



REPUBLIC OF SAN MARINO

REGULATION no. 14 of 24 August 2016

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

*Having regard to Article 41, paragraph 1, letter f) of Law no. 101 of 1 July 2015;
Having regard to Congress of State decision no. 14 adopted during its sitting of 10 August 2016;
Having regard to Article 5, paragraph 5 of Constitutional Law no. 185/2005 and to Article 13 of
Qualified Law no. 186/2005;
Promulgate and order the publication of the following Regulation:*

REGULATION IMPLEMENTING ARTICLE 41, PARAGRAPH 1, LETTER F) OF LAW NO 101 OF 1 JULY 2015 “LAW ON FOUNDATIONS”

CHAPTER I GENERAL PROVISIONS

Art. 1

(Sources of law)

1. This Regulation shall be adopted in accordance with Article 41, paragraph 1, letter f) of Law no. 101 of 1 July 2015.

Art. 2

(Definitions)

1. For the purposes of this Regulation:
 - a) “Law on Foundations” shall mean Law no. 101 of 1 July 2015 governing foundations that have acquired legal personality and are established in the territory of the Republic of San Marino;
 - b) “financial companies” shall mean San Marino or foreign entities that carry out, in the form of enterprises, activities included in the list of Annex 1 to the LISF (Law on Companies and Banking, Financial and Insurance Services), or activities comparable to them, and are subject to supervision;
 - c) “LISF” shall mean Law no. 165 of 17 November 2005 and subsequent amendments and integrations;
 - d) “controlling interest” shall have the meaning assigned to it in Article 2 of the LISF;
 - e) “Founder” shall mean one or more natural or legal persons.

CHAPTER II
RULES ON THE AUTHORISATION PROCEDURE FOR THE ACQUISITION OF
SHAREHOLDINGS IN COMPANIES

Art. 3

(Obligations and prohibitions)

1. Without prejudice to the provisions of the following paragraphs of this Article, foundations may hold shares in San Marino or foreign companies with share capital, other than financial companies, subject to obtaining the authorisation of the Control Committee established pursuant to Article 42 of the Law on Foundations. A specific application, motivated in accordance with Article 4 below, shall be submitted to the Control Committee to demonstrate the connection and consistency of the shareholding with the purpose pursued by the foundation and under the conditions set out in this Regulation. The above provision shall also apply if the foundation intends to indirectly acquire controlling interests in companies through other companies in which the foundation holds controlling interests.
2. Foundations that carry out socially oriented non-profit activities (ONLUS) pursuant to Article 5 of the Law on Foundations shall be prohibited from holding shares in companies when such holding involves coordination and management functions or represents a controlling interest in the participated company or determines the exercise of a dominant influence on the operational choices of the bodies of the participated company.
3. Foundations shall also be prohibited from holding shares in companies whose controlling interests can be traced back to blood relatives or relatives by affinity in direct line, of any degree, and in collateral line up to the third degree according to the civil calculation, or to the spouse or cohabiting partner of the founder.
4. In any case, the possibility provided for in paragraph 1 of this Article shall be envisaged by the articles of association of the foundation.

Art. 4

(Authorisation procedure)

1. Any foundation that intends to acquire the shareholding referred to in Article 3, paragraph 1 above shall submit an application, signed by the President of the Board of Directors and authenticated by a San Marino notary public, to the Control Committee, accompanied by appropriate documents to demonstrate:
 - a) the reasons for the application, indicating that the application is closely related to the pursuit of the institutional purposes referred to in the memorandum of association and in the articles of association;
 - b) the commitment undertaken by the foundation to keep and maintain at its registered office all documents relating to the acquisition of the shareholding;
 - c) the foundation's obligation to make all documents concerning the shareholding available to the Control Committee for the checks and verifications falling within its competence;
 - d) the obligation to include in the mandatory accounting records and in the financial statement the shareholding acquired.
2. In addition, the following documents and information shall be attached to the application:
 - a) the balance sheets of the last three financial years of the company and, in the cases referred to in the second sentence of Article 3, paragraph 1, of one or more companies in which the company intends to acquire controlling interests, the area of activity of such companies and whether or not it is relevant to the purposes indicated in the articles of association of the foundation;
 - b) the gearing ratios of the company and its shareholders with the applicant foundation and their evolution in the previous three years;
 - c) the sources of financing that are intended to be activated for the implementation of the purchase operation;

- d) the extract certified by a notary public of the shareholders' register, the memorandum and articles of association of the company and, in the cases referred to in the second sentence of Article 3, paragraph 1, of one or more companies in which the company intends to acquire controlling interests.
3. The Control Committee shall examine the application referred to in paragraph 1 and within thirty days from the filing of such application, with a reasoned decree, may grant or reject the requested authorisation.
4. If the documentation attached to the application is incomplete, the Control Committee may request that it be supplemented, interrupting the period referred to in the previous paragraph, under penalty of rejection of the application.
5. The rejection of the authorisation shall make it impossible for the foundation to acquire the shareholding. In this case, the Control Committee shall be required to report to the Judicial Authority any facts and circumstances that could constitute a crime, by providing any information and documents useful for investigations.
6. In case of rejection of the authorisation, if the Control Committee finds anomalies or suspects the violation of the rules contained in Law no. 92 of 17 June 2008 and subsequent amendments, it shall provide all documents and information to the Financial Intelligence Agency and apply, if the foundation has violated the provisions of this Article, the sanction provided for in Article 68, paragraph 5 of the Law on Foundations.
7. An appeal may be lodged against the decisions of the Control Committee according to the procedures and terms provided for in Law no. 68/1989 and subsequent amendments.

Art. 5

(Nullity)

1. Without prejudice to the application of the administrative pecuniary sanctions referred to in Article 68, paragraph 5 of the Law on Foundations, the acts of participation in companies committed by the foundation in violation of Article 3 shall be null and void.

Art. 6

(Transitional and final provisions)

1. Foundations with legal personality existing at the date of entry into force of the Law on Foundations shall be required to comply with the provisions of this Regulation within one hundred and twenty days from the date of its entry into force.
2. This Regulation shall be reviewed in order to verify its results and implementation problems one year after its entry into force and may be amended in order to ensure the appropriateness of the intervention.

Done at Our Residence, on 24 August 2016/1715 since the Foundation of the Republic

THE CAPTAINS REGENT

Gian Nicola Berti - Massimo Andrea Ugolini

MINISTER OF INTERNAL
AFFAIRS

Gian Carlo Venturini