



# REPUBBLICA DI 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 18 January 2022:*

### **LAW no. 12 of 28 January 2022**

#### **PROVISIONS ON THE STATE LAWYERS' OFFICE AND THE REPRESENTATION AND DEFENCE OF THE STATE IN JUDICIAL PROCEEDINGS**

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

*(The State Lawyers' Office)*

1. The State Lawyers' Office shall be entrusted with the legal and judicial protection of the interests of the State, of the Administration, as defined in Article 2, and of the Institutional Bodies, as well as with the provision of technical and legal aid, assistance and support in their activities, in autonomy and independence and outside the departmental organisation. The State Lawyers' Office shall report periodically on its activity to the Congress of State through the Minister of Internal Affairs and annually to the Great and General Council.

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

*(Definitions)*

1. For the purposes of this Law, the following definitions shall apply:
- "Administration" shall mean all administrative bodies, Organisational Units (OUs), Departments, Autonomous State Corporations and Entities of the Overall Public Sector and related organisational structures;
  - "Assisted Administration" shall mean any individual OU, Department, Autonomous State Corporation and Entity of the Overall Public Sector and related organisational structures, as well as any administrative body requesting legal assistance.

##### **Art.3**

*(Functions)*

1. The State Lawyers' Office shall perform the following functions:
- representing and defending the interests, both financial and non-financial, of the State, of the Administration and of the Institutional Bodies both in contentious proceedings before ordinary civil, administrative and criminal judicial bodies, and in non-contentious proceedings, as well

as in proceedings before the Guarantors' Panel on the constitutionality of rules and international courts;

- b) representing and defending the Directors acting as Head of Personnel of the Public Administration, of the Autonomous State Corporations and of the Entities of the Overall Public Sector in proceedings before the Disciplinary Commission;
- c) preparing deeds and contracts, at the request of Institutional and Administrative Bodies, OUs, Departments, Autonomous State Corporations, Entities of the Overall Public Sector and related organisational structures, in cooperation with the relevant actors, without prejudice to the competences of the Directorate General of Civil Service and the sectoral competences of the individual Assisted Administration;
- d) performing, in accordance with the legislation in force, the activity of acting Notary at the request of the State, of the Autonomous State Corporations and of the Entities of the Overall Public Sector;
- e) providing support and legal advice on town planning and land management, drafting town planning agreements and documents on land management in terms of town planning, construction and on the realisation of works of public interest, by assigning a State Lawyer to the Department of Territory and Environment;
- f) providing advice and opinions pursuant to Article 6;
- g) collecting fees and expenses in the proceedings where the State Lawyers' Office provides support, when such fees and expenses are to be borne by the counterparties or in the event of a settlement;
- h) performing any other function or task related to the above-mentioned activities or provided for by the legislation in force.

#### **Art. 4**

##### *(Legal representation and defence in judicial proceedings)*

1. The State's representation in civil and criminal proceedings shall be the responsibility of the Government Syndics. The representation of the OUs and Departments of the Public Administration as well as of the Police Corps in administrative proceedings shall be the responsibility of the Director of Civil Service. The representation of collegial administrative bodies and Institutional Bodies in administrative proceedings shall be the responsibility of their respective presidents. The Government Syndics, the Director of Civil Service and the presidents of the collegial administrative bodies and of the Institutional Bodies shall have an address for the service at the State Lawyers' Office for the purposes of this paragraph.
2. Representation of the State Autonomous Corporations and of the Entities of the Overall Public Sector in judicial proceedings shall be the responsibility of their respective legal representatives.
3. The State General Lawyer and the State Lawyers shall exercise their functions in all judicial proceedings, in whatever venue and without the need for a mandate.
4. The Administration or Institutional Body assisted in judicial proceedings shall provide the State Lawyers' Office with a detailed report on the contentious matter.
5. Conflicts that arise between the State Lawyers' Office and the Assisted Administration in relation to the commencement of proceedings and defence in such proceedings, shall be resolved by the Congress of State.
6. Following a reasoned report by the State Lawyers' Office, representation of the State, of the Administration and of the Institutional Bodies in contentious proceedings before civil, criminal and administrative judicial bodies may be conferred on independent lawyers by the Congress of State and the competent administrative bodies of the Autonomous State Corporations and of the Entities of the Overall Public Sector in the following cases:
  - a) very exceptional circumstances;

- b) defence in judicial proceedings of Institutional and Administrative Bodies, OUs, Departments, Autonomous State Corporations and Entities of the Overall Public Sector with opposing substantive positions;
  - c) defence in judicial proceedings before foreign judicial bodies or international courts.
7. Independent lawyers appointed pursuant to paragraph 6 shall exercise representation jointly with the State Lawyers' Office, except in the case referred to in letter b), and defence shall be subject to the instructions of the State General Lawyer.
8. For the purpose of practising their profession in the territory in the cases referred to in paragraph 6 a) and b), foreign lawyers, duly authorised to practise the profession in the State they come from, shall have an address for service at the State Lawyers' Office. Before starting their activity, they shall send to the President of the Board of the Association of Lawyers and Notaries a communication indicating their personal and professional data, by registered letter with acknowledgement of receipt or equivalent electronic delivery service.
9. If sued in connection with their public activities, private operators of public services and State-owned private entities may appoint an independent lawyer who shall liaise with the State General Lawyer in the handling of the case.
10. In order to protect its assets, image and prestige, the State shall join a civil action to criminal proceedings in which the State, qualified as the offended party, has also suffered pecuniary and/or non-pecuniary damages caused by the same offence, except in cases in which the State Lawyers' Office expresses a reasoned contrary opinion. The State Lawyers' Office shall promptly inform the Congress of State of the fact that the State has joined criminal proceedings as a civil party or of any contrary opinion referred to in the preceding sentence.
11. The Congress of State, also based on a report of the State Lawyers' Office, may authorise the State to join a civil action in the event that the State, although not qualified as the offended party, has suffered pecuniary and/or non-pecuniary damages caused by the same offence.
12. The provisions of paragraphs 10 and 11 shall also apply if the party offended and/or damaged by the offence is an Autonomous State Corporation or an Entity of the Overall Public Sector.

**Art.5**  
(Notary function)

1. The State General Lawyer and the State Lawyers shall perform the functions of acting Notary at the request of the State, of the Autonomous State Corporations and of the Entities of the Overall Public Sector according to the instructions issued within the OU.
2. The activity referred to in paragraph 1 shall consist in the following:
- a) publicly certifying documents drawn up and contracts concluded in presence of the acting Notary and what the acting Notary attests and certifies to have personally performed or to have occurred in his/her presence;
  - b) receiving deeds of purchase *inter vivos* in favour of the State and the Administration and, unless otherwise determined, exchange deeds to which the State and the Administration are parties, subject to verification of the enforceability of authorising administrative or legislative acts;
  - c) keeping deeds drawn up and received and authenticated agreements intended for property publicity;
  - d) issuing certified copies.
3. The acting Notary, in the performance of his/her duties, shall comply with and apply, to the extent compatible, the provisions of Title II of Law no. 73 of 30 April 2014 and subsequent amendments.
4. The acting Notary shall record in special registers the details, in chronological order, of the deeds received or whose signatures have been authenticated. Articles 49, 50, 51, 52, 55 and 56 of Law no. 73 of 30 April 2014 and subsequent amendments shall apply *mutatis mutandis*.

5. The acting Notary's registers shall be kept and validated pursuant to the current rules on keeping and validation of notarial registers in implementation of Law no. 73 of 30 April 2014 and subsequent amendments

#### **Art.6**

##### *(Legal advice and assistance)*

1. In order to guarantee the general interest in the legality of administrative action, the State Lawyers' Office shall provide advice, with no restrictions on subject matter, to the Administration and Institutional Bodies and shall provide assistance in the preliminary stage for the drafting and finalization, from a legal point of view, of administrative acts and measures.

2. The State Lawyers' Office shall not be required to execute requests for advice and assistance when such requests:

- a) are not drafted in a detailed and complete manner;
- b) do not relate to legal issues;
- c) do not indicate an interpretation proposal made on the basis of the practical application and specific knowledge of the subject matter;
- d) come from sectors that already have legal experts or assigned State Lawyers;
- e) concern the substantive drafting of regulatory acts on the basis of discretionary choices;
- f) concern the substantive drafting of reports for International Organisations, going beyond mere technical assistance.

3. In providing its advice and assistance, the State Lawyers' Office shall communicate directly with the Assisted Administration or Institutional Body, from which it requests the references and documents useful for the handling of the contentious matter or issue.

4. The Assisted Administration or Institutional Body shall provide the State Lawyers' Office with the references and documents referred to in paragraph 3 in accordance with the time limits and modalities defined by the latter.

5. The State Lawyers' Office shall express its mandatory opinion on settlement agreements drawn up by the Administration and Institutional Bodies, in relation to disputes and cases handled by the State Lawyers' Office.

6. The legal advice and assistance referred to in this Article may also be rendered to private operators of public services and State-owned private entities, if connected with the performance of public services.

#### **Art.7**

##### *(Access to documents and professional secrecy)*

1. Pursuant to Article 30, paragraph 3, letter b) of Law no. 160 of 5 October 2011 and subsequent amendments, in compliance with professional secrecy and in order to protect confidentiality in the relations between the State Lawyers' Office and the Assisted Administration or Institutional Body, access to the following documents shall be prohibited:

- a) opinions rendered in connection with ongoing or potential litigation and related documents;
- b) defence documents;
- c) correspondence relating to the matters referred to in letters a) and b) above.

2. In cases of advice not related to ongoing or potential litigation, access to the documents may be deferred by the Assisted Administration or Institutional Body until the adoption of the administrative measures for which the advice is intended, in line with Article 27, paragraph 2, of Law no. 160/2011 and subsequent amendments. The Assisted Administration or Institutional Body shall admit the request for access, after consulting the State Lawyers' Office.

## **Art.8**

### *(Officials of the State Lawyers' Office)*

1. The Officials of the State Lawyers' Office shall include:
  - a) the State General Lawyer;
  - b) the State Lawyer.
2. The rules of the Code of Conduct for Public Officials set forth in Law no. 141 of 5 September 2014 as well as the rules of professional conduct laid down in the Statute of the Association of Lawyers and Notaries of the Republic of San Marino shall apply to the officials referred to in paragraph 1, insofar as they are compatible and do not conflict with mandatory rules on public employment that contain different provisions on their professional activity.
3. The officials referred to in paragraph 1 shall perform their duties in all judicial proceedings, in all venues and without the need for a mandate and may be called upon to undertake any task falling within their professional competence.
4. In the event of a difference of opinion with the State General Layer in the handling of cases, the State Lawyer may request, by submitting a written report, to be relieved from handling the case on which the difference of opinion arose.
5. The State Lawyer may also be replaced in the handling of contentious and advisory matters assigned to him/her by reasoned decree of the State General Lawyer.
6. Without prejudice to the general provisions on public employment, the office of State General Lawyer and of State Lawyer shall be incompatible with positions in political movements or parties or trade unions and professional associations and with the office of member of the Great and General Council and Head or member of the Township Council. This incompatibility shall continue to apply for two years following the termination of the mandate as State General Lawyer and for two years following the termination of the mandate as State Lawyer.
7. Within the framework of the annual and pluriannual budget planning, appropriate resources shall be allocated to ensure the ongoing training of the officials referred to in this Article, in line with the training levels envisaged for members of the Association of Lawyers and Notaries of the Republic of San Marino.

## **Art.9**

### *(The State General Lawyer)*

1. The State General Lawyer shall:
  - a) lay down general guidelines for the handling of contentious and advisory matters;
  - b) assign contentious and advisory matters to officials on the basis of agreed general, rotation and hierarchical criteria;
  - c) promote the collegial examination and decision of major legal issues;
  - d) supervise the services and the staff, including administrative staff, of the State Lawyers' Office and oversee their organisation, giving appropriate instructions and general provisions;
  - e) report to the Congress of State on legislative shortcomings and interpretative problems arising in the performance of official duties;
  - f) report, following a request of the Congress of State, on the activities carried out by the Office;
  - g) give an opinion as to whether specific contentious matters involving the Administration should be assigned to independent lawyers;
  - h) issue the instructions for the performance of the functions of acting Notary;
  - i) submit annually to the Great and General Council a report on the activity of the State Lawyers' Office, including the distribution criteria adopted for the allocation of the sums provided for in Article 1, paragraph 5 of Annex 1.
2. The office of State General Lawyer shall be conferred on anyone holding a master's degree in law with professional qualification and having accrued at least ten years of specific seniority in relation to all the professional fields pertaining to the relevant job specification.

3. The State General Lawyer shall also act as head of personnel for the purpose of charging violations of the rules of professional conduct referred to in Article 8, paragraph 2; in this capacity, he/she shall coordinate functionally with the Directorate General of Civil Service for the application of staff rules and shall adhere to its guidelines.

4. The managerial position of the State General Layer shall be remunerated pursuant to Delegated Decree no. 21 of 6 March 2013 based on parameter 3 position-based remuneration. Access to the position of State General Lawyer shall be subject to the ordinary rules on the recruitment of Directors in the Overall Public Sector. If a person who is not an employee of the Overall Public Sector and has proven particularly qualified experience in relation to the number and complexity of cases handled is appointed as State General Lawyer, up to 10 seniority steps may be granted to him/her, en block, as from the commencement of the employment relationship. The recruitment announcement or the appointment measure concerning the filling of this position shall specify the criteria for the recognition of these seniority steps en block. The State General Lawyer shall also be subject to an additional remuneration corresponding to the professional fees provided for the State Lawyers, which absorbs and replaces performance-based remuneration.

5. The State General Lawyer shall hold office for five years and may be reappointed once for further five years. The State General Lawyer shall be subject to the rules on the assessment of administrative - management action of public directors under Delegated Decree no. 94 of 25 May 2021.

#### **Art.10**

*(State Lawyer)*

1. The job specification (JS) of the State Lawyer (AVVSTA) in Annex A to Delegated Decree no.3 of 23 January 2015 shall be replaced by that provided for and governed by Annex 1 to this Law. The aforementioned Annex 1 shall also define the remuneration related to the job specification.

2. State Lawyers shall be recruited on an open-ended contract exclusively through a competition on the basis of qualifications and tests, with a written and an oral examination.

#### **Art.11**

*(Transitional provisions)*

1. Officials in the positions of State Lawyers shall remain in service in the corresponding qualifications referred to in Article 8, without prejudice to their accrued rights and length of seniority, and shall be entitled to the remuneration referred to in Article 1, paragraphs 4 and 5 of Annex 1 as follows:

- a) as from the entry into force of this Law and for the period of one year during which a specific training programme shall be developed in relation to all the professional fields pertaining to the relevant job qualification, only the additional remuneration corresponding to the professional fees shall be recognised;
- b) after the aforementioned year has elapsed and the training programme has been successfully completed according to the individual reports drawn up by the State General Lawyer, the new remuneration shall be paid in full.

2. The acting Notary shall continue the numbering of the register and of record-keeping starting from the last number reached at the time of entry into force of this Law.

3. The keeping of the register in electronic form, as referred to in Article 5, paragraphs 4 and 5, shall start on 1 January 2022. The validation of the notary registers of the acting Notary shall start ninety days after the keeping of the register in electronic form.

4. Positions already assigned, by virtue of Congress of State's decisions or of decisions made by the administrative bodies of the State Autonomous Corporations and of the Entities of the Overall Public Sector, for the performance of the functions referred to in Article 3, paragraph 1, letter a), shall remain in force until their expiry date, unless they are revoked.

**Art.12**

*(Repeal and entry into force)*

1. All provisions that conflict with this Law shall be repealed.
2. This Law shall enter into force on the fifteenth day following that of its legal publication.

*Done at Our Residence, on 28 January 2022.*

THE CAPTAINS REGENT  
*Francesco Mussoni - Giacomo Simoncini*

THE MINISTER  
OF INTERNAL AFFAIRS  
*Elena Tonnini*