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Changes to Company and Trust Law

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Cogniti nobisque incogniti aliis (known to ourselves and unknown to others): for centuries this Latin motto has been the guiding principle for the policy of the Republic of San Marino in international relations. This policy of discretion granted the Republic independence for more than 1,700 years, since its foundation in AD 301, and allowed it to become the world's oldest republic and Europe's oldest existing state. This was possible even though its location exposed San Marino to shocking events in European history during this period, and even though San Marino is only a small mountain in the Italian peninsula with no army.

Company law reform

The constant application of a policy of discretion characterised the development of the banking systems during the 20th century, with strict bank secrecy laws.

A complete new reform of company law has been enacted in 2006, giving much more freedom to the drafting of the articles of association. Companies are subject to a tax rate of 17% (lower from next year). However, in practice, the tax rate may be even lower if special regimes are applied. These regimes exist for holding companies, companies holding intellectual property and companies providing intragroup services. In these cases, the effective tax rate can be either zero or 6.5%. No withholding tax is applied to dividends.

Trust law reform

In 2004, San Marino incorporated the Hague Convention on the recognition of trusts into domestic law, allowing the free use of foreign trust laws. In 2005, a complete trust law was introduced, in line with the modern development in the law of trusts. Among the most

important provisions that were introduced were those restricting the beneficiary from dealing with the beneficial interest, introducing the office of protector as well as the introduction of purpose trusts. Precise accounting rules are imposed on trusts and the office of trustee is restricted to authorised financial institutions with strong expertise in the area.

The trust law is fully integrated with the domestic legal system. In San Marino, pure Roman law is still in force, which recognises testamentary trusts as many modern studies confirm. Therefore, no conflict exists between the trust law and the principles of domestic law already applicable to the testamentary trust. Transfers from settlor to trustee and from the trust to beneficiaries are exempt from taxes. Income produced by the trust assets is taxed at the ordinary company tax rate (17%), but on a tax base which is 10% of the actual trust income. Therefore, the effective tax rate is 1.7%.

Mutual Funds

Under Sammarinian Law, a mutual fund is a sort of unit trust, managed by a fund management company. Equity interests in the trust are issued with the purpose or effect of pooling investors' funds to spread risk and enabling investors to receive profits or gains from the acquisition, holding, management or disposal of investments. Investment funds are subject to the general law on financial, banking and insurance services and companies. They are also subject to the Collective Investment Services Regulations and the recent Accounting Regulations for Mutual Funds. A fund management company needs to be authorised by the central bank. The regulations impose strict requirements on its shareholders, to insure that they have a good reputation and provide prudent administration. Members of the board of the fund management company have to meet strict independence and professionalism requirements.

The regulations allow several types of investment funds: open-ended funds, closed-ended funds, funds intended for the general

public (retail), reserved funds, alternative funds and guaranteed funds. Undertakings for Collective Investment in Transferable Securities (Ucits) 111-type funds are also expressly contemplated and a convention with Italy is under discussion for the distribution of such funds in Italy and the European Union. The regulations contain rules for mergers between funds, the role of the depository bank and a code of conduct to avoid conflicts of interest and excessive frequency of transactions, and to ensure their best execution. The regulations also set clear rules about cross-border operations, obliging foreign funds to be authorised. Income produced by the assets included in the investment fund are exempted from income tax, with the exception of rents or capital gains from real estate located in San Marino, which are taxed accordingly at the ordinary company tax rate (17%). No withholding taxes are levied on the distribution of income from the investment fund or on the capital gains realised by investors when they sell their share in the fund. In certain cases, when the recipient is an EU resident, the withholding taxes imposed according to the EU Savings Directive apply. Income of companies managing investment funds is taxed at 12 per cent. Furthermore, these companies get a tax credit amounting to 25% of net consideration paid to their employees.