



REPUBLIC OF SAN MARINO

The Italian text shall be legally binding

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

Having regard to Article 4 of Constitutional Law no. 185/2005 and to Article 6 of Qualified Law no. 186/2005;

Promulgate and make public the following Qualified Law approved by the Great and General Council in its sitting of 15 September 2011 with 47 votes in favour and 3 votes against:

QUALIFIED LAW NO. 2 OF 16 SEPTEMBER 2011

NEW PROVISIONS ON THE JUDICIAL SYSTEM

Art. 1

Article 1 of Qualified Law no. 145 of 30 October 2003 shall be modified as follows:

“Art. 1

(Organisation of the Single Court)

The Single Court is internally subdivided according to the civil, criminal, administrative, juvenile and family matters, to which the single Law Commissioners are assigned by the Head Magistrate.

All magistrates have complete jurisdiction and can therefore be freely replaced in the performance of their functions and duties.

The Judges of Appeal may mutually replace each other in case of impossibility or incompatibility of one of them.

Replacements shall be established according to predetermined criteria, established by the Judicial Council, fully respecting the principle of pre-establishment of the Judge.

The work shall be distributed among the *Procuratori del Fisco* (prosecuting magistrates) on an equal footing and on the basis of predetermined and shared criteria, taking inspiration from the principles of equity and in a way as to guarantee in the most effective way that judgements are pronounced within a reasonable time; in case of disagreement, such principles shall be established by the Judicial Council in ordinary session.”.

Art. 2

Article 2 of Qualified Law no. 145 of 30 October 2003 shall be modified as follows:

“Art. 2

(Appointment and incompatibility of magistrates)

Once the procedure referred to in Article 3, last paragraph has been followed, Magistrates shall be appointed after having passed a public competition or having been assigned to higher jurisdictional functions.

The Highest Judges of Appeal, the Judges of Extraordinary Remedies and the Judges for Civil Liability Actions of Magistrates shall be appointed by the Judicial Council.

Magistrates shall show specific professionalism, objectivity and impartiality. In fulfilling their duties, they shall always have sound knowledge of legal matters, show great composure and have a blameless civil and moral behaviour.

The Office of Magistrate shall be incompatible with positions in and membership of political movements or parties or trade unions, as well as with candidature for national and local elections, conduction of commercial or industrial activities and the position of director and auditor within companies. The office of Law Commissioner, *Procuratore del Fisco* and Clerk shall also be incompatible with the practice of an independent profession, positions held in other offices and public or private employment both in San Marino and abroad, with the exception of the position as university professor, as far as compatible.

The office of Judge of Appeal or superior judge shall be incompatible with the practice of the profession in the territory of San Marino.

Magistrates' spouses, cohabiting partners and relatives up to the third degree of consanguinity and affinity shall be prohibited to carry out legal representation and defence before the Single Court.

The legal status of Magistrates shall be regulated by ordinary law.

The remuneration of Magistrates shall be fixed by ordinary law.

In accordance with Article 4, paragraph 2, of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order, all San Marino citizens shall have access to the Judiciary.

Magistrates shall assume their office by taking an oath before Their Excellencies the Captains Regent.”.

Art. 3

Article 3 of Qualified Law no. 145 of 30 October 2003 shall be modified as follows:

“Art. 3

(Recruitment of magistrates)

The Highest Judges of Appeal and the Judges of Extraordinary Remedies, two for each Office, and the six Judges for Civil Liability Actions of Magistrates, one effective member and one substitute for each instance, shall be appointed by the Judicial Council by two thirds majority.

The Judges of Appeal shall be appointed following a specific competition on the basis of qualifications before a Selection Board composed of three members, one of whom acting as president, chosen by the Judicial Council from among legal experts of repute, including outside the San Marino Judiciary, or from among the Judges of Appeal or superior judges. Anyone enrolled in the Registers of Lawyers and Notaries and of Accountants (in possession either of a university degree or high school diploma) of the Republic, as well as spouses, cohabiting partners and

relatives up to the third degree of consanguinity and affinity of anyone enrolled in such registers, shall not be members of the Selection Board.

The Law Commissioners, the *Procuratore del Fisco* and the Clerks shall be appointed following a competition on the basis of tests, including a written and an oral test, before a Selection Board composed of three members chosen by the Judicial Council from among legal experts of repute, including outside the San Marino Judiciary, or from among the Judges of Appeal or superior judges, one of whom acting as president. Anyone enrolled in the Registers of Lawyers and Notaries and of Accountants (in possession either of a university degree or high school diploma) of the Republic, as well as spouses, cohabiting partners and relatives up to the third degree of consanguinity and affinity of anyone enrolled in such registers, shall not be members of the Selection Board.

The ranked lists resulting from the competitions, with indication of the winners, shall be transmitted to the Great and General Council, which shall take note thereof.

The selection of candidates and the procedures relative to the tests, in so far as they are compatible with this Law, shall be regulated by Qualified Law no. 1 of 4 May 2009.

The starting of procedures to appoint Magistrates shall be requested to the Great and General Council with a reasoned report drawn up by the Head Magistrate with the consent of the Judicial Council. After having taken note of the request, the Great and General Council shall decide by absolute majority.

New Magistrates shall preferably be recruited through internal career progression. The judges on duty on a permanent basis who are appointed to perform higher functions shall not be required to serve a probationary period.”.

Art. 4

Article 4 of Qualified Law no. 145 of 30 October 2003 shall be modified as follows:

“Art. 4 *(Term of office of magistrates)*

The Highest Judges of Appeal, the Judges of Extraordinary Remedies and the Judges for Civil Liability Actions of Magistrates shall be appointed for a 5-year term and their mandate may be renewed.

Following their appointment, the Judges of Appeal, the Law Commissioners and the Clerks shall be required to serve a probationary period of three years. The Judicial Council shall assess the activity carried out on the basis of a detailed report drawn up by the Head Magistrate and shall decide whether to confirm the office, on a permanent basis, or to terminate it and shall inform the Great and General Council thereof for the relevant acknowledgement.

The Magistrates confirmed on a permanent basis shall remain in office until the age of 68. The Judicial Council may extend this term by two years upon request of the interested party if required by the service, as demonstrated by a detailed report of the Head Magistrate. The Magistrates shall cease to hold office due to resignation, removal, disqualification or following employment in the public administration.

The Magistrate’s resignation, which shall be submitted in writing to the Captains Regent, shall constitute a unilateral and formal act and shall have immediate effect.

In their capacity as Presidents of the Judicial Council, the Captains Regent shall inform the Great and General Council of a Magistrate’s resignation, removal or disqualification for the relevant acknowledgement.

Law Commissioners who have performed jurisdictional functions for at least ten years may ask the Great and General Council, for serious personal and family reasons, to be employed in the public administration. Having heard the opinion of the Judicial Council and of the Congress of

State, the Great and General Council shall adopt a decision within three months following the submission of the request.”.

Art. 5

Article 5 of Qualified Law no. 145 of 30 October 2003 shall be modified as follows:

“Art. 5

(Requirements for the appointment of magistrates)

The two Highest Judges of Appeal and the two Judges of Extraordinary Remedies shall be chosen from among legal experts of repute who meet the minimum requirements applying to the magistrates of appeal, so that one is competent in civil matters and the other in criminal matters.

The Judges for the Civil Liability of Magistrates shall be chosen from among legal experts of repute who meet the minimum requirements applying to the magistrates of appeal.

The public competition for Criminal, Civil and Administrative Judges of Appeal may be attended by magistrates having at least the qualification of magistrate of appeal or of tenured professors of law, aged no less than 45.

Also the Law Commissioners having served for at least 10 years may be appointed as Judges of Appeal. The professional skills and competence acquired shall be assessed by the Judicial Council in plenary session, to which the Head Magistrate shall submit a relevant report.

The public competition for Law Commissioners may be attended by magistrates, or tenured professors of law, or professors of law who, subsequent to a public competition, are employed in a university, or attorneys with at least 6-year practice of law.

Clerks having served for at least 4 years may be appointed as Law Commissioners. The professional skills and competence acquired shall be assessed by the Judicial Council in plenary session, to which the Head Magistrate shall submit a relevant report.

The public competition for *Procuratore del Fisco* may be attended by attorneys aged no less than 30 and by tenured professors of law, or professors of law who subsequent to a public competition are employed in a university.

Clerks having served for at least 2 years may be appointed as *Procuratore del Fisco*. The professional skills and competence acquired shall be assessed by the Judicial Council in plenary session, to which the Head Magistrate shall submit a relevant report.

The public competition for Clerks may be attended by anyone aged less than 36 having a university degree in law and having passed an examination of professional qualification to practice as attorney or notary.”.

Art. 6

Article 6 of Qualified Law no. 145 of 30 October 2003 shall be modified as follows:

“Art. 6

(Head Magistrate of the Single Court)

The Head Magistrate of the Single Court shall be appointed for a 5-year term by the Judicial Council in plenary session from among the Law Commissioners having served for at least 5 years and the Judges of Appeal, whose office has been confirmed, or from among the Highest Judges of Appeal.

If, in exceptional circumstances, the administration of Justice urgently needs special and specific professionals and experts, the Judicial Council may appoint as Head Magistrate a person, outside the San Marino Judiciary, of the highest repute and possessing outstanding competence in

the management of judicial structures and bodies, for periods of time to be defined by the Judicial Council itself, including for less than five years.

In this case, the Head Magistrate shall perform exclusively the tasks pertaining to the organisation of the Single Court and to judicial work distribution provided for by the law and all conditions, powers, prerogatives, guarantees and incompatibilities established by the law for the Republic's Magistrates shall apply to him/her. Remuneration shall be fixed on the basis of that envisaged for the Law Commissioner, except for special allowances.

The Head Magistrate shall be responsible for the organisation and judicial work distribution according to predetermined criteria, as well as for the supervision, without prejudice to the decision-making autonomy of judges, coordination and management of judicial offices, except for merely administrative functions.

The Head Magistrate shall entrust the work to the Law Commissioners and to the Clerks, taking into account the professional skills and competence they have acquired and their qualifications.

Moreover, the Head Magistrate shall establish the criteria for work distribution among the Judges of Appeal, in agreement with them. In case such agreement cannot be reached, work distribution shall be established by the Judicial Council in ordinary session.

The Head Magistrate shall periodically report to the Judicial Council on the correct performance of the tasks entrusted to the Magistrates, both in qualitative and quantitative terms, and he/she shall propose the adoption of any measures.

Law Commissioners, Conciliating Judges and Clerks shall be required to precisely and promptly fulfil the duties pertaining to their office and to comply with the directions given by the Head Magistrate. Without prejudice to the incompatibilities provided for by the law, any other position may be held only if the needs of the office are met and upon authorisation by the Judicial Council in ordinary session. Any non-compliance, or the loss of the requirements and professionalism referred to in Article 2, paragraph 3 above, shall be reported to the Judicial Council in plenary session for the relevant assessment and the adoption of any measures, which will be regulated by means of a specific ordinary law.

The Head Magistrate shall be required to annually submit to the Great and General Council, through the Secretary of State for Justice, the report on the state of justice, including the comments on the judicial work carried out by the magistrates of all instances.”.

Art. 7

Article 7 of Qualified Law no. 145 of 30 October 2003 shall be modified as follows:

“Art. 7
(*Judicial Council*)

The Judicial Council shall have functions pertaining to the representation and guarantee of the judicial system.

The Judicial Council shall meet in ordinary session and in plenary session.

The Judicial Council in ordinary session shall be composed of the Law Commissioners, the Judges of Appeal and the Highest Judges of Appeal. It shall be presided over by the Captains Regent, or by proxy, by the Head Magistrate. The Secretary of State for Justice shall attend the sessions without voting right.

The Judicial Council in ordinary session shall approve the criteria for the assignment of tasks under Article 1, paragraphs 3 and 4, and Article 11, paragraph 6; it may start the review action according to the procedures established by the constitutional law; it may submit requests and provide opinions concerning the organisation of judicial offices; it shall consider matters of a general nature related to the administration of justice, and in this regard it shall have the power to submit requests and provide opinions; it shall decide on any other issue concerning the organisation

of the judicial work which is submitted to it by the Head Magistrate or by the Secretary of State for Justice.

The Judicial Council in plenary session shall be composed of the members of the Parliamentary Commission for Justice, the Secretary of State for Justice, the Highest Judges of Appeal, three Judges of Appeal, five Law Commissioners and the Head Magistrate. The Law Commissioners and the three Judges of Appeal shall be chosen from among those confirmed on a permanent basis with the highest level of seniority in that position; in case of equal level of seniority, the oldest in terms of age shall prevail. In any case, the number of Magistrates shall always be equal to that of the other members; if, due to requirements, their number is lower, the Council shall be supplemented with Magistrates of the same instance as the position where the lack has occurred, or, if the number continues to be lower, with Law Commissioners, including temporarily, chosen from among those with the highest level of seniority in that position, or, in case of equal level of seniority, from among the oldest in terms of age.

The Judicial Council in plenary session shall be presided over by the Captains Regent, or, in case they are absent, by the President of the Parliamentary Commission for Justice.

During the discussions concerning the annual Report by the Head Magistrate, the President of the Association of Lawyers and Notaries shall attend the Judicial Council in plenary session without voting right.

The Judicial Council shall meet in plenary session for the adoption of all decisions referred to in Article 3 of this Law concerning the appointment of magistrates, for the confirmation of the offices under Article 4 of this Law and for the appointment of the Head Magistrate; it shall adopt the decisions referred to in Article 9 of this Law; it shall assess the professional skills and competence acquired by the Magistrates under Article 5 of this Law; it may, in conformity with the constitutional law, order the precautionary suspension of the magistrate subject to the review action and declare his/her removal or dismissal in compliance with the decision adopted by the Guarantors' Panel on the Constitutionality of Rules; it shall receive and assess the annual report of the Head Magistrate; it shall examine the issues concerning the relations between the judicial bodies and other State bodies and, in this regard, it shall have the power to provide guidelines and proposals; exceptionally, it may allow additional time to the judges for the issuance of judgements, decrees and judicial orders, in application of Article 2, point 4 of Law no. 13 of 5 June 1923; it shall perform any other function entrusted to the Judicial Council by the law that is not expressly indicated among those specifically pertaining to the ordinary session.

The Judicial Council shall meet in ordinary session at least twice a year, every six months, and in plenary session at least once a year to discuss the report of the Head Magistrate; however, ordinary and plenary sessions may be convened whenever deemed necessary. With regard to both sessions, the Judicial Council shall be convened by the Captains Regent on their initiative or upon request of the Secretary of State for Justice, of the Head Magistrate or of at least one third of the members.

For the Judicial Council, both in ordinary and plenary session, to be valid, the presence of at least half the members shall always be requested. Decisions shall be adopted with the favourable vote of the majority of the members present.

The works of the sessions of the Judicial Council shall be recorded in specific minutes drawn up by the secretary, who shall be appointed at the beginning of the session.

Copy of these minutes shall be transmitted to the Association of Lawyers and Notaries.

In all cases concerning the responsibility, incompatibility and unfitness of the single Magistrates, the latter shall be heard in person or through a special prosecutor, but they shall not participate in or attend the discussions and decisions. Similarly, in case of candidature of magistrates for the appointment to higher jurisdictional positions or in case of confirmation of the office and in all cases concerning them, the interested magistrates and the members of the Judicial Council, who were members of the selection board for their appointment, shall not participate in the discussions and decisions.”.

Art. 8

Article 8 of Qualified Law no. 145 of 30 October 2003 shall be modified as follows:

“Art. 8

(Parliamentary Commission for Justice)

The Parliamentary Commission for Justice shall be composed of ten Parliamentarians, appointed by the Great and General Council at the beginning of each legislature by a majority of at least two-thirds. It shall be presided over and convened by the President, appointed by the Commission itself during its first session. The Secretary of State for Justice shall be a full right member of the Commission.

The Parliamentary Commission for Justice shall report on all its activities only to the Great and General Council.

The Commission may meet in plenary session before the Judicial Council is convened with a view to discussing the issues on the agenda; at least one third of its members may start the review action relative to magistrates according to the procedures provided for by the constitutional law; it shall examine the annual report of the Head Magistrate; as a coordination body, it shall supervise over the execution of the decisions adopted by the Judicial Council in plenary session, which shall be submitted to the Great and General Council or for which administrative measures shall be adopted; it shall exercise the powers envisaged by the law. The Commission shall have the power to request the opinion of the Head Magistrate, who may also be convened for hearings.

For the decisions of the Commission to be valid, the presence of at least half the members plus one shall be required. The decisions shall be adopted by absolute majority.

Parliamentarians enrolled in the Registers of Lawyers and Notaries and of Accountants (either holding a university degree or high school diploma) shall not be members of the Parliamentary Commission for Justice.”

Art. 9

Article 10 of Qualified Law no. 145 of 30 October 2003 shall be modified as follows:

“Art. 9

(Abstention and objection)

The Magistrate shall be obliged to abstain from a case when there are serious reasons determined by interests in the proceedings, or family, marital, non-marital cohabitation, affinity, friendship, enmity, economic or work relationships between the Magistrate or one of his/her close relatives and one of the parties or their defending counsels in civil or administrative proceedings, or the suspect or accused person or the injured party, or their defending counsels in criminal proceedings.

The Magistrate shall also be obliged to abstain from a case where he/she has offered advice, has expressed opinions or, in the exercise of his/her functions and before the judgement is passed, has unduly made his/her views known concerning the facts of the proceedings.

The parties may object to the Magistrate if he/she decides not to abstain in the above-mentioned cases.

The Magistrate may also abstain from the case when his/her impartiality and freedom of judgement seem to be undermined by the existence of reasons of opportunity.

A judge responsible for deciding on objection shall not be subject to objection.

Objection to the *Procuratore del Fisco* shall not be admitted in criminal proceedings.

The procedures relative to abstention and objection concerning Magistrates shall be regulated by a specific ordinary law.

In the presence of certain and objective requirements in the context of the reasons provided for in this Article, the Magistrate not complying with his/her obligation to abstain for the case shall be subject to the measures regulated by a specific law”.

Art. 10

(Transitional and coordination provisions)

The offices of Administrative Judge of First Instance and of Conciliating Judge shall be eliminated. From the entry into force of this Law, all functions attributed to these judges by the existing rules and provisions, of whatever nature, shall be transferred to the Law Commissioner.

From the entry into force of this Law, the Administrative Judge of First Instance and the Conciliating Judge, who also performs the functions of *Pro Fiscale* on duty, shall be fully entrusted with the office, functions and status of Law Commissioner.

In case an Administrative Judge of First Instance still has to be confirmed, the three-year period shall be calculated from the date on which the original functions have been entrusted. The Conciliating Judge who also performs the functions of *Pro Fiscale* on duty shall be fully entrusted with the office, functions and status of Law Commissioner on a permanent basis and shall not be subject to any confirmation.

The Conciliating Judge who performs the functions of *Procuratore del Fisco* presently on duty shall cease to act as Conciliating Judge and shall assume, to all legal and practical effects, the office of *Procuratore del Fisco* on a permanent basis. The Conciliating Judge shall maintain the functions of *Pro Fiscale* until the new *Procuratore del Fisco* is appointed.

Clerks presently on duty may be appointed Law Commissioner and *Procuratore del Fisco* by the Judicial Council on the basis of the report of the Head Magistrate. They shall comply with the ordinary probationary period.

The provision of Article 4, paragraph 2 concerning the probationary period shall apply only to the Magistrates who will take office after the approval of this Law.

The provisions of Article 9 of this Law and those contained in the relevant law of procedure shall apply also to on-going proceedings; until the entry into force of the law on the procedure relative to abstention and objection, the provisions of Qualified Law no. 55 of 25 April 2003 shall continue to be applied.

Art. 11

(Repeal)

Decree no. 55 of 2 March 2006 shall be repealed.

All provisions in contrast with this Law shall be repealed.

Art. 12

(Entry into force)

This Law shall enter into force on the fifth day following that of its legal publication.

Done at Our Residence, on 16 September 2011/1711 since the Foundation of the Republic.

THE CAPTAINS REGENT
Maria Luisa Berti – Filippo Tamagnini

THE SECRETARY OF STATE
FOR INTERNAL AFFAIRS
Valeria Ciavatta