



REPUBLIC OF SAN MARINO

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

Having regard to Article 4 of Constitutional Law no. 185/2005 and to Article 6 of Qualified Law no. 186/2005;

Hereby promulgate and order the publication of the following Ordinary Law, approved by the Great and General Council during its sitting of 23 July 2009:

LAW NO. 105 OF 31 JULY 2009

FRAMEWORK LAW FOR THE REFORM OF THE PUBLIC ADMINISTRATION

TITLE I GENERAL PROVISIONS

Art. 1 *(Purposes)*

1. This Law shall establish the principles and guidelines for the reform of the Public Administration through the reorganisation of Public Offices and Entities of the Overall Public Sector, the review of rules on public employment relationships, the separation of the powers of the Congress of State from those of the Administration, and the rationalisation of executive functions, in line with the evolution of the institutional, economic and social system, in order to improve the effectiveness of executive and administrative activities and provide services that are increasingly effective and in line with the needs of users.
2. The principles and guidelines contained in this Law shall be in line with the Decision of the Great and General Council of 16 May 2007, with the provisions contained in Constitutional Law no. 183 of 15 December 2005 and Qualified Law no. 184 of 15 December 2005, and with the indications provided for in public employment contracts and in the Agreements with Trade Unions.
3. The individual fields covered by this Law shall be specifically regulated by means of laws and delegated decrees, in accordance with the provisions of this Law and in line with the hierarchy of sources referred to in Article 3 bis of Decree no. 79 of 8 July 2002 "Declaration of the Citizens' Rights and Fundamental Principles of San Marino Legal System".

Art. 2 *(Definitions)*

1. For the purposes of this Law, the following definitions shall apply:
 - a. Administration: the bodies, the Overall Public Sector and the organisational structures into which it is divided;

- b. assignment: identification of the Organisational Unit in which the employee works, which can be modified;
- c. Entities of the Overall Public Sector: Entities and Autonomous State Corporations;
- d. staffing needs: qualitative and quantitative definition of the Administration's staffing needs, in line with the objectives of efficiency and effectiveness of administrative activities, but also of their cost reduction;
- e. Organisational Units (also referred to briefly as units): Entities/Departments and Offices-Services constituting their organisational structure, as defined by Qualified Law no. 184 of 15 December 2005, Article 18.

TITLE II

INSTITUTIONAL REFORM OF CIVIL SERVICE

Art. 3

(Functions of the Congress of State)

1. The Congress of State shall provide policy and administrative direction and shall control the administrative activity, in compliance with the rules and within the scope of the powers assigned to it by law.
2. In particular, the Congress of State shall define objectives and programmes to be implemented and monitor their implementation by the Administration.
3. In order to foster an ever greater autonomy and independence of the Administration's activities, the principles laid down in Title V of Qualified Law no. 184 of 15 December 2005 shall be applied and the Administration shall be entrusted with purely administrative competences.

Art. 4

(Collegial and individual political function of the Congress of State)

1. In order to improve the functioning at the highest level of the executive function, the rules and principles contained in Constitutional and Qualified Laws nos. 183 and 184 of 15 December 2005 concerning the collegial functions of the Congress of State and the individual functions of the Ministers shall be implemented as part of the reform. Secondary legislation acts shall also be regulated.
2. Given the changes that will be made to the organisation of the administrative function and its increasing autonomy and independence, the criteria for defining the personnel of the Ministries shall be reviewed, according to principles of greater consistency with the political functions assigned to them.
3. In the context of the individual political functions and responsibilities of the members of Government, a qualified law shall define how these functions and responsibilities are to be implemented in the relationship with the relevant administrative sectors, since, in any case, the related political responsibility shall be identified for each Office and Service.

TITLE III

ORGANISATION OF THE ADMINISTRATION

Art. 5

(Purposes of reorganisation)

1. The reorganisation of the administrative structure shall be aimed at identifying solutions, in line with the evolution of the Administration, in order to: rationalise the overall organisation of the Administration and the services provided to users; pursue objectives of efficiency, effectiveness, cost-effectiveness and compliance with the needs of users; provide new instruments of autonomy

and define more precisely the roles and areas of management.

Art. 6

(Organisational structure of the Administration)

1. The organisational structure of the Administration shall consist of:
 - a. Departments;
 - b. Entities of the Overall Public Sector;
 - c. Offices and Services.

Art. 7

(Purposes of the Organisation by Departments)

1. As a result of the transfer of administrative competences on expenditure and personnel from the Congress of State to the Administration, provided for by Title V of Qualified Law no. 184/2005, and to finalise the separation between the political and administrative functions in accordance with the provisions of Constitutional Law no. 183/2005 and Qualified Law no. 184/2005, the model of organisation by Departments shall be confirmed, albeit with a reform of such Departments that shall take into account the experience gained over the years and the new institutional and operational needs.
2. In order to implement the provisions of the preceding paragraph and of Article 5, so as to ensure the clearness of roles and avoid overlapping tasks and functions, the Entities of the Overall Public Sector shall no longer be part of the Organisation by Departments even though they shall be part of the Administration's organisational structure and be subject to the principles and rules of this reform, without prejudice to their autonomy and specificities, including their organisational structure.
3. The reorganisation of the current Departments shall involve the redefinition of their areas of responsibility and, consequently, their number, composition, as well as the roles and tasks of their Heads.
4. Following the new definition of Offices and Services, which shall take into account the existing situation and their potential for improvement and development, new Departments, independent of political responsibilities of Ministries, shall be identified by qualified law.

Art. 8

(Departments)

1. Departments shall represent aggregations of units according to criteria of homogeneity and coordination of operational areas, defined in accordance with the aims of the organisation by departments as set out above.
2. Departments shall pursue the following objectives:
 - a. management of specific activities delegated as a result of the transfer of powers provided for in Article 3;
 - b. providing impulse, integrating and controlling the units belonging to the same Department within the framework of projects and activities involving several units of the same or different Departments;
 - c. optimisation and rationalisation of the use of financial, human and instrumental resources, in order to achieve, in line with the indications of the bodies of Civil Service, an improvement in the effectiveness of administrative activities, but also to pursue cost reduction and enhance the professional skills of human resources;

d. definition of operational methods, in line with the indications of the bodies of Civil Service, in order to simplify and harmonise the activities of the individual units also to improve relations with users.

3. Depending on the specific sector they belong to and the powers assigned to them, the functions of the Departments may be different.

Art. 9

(Heads of Department)

1. A specific law shall define the role and tasks of the Head of Department, in line with the objectives laid down in Article 8, but also with the characteristics of the specific Department of assignment.

2. In addition, the Head of Department shall be responsible to the Congress of State for the functions falling within his or her responsibility, relating in particular to the following areas and autonomies:

a. management, in the manner and with the autonomy provided for by law, of the powers transferred from the Congress of State and the individual Ministers, referred to in Article 3;

b. autonomous coordination of the activities of the units of the Department with regard to the plans and programmes assigned to it or to part of it, but also for the functional performance of administrative activities involving several units of the Department;

c. definition and constant monitoring, in accordance with the indications of the bodies of Civil Service and after consulting the Directors concerned, of the best possible use of human, financial and instrumental resources within the Department;

d. definition and constant monitoring, in accordance with the indications of the bodies of Civil Service and in cooperation with the Directors within the Department, of the operational methods, in order to harmonise, simplify and rationalise administrative processes and to make the Department's activities as a whole homogeneous and consistent with the needs of users.

Art. 10

(Directorate General and bodies of Civil Service)

1. The Directorate General of Civil Service shall promote, guide and monitor the processes of modernisation of the Administration, with particular reference to the optimal management of human and instrumental resources and to the definition, in collaboration with the Heads of Department and, through the latter with the Directors, of the organisation of administrative activities based on criteria of efficiency, effectiveness and compliance with the needs of users.

2. In order to ensure that the work of the Administration is impartial and fair, the Directorate General of Civil Service shall carry out the function referred to in the preceding paragraph vis-a-vis the entire Overall Public Sector, including Entities.

3. The Directorate General of Civil Service shall include the Director of Civil Service, who shall be the Head of the Department of Civil Service, and collegial bodies.

4. The Department of Civil Service shall be composed of Organisational Units with relevant Missions and Functions, covering the entire Overall Public Sector, and it shall have administrative powers.

5. A special law shall define the role and tasks of the individual and collegial bodies of Civil Service.

Art. 11

(Director of Civil Service)

1. The Director of Civil Service shall be accountable to the Minister responsible for Civil Service and to the Congress of State for the assigned functions, as well as for the implementation of plans and programmes concerning the functioning of administrative activities as a whole.

2. In particular, the Director of Civil Service, either directly or by presiding over and coordinating the collegial bodies of Civil Service, shall:
 - a. propose, implement and enforce rules and guidelines for the entire civil service (Public Administration, Entities of the Overall Public Sector) and, in this respect, interact with the Trade Unions as a representative of the Administration, either autonomously or by mandate of the Congress of State;
 - b. make proposals to the Minister responsible for Civil Service and to the Congress of State for the improvement of administrative activities.

Art. 12

(Coordination of Departments and Department Councils)

1. In order to pursue the purposes of the reorganisation, the Coordination of Departments and the Department Councils shall have an organisation and powers in line with their functions and the new department structure.
2. In order to achieve the general integration of the entire Overall Public Sector, areas for sharing and coordination among the Departments and Entities of the Overall Public Sector shall be identified within the Directorate General and the Department of Civil Service.

Art. 13

(Mission and Functions of Offices and Services)

1. The Offices and Services of the Administration shall base their work on specific Missions and Functions assigned to them.
2. The Mission shall constitute the element which justifies the existence of a structure and, therefore, describes its institutional aims and purposes, which tend to remain the same over time. Missions shall be established by law both within the framework of the reform and subsequently.
3. Functions shall outline the activities of the specific unit and the means by which such unit pursues the Mission and shall be established by delegated decree in order to make the structure flexible to external changes or to entrust the unit with new tasks.
4. Functions shall remain fully in line with the relevant Mission over time.
5. Missions and Functions shall give rise to requirements related to job specifications, status and incompatibilities of employees and directors.

Art. 14

(Offices - Services and Departments: Roles and Coordination)

1. In accordance with the principles of the reorganisation and the functions of the Departments and bodies of Civil Service, Offices and Services shall have full operational autonomy for the pursuit of the Mission and related Functions.

TITLE IV DIRECTORS

Art. 15

(Functions of directors)

1. The regulations on the status of directors shall be reviewed by means of a special law, taking into account the agreements signed on competitions and selection and qualifications. Said law shall define the duties and role of directors, in line with the regulations on job specifications, on the Missions and Functions of Public Offices and Services, and on the transfer and separation of powers, as well as in line with the evolution of the current legislation on directors, establishing that they shall:

- a. be responsible for the services provided by the direct Organisational Unit and have the power/duty to organise it in the best possible way, taking into account the instrumental, financial and human resources allocated to it;
- b. have broader personnel management instruments to make the best operational use of the assigned personnel and for their professional development;
- c. have broader expenditure powers, as provided for in the reform of the accounting system;
- d. represent, together with its personnel, the privileged professional reference for matters falling within the competence of the direct Organisational Unit and issue administrative acts and measures of external relevance.

Art. 16

(Employment relationship and remuneration of directors)

1. The employment relationship with Directors may be permanent or temporary. In the latter case, the appointment shall be made by the Congress of State or the Great and General Council (when provided for by special rules), without prejudice to the adoption of appropriate and diversified forms of selection, in order to provide the Administration with the best available professionals.
2. The remuneration of directors shall be established by law and consist of four components: basic; position-based, connected to the complexity of the unit directed; performance-based; and temporary, for those who do not have a permanent employment relationship with the Public Administration.

Art. 17

(Evaluation of Heads and Directors)

1. A separate regulation following the identification of Offices and Services shall define the principles and procedures for the evaluation of the professional performance of Heads and Directors.
2. Evaluation shall take place in different ways and with different frequencies: performance evaluation and position evaluation.
3. The purposes of the evaluation shall be the following:
 - a. rewarding merit;
 - b. defining possible interventions to improve professional performance;
 - c. quantifying variable elements of remuneration;
 - d. evaluating in a comprehensive manner the task performed or the periodical assignment, so as to confirm or not the latter.
4. The evaluation shall cover the overall performance of Heads of Departments and Directors and shall be based on preliminary objectives.

TITLE V

PUBLIC EMPLOYMENT RELATIONSHIP

Art. 18

(General provisions)

1. The employment relationship established between the Administration and the employee shall have the purpose of ensuring the performance of administrative activities.

2. In application of principles already clearly established in laws, collective agreements and agreements between the Administration and the Trade Unions, the reform shall provide for the elimination of the job description and establish that employees shall no longer permanently hold a position and may be transferred.
3. In order to achieve what stated above, the permanent personnel shall be classified according to appropriate job specifications and assigned to the Organisational Units according to qualitative and quantitative needs.
4. In line with the principles of this law and after discussions with the trade unions, certain rules of public employment relationships shall be reviewed with the aim of making personnel management more flexible, embedding the culture of service to the public in the regulations, enhancing the value of existing professional skills and achieving a general rebalancing of treatment.
5. At a later stage, the provisions of Article 25 below shall be dealt with, deferring the relevant issues to collective bargaining.

Art. 19
(Job specifications)

1. Job specifications shall establish what is required of the employees in terms of work performance, regardless of the unit to which they will be assigned.
2. Job Specifications shall be regulated by a specific law and defined by a delegated decree according to criteria of homogeneity among the services, clearness and consistency with the current and future needs of the Public Administration, by reducing and simplifying the current qualifications and reviewing/updating the qualifications currently envisaged for individual positions.

Art. 20
(Classifications)

1. Within the framework of the reform, each permanent employee shall be classified in a job specification, but may perform temporary replacement - assignment services in another job specification according to the rules and criteria that shall be laid down by law and by contracts.
2. Within the framework of the reform, the criteria for the most correct classification of personnel in job specifications shall be provided for by law, after negotiation with the trade unions, with a view to reducing expenditure and precarious employment and, above all, to ensure that the reform is an opportunity to select new professionals and enable access to the Administration as much as possible through competitions, training courses followed by competitions and other forms of selection.

Art. 21
(Assignments to units)

1. Employees shall be assigned to units (Offices, Services or Entities/Departments) to pursue their mission and functions.
2. The assignment of an employee to a unit shall not be permanent, in accordance with the rules agreed with the trade unions, which shall guarantee the stability of the unit and its adaptability to the needs of the users.
3. The employee may be assigned:
 - a. to the Entity/Department for the functions belonging to this;
 - b. to the Entity/Department to carry out functions of units subordinate to it and then assigned to a specific unit;
 - c. to the units of the Entity/Department.

Art. 22

(Access to public employment and other forms of selection)

1. The rules for access to public employment shall be reformed to meet the need to identify lacking or absent human resources and increasingly needed professional skills, in an Administration that shall play a more authoritative and attentive role vis-à-vis users and in the context of external relations.
2. Forms of selection shall also be envisaged for types of temporary collaboration with the Administration and shall be properly regulated.
3. The rules on public employment lists shall be reviewed to ensure that recruitment is in line with the needs of the administration.

Art. 23

(Staffing needs of units)

1. Within the framework of the reform, the qualitative and quantitative staffing needs of the units shall be defined, following the definition of their missions and functions.
2. The Administration shall periodically assess the qualitative and quantitative needs of the individual units, in line with their functions and the principles of flexibility, cost-effectiveness and efficiency - effectiveness of administrative activities.

Art. 24

(Collegial bodies of Public Employment)

1. The collegial bodies competent in public employment matters shall be reviewed, by law, with reference to the transfer of powers referred to in Article 3, the reform of the macrostructure and the regulatory changes in public employment relationships.

Art. 25

(Finalisation of the reform)

1. After consultation with the trade unions and following the first classification and assignment of personnel, the following matters shall be regulated by law:
 - a. evaluation and reward of employees' merit;
 - b. role and "value" of vocational training;
 - c. review of the remuneration regime, in order to pursue objectives of fairness and simplification of the current situation;
 - d. intra- and inter-departmental mobility;
 - e. participation in specific projects with clearly defined objectives and time frames (target projects);
 - f. hierarchy of regulatory sources on public employment;
 - g. sheltered employment for employees with reduced capacity for work.

Art. 26

(Verification of the effectiveness of regulatory acts)

1. The regulatory acts implementing this Law as well as its content shall be subject to verification in order to ensure the appropriateness and coherence of the reform and may be amended by delegated decree until the finalisation of the reform.

TITLE VI
SOURCES OF LAW

Art. 27
(Single Text)

1. After the approval of the legislation referred to in Article 25, a coordinated text of all the regulations on employment relationships in the Public Administration shall be drawn up by means of a Delegated Decree. The Single Text shall include a clear definition of the hierarchy of the regulatory sources on public employment.

Art. 28
(Entry into force)

1. This Law shall enter into force on the fifth day following that of its legal publication.

Done at Our Residence, on 31 July 2009/1708 since the Foundation of the Republic

THE CAPTAINS REGENT
Massimo Cenci - Oscar Mina

THE MINISTER OF
INTERNAL AFFAIRS
Valeria Ciavatta