



# Supplementary Peer Review Report Phase 1 Legal and Regulatory Framework

**SAN MARINO**



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## About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 100 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004. These standards have also been incorporated into the UN *Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once adopted by the Global Forum.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency).



## Executive Summary

1. This is a supplementary report on the amendments made by San Marino to its legal and regulatory framework for transparency and exchange of information. It complements the Phase 1 Peer Review report of San Marino which considered the legal and regulatory framework in place as at 5 October 2010 and was adopted and published by the Global Forum on Transparency and Exchange of Information for Tax Purposes in January 2011.

2. This supplementary report considers the changes made by San Marino since October 2010, the date at which the legal and regulatory framework was previously assessed, to address the recommendations made in the original review report. It considers San Marino's progress report sent to the Peer Review Group – see report in annex 2 – concerning the legislative amendments adopted by San Marino to address the determination and recommendations relating to elements A.1 (availability of ownership and identity information), A.2 (availability of accounting information), B.1 (access to information) and C.1 (exchange of information mechanisms) which were previously assessed to be “not in place” and elements B.2 (notification requirements and rights and safeguards) and C.2 (network of exchange of information mechanisms) previously assessed to be “in place, but certain elements of its legal implementation need improvement”. San Marino is of the view that the amendments made to its legal framework are such that all six of these elements should now be determined to be “in place”. Consequently, San Marino has asked for a supplementary peer review report pursuant to paragraph 58 of the Global Forum's *Methodology for Peer Reviews and Non-member Reviews*.

3. San Marino is located in the Italian peninsula and shares its border with Italy. It is not a member of the European Union (EU), but co-operates with it under a number of EU mechanisms. San Marino relies on a well diversified economy. The revenue from construction, tourism and banking and financial services contributes more than half of its GDP. San Marino committed to the international standards of transparency and exchange of information for tax purposes in 2000.

4. A number of changes have recently improved the legal and regulatory framework, such as lifting bank secrecy so it does not limit international

exchange of information for tax purposes. Additionally, anonymous companies, which were previously allowed to issue bearer shares, have now been converted to joint-stock companies or closed down. Bearer passbooks have either been converted to nominative accounts or closed.

5. Ownership information is available for all relevant entities and arrangements, including foreign companies and partnerships setting up permanent establishments in San Marino. San Marino fiduciary companies whose clients hold shares in foreign companies are required to disclose the identification of the persons for whom they acting as nominees, their shareholdings, and (where relevant) their beneficial owners. Sanctions are in place for violations of obligations concerning keeping of corporate books and accounting records (which include information on entities' owners).

6. Full accounting records, including underlying documentation, are clearly required to be kept by all relevant entities for at least five years.

7. San Marino's competent authority, the CLO, has the necessary access powers to obtain information from all relevant entities for the purposes of responding to international requests. The scope of professional secrecy in San Marino's laws is wide in comparison to the standards, as it covers notaries and accountants, and this may limit authorities' access to information needed to meet requests from foreign tax authorities.

8. San Marino has signed a total of 35 international agreements allowing for the exchange of information in tax matters, of which 22 are currently in force. Out of the remaining 13 agreements not in force, San Marino has ratified 12 agreements and awaits ratification by its partner. Three of San Marino's agreements do not provide for exchange of information to the international standard. Though it has been very active in negotiating tax information agreements recently, San Marino does not have an agreement to the standard with Italy, which is its biggest trading and financial partner. A Protocol to bring the DTC with Italy to the international standard was initialled on 25 June 2009 but has not been signed.

9. San Marino's Parliament passed a new Law 106/2011 on 22 July 2011, which came into force on 9 August 2011. This law has created a limited unilateral mechanism by which San Marino is obliged to provide tax information upon request to the jurisdictions with which it has initialled or signed DTCs or TIEAs in conformity with international law, but which have not yet entered into force.<sup>1</sup> The effectiveness of this unilateral mechanism in practice will depend on the ability of the partner jurisdictions to use it for requests for information.

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1. Article 9 reads: "The Central Liaison Office (CLO) shall provide assistance to the competent authorities of the States or Jurisdictions referred to in Article 2, paragraph 2 above through exchange of information that is foreseeably relevant

10. Given the rapid amendments made by San Marino to its legal and regulatory framework for transparency and exchange of information, and the fact that its competent authority has over the past year solidified its experience with international exchange of information in tax matters, the Phase 2 review of San Marino will take place, in accordance with the schedule of reviews adopted by the Global Forum, during the second half of 2012.

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to the administration and enforcement of the domestic laws of said States or Jurisdictions concerning taxes covered by Article 10 hereunder. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.

Information shall be exchanged in accordance with the provisions of this Title irrespective of and independently from the content of the relevant agreement, which has not yet entered into force.

The rights and safeguards secured to persons by the laws or administrative practice in the Republic of San Marino shall remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.”





## Introduction

### Information and methodology used for the supplementary review of San Marino

11. The assessment of San Marino legal and regulatory framework made through this supplementary peer review report was prepared pursuant to paragraph 58 of the Global Forum's *Methodology for Peer Reviews and Non-member Reviews*, and considers recent changes to the legal and regulatory framework of San Marino based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes*. This supplementary report was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at August 2011, and information supplied by San Marino. It follows the phase 1 Report on San Marino which was adopted and published by the Global Forum in January 2011.

12. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. In respect of each essential element a determination is made that: (i) the element is in place; (ii) the element is in place, but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In particular, this report considers changes in San Marino's legal and regulatory framework which relate to five of the essential elements (elements A.1, A.2, B.1, C.1 and C.2).

13. The supplementary review was conducted by an assessment team, which consisted of two expert assessors and one representative of the Global Forum Secretariat: Caroline Peffer, from the Ministry of Finance of Luxembourg, Monica Sionara Schpallir Calijuri, from Secretariat of the Federal Revenue of Brazil and Sanjeev Sharma from the Global Forum Secretariat.

14. An updated summary of determinations and factors underlying recommendations in respect of the 10 essential elements of the Terms of Reference, which takes into account the conclusions of this supplementary report, can be found in the annexes to this report.

## Compliance with the Standards

### A. Availability of information

#### Overview

15. Effective exchange of information requires the availability of reliable information. This part of the report considers the legal and regulatory framework now in place in San Marino as regards the availability of ownership information, accounting records and bank information. The original Phase 1 report found that element A.3 (bank information) was “In place” and no recommendations were made. Element A.1 (availability of ownership information) was found to be “Not in place” due to: inconsistent obligations on foreign entities with a nexus to San Marino to maintain ownership information; San Marinense fiduciary companies with shareholdings in foreign companies not being required to maintain information on persons for whom they act; absence of enforcement provisions to ensure availability of ownership information for companies and partnerships; and, incomplete availability of information on beneficiaries of trusts. Element A.2 was found to be not in place as companies and other entities which during the year had revenues under EUR 800 000 were only obliged to keep partial accounting records which were not in line with the international standard. Also, foreign partnerships carrying on business in San Marino were not clearly obliged to maintain accounting records.

16. San Marino has promptly introduced amendments in various laws to remove the deficiencies concerning the ownership and identity information as identified in the Phase 1 review report:

- Article 13 of Decree Law No.36/2011 (Decree 36/2011) amended paragraph 1 of Article 11 of Law No.129/2010, providing that foreign companies and partnerships setting up permanent establishments in San Marino must do so before a San Marino public notary. As notaries in San Marino are required to identify their customers, and the beneficial owners of the customers, ownership information is available for foreign companies and foreign partnerships with a permanent establishment in San Marino;
- Article 12 of Decree 36/2011 requires San Marino fiduciary companies whose clients hold shares in foreign companies to disclose the identification of the persons for whom they acting as nominees, their shareholdings, and (where relevant) their beneficial owners;
- Article 15 of Decree 36/2011 expressly requires that the certificates of trust needs to be registered for all trusts, and these certificates include information on *the beneficiaries with a current interest in the trust fund*; and
- Article 10 of Decree 36/2011 amended the Companies Law, inserting sanctions for violations of obligations concerning keeping of corporate books and accounting records (which include information on the ownership of the company).

17. In terms of element A.2 (availability of accounting information), Decree 36/2011 has amended the relevant laws to clearly provide that only individuals (including sole proprietors) may keep simplified accounts and to ensure full accounting records are kept by foreign partnerships that carry on business in San Marino. As a result, both matters raised in the original review report which related to accounting records have now been addressed.

## A.1. Ownership and identity information

Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

### *Companies (ToR<sup>2</sup> A.1.1)*

18. The original review report found that ownership information was available in San Marino with respect to domestic and foreign companies, but a gap existed where San Marino fiduciary companies held shares in foreign companies (paras.78-85). Information was not available on the persons on

2. *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.*

whose behalf these domestic fiduciary companies were acting, nor was information available on all persons in the ownership chain.

19. Articles 41 and 42 of Law No.165/2005 (Law on Companies and Banking, Financial and Insurance Services) enable the Central Bank of San Marino (CBSM) to request data, documents and information from San Marinense fiduciary companies.

20. To strengthen the obligations in this area, San Marino has now explicitly prescribed obligations on fiduciary companies to provide information to the Central Liaison Office (CLO). In this regard, Article 12 of Decree 36/2011 states:

**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.*

21. This is supported by Central Bank of San Marino (CBSM) Regulation No.03/2011 for Financing Operations (Financial Companies), which came into force on 1 July 2011.

22. This article refers to Law No.98/2010, which was examined in paragraphs 80 and 81 of the original review report. Article 2(2) of that law relates to identification information on the fiduciary company's settlors, their shareholdings and, if they are not natural persons, the identification of their beneficial owners.

23. Accordingly, pursuant to Article 12 of Decree 36/2011, San Marino fiduciary companies having shareholdings in foreign companies are subject to clear obligations to maintain ownership information (identical to those in place for foreign fiduciary companies with mandates to participate in San Marinense companies). It is noted that the amended law also prescribes identical sanctions for non-compliance.

### *Partnerships (ToR<sup>3</sup> A.1.3)*

24. The original review report (paras.89-95) found that while full information was available concerning the partners of domestic partnerships, a gap existed with respect to information on the partners of foreign partnerships with a nexus to San Marino.

25. Article 11 of Law No.129/2010 (the Licensing Law) prescribes the licensing requirements for foreign entities seeking to set up a permanent establishment in the Republic of San Marino. Decree Law No.172/2010 introduced the concept of permanent establishment for tax purposes. Foreign partnerships carrying on business in San Marino were not however taxed. The concept of permanent establishment in the tax law contained different terminology to define the types of foreign entities whose permanent establishments are subject to tax from the terminology used in the law establishing licensing requirements for foreign entities operating in San Marino. As a result, it was not clear whether the tax laws applied to permanent establishments of foreign partnerships. Paragraph 94 of the original review report discussed this issue and concluded that as a result the availability of information on partners of foreign partnerships carrying on business in San Marino was not ensured.

26. Article 13 of Decree 36/2011 amended Article 11(1) of the Licensing Law which now provides that *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.* Public notaries in San Marino are subject to AML obligations and must conduct customer due diligence (see paragraph 74 of the original review report). Accordingly, they must identify their customers and the beneficial owners of their customers.

27. The requirements for obtaining a license from the Office of Industry, Handicraft and Trade were examined in paragraph 66 of the original review report in connection with foreign companies. Foreign companies are required to submit documents which *inter alia* include a certified copy of the statutes, a certificate of the effectiveness of the company or equivalent document and a certified copy of the articles of association. Now, with the amendment to the Licensing Law, foreign partnerships desirous of setting up a permanent establishment in San Marino must also obtain a license. San Marino authorities have indicated that, in case of a foreign partnership, equivalent information (including the details of the partners) is required by the licensing authority, prior to grant of a license to a foreign partnership.

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3. *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.*

28. Further, article 14 of Decree 36/2011 amended article 34 of the Tax Law requiring permanent establishments of non-resident partnerships to keep accounting records similar to those kept by domestic partnerships.

29. The newly introduced obligations under Licensing Law and Tax Law ensure availability of identity and ownership information on foreign partnerships to the competent authority. Accordingly, San Marino has implemented the first recommendation concerning ownership information for foreign partnerships.

### *Trusts (ToR A.1.4)*

30. The original review report noted that information on all the beneficiaries of trusts was not ensured under San Marino laws. This concern mainly arose from Article 6(2)(g) of Law No.42/2010 (the Trust Act). Article 6 concerns the creation of trusts. Article 6(2) sets out requirements for information to be included in the trust instrument. For a beneficiary trust, the identification of the beneficiaries, or the criteria which enable them to be identified, or the identification of the person who has the power to identify the beneficiaries must be stated in the trust instrument. Paragraph 103 of original review report expressed concerns regarding the alternative that the trust instrument might simply note *the identification of the person who has the power to identify the beneficiaries*. This issue has not yet been the subject of legislative reform by San Marino.

31. Paragraph 104 of the original review report examined the issue of registration of trusts with the Office of the Trust Register. Article 7 of the Trust Act, which applies to both domestic trusts and foreign trusts with a trustee in San Marino, provides for the drawing up of a trust certificate which *inter alia* includes details of the beneficiaries with a current interest in the trust fund. The trust certificate must be authenticated by a notary public who certifies that the contents are true. Article 8(3) of the Trust Act obliges the notary public who has authenticated the trust certificate to deposit the certificate with the Office of the Trust Register. The resident trustee or the resident agent is obliged to inform the Office of the Trust Register of any changes to registered information within fifteen days from the date he makes or receives such amendments (Article 13(3)).

32. Paragraph 104 of the original review report dwelt on the ambiguities created by Article 3 of Delegated Decree No.50/2010 which required registration of an abstract of the trust instrument. It was unclear whether the abstract is the same as the trust certificate.

33. Article 15 of Decree 36/2011, enacted subsequent to the original review report, introduced in Article 1 of Delegated Decree No.50/2010 a clarification that the “abstract” of trust instrument means the “certificate” of the



trust referred to in article 7 of Law No.42/2010. This amendment removes the ambiguity and it is clear in the legislation that a certificate of trust needs to be registered with the Office of the Trust Register. Pursuant to Article 15bis of Law No.95/2008 (newly inserted by Art.5 of Decree 36/2011), the CLO has complete and unlimited access to this information.

34. The legislative measures introduced by San Marino thus address the issues related to trusts. While trust instruments do not need to identify the beneficiaries or the class of beneficiaries (they may simply note *the identification of the person who has the power to identify the beneficiaries*) the trust certificate, which must be deposited with the Office of the Trust Register, must contain details of *the beneficiaries with a current interest in the trust fund*.

### ***Enforcement provisions (ToR A.1.6)***

35. Paragraphs 128 and 129 of original review report noted that there were no sanctions for companies or partnerships if they failed to keep ownership information in accordance with Law No.47/2006 (Company Law).

36. Article 10 of Decree 36/2011 introduced amendments in the Company Law, specifically article 72 which deals with statutory corporate books and accounting records (see paras.58, 134 of original review report).

37. The amended Article 72(5) states:

*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.*

38. Amended article 72(7) sets out sanctions for violations of obligations concerning keeping of corporate books and accounting records, which contain information on the shareholders of companies. Failure to keep records attracts an administrative pecuniary sanction ranging from EUR 2 000 to EUR 25 000. Where there are repeated administrative breaches, the pecuniary administrative sanction can be increased up to three times, both for the minimum and for the maximum amount, depending on the gravity of the infringement.

39. Thus, the changes introduced to the Company law address the absence of sanctions for companies and partnerships which fail to keep ownership information in accordance with obligations in the Company Law.

40. The effectiveness of the enforcement provisions which are in place in San Marino will be considered as part of the Phase 2 review.

### Determination and factors underlying recommendations

Phase 1 determination	
<b>The element is not in place.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
Other than for foreign companies, the requirement that entities formed outside of San Marino but having their place of effective management in San Marino maintain ownership information or provide it to authorities is unclear.	San Marino should address the lack of clarity in its laws to make it explicit that, in addition to foreign companies, all foreign entities having sufficient nexus to San Marino are required to maintain information on their ownership.
The obligations on fiduciary companies registered in San Marino that have shareholdings in foreign companies to disclose to the authorities information identifying the person(s) for whom they act are unclear and only those persons in the ownership chain who hold more than 25% interest in the fiduciary company's client must be identified.	Provisions should be established to ensure that San Marinense fiduciary companies having shareholdings in foreign companies maintain the information identifying the person(s) for whom they act and that all fiduciary companies maintain information on all persons in the ownership chain behind their clients.
There is no obligation to identify the beneficiaries of trusts unless they hold more than a 25% interest in trust property.	San Marino should establish clear provisions in its laws to ensure availability of information on all beneficiaries of trusts.
The Company Law does not prescribe any sanctions for failure by companies or partnerships to keep ownership information.	San Marino should prescribe enforcement provisions in the form of penalties for companies and partnerships which do not maintain information in accordance with the Company Law.

## A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

### ***General requirements (ToR A.2.1) and Underlying documentation (ToR A.2.2)***

41. The original review report concluded that while full accounting records were required to be kept for other relevant entities, under the Income Tax Law companies, similar entities, permanent establishments of non-resident companies and sole proprietors which during the year had revenues under EUR 800 000 were only obliged to keep partial accounting records. That is, they were obliged to keep records which explain all transactions but not records enabling the financial position to be determined and they were not obliged to prepare financial statements or a balance sheet. Therefore, it was recommended that San Marino prescribe accounting requirements for these businesses which ensure the keeping of accounting records in line with the standards.

42. In addition, that report found that foreign partnerships carrying on business in San Marino were not clearly obliged to maintain accounting records.

### *Accounting records for entities with annual revenues under EUR 800 000*

43. Decree 36/2011 introduced amendments to Articles 26, 34 and 35 of Law No.91/1984 (Introduction of the General Income Tax Law). The definition of major firms, as per amended article 26 now reads: *economic operators holding an individual license, whose income is defined according to 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 EUR 800 000 during the reference year, the profit and loss account and balance sheet for subsequent two years.*<sup>4</sup>

44. Amended article 34 now prescribes the keeping of full accounting records and underlying documents by all companies, partnerships, similar entities, permanent establishments of non-resident firms. Sole proprietors<sup>5</sup>

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4. San Marino's authorities have indicated that tax reforms which will be presented to the Parliament for approval before the end of the current year include a reduction of the threshold from EUR 800 000 to EUR 350 000.
  5. Sole proprietors are natural persons resident in San Marino who have been issued a licence, under Law No.129/2010 «Regulations Governing Licenses To Pursue

considered as major firms pursuant to article 26 must also maintain full accounting records and underlying documents.

45. The amended Article 35, under the heading *simplified accounting requirements for minor firms*, now restricts the benefit of simplified accounting to economic operators holding an individual license (*i.e.* sole proprietors). Nonetheless, these individuals must maintain an inventory book and a purchase and sale book, without prejudice to the obligation to keep purchase and export invoice and any other books or documents required under any legislation.

46. The abovementioned amendments in articles 26, 34 and 35 of the Introduction of the General Income Tax Law now expressly provide that the benefits of simplified accounting are only available to economic operators holding an individual license (sole proprietors). As at 8 September 2011 there were approximately 1 200 sole proprietors with revenues under EUR 800 000. While, considering the nature of the sole proprietors and the number of them, the fact that the accounting records to be kept by these persons are not completely consistent with the international standard is not a material gap, San Marino should ensure that this allowance for simplified records does not in any way interfere with the effective exchange of information in tax matters. All the other entities, including sole proprietors considered as major firms, must keep full accounting records and underlying documents consistent with the standard.

47. Accordingly, the changes introduced by Decree 36/2011 address the deficiency concerning accounting records for entities with annual revenues under EUR 800 000

#### *Accounting records by foreign partnerships*

48. Article 13(1) of Decree 36/2011 amended Article 11 of Law No. 129/2010. Amended article 11 now provides that only foreign companies or partnerships are allowed to set up permanent establishments in the Republic of San Marino.

49. Article 14 of Decree 36/2011 amended Article 34 of the Introduction of the General Income Tax Law, which now explicitly provides that the accounting records to be kept by partnerships and permanent establishments of foreign partnerships are the same as those to be kept by all companies (see paragraph 143 of the original review report).

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Industrial, Service, Handicraft And Commercial Activities”, to run a business. They operate in the agriculture, production and services, handicraft and in commercial activities (*e.g.* trade and business agents, hairdressers, painters, carpenters, plumbers, bakers, electricians, cafeteria operators, restaurateurs and operators of small stores).

50. Accordingly, the changes introduced by Decree 36/2011 address the deficiency concerning accounting records for foreign partnerships carrying on business in San Marino.

### Determination and factors underlying recommendations

Phase 1 determination	
The element is <b>not</b> in place.	
Factors underlying recommendations	Recommendations
There is lack of clarity concerning the obligations on foreign partnerships carrying on business in San Marino to maintain accounting records in San Marino.	San Marino should clarify the requirement for foreign partnerships that carry on business in San Marino to maintain accounting records and underlying documentation.
Businesses achieving revenue less than EUR 800, 000 are allowed to keep accounts in the simplified form for the reference year and two subsequent years. The keeping of accounts in simplified form does not meet the international standards.	San Marino should provide that all entities maintain proper accounting records and underlying documents consistent with the international standards.

### A.3. Banking information

Banking information should be available for all account-holders.

51. The original review report did not raise any concerns with respect to bank information. The determination for A.3 was, and remains, “The element is in place”.

## B. Access to information

### Overview

52. A variety of information may be needed in respect of the administration and enforcement of the relevant tax laws and jurisdictions should have the authority to access all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. San Marino's Phase 1 report noted that element B.2 (notification requirements and rights and safeguards) was "In place, but certain aspects of the legal implementation of the element need improvement" as the scope of professional secrecy for lawyers and notaries was wide (not limited to giving of advice or conduct of legal proceedings) and not compatible with the effective exchange of information. Also, element B.1 (access to information) was assessed as "Not in place" due to the lack of powers of the Central Liaison Office (CLO) to access information in civil tax matters; uncertainties in the authorities' powers to obtain information from all relevant entities and arrangements; the inability of the Tax Office to obtain information more than three years old; and, uncertainties in the ability of the Tax Office to obtain information on behalf of the CLO in absence of a domestic tax interest.

53. Amendments introduced by Decree 36/2011 and enactment of Law No.106/2011 (Provisions for the Implementation of International Tax Assistance through Exchange of Information) have addressed all concerns raised under element B.1 of the original review report. San Marino's competent authority, the CLO, has the necessary access powers to obtain information from all relevant entities for the purposes of responding to international requests. As a result, the determination for element B.1 is now that it is "In place."

54. Decree 36/2011 also made amendments to the scope of professional privilege which can be claimed to protect certain information from access by the competent authority. The professional privilege in place for lawyers, as amended, in San Marino is in line with this standard. Importantly though, the privilege still extends to accountants and notaries (not just to "attorneys,

solicitors or other admitted legal representatives”). Accordingly, it is noted that the protection afforded is still somewhat broader than that provided for in the international standard.

## **B.1. Competent Authority’s ability to obtain and provide information**

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

### ***Bank, ownership and identity information (ToR B.1.1) and accounting records (ToR B.1.2)***

#### *Ability to access information for civil tax matters*

55. Paragraphs 166 to 170 of the original review report noted that the CLO, the competent authority, had the power to access information for the prevention of fraud only.

56. Article 2 of Decree 36/2011 amended Article 11 (Tasks, functions and powers) of Law No.95/2008. The amended article 11 now explicitly provides that the functions outlined in the paragraph are performed regardless of the fact that the behaviours might be criminally relevant. Paragraph 2 of that article now reads *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.*

57. San Marino has very recently passed another law, Law No.106/2011, which came into force on 9 August 2011. This law, titled “Provisions for the Implementation of International Tax Assistance through Exchange of Information”, sets out legal and procedural mechanisms concerning exchange of information pursuant to the international agreements in force in San Marino. Article 2, paragraph 1, provides that exchange of information in tax matters between the Republic of San Marino and other States and Jurisdictions must take place in compliance with international agreements in force. Further, the information must be exchanged according to the procedures and in compliance with that established in such agreements. Article 5 further obliges the CLO to obtain, either directly or indirectly, the requested information for

exchange purposes. This law has also created a domestic unilateral mechanism under which the San Marino is able to provide information in tax matters, upon request, to any jurisdiction with whom it has initialled or signed an agreement providing for exchange of information in tax matters, but which is not yet in force (Article 2, paragraph 2).

58. In view of the amendments made to the enabling law, the CLO is empowered to obtain information in both criminal and civil tax matters for the purposes of exchange of information.

*Uncertainties in the authorities' powers to obtain information from all relevant entities and arrangements*

59. Paragraphs 174 to 184 of the original review report note that the CLO could seek assistance from the Office for Control and Supervision of Economic Activities (OCSEA), the Central Bank and other public authorities, including the Tax Office; the Office of Industry, Commerce and Handicrafts; the Commercial Registry of Single Courts; the Foundation Authority; and the Registrar Office. However, the Tax Office has limited powers for collecting information to assist the CLO and the ability of other authorities to gather information for the CLO was unclear.

60. Articles 2-6 and 10-11 of Decree 36/2011 outline the legal measures undertaken by San Marino to implement the recommendation.

61. Article 2 amended Article 11 of Law No.95/2008. Article 11(2) now provides that the CLO has the power to access directly, or through other authorities, information required in order to respond to international requests for information in tax matters.

62. Article 3 amended Article 12 of Law No.95/2008. The amended article now provides that the CLO may gain the co-operation of the OCSEA, the Tax Office, the Offices of the Public Administration and the Police Forces. Further, these authorities and all Offices of the Public Administration must respond to the requests of the CLO in accordance with procedures established by the CLO in order to perform the functions laid down in Article 11. Therefore, the prescribed authorities are now legally obliged to assist the CLO. Further, Article 4 of the Decree inserted a new Article 13bis into Law No.95/2008 prescribing sanctions for non-compliance by these authorities.

63. Article 5 added article 15bis to Law No.95/2008. Pursuant to this new article, the CLO has complete and unlimited access to data and information available in registers, archives, professional registers kept by the Public Administration and Professional Associations and also data and information kept by the Central Bank, the Financial Intelligence Agency, the Police Authority and the Single Court. Further, the CLO has been granted access to all



information held by the Trust Register Office and it can directly request a trustee to produce the books of events pursuant to Article 28(5) of Law No.42/2010.

64. Article 6 introduced new article 17bis to Law No.95/2008 which provides for conclusion of two co-operation agreements. Pursuant to this law, the following two MOUs have been signed, which provide for co-operation among the authorities signing the MOU:

- Memorandum of Understanding between the CLO, the OCSEA and the Financial Intelligence Agency concerning collaboration and exchange of information, concluded on 19 May 2011; and
- Co-operation Agreement between the CLO, the OCSEA and the Central Bank, concluded on 26 May 2011. This agreement governs the forms of co-operation for investigations into banking and financial aspects without prejudice to the provisions of bank secrecy contained in Article 36(5) of Law No.165/2005.

65. Article 11 strengthened the powers of the Tax Office during control activities (see further details below).

66. Further, Article 7 of Law No.106/2011 refers to information gathering measures available to the CLO. It provides that, without prejudice to what is envisaged in articles 11, 12 and 15bis of Law No.95/2008, as amended by Decree 36/2011, the CLO may obtain information directly from persons holding or controlling the information requested.

67. In view of the above, San Marino has removed the uncertainties in the authorities' powers to obtain information from all relevant entities and arrangements.

#### *Ability to obtain information more than three years old*

68. Paragraph 183 of the original review report noted that, pursuant to Article 38 of the Income Tax Law, accounting records are required to be kept for three years, excluding the tax period they refer to. Article 9 of Decree 36/2011 amended Article 38 of the Tax Act which now provides: *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 periods are concluded.*

69. Thus the retention period has been increased to five years in line with the international standard.

### *Ability of the Tax Office to assist the CLO*

70. Paragraphs 181, 182, 186 and 187 of the original review report referred to limited powers of the Tax Office to assist the CLO to meet international request for information. Article 11 of Decree 36/2011 has significantly enlarged the scope of inquiries which may be undertaken by the Tax Office. Tax Offices have been given stronger powers and they may conduct inquiries either on their own initiative or based on the requests from the CLO or bodies of the Public Administration. Article 11 of the Decree states:

*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.*

71. San Marino has taken effective steps to implement all the recommendations made in the original review report which relate to access powers. These provisions complement already existing mechanisms discussed in the original review report.

### Determination and factors underlying recommendations

Phase 1 Determination	
The element is <b>not</b> in place.	
Factors underlying recommendations	Recommendations
The CLO can access information in criminal tax matters only.	The CLO should be granted powers to access information in all tax matters, including civil tax matters.
The CLO relies on the OCSEA, Tax Office and other public bodies for obtaining information. Uncertainties remain in the powers of these authorities to obtain information from all relevant entities and arrangements for the purpose of international requests for information.	The relevant authorities on which the competent authority relies for obtaining information should be granted the well defined powers to obtain information in the possession or control of all persons within San Marino's territorial jurisdiction for the purpose of international requests for information.
The Tax Office cannot obtain information more than three years old.	The Tax Office should have powers to obtain all available information necessary for the purpose of international exchange of information.
The Law does not unequivocally provide that the Tax Office is empowered to obtain information to meet the requests from CLO in absence of a domestic tax interest. The use of term "control" and "taxpayer" without defining scope of these terms creates uncertainties.	San Marino should make appropriate amendments to the Tax Law explicitly providing the Tax Office with powers to obtain information in all cases to assist the CLO to meet international requests for information. In doing so, it should consider defining the scope of various terms like "tax payer" and "control".

## B.2. Notification requirements and rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

### *Not unduly prevent or delay exchange of information (ToR B.2.1)*

72. The original review report noted that the scope of professional secrecy for lawyers, notaries and accountants was wide (not limited to giving advice or conduct of legal proceedings) and was therefore found to be incompatible with the effective exchange of information (see paragraphs 196 to 199).

73. Paragraphs 3 and 4 of Article 2 of Decree 36/2011 amended Article 11 of Law No.95/2008 concerning professional secrecy. The amended law explicitly provides that official and professional secrecy cannot be claimed when the CLO requests information to perform its functions. Further, lawyers and accountants can only claim professional secrecy with respect to information they receive while performing their task of defending or representing clients during a judicial proceeding or in connection with such proceedings, including advice on initiating or avoiding proceedings.

74. Paragraph 19.3 of the commentary on Article 26 of the *OECD Model Tax Convention on Income and on Capital and Commentary on Paragraph 3 of Article 7 of the 2002 Model Agreement on Exchange of Information on Tax Matters* describe the scope of legal professional privilege, stating that it attaches to any information that constitutes "...confidential communications between attorneys, solicitors or other admitted legal representatives in their role as such and their clients to the extent that the communications are protected from disclosure under domestic law. ... Communications between attorneys, solicitors or other admitted legal representatives and their clients are only confidential if, and to the extent that, such representatives act in their capacity as attorneys, solicitors or other legal representatives...". The professional privilege, as amended, in San Marino is in line with this standard even though it does not expressly require the communication between the client and his attorney to be confidential in nature. Importantly though, the privilege still extends to accountants and notaries (not just to "attorneys, solicitors or other admitted legal representatives"). Accordingly, it is noted that the protection afforded is still somewhat broader than that provided for in the international standard.

75. Article 6 of Law No.106/2011 refers to situations where the CLO may decline to provide information to a foreign counterpart. The reasons *inter alia* include information which would reveal confidential communication between a client and an attorney, solicitor or other admitted legal representative where such communications is: (i) produced for the purpose of seeking or providing legal advice; or (ii) produced for the purpose of use in existing or contemplated legal proceedings. In San Marino international treaties prevail over domestic laws. Even so, it appears the CLO does not have the power to obtain information from accountants and notaries in all cases and thus this could not be obtained in order to satisfy a request received from a foreign counterpart.

**Determination and factors underlying recommendations**

Phase 1 determination	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
Factors underlying recommendations	Recommendations
The <u>privilege afforded to accountants and scope of professional secrecy for lawyers and notaries</u> is wide (not limited to giving of advice or conduct of legal proceedings) and not compatible with the effective exchange of information.	It is recommended that <u>San Marino</u> <u>revise</u> provisions be put in place to reduce the <u>privilege afforded to accountants</u> scope of the professional <u>secrecy of lawyers and notaries</u> <u>so to</u> make it clear that this does not unduly prevent or delay the international exchange of information for tax matters.

## C. Exchanging information

### Overview

76. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanisms for doing so. In San Marino, the legal authority to exchange information is derived from bilateral mechanisms (double taxation conventions and taxation information exchange agreements), as well as domestic law. This section of the report examines whether San Marino has a network of information exchange arrangements that would allow it to achieve the effective exchange of information in practice. San Marino's Phase 1 report found element C.1 (exchange of information mechanisms) as "Not in place", C.2 (network of exchange of information mechanisms) as to be "In place, but certain aspects of the legal implementation of the element need improvement". Elements C.3 (confidentiality) and C.4 (rights and safeguards of taxpayers and third parties) were found to be "In place". Finally, as with other Phase 1 reports, in respect of element C.5 (timeliness of responses to requests for information) the report noted that it involves issues of practice that will be dealt with in the San Marino's Phase 2 review.

77. Since its original review report, San Marino has signed six additional agreements allowing for the international exchange of information in tax matters, consisting of five taxation information exchange agreements (TIEAs) and one double taxation convention (DTC). This supplementary report considers all these six agreements<sup>6</sup> and the consequential overall changes to conclusions in the original review report. All six agreements are consistent with the international standard. San Marino has now signed a total of 35 international agreements allowing for exchange of information, of which 22 are in force. Out of the remaining 13 agreements, 12 have been ratified by San Marino. Only 3 agreements do not provide for exchange of information to the standard. No material change has taken place in the matter of San Marino's bilateral agreement with Italy, its most relevant partner.

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6. Taxation information exchange agreements have been signed with Canada (27 October 2010), Guernsey (29 September 2010), South Africa (10 March 2011), Spain (6 September 2010) and Vanuatu (19 May 2011). A double taxation convention was signed with Portugal on 18 November 2010.

78. San Marino has very recently passed Law No.106/2011 which, amongst other things, enables it to provide information on a unilateral basis to any jurisdiction where there is an initialled or signed agreement for the exchange of information in tax matters. This law allows San Marino to provide information, on request, to partners with which its initialled/signed agreements are not in force. The effectiveness of this unilateral mechanism in practice will depend on the ability of the partner jurisdictions to use it for requests for information.

79. Subsequent to the original review report, San Marino has made significant changes in its domestic law and, as described in Part B of this report, now it has comprehensive access powers ensuring its exchange of information agreements have been given full effect.

### C.1. Exchange of information mechanisms

Exchange of information mechanisms should allow for effective exchange of information.

80. Since its original review report, San Marino has signed six additional agreements allowing for the international exchange of information in tax matters, consisting of five taxation information exchange agreements (TIEAs) and one double taxation convention (DTC). These agreements are with Canada, Guernsey, Portugal, South Africa, Spain and Vanuatu.

81. On 22 July 2011 the San Marinese Parliament passed Law No. 106/2011 “Provisions for the Implementation of International Tax Assistance through Exchange of Information”, which came into force on 9 August 2011. This law complements the legal framework for accessing information already in place, as discussed in Part B of the original review report as well as previously in this report. Articles 2 and 9-12 of this law provide a legal framework for exchange of information on request by San Marino on a unilateral basis. Article 2 (general provisions) provides that “Pending the conclusion and entry into force of agreements between the Republic of San Marino and other States or Jurisdictions to avoid double taxation and/or to favour exchange of information in tax matters on the basis of OECD standards, the provisions contained in Title III of this Law shall establish the procedures according to which the Republic of San Marino provides tax information upon request to said States or Jurisdictions, with which the agreement negotiated, and initialled in conformity with international law, has not yet entered into force.” Title III of the law (Arts.9 through 12) sets out the provisions for exchange of information pending the entry into force of the agreements.<sup>7</sup>

7. Article 9 reads: “The Central Liaison Office (CLO) shall provide assistance to the competent authorities of the States or Jurisdictions referred to in Article 2,

82. The Global Forum has agreed on some key points that should be part of any unilateral mechanism. There must be:

- consultation with countries to be scheduled or otherwise designated;
- notification to jurisdictions that they are able to use this mechanism;
- a clear international commitment to be bound by the mechanism;
- complemented by clear procedures for designating which jurisdictions the mechanism applies to;
- a continuing primary focus for the jurisdiction of having bilateral or multilateral agreements in force; and
- domestic access powers to collect requested information and respond to requests.

83. This unilateral mechanism is applicable to those “...States or Jurisdictions, with which the agreement negotiated, and initialled in conformity with international law, has not yet entered into force.” The law does not require scheduling of specific jurisdictions to which it would apply. For San Marino’s authorities, obligations under this mechanism come into play from the time the agreement is initialled and end when the agreement comes into force. San Marino has established processes for informing jurisdictions that this mechanism is open to them to use. Through a Note Verbale, San Marino, sends a copy of Law No.106/2011 to its counterpart and informs them of the procedure for sending requests to San Marino in accordance with the unilateral mechanism. San Marino has begun sending these Notes Verbale to those jurisdictions with which it currently has an initialled/signed agreement which is not in force.<sup>8</sup> For

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paragraph 2 above through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of said States or Jurisdictions concerning taxes covered by Article 10 hereunder. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.

Information shall be exchanged in accordance with the provisions of this Title irrespective of and independently from the content of the relevant agreement, which has not yet entered into force.

The rights and safeguards secured to persons by the laws or administrative practice in the Republic of San Marino shall remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.”

8. The first such Note Verbale was sent to Italy soon after the law was enacted, on 25 July 2011. On 16 August 2011, Notes Verbale were sent to all other jurisdictions with which San Marino has an initialled/signed agreement which is not yet in force.



future agreements, the Note Verbale will be provided to the jurisdiction at the time the agreement is initialled.

84. The text of Law No.106/2011 can be found on the public website of San Marino's Grand and General Council (Parliament).<sup>9</sup> San Marino has also notified the Global Forum of the existence of this mechanism for consideration in this supplementary report.

85. San Marino's authorities have indicated that their priority remains establishing bilateral agreements in line with the international standard and that the unilateral mechanism is seen as a complementary measure to allow for additional exchange of information in support of those agreements. This approach can be seen in San Marino's signature of six additional agreements allowing for the international exchange of information in tax matters since the original review report.

86. Law No.106/2011 clearly provides that the CLO can use its access powers both for the purposes of requests received under bilateral agreements and for requests pursuant to the unilateral mechanism (see in particular Arts.9 and 11). As discussed in the Part B of this report, San Marino now has an effective domestic legal mechanism in place enabling it to collect information to meet the requests received from partner jurisdictions pursuant to international agreements, and now also pursuant to the unilateral mechanism also. It has adequate legal safeguards to ensure the confidentiality of the information received from and sent to the requesting jurisdiction.

87. As with any unilateral mechanism, the effectiveness of this unilateral mechanism will depend on the ability of the partner jurisdictions to use it for requests for information.

### ***Foreseeably relevant standard (ToR C.1.1)***

88. The international standard for exchange of information envisages information exchange on request to the widest possible extent. Nevertheless it does not allow "fishing expeditions", *i.e.* speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of "foreseeable relevance" which is included in Article 1 of the OECD Model TIEA or article 26(1) of the OECD Model Tax Convention on Capital and on Income. Each of the new agreements includes a provision equivalent to Article 1.

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9. [www.consigliograndeegenerale.sm/on-line/Home/ArchivioLeggiDecreteRegolamenti/scheda17098\\_996.html](http://www.consigliograndeegenerale.sm/on-line/Home/ArchivioLeggiDecreteRegolamenti/scheda17098_996.html).

***In respect of all persons (ToR C.1.2)***

89. For exchange of information to be effective it is necessary that a jurisdiction's obligations to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason the international standard for exchange of information envisages that exchange of information mechanisms should provide for exchange of information in respect of all persons.

90. All of San Marino's agreements, including the six new agreements, contain a provision concerning jurisdictional scope which is in line with the international standard. The unilateral mechanism does not restrict provision of information by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested.

***Obligation to exchange all types of information (ToR C.1.3)***

91. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. Both the OECD Model Convention and the OECD Model TIEA stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

92. The new agreements do not allow the requested jurisdiction to decline to supply information solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person.

93. The original review report noted that the DTCs with three countries – the agreements in force with Croatia and Cyprus<sup>10</sup> and the signed agreement with Italy – do not contain wording akin to Article 26(5) of the OECD Model

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10. Note by Turkey: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Note by all the European Union Member States of the OECD and the European Commission: The Republic of Cyprus is recognised by all members of the United

Tax Convention.<sup>11</sup> The Protocol with Italy, initialled on 25 June 2009, contains wording akin to Article 26(5). San Marino has bank secrecy, however, this can be overridden for exchange of information with foreign counterparts in accordance with those international agreements which contain provisions in line with Article 26(5). Absence of paragraph akin to Article 26(5) of the OECD Model in these three agreements may be a legal hindrance in exchanging bank information by San Marino.

94. San Marino has sent Verbal Notes to Croatia, Cyprus<sup>12</sup> and Italy noting its willingness to sign protocols to these DTCs that will align the treaties with the international standard in this respect.

95. While the unilateral mechanism does not specifically address the question of exchange of bank information, it provides: *For the purposes of obtaining the requested information by the Central Liaison Office, the provisions of Decree Law no.36 of 24 February 2011 and subsequent amendments shall apply* (Article 11, second paragraph, of Law No.106/2011). Decree Law No.36/2011 clearly allows exchange of bank information since it provides: *Bank Secrecy pursuant to Article 36 of Law no.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* (Art.2).

#### ***Absence of domestic tax interest (ToR C.1.4)***

96. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. A refusal to provide information based on a domestic tax interest requirement is not consistent with the international standard. EOI partners must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction.

97. All six of the new agreements concluded by San Marino allow information to be obtained and exchanged notwithstanding it is not required for a domestic tax purpose. The unilateral mechanism does not restrict provision of

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Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

11. Article 26(5) reads: “In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”
12. See footnote 10.

information to circumstances where San Marino has a domestic tax interest in the matter.

98. Paragraph 222 of the original review report mentioned that while most of San Marino’s agreements do not have a domestic tax interest requirement, the agreements with Croatia, Cyprus<sup>13</sup> and Italy do not contain wording similar to Article 26(4) of the OECD Model Tax Convention<sup>14</sup> and thus do not provide for exchange of information to the international standard due to problems relating to the access powers of San Marino’s competent authority. In view of the legislative changes introduced by San Marino discussed in Part B of this report, no issue remains regarding access powers. During the peer review of Italy, the Global Forum clearly determined that Italy does not have a domestic tax interest requirement. It remains possible however that a domestic tax interest requirement exists in Croatia or Cyprus.<sup>15</sup>

### ***Absence of dual criminality principles (ToR C.I.5)***

99. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested country if it had occurred in the requested country. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

100. Neither the new agreements concluded by San Marino, nor the unilateral mechanism, apply the dual criminality principle to restrict the exchange of information.

### ***Exchange of information in both civil and criminal tax matters (ToR C.I.6)***

101. All of the new agreements concluded by San Marino and the unilateral mechanism provide for the exchange of information in both civil and criminal tax matters.

13. See footnote 10.

14. Article 26(4) reads: “If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.”

15. See footnote 10.

***Provide information in specific form requested (ToR C.1.7)***

102. All of San Marino's agreements, including the new agreements, allow for information to be provided in the specific form requested, to the extent allowable under the requested jurisdiction's domestic laws. The unilateral mechanism specifically provides that, if specifically requested by the competent authority of the requesting state, the CLO must provide information in conformity with the law, to the extent allowable under San Marino's laws, in the form of depositions of witnesses and authenticated copies of the original records.

***In force (ToR C.1.8)***

103. Exchange of information cannot take place unless a signed agreement enters into force. The international standard requires that a jurisdiction must take all steps necessary to bring them into force expeditiously. An agreement comes into force after both the contracting parties have completed the ratification process and notified each other of the same. In San Marino, the ratification is done by the Parliament and the whole ratification process takes usually between one and three months.

104. The new agreements signed with Guernsey and Spain are in force and the remaining four new agreements are not yet in force. San Marino has signed a total of 35 agreements, of which 22 are in force. Out of the remaining 13 agreements not in force, San Marino has ratified 12 agreements and awaits ratification by its partner. See Annex 3 for details of signing and entry into force dates.

105. Paragraph 232 of the original review report considered the status of the tax treaty with Italy. On 3 March 2011 San Marino sent a Verbal Note to the Italian Ministry of Foreign Affairs recommending both parties sign of the Protocol that will align the afore-mentioned tax treaty with the international standard.

106. San Marino's new unilateral legal mechanism establishes a basis for San Marino to provide tax information, if so requested, under the provisions of initialled or signed treaties/protocols. The practical use of this mechanism by San Marino's partner jurisdictions will depend on their ability to request information in absence of an international agreement.

***In effect (ToR C.1.9)***

107. For information exchange to be effective, the parties to an exchange of information agreement need to enact any legislation necessary to comply with the terms of the agreement.

108. San Marino has created a domestic framework for exchange of information based on the agreements signed by it. The mechanisms discussed in the original review report have been complemented by the amendments to various laws as reported in Parts A and B of this Report. San Marino's competent authority has powers to access information to give effect to the terms of its international agreements.

109. San Marino has also passed Law No.106/2011, which came into force on 9 August 2011, for the implementation of international agreements for exchange of tax information. This law sets out: general provisions on exchange of information; exchange of information on the basis of bilateral agreements; and exchange of information pending the entry into force of the initialled or signed agreements.

### Determination and factors underlying recommendations

Phase 1 determination	
<b>The element is <del>not</del> in place; <u>but certain aspects of the legal implementation of the element need improvement.</u></b>	
Factors underlying recommendations	Recommendations
<u>While San Marino has created a unilateral mechanism which may allow the provision of information in tax matters, its San Marino's tax treaty with Italy, which was signed 8 years ago, is not yet in force.</u>	San Marino should <del>take all the necessary steps on its side</del> <u>continue efforts</u> to bring this agreement into force expeditiously.
<del>Three of</del> <u>Of San Marino's 29 double tax conventions-35-EOI arrangements, 3</u> do not provide for exchange of information to the international standard.	It is recommended that San Marino bring these arrangements up to the international standard.
<del>San Marino's arrangements providing for international exchange of information have not been given effect to through domestic law as there are important limitations on the authorities' powers to obtain necessary information for the purpose of international information exchange.</del>	<del>It is recommended that San Marino enact necessary legislation to remove various deficiencies noted in this report, which will enable it to comply with and give effect to its EOI agreements.</del>

## C.2. Exchange-of-information mechanisms with all relevant partners

The jurisdictions' network of information exchange mechanisms should cover all relevant partners.

110. The standards require that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

111. Since the original review report, San Marino has signed a further six agreements providing for international exchange of information in tax matters to the international standard. These agreements are with Canada (27 October 2010), Guernsey (29 September 2010), Portugal (18 November 2010), South Africa (10 March 2011), Spain (6 September 2010) and Vanuatu (19 May 2011).

112. To date, San Marino has signed 35 agreements (13 DTCs and 22 TIEAs), of which 22 are presently in force. It is to be noted that out of remaining 13 agreements which are not in force, San Marino has taken all steps at its end to ratify these agreements, other than the signed agreement, with initialled protocol, with Italy. An updated list of San Marino's exchange of information mechanisms can be found in Annex 3.

113. As noted previously, the DTC with Italy, signed on 21 March 2002, is not in force and does not provide for exchange of information to the standards. A protocol to this agreement was initialled on 25 June 2009 in order to bring said DTC to the standard. In accordance with Law No.106/2011, San Marino can provide information to all its partners including where there is an initialled or signed agreement which is not yet in force. San Marino has confirmed that pursuant to the unilateral mechanism they are able to provide information to Italy.

Phase 1 determination	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
Factors underlying the recommendations	Recommendations
The exchange of information mechanism with Italy, San Marino's most relevant partner, is not in force and does not provide for exchange of information to the standards.	San Marino <u>should continue efforts to establish</u> <del>enter into</del> and bring into force <u>an agreement which allows</u> for exchange of information to the standard with Italy.
13 of San Marino's 29 agreements are in force and appear to provide for effective exchange of information.	San Marino should continue to develop its EOI network with all relevant partners.

### C.3. Confidentiality

The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

114. The original review report did not raise any concerns with respect to this element.

115. The six new agreements concluded by San Marino meet the standards for confidentiality including the limitations on disclosure of information received and use of the information exchanged, which are reflected in Article 8 of the OECD Model TIEA.

116. Article 12 of Law 106/2011 specifically provides that any information provided to the requesting State must be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the requesting State. The law also contains confidentiality provisions similar to Article 26(2) of the OECD Model Tax Convention. The Article further provides that, violations of the provisions by the persons or authorities of the requesting State shall entail the suspension of the forms of assistance regulated by the law.

117. With respect to the unilateral mechanism, this law also specifically provides that any information provided to the requesting State under the unilateral mechanism is to be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the requesting State (Art.12). The effectiveness of the unilateral mechanism for providing information to the partner jurisdiction will also depend on the confidentiality provisions in the domestic laws of the requesting jurisdictions. If the confidentiality rules in respect of taxpayer



information do not in absence of an international agreement allow sharing taxpayer information, which is often a necessary component of the request itself, the unilateral mechanism may not be acceptable to the requesting state. Therefore, as with any unilateral mechanism, the success of this mechanism will depend on the ability of partner jurisdictions to make requests in accordance with the mechanism.

#### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>

### **C.4. Rights and safeguards of taxpayers and third parties**

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

118. The original review report did not raise any concerns with respect to this element. The determination for C.4 was, and remains, “The element is in place”.

119. The six new agreements follow the OECD Model TIEA/OECD Model Tax Convention by incorporating wording providing that requested jurisdictions are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of attorney-client privilege or information the disclosure of which would be contrary to public policy. The unilateral mechanism specifically provides that the rights and safeguards secured to persons by the laws or administrative practice in San Marino remain applicable to the extent that they do not unduly prevent or delay effective exchange of information (Art.9 Law No.106/2011).

120. As noted previously, in section B.2 of this report, the scope of professional privilege in San Marino is wide in that it encompasses notaries and accountants and its scope may interfere with exchange of information to the standards.

#### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>

## C.5. Timeliness of responses to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

121. The original review report did not raise any concerns with respect to this element. A review of the practical application of these processes and the resources available in San Marino will be conducted in the context of its Phase 2 review.

### *Responses within 90 days (ToR C.5.1)*

122. There are no specific legal or regulatory requirements in place which would prevent San Marino responding to a request for information by providing the information requested or providing a status update within 90 days of receipt of the request.

123. Article 11 of Law 106/2011 states that the CLO seek to provide the requested information normally within 90 days of receipt of request. If the CLO is unable to provide the information within the 90 day period due to complexity of the request, it is required to inform the competent authority of the requesting State accordingly.

### *Organisational process and resources (ToR C.5.2)*

124. Decree 36/2011 creates obligations on the Tax Office, OCSEA and other bodies of the public administration to assist the CLO in its functioning of exchanging the information.

### *Absence of restrictive conditions on exchange of information (ToR C.5.3)*

125. San Marino's domestic law has been aligned, particularly pursuant to Decree 36/2011 and Law 106/2011, to meet the standards for information exchange agreed to in with its EOI partners.

### **Determination and factors underlying recommendations**

#### **Phase 1 determination**

**The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.**



## Summary of Determinations and Factors Underlying Recommendations

Conclusions	Factors underlying the recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1)</i>		
<b>The element is in place.</b>		
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2)</i>		
<b>The element is in place.</b>		
Banking information should be available for all account holders. <i>(ToR A.3)</i>		
<b>The element is in place.</b>		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). <i>(ToR B.1)</i>		
<b>The element is in place.</b>		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. <i>(ToR B.2)</i>		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	The privilege afforded to accountants and notaries is wide and not compatible with the effective exchange of information.	It is recommended that San Marino revise the privilege afforded to accountants and notaries to make it clear that this does not unduly prevent or delay the international exchange of information for tax matters.

Conclusions	Factors underlying the recommendations	Recommendations
Information exchange mechanisms should provide for effective exchange of information. (ToR C.1)		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	While San Marino has created a unilateral mechanism which may allow the provision of information in tax matters, its tax treaty with Italy, which was signed 8 years ago, is not yet in force.	San Marino should continue efforts to bring this agreement into force expeditiously.
	Of San Marino's 35 EOI arrangements, 3 do not provide for exchange of information to the international standard.	It is recommended that San Marino bring these arrangements up to the international standard.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. (ToR C.2)		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	The exchange of information mechanism with Italy, San Marino's most relevant partner, is not in force and does not provide for exchange of information to the standards.	San Marino should continue efforts to establish and bring into force an agreement which allows for exchange of information to the standard with Italy.
		San Marino should continue to develop its EOI network with all relevant partners.
The information exchange mechanisms of jurisdictions should have adequate provisions to ensure the confidentiality of information received. (ToR C.3)		
<b>The element is in place.</b>		
Information exchange mechanisms should respect the rights and safeguards of taxpayers and third parties. (ToR C.4)		
<b>The element is in place.</b>		
The jurisdiction should provide information under its network of agreements in a timely manner. (ToR C.5)		
<b>The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.</b>		

## Annex 1: Jurisdiction’s Response to the Supplementary Review<sup>16</sup>

The Republic of San Marino would like, first of all, to thank the assessment team for its work and for the constructive cooperation provided over the course of this supplementary review.

As outlined by the assessors, San Marino has made enormous progress, since October 2010, in implementing the international standard, which is duly acknowledged and reflected in the supplementary review.

The review recognizes the efforts and the measures taken to align the legislative framework with the Global Forum’s best practices and to allow an effective and timely exchange of information in the context of administrative and tax assistance.

This confirms and strengthens the commitment towards transparency undertaken by the San Marino institutions and authorities. In this respect, San Marino will also make it clear that, in its domestic legislation, all elements of professional secrecy are consistent with an effective exchange of information for tax matters.

Moreover, San Marino wishes that the efforts and steps already made at all levels to bring its only 3 not completely aligned agreements (out of 35 already concluded) up to the standard might finally be recognized and yield the hoped-for results.

At the same time, San Marino assures that it will continue to develop its already wide EOI network with all relevant partners *i.e.* those interested in doing so.

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16. This Annex presents the jurisdiction’s response to the review report and shall not be deemed to represent the Global Forum’s views.

## **Annex 2: Request for a Supplementary Report Received from San Marino**

Dear Mr. D'Aubert,

taking into account that the Revised Methodology has been adopted, San Marino would like to submit the request for a supplementary report, in accordance with paragraph 58.

To this end, we are submitting an Aide Memoire detailing how the newly-passed legislation in San Marino addresses the issues raised in the Report published in January 2011 and its Recommendations.

Moreover, please find attached the English translation of Decree Law n.36 of 24 February 2011, the MOU between CLO and UCVAE and AIF signed in accordance with Art. 6 of said Decree Law n.36 of 24 February 2011, as well as three verbal notes showing San Marino's commitment to bringing the existing agreements with Italy, Croatia and Cyprus in line with international standards and a revised list of DTCs and TIEAs concluded and initialled by San Marino (out of 31 TIEAs or DTCs, concluded in conformity with OECD standards, 30 are in force or already ratified by San Marino Parliament).

We are confident that the Secretariat will begin to work on the draft supplementary report as soon as possible. Please do not hesitate to contact us if you have any question or need any clarification.

Waiting for a kind reply, please accept our best regards.



Dario Galassi  
Counsellor  
Department of Foreign Affairs  
SAN MARINO

## Measures Taken by San Marino to Address the Recommendations in the Phase 1 Report

Recommendations	Measures taken by San Marino to address the recommendations
<p>ToR A.1</p> <p><b>FIRST RECOMMENDATION</b></p> <p>San Marino should address the lack of clarity in its laws to make it explicit that, in addition to foreign companies, all foreign entities having sufficient nexus to San Marino are required to maintain information on their ownership.</p>	<ul style="list-style-type: none"> <li>● Decree Law n. 36 of 24 February 2011, more specifically, Art. 13, paragraph 1 (amending Art. 11 of Law n. 129 of 23 July 2010), clearly provides that <b>only</b> foreign companies or <b>partnerships</b> are allowed to set up a permanent establishment in the Republic of San Marino. No other entities are allowed to do so. Said article clarifies and makes explicit what requested in the relevant recommendation.</li> </ul> <p><b>“Article 13</b> <i>(Amendments to Art. 11, paragraphs 1 and 4 of Law n. 129 of 23 July 2010)</i></p> <p><i>1. Paragraph 1 of Art. 11 of Law n. 129 of 23 July 2010 shall be superseded as follows:</i></p> <p><i>“1. Paragraph 1 of Art. 11 of Law n. 129 of 23 July 2010 shall be superseded as follows:</i></p> <p><i>“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.”</i></p>
<p>ToR A.1</p> <p><b>SECOND RECOMMENDATION</b></p> <p>Provisions should be established to ensure that San Marinese fiduciary companies having shareholdings in foreign companies maintain the information identifying the person(s) for whom they act and that all fiduciary companies maintain information on all persons in the ownership chain behind their clients.</p>	<p>As a general remark it should be noted that, contrary to what stated in the second factor underlying recommendation, legislation in force prior to the adoption and concomitant entry into force of Decree Law n. 36/2011 already provided for the possibility, in the case of fiduciary companies, to obtain ownership information on any person in the ownership chain irrespective of his/her interest. In fact, any operation carried out by a Sammarinese fiduciary company must be disclosed to the Supervisory Authority (Central Bank of the Republic of San Marino – CBSM) and to the Central Liaison Office (CLO). Said authorities can also obtain information regarding participations in foreign companies, their settlors and beneficial owners, regardless of the nationality of the settlor or the legal seat of the subsidiary. There is no regulatory obstacle to obtaining the information needed.</p> <p>It should be also noted that in San Marino, differently from other countries, fiduciary companies are supervised by the Central Bank. Articles 41 and 42 of Law 165/2005 (Law on Companies and Banking, Financial and Insurance Services) enable CBSM</p>



Recommendations	Measures taken by San Marino to address the recommendations
	<p>to acquire all data, documents and information. The robustness and consistency of these powers have been assessed by the International Monetary Fund during the FSAP mission held in November 2009 and more recently in January 2011 (within the Article IV Consultation Mission).</p> <p>According to the IMF's evaluation, Articles 41 and 42 are fully compliant with the Basel Core Principles for an Effective Supervision.</p> <p>About the notion of beneficial owner and identification requirements for fiduciary companies:</p> <p>San Marino authorities would like to point out that the notion of beneficial owners as the persons who hold more than 25 per cent interest needs to be clarified. In fact, once fiduciary companies receive mandates to participate in a company (domestic or foreign) from a customer, the fiduciary company must perform Customer Due Diligence (CDD) requirements for that customer, irrespective of the amount of the participation. CDD requirements include the identification/verification of the customer and the identification/verification of the beneficial owner of the customer. The identification/verification process goes beyond the 25% threshold. Therefore, San Marino Authorities deem the recommendation as not correct. In fact, the information on the customer mandating for the participation in a company is always available to the fiduciary companies as part of the CDD requirement as well as the information and data on "all the persons behind the customer", which is the same as information on "beneficial owners". The notion of beneficial owner in Sammarinese legislation has been drafted in accordance with the FATF Recommendations, as the natural person that ultimately owns or control the client. No other definition is possible.</p> <p>Finally, please note that the amendments required of San Marino are not in place in the majority of the G20 countries where there are:</p> <ul style="list-style-type: none"> <li>Ø no obligation to centralize the information on shareholdings held by domestic fiduciary companies abroad;</li> <li>Ø no obligation for fiduciary companies to collect and maintain information on all persons in the ownership chain behind their clients regardless their interest.</li> </ul> <p>Furthermore, Art. 12 of Decree Law n. 36/2011, in order to clarify CLO's powers with respect to the possibility to obtain any information needed from fiduciary companies, expressly provides for the obligation of fiduciary companies to disclose information on</p>

Recommendations	Measures taken by San Marino to address the recommendations
	<p>foreign shareholdings held through fiduciary mandates, making the power of the Central Liaison Office even more explicit.</p> <p><b>Legislative measures:</b></p> <ul style="list-style-type: none"> <li>● Decree Law n. 36 of 24 February 2011 (more specifically Art. 12).  <b>“Article 12</b>  <i>(Provisions on foreign shareholdings through fiduciary mandates)</i>  1. <i>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.</i>  2. <i>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.”.</i></li> <li>● Regulation issued by the Central Bank of the Republic of San Marino n. 2011-03, which entered into force on 1 July 2011.  (An abstract in English was submitted on 21 June 2011 and is herewith attached as <i>Annex I</i>. The translation of the entire text should be ready by 18 July 2011 and will be immediately transmitted to the OECD).</li> <li>● Law n. 165/2005, more specifically Art. 41 and 42:  <b>“Article 41 (Powers to request information or obligations of information) 1.</b> <i>The supervisory authority may request the authorised parties to notify, if necessary on a periodical basis, data and information and to forward deeds and documents in accordance with the procedures and within the terms that it has established.</i>  2. <i>The powers specified in paragraph 1 may also be exercised vis-à-vis the external auditors and actuaries, appointed in accordance with article 33, the financial promoters, the insurance and reinsurance intermediaries and the parties to which functions have been outsourced by authorised parties.</i>  3. <i>Save as provided by article 65 ter of the Companies Law, the authorised party’s board of auditors will notify the supervisory authority without delay of all the events and facts coming to its knowledge in the performance of its tasks that might constitute a management irregularity or a breach of the regulations governing</i></li> </ul>

Recommendations	Measures taken by San Marino to address the recommendations
	<p><i>the authorised parties' activities. To that end, the authorised parties' articles of association will assign the relevant tasks and powers to the board of auditors.</i></p> <p><i>4. The authorised parties' external auditors and actuaries, appointed in accordance with article 33, will notify the supervisory authority without delay of the events or facts noted in the performance of their appointment that might constitute a grave breach of the regulations governing the activities of the authorised parties being audited or that might adversely affect the continuity of the enterprise.</i></p> <p><i>5. Where internal and external auditors and actuaries notify the supervisory authorities in good faith of those facts or decisions referred to in paragraphs 3 and 4, such notification will not constitute a breach of any restrictions on the disclosure of information imposed under contracts or in the form of legislative, regulatory or administrative measures.</i></p> <p><i>Article 42 (Powers of investigation)</i></p> <p><i>1 The supervisory authority may conduct inspections at the offices and branches of the authorised parties, as well as requesting information, ordering the disclosure of documents and carrying out the checks and verifications deemed to be necessary, to include those on non-reserved activities; it may have access to the company's accounts and all its books, notes and documents; it may question the directors and any employee or officer within the sphere of each one's duties, with a view to obtaining information and clarification.</i></p> <p><i>2 The powers referred to in paragraph 1 may also be exercised in respect of the financial promoters, insurance and reinsurance intermediaries and the parties to which functions have been outsourced by authorised parties.</i></p> <p><i>3 The supervisory authority may, in the exercise of the powers of investigation, avail itself of external auditors and actuaries appointed, on that authority's mandate, to carry out specified checks and assessments."</i></p>

Recommendations	Measures taken by San Marino to address the recommendations
<p>ToR A.1</p> <p><b>THIRD RECOMMENDATION</b></p> <p>San Marino should establish clear provisions in its laws to ensure availability of information on all beneficiaries of trusts.</p>	<p>In this regard San Marino underlines that the beneficiary of the trust is always known, regardless of the interest any beneficiary has in the trust (even when below the threshold of 25 per cent), unless the trustee decides to identify it at a later stage.</p> <p>In fact, San Marino legislation provides that the instrument establishing a beneficiary trust shall include “identification of beneficiaries, or the criteria that enable them to be identified, or the identification of the person that has the power to identify the beneficiaries” as well as “rules ensuring the presence of a protector” (Art.6, para. 2 (g) of Law 42/2010).</p> <p>The Central Bank of the Republic of San Marino keeps a centralized Register of trusts, in which the identification data of beneficiaries of the trust must be registered (Art.7, Law 42/2010).</p> <p>According to Article 13 of Law 42/2010, any change of the beneficiary of the trust must be recorded in the Trust Register within 15 days from when the change occurred. The only cases where the beneficiary is not known are those in which the beneficiary has no actual right on the assets of the trust (for example, a trust for the children that a couple might have, but does not have at the moment).</p> <p>In our opinion, the Recommendation arises from a confusion between the notion of beneficial owner (identified according to the AML Law and implemented by FIA Instruction 2010-06; to be noted is that these requirements are in line with the Directive 2005/60/EU) and the beneficiary of trusts. Of course the two fields are linked but they are different, and it is crucial not to confuse the identification of the beneficiaries of the trust with the identification of the beneficial owner of the Trust.</p> <p>Under AML/CFT framework, the customer/client of the trustee is the settlor, thus the trustee is required to identify the settlor as well as the beneficial owner of the settlor, pursuant to AML/CFT Law and FIA Instruction on beneficial owner.</p> <p>Once the trustee acts on behalf of the trust (for instance, a trustee opens an account for the trust), banks must identify the trust as well as the beneficial owner of the trust, according to the criteria set forth in FIA Instruction 2010-06.</p> <p>Such provisions are only applicable for AML/CFT purposes.</p> <p>In fact, as also indicated by OECD assessors in paragraph 104 “A trust is required to be registered in a Trust Register, which is maintained by CBSM. Art.7 of the Trust Act obliges the trustee to draw up a certificate of trust to be authenticated by a notary public.</p>

Recommendations	Measures taken by San Marino to address the recommendations
	<p><i>This certificate should contain information on the trustee, protector, settlor and beneficiaries. The notary public must file this certificate with the office of the Trust Register, where it is transcribed into the Register". Thus, for any purpose other than AML/CFT, the San Marino Authorities are able to obtain information on the beneficiaries of trust (i.e. any person having an interest in the trust, regardless the percentage of the interest).</i></p> <p>Decree Law n. 36/2011, art.5 (adding article 15 bis to law 95/2008) provides that the CLO shall also have access to all information held by the Trust Register Office.</p> <p>Moreover, Art. 15 of the Decree Law n. 36/2011 addresses the issue raised in paragraph 104 of the Report clarifying that the terms "abstract" (mentioned in Art. 3 of the Delegated Decree n. 50/2010) and "certificate" (mentioned in Art. 7 of the Law n. 42/2010) are the same.</p> <p><b>Legislative measures:</b></p> <ul style="list-style-type: none"> <li>● Decree Law n. 36/2011, Art.5:</li> </ul> <p><b>"Article 5</b> (Access to information and data)</p> <p><i>After Article 15 of Law n. 95 of 18 June 2008, the following Article 15 bis shall be added:</i></p> <p><i>"Article 15 bis</i> (Access to information and data)</p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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</i></p>

Recommendations	Measures taken by San Marino to address the recommendations
	<p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.”</i></p> <ul style="list-style-type: none"> <li>● Law n. 42/2010, more specifically Art. 6, para. 2(g); Art. 7 and Art. 13.</li> </ul> <p><b>“Art 6.</b></p> <p><i>(Creation of trusts)</i></p> <p>[...]</p> <p><i>2 The trust instrument shall include the following trust elements:</i></p> <p><i>g) In the case of beneficiary trusts:</i></p> <p><i>i) the identification of the beneficiaries, or the criteria which enable them to be identified, or the identification of the person who has the power to identify the beneficiaries;</i></p> <p><i>ii) the rules ensuring the presence of a protector, authorised to take action against the trustee in case of breach of trust when, for any reason, there are no beneficiaries and in the other cases envisaged by the Law;” [...]</i></p> <p><b>“Art 7.</b></p> <p><i>(Certificate of trust)</i></p> <p><i>1 Within 15 days of the date of creation of a trust, the resident trustee or the resident agent, on the basis of the information provided by the non-resident trustee, shall draw up a certificate containing:</i></p> <p><i>a) the name of the trust chosen by the settlor or, if absent, by the trustee;</i></p> <p><i>b) an indication as to whether the trust is revocable or irrevocable;</i></p> <p><i>c) details of the trustee and any limitations placed upon his powers;</i></p> <p><i>d) details of the protector, if so required, and the nature of his powers;</i></p>

Recommendations	Measures taken by San Marino to address the recommendations
	<p>e) details of the settlor;</p> <p>f) in the case of beneficiary trusts or also for beneficiaries, details of the beneficiaries with a current interest in the trust fund;</p> <p>g) the date of the trust instrument and the duration of the trust, if envisaged in the trust instrument;</p> <p>h) the governing law of the trust;</p> <p>i) one of the following expressions:</p> <p>    i) “This instrument creates a beneficiary trust”;</p> <p>    ii) “This instrument creates a purpose trust”;</p> <p>    iii) “This instrument creates a beneficiary trust and a purpose trust”;</p> <p>j) a description of the purpose of the trust in case of a purpose trust;</p> <p>k) details of the local agent, if so required.</p> <p>2 The certificate shall be signed by the resident trustee or the resident agent, with the authenticated signature of a notary public who certifies that the contents are true.</p> <p><b>Art 13.</b></p> <p>(Amendment to the trust instrument)</p> <p>1 The trust instrument may provide that the provisions contained therein and the choice of the governing law may be amended in the interest of the beneficiaries or to promote the purpose of the trust.</p> <p>2 Any amendment to the trust instrument shall be subject to the requirements envisaged by Article 6, paragraph 1 of the Law.</p> <p>3 The resident trustee or the resident agent shall inform the Office of the Trust Register of any amendment relating to the elements specified in the certificate referred to in Article 8 by means of a certification, within fifteen days from the date he makes or receives such amendments. The Office shall make the relevant notes in the margin of the original certificate.</p> <p>4 The certificate shall be signed by the resident trustee or the resident agent, with the signature being authenticated by a notary public who shall confirm that the contents are true.</p> <p>5 A resident trustee or a resident agent who fails to make the communications envisaged by paragraph 3 within the relevant time limits shall be subject to an administrative sanction of € 2,000.00.</p> <p>6 Any amendment to a trust instrument shall not be detrimental to the effects of the actions effectively performed by the trustee prior to such amendment.”.</p>

Recommendations	Measures taken by San Marino to address the recommendations
<p>ToR A.1</p> <p><b>FOURTH RECOMMENDATION</b></p> <p>San Marino should prescribe enforcement provisions in the form of penalties for companies and partnerships which do not maintain information in accordance with Company Law.</p>	<ul style="list-style-type: none"> <li>● Decree Law n. 36/2011, more specifically Art. 10, prescribes sanctions for failure by companies or partnerships to keep ownership information.</li> </ul> <p>The relevant recommendation has therefore been complied with.</p> <p><b>“Article 10</b></p> <p><i>(Sanctions for violating the obligations set out in Art. 72 of Law n. 47 of 23 February 2006 and subsequent amending acts)</i></p> <p><i>Paragraph 5 of Art. 72 of Law n. 47 of 23 February 2006 and subsequent amending acts shall be supplemented as follows:</i></p> <p><i>“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.”.</i></p> <p><i>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:</i></p> <p><i>“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.</i></p> <p><i>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.</i></p> <p><i>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.”</i></p>



Recommendations	Measures taken by San Marino to address the recommendations
<p>ToR A.2</p> <p><b>FIRST RECOMMENDATION</b></p> <p>San Marino should clarify the requirement for foreign partnerships that carry on business in San Marino to maintain accounting records and underlying documentation.</p>	<ul style="list-style-type: none"> <li>● Decree Law n. 36/2011, more specifically Art. 13 and 14.</li> </ul> <p>Art. 13, paragraph 1, clarifies that only foreign companies or partnerships are allowed to set up a permanent establishment in San Marino. Said Article also provides that these entities need to fulfil all setting up procedures before a San Marino Notary Public and appoint a representative in San Marino, who shall have the same rights and obligations as a sole director.</p> <p><b>“Article 13</b></p> <p><i>(Amendments to Art. 11, paragraphs 1 and 4 of Law n. 129 of 23 July 2010)</i></p> <p><i>1. Paragraph 1 of Art. 11 of Law n. 129 of 23 July 2010 shall be superseded as follows:</i></p> <p><i>“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.”.</i></p> <p>Art. 14, paragraph 2, amending Art. 34 of Law n. 91 of 13 October 1984 (“Introduction to General Income Tax”) clearly provides that <b>all companies and partnerships, thus including foreign partnerships</b>, are required to keep accounting records</p> <p><b>Article 14</b></p> <p><i>(Amendments to Articles 26, 34 and 35 of Law n. 91 of 13 October 1984 and subsequent amending and supplementing acts) [...]</i></p> <p><i>2. Art. 34 of Law n. 91 of 13 October 1984 and subsequent amending and supplementing acts shall be superseded as follows:</i></p> <p><b>“Art. 34</b></p> <p><i>(Accounting requirements for companies and partnerships, similar entities and major firms)</i></p> <p><i>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.”</i></p>

Recommendations	Measures taken by San Marino to address the recommendations
<p>ToR A.2</p> <p><b>SECOND RECOMMENDATION</b></p> <p>San Marino should provide that all entities maintain proper accounting records and underlying documents consistent with the international standards.</p>	<ul style="list-style-type: none"> <li>● Decree Law n. 36/2011, more specifically Art. 14, para. 1 amending Art. 26 of Law 91/1984 (Introduction to General Income Tax).</li> </ul> <p><b>“Article 14</b> (Amendments to Articles 26, 34 and 35 of Law n. 91 of 13 October 1984 and subsequent amending and supplementing acts)</p> <p>1. Article 26 of Law n. 91 of 13 October 1984 shall be superseded as follows:</p> <p><b>“Art. 26</b> Major firms</p> <p>(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.”.</p>
<p>ToR B.1</p> <p><b>FIRST RECOMMENDATION</b></p> <p>The CLO should be granted powers to access information in all tax matters, including civil tax matters.</p>	<ul style="list-style-type: none"> <li>● Decree Law n. 36/2011, more specifically Art. 2 amending Art. 11 of Law n. 95 of 18 June 2008, provides the CLO with access to information on all fiscal matters, both civil and criminal.</li> </ul> <p><b>“Article 2</b> (Amendments to Article 11 of Law n. 95 of 18 June 2008)</p> <p>Article 11 of Law n. 95 of 18 June 2008 shall be superseded as follows:</p> <p><b>“Article 11</b> (Tasks, functions and powers)</p> <p>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.</p> <p>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</p>

Recommendations	Measures taken by San Marino to address the recommendations
	<p><i>“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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.”</i></p>

Recommendations	Measures taken by San Marino to address the recommendations
<p>ToR B.1</p> <p><b>SECOND RECOMMENDATION</b></p> <p>The relevant authorities on which the competent authority relies for obtaining information should be granted the well defined powers to obtain information in the possession or control of all persons within San Marino's territorial jurisdiction for the purpose of international requests for information.</p>	<ul style="list-style-type: none"> <li>● Decree Law n. 36/2011, more specifically Art. 2, 3, 4,5,6,10 and 11.</li> <li>● In implementation of the provisions of Decree Law n. 36/2011, and in particular of Art. 6, the following legislative measures have also recently been taken: <ul style="list-style-type: none"> <li>- Memorandum of Understanding between the Offices for Supervision over Economic Activities of the Republic of San Marino and the Financial Intelligence Agency of the Republic of San Marino Concerning Collaboration and Exchange of Information, concluded on 19 May 2011.</li> <li>- Cooperation Agreement between the Offices for Supervision over Economic Activities of the Republic of San Marino and the Central Bank of the Republic of San Marino, concluded on 26 May 2011;</li> </ul> </li> </ul> <p>Both texts have already been sent to the OECD.</p> <p><b>“Article 2</b> (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.</p>

Recommendations	Measures taken by San Marino to address the recommendations
	<p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.”.</i></p> <p><b>Article 3</b> (Amendments to Article 12 of Law n. 95 of 18 June 2008 )</p> <p>1. Article 12 of Law n. 95 of 18 June 2008 shall be superseded as follows:</p> <p>“Article 12</p> <p>(Relations with the Offices of the Public Administration and the Police Forces)</p> <p>In carrying out its functions the Central Liaison Office:</p> <ul style="list-style-type: none"> <li>- 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.</li> <li>- 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.</li> </ul> <p>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</p>

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	<p><i>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.”.</i></p> <p><b>Article 4</b> (Sanctions)</p> <p><i>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:</i></p> <p><i>“Art. 13 bis</i> (Sanctions)</p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.”.</i></p> <p><b>Article 5</b> (Access to information and data)</p> <p><i>After Article 15 of Law n. 95 of 18 June 2008, the following Article 15 bis shall be added:</i></p>

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	<p><i>“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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.”.</i></p> <p><b>Article 6</b> <i>(Cooperation instruments between the Supervisory Offices over Economic Activities, the Central Bank and the Financial Intelligence Agency)</i></p> <p><i>1After 17 of Law n. 95 of 18 June 2008, the following Article 17 bis shall be added:</i></p> <p><i>“Article 17 bis (Cooperation instruments between the Supervisory Offices over Economic Activities, the Central Bank and the Financial Intelligence Agency)</i></p>

Recommendations	Measures taken by San Marino to address the recommendations
	<p><i>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:</i></p> <ul style="list-style-type: none"> <li>- <i>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;</i></li> <li>- <i>the reporting procedures, pursuant to Article 7, paragraph 2 of this Law;</i></li> <li>- <i>any further:</i> <ul style="list-style-type: none"> <li><i>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,</i></li> <li><i>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.</i></li> </ul> </li> </ul> <p><i>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 timelimits 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.</i></p> <p><i>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”.</i></p> <p>[...]</p> <p><b>“Article 10</b></p> <p><i>(Sanctions for violating the obligations set out in Art. 72 of Law n. 47 of 23 February 2006 and subsequent amending acts)</i></p> <p><i>Paragraph 5 of Art. 72 of Law n. 47 of 23 February 2006 and subsequent amending acts shall be supplemented as follows:</i></p> <p><i>“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</i></p>



Recommendations	Measures taken by San Marino to address the recommendations
	<p><i>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.”</i></p> <p><i>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:</i></p> <p><i>“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.</i></p> <p><i>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.</i></p> <p><i>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.”.</i></p> <p><b>Article 11</b></p> <p><i>(Control activities carried out by the Tax Office)</i></p> <p><i>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:</i></p> <p><i>- 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;</i></p>

Recommendations	Measures taken by San Marino to address the recommendations
	<p>- access the premises in which economic activities are conducted in order to carry out inspections and controls;</p> <p>- examine and ascertain the accounting records, the formal papers and documents relating to the economic activities carried out by economic operators;</p> <p>- 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);</p> <p>- 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;</p> <p>- request public officials an abstract or copy of the documents and formal papers in their possession;</p> <p>- ask for the assistance of technical experts for issues that require special knowledge.</p> <p>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.</p> <p>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.”</p>
<p>ToR B.1</p> <p><b>THIRD RECOMMENDATION</b></p> <p>The Tax Office should have powers to obtain all available information necessary for the purpose of international exchange of information.</p>	<p>● Decree Law n. 36/2011, more specifically Art. 9 (amending Art. 38 of Law n.91/ 1984), which provides that all information must be kept for <b>five</b> years, and by Art. 11, which strengthens the controls carried out by the Tax Office.</p> <p><b>“Article 9</b> (Keeping of tax records)</p> <p>1. Article 38 of Law n. 91 of 13 October 1984 shall be superseded as follows:</p> <p><b>“Article 38</b> (Record keeping)</p> <p>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</p>

Recommendations	Measures taken by San Marino to address the recommendations
	<p><i>the tax period they refer to, and in any case until the assessments for said tax period are concluded.”. [...]</i></p> <p><b>“Article 11</b></p> <p><i>(Control activities carried out by the Tax Office)</i></p> <p><i>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:</i></p> <ul style="list-style-type: none"> <li><i>- 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;</i></li> <li><i>- access the premises in which economic activities are conducted in order to carry out inspections and controls;</i></li> <li><i>- examine and ascertain the accounting records, the formal papers and documents relating to the economic activities carried out by economic operators;</i></li> <li><i>- 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);</i></li> <li><i>- 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;</i></li> <li><i>- request public officials an abstract or copy of the documents and formal papers in their possession;</i></li> <li><i>- ask for the assistance of technical experts for issues that require special knowledge.</i></li> </ul> <p><i>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.</i></p> <p><i>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.”</i></p>

Recommendations	Measures taken by San Marino to address the recommendations
<p>ToR B.1</p> <p><b>FOURTH RECOMMENDATION</b></p> <p>San Marino should make appropriate amendments to the Tax Law explicitly providing the Tax Office with powers to obtain information in all cases to assist the CLO to meet international requests for information. In doing so, it should consider defining the scope of various terms like “tax payer” and “control”.</p>	<ul style="list-style-type: none"> <li>● Decree Law n. 36/2011, more specifically Art. 11, which defines the control activities carried out by the Tax Office. Said article confers strengthened powers upon the Tax Office to obtain information and explicitly states that the Tax Office can also obtain information upon request by the CLO, thus providing assistance in responding to international requests for information.</li> </ul> <p><b>“Article 11</b> <i>(Control activities carried out by the Tax Office)</i></p> <p><i>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:</i></p> <ul style="list-style-type: none"> <li>- <i>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;</i></li> <li>- <i>access the premises in which economic activities are conducted in order to carry out inspections and controls;</i></li> <li>- <i>examine and ascertain the accounting records, the formal papers and documents relating to the economic activities carried out by economic operators;</i></li> <li>- <i>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);</i></li> <li>- <i>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;</i></li> <li>- <i>request public officials an abstract or copy of the documents and formal papers in their possession;</i></li> <li>- <i>ask for the assistance of technical experts for issues that require special knowledge.</i></li> </ul> <p><i>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.</i></p> <p><i>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.”</i></p>

Recommendations	Measures taken by San Marino to address the recommendations
<p>ToR B.2</p> <p><b>RECOMMENDATION</b></p> <p>It is recommended that provisions be put in place to reduce the scope of the professional secrecy of lawyers and notaries so this does not unduly prevent or delay the international exchange of information for tax matters</p>	<ul style="list-style-type: none"> <li>Decree Law n. 36/2011, more specifically Art. 2, paragraphs 3 and 4, which amend Art. 11 of Law n. 95/2008 and reduces the scope of official secrecy and of professional secrecy of lawyers and notaries.</li> </ul> <p><b>“Article 2</b></p> <p><i>(Amendments to Article 11 of Law n. 95 of 18 June 2008) [...]</i></p> <p><i>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.</i></p> <p><i>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.”</i></p>
<p>ToR C.1</p> <p><b>FIRST RECOMMENDATION</b></p> <p>San Marino should take all the necessary steps on its side to bring this agreement [DTC with Italy] into force expeditiously.</p>	<p>San Marino has stressed several times that it has taken all possible steps and measures to bring the 2002 tax treaty with Italy into force. In order to clearly formalise this, on 3 March 2011 San Marino sent a Verbal Note (herewith attached as <i>Annex II</i>) to the Italian Ministry of Foreign Affairs urging the signing of the Protocol that will align the afore-mentioned tax treaty with the international standard. While the factor underlying the recommendation is consistent with the facts, the recommendation should be directed at Italy, not San Marino.</p> <p>Moreover, the San Marino Parliament is about to adopt a new Law, which <b>will allow San Marino's Authorities to exchange information</b>, both on Criminal and Civil Tax Matters, according to the TIEA model and to the OECD's manual on implementation of exchange of information for tax purposes, <b>with Countries and Jurisdictions with which a TIEA has already been negotiated and initialled, even pending its signature and formal entry into force</b>. Once the final text is available, it will be immediately sent to your attention.</p>

Recommendations	Measures taken by San Marino to address the recommendations
<p>ToR C.1</p> <p><b>SECOND RECOMMENDATION</b></p> <p>It is recommended that San Marino bring these arrangements [DTCs with Italy, Croatia and Cyprus] up to the international standard.</p>	<p>First of all, it should be pointed out that 3 out of the 29 Agreements originally mentioned in the “summary of determinations” (now 32, with the DTC with <b>Portugal</b> and the TIEAs with <b>South Africa</b> and <b>Vanuatu</b> having been signed, respectively, on 18 November 2010, 10 March 2011 and 19 May 2011) represents a very small portion of the total number of agreements.</p> <p>Moreover, the amending Protocol to the existing DTC with <b>Croatia</b> aligning the provisions on exchange of information with the most recent OECD standards was agreed as final and ready for signature by means of a Verbal Note dated 15 June 2011. The signing procedures are now being finalized. In November 2010 San Marino had sent a Verbal Note urging the finalization of the Protocol (<i>Annex III</i>) herewith enclosed.</p> <p>An Amending Protocol to the DTC with <b>Cyprus</b> conforming the agreement to the EOI standard has been submitted for consideration to the Cyprus competent authorities. The relevant Verbal Note is herewith enclosed (<i>Annex IV</i>).</p> <p>San Marino is therefore strongly committed to bringing these agreements up to the international standards and is actively taking steps in this direction.</p> <p>A list of TIEAs and DTCs containing information on the dates of signature, entry into force and ratification by San Marino, as well as on initialled agreements, is also herewith attached (<i>Annex V</i>).</p>
<p>ToR C.1</p> <p><b>THIRD RECOMMENDATION</b></p> <p>It is recommended that San Marino enact necessary legislation to remove various deficiencies noted in this report, which will enable it to comply with and give effect to its EOI agreements.</p>	<p>San Marino’s remarks and observations herein contained on the powers of the Central Liaison Office and of the Tax Office to obtain information for the purpose of international information also respond to the third recommendation. More specifically, Decree Law n. 36/2011 clarifies and expands the Central Liaison Office’s scope of action and powers in obtaining information in order to comply with and give effect to San Marino’s EOI agreements.</p> <p>The recommendation that San Marino enact necessary legislation to address the afore-mentioned limitations has therefore been complied with.</p>

Recommendations	Measures taken by San Marino to address the recommendations
<p>ToR C.2</p> <p><b>FIRST RECOMMENDATION</b></p> <p>San Marino should enter into an agreement for the exchange of information with Italy.</p>	<p>See San Marino's comment on the first recommendation in ToR C.1.</p>
<p>ToR C.2</p> <p><b>SECOND RECOMMENDATION</b></p> <p>San Marino should continue to develop its EOI network with all relevant partners.</p>	<p>San Marino has ratified 30 of the 32 agreements signed (the Agreement with Portugal was ratified by Parliament on 27 April 2011), 16 of which are in force, as can be seen from <i>Annex V</i>. Negotiations are in place with 35 other countries and jurisdictions. In line with the Recommendation, San Marino is continuing to develop its EOI network with all relevant partners.</p>

### Annex 3: List of all Exchange-of-Information Mechanisms in Force

Jurisdiction	Type of agreement	Date signed	Date in force
Austria	Double taxation convention (DTC)	24.11.2004	01.12.2005
	Protocol	18.09.2009	01.06.2010
Belgium	DTC	21.12.2005	25.06.2007
	Protocol	14.07.2009	Not in force
Croatia	DTC	18.10.2004	05.12.2005
Cyprus <sup>17</sup>	DTC	27.04.2007	18.07.2007
Hungary	DTC	15.09.2009	3.12.2010
Italy	DTC	21.03.2002	Not in force
Liechtenstein	DTC	23.09.2009	19.01.2011
Luxembourg	DTC	27.03.2006	01.01.2007
	Protocol	18.09.2009	05.08.2011
Malta	DTC	03.03.2005	19.07.2005
	Protocol	10.09.2009	15.02.2010
Malaysia	DTC	19.11.2009	28.12.2010
Portugal	DTC	18.11.2010	Not in force.
Romania	DTC	23.05.2007	11.02.2008
	Protocol	27.07.2010	16.06.2011
St. Kitts and Nevis	DTC	20.04.2010	Not in Force
Andorra	Taxation information exchange agreement (TIEA)	21.09.2009	7.12.2010
Argentina	TIEA	07.12.2009	Not in force
Australia	TIEA	04.03.2010	11.01.2011

17. See footnote 10.



Jurisdiction	Type of agreement	Date signed	Date in force
Bahamas	TIEA	24.09.2009	Not in force
Canada	TIEA	27.10.2010	Not in force
Denmark	TIEA	12.01.2010	23.04.2010
Faroe Islands	TIEA	10.10.2009	03.06.2011
Finland	TIEA	12.01.2010	15.05.2010
France	TIEA	22.09.2009	02.09.2010
Germany	TIEA	21.06.2010	Not in force
Greenland	TIEA	22.09.2009	Not in force
Guernsey	TIEA	29.09.2010	16.03.2011
Iceland	TIEA	12.01.2010	Not in force
Monaco	TIEA	29.07.2009	10.05.2010
Netherlands	TIEA	27.01.2010	Not in force
Norway	TIEA	12.01.2010	22.07.2010
Samoa	TIEA	01.09.2009	Not in force
South Africa	TIEA	10.03.2011	Not in force
Spain	TIEA	06.09.2010	02.08.2011
Sweden	TIEA	12.01.2010	01.07.2010
United Kingdom	TIEA	16.02.2010	27.07.2011
Vanuatu	TIEA	19.05.2011	Not in force

## **Annex 4: List of all Laws, Regulations and Other Relevant Material**

Decree Law No.36 of 24 February 2011 (Decree 36/2011) – Urgent Provisions to Conform to International Standards on Transparency and Exchange of Information.

Law No.106 of 22 July 2011 – Provisions for the Implementation of International Tax Assistance through Exchange of Information.

Central Bank of San Marino (CBSM) Regulation No.03/2011 for Financing Operations (Financial Companies).

Memorandum of Understanding between the Offices for Supervision over Economic Activities of the Republic of San Marino and the Financial Intelligence Agency of the Republic of San Marino concerning Collaboration and Exchange of Information, concluded on 19 May 2011.

Memorandum of Understanding between the Offices for Supervision over Economic Activities of the Republic of San Marino and the Central Bank of the Republic of San Marino concerning Collaboration and Exchange of Information, concluded on 26 May 2011.

