



# REPUBLIC OF SAN MARINO

## PROVISIONS ON THE EXERCISE OF INDIVIDUAL PROPRIETORSHIPS IN THE SECTOR OF INDUSTRY OR HANDICRAFT BY NATURAL PERSONS RESIDING ON THE TERRITORY, PROCEDURES FOR THE INCORPORATION AND SUBSEQUENT LICENSING OF MANUFACTURING COMPANIES FORMED BY PROMOTERS BEING NATURAL PERSONS EITHER CITIZENS OR RESIDENTS OF THE REPUBLIC OF SAN MARINO

**We the Captains Regent<sup>1</sup>**  
**of the Most Serene Republic of San Marino**

*Promulgate and make public this law approved by the Great and General Council during its sitting of April 28, 1999.*

### SECTION I (GENERAL PROVISIONS)

#### **Art. 1** *(Definition and scope of application)*

- 1.1. Industrial and handicraft licences for the exercise of an enterprise, in the form of an individual proprietorship or a company, shall be granted under this law.
- 1.2. This law shall pursue the full implementation of the principle referred to in Art. 10 of Law no. 59 of July 8, 1974, on the protection and safeguard of private enterprise.

### SECTION II (ON THE GRANTING OF INDUSTRIAL AND HANDICRAFT LICENCES FOR THE EXERCISE OF INDIVIDUAL PROPRIETORSHIPS BY NATURAL PERSONS RESIDING ON THE TERRITORY)

#### **Art. 2** *(Applicants and application requirements)*

- 2.1 Anyone intending to form an individual proprietorship in the sector of industry or handicraft on the territory of the Republic of San Marino shall file an application to the competent Office of Industry and Handicraft.
- 2.2 The following documents shall be attached thereto:
  - a) a certificate of residence issued by the Register Office of San Marino;
  - b) a police record;
  - c) a certificate showing that the applicant has never suffered bankruptcy;
  - d) a certificate of competence;
  - e) a declaration of the applicant attesting that he has not obtained any other industrial and/or handicraft licence under this law in the two years prior to the application;

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<sup>1</sup> Captains Regent: the two joint Heads of State.

- f) a brief report on the activity related to the licence requested;
- g) the purpose and scope of the licence, in accordance with what set forth in the following article 3.
- 2.3 The list of documents referred to in the preceding paragraph may be changed by a Regency Decree<sup>2</sup>.

### **Art. 3**

#### *(Objects of proprietorships)*

- 3.1 Within forty days from the entry into force of this law, the Congress of State<sup>3</sup> shall issue a special regulation, to be enacted by a Regency Decree, identifying the objects of proprietorships.
- 3.2 In filing the application to the competent Office of Industry and Handicraft, the applicant shall select only one of the objects listed in the Decree referred to above.
- 3.3 The combination or subsequent request for combination of more objects selected from among those listed in the Decree referred to in paragraph 3.1 shall not be allowed.
- 3.4 Any application for an industrial or handicraft licence with an object other than those listed in the Decree referred to in paragraph 3.1 shall be duly authorised with an explanatory order within 60 days from the filing of the relevant application to the competent Office of Industry and Handicraft under the terms of Law no. 18 of June 8, 1965, or under the terms of Law no. 10 of January 25, 1990.
- 3.5 Any rejection of authorisation shall be notified with an explanatory order to the applicant within 60 days from the date of the filing of the application to the competent Office of Industry and Handicraft.
- 3.6 The authorisation referred to in paragraph 3.4 shall not be mandatory in case the owner of a licence granted under this law intends to change the object of the licence by choosing it from among the others listed in the Decree, provided that the application for a different object is filed together with an explicit renunciation to the original one.
- 3.7 The Congress of State shall issue a special regulation annually, to be enacted by a Regency Decree, including any change in the list of objects of proprietorships.
- 3.8 The Decree referred to above shall also identify the areas of action and the objects of proprietorships to be encouraged or discouraged, both in relation to the granting of new industrial or handicraft licences and compatibly with the environmental, occupational, economic and social needs of the Republic.
- 3.9 Licences granted prior to any changes in object and activity, as listed in the Decree referred to above, shall continue to be effective and may be transferred to another natural person under the terms and procedures referred to in the following articles 5 and 6.

### **Art. 4**

#### *(Attributions of the Office of Industry and Handicraft while examining the application, and procedures for the granting of a licence)*

- 4.1 Upon receipt of an application for a licence and the necessary documents annexed thereto as referred to in the preceding article, the Director of the Office of Industry and Handicraft shall examine the application and notify its acceptance or rejection within 30 days from the filing of the application.
- 4.2 An application shall be rejected only in case of defects of form of the application, missing documents, non compliance with the requirements set forth in article 2 and in particular where the police record shows convictions for voluntary offences against property, or offences of

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<sup>2</sup> Regency Decree: decree of the Captains Regent.

<sup>3</sup> Congress of State: the Government.

other nature judged with a conviction to at least 2-year imprisonment, or where the documentation submitted indicates the absence or loss of competence by the applicant, or a judgement on bankruptcy, or, lastly, where the applicant is already the proprietor of other industrial, business or handicraft licences, or where the applicant obtained, under this law, another industrial and/or handicraft licence over the two years prior to the application.

4.3 The Director of the Office of Industry and Handicraft may allow the applicant to file any missing documents within a time limit not exceeding 30 days. In case of failure, the incomplete application shall be rejected.

4.4 In notifying the acceptance of the application, the Director of the Office of Industry and Handicraft shall request the applicant to submit additional documents including:

- a) a certificate of unemployment issued by the Employment Office;
- b) a tenancy agreement, leaseback contract and/or gratuitous bail registered with the Registration Office, and a statement of deposit with the Tax Office, certifying the availability of premises suitable for the performing of the activities indicated in the object of the licence requested, or a cadastral certificate indicating that the applicant is the sole owner or usufructuary of suitable premises;
- c) a declaration of habitability and/or housing conformity with the activities indicated in the object of the licence requested, issued by the Town Planning Office;
- d) a declaration that no other activities are based in the premises referred to in the declaration of habitability;
- e) an indication of the exact street number given by the Town Planning Office;
- f) a receipt of payment of the tax due for the granting of the licence, under Law no. 52 of July 1, 1992;
- g) a cadastral survey of the premises;
- h) the business name, if any;
- i) an indication of the square metres of the premises;
- j) any authorisation referred to in Subsection III of Law no. 87 of July 19, 1995, and any survey referred to in Law no. 31 of February 18, 1998 “*Framework Law on Security and Health on the Workplace*” with regard to production activities;
- k) any certificates and documents of attendance to courses for the performing of special activities requiring specific training or professional experience, as expressly required for the various objects listed in the Decree of the Captains Regent referred to in article 3.

4.5 Failing the deposit of the documents referred to above within 12 months from the acceptance of the application by the Director of the Office of Industry and Handicraft, the application shall automatically become null and void, and the applicant shall file a new application.

4.6 The list of documents referred to in paragraph 4.4 may be changed by a special Decree of the Captains Regent.

## **Art. 5**

### *(Transfer of an industrial or handicraft proprietorship to natural persons residing on the territory)*

5.1 The transfer of a proprietorship granted under this law shall be authorised only in favour of natural persons meeting the same subjective and objective requirements for the granting *ex novo* of a proprietorship.

5.2 The transfer of a proprietorship granted under this law shall be authorised upon request by the Director of the Office of Industry and Handicraft with an explanatory order. The applicant shall annex all the documents referred to in article 4.4 as well as the documents referred to in article 2.2. a), b), c), d) and e).

5.3 To obtain the authorisation to transfer a proprietorship, the applicant shall also file a special transfer contract duly registered with the Registration Office, as well as a declaration by the Tax Office certifying the filing of the contract.

5.4 The transfer of a proprietorship granted under this law shall be authorised within 30 days from the date of the application.

5.5 Any rejection by the Director of the Office of Industry and Handicraft shall be notified to the applicant within 30 days from the filing of the application. The authorisation shall be rejected only in case of defects of form of the application, missing documents, non compliance with transfer requirements, or where the police record shows convictions for voluntary offences against property, or offences of other nature judged with a conviction to at least 2-year imprisonment, or where the documents submitted indicate the absence or loss of competence by the applicant, or a judgement on bankruptcy, or, lastly, where the applicant is already the proprietor of other industrial, business or handicraft licences, or obtained, under this law, another individual industrial and/or handicraft licence during the two years prior to the application.

5.6 Under the same terms and procedures, the Director of the Office of Industry and Handicraft shall be equally responsible for authorising the transfer of a proprietorship granted under the preceding article 3.4.

#### **Art. 6**

*(Transfer of an industrial proprietorship  
to natural persons not residing on the territory)*

6.1 Any transfer of a proprietorship granted under this law to natural persons not residing on the territory of the Republic shall be authorised with an explanatory order within 60 days from the date of the filing of the application under the terms of Law no. 18 of June 8, 1965.

6.2 Any rejection of the authorisation referred to above shall be notified to the applicant with an explanatory order within 60 days from the filing of the application to the competent Office of Industry.

6.3 Once the authorisation referred to in paragraph 6.1 has been obtained, the Director of the Office of Industry shall be responsible for releasing the authorisation to transfer an industrial proprietorship to natural persons not residing on the territory of the Republic under the same terms referred to in article 5.

6.4 The transfer of handicraft proprietorships to natural persons not residing on the territory of the Republic is not allowed in any case.

### **SECTION III**

**(ON THE PROCEDURES FOR THE INCORPORATION AND SUBSEQUENT LICENSING OF  
MANUFACTURING COMPANIES FORMED BY PROMOTERS BEING NATURAL PERSONS EITHER  
CITIZENS OR RESIDENTS OF THE REPUBLIC OF SAN MARINO)**

#### **Art. 7**

*(Procedures for the incorporation of Limited Liability Companies or Joint Stock Companies  
formed by promoters being San Marino citizens and/or residents)*

7.1 The incorporation of a company on the territory of the Republic of San Marino under article 12 of Law no. 68 of June 13, 1990, shall not require any prior authorisation if the company is jointly formed by San Marino citizens or residents, in the form of a Limited Liability Company or a Joint Stock Company, and exclusively to perform a manufacturing activity, within the following limits:

- a) the promoter(s) subscribing the majority capital stock (51%) shall be citizen(s) or resident(s) of the Republic of San Marino;
- b) the promoter(s) subscribing the majority capital stock cannot participate in the incorporation of more than one Limited Liability or Joint Stock Company during the two years running from the day on which he(they) had this quality. Consequently, he(they) cannot be promoter(s) and subscriber(s) of the majority capital stock of companies incorporated under this law and without the authorisation of the Congress of State;
- c) the promoter subscribing the majority capital stock - citizen or resident of San Marino - shall be the director and legal representative of the company;
- d) the corporate purpose shall be necessarily selected from among those listed for industrial activities in the Regency Decree referred to in article 3;
- e) the combination of more corporate purposes, as listed and identified in the Decree referred to in article 3, shall not be allowed;
- f) the addition of or combination with other corporate purposes, as listed in the Decree referred to in article 3, shall not be allowed even if requested subsequent to the incorporation and licensing of the company;
- g) citizens or residents of San Marino permanently employed in the Public Administration, State Enterprises or Agencies, in the Social Security Institute or the University, cannot be promoters subscribing the majority capital stock;
- h) legal persons, including San Marino legal persons, cannot be promoters and subscribers of the majority capital stock;
- i) the promoters subscribing the majority capital stock shall keep the majority of the capital share and may not cede it except under the terms and within the limits set forth in the following articles 13 and 14;
- j) the minority capital stock (up to 49% of the total) may be freely subscribed by natural persons - both residents and non residents of the Republic of San Marino -, or legal persons - both national and foreign -, or natural persons owning a proprietorship;
- k) the minority capital stock (up to 49% of the total) may be ceded freely to any person referred to in the preceding paragraph even subsequent to the incorporation of the company and without any authorisation.

## **Art. 8**

### *(Drafting of the Memorandum of Association)*

8.1 Anyone intending to operate a manufacturing company, jointly with other persons, on the territory of the Republic of San Marino, in the form of a Limited Liability or Joint Stock Company and in accordance with the limitations referred to in article 7, shall proceed with the legal incorporation of the company by notarial act.

8.2 The memorandum of association of a Limited Liability or Joint Stock Company shall meet the requirements set forth in article 11 of Law n. 68 of June 13, 1990, as well as the following ones:

- the majority capital stock shall be subscribed by the company promoter, who shall be either a citizen or a resident of San Marino;
- the company promoter referred to above shall act by law as director or legal representative of the company;
- the corporate purpose shall be selected from among those listed in the Regency Decree referred to in the preceding article 3;
- the company promoter subscribing the majority capital stock shall declare that, in the two years prior to the incorporation, he has not participated as promoter in other Limited Liability or Joint Stock Companies incorporated under this law.

8.3 The following documents shall be attached to the memorandum of association, under pain of nullity:

- a certificate of residence and citizenship of the company promoters;
- a police record of the promoters;
- a certificate attesting that the promoters have never suffered bankruptcy.

**Art. 9**  
*(Legal recognition)*

9.1 The legal recognition of companies incorporated under this law shall be requested under the terms set forth in Law no. 68 of June 13, 1990.

**Art. 10**  
*(Granting of the licence)*

10.1 After having incorporated the Limited Liability or Joint Stock Company in conformity with the terms and procedures referred to in Section III of this law, and after having obtained the legal recognition by the Civil and Criminal Court of the Republic, the Director of the Office of Industry shall grant the relevant licence.

10.2 To grant the licence, the competent Office of Industry shall be duly notified of the relevant legal recognition by the Registry of the Civil and Criminal Court.

**Art. 11**  
*(Terms for the granting of a licence)*

11.1 Within 30 days from the notification of the legal recognition of the company by the Civil and Criminal Court, the Director of the Office of Industry shall request the notary public who has received and drafted the Memorandum of Association the following documents, in order to grant the relevant licence:

- a) a tenancy agreement, leaseback contract and/or gratuitous bail registered with the Registration Office including a statement of deposit with the Tax Office, certifying the availability of premises suitable to the performing of the activities indicated in the corporate purpose, or a cadastral certificate indicating that the applicant is the sole owner or usufructuary of suitable premises;
- b) a declaration of habitability and/or housing conformity with the activity indicated in the corporate purpose issued by the Town Planning Office;
- c) a declaration that no other activities are based in the premises referred to in the declaration of habitability;
- d) a certificate of unemployment of both promoters stating that they are not permanently employed in the Public Administration, State Enterprises or Agencies, in the Social Security Institute or the University;
- e) an indication of the exact street number given by the Town Planning Office;
- f) a receipt of payment of the tax due for the granting of the licence, under Law no. 52 of July 1, 1992;
- g) a cadastral survey of the premises;
- h) an indication of the square metres of the premises;
- i) a certificate of law effectiveness;
- j) any authorisation referred to in Subsection III of Law no. 87 of July 19, 1995, and any survey referred to in Law no. 31 of February 18, 1998 “*Framework Law on Security and Health on the Workplace*” with regard to production activities.

11.2 Failing the deposit of the documents referred to above within one year from the request notified by the Director of the Office of Industry, the licence shall automatically become null and void under the last paragraph of article 18 of Law no. 18 of June 8, 1965, and lead to the compulsory winding-up of the company.

11.3 An extension of the deadline referred to above may be granted by the Congress of State upon request of the legal representative of the company for a period not exceeding one year.

11.4 Failing the company to take in the licence under the terms referred to in paragraphs 2 and 3 above, the compulsory winding-up of the company, if not executed by the company itself, shall be ordered by the Law Commissioner of the Civil and Criminal Court.

## **Art. 12**

*(Authorisation and permits)*

12.1 The incorporation of a Limited Liability or Joint Stock Company with a corporate purpose different from or not included in those listed in the Decree referred to in article 3 of this law shall be authorised with an explanatory order within 60 days from the filing of the application to the competent Office of Industry under the terms of article 12 of Law no. 68 of June 13, 1990.

12.2 Any rejection of the authorisation referred to above shall be notified to the company with an explanatory order within the same deadline of 60 days from the filing of the application.

12.3 The company wishing to change or integrate its corporate purpose - chosen from among those listed in the Decree referred to in article 3 of this law during its incorporation - shall obtain the prior authorisation pursuant to article 12 of Law no. 68 of June 13, 1990.

12.4 The authorisation referred to in the preceding paragraphs shall not be mandatory if the company replaces its corporate purpose with another one chosen from among those listed in the Decree referred to in article 3, provided that the company expressly renounces to its original corporate purpose.

12.5 The Congress of State shall issue annually a special regulation to be enacted with a Regency Decree, showing any amendment to the list of corporate purposes.

12.6 The Decree referred to above shall also identify and indicate the areas of intervention and types of enterprises to be encouraged or discouraged with regard to the incorporation of new manufacturing companies and compatibly with the environmental, occupational, economic and social needs of the Republic.

12.7 Companies incorporated prior to changes in the types of entrepreneurial activities and corporate purposes laid down in the Decree referred to above shall be allowed to take in their licences and perform the activities stated in their original corporate purpose.

## **Art. 13**

*(Transfer of the majority capital share and changes in legal representation)*

13.1 The majority capital share subscribed during the incorporation of the company by the promoter, who shall be either a citizen or a resident of the Republic, may be freely transferred to any person meeting the same requirements for the incorporation *ex novo* of the company itself.

13.2 To this end the majority capital share referred to above shall be ceded by means of a public act or certified private agreement. The transferee shall declare, under his full responsibility, that he intends to buy the majority capital share and fulfil the functions of Director and Legal Representative of the company.

13.3 A copy of the deed of release of the shares shall be deposited with the Registry of the Civil and Criminal Court and with the Office of Industry within 30 days from the date of registration by the notary public and under his responsibility. The following documents shall also be supplied:

- a certificate of residence and citizenship of the buyer;

- a police record of the buyer;
- a certificate that the buyer has never suffered bankruptcy.

#### **Art. 14**

*(Transfer of the majority capital share and changes in legal representation  
in favour of natural persons non residents of the Republic)*

14.1 Any transfer of the majority capital share initially subscribed by or ceded to natural persons that are citizens or residents, in favour of natural persons that are non citizens and/or non-residents or legal persons, shall be previously authorised with an explanatory order within 60 days from the date of the filing of the request under the terms of article 12 of Law no. 68 of June 13, 1990, and after one year from the taking in of the licence.

14.2 Any rejection of the authorisation referred to above shall be notified to the applicant with an explanatory order within the same term of 60 days from the filing of the request.

14.3 Failing the prior authorisation referred to in paragraph 1 above, the cession of the majority capital share of a company incorporated under this law to natural persons, non citizens and/or non-residents, or legal persons shall be null and void.

14.4 A copy of the authorisation referred to in paragraph 1 above shall be annexed to the deed of release of shares under pain of nullity.

14.5 Having obtained the authorisation referred to in paragraph 1 above, any further cession to other natural or legal persons, residing or not in the Republic, shall be free and not subject to any further authorisation by the Congress of State.

### **SECTION IV**

#### **(CONTROL, SUPERVISION AND WINDING-UP OF COMPANIES)**

#### **Art. 15**

*(Control, Supervision and Winding-Up of Companies)*

15.1 The Congress of State shall order the Civil and Criminal Court to initiate the compulsory winding-up of all companies irrespective of the form in which they have been incorporated and under the terms set forth by Law no. 68 of June 13, 1990.

15.2 With the entry into force of this law a special Commission, composed of Directors and Officials of the Public Administration appointed by the Congress of State, shall be entrusted with the control and supervision of all companies. In particular, the Commission shall:

- report to the Congress of State on any companies and/or businesses that have arbitrarily performed an activity which is substantial for the budget and essentially different from that indicated in the corporate purpose;
- report and propose interventions with regard to those activities whose purpose is not in accordance with the interests of the State, or its international agreements and treaties;
- establish that property, equity investments and shareholdings, not directly attributable to the business activity, be aimed at reaching the company aims and developing its business activity;
- assess the status of capital stock in relation to its subscription and payment, as well as the compensation of losses;
- report any non compliance with the obligations set forth in the authorisation and related agreement;
- report on any company that has not yet performed any of the activities indicated in its corporate purpose.



15.3 The members of the Commission referred to above shall be appointed for a 3-year term and can be re-elected. In order to accomplish the tasks described above, the Commission may require all Public Offices to provide documents, information and assistance.

**SECTION V**  
**(TRANSITIONAL, REFERENCE AND FINAL PROVISIONS)**

**Art. 16**

*(Reference rules on the regulation, operation and winding-up of Limited Liability and Joint-Stock Companies incorporated under this law)*

16.1 With regard to the rules governing the functioning and the business relations of companies incorporated under this law, and with regard to any other provision, including winding-up, express reference shall be made to the law provisions currently in force and in particular to Law no. 68 of June 13, 1990.

**Art. 17**

*(Reference rules)*

17.1 Industrial proprietorships authorised by the Congress of State even prior to the entry into force of this law, as well as those granted by the Director of the Office of Industry under this law, may be turned into companies in any of the forms and under the terms set forth in article 12 of Law no. 68 of June 13, 1990.

17.2 The regulation and discipline of industrial proprietorships which shall be authorised by the Congress of State, the regulation and discipline of those authorised prior to the entry into force of this law or those to be granted by the Director of the Office of Industry under this law shall be enacted in accordance with Law no. 18 of June 8, 1965.

17.3 The Congress of State shall have the faculty of licensing industrial proprietorships - even with an object different from those listed in the Decree referred to in the preceding article 3 - to a person who is already the proprietor of other individual licences or is permanently employed in the private sector.

17.4 The regulation and discipline of handicraft proprietorships which shall be authorised by the Congress of State Commission for Handicraft, the regulation and discipline of those authorised prior to the entry into force of this law or those to be granted by the Director of the Office of Industry under this law shall be enacted in accordance with Law no. 69 of July 6, 1982, and Law no. 10 of January 25, 1990.

**Art. 18**

*(Appeals)*

18.1 Under the terms of Law no 68 of June 28, 1989, jurisdictional appeals against the orders of the Director of the Office of Industry and Handicraft may be filed to the Administrative Court.

## **Art. 19**

### *(Special provisions concerning the functions of director and auditor in a company)*

19.1 From the date of the entry into force of this law, persons whose police records indicate convictions for voluntary offences against property, or offences of other nature judged with a conviction to at least 2-year imprisonment, or whose documentation, submitted in accordance with the provisions of the preceding paragraphs, indicates the absence or loss of competence, or a judgement on bankruptcy, shall not be allowed to fulfil the functions of either directors or auditors. The same circumstances shall entail the automatic termination of the functions of directors and auditors previously appointed.

19.2 Without prejudice to the provisions referred to in Subsection VI- Section III of Law no. 68 of June 13, 1990, at least one of the Auditors shall be chosen from among professionals, not employed in the public sector, and registered with one of the following professional orders and/or associations.

- Board of Accountants
- Order of Chartered Accountants
- Order of Attorneys and Notaries Public.

19.3 From the date of the entry into force of this law, the function of sole administrator or director or auditor of a company of any type, incorporated even prior to the entry into force of this law, shall comply with the requirements referred to in the preceding paragraph, including the submission of a police record and a certificate demonstrating that the person in question has never suffered bankruptcy.

19.4 For all types of companies that will be incorporated subsequent to the entry into force of this law, the legal recognition of a company shall be subject to the filing of the above-mentioned documents concerning all the persons who will act as directors or auditors, including a request for recognition.

19.5 With regard to all companies already incorporated and operating, or being incorporated and/or recognised, the directors shall submit within 90 days from the entry into force of this law the documents referred to in paragraph 3 of this article, as well as those regarding appointed auditors.

19.6 Within the same term of 90 days, companies already incorporated and operating, or being incorporated and/or recognised shall proceed with the appointment of auditors in accordance with paragraph 2 above.

19.7 The documents on file regarding both the directors and the auditors shall be updated every year and under the same terms applying to the approval of the annual balance sheet.

19.8 Equally, both the obligation referred to above and the obligation to comply with the provisions set forth in the preceding paragraph 2 shall apply to companies having not yet taken in their licence and performed any activity, as well as to companies having intentionally and temporarily suspended their activity by addressing a special request for suspension of the licence to the Office of Industry.

19.9 Failing the deposit or updating of documents within the deadlines set forth in this article, or failing compliance with the provisions referred to in the preceding paragraph 2, the Law Commissioner of the Civil and Criminal Court shall be authorised to order the compulsory winding-up of the company.

19.10 Prior to the execution of the order referred to above, the Law Commissioner shall require the company directors to submit the necessary documents or immediately call a special meeting to replace the Board of Directors or the Board of Auditors under the terms referred to in paragraph 2 within 60 days at the maximum.

19.11 Non compliance with the terms referred to above shall legitimate the immediate winding-up of the company.

19.12 The same procedure referred to in the preceding paragraphs shall be applied where the updating of the documents relative to the directors and auditors indicates: convictions for: voluntary offences against property, or offences of other nature sentenced to at least 2-year imprisonment; absence or loss of competence, or a judgement on bankruptcy; lastly, that one of the auditors is no longer a resident or has been stricken off or temporarily suspended from his professional order or association.

#### **Art. 20**

*(Special provisions concerning employment requirements imposed on Anonymous Companies with bearer shares)*

20.1 From the day of the entry into force of this law, in authorising the incorporation of Anonymous Companies with bearer shares under article 12.1 of Law no. 68 of June 13, 1990, the Congress of State shall require the employment of at least 5 people.

20.2 Anonymous Companies with bearer shares, already incorporated and recognised at the date of the entry into force of this law, shall equally comply with the employment requirements stated for new companies.

20.3 In compliance with the staff requirements stated in the authorisation to incorporate a company, existing Anonymous Companies shall adjust their staff number accordingly, by hiring new personnel within 18 months from the entry into force of this law.

20.4 The Labour Office - Supervision Section - shall verify compliance by Anonymous Companies with bearer shares with the requirements referred to above, and report its findings to the Ministry of Industry and the Ministry of Labour.

20.5 In the event of non compliance with the requirements referred to in paragraph 2, the Ministry of Industry and the Ministry of Labour shall inform accordingly the Law Commissioner of the Civil and Criminal Court of the Republic of San Marino.

20.6 Upon notification by the above-mentioned Ministries, the Law Commissioner shall formally order the legal representative of the non-compliant company to convert the Anonymous Company with bearer shares either into a Joint Stock Company with registered shares, or into a Limited Liability Company, or into a Partnership, within 60 days from the day of notification of the order.

20.7 Failing the conversion of the non-compliant company into one of the above-indicated types within the said deadline, the Law Commissioner shall immediately order the compulsory winding-up of the company.

20.8 The Labour Office - Supervision Section shall verify annually that Anonymous Companies with bearer shares comply with employment requirements.

#### **Art. 21**

*(Special provisions for the release of shares of Limited Liability or Joint Stock Companies)*

21.1 With the entry into force of this law, any release of shares of Limited Liability or Joint Stock Companies that has not been formalised with a notary's act or a private agreement certified by a Notary Public, shall be considered null and void.

21.2 The following certificates shall be annexed to the deed of release of shares, under pain of nullity:

- a police record of the transferee;
- a certificate stating that the transferee has never suffered bankruptcy.

21.3 Failing the certificates referred to above, the drafting Notary Public shall neither receive, nor draft deeds, nor probate private agreements of release or endorsement of shares.

21.4 Should the certificates referred to in paragraph 2 indicate that the transferee has been convicted for voluntary offences against property, or offences of other nature judged with a conviction to at least 2-year imprisonment, or the absence or loss of competence, or a judgement on bankruptcy, the release of shares shall be null and void.

21.5 The Notary Public found to have received deeds of release or endorsement of shares that were null and void under the preceding paragraph, shall be punished, irrespective of and in addition to the sanctions that may be separately imposed on him by his professional order, with a fine of ITL 3 million and a suspension ranging from a minimum of 15 days to a maximum of 2 months. The punishment shall be doubled in the event of recurrence.

21.6 In case of violation of this article, the Director of the Office of Industry shall apply the fine referred to above and notify the relevant professional order for the application of the suspension.

## **Art. 22**

*(Transitional provision)*

22.1 With the entry into force of this law, the Congress of State Commission for Handicraft referred to in Law no. 10 of January 25, 1990, shall maintain all its functions, except those pertaining to the granting of handicraft licences under this law.

22.2 Applications for handicraft licences, or requests to change them shall be examined by the bodies and under the terms referred to in this law.

22.3 Applications for handicraft licences, or requests to change them, to the benefit of natural persons not residing on the territory of the Republic, shall be examined under the terms of Law no. 18, of June 8, 1965.

22.4 Requests for the authorisation to incorporate a company, filed prior to the entry into force of this law, shall be examined under the terms of Law no. 68 of June 13, 1990, within 180 days from the date of the entry into force of this law.

22.5 Requests for the authorisation to incorporate a company, filed subsequent to the entry into force of this law, shall be examined under the terms of Law no. 68 of June 13, 1990, within 60 days from filing the request.

## **Art. 23**

*(Authorising handicraft and/or industrial proprietorships and companies to change the location of their main office)*

23.1 From the day of the entry into force of this law, and upon request to be filed together with the necessary documents to the Office of Industry and Handicraft, industrial and/or handicraft proprietorships, as well as manufacturing companies, shall be authorised to change the location of their main office by the Director of the Office of Industry and Handicraft.

23.2 The Director of the Office of Industry and Handicraft shall examine the request referred to above within 30 days from receiving it, and then notify the applicant with an explanatory order whether the request has been accepted or rejected.

23.3 The authorisation to change location shall be rejected only in case of defects of form of the request, missing documents and non compliance with change of location requirements.

**Art. 24**  
*(Sanctions)*

24.1 The Office of Industry and Handicraft shall be responsible for supervising the correct application of this and other laws concerning Industry and Handicraft.

24.2 To this end, the Office of Industry and Handicraft shall proceed on its own initiative, on request of or communication by any professional body, availing itself of the assistance of the Civil Police and the Gendarmerie.

24.3 The Office of Industry and Handicraft may promote investigations, carry out surveys, submit opinions, give instructions and execute orders. It may ask ordinary courts to adopt cautionary measures in order to interrupt or assure evidence of illegal circumstances or behaviours, including the seizure of goods and documents.

24.4 For the purposes indicated in the preceding paragraphs:

1. the police bodies shall report to the Office of Industry and Handicraft any facts constituting criminal or administrative offences in the sector of industry and handicraft, and transmit all related evidence accordingly; they shall also carry out the investigations and surveys requested by the Office of Industry and Handicraft and collaborate in those directly carried out by the Office;
2. the Office of Industry and Handicraft shall notify to the ordinary court any criminal offences as well as administrative offences related to criminal ones, considered as such by the laws on industry and handicraft;
3. the Office of Industry and Handicraft shall apply the fines and additional sanctions applicable to administrative offences in the sector of industry and handicraft;
4. the Office of Industry and Handicraft may issue orders to assure that industrial and handicraft activities are in compliance with domestic legislation, international agreements and treaties, and in full respect for the legitimate orders of the authorities: to this end, the Office shall issue orders and provisions that are immediately executable. Appeals against such orders and provisions may be filed to the Administrative Judge of Appeal within 20 days from the date of their communication and in accordance with the procedure set forth by article 34 of Law no. 68 of June 28, 1989. The appeal shall not suspend the execution of the order, unless the relevant Judge otherwise decides;
5. the Office of Industry and Handicraft shall inform the affected offices of the Public Administration, and supply evidence accordingly.

24.5 The Congress of State may suspend or revoke a handicraft and/or industrial licence if the proprietor performs his activity in such a manner that is detrimental to the prestige and interests of the Republic.

24.6 Anyone performing an industrial or handicraft activity without the relevant licence shall be punished with first-degree arrest, or a pecuniary fine, or a second to third-degree mulct in days. The same punishment shall be applicable to anyone not complying with the provisions established by the Office of Industry and Handicraft.

24.7 In all cases of abuse of industrial or handicraft activity, the Law Commissioner shall order the termination of the activity itself by adopting the relevant cautionary measures, including the seizure, also for evidence purposes, of goods and documents. The order shall be executed immediately in spite of charge.

24.8 Where the correct interpretation of the purpose of the activity may be of prejudice to the judgement of an offence, the provision shall be suspended until the definition of the interpretation procedure, the latter being respectively the responsibility of the Congress of State for industrial licences, and of the Congress of State Commission on Handicraft for handicraft licences.

24.9 Any other non compliance with this law and the other regulations concerning industry and handicraft shall be punished with an administrative fine ranging from ITL 500,000 to ITL 5 million.

24.10 Where the violation is found to be particularly severe as to the quality, quantity and value - in any case no less than ITL 5 million - of the goods or services being traded illegally, a threefold punishment shall be applied.

24.11 In the event of recurrent violation and in addition to the punishments and administrative sanctions envisaged in the preceding paragraphs, the enterprise activity shall be suspended, as an accessory sanction, for 3 to 90 days.

24.12 The violator shall be judged as a recidivist under this law if, during the 5 years prior to the last violation, he has committed the same offence or incurred in the same administrative violation, as defined by the laws on industry and handicraft, at least two times.

24.13 Where the industrial or handicraft activity is performed without the relevant licence, the judgement shall also entail the seizure of the goods owned by the violator.

24.14 If the goods are not the property of the violator, or the violation relates to services, or the industrial or handicraft activity relates to goods other than those contemplated by the licence, a special fine shall be applied instead of the seizure, for an amount equal to the current value of the goods or services illegally traded.

24.15 To assure the execution of seizure and pecuniary sanctions due to the infringement of this law, the Law Commissioner may order the confiscation of all movables present in the premises of the company or proprietorship.

24.16 The defendant or any interested party may offer to pay a bail to avoid confiscation.

24.17 A legal person owning a licence shall bear civil responsibility for the execution of pecuniary sanctions and the fulfilment of the obligations imposed on its legal representatives, directors or executives owing to non compliance with the laws on industry and handicraft. Responsibility shall be joint and without benefit of discussion.

24.18 The goods owned by the legal person shall be considered the property of the culprit when a legal action is initiated against its legal representatives, directors or executives for offences committed in the exercise of the enterprise.

24.19 In case of recurrence, any violation previously perpetrated in the exercise of the enterprise by those acting as legal representatives, directors or executives shall be equally taken into account.

24.20 The suspension of the enterprise activity as accessory punishment shall be directly imposed on the legal person.

## **Art. 25**

### *(Repealed provisions)*

25.1 All the rules that are in contrast with this law shall be repealed, namely:

- Law no. 61 of July 8, 1994 (*Provisions on the Supervision and Control of Companies*)
- articles 26, 32, and 36 of Law no. 18 of June 8, 1965;
- article 31 of Law no. 10 of January 25, 1990.

**Art. 26**  
*(Amended provisions)*

26.1 Article 21 of Law no. 10 of January 25, 1990, (*Law on Handicraft*) is amended as follows:

“Art 21  
(Granting of a Handicraft Licence)

The application for a handicraft licence shall be formally addressed to the Congress of State Commission for Handicraft. The application shall contain the applicant’s personal, civil and professional data as well as the structural, market and occupational features of the enterprise.

The granting of a handicraft licence shall be authorised by the Congress of State Commission for Handicraft composed of the Minister of Handicraft and two Ministers specifically designated by the Congress of State.

Prior to the granting of the licence, the Office responsible for Handicraft shall verify that the applicant does not perform any other activity or dependent work, does not own another licence and that the premises where the activity is to be performed are actually available and in compliance with the law requirements.”.

**Art. 27**  
*(Entry into force)*

27.1 This law shall enter into force on the fifteenth day following that of its legal publication.

*Done in San Marino on 29 April 1999/1698 since the Foundation of the Republic.*

THE CAPTAINS REGENT  
*Antonello Bacciocchi - Rosa Zafferani*

THE MINISTER OF THE INTERIOR  
*Antonio L. Volpinari*



# REPUBLIC OF SAN MARINO

**Errata corrigenda in article 19.3 of Law no. 53 of April 28, 1999, “Provisions on the exercise of individual proprietorships in the sector of industry or handicraft by natural persons residing on the territory, procedures for the incorporation and subsequent licensing of manufacturing companies formed by promoters being natural persons either citizens or residents of the Republic of San Marino”**

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

*Having regard to art 19, paragraphs 1, 2 and 3 of Law no. 53 of April 28, 1999;*

*Having regard to art. 46 of the Rules of Procedure of the Great and General Council;*

*In consideration of the request addressed by the Bureau of the Great and General Council on June 7, 1999;*

*Having seen Decision no. 20 of June 14, 1999, of the Congress of State;*

*Promulgate and make public:*

## Single Article

Owing to a clerical error occurred while drafting art. 19.3 of the bill “*Provisions on the exercise of individual proprietorships in the sector of industry or handicraft by natural persons residing on the territory, procedures for the incorporation and subsequent licensing of manufacturing companies formed by promoters being natural persons either citizens or residents of the Republic of San Marino*”, noted by the relevant Permanent Parliamentary Commission in the fulfilment of its functions, yet not amended by adjusting the contents of the additional paragraph approved by the same Commission (precisely a new paragraph to be inserted between the first and the second one, the latter thus becoming the third paragraph), the Great and General Council, during its sitting of April 28, 1999, approved, besides the above-mentioned bill (Law no. 53 of April 28, 1999), article 19, its third paragraph reading as follows:

*“From the date of the entry into force of this law, the function of sole administrator or director or auditor of a company of any type, incorporated even prior to the entry into force of this law, shall comply with the requirements **referred to in the preceding paragraph**, including the submission of a police record and a certificate demonstrating that the person in question has never suffered bankruptcy.”*

The reference “*to the preceding paragraph*” (contained in the bill during its first reading), following the approval of the additional amendment mentioned above, had to be replaced with a reference “*to the first paragraph*”.

The correct text of article 19.3 reads as follows:

*“From the date of the entry into force of this law, the function of sole administrator or director or auditor of a company of any type, incorporated even prior to the entry into force of this law, shall comply with the requirements **referred to in the first paragraph**, including the submission of a police record and a certificate demonstrating that the person in question has never suffered bankruptcy.”*



*Done in San Marino on 17 June 1999/1698 since the Foundation of the Republic.*

THE CAPTAINS REGENT  
*Antonello Bacciocchi - Rosa Zafferani*

THE MINISTER OF THE INTERIOR  
*Antonio L. Volpinari*