

# REPUBLIC OF SAN MARINO

DELEGATED DECREE no.146 of 28 November 2008  
(Ratification of Delegated Decree no. 135 of 31 October 2008)

Courtesy translation

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

*Having regard to Delegated Decree no. 135 of 31 October 2008 "Regulations of the Financial Intelligence Agency" promulgated:*

*Having regard to article 91 of Law no.92 of 17 June 2008;*

*Having regard to the decision no. 2 of the State Congress adopted in the sitting of 29 October 2008;*

*Having considered that the adoption of the decree in question becomes obligatory and bound within the times by Law 92/2008;*

*Having regard to the amendments made to the aforementioned decree during its ratification by the Great and General Council in the sitting of 25 November 2008;*

*Having regard to articles 30, paragraph 2, and 31, paragraph 2, of Law no. 31 of 18 February 1998;*

*Having regard to articles 8 and 9, paragraph 5, of Qualified Law no. 186/2005;*

*We promulgate and send for publishing the final text of Delegated Decree no. 135 of 31 October 2008, as modified by the amendments approved by the Great and General Council during its ratification:*

## **REGULATIONS OF THE FINANCIAL INTELLIGENCE AGENCY**

### **Article 1**

*(Logistical independence, custody and protection of data)*

1. The Financial Intelligence Agency, established at the Central Bank of the Republic of San Marino, shall operate in separate premises made available by the Central Bank for the exclusive use of the same Agency.
2. The Agency shall avail of the equipment, support services, computer and communication systems made available by the Central Bank for the exclusive use of the Agency in order to ensure the correct, autonomous and efficient performance of the functions assigned by law.
3. The Agency shall adopt suitable measures to guarantee, with maximum effectiveness, that the documents, data, and information acquired, as well as the computer systems, are accessible only to the authorised personnel of the Agency.

### **Article 2**

*(Requirements of professionalism for the Director and Vice Director)*

1. The Director and the Vice Director, appointed by the State Congress in accordance with article 3 of Law no. 92 of 17 June 2008 must possess following requirements of professionalism:
  - a. a degree in economic, legal or banking science disciplines;
  - b. knowledge of the financial system and financial analysis skills gained through appropriate professional experience;
  - c. knowledge of the systems for preventing and combating money laundering and the financing of terrorism.
2. The Director and the Vice Director must themselves ensure that they remain updated on combating money laundering and the financing of terrorism, also through participation in specific courses.

### **Article 3**

#### *(Requirements of honourability for the Director and Vice Director)*

1. Nobody who has been sentenced, even not definitively, for a non-negligent offence to detention or to prohibition from public offices for a period of no less than year may be nominated as Director and Vice Director and, if nominated, the assignment shall be terminated.
2. The Director and the Vice Director, if subject to criminal proceedings for acts inherent to their office or for other acts of serious criminal importance, may be suspended from office by a provision of the State Congress.
3. In the case where the suspension regards both the Director and the Vice Director, the functions assigned to them shall be performed by the official of the highest level and with the greatest seniority.
4. The Director and the Vice Director shall be removed by the State Congress in the cases provided for by article 3, paragraph 2 of Law no. 92 of 17 June 2008, in the cases provided for by article 4, or in the case where they have committed or omitted acts in a situation of conflict of interest, pursuant to article 5, or where they have damaged the reputation of the office or the prestige of the Agency.

### **Article 4**

#### *(Requirements of independence for the Director and Vice Director)*

1. The office of Director and Vice Director is incompatible with:
  - a. the position of partner, director, manager, statutory auditor, official, employee, auditor of the subjects designated by article 17 of Law no. 92 of 17 June 2008 of subjects designated in other States;
  - b. performing one of the activities specified in articles 18 letters d), e), f), 19 and 20 of Law no. 92 of 17 June 2008;
  - c. assignments of a political nature;
  - d. carrying out any other assignment, commitment, professional or advisory activity.
2. From the acceptance of the nomination, all current employment or assignments shall cease.
3. If an employee of the Central Bank is nominated as Director or Vice Director, in exception to the previous paragraph, from the acceptance of the nomination, the functions performed at the same Central Bank shall cease.
4. In accepting the nomination, the Director and Vice Director must declare any interests in companies that carry out any of the activities specified by article 17 of Law no. 92 of 17 June 2008.
5. These interests must be disposed of within 30 days of assuming office.

### **Article 5**

#### *(Conflicts of interest of the Director and Vice Director)*

1. In carrying out their functions, the Director and the Vice Director must refrain from initiating acts or making decisions in a situation of conflict of interest.
2. A conflict of interest pursuant to the previous paragraph arises when the Director or the Vice Director, in performing their assigned functions, are called upon to perform acts that have a specific

impact on their property, on that one a spouse, relatives or in-laws to the second degree, or on businesses, companies or similar bodies in which they have a direct or indirect interest.

3. The Director who finds himself in a situation of conflict of interest shall immediately inform the Vice Director of this, who shall, exclusively and without hierarchical restriction, assume the jurisdiction to perform the functions assigned to the Agency in relation to the acts or decisions due to which the Director's conflict of interest arises.

4. If a situation of conflict of interest concerns the Vice Director, he shall, regardless of the assignment of delegations, immediately inform the Director of said situation.

5. In the case where the conflict of interest regards both the Director and the Vice Director, the functions shall be performed by the official of the highest level and with the greatest seniority.

6. The provisions of this article do not exclude the application of the civil, criminal or administrative rules in force, whenever they may be applicable.

### **Article 6**

*(Regulatory and remunerative framework for the Director and Vice Director)*

1. The regulatory treatment provided for by the work contract of the management officials of Central Bank shall apply to the Director and to the Vice Director; the remunerative treatment and framework shall be defined by the nomination measure.

### **Article 7**

*(Functions of the Director and the Vice Director)*

1. The Director shall be responsible for the operations of the Agency, the activity of which he shall plan, manage and control in full autonomy. The Director shall adopt the provisions relating to the functions assigned to the Agency, with the right to delegate the Vice Director.

2. The Director shall coordinate and controls the operations of the personnel of the Agency, for whom he shall promotes training and updating on matters regarding the prevention and combating of money laundering and the financing of terrorism.

3. The Director shall produce an appropriate report proposing the personnel structure of the Agency and modifications thereto to the Credit and Savings Committee, with due considerations to the specific operational and organisational requirements of the Agency. The Credit and Savings Committee, having heard the Board of Management of the Central Bank, shall establish whether the personnel meets the criteria of economy, proportionality, efficiency and effectiveness and, if the report is approved, shall send it to the Central Bank for so that it can fulfil its obligations.

4. The Director of the Agency shall supervise the personnel and shall present the Board of Management of the Central Bank with the information and assessments regarding personnel for decisions on hiring, promotion and other contractual conditions.

5. The Director shall govern the organisation and operation of the Agency with independent provisions.

6. The Vice Director shall assist the Director in the carrying out his functions. Should the Director be impeded or absent, his functions shall be carried out by the Vice Director.

**Article 8**  
*(Employees)*

1. The personnel of the Agency shall be hired according to the procedures and with application of the contracts in force at the Central Bank and is structured according to professionalism, level of responsibility and autonomy, functions and duties carried out.
2. Personnel must be selected in such a manner as to guarantee the complete independence of the Agency.
3. Personnel may also be hired on a fixed term contract, in compliance with the rules in force and the provisions specified in the contracts of the personnel of the Central Bank.
4. The transfer of personnel from the Central Bank to the Agency and vice versa is governed by agreement between the Director of the Agency and the General Director of the Central Bank, holding account of the operational and functional requirements of the Agency and the Central Bank.
5. The personnel of the Agency shall report directly and exclusively to the Director and the Vice Director.
6. The personnel of the Agency may not assume any other assignment or employment, carry on any other professional or advisory activity or cover assignments of a political nature.

**Article 9**  
*(Personnel from external transfers)*

1. The Agency may avail of employed personnel from Public Administrations who possess the skills and requirements of professionalism and experience necessary to carry out the specific functions or duties.
2. The transfer of employees of Public Administrations, compatible with the approved staffing plan, shall be arranged following a justified request from the Director of the Agency, subject to acceptance on the part of the Director of the Public Administration in question.
3. The legal and economic treatment provided for by the contracts of employees and officials of the Central Bank shall be applied to personnel on transfer from Public Administrations for the full duration of their transfer; the burden shall fall on the Central Bank. The service performed at the Agency is equivalent, to the full effect of the law, with that performed at the Administrations of origin. Transferred personnel are entitled to be readmitted to the job that they held before.
4. The service performed by police personnel of police applied at the Agency in compliance with article 51 of Law no. 92 of 17 June 2008 is equivalent, to the full effect of the law, to that performed at the respective Headquarters of origin. The related costs shall be sustained by the Administration of origin.

**Article 10**  
*(Central Bank personnel and transfer of functions)*

1. Within a month of the nomination, the Director of the Agency, in agreement with the General Director of the Central Bank, shall identify the personnel of the Central Bank that the Agency will use in completing the personnel structure.
2. The General Director of the Central Bank and the Director of the Agency shall ensure the functional and rapid transfer of the functions as specified in article 93 of Law no. 92 of 17 June 2008.

**Article 11**  
*(Observance of official secrets)*

1. Transferred personnel, in compliance with article 9, are obliged to comply with official secrecy regarding their Administrations and Headquarters of origin.
2. The Director, the Vice Director and the personnel of the Agency are obliged to comply with official secrecy also in regard to the Central Bank.

3. The obligation of secrecy regarding all information that may come to light in the performance of functions or duties carried out at the Agency must be observed even after the assignment or employment is terminated.

### **Article 12**

#### *(Costs estimate document)*

1. The cost estimate document pursuant to article 2, paragraph 4 of Law no. 92 of 17 June 2008 shall specify and quantify of the financial and instrumental resources necessary for the subsequent year, established according to criteria of economy, proportionality, efficiency and effectiveness.
2. The Director of the Agency shall present the document to the Credit and Savings Committee.
3. The Credit and Savings Committee, having obtained the opinion of the Board of Management of the Central Bank and having performed the assessments specified by article 2 paragraph 4 of Law no. 92 of 17 June 2008, shall send the document with its resolution to the Central Bank.
4. The Board of Management of the Central Bank, having received the cost estimate document, shall record an appropriate item of expenditure in its Financial Statements.
5. Should any additional financial resources become necessary in order to guarantee the operation of the same Agency, the Director of the Agency may request a change to the cost estimate document in the same manner as described in this article.

### **Article 13**

#### *(Directors' report)*

1. The directors' report, signed by the Director of the Agency, contains the overall outline of the financial and instrumental resources used by the Agency in the previous year and illustrates the items of expenditure incurred in detail. The report is sent to the Credit and Savings Committee which, with its resolution, sends it to the Board of Management of the Central Bank.

### **Article 14**

#### *(Operational independence and performance of financial investigations)*

1. The Agency performs the tasks assigned to it by Law regarding the prevention and combating of money laundering and the financing of terrorism in full autonomy and independence.
2. The Agency shall perform the investigation functions specified in article 4, paragraph 1, letter b) of Law no. 92 of 17 June 2008, by performing the financial analysis and investigation of reports received and of the data and the information that it has at hand.
3. To perform the financial investigation function, the Agency shall exercise the powers under article 5, paragraph 1, letters a), b), c) and f) of Law no. 92 of 17 June 2008. It shall also enjoy the powers provided for by articles 8, 11, 12, 14 and 16 of Law no. 92 of 17 June 2008.

### **Article 15**

#### *(Assistance to the Judicial Authority)*

1. On the delegation of the Judicial Authority, pursuant to article 5, paragraph 4 of Law no. 902 of 17 June 2008, the Agency may perform inquiries and evidence taking, availing of Police personnel transferred to the Agency, or other Police personnel specified by the Legal Authority. The reports of the actions carried out shall be immediately sent to the Judicial Authority.
2. The Judicial Authority may request the assistance of the Agency in proceedings relating to crimes of money laundering and financing of terrorism and to the offences and administrative violations provided for by Law no. 92 of 17 June 2008.
3. If the Judicial Authority receives a report pursuant to article 15 of Law no. 92 of 17 June 2008, or a report forwarded by a Police Authority, the Agency, in exception to the provisions of article 7

paragraph 1 of Law no. 92 of 17 June 2008, it shall inform the Judicial Authority of the outcome of the financial investigation carried out, even if no acts of criminal significance emerge.

Done at Our Residence, 28 November 2008/1708 since the Foundation of the Republic

THE CAPTAINS REGENT  
*Ernesto Benedettini – Assunta Meloni*

THE SECRETARY OF STATE  
FOR INTERNAL AFFAIRS  
*Valeria Ciavatta*

