judicial police officers or agents to possess and use technical instruments to control, capture and record evidence, by indicating the timing and modalities of the operations and of the following report. Defence guarantees and secrecy requirements under Articles 3 and 5 of Law no. 93 of 17 June 2008 shall be observed.

2. The Investigating Judge shall proceed according to what envisaged in the preceding paragraph whenever this is necessary to establish the truth and provided that the activity transferred is not included among those regulated by Law no. 98 of 21 July 2009 (Law on wire-tapping).

3. The following point is added to the first paragraph of Article 3 of Law no. 98 of 21 July 2009:

12) offences set forth in the first paragraph of Article 287 bis and ter of the Criminal Code".

Article 5

1. Paragraph 3 of Article 287 of the Criminal Code, as added by Article 6 of Law no. 99/2010, shall be repealed, as well as any provision in contrast with this Law.

Article 6

1. This Law shall enter into force on the fifteenth day following that of its publication.

Done at Our Residence, on 11 May 2012/1711 since the Foundation of the Republic

THE CAPTAINS REGENT
Maurizio Rattini – Italo Righi

THE MINISTER
OF INTERNAL AFFAIRS
Valeria Ciavatta