

**THE DIRECTOR GENERAL
OF THE CENTRAL BANK OF THE REPUBLIC OF SAN MARINO**

IN VIEW OF to Article 36 of Law no. 165 of 17 November 2005 that, in the sixth paragraph, excludes the breach of banking secrecy in the cases described therein, and in the ninth paragraph assigns to the Supervisory Authority the duty of supervising over strict compliance with banking secrecy;

IN VIEW OF to Article 40 of Law no. 165 of 17 November 2005 that assigns to the Supervisory Authority the power to issue recommendations to interpret the provisions contained in the same Law;

IN VIEW of the Statutes of the Central Bank of the Republic of San Marino approved by Law no. 96 of 29 June 2005 and in particular Article 30, paragraph 3 of the Statutes, based on which the Central Bank's acts on supervision, passed by the Supervision Committee, are issued by the Director General;

IN VIEW of the Supervision Committee resolution, with which approval was granted to the text of the Recommendation of the Central Bank of the Republic of San Marino on the interpretation of Article 36, paragraph 6, of Law no. 165 of 17 November 2005;

ISSUES

the enclosed Recommendation 2009-

01. San Marino, 30 January 2009

SIGNED: THE DIRECTOR GENERAL
Prof. Luca Papi

Recommendation no. 2009-01

INTERPRETATION of Article 36, paragraph 6, of Law no. 165/2005

Premise

The evolution of the international principles concerning the prevention of and fight against money-laundering and terrorism financing, which have found implementation in the national legal systems of the various Countries, may result in, for the intermediaries that enter into relationship with San Marino banks and other financial undertakings, the obligation to receive from them all necessary information to fulfil the provisions contained in the anti-money laundering legislation applicable to one's Country or, in the absence thereof, to refuse the execution of the requested transaction.

Given that the intermediary where the transaction must be executed, wholly or partially, is to be considered a third party pursuant to Article 36 of Law no. 165/2005, certain San Marino financial undertakings have requested from this Supervisory Authority an intervention clarifying matters regarding the acceptance of these requests for information in relation to compliance with banking secrecy, on which the Authority is called to offer supervision pursuant to the ninth paragraph of the above-mentioned article of the Law.

Purposes

In order to promote the adoption by San Marino financial undertakings, of a uniform and correct conduct, the Supervisory Authority has therefore considered it appropriate to utilise the interpretative instrument referred to in Article 40 of Law no. 165/2005 by issuing a specific Recommendation.

Contents

As is known, the sixth paragraph of Article 36 of Law no. 165/2005 lists a series of cases in which disclosure to third parties of data covered by banking secrecy does not constitute a breach of the prohibition placed in the first paragraph of the afore-mentioned article.

Among these cases, those marked by letters a) and c) are particularly significant for the purposes of this Recommendation.

Indeed, in the case in which the transaction requested by the client from the San Marino authorised party should be executed, wholly or partially, with banks or other financial intermediaries or otherwise with parties obliged to respect the anti-money laundering provisions in force in their Country, it is evident that the circumstance referred to under letter c) shall apply, provided that the disclosure of the information to the above-mentioned third party is a condition "*necessary*" to execute the client's request.

For all other cases in which the "*necessity*" requirement is not applicable, the disclosure to a third party may nevertheless not constitute a breach of banking secrecy in cases where the client, the *party concerned* with the confidentiality of the information, has issued, with a *specific written statement*, its consent to the communication, thus indicating, more in general, the non-imperative nature of banking secrecy in relation to the ordering powers recognised by the law to the concerned party.

Please note that in any case that, especially for transactions requested within the context of pre-existing contractual relations as compared to the current regulatory framework, relations with clients must remain guided by the rules of transparency, correctness and diligence referred to in Article 66 of Law no. 165/2005, ensuring a degree of awareness to the client such as to limit the risk of disputes.

San Marino, 30 January 2009.