



# REPUBLIC OF SAN MARINO

## 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;*

*Hereby promulgate and order the publication of the following Ordinary Law, approved by the Great and General Council during its sitting of 5 May 2012:*

### LAW NO. 54 OF 21 MAY 2012

#### LAW ESTABLISHING "ENTE POSTE" OF THE REPUBLIC OF SAN MARINO

##### **Art. 1**

*(Establishment and name)*

"Ente Poste"<sup>1</sup> of the Republic of San Marino (EPSM), called San Marino Posts, shall be established as a public entity with legal personality enjoying organisational, administrative, accounting and regulatory autonomy (hereinafter referred to as "Ente Poste").

With a view to achieving the objectives put forward, the State shall allocate an endowment fund to the Agency.

##### **Art. 2**

*(Mission and functions)*

Ente Poste shall manage postal services, as well as the services and activities mentioned here below in a cost-effective manner. Such Authority shall be responsible for the enforcement of relevant international Conventions and related implementing regulations.

The functions of Ente Poste shall be:

- to ensure the international postal service. In this context, it shall also fulfil representation duties on behalf of the Republic of San Marino;
- to negotiate relevant international conventions and agreements, taking account of the development of the services and products, under the mandate of the Congress of State;
- to collect, sort, transport and deliver mail in the territory;
- to provide the postal financial services described in Annex A) to this Law;
- to provide other services delegated by the Public Administration and the Overall Public Sector;
- to provide collection and payment services delegated by the Treasury Service of the Central Bank, as well as those services delegated by public entities and offices;

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<sup>1</sup> Note of the translator: "Ente Poste" = Post Corporation

- to carry out activities in the field of research and development in respect of its own areas of competence;
- to conduct any other functional and instrumental activity for the development of the postal sector, in accordance with the limits and legal requirements in force;
- to draw up regulations to define and adopt charges and tariffs for postal services;
- to issue implementing regulations concerning its own areas of competence.

The postal financial services referred to in Annex A) to this Law shall be implemented through a delegated decree to be adopted by 31 December 2012.

### **Art. 3**

*(Guidance and supervision)*

The functions of guidance and supervision over the activities of Ente Poste shall be devolved to the Congress of State through the Secretary of State who is responsible for postal services.

### **Art. 4**

*(Ente Poste's bodies)*

The bodies of Ente Poste shall be the following:

- the Board of Directors;
- the Chairman;
- the Board of Auditors.

### **Art. 5**

*(The Board of Directors)*

The Board of Directors shall be responsible:

- 1) to adopt measures and carry out any initiative relevant to the achievement of the objectives referred to in Article 1 and the performance of the functions referred to in Article 2;
- 2) to develop plans and projects in order to implement the guidelines adopted by the Congress of State in accordance with Article 3;
- 3) to submit proposals and suggestions to the Congress of State for relevant decisions in respect of the development of Ente Poste's activities;
- 4) to approve the annual and multi-annual budget and any amendment for subsequent adoption by the Great and General Council;
- 5) to approve the balance sheet for subsequent adoption thereof by the Great and General Council and the profit and loss account drawn up in accordance with corporate legislation and banking supervision rules;
- 6) to decide on the introduction and/or cancelling of products;
- 7) to adopt rules governing operations;
- 8) to propose to the Congress of State the quantitative and qualitative requirements of staff within Ente Poste;
- 9) to decide on the adoption of the tariffs for the postal products in a free market regime and the fees for the financial services provided, and to propose to the Congress of State the tariffs for the postal services covered by the Universal Postal Service;
- 10) to propose to the Congress of State the taking out of loans;
- 11) to propose to the Congress of State the acquisition and disposal of immovable property functional to the conduction of Ente Poste's activities;
- 12) to make strategic decisions regarding the organisation of the Agency and any other aspect

deemed appropriate to the interests of the Agency.

The Board of Directors may delegate tasks to the Chairman or any member of the Board of Directors, establishing the modalities through which the decisions made by the delegated persons shall be brought to its notice.

The Board of Directors shall establish the powers to exercise the authority to sign and it may confer special powers of attorney upon the Chairman or another member of the Board of Directors to carry out certain measures or acts.

#### **Art. 6**

##### *(Composition of the Board of Directors)*

The Board of Directors shall be appointed by the Great and General Council. It shall consist of five members, including the Chairman, chosen among people with skills and experience in the economic and/or legal field and satisfying the respectability, professional and independence requirements set forth by corporate and banking supervision legislation.

The term of office for the members of the Board of Directors, including the Chairman shall be three years and they can be re-elected only for a second term.

The members of the Board of Directors shall remain in office until the appointment of the new Board of Directors by the Great and General Council.

At the earliest possible meeting the Board of Directors shall appoint the Vice-Chairman among its members.

The remuneration of the members of the Board of Directors shall be established by means of a delegated decree.

#### **Art. 7**

##### *(Validity of meetings and decisions)*

The Board of Directors shall meet at least once a month and it shall be convened either by the Chairman or, if he/she is absent or unable to attend, by the Vice-Chairman.

Meetings of the Board of Directors shall be valid if the majority of its members are present.

Decisions shall be taken by an absolute majority of its members. In the event of a tie the Chairman shall have the casting vote.

Meetings of the Board of Directors and decisions made shall result from relevant minutes.

The decisions of the Board of Directors shall have immediate effect, except for those subject to the preventive supervision of legality and those which, by law or regulation, require additional or different acts for the purposes of their effectiveness and enforceability.

The members of the Board of Directors shall be required to report any conflict of interest in relation to the topics discussed. Where a member of the Board of Directors is found in a position of conflict of interest, he/she shall refrain from any discussion and voting. Abstention shall be recorded in the minutes.

The Director-General shall take part in the meetings of the Board of Directors without any voting right. The Board of Auditors may also take part in the meetings of the Board of Directors. The duty of abstention referred to in the paragraph above shall also apply to the members of the Board of Auditors.

#### **Art. 8**

##### *(Chairman)*

The Chairman shall be the legal representative of Ente Poste.

The Chairman shall be appointed by the Great and General Council. He/she shall remain in

office for three years and may be re-elected only once.

The Chairman shall convene and chair the Board of Directors.

As a matter of necessity and urgency, the Chairman shall be entitled to adopt extremely urgent initiatives falling within the competence of the Board of Directors, without prejudice to the obligation to convene the Board of Directors as soon as possible for the necessary ratification.

If the Chairman is absent or unable to attend, his/her functions shall be performed by the Vice-Chairman.

### **Art. 9** *(Director-General)*

The Director-General shall:

- provide oversight of the technical and administrative progress of Ente Poste;
- be the be the Head of Ente Poste's staff under existing laws;
- identify and propose to the Board of Directors the quantitative and qualitative requirements of staff within Ente Poste;
- report on the situation within Ente Poste to the Board of Directors on a monthly basis;
- prepare the annual budget and any amendment for the subsequent review on the part of the Board of Directors and the Great and General Council;
- draw up the balance sheet for the subsequent review thereof by the Board of Directors and the Great and General Council, as well as the profit and loss account in accordance with corporate legislation and banking supervision rules. The balance sheet and other accounting documents shall be submitted to the Board of Directors for approval;
- exercise all duties and functions assigned to him/her by rules, regulations, the Chairman and the Board of Directors;
- attend the meetings of the Board of Directors and implement the decisions made by the Board of Directors;
- ensure that products and/or services are issued regularly, adopt any measure required for the functioning of Ente Poste and be responsible for the administrative management of Ente Poste.

The appointment of the Director-General shall be decided by the Congress of State.

The appointment of the Director-General shall be made on the basis of a private law contract for a period of three years, which might be renewed.

The qualifications are defined in Article 20, paragraph 3, of Annex A to Law no. 188 of 5 December 2011.

Without prejudice to the special provisions contained in this Law, the rules referred to in Law no. 108 of 31 July 2009 and the special incompatibilities referred to in Article 76 of Law no. 188 of 5 December 2011 shall apply.

### **Art. 10** *(Board of Auditors)*

The Board of Auditors shall be appointed by the Great and General Council for a period of three years. It might be re-elected.

The Board of Auditors shall be composed of three members, satisfying the respectability, professional and independence requirements set forth by corporate and banking supervision legislation. At least two of them shall be registered in the Register provided for in Law no. 146 of 27 October 2004. A member of the Board of Auditors shall be enrolled in the Professional Register of Lawyers and Notaries of the Republic of San Marino.

At its earliest possible meeting, the Board of Auditors shall elect a President among its members.

The Board of Auditors shall be responsible:

- to monitor compliance with laws and the principles of sound administration;
- to supervise the regularity and adequacy of the organisational, administrative and accounting structure of Ente Poste and the control system;
- to check financial management and that the balance sheet complies with accounting records;
- to carry out regular administrative and accounting monitoring of the situation within Ente Poste, preparing a relevant report thereon;
- to review financial statements and report thereon to the Board of Directors by preparing a relevant report;
- to perform any other function and task assigned to it by existing legislation.

Without prejudice to the functions of the Board of Auditors regulated by this Article, the financial statements of Ente Poste, drawn up pursuant to corporate and banking supervision legislation shall be audited by an auditing firm appointed by the Board of Directors upon designation of the Congress of State. The mandate to audit the financial statements shall not exceed five years.

### **Art. 11**

*(Incompatibility, revocation and removal from office)*

The position as member of the Board of Directors, Chairman and member of the Board of Auditors shall be incompatible with:

- a) the office as member of the Great and General Council, the Congress of State and employee of Ente Poste;
- b) the acceptance of positions within sole proprietorships or socially-owned enterprises, which have competences, interests or exercise activities or functions that are similar to, connected with or related to those falling within the competence of Ente Poste;
- c) management functions or the position as official or employee in the enterprises referred to in letter b);
- d) the holding of shares or any interests in the enterprises referred to in letter b);
- e) positions covered within a company, as official or employee, the holding of shares in sole proprietorships or socially-owned enterprises, which have competences or exercise activities or functions that are similar to, connected with or related to those falling within the competence of Ente Poste.

The members of the Board of Directors and the Board of Auditors shall be removed from office by the Great and General Council when they no longer meet the conditions and requirements laid down in the paragraphs above or they are no longer able to carry out their activity.

In the event of voluntary resignation, the members of the Board of Directors, the Board of Auditors and the Chairman shall remain in office until they are replaced.

The replacement of removed, revoked or resigned members shall be made by the Great and General Council at the earliest possible sitting following notification.

### **Art. 12**

*(Control system)*

The Director-General shall organise and guarantee a control system, approved by the Board of Directors on the basis of a favourable opinion of the Board of Auditors. Such control system shall be intended as a set of rules and procedures aimed at ensuring compliance with business strategies and the achievement of the following purposes:

- effectiveness and efficiency of business processes (administrative, risk-management, production, delivery processes, etc.);
- reliability and integrity of accounting and management information;
- compliance of the overall business with law, supervisory regulations, as well as with internal

policies, plans, rules and directives.

The Control System of the Postal Financial Sector is structured on three different levels of control to prevent business risks: operational controls (I level), risk management and compliance controls (II level), internal audit controls (III level).

Ente Poste's organisational structure shall ensure the necessary separation between operational and control functions.

The Director-General shall be accountable to the Board of Directors and the Board of Auditors for the functioning of the internal control system.

The Board of Directors and the Board of Auditors, in their own areas of responsibility, shall be required to check that internal procedures are complied with and they shall monitor, on a regular basis, the adequacy and effectiveness of the system.

### **Art. 13**

#### *(Activities and services)*

The activity of Ente Poste shall include the following services:

- a) Postal Services;
- b) Postal Financial Services.

The activities and the organisation of their respective services shall be governed through ad-hoc delegated decrees.

With regard to the activities pertaining to the Postal Financial Services, Ente Poste shall be subject to supervision pursuant to banking legislation and it shall be considered an obliged party under anti-money laundering legislation. Considering the public nature of such entity and the particular nature of the activities carried out, the delegated decrees referred to in the paragraph above and relating to the Postal Financial Services, shall determine what banking, financial and anti-money laundering provisions are applicable to Ente Poste and with which exceptions. The supervisory authorities may issue specific supervisory provisions relating to Ente Poste by means of a regulation.

The services referred to in the first paragraph, as described in respect of the Postal Financial Services in Annex A) to this Law, may be amended or supplemented by means of an ad-hoc delegated decree to respond to changes in the needs of the services, the market and the regulatory framework of reference.

Human resources shall be allocated to the activities referred to in paragraph 1 in accordance with relevant legislation in force, taking account of the qualitative and quantitative needs of Ente Poste.

Ente Poste shall adopt the most appropriate means of communication, including electronic means, to promote the activity carried out and make its decisions transparent. Furthermore, it shall adopt the measures best suited to provide on-line services to its customers.

### **Art. 14**

#### *(Staff needs)*

With regard to staff needs, Ente Poste requires two experts/heads to be recruited preferably among the employees of the Overall Public Sector or entities controlled by the State, or among professionals with specific experience in the sector, or among those registered on the mobility lists. Such persons shall be responsible for activities relating to postal services and postal financial services, respectively. The professional characteristics of such persons, who do not hold any management position, shall be based on Ente Poste's needs, without prejudice to the fact that the person responsible for postal financial services shall have specific skills and responsibilities in relation to such services and the function of Ente Poste's Deputy Director assigned to him/her.

**Art. 15**  
*(Financing)*

The financing of Ente Poste shall be ensured by collecting revenue from postal and postal financial services, other revenue deriving from activities carried out on behalf of offices of the Public Administration or the Overall Public Sector, as well as concession fees, donations, contributions from public or private parties and State funding in the ways specified by law.

**Art. 16**  
*(Administrative and accounting regime)*

The financial management of Ente Poste shall comply with Law no. 30 of 18 February 1998 "General Rules on the State Accounting System".

While drawing up the financial statements, Ente Poste shall also be required, in respect of the kind of activity performed, to conform to relevant private-law accounting principles. It shall also prepare the profit and loss account and the notes on the accounts referred to in corporate legislation, without prejudice to the specific provisions concerning the preparation of the balance sheets of the supervised entities under banking legislation.

Ente Poste's administrative and accounting management shall be governed by an ad-hoc delegated decree which may provide for derogations from Law no. 30 of 18 February 1998 in order to harmonise the public-law accounting regime with that based on private law.

**Art. 17**  
*(Conversion of Ente Poste into a joint-stock company)*

With a view to maximising the efficiency of the services supplied in line with the international guidelines provided by the Universal Postal Union, as well as to reducing the operating costs and improving the operational sectors, the Congress of State shall be mandated, following a regular check of the objectives achieved and the strategies identified by the Board of Directors, to submit to the Great and General Council a draft law to convert Ente Poste into a public joint-stock company based on San Marino law.

**Art. 18**  
*(Tax system)*

As a taxable person, Ente Poste shall be exempt from any tax or duty provided for by the system.

**Art. 19**  
*(Ente Poste's earnings)*

Ente Poste's earnings shall be paid to the State, except in case they are reinvested or placed in reserve funds in line with the guidelines of the Congress of State.

**Art. 20**  
*(Transitional provisions)*

The provisions of this Law concerning Ente Poste's accounting and administrative organisation shall be implemented on the date of entry into force of the delegated decree referred to in the last paragraph of Article 16.

The drawing up of the private-law financial statements shall become mandatory when the postal financial services are implemented.

Pending the entry into force of the delegated decrees mentioned in Article 13, Ente Poste shall, in all respects and with regard to the activities that are not related to telecommunications, take the place of the Directorate of Posts and Telecommunications referred to in Law no. 106/1993 and of the Organisational Unit of Posts and Telecommunications referred to in Article 20 of Annex A to Law no. 188 of 5 December 2011 for the fulfilment of the tasks and functions assigned to it, as well as for the preparation of any activity required to ensure that Ente Poste is fully operational under this Law.

Pursuant to the paragraph above, Ente Poste shall take over all contracts, agreements and conventions in force on the date of conversion until they come to their normal end.

Until definition of the quantitative and qualitative staff needs of Ente Poste, the permanent staff of the Postal Sector referred to in Title XI of Law no. 106 of 17 September 1993 shall continue to work for Ente Poste on the basis of their current qualifications. The mandate of the personnel with an existing employment relationship within the Postal Sector, whether chosen from the ranking lists or covering a higher position, shall be prolonged and such personnel shall be assigned to Ente Poste, in accordance with the general provisions in force for the Overall Public Sector.

The staff assigned to the sector of telecommunications referred to in Title XI of Law no. 106 of 17 September 1993 shall be allocated to the Department of Economy until otherwise agreed.

The remuneration and regulatory treatment envisaged for the employees of the Overall Public Sector shall apply to Ente Poste's employees.

**Art. 21**  
*(Repeal)*

Any provision in contrast with this Law shall be repealed.

**Art. 22**  
*(Entry into force)*

This Law shall enter into force on the 20th day following that of its legal publication.

*Done at Our Residence, on 21 May 2012/1711 since the Foundation of the Republic*

THE CAPTAINS REGENT  
*Maurizio Rattini – Italo Righi*

THE MINISTER  
OF INTERNAL AFFAIRS  
*Valeria Ciavatta*



ANNEX A  
POSTAL FINANCIAL SERVICES – FINANCIAL ACTIVITY OF THE AGENCY

- a) It exercises the banking activity as far as collection of savings is concerned:
  - through deposits, including postal accounts;
  - through securities, including bonds;
- b) It provides payment services, as defined in Annex I, letter I, of Law no. 165 of 17 November 2005 and subsequent amendments and supplements;
- c) It provides electronic money issuance services, as defined in Annex J of Law no. 165 of 17 November 2005 and subsequent amendments and supplements;
- d) It provides services for the collection and transfer of funds in the framework of the international networks of Eurogiro and Moneygram;
- e) It provides money order issuance and payment services;
- f) It places financial instruments on behalf of the State;
- g) It incurs credit or financial exposure only to the State and the Overall Public Sector.