



REPUBLIC OF SAN MARINO

The Italian text shall be legally binding

DECREE – LAW no. 162 of 24 September 2010

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

Having regard to the conditions of need and urgency referred to in Article 2, paragraph 2, letter b) of Constitutional Law no. 183 of 15 December 2005 and in Article 12 of Qualified Law no. 184 of 12 December 2005, with particular reference to the need of harmonising, in a more articulated manner, the regulatory framework enabling to reliably identify the person undertaking an economic activity in San Marino and to verify the good repute thereof, as well as the urgency to achieve this harmonisation with a view to avoiding differences in treatment among persons operating in different economic sectors;

Having regard to Congress of State Decision no. 32 adopted in its sitting of 21 September 2010;

Having regard to Article 5, paragraph 2 of Constitutional Law no. 185/2005 and to Articles 9 and 10, paragraph 2 of Qualified Law 186/2005;

Promulgate and order the publication of the following Decree-Law:

HARMONISATION OF THE REGULATORY FRAMEWORK CONCERNING UNFIT PERSONS AND THE LICENSING REQUIREMENTS TO UNDERTAKE ECONOMIC ACTIVITIES. AMENDMENTS TO LAWS NO. 47 OF 23 FEBRUARY 2006, NO. 129 OF 23 JULY 2010 AND NO. 130 OF 26 JULY 2010.

Art. 1

(Modification of the definition of “Unfit Person”)

Article 1, paragraph 1, point 9) of Law no. 47 of 23 February 2006 and subsequent amendments shall be modified as follows:

the term “Unfit Person” means an individual who:

a) has been convicted by a criminal judgement having the force of res judicata and has been punished with more than 2 years imprisonment for felonies against property, public confidence, public economy or for trafficking in narcotic drugs, committed over the last 15 years; or has been

convicted by a criminal judgement having the force of *res judicata* for corruption, use of false invoices for inexistent operations, tax fraud, usury, fraudulent bankruptcy or money laundering committed over the last 15 years; or has suffered convictions, including non-final, or is subject to ongoing criminal proceedings, for criminal conspiracy or terrorist financing;

b) during the 12 months preceding the date of the instrument of incorporation of the company, of the share acquisition or of the appointment of directors, has been a shareholder or has had representative powers in conformity with Article 52 of Law no. 47 of 23 February 2006 in at least two San Marino companies, which have entered into *ex officio* or compulsory liquidation, or in a company, the license of which has been revoked by the Congress of State. The fact of being a shareholder or of having representative powers in conformity with Article 52 of Law no. 47 of 23 February 2006 shall be concurrent with the company's entering into liquidation or with the revocation of its license by the Congress of State. A shareholder who demonstrates that, by behaving diligently, he/she is not responsible for the decisions or activities of the company leading to its compulsory or *ex officio* liquidation or to the revocation of its license shall not be considered an "Unfit Person";

c) has undergone bankruptcy proceedings or equivalent proceedings under foreign legal systems, either ongoing or concluded less than five years ago;

or a legal person that:

i) is undergoing bankruptcy or compulsory liquidation proceedings for insolvency, or equivalent proceedings also under foreign legal systems;

ii) is undergoing voluntary liquidation proceedings in the presence of a cause for dissolution;

iii) during the 12 months preceding the date of the instrument of incorporation of the company or of the share acquisition, has been a shareholder of at least two San Marino companies, which have entered into *ex officio* or compulsory liquidation, or of a company, the license of which has been revoked by the Congress of State. The fact of being a shareholder shall be concurrent with the company's entering into liquidation or with the revocation of its license by the Congress of State. A shareholder, which demonstrates that, by behaving diligently, it is not responsible for the decisions or activities of the company leading to its compulsory or *ex officio* liquidation or to the revocation of its license shall not be considered an "Unfit Person."

Art. 2 (*Certificates*)

Article 1, paragraph 1, point 10) of Law no. 47 of 23 February 2006 and subsequent amendments shall be replaced by the following:

"the term "Certificates" means:

a) in case of a legal entity, its Certificate of Status (*certificato di vigenza*);

b) in case of an individual, the General Criminal Record, the Certificate of Pending Charges, the Certificate of compulsory or *ex officio* liquidation and the Certificate of revocation of the licence."

Art. 3 (*Certificate of compulsory or ex officio liquidation and Certificate of revocation of the license*)

The Commercial Registry of the Single Court shall issue the certificate indicating, with regard to the last 12 months preceding the application for said certificate, the number of companies entered into compulsory or *ex officio* liquidation, where:

- a) an individual is or has been a shareholder or has had the representative powers referred to in Article 52 of Law no. 47 of 23 February 2006 at the time when the company has entered into liquidation, or,
- b) a legal person has been a shareholder.

The Office of Industry, Handicraft and Trade shall issue the certificate indicating, with regard to the last 12 months preceding the application for said certificate, the number of companies the license of which has been revoked by the Congress of State, where:

- a) an individual is or has been a shareholder or has had the representative powers referred to in Article 52 of Law no. 47 of 23 February 2006 at the time when the license has been revoked;
- b) a legal person is or has been a shareholder at the time when the license has been revoked.

The certificates referred to in the preceding paragraphs may be replaced by corresponding statements made according to Art. 1 of Law no. 105 of 21 October 1988.

Art. 4

(Modification of Article 17 of Law no. 47 of 23 February 2006 and subsequent amendments)

Paragraph 2 of Article 17 of Law no. 47 of 23 February 2006 and subsequent amendments shall be replaced by the following:

“2. Fiduciary Companies shall not establish companies or acquire or possess their shareholdings on the basis of a fiduciary mandate if the Certificates show that the settlor or the beneficial owner is an Unfit Person.”.

Art. 5

(Modification of Article 31 of Law no. 47 of 23 February 2006 and subsequent amendments)

Paragraph 1 of Article 31 of Law no. 47 of 23 February 2006 and subsequent amendments shall be replaced by the following:

“1. The general meeting of joint-stock companies may decide to raise new capital by issuing registered bonds.”.

Art. 6

(Amendments to Article 7 of Law no. 129 of 23 July 2010)

Article 7, paragraph 1, letter c) of Law no. 129 of 23 July 2010 shall be replaced by the following:

“c) has not been convicted by a criminal judgement having the force of res judicata and has not been punished with more than 2 years imprisonment for felonies against property, public confidence, public economy or for trafficking in narcotic drugs, committed over the last 15 years; or has not been convicted by a criminal judgement having the force of res judicata for corruption, use of false invoices for inexistent operations, tax fraud, usury, fraudulent bankruptcy or money laundering committed over the last 15 years; or has not suffered convictions, including non-final, or is not subject to ongoing criminal proceedings, for criminal conspiracy or money laundering for the purposes of terrorist financing;”

Article 7, paragraph 1 of Law no. 129 of 23 July 2010 and subsequent amendments shall be integrated by the following:

“f) during the 12 months preceding the submission of the application for a license, has not been a shareholder or has had no representative powers in conformity with Article 52 of Law no. 47 of 23 February 2006 in at least two San Marino companies, which have entered into ex officio or compulsory liquidation, or in a company, the license of which has been revoked by the Congress of

State. The fact of being a shareholder or of having representative powers in conformity with Article 52 of Law no. 47 of 23 February 2006 shall be concurrent with the company's entering into liquidation or with the revocation of its license by the Congress of State. A shareholder who demonstrates that, by behaving diligently, he/she is not responsible for the decisions or activities of the company leading to its compulsory or ex officio liquidation or to the revocation of its license shall not be considered an "Unfit Person."

Art. 7

(Amendments to Article 26 of Law no. 129 of 23 July 2010)

Article 26, paragraph 1 of Law no. 129 of 23 July 2010 shall be integrated by the following:

"g) in case the license holder, following a judicial order, fulfils the conditions referred to in Article 7, paragraph 1, letter d) or has suffered any conviction, including non-final, or is subject to criminal proceedings for criminal conspiracy or terrorist financing. The license shall be revoked in case of a final judgement in all circumstances referred to in Article 7, paragraph 1, letter c)."

Art. 8

(Amendments to Article 24 of Law no. 130 of 26 July 2010)

Article 24, paragraph 2, letter b) of Law no. 130 of 26 July 2010 shall be replaced by the following:

"b) has not been convicted by a criminal judgement having the force of res judicata and has not been punished with more than 2 years imprisonment for felonies against property, public confidence, public economy or for trafficking in narcotic drugs, committed over the last 15 years; or has not been convicted by a criminal judgement having the force of res judicata for corruption, use of false invoices for inexistent operations, tax fraud, usury, fraudulent bankruptcy or money laundering committed over the last 15 years; or has not suffered convictions, including non-final, or is not subject to ongoing criminal proceedings, for criminal conspiracy or money laundering for the purposes of terrorist financing;"

Article 24, paragraph 2 of Law no. 130 of 26 July 2010 shall be integrated by the following:

"f) during the 12 months preceding the submission of the application for a license, has not been a shareholder or has had no representative powers in conformity with Article 52 of Law no. 47 of 23 February 2006 in at least two San Marino companies, which have entered into ex officio or compulsory liquidation, or in a company, the license of which has been revoked by the Congress of State. The fact of being a shareholder or of having representative powers in conformity with Article 52 of Law no. 47 of 23 February 2006 shall be concurrent with the company's entering into liquidation or with the revocation of its license by the Congress of State. A shareholder who demonstrates that, by behaving diligently, he/she is not responsible for the decisions or activities of the company leading to its compulsory or ex officio liquidation or to the revocation of its license shall not be considered an "Unfit Person."

Art. 9

(Amendments to Article 25 of Law no. 130 of 26 July 2010)

Article 52, paragraph 2, letter b) of Law no. 130 of 26 July 2010 shall be replaced by the following:

“b) has not been convicted by a criminal judgement having the force of res judicata and has not been punished with more than 2 years imprisonment for felonies against property, public confidence, public economy or for trafficking in narcotic drugs, committed over the last 15 years; or has not been convicted by a criminal judgement having the force of res judicata for corruption, use of false invoices for inexistent operations, tax fraud, usury, fraudulent bankruptcy or money laundering committed over the last 15 years; or has not suffered convictions, including non-final, or is not subject to ongoing criminal proceedings, for criminal conspiracy or money laundering for the purposes of terrorist financing;”.

Article 52, paragraph 2 of Law no. 130 of 26 July 2010 shall be integrated by the following:

“f) during the 12 months preceding the submission of the application for a license, has not been a shareholder or has had no representative powers in conformity with Article 52 of Law no. 47 of 23 February 2006 in at least two San Marino companies, which have entered into ex officio or compulsory liquidation, or in a company, the license of which has been revoked by the Congress of State. The fact of being a shareholder or of having representative powers in conformity with Article 52 of Law no. 47 of 23 February 2006 shall be concurrent with the company’s entering into liquidation or with the revocation of its license by the Congress of State. A shareholder who demonstrates that, by behaving diligently, he/she is not responsible for the decisions or activities of the company leading to its compulsory or ex officio liquidation or to the revocation of its license shall not be considered an “Unfit Person.”.

Art. 10

(Amendments to Article 76 of Law no. 130 of 26 July 2010)

Article 76 of Law no. 130 of 26 July 2010 shall be replaced by the following:

“1. Ex officio suspension of the license shall take place in the following cases:

- a) 90 days after the expiry of the term established for the payment of the annual license fee; in this case, the license shall be suspended until the sum due is paid. 180 days after the expiry of the term established for the regular payment of the license fee, the license shall be revoked;
- b) expiry or termination of the lease, property leasing or bailment agreement relative to the main place of business of the Economic Operator. The license shall be reactivated upon conclusion of a new agreement, which shall in any case take place within 12 months from the date of expiry or termination of the preceding agreement, on penalty of revocation of the license;
- c) unjustified closure of the registered office of the Economic Operator, excluding retailers, and/or of the premises where the economic activity is undertaken, for a period of more than 90 days;
- d) in case it is found that the place of business has been deprived of the instruments necessary to regularly undertake the economic activity;
- e) in case the Civil Police is not in a position to deliver the license, as provided for in Article 10, paragraph 5 of Law no. 129 of 23 July 2010, within 2 months from the date of its issue, on account of the Economic Operator’s unjustified absence;
- f) in the other cases provided for by this Law or by special laws;
- g) in case the license holder, following a judicial order, fulfils the conditions referred to in Article 24, paragraph 2, letter c) or has suffered any conviction, including non-final, or is subject to criminal proceedings for criminal conspiracy or terrorist financing. The license shall be revoked in case of a final judgement in all circumstances referred to in Article 24, paragraph 2, letter b).

2. If the license has been suspended, any communication shall be transmitted:

- a) in case of legal persons, for all purposes to the registered office of the company, unless otherwise indicated;

- b) in case of residents, to their home;
 - c) in case of non-residents, to the office of an Accountant, in possession either of a university degree or high school diploma, or of a Notary Public enrolled in the relevant Professional Register, which they shall formally choose as their address for serving;
 - d) failing that, *ad valvas*.
3. The Congress of State may suspend or revoke the license in case its holder undertakes the economic activity in such a way as to undermine the prestige and interests of the Republic.”.

Art. 11
(Final provisions)

1. If, on the date of entry into force of this Decree, the company has already been incorporated, shares have been acquired, directors have been appointed or the license has been issued, the term of 12 months referred to in Articles 1, 6, 8 and 9 above shall start to run from the date of entry into force of this Decree. Also for all new cases, the term of 12 months shall run from the date of entry into force of this Decree.
2. The procedure on the basis of which a shareholder may provide the demonstration referred to in Articles 1, 6, 8 and 9 above will be regulated by a delegated decree.
3. Decree-Law no. 150 of 2 September 2010 shall be repealed. Until the entry into force of this Decree, the rules existing before this Decree shall therefore continue to be in force. The acts done in conformity with Decree-Law no. 150 shall be valid.

Done at Our Residence, on 24 September 2010/1710 since the Foundation of the Republic

THE CAPTAINS REGENT
Marco Conti – Glauco Sansovini

THE SECRETARY OF STATE
FOR INTERNAL AFFAIRS
Valeria Ciavatta