

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 of 2005 and Article 6 of Qualified Law no. 186 of 2005;

Promulgate and order the publication of the following Ordinary Law approved by the Great and General Council during its sitting of June 11, 2008.

LAW N°. 95 OF 18 JUNE 2008

RE-ORGANIZATION OF THE SUPERVISORY SERVICES OVER ECONOMIC ACTIVITIES

**TITLE 1
OBJECTIVES AND PURPOSES**

Art.1

(Aims)

1. 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. It shall not apply to the activities referred to in Law No. 165/2005, as they are subject to specific control and supervisory bodies.
2. This Law shall also regulate the administrative cooperation with other States in compliance with the international agreements adopted by the Republic of San Marino.

Art.2

(The like)

1. "The like" shall only refer to the violations with the same degree of unlawfulness as tax fraud under San Marino legislation.
2. The single cases falling within the categories of "The like" shall be defined in the framework of the international agreements adopted by the Republic of San Marino.

**TITLE II
SUPERVISION OF ECONOMIC ACTIVITIES**

Art.3

(The Office for Control and Supervision over economic activities)

1. The Office for Control and Supervision over the economic activities conducted as an enterprise¹ shall be established.
2. Until the restructuring of the Public Administration is not completed, during which all the aspects concerning the organization and the procedures of recruitment, as well as the requirements, incompatibility cases, and remuneration of the staff shall be defined, the Office shall be established with the following characteristics:

¹ Both as a natural and a legal person. [Translator's Note]

- a) it shall be composed of two officials, one of whom being the Head of the Office, both appointed by the Congress of State. Their remuneration and working conditions shall be set upon their appointment;
- b) their term of office shall last three years, unless the above mentioned reform occurs before, and they may be re-appointed only once for a further three year term;
- c) the Office shall rely on the administrative staff referred to in Article 16 below.

Art.4

(Requirements and ineligibility)

1. The officials appointed under the preceding Article shall hold a degree in Law, Economics or in Socioeconomic disciplines and have appropriate professional skills and experience to be confirmed by their curriculum vitae, which shall be considered as integral part of the appointment.
2. The appointment to the Office shall be incompatible with the position of member of the Great and General Council (parliamentarian) or with executive positions in political parties, trade unions or trade associations.
3. It shall also be incompatible with economic operators activities as well as with positions held in any organs or control bodies of companies or partnerships working in the supervised sectors pursuant to this Law.
4. The incompatibility criteria envisaged in Law No. 41 of 22 December 1972 (Organic Law for State employees) and subsequent amendments and supplements shall also apply.
5. The official being in a position of conflict of interest in relation to a supervised entity shall be ineligible to cover the position.

Art.5

(Tasks and functions)

1. The Office for Control and Supervision referred to in Article 3 above shall conduct directly or through other Public Offices or State services the activities of preventing, identifying, investigating, countering tax fraud or "The like", frauds and distortions in trade exchange.
2. The Office for Control and Supervision over economic activities shall carry out the activity of controlling and supervising all economic operators structured as enterprises. In particular, it shall:
 - propose actions and report to the competent Bodies and/or Offices on the economic operators having exercised arbitrarily an activity which is essentially different from the one envisaged in the corporate purpose;
 - report and propose actions for those activities that, in any way, pursue an objective opposed to the interests of the State, as well as to international conventions and agreements;
 - ascertain that investments in property, immovable goods and shares are aimed at achieving the objective of the enterprise;
 - check the amount of the corporate capital of the company or partnership with respect to its subscription, deposit and settlement of losses;
 - ascertain that the corporate purpose complies with the laws of the State, as well as with the International Conventions and Agreements adopted by the Republic, and report any discrepancy or non-compliance with the requirements laid down for setting up the company or partnership;

- report the operators which have not commenced any of the activities set forth in their corporate purpose;

- monitor the commercial transactions carried out by San Marino economic operators.

3. The Head of the Office for Control and Supervision over economic activities shall submit every year a report on the activity carried out by the Office to the Great and General Council through the Secretary of State for Industry, Handicraft and Trade.

4. The Office for Control and Supervision over economic activities shall be answerable for its activity to the Congress of State through the Secretary of State for Industry, Handicraft and Trade and the Secretary of State for Finance and the Budget. Furthermore, it shall report the violations identified as a result of the controls referred to in paragraph 2.

5. If the violations reported are particularly serious, the Congress of State may order the licence to be revoked and has the power to start the procedure for the compulsory winding-up for all companies and partnerships at the Single Court, under Law No. 47 of 23 February 2006.

Art. 6

(Relations with Public Offices)

1. In order to perform its own functions, the Office for Control and Supervision over economic activities may rely on the cooperation with the Gendarmerie, the Civil Police and the Fortress Guard Uniformed Unit.

2. Public offices are required to provide any documents, information and cooperation requested.

3. The Office for Control and Supervision over economic activities shall have direct access to the data necessary to fulfil its functions, collected by the Tax Office and the Service for Import Supervision.

4. The functions assigned to the Assessment Bodies envisaged by the law on the general income tax shall not be prejudiced. To this end, the Office for Control and Supervision over economic activities shall report to these bodies all relevant information and data obtained while fulfilling its tasks.

Art.7

(Cooperation with the Court and the Supervisory Authorities)

1. In case of suspected crime, the Office for Control and Supervision over economic activities is required to forward to the Judicial Authority the information and data acquired while performing its functions.

2. Where the violations identified concern matters the supervision of which falls within the competence of the Central Bank of the Republic of San Marino – Supervision Department, the Office shall make a relevant report.

Art. 8

(Relations with economic operators)

1. The Office for Control and Supervision over economic activities shall have the power to summon economic operators and request them to submit any documents which could be useful to the fulfilment of its functions.

2. While performing its functions, the Office shall inform the economic operators during the meeting about the reasons having led to their summons.

3. The economic operators shall cooperate by allowing the access, if necessary, to premises, means of transport and documents and providing all relevant information.

4. Besides the sanctions envisaged in the legislation in force, any economic operator hindering the activities of the Office shall be punished with an accessory administrative pecuniary sanction applied by the Office of Industry, Handicraft and Trade ranging from € 1,000 to € 10,000 depending on the gravity of the infringement.

TITLE III INTERNATIONAL ADMINISTRATIVE COOPERATION

Art. 9

(Central Liaison Office)

1. A Central Liaison Office shall be established.

2. The Office shall be established based on the following criteria:

a) it shall include two officials, one of whom being the Head of the Office, both appointed by the Great and General Council upon proposal by the Congress of State, which shall establish the remuneration and working conditions;

b) the two officials shall be appointed for a three-year term and may be reappointed only once for a further three-year term;

c) the Office shall be assigned administrative personnel referred to in Article 16.

Art.10

(Requirements and incompatibility)

1. The officials appointed according to Article 9 above shall have a university degree in Law, Economics or Socioeconomic disciplines and have appropriate professional skills and experience to be confirmed by their curriculum vitae, which shall be considered as integral part of the appointment.

2. The appointment to the Office shall be incompatible with the position of Member of the Great and General Council (parliamentarian) or with executive positions in political parties, trade unions or trade associations.

3. It shall also be incompatible with free-lance or economic operators activities within the Republic of San Marino as well as with positions held in any organs or control bodies of companies or partnerships working in the supervised sectors pursuant to this Law.

4. The official who is in a conflict of interest in relation to a supervised entity by the Office shall not be eligible to cover the position.

Art.11

(Tasks and functions)

1. The Central Liaison Office shall be the body responsible for the contacts with the competent offices of other Countries for administrative cooperation in implementation of the international agreements adopted by the Republic of San Marino.

2. The Central Liaison Office shall access all the necessary information to prevent and contrast frauds, including tax frauds and "The like" as well as distortions in trade exchange.

3. The Central Liaison Office shall report 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.

4. 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.

Art.12

(Relations with the Office for Control and Supervision)

1. While fulfilling its functions, the Central Liaison Office shall avail itself of the cooperation of the Office for Control and Supervision referred to in article 3 and, if necessary, directly of the bodies of the Public Administration.

Art.13

(Cooperation with the Central Bank)

1. In carrying out its functions the Central Liaison Office may request the cooperation of the Central Bank of the Republic of San Marino for investigations into banking and financial aspects, without prejudice to the provisions of Law no. 165 of 17 November 2005.

Art.14 (abrogated by Art. 44 of Law n. 129 of 23 July 2010)

(Relations with economic operators)

1. The Central Liaison Office shall have the power to summon economic operators and request them to submit any documents which could be useful for the fulfilment of its functions.
2. While performing its functions, the Office shall inform the economic operators during the meeting about the reasons having led to their summons.
3. The economic operators shall cooperate by providing all relevant information.
4. The Economic operators may oppose the request by the Office by providing reasonable grounds according to the procedure described below.
5. The Central Liaison Office after receiving a request for administrative assistance shall inform the economic operator having the power to access the relevant file as well as the request and the documentation transmitted by the competent foreign authority.
6. The information referred to in the previous paragraph is provided through service of notice to the interested party. If service is not possible in the Republic of San Marino, the Central Liaison Office shall request the foreign authority to serve it.
7. Fifteen days following service of notice referred to in the previous paragraph and the interested party failing to provide reasonable grounds for refusal to the Central Liaison Office, the Office shall immediately transmit the information acquired to the competent foreign authority.
8. The Central Liaison Office after receiving a refusal by an economic operator, shall take a well grounded decision informing the interested party about the conditions established by International Agreements providing that the information may be transmitted to the authority requesting it, including documents and records.
9. The interested party may appeal such decision before the Administrative Judge within fifteen days after receiving the decision referred to in the previous paragraph by refusing to provide information which could reveal a market, company, industrial, commercial or professional secret. If not otherwise provided for by the law the provision of Law no. 69 of 28 June 19879 shall apply. Intermediate actions of the proceeding including the decision taken by the Central Liaison Office may be appealed only with the final decision. The decision taken by the Administrative Judge in case of suspension cannot be appealed.

10. The Central Liaison Office shall immediately transmit the information acquired to the requesting State.

Art.15

(Suspension of use of debt declarations)

1. In the framework of its functions laid down in Article 11, the Central Liaison Office shall report to the relevant bodies of the Public Administration, which shall in turn take the necessary measures, the names of those economic operators against which there is clear and solid evidence that the ongoing transactions with foreign economic operators are fictitious or have been devised with the purpose to elude tax payments in the Republic of San Marino or abroad or to obtain undue tax rebate for export.
2. The Tax Office shall adopt measures to suspend the rebates for export with subsequent interruption of use of debt declarations and shall inform the Central Liaison Office and the Office for Control and Supervision over economic activities.
3. The Congress of State shall regulate the procedure of suspension of use of debt declarations by issuing a specific delegated decree.

TITLE IV
COMMON PROVISIONS

Art.16

(Administrative staff)

1. The Offices referred to in Article 3 and Article 9 shall be assigned administrative staff employed within the Department for Production Activities and selected to cover the specific positions.
2. While the reorganisation of Public Administration is in progress, which should assign specifically appointed staff to the Offices above, these positions will be covered by the personnel already employed within the Public Administration. Staff will be relocated to the Office from other sectors of the Public Administration.

Art.17

(Official secrecy)

1. Members and employees of the Offices and all those who in any capacity cooperate with them are bound by official secrecy and confidentiality on any matters regarding the activity of these Offices and its relations with third parties. All information and records filed with the Offices in the framework of the activities thereof are covered by official secrecy. The obligation to abide by official secrecy shall not lapse after the end of the working relationship with the Office.
2. Those who, willingly or unwillingly, acquire information regarding the activity of the Office as a result of a relation with said Office, shall also be bound by official secrecy.
3. Official secrecy cannot be opposed to the Judicial Authority when the information requested is necessary in the framework of investigations into criminally punishable violations.

TITLE V
FINAL PROVISION

Art.18

(Final provisions)

1. With the appointment of the office personnel referred to in Art.3 and Art. 9, all the functions previously conferred upon the Committee for the Control and Supervision of Companies and Partnerships shall be transferred to the Office for Control and Supervision over economic Activities, while all the functions previously conferred upon first- and second - level working groups for administrative cooperation between Italy and San Marino shall be transferred to the Central Liaison Office.

Art.19

(Repeals)

1. All the provisions in contrast with this Law shall be repealed, in particular Art. 15 of Law no. 53 of 28 April 1999.

Art.20

(Entry into force)

1. This Law shall enter into force as of the fifteenth day following its legal publication.

Done at Our Residence, 18 June 2008

*THE CAPTAINS REGENT
Rosa Zafferani – Federico Pedini Amati*

THE SECRETARY OF STATE
FOR THE INTERNAL AFFAIRS
Valeria Ciavatta