

**The Italian text shall be legally binding**

# **REPUBLIC OF SAN MARINO**

DECREE - LAW no. 36 of 24 February 2011  
(Ratifying Decree Law n. 190 of 29 November 2010)

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

*Having regard to Decree-Law n. 190 of 29 November 2010 – “Urgent measures to conform to international standards on transparency and exchange of information”, promulgated;*  
*Having regard to the conditions of necessity and urgency referred to in Article 2, paragraph 2, letter b) of Constitutional Law no. 183 of 15 December 2005 and in Article 12 of Qualified Law no. 184 of 12 December 2005 and 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 Congress of State adopted during its sitting of 29 November 2010;*  
*Having regard to the amendments made to the above-mentioned Decree at the time of ratification by the Great and General Council during its sitting of 23 February 2011;*  
*Having regard to Articles 8 and 9, paragraph 5 of Qualified Law no. 186/2005;*  
*Promulgate and order the publication of the final text of the Decree Law n. 190 of 29 November 2010 as modified according to the amendments approved by the Great and General Council at the time of ratification of said Decree:*

## **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)*

1. Article 1 of Law n. 95 of 18 June 2008 shall be superseded as follows:

“Article 1  
*(Aims)*”

This Law regulates 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 Countries and jurisdictions in compliance with the international agreements in force between the Republic of San Marino and other Countries and jurisdictions.”.

## **Article 2**

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

Article 11 of Law n. 95 of 18 June 2008 shall be superseded as follows:

### **“Article 11**

*(Tasks, functions and powers)*

The Central Liaison Office shall be the competent authority for implementing and carrying out the administrative cooperation and the exchange of the information in tax matters, in compliance with the international agreements in force between the Republic of San Marino and other Countries and jurisdictions. 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 or through other competent offices 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 frauds, including tax frauds and “The like” as well as distortions in economic relations with other Countries and jurisdictions. 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 n. 95 of 18 June 2008 )*

1. Article 12 of Law n. 95 of 18 June 2008 shall be superseded 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 parties concerned.

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 bis 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 based on the indications provided by 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 Central Liaison Office. The above-mentioned sanctions do not apply to the public administration offices, to supervisory authorities and to the police forces, without prejudice to other disciplinary measures provided for by the laws in force.

The administrative pecuniary sanction referred to in the preceding paragraph shall be doubled when the illicit conduct occurs through recourse to fraudulent means. Reductions in the amount of the sanctions are not allowed.

The party concerned can lodge an appeal against the sanction before the Administrative Court in the manner and form established by Art. 34 of Law n. 68 of 28 June 1989 and subsequent amendments.

Once the payment deadline has passed, the Central Liaison 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 and subsequent amending and supplementing acts.

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 shall be 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 Public administrations and Professional Associations; said Office shall also have access to the data and information kept by the Central Bank and the Financial Intelligence Agency, in accordance with the terms and procedures laid down in the agreements or protocols referred to in Article 17 bis of this Law.

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 in 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 parties 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)*

1After 17 of Law n. 95 of 18 June 2008, the following Article 17 bis shall be 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 further:
  - a) 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,
  - b) procedure for accessing available data and information 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 Law Decree n. 65 of 14 May 2009 and kept with the Central Bank of the Republic of San Marino, by complying with the procedures, forms and time-limits to be

established by the Central Bank and laid down by the Agreement referred to in the previous paragraph, in accordance with what already provided for by the last paragraph.

Through specific protocols of understanding between the Central Liaison Office and the Office for Control and Supervision over Economic Activities, on the one hand, and the Financial Intelligence Agency, on the other, the forms of mutual cooperation and access to available data and information shall be determined”.

## **TITLE II**

### **AMENDMENTS TO LAW N. 165 OF 17 NOVEMBER 2005**

#### **Article 7**

*(Amendments to Articles 36 and 103 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, shall be superseded as follows:

“c) communication is being addressed to the parent company, whether a San Marino company or a company of a foreign State with which a relevant agreement referred to in Article 103 is in force and is required for purposes of consolidated supervision and risk control on a group-wide basis.”.

After paragraph 9 of Article 36 of Law n. 165 of 17 November 2005 and subsequent amending and supplementing acts the following paragraph shall be 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 the last paragraph of Article 4.”.

Article 103, paragraph 1, of Law n. 165 of 17 November 2005 and subsequent amending and supplementing acts shall be superseded as follows:

“1. The supervisory authority is authorised to conclude cooperation agreements with the competent authorities of foreign jurisdictions providing, subject to full reciprocity, for the exchange of information and of documents required in the performance of said authorities’ respective supervisory tasks, along with the possibility for and the procedures to be followed in order to obtain these information and documents directly from the supervised parties by the authority responsible for the supervision of their foreign parent company.”.

#### **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 shall be added:

“9. For relationships within a group [*Per i rapporti di gruppo*] already existing at the date of entry into force of this law, communication to the foreign parent company pursuant to Article 36, paragraph 6, letter c) 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)*

1. Article 38 of Law n. 91 of 13 October 1984 shall be superseded 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 set out in Art. 72 of Law n. 47 of 23 February 2006 and subsequent amending acts)*

Paragraph 5 of Art. 72 of Law n. 47 of 23 February 2006 and subsequent amending acts shall be supplemented as follows:

“The books indicated in the previous paragraph must be kept in the registered offices of the company or partnership for its entire duration, in compliance with Directory LXXI of Book II of the Charters. These books can also be deposited with a Lawyer, a Public Notary or 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 7.”.

After paragraph 6 of Article 72 of Law n. 47 of 23 February 2006 and subsequent amending acts, the following paragraph 7 shall be added:

“If a company or partnership does not comply with one or more of the obligations set out in this article an administrative pecuniary sanction ranging from Euro 2,000.00 to Euro 25,000.00 shall apply. In case of violations of the obligations set out in paragraphs 1, 2 and 3, the sanction shall be determined and applied by the Tax Office; in case of violations of the obligations set out in paragraphs 4,5 and 6 the sanction shall be applied by the Office of Industry, Handicraft and Trade in the amount determined by the Office for Control and Supervision over Economic Activities.

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

Anyone who, during the two years prior to 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.”.

## **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 or requests by the Central Liaison Office or other bodies of the Public Administration:

- summon natural persons, Economic Operators as well as representatives of non-profit organizations to provide clarifications, information and evidence and to supply any document considered necessary, also for the purpose of implementing the provisions of the international agreements in force between the Republic of San Marino and other Countries and jurisdictions;
- 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 relating to the economic activities carried out by economic operators;
- request taxpayers to produce original copies of the documents reporting the expenses that they request be deducted pursuant to Art. 6 of Law n. 91 of 13 October 1984 and subsequent amending and supplementing acts (*Income Tax*);
- access 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.

## **Article 12**

*(Provisions on foreign shareholdings through fiduciary mandates)*

1. San Marino fiduciary companies having shareholdings in foreign companies through a fiduciary mandate, upon request by the Central Liaison Office pursuant to Art. 11, paragraph 3 of Law n. 95 of 18 June 2008 and subsequent amending and supplementing acts, are required to transmit, in accordance with the terms and procedures laid down by said Office, the information referred to in Art. 2, paragraph 2 of Law n. 98 of 7 June 2010.

2. Any San Marino fiduciary company failing to comply with the obligations set out in the previous paragraph shall be applied the sanction referred to in Article 13 bis of Law n. 95 of 18 June 2008 and subsequent amending and supplementing acts.

## **Article 13**

*(Amendments to Art. 11, paragraphs 1 and 4 of Law n. 129 of 23 July 2010)*

1. Paragraph 1 of Art. 11 of Law n. 129 of 23 July 2010 shall be superseded as follows:

“1. Only foreign companies or partnerships shall be allowed to set up a permanent establishment in the Republic of San Marino. A foreign company or partnership desiring to set up a permanent establishment in the Republic of San Marino must fulfil all setting-up procedures before a San Marino Public Notary and appoint a representative in San Marino, who shall have the same rights and obligations as a sole director.”.

2. Paragraph 4, letter a) of Art. 11 of Law n. 129 of 23 July 2010 shall be superseded as follows:

“a) its name or business name, head office, legal representative, corporate purpose and corporate capital;”.

#### **Article 14**

*(Amendments to Articles 26, 34 and 35 of Law n. 91 of 13 October 1984 and subsequent amending and supplementing acts)*

1. Article 26 of Law n. 91 of 13 October 1984 shall be superseded as follows:

#### **“Art. 26**

#### *Major firms*

(1). Economic operators holding an individual license, whose income is defined according to the provisions of Article 20, and who are not already bound to prepare the financial statements, except for the firms subject to the regime provided for in Article 27 bis, must prepare, in case they have achieved revenues exceeding Euro 800,000.00 during the reference year, the profit and loss account and balance sheet for the subsequent two years.

(2) The reference year mentioned in the article refers to the year in which the economic activity began; to the second year of simplified accounting records keeping provided for by Art. 35; to the second year of regular accounting records keeping, referred to in the first paragraph of this Article and in the fourth paragraph of Art. 35.

(3) The parameters referred to in paragraph 1 may be changed and defined through a delegated decree proposed by the Congress of State.

(3) The Secretariat of State for Finance provides firms with the criteria to be followed to calculate the amount of income set out in paragraph 1.

(4) For the firms regulated by this Article, and with reference to the preparation of the profit and loss account and balance sheet, the provisions contained in Law No. 47 of 23 February 2006 shall apply.”.

2. Art. 34 of Law n. 91 of 13 October 1984 and subsequent amending and supplementing acts shall be superseded as follows:

#### **“Art. 34**

*(Accounting requirements for companies and partnerships, similar entities and major firms)*

1. All companies and partnerships, similar entities, permanent establishments of non-resident firms, as well as sole proprietors required to keep accounting records in the regular form because of their being considered major firms pursuant to Art. 26, shall keep, also through electronic means, a day book, an inventory book, a register of depreciable assets, all duly certified, as well as auxiliary accounting entries clearly indicating asset items and profit

items, classified consistently with the size and nature of the firm. They shall also compile the inventory and the balance sheet with a profit and loss account.”.

3. Article 35 of Law n. 91 of 13 October 1984 shall be superseded as follows:

**“Art. 35**

*Simplified accounting requirements for minor firms*

(1) Economic operators holding an individual license, whose income is defined according to the provisions of Article 20, in case they have not achieved revenues exceeding the amount indicated in Art. 26 during the reference year, shall be exempted for the following two years from the accounting requirements under Article 34, and they shall be required to maintain an inventory book, a purchase and sales book, without prejudice to the obligation to keep purchase and export invoices and any other book or document required.

(2) Registers shall be duly certified.

(3) Within the annual filing deadline, these persons shall indicate in the inventory book the value of stocks.

(4) Said persons may opt to comply with all accounting requirements under the preceding Article. Such option shall be exercised by the month of January of each year and shall be binding on the taxpayer for that year and the following one.

(5) A taxpayer may withdraw the option subject to appropriate written request to the Tax Office within the first four months of the second year.”.

**Art. 15**

*(Amendments to Delegated Decree n. 50 of 16 March 2010)*

1. After Article 1, paragraph 1 of Delegated Decree n. 50 of 16 March 2010 the following paragraph is added:

“2. “Abstract” of the trust instrument means the “certificate” of the trust referred to in Art. 7 of the above-mentioned Law n. 42 of 1 March 2010.”.

2. In Art. 8, paragraph 1 of Delegated Decree n. 50 of 16 March 2010 the phrase “of voluntary jurisdiction” shall be deleted.

*Done at Our Residence, on 24 February 2011*

THE CAPTAINS REGENT  
*Giovanni Francesco Ugolini – Andrea Zafferani*

THE SECRETARY OF STATE  
FOR INTERNAL AFFAIRS  
*Valeria Ciavatta*