REPUBLIC OF SAN MARINO

DELEGATED DECREE NO. 33 of 27 February 2020
(Ratifying Delegated Decree no. 21 of 3 February 2020)

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

Having regard to Delegated Decree no. 21 of 3 February 2020 - Alignment of national legislation with international standards and conventions on the prevention and combating of money laundering and terrorist financing - which has been promulgated:

Having regard to Article 10 of Law no. 154 of 03 October 2019;

Having regard to Congress of State Decision no. 7, adopted during its sitting of 29 January 2020;

Having regard to the amendments to the above-mentioned decree, which were introduced at the time of its ratification by the Great and General Council in its sitting of 20 February 2020;
Having regard to Decision no. 7 adopted by the Great and General Council on 20 February 2020;
Having regard to Article 5, paragraph 3 of Constitutional Law no. 185/2005 and to Article 8, paragraph 3, and Article 10, paragraph 2 of Qualified Law no. 186/2005, as well as to Article 33, paragraph 6 of Qualified Law no. 3/2018;
Hereby promulgate and order the publication of the final text of Delegated Decree no. 21 of 3 February 2020, as modified following the amendments approved by the Great and General Council at the time of its ratification:

ALIGNMENT OF NATIONAL LEGISLATION WITH INTERNATIONAL STANDARDS AND CONVENTIONS ON THE PREVENTION AND COMBATING OF MONEY LAUNDERING AND TERRORIST FINANCING

Art. 1
(Amendments to Article 1 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. Letter e), paragraph 1 of Article 1 of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:
"e) "assets" or "funds": assets or funds as defined by Article 1, paragraph 1, letter c) of Law no. 57 of 29 March 2019 and subsequent amendments and by Article 1 of the Technical Annex to the same Law.".

1 *bis*. Letter i) of paragraph 1 of Article 1 of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:
"i) "payable-through accounts": cross-border or national correspondent accounts used directly by the customers to carry out transactions on their own behalf;".

1 *ter*. Letter r) of paragraph 1 of Article 1 of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:

"r) "beneficial owner": any natural person(s) who ultimately owns or controls, directly or indirectly, the customer or the natural person(s) on whose behalf or in any case in whose interest the business relationship, service or transaction is established, provided or carried out respectively. The criteria for determining the beneficial owner are specified in Article 1 *bis* of the Technical Annex;".

2. In Article 1, paragraph 1 of Law no. 92/2008 and subsequent amendments, after letter b), the following letter shall be added:

"b *bis*) "virtual assets": digital representations of assets which can be traded or transferred digitally and can be used for payment or investment purposes. Virtual assets shall not include digital representations of fiat currencies, transferable securities or other financial assets.".

3. In Article 1, paragraph 1 of Law no. 92/2008 and subsequent amendments, after letter s) the following letter shall be added:

s)

"s *bis*) "virtual asset service providers": any natural or legal person who, on a professional basis, i.e. when receiving remuneration in any form or manner, carries out one or more of the following activities or transactions in the name or on behalf of another natural or legal person:

i) exchange between virtual assets and fiat currencies;
ii) exchange between one or more forms of virtual assets;
iii) transfer of virtual assets;
iv) custody and/or administration of virtual assets or tools that allow to have control over virtual assets;
v) participation and provision of financial services related to the offer and/or sale of a virtual asset of an issuer.".

4. The first sentence of paragraph 1 of Article 1 of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:

"2. For the purposes of the legislation on the prevention and combating of money laundering only, except as provided for in Articles 199 and 199-*bis* of the Criminal Code, the following conduct, when committed intentionally, may be regarded as money laundering, even if committed abroad:".

Art. 2

(Amendments to Article 6 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. In paragraph 2 of Article 6 of Law no. 92 of 17 June 2008 and subsequent amendments, the following part shall be repealed: "The Agency shall also communicate the measure to the party concerned except where the communication may prejudice the results of the investigation.".

Art. 2-*bis*

(Amendments to Article 7 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. Paragraph 1 of Article 7 of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:

"1. In case the Agency, as a result of the financial analysis conducted, detects facts that might constitute money laundering offences, predicate offences or terrorist financing, it shall transmit to the judicial authority the report on the financial analysis and the related documents via dedicated, safe and secure channels.".

Art. 2-*ter*

(Amendments to Article 12 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. Paragraph 1 of Article 12 of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:
"1. The Agency, the police authority and the National Central Bureau of Interpol shall cooperate also by exchanging information, either spontaneously or upon request, by concluding ad hoc memoranda of understanding.".

2. Paragraph 3 of Article 12 of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:
"3. The information shall be exchanged via dedicated, safe and secure channels and may be used exclusively for the purposes of preventing and combating money laundering, predicate offences and terrorist financing. The information shall not be disclosed to third parties without the prior written consent of the Agency and shall be covered by official secrecy also with respect to those who receive it.".

Art. 2-*quater*

(Amendments to Article 14 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. Article 14 of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:

"Art. 14

(Collaboration with the Central Bank)

1. The Agency and the Central Bank shall cooperate also by exchanging information, either spontaneously or upon request, via dedicated, safe and secure channels and on the basis of ad hoc memoranda of understanding.
2. Except for the cases where it operates as obliged party under Article 18, paragraph 1, letter b), whenever the Central Bank, in the exercise of its supervision functions over the financial institutions referred to in Article 18, paragraph 1, letters a), c), d), e) and f), or in the exercise of the other statutory functions, detects violations of this Law, or facts or circumstances that might be related to money laundering or terrorist financing, it shall inform the Agency thereof in writing and without delay.
3. The Central Bank shall provide the Agency with data regarding financial institutions, as well as information useful for carrying out the financial analysis and the other functions envisaged by law.".

Art. 3

(Amendments to Article 16-novies of Law no. 92 of 17 June 2008 and subsequent amendments)

1. In letters a) and b) of paragraph 1 of Article 16-*novies* of Law no. 92 of 17 June 2008 and subsequent amendments, "250 euro" shall be replaced by "150 euro".
2. Paragraph 2 of Article 16-*novies* of Law no. 92 of 17 June 2008 and subsequent amendments shall be repealed.
3. In paragraph 3 of Article 16-*novies* of Law no. 92 of 17 June 2008 and subsequent amendments, "100 euro" shall be replaced by "50 euro".

Art. 3-*bis*

(Amendments to Article 17 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. After paragraph 5 of Article 17 of Law no. 92 of 17 June 2008 and subsequent amendments, the following paragraph shall be added:
"5 bis. The Register of Non-financial Institutions referred to in the preceding paragraph 5, with the exception of suspended or removed parties, shall be made freely available by the Agency on its website only with respect to the name and surname or the business name of the obliged party, the registration number in the aforementioned register and the economic operator code, if assigned.".

Art. 4

(Amendments to Article 18 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. Letter c) of paragraph 1 of Article 18 of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:
"c) Poste San Marino S.p.A. when offering the postal financial services described in Article 3, paragraph 1, letter c) of the Articles of Association of Poste San Marino S.p.A. referred to in Annex A) to Delegated Decree no. 22 of 26 February 2015;".

Art. 5

(Amendments to Article 19 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. Letters a), c), e), g) of paragraph 1 of Article 19 of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:
"a) trust or company service providers other than financial institutions;
c) real estate agents, even when they act as intermediaries in the lease of real estate, but only in relation to transactions for which the monthly rent is equal to or greater than 10,000 euro;

e) the parties carrying out the activity of custody and transport of cash, works of art, securities or values;
g) the parties carrying out the activity of auction house, art gallery, trade in antiques or in any case works of art, if the value of the transaction or a series of transactions connected with each other is equal to or greater than 10,000 euro;".
2. After letter g *ter*) of paragraph 1 of Article 19 of Law no. 92 of 17 June 2008 and subsequent amendments, the following letter shall be added:
"g *quater*) service providers in the field of virtual assets.".

Art. 5-*bis*

(Amendments to Article 21 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. Letter c) of paragraph 1 of Article 21 of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:
"c) when they perform occasional transactions representing a transfer of funds equal to or higher than EUR 1,000.00;".

Art. 5-*ter*

(Amendments to Article 23-ter of Law no. 92 of 17 June 2008 and subsequent amendments)

1. After paragraph 2 of Article 23-*ter* of Law no. 92 of 17 June 2008 and subsequent amendments, the following paragraph shall be added:
2 bis. Obliged parties shall be required to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced due diligence measures are applicable. Where obliged parties determine that a beneficiary, other than a natural person, presents a higher risk, they shall be required to take enhanced measures, including reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary at the time of payout of the capital or return on capital.".

Art. 6

(Amendments to Article 27 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. Letter c) of paragraph 1 of Article 18 of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:
"c) in cases of higher risks that have been identified by obliged parties in the framework of the self-assessment of the risks referred to in Article 16 *quinquies*, as well as in cases when the risk profile is high;".

Art. 7

(Amendments to Article 27-bis of Law no. 92 of 17 June 2008 and subsequent amendments)

1. Paragraph 4 *bis* of Article 27-*bis* of Law no. 92 of 17 June 2008 and subsequent amendments shall be repealed.

Art. 7-*bis*

(Amendments to Article 30 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. Article 30 of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:

"Art. 30

(Prohibition to keep anonymous accounts or accounts in fictitious names and to use national payable-through accounts)

1. Financial institutions shall be prohibited from keeping anonymous accounts or savings passbooks or in fictitious names, or from issuing bearer passbooks or otherwise from using relationships that do not allow the identification of the customer and the beneficial owner.
2. It shall be prohibited to use any form of anonymous accounts or passbooks or in a fictitious name opened abroad.
3. In case of national payable-through accounts, the financial institution shall be satisfied that its counterpart has performed ongoing due diligence on the customers having direct access to such accounts, and that it is able to provide relevant customer due diligence data to the financial institution upon request.".

Art. 7-*ter*

(Amendments to Article 31 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. After paragraph 2 of Article 31 of Law no. 92 of 17 June 2008 and subsequent amendments, the following paragraph shall be added:
"2 *bis*. In the case of payment of premiums for life insurance contracts, including temporary death insurance policies, as well as in case of benefits in the form of settlements, surrenders or other payments due under insurance contracts by insurance companies, including through insurance intermediaries, the use of cash shall not be permitted.".

Art. 8

(Amendments to Article 34 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. Paragraph 2 of Article 34 of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:
"2. Obliged parties shall register and keep the supporting evidence and records of business relationships, relevant transactions, occasional transactions, services provided, correspondence and results of every analysis carried out. In particular, they shall register and keep original documents or copies having the same evidentiary effects for a period of at least five years following the carrying out of the transaction or the provision of the service.".

Art. 9

(Amendments to Article 34-bis of Law no. 92 of 17 June 2008 and subsequent amendments)

1. Paragraph 1 of Article 34-*bis* of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:
"1. Following withdrawal, waiver or lapse of the authorisation to carry out a reserved activity, the financial institution shall, even if in ordinary or compulsory administrative winding-up, appoint a person responsible for keeping, for the purposes of this Law, documents and electronic archives for at least five years. In such cases, the retention period shall start on the date of cancellation from the Register of Authorised Parties pursuant to Law no. 165 of 17 November 2005 and subsequent amendments and integrations. In cases of transactions for en bloc disposal of assets and liabilities, pursuant to Article 52 of Law no. 165 of 17 November 2005 or other special laws, the retention period shall start on the date on which the en bloc sale takes effect.".

Art. 10

(Amendments to Article 42 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. In paragraph 5 *bis* of Article 42 of Law no. 92 of 17 June 2008 and subsequent amendments, the words "shall report directly" shall be replaced by the words "shall be part of the staff".

Art. 11

(Amendments to Article 57 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. In the text of letter a) of paragraph 1 of Article 57 of Law no. 92 of 17 June 2008 and subsequent amendments, the following part shall be repealed: "The same punishment shall be imposed on anyone not complying with the restrictive measures adopted under Article 46".

Art. 12

(Amendments to Article 61 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. Reference to Article 24-*bis* of Law no. 92 of 17 June 2008 and subsequent amendments shall be repealed.

Art. 13

(Amendments to Article 74 of Law no. 92 of 17 June 2008 and subsequent amendments)

1. Paragraph 6 of Article 74 of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:
"6. The alleged violations shall be notified in accordance with Article 17, paragraphs 1 and 2 of Law no. 100 of 29 July 2013. Persons residing abroad may have an address for service in the Republic of San Marino when they take office or when are hired as employees or when a consultancy or collaboration relation starts and shall promptly notify the Agency thereof. In the absence of the aforesaid communication, any notification shall be deemed validly made at the address for service of the obliged party.".
2. Letter c), paragraph 10 of Article 74 of Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:
"c) analyse all evidence acquired during investigation and filed with the records of the sanction procedure. On the basis of the counterarguments and documents submitted by the parties concerned and of all information collected, the Agency shall also carefully assess the alleged violations, the seriousness thereof and the personal liability, in accordance with the criteria set forth in the preceding Article 72, paragraph 1.".

Art. 14

(Amendments to Article 1 of the Technical Annex to Law no. 92 of 17 June 2008 and subsequent amendments)

1. After paragraph 4 of Article 1 of the Technical Annex to Law no. 92 of 17 June 2008 and subsequent amendments, the following paragraph 4 *bis* shall be added:
"4 *bis* The Department of Finance and Budget shall coordinate the publication and updating of a list indicating exactly the functions which, in accordance with national legislative, regulatory and administrative provisions, shall be considered prominent public offices for the purposes of this Article. Publication and updating shall take place after consultation with the Technical Commission for National Coordination.".

Art. 14-*bis*

(Amendments to Article 1-bis of the Technical Annex to Law no. 92 of 17 June 2008 and subsequent amendments)

1. Paragraph 3 of Article 1-*bis* of the Technical Annex to Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:
"3. The provisions of paragraph 1 shall not apply to companies listed on a regulated market that are subject to reporting requirements, which ensure adequate transparency of information on ownership structure and beneficial ownership.".

Art. 15

(Amendments to Article 1-bis of the Technical Annex to Law no. 92 of 17 June 2008 and subsequent amendments)

1. Paragraph 6 of Article 1-*bis* of the Technical Annex to Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:

“6. In case the customer is a trust, the beneficial owners shall be:

a) the settlor(s);
b) the trustee(s);
c) the protector(s), if any;
d) the beneficiaries, or where the persons benefiting from the trust have yet to be determined, the category of persons in whose main interest the trust is set up or operates;
e) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means.”.

Art. 16

(Repeal of Article 2 of the Technical Annex to Law no. 92 of 17 June 2008 and subsequent amendments)

1. Article 2 of the Technical Annex to Law no. 92 of 17 June 2008 and subsequent amendments shall be repealed.

Art. 17

(Amendments to Article 3 of the Technical Annex to Law no. 92 of 17 June 2008 and subsequent amendments)

1. Article 3 of the Technical Annex to Law no. 92 of 17 June 2008 and subsequent amendments shall be amended as follows:

“1. The data, information, documents and statistics referred to in Article 16 ter shall include at least the following:

a) data measuring the size and importance of the different sectors which fall within the scope of this Law, including the number of natural persons and entities, and economic importance of each sector.

b) data measuring the reporting, investigation and judicial phases of the national AML/CFT regime, including the number of suspicious transaction reports made to the Agency, the follow-up given to those reports and, on an annual basis, the number of cases investigated, the number of persons prosecuted, the number of persons convicted for money laundering or terrorist financing offences, the types of predicate offences, where such information is available, and the value in Euro of property that has been frozen, seized or confiscated;

c) if available, data identifying the number and percentage of reports resulting in further investigation, together with the annual report of the Agency to obliged parties detailing the usefulness and follow-up of the reports they presented;

d) data regarding the number of cross-border requests for information that were made, received, refused and partially or fully answered by the Agency, broken down by counterpart country;

e) the human resources allocated to the Agency to carry out the tasks referred to in Article 4 of this Law;

f) the number of on-site and off-site supervisory actions, the number of violations detected on the basis of the supervisory actions and the administrative sanctions applied by the Agency.”.

Done at Our Residence, on 27 February 2020/1719 since the Foundation of the Republic

THE CAPTAINS REGENT
Luca Boschi – Mariella Mularoni

THE MINISTER OF
INTERNAL AFFAIRS
Elena Tonnini