



REPUBLIC OF SAN MARINO

DELEGATED DECREE no. 117 of 24 July 2014
(ratifying Delegated Decree no. 82 of 10 June 2014)

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

Having regard to Delegated Decree no. 82 of 10 June 2014 - "Harmonization and updating of Law no. 47 of 23 February 2006 and subsequent amendments in relation to the new provisions on the exercise of economic activities" - promulgated:

Having regard to Article 40, paragraph 8 of Law no. 40 of 31 March 2014;

Having regard to Congress of State Decision no. 3, adopted during its sitting of 27 May 2014;

Having regard to the amendments to the above-mentioned Decree, which were introduced at the time of its ratification by the Great and General Council in its sitting of 16 July 2014;

Having regard to Decision no. 20 of 16 July 2014 of the Great and General Council,

Having regard to Article 5, paragraph 3 of Constitutional Law no. 185/2005 and to Articles 8 and 10, paragraph 2 of Qualified Law no. 186/2005;

Hereby promulgate and order the publication of the final text of Delegated Decree no. 82 of 10 June 2014,

as amended following the amendments approved by the Great and General Council when ratifying it:

HARMONIZATION AND UPDATING OF LAW NO. 47 OF 23 FEBRUARY 2006 AND SUBSEQUENT AMENDMENTS IN RELATION TO THE NEW PROVISIONS ON THE EXERCISE OF ECONOMIC ACTIVITIES

Art. 1

(Amendment of the definition of "Unfit Person")

1. Point 9 of paragraph 1 of Article 1 of Law no. 47 of 23 February 2006 and subsequent amendments shall be replaced by the following:

“the term “Unfit Person” shall mean an individual who:

- a) has been convicted in the Republic of San Marino or abroad 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 24 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 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 and subsequent amendments shall be concurrent with the actions leading to the adoption of the decision on licence revocation. This provision shall not apply when, in the administrative appeal against the refusal of registration as a shareholder or director in the Register of Companies following a revocation measure, the shareholder or director demonstrates that he has behaved diligently and that he is not responsible for the decisions or activities of the company leading to the revocation of the licence;
- c) during the 24 months preceding the date of the instrument of incorporation of the company, of the share acquisition or of the appointment of directors, has been the holder of a license revoked by the Congress of State;
- d) is undergoing, also as sole director, at the same time as the instrument of incorporation of the company, of the share acquisition or of the appointment of directors, any bankruptcy proceedings or equivalent proceedings in foreign jurisdictions;
- e) is subject to any forced collection procedure applied by the Tax Collection Department of the Central Bank of the Republic of San Marino, under Title II of Law no. 70 of 25 May 2004, aimed at recovering claims held by the Public Administration or the entities of the overall Public Sector, which are not subject to legal disputes or agreements on payment by instalments to settle the outstanding debts;
- f) is resident in any "countries under monitoring" as identified by the Financial Intelligence Agency,

or a legal person that:

- i) is undergoing bankruptcy or compulsory liquidation proceedings for insolvency, or equivalent proceedings also in foreign jurisdictions;
- ii) is undergoing voluntary liquidation proceedings upon the occurrence of a cause for dissolution;
- iii) during the 24 months preceding the date of the instrument of incorporation of the company or of the share acquisition has been the shareholder 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 actions leading to the adoption of the decision on licence revocation. This provision shall not apply when, in the administrative appeal against the refusal of registration as a shareholder in the Register of Companies following a revocation measure, the shareholder demonstrates that it has behaved diligently and that it is not responsible for the decisions or activities of the company leading to the revocation of the licence;
- iv) is subject to any forced collection procedure applied by the Tax Collection Department of the Central Bank of the Republic of San Marino, under Title II of Law no. 70 of 25 May 2004 aimed at recovering claims held by the Public Administration or the entities of the overall Public Sector, which are not subject to legal disputes or agreements on payment by instalments to settle the outstanding debts.”.

Art. 2
(Certificates)

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

“the term “Certificates” shall mean:

- a) in case of a legal person, the Certificate of Status and the Certificate of Licence Revocation;
- b) in case of an individual, the General Criminal Record and the Certificate of Licence Revocation.”.

(Art. 3 – Deleted)

Art. 4
(Integration of Article 16 of Law no. 47 of 23 February 2006 and subsequent amendments)

1. Article 16 of Law no. 47 of 23 February 2006 and subsequent amendments shall be integrated with the following paragraph:

“7 bis. Those who have been granted the authorisation by the Congress of State to exercise the reserved activities referred to in paragraph 6, shall, under penalty of revocation of said authorisation, obtain the relevant license within 12 months following registration in the Register of Companies, unless otherwise indicated in the decision to grant the authorisation.”.

Art. 5
(Amendment of Article 17 of Law no. 47 of 23 February 2006 and subsequent amendments)

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

“1. Upon acceptance of the fiduciary mandate, Fiduciary Companies that, on the basis of the fiduciary agreement, set up companies, acquire or hold their shares, shall preliminarily obtain the certificates relative to settlors and declare, at the same time as the instrument of incorporation or of the share acquisition respectively, that they act in a fiduciary capacity, by mentioning the details of the authorisation to exercise the reserved activity.

2. Fiduciary companies shall not set up companies, acquire or hold their shares on the basis of a fiduciary mandate if the certificates show that the settlor or the beneficial owner is an Unfit Person.

3. Since this is an activity reserved to financial companies, it shall remain in any case subject to regulatory and supervisory powers of the Central Bank of the Republic of San Marino.

4. In the cases referred to in the first paragraph, the existence of the sole shareholder and the relevant provisions under Article 12 shall be understood as referring to the settlor and not to the fiduciary company.

5. In the cases referred to in the first paragraph, Unfitness, Certificates and the relevant provisions envisaged by this Law shall be understood as referring to the settlor and the beneficial owner thereof and not to the fiduciary company.

6. The Commercial Registry of the Court shall inform the Register of Fiduciary Investments of the Central Bank of the Republic of San Marino of the changes in company shareholdings held through a fiduciary mandate.”.

Art. 6

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

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

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

Art. 7

(Integration of Article 48 of Law no. 47 of 23 February 2006 and subsequent amendments)

1. Article 48 of Law no. 47 of 23 February 2006 and subsequent amendments shall be integrated with the following paragraphs:

“2 *bis*. Anyone becoming an unfit person shall notify his new status within 5 working days of receipt of the notification of the act establishing the status as unfit person: to the shareholders and the Board of Directors of the company in which he holds the office of director, as well as to the Commercial Registry.

2 *ter*. The notification referred to in the preceding paragraph may also be made by other persons who have become aware of the director’s new status as unfit person.

2 *quater*. Within 30 days after receipt of the notification referred to in paragraph 4, the shareholders shall replace the director who has become an unfit person.

2 *quinquies*. If the shareholders fail to comply with the provisions of the preceding paragraph, the Law Commissioner shall convene the shareholders meeting for the appointment of a new director. If the shareholders meeting fails to adopt a decision, the Law Commissioner shall appoint a Judicial Administrator after removing the director who has become an unfit person. The Judicial Administrator shall carry out the activities provided for in paragraphs 4 and 5 of Article 66.

Art. 8

(Amendment of paragraph 5 of Article 72 of Law no. 47 of 23 February 2006 and subsequent amendments)

1. Paragraph 5 of Article 72 of Law no. 47 of 23 February 2006 and subsequent amendments shall be replaced as follows:

“5. The registers indicated in the previous paragraph shall be kept in the registered office of the company for its entire duration, in compliance with Section LXXI of Book II of the Statutes. However, it shall be possible to deposit such registers, as well as the registers and documents referred to in preceding paragraphs 1 and 2, with the office of a lawyer and notary or an accountant (holding a university degree or a high school diploma) enrolled in the relevant professional register. The person with whom the registers are deposited shall in any case be required to show them to judicial, administrative and control bodies upon their simple request. Failure to produce the registers shall result in the application of the sanction referred to in paragraph 7. The company shall file with the Commercial Registry of the Court a statement designating the professional, with whom the registers referred to in preceding paragraphs 1 and 2 are deposited.”.

Art. 9

(Integration of Article 106 of Law no. 47 of 23 February 2006 and subsequent amendments)

1. Article 106 of Law no. 47 of 23 February 2006 and subsequent amendments shall be integrated with the following paragraph:

“2 *bis*. If within two years from the date of entry in the Register of Companies the company has not obtained the license, it shall start voluntary liquidation procedures. If the company fails to comply with the above requirement within the established time-limits, the Law Commissioner shall order the company to adopt a decision within 30 days on voluntary liquidation, failing which it shall be placed in ex-officio liquidation.”.

Art. 10

(Amendment of Article 111 of Law no. 47 of 23 February 2006 and subsequent amendments)

1. Article 111 of Law no. 47 of 23 February 2006 and subsequent amendments shall be replaced as follows:

“Art. 111 (Procedure)

1. Within six months of their appointment, liquidators shall submit a report and a plan defining all debts based on the order of priority established by existing laws.
2. Liquidation and bankruptcy procedures shall be declared closed by decree of the Law Commissioner, without further formalities, when no assets or assets less than € 1,000.00 result from the report drawn up by the liquidator or by the bankruptcy attorney.
3. Liquidators shall submit an annual report outlining the most relevant facts of the procedure. However, the period between the registration of the decision adopted by the shareholders meeting on liquidation, or of the decree of the Law Commissioner ordering it, and the drawing up of the statement of final account shall constitute a single tax period. Therefore, liquidators shall submit the tax return relating to this period in accordance with the tax legislation in force.
4. Upon completion of the liquidation of assets, liquidators shall submit the final report with the plan of distribution of any remaining assets to shareholders. The final report shall be filed with the Registry, where it remains available to interested parties for thirty days. Such filing shall be notified by posting it publicly and in the Government Building.
5. If objections to the distribution plan are filed by bringing an action against the liquidator within thirty days of the expiry of the time-limit referred to in paragraph 4, the Law Commissioner shall issue a relevant judgement in summary proceedings. Objections shall be gathered and decided through consolidated proceedings, in which all shareholders and the creditors concerned may take part. The judgement shall also apply to absent persons.
6. If no objections are submitted or if objections are rejected, the plan shall be approved by decree of the Law Commissioner, which makes the plan immediately enforceable.
7. The liquidators shall convene the shareholders meeting to approve the statement of final account drawn up on the basis of the plan enforced. After approval, they pay creditors and distribute the remaining assets to the shareholders.

8. After completion of all formalities, the liquidators shall request that the company be removed from the Register. Through such removal the company shall be closed.

9. Notwithstanding the closure of the company, after its removal from the Register the company's unpaid creditors may enforce their claims against the shareholders, up to the amounts collected based on the statement of final account, and against the liquidators, if non-payment was caused by them.”.

Done at Our Residence, on 24 July 2014/1713 since the Foundation of the Republic

THE CAPTAINS REGENT
Valeria Ciavatta – Luca Beccari

THE MINISTER OF
INTERNAL AFFAIRS
Gian Carlo Venturini