

LAW no. 146 of 27 October 2004

REPUBLIC OF SAN MARINO

Establishment of the register for external auditors and auditing companies

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

Promulgate and send for publication the following Law approved by the Grand and General Council during the session of 27 October 2004.

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Title I

Auditors Register

Art. 1

(Concept)

1. An external auditor is the professional charged with verifying that business operating transactions are correctly posted on accounting books, that the fiscal year financial statements match such records and that the calculations made and the statements conform to the laws and standards governing them.

Art. 2

(General auditing principles)

1. The general standards which the external auditor must comply with are:

- independence;

- integrity;
- objectivity;
- expertise and diligence;
- confidentiality;
- professionalism;
- compliance with technical standards.

2. The Auditor is also obligated to comply with the code of practice.

Art. 3

(Register of External Auditors)

1. a register for the external auditors of the Republic of San Marino is hereby established at the office of the Secretary of State for Industry.
2. Registration with the Register grants the right to utilise the title of external auditor .

Art. 4

(Registration with the Register)

1. Registration with the Register is provided for by the office of the Secretary of State for Industry following application by the concerned subject, who shall attach to the application documents proving possession of the requirements specified by the following paragraph.
2. Except for the provisions of article 9, registration with the Register is subordinated to the possession of the following requirements:
 - a) registered residence within the territory of the Republic of San Marino;
 - b) enjoyment of all civil rights;
 - c) having the examination specified in article 6.
3. Every subject registered with the Register is obligated to pay an annual fee, calculated through a specific Regency decree, allocated to guarantee the financial needs relative to every pre-established activity in order to allow registration with the Register as well as its upkeep and supervision of the registered external auditors.

Art. 5

(Admission to examination for registration with the Register)

1. The office of the Secretary of State for Industry announces an annual examination for registration with the Register.
2. For admission to the examination it is necessary:
 - a) to have obtained in subjects of corporate or juridical economics, a first level three-year degree or a five-year degree or a university degree or a diploma from schools specialised in the subject issued upon completion of a study cycle of at least three years;
 - b) to have fulfilled a three years training with an auditing company or with a professional registered with the Register of External Auditors. The training must be based on auditing or financial statements.
3. In lieu of the three year-training, a two year period of practice during completion of the degree specialised studies, is valid.

Art. 6

(Examination for registration with the Register)

1. The examination provided by article 5 consists of a written and oral examination aimed at verifying the candidate theoretical knowledge and ability to apply this knowledge in practice, of the following subjects:
 - a) general and applied accounting and standards for annual financial statements;
 - b) analytical and management accounting;
 - c) methods of auditing and checking accounts and financial statements;
 - d) business law;
 - e) bankruptcy law;
 - f) tax law;
 - g) labour and social security law;
 - h) information and computer systems;
 - i) business administration, general and financial economics;
 - j) mathematics and statistics;
 - k) basic principles of corporate financial management.
2. For the subjects specified in letters e) to k), verification of the theoretical knowledge and abilities to apply it in practice is limited to the amount necessary for auditing accounts and financial statements.

3. For members registered with Associations and Boards recognised by the law, are excluded from the examination of verification of theoretical knowledge and capacities of applying them in practice, subjects and similar included in their articles of associations which have formed subject of exams during the two year course for obtainment of specialised degree..

4. Board of examiners is made up by five members respectively representing: one the Association of Certified Accountants and one from the Board of Bookkeepers to be chosen among those registered with the external auditors Register for at least five years; two appointed by the State Congress, of which at least one chosen among the members registered with the external auditors Register for at least five years; one as President of the Commission appointed by the Secretary of State for Industry..

Art. 7

(Registration of Companies with the Register)

1. For companies, registration with the Register of external auditors is provided for by the Secretary of State for Industry through applications filed by the companies to which documents must be attached proving possession of the requirements as defined in the following paragraph.

2. Notwithstanding the provisions of article 9, second paragraph, registration with the Register is subordinated to the following requirements:

a) legal and operating office in the Republic of San Marino;

b) company objective providing for the possibility of having their financial statements audited and certified;

c) in the case of an auditing body, legal representative or majority of directors registered with the Register of External Auditors;

3. Having also the right to be registered with the Register of Auditors for the sole purpose of certifying financial statements, companies which for at least five years have obtained public authorisation for auditing activities and certification by other States with which the reciprocal right of equal treatment is in effect..

Art. 8

(Obligation of notification)

1. Replacement of administrators and legal representatives is notified to the Secretary of State for Industry within the subsequent thirty days. In addition, any other modification which affects the requirements defined by article 7 shall be notified within the same term.

2. In the case of omissions or delays in notification, the Secretary of State for Industry, based on notification from the Office of Industry, shall apply the administrative sanction of six months of suspension and the legal representative shall pay a monetary sanction of Euro 2,000.00=. In the event of a legal appeal, Law no. 68 of 28 June 1989 shall be applicable .

Art. 9

(Reputation)

1. All those subjects shall be barred from being registered in the Register who:
 - a) have been struck off their relative professional Register, pursuant to the provisions of article 50 of Law no. 28 of 20 February 1991;
 - b) have been struck off their relative professional Register, pursuant to the provisions of article 51 of Law no. 28 of 20 February 1991;
 - c) have been finally sentenced to detention for crimes against Public Administration, against Public Trusts, Public Economy and Public Assets;
 - d) have been sentenced for actions specified by article 62 of Law no. 68 of 13 June 1990.
2. companies shall be barred from being registered in the Register whose administrators or legal representatives are involved in one of the situations indicated in the first paragraph of the present article.
3. the Commissioner Court and professional Registers shall notify the Secretary of State for Industry of the measures implemented against those registered subjects for non-fulfilment of the duties of auditing activities.

Art. 10

(Professional updating)

1. Professional updating is a prerequisite for the quality and prestige of the professional service as well as guaranty for the safeguard of public interest.
2. Subjects registered in the Auditors Register are obligated to maintain and continuously improve their professional competence in subjects pertaining to their professional activity, through attendance of refresher courses -see the provisions of article 16.

Art. 11

(Suspension from the Register)

1. In addition to instances provided by point 2 of article 8, the Secretary of State for Industry shall suspend registration from the Register for those subjects who:
 - a) are qualified as private or public employees or pensioners collecting pensions paid by an obligatory public welfare system;
 - b) are called to cover public offices which are incompatible with any other professional activity;
 - c) have been suspended from registering with a related Professional Register according to the provisions of article 49 of Law no. 28 of 20 February 1991;

- d) are temporarily barred or suspended from executive offices of corporations or companies;
- e) pursuant to the provisions of point 2 of article 10, have not attended activities of professional updating or training;
- f) have not paid the annual contribution set by the Secretariat of State for Industry. The suspensive measure is issued after three months from the due date set for the payment of the contribution. In case of persistent omission of payment of the obligatory contribution, after six months from the suspension, the Secretary of State for Industry after carrying out the procedure according to the subsequent article 12, shall decree removal from the Register of External Auditors;
- g) do not practise an independent profession according to the provisions of Law no. 28 of 20 February 1991.

2. The decisions by the Secretary of State for the Industry can be appealed against within the mandatory term of thirty days from receipt of the notification before the Administrative Court pursuant to the provisions of Law 68 of June 28 1989.

Art. 12

(Removal from the Register)

1. If failure to meet legal requirements has been ascertained, the Secretary of State for Industry shall notifies the subject in question and set a term of not more than six months within which to remedy the deficiencies. If within the assigned term an amnesty has not occurred, the Secretary of State for Industry shall decree the removal from the Register.
2. The subject concerned shall be notified of the reason for the removal.
3. Decisions by the Secretary of State for Industry can be appealed against by the subject in question within the mandatory term of thirty days from receipt of the notification, before the Administrative Court pursuant to the provisions of Law no. 68 of 28 June 1989.

Art. 13

(Guarantees)

1. External auditors and auditing companies shall provide an appropriate insurance policy to cover risks arising from auditing financial statements.

Art. 14

(Fees for External Auditors)

1. Standards for calculating the fees for External auditors refer to the tariffs set by a special Regency decree.

Part II

Transitional and Final Regulations

Art. 15

(Initial Establishment of the Register)

1. Within thirty days from the effective date of the present Law, the Secretary of State for Industry shall proceed in establishing the Register.
2. Based on the application submitted to the Secretariat of State for Industry within one hundred and eighty days from the effective date of the present Law, all those subjects are to be registered with the Register who are legally resident in the Republic of San Marino, not involved in cases provided by article 9 and that as of the date of enforcement of the present Law are registered with the Association of Certified Accountants and Statutory Accountants, pursuant to Decrees nos. 57 and 58 of 26 April 1995.
3. In addition, registration may be requested by all those subjects who by 31 December 2003 have held the position of auditor according to Section III of Law no. 68 of 13 June 1990, provided that they apply to the Secretariat of the State for Industry within one hundred and eighty days from the date of enforcement of the present Law, are actually legal residents of the Republic of San Marino, are not involved in cases provided by article 9 and that as of the date of enforcement of the present Law are registered with professional associations and are registered bookkeepers as specified by article 19 of Law no. 53 of 28 April 1999.
4. By way of exception to article 11, letter a) with reference solely to the holders of pensions paid by the compulsory public pension system, and g), may also request registration with the Register of Accountants without suspension, all those subjects who as of 31 December 2003 held the office of auditor according to Section III of Law no. 68 of 13 June 1990, for the sole purpose of maintaining such already assumed appointment, provided that they submit their application to the Secretariat of the State for Industry within one hundred and eighty days from the date of enforcement of the present Law, are actually legal residents of the Republic of San Marino, are not involved in cases provided by article 9, are registered with professional Associations and are registered bookkeepers as specified by article 19 of Law no. 53 of 28 April 1999 and have practised the profession for at least ten years.

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Art. 16

(Implementing Regulations)

1. Within ninety days from publication of the present Law, based on the proposal by the Secretariat of State for Industry, having consulted the Association of Certified Accountants and Board of Bookkeepers, the regulation governing the procedures for the fulfilments of apprenticeship, permanent professional training and code of practices shall be issued.
2. Within ninety days from publication of the present Law, based on proposal by the Secretariat of State for Industry, having consulted the Association of Certified Accountants and Board of

Bookkeepers, the regulations for exercising of supervisory power by the Secretariat of the State for Industry shall be issued

Art. 17

(Initial formation of the examining Commission)

1. For the first five years, the board of examiners is formed by five members respectively representing: one the Association of Certified Accountants and one from the Board of Bookkeepers to be chosen among those registered with the External Auditors Register for at least five years; two appointed by the State Congress, of which at least one shall be chosen from among the members registered with the External Auditors Register for at least five years; one as President of the Commission appointed by the Secretary of State for Industry.

Art. 18

(Auditing companies)

1. Auditing companies which do not have legal and operating head offices in the Republic of San Marino, already registered with the Special Register of Auditing companies established at the Secretariat of State for Industry according to the provisions of article 87 of Law no. 68 of 13 June 1990, if such companies, as of the effective date of the present Law have already formalised a mandate pertaining to certification of financial statements of resident organisations and/or companies, may, notwithstanding the provisions of art 84 of the same Law, certify financial statements for an additional three years beginning on January 1 2005.

Art. 19

(Fees for External Auditors. provisional arrangement)

Awaiting issue of appropriate Regency decree, for the standards of calculating fees for External Auditors, refer to the professional fees for Certified Accountant and Tax advisers and Accountants issued by Decree no. 65 of 20 May 1996 and Decree no. 64 of 20 May 1996.

Art. 20

(Enforcement)

1. The present Law shall be effective as of the fifth day following the date of legal publication.

Done at Our Residence on 4 November 2004/1704 since the Foundation of the Republic.

The Captains Regent

Giuseppe Arzilli – Roberto Raschi

The Secretary of State

for Internal Affairs

Loris Francini