



# 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 23 July 2009:*

**LAW NO. 108 OF 31 JULY 2009**

## **LAW ON DIRECTORS**

### **Art.1**

*(Purposes)*

1. This Law shall regulate the legal status of the directors of the Overall Public Sector, enhancing their autonomous role within the organisation of the State and establishing their respective responsibilities with the aim of achieving the effectiveness, efficiency and cost-effectiveness of administrative activities, their compliance with the needs of the users, understood as the general criteria governing administrative activities, and the enhancement of human resources of the Public Administration, in compliance with the principles of legality and impartiality.
2. The Director shall be the public official leading an Organisational Unit who shall be entrusted with functions and decision-making powers of guidance, promotion and coordination, as well as representation of the Administration to which he/she belongs vis-à-vis third parties.

### **Art.2**

*(Principle of separation)*

1. The Public Administration shall base its activities on the pursuit and implementation of the principle of the separation of political direction and control from administrative implementation and management activities.
2. Pursuant to Article 16, paragraph 2, of Qualified Law no. 184 of 15 December 2005, the plans and programmes aimed at implementing the administrative and political guidelines shall be defined by the Congress of State, with an indication of the relevant priorities and financial resources, at the beginning of each year, and in any case no later than thirty days after the Budget Law enters into force, and shall be subject to preventive legitimacy control in the forms provided for by the provisions in force.

### **Art.3**

#### *(Job specification and assignment)*

1. The functions of directors shall be defined by the provisions of this Law, the job specification and the assignment.
2. The job specification of directors shall be described, as a development of the professional fields referred to in Article 5 below, in the appropriate legislation on job specifications.
3. The assignment of a Director to an Organisational Unit shall specify the professional service required, in line with the mission and functions of the Organisational Unit, as defined by the appropriate legislation.

### **Art.4**

#### *(Powers and responsibilities)*

1. Without prejudice to the provisions of Constitutional Law no. 183 of 15 December 2005 and Qualified Law no. 184 of 15 December 2005, the Director shall be responsible for adopting administrative acts and measures of internal and external relevance, for financial, technical and administrative management, by means of autonomous expenditure powers, in compliance with the Accounting and Budget rules, for organising the human and material resources of the Organisational Unit to which he/she is assigned and for implementing the relevant programmes and plans.

### **Art.5**

#### *(Professional fields)*

1. The Director shall perform, with operational autonomy and management responsibility, the functions envisaged by his or her job specification, divided into the following 5 professional fields relating to the powers and responsibilities referred to in the previous article:
  - a. planning and scheduling of the Organisational Unit's activities: the Director shall ensure the implementation of the directives and programmes approved by the Congress of State, assigned directly or through the Head of Department or hierarchical superior in the case of Entities of the Overall Public Sector, so as to achieve the objectives established;
  - b. organisation and development of human resources: the Director shall provide, and maintain over time, his/her Organisational Unit with the best possible organisation, taking into account the instrumental, financial and human resources assigned to it; he/she shall contribute to the evaluation of personnel in accordance with the legislation in force; he/she shall ensure, in particular, the optimal operational allocation of employees and, also through this, their professional development; he/she shall identify and propose possible improvements to the internal organisation which require changes in the qualitative and quantitative composition of the resources assigned;
  - c. development of operation and technical knowledge with reference to the activity of the Organisational Unit: the Director shall perform the professional activity, if envisaged by his/her job specification and by the functions of the Organisational Unit he/she directs, and shall issue the administrative acts and measures of internal and external relevance necessary for the pursuit of the mission assigned to the Organisational Unit and in accordance with its functions; he/she shall be accountable for the services provided by the Organisational Unit and be the privileged point of reference for the improvement of the specific legislation applied by the Organisational Unit he/she directs;
  - d. external and internal communication: the Director, in line with the functions of his/her Organisational Unit, shall establish relations with persons inside and outside the Public Administration, in particular vis-à-vis users, also acting as the Administration's legal representative where required by the type of functions performed or by express delegation; the Director shall establish relations with the relevant Head of Department or hierarchical superior,

- where present, and with the Directorate General of Civil Service for the competences assigned to it, as well as with the competent Minister for the specific aspects relating to his/her activity;
- e. control: the Director shall be responsible for full compliance within the Organisational Unit with the reference legislation and internal rules, as well as for the consistency of the operational processes with the functions of the Organisational Unit, but also with criteria of efficiency, effectiveness, cost-effectiveness and compliance with the needs of users.
2. The permanent Director shall be classified according to the relevant director job specification. In the case of temporary Directors, the relevant director job specification shall be indicated.

**Art.6**  
*(Requirements)*

1. The following shall be prerequisites for access to the position of Director:
  - a. be a San Marino citizen or a citizen of a country with which there are agreements providing for reciprocity in similar cases;
  - b. residence in the territory;
  - c. holding a five-year university degree or a degree under the former system, as provided for in the job specification, for at least five years;
  - d. professional qualification or other qualification/requirement provided for in the job specification or for the specific assignment;
  - e. continuous work or professional experience of at least three years:
    - i. performing functions or holding positions in the Overall Public Sector requiring a master's degree or a degree under the former system;
    - ii. performing self-employment activities or holding managerial posts in the private sector.The requirement referred to in letter e. may be replaced by a specialist diploma in subjects connected with the Organisational Unit.
- f. not being in any of the conditions of incompatibility referred to in this Law, provided for by the job specification, the specific assignment or special rules.

**Art.7**  
*(Employment relationship)*

1. The Director shall be employed on a permanent or temporary basis.
2. The employment relationship between the Public Administration and the permanent Director shall be governed by this Law and the rules on public employment.
3. The employment relationship between the Public Administration and the temporary Director shall be governed by this Law and by the fixed-term contract under private law, which shall include any further applicable rules.

**Art.8**  
*(Access to the position of Director)*

1. Access to the position of Director shall be granted following a competition or other forms of selection, which, in any case, shall take into account the curriculum vitae, professional skills and specialisation of the candidate, without prejudice to the requirements provided for by this Law, the job specification, the specific assignment and special rules.
2. The appointment decision, following the procedures referred to in the preceding paragraph, shall be adopted by the Congress of State or the Great and General Council in cases falling within their respective competences.
3. In order to allow Directors and personnel of the Overall Public Sector, who meet the requirements, to access appointments and assignments for vacant posts as Directors, a list of available vacant posts shall be prepared.

## **Art.9**

### *(Appointment and Assignment to an Organisational Unit)*

1. The appointment decision referred to in paragraph 2 of Article 8 shall provide for the assignment of the Director to an Organisational Unit for a definite period of time, the duration of the appointment or assignment, the programmes to be implemented, the objectives to be achieved and the remuneration, in accordance with this Law or special laws of reference.
2. The assignment of the Director with an ongoing fixed-term contract may be changed by a subsequent decision for special needs of the Administration or upon request of the Director if it is compatible with the needs of the Administration.
3. Directors who obtain a permanent position following a competition shall be permanently assigned, by means of the renewals referred to in Article 11, paragraph 2, to the Organisational Unit for which they obtained the permanent position. Their assignment may be changed with the consent of the Director, or if it is necessary to resort to a person with different professional skills and competence, or if there is a restructuring or reorganisation involving the elimination or modification of the Organisational Unit, or if the post of Director is eliminated or changed or its requirements are changed, or in the event of special incompatibilities or situations of serious inappropriateness, or following a negative evaluation.
4. The modification of the assignment referred to in the preceding paragraph may only take place with due justification.

## **Art.10**

### *(Private law contract)*

1. The private-law contract referred to in Article 7 shall follow the appointment decision and shall define the appointment, the duration of the relationship and the remuneration, within the framework of the provisions defining the functions to be performed contained in this Law, in the reference job specification and in the rules relating to the Organisational Unit to which the Director is assigned. The contract shall also define the duration of the probationary period and mention the rules applicable to the grounds for termination and the right of termination of the parties.
2. The Congress of State, upon proposal of the Minister responsible for Public Sector, shall adopt model contracts for the relationships referred to in this Article.
3. The contract shall be signed for the public part by the Minister responsible for Public Sector and filed in a special register at the Department of Civil Service, which shall be responsible for its safekeeping and subsequent formalities.

## **Art.11**

### *(Duration of the contract and assignment)*

1. The fixed-term contract referred to in Article 10 shall be subject to the successful completion of the probationary period referred to in Article 12, its duration shall not exceed three years and it may be renewed by means of a special decision.
2. The assignment to an Organisational Unit shall not exceed three years, also for permanent Directors, and may be renewed.

## **Art.12**

### *(Probationary period)*

1. A probationary period of no more than six months starting from the actual beginning of the assignment shall apply in the case of fixed-term relationships, for any new assignment and to be employed on a permanent basis.

2. In the case of fixed-term employment relationships, the contract shall take full effect after the successful completion of the probationary period; in the case of permanent employment relationships, the employment shall become definitive.
3. The service performed during the probationary period shall be taken into account for all legal and contractual purposes.
4. This shall be without prejudice to the possibility of extending the probationary period for reasons of force majeure recognised by decision of the Congress of State, upon proposal of the Head of Department or of the Director acting as Head of Personnel in the Entities of the Overall Public Sector, or of the competent Minister.
5. The legislation on evaluation referred to in Article 22 shall lay down the criteria and procedural arrangements for carrying out evaluations of the probationary period. Until the issuance of the aforementioned legislation, the evaluation of the Director shall be carried out by the Congress of State, after hearing the competent Minister and the Minister responsible for Public Sector.
6. A negative evaluation of the probationary period shall constitute grounds for termination of the relationship and interruption of the assignment.

### **Art.13**

#### *(Termination of the contract and revocation of the assignment)*

1. Without prejudice to its criminal, civil, administrative and accounting responsibilities, the Administration shall have the right to terminate the fixed-term contract in advance and to revoke the appointment and assignment, in the event of serious violation of legal and contractual obligations or for facts that, since they cause damage to the Administration, do not permit the continuation, even temporarily, of the assignment.
2. The right of termination shall also be granted to the Director.
3. The parties shall give notice of termination well in advance by registered letter with acknowledgement of receipt.

### **Art.14**

#### *(Duties of the Director)*

1. Without prejudice to the provisions on public employment, the Director shall:
  - a. behave in an exemplary manner in accordance with the principles of dignity and professional ethics, honesty, fairness and loyalty to the Republic;
  - b. perform the functions provided for in the relevant job specification, while pursuing the exclusive interest of the State;
  - c. not profit from anything falling within the scope of his/her functions nor engage in activities contrary to the interests of the State;
  - d. promptly inform the Head of Department or the Director acting as Head of Personnel in the case of Entities of the Overall Public Sector, of the existence of any criminal proceedings against him/her.
2. The Director shall respect, under the flexibility regime, the working hours provided for by law and by the collective agreement and/or the private law contract referred to in Article 10, and shall in any case be obliged to perform daily services beyond normal working hours if the needs of the service require it. This kind of service shall be an integral part of the functions of Director. Services performed outside normal working hours shall be remunerated in accordance with Article 19.
3. Training and professional development shall be a duty and a right for the Director.

**Art.15**  
*(Disciplinary rules)*

1. The disciplinary rules in force for public employees shall apply to the Director. Disciplinary sanctions shall be applied or promoted, as the case may be, by the Head of Department or the Director acting as Head of Personnel in the Entities of the Overall Public Sector.

**Art.16**  
*(General incompatibilities)*

1. Without prejudice to the incompatibilities provided for public employees, it shall be prohibited for the Director, whatever his or her employment relationship:
  - a. to perform self-employment, commercial, craft and industrial activities and to provide services in a subordinate capacity in private companies;
  - b. to engage in consultancy and any other remunerated activity, either on his/her own behalf or on behalf of natural and legal persons governed by private law;
  - c. to enter into business relations with the State and the Entities of the Overall Public Sector, either directly or indirectly;
  - d. to hold management and supervisory positions in private companies and entities that are profit-making or whose purpose is to carry out economic activities;
  - e. to perform any service and undertake any assignment, even of an occasional nature, whether free of charge or remunerated, on behalf of private companies and entities that are profit-making or otherwise engaged in economic activities;
  - f. to directly or indirectly hold shares in the capital of profit-making companies operating in sectors falling within the competence of the Organisational Unit to which he/she is assigned or which enter into business relations with the Public Administration;
  - g. to defend the rights of third parties against the State.
2. In any case, the Director shall avoid situations that generate conflicts of interest and shall promptly notify the competent Head of Department of any incompatibilities, as well as cases of potential conflict of interest.
3. The Directorate General of Civil Service, by means of a reasoned decision to be taken within one month of the request, may declare compatible with the position of director the performance of services relating to scientific and artistic activities that do not affect normal working activity.

**Art.17**  
*(Special incompatibilities)*

1. In order not to jeopardise the impartiality and independence of the Director in the performance of his/her functions, the regulations governing the mission and functions of the individual Organisational Units shall identify any special incompatibilities that the Director assigned to a specific Organisational Unit shall not be subject to during the period of assignment, and during the period preceding and/or following such assignment. For the same reasons, the maximum continuous duration of assignment to specific Organisational Units may also be established, and thus any possible need for rotation.
2. However, the office of Director appointed by the Great and General Council shall be incompatible with the role of member of the Great and General Council and Secretary of political forces and trade unions, however denominated.

**Art.18**  
*(Rights)*

1. Without prejudice to the provisions of Article 7 of this Law, the Director shall have the right:
  - a. to be assigned to the duties provided for in the relevant job specification, with the exception of the provisions of Article 21 for staff assignments;
  - b. to confidentiality of his/her personal data;
  - c. to the protection and respect of his/her privacy.

**Art.19**  
*(Remuneration)*

1. The remuneration provided for the position of director, whatever the employment relationship, shall be established by law or an act having the force of law and shall consist of the following items:
  - a. basic remuneration;
  - b. position-based remuneration;
  - c. performance-based remuneration;
  - d. allowance for fixed-term contracts;
  - e. seniority steps in the manner laid down in the rules of public employment, if the Director is part of the permanent staff.
2. The basic remuneration referred to in paragraph 1 letter a. shall be related to the job specification of director.
3. The position-based remuneration, referred to in paragraph 1, letter b., shall follow the assignment to an Organisational Unit, and shall vary in relation to the number of employees assigned, the financial flows managed, the professional skills required and the organisational complexity. This remuneration item shall be paid on the basis of the parameters indicated in the regulations governing the new functions of the individual Organisational Units and shall be proportionate to the basic remuneration.
4. The performance-based remuneration, referred to in paragraph 1, letter c., shall be based on the achievement of the objectives fixed in advance and shared with the Director. Such remuneration shall be conditional on the positive outcome of the assessment of achievement referred to in Article 22. The amount of the performance-based remuneration shall be related to the annual position-based remuneration.
5. The allowance for fixed-term contracts, referred to in paragraph 1, letter d., shall only be paid to Directors who are not part of the permanent staff, in any qualification or job specification, in the Overall Public Sector.
6. The remuneration referred to in the preceding paragraphs shall cover all the functions, tasks and assignments performed by the Director in relation to the Organisational Unit to which he/she is assigned.
7. A delegated decree shall regulate the amount of the basic remuneration, the cap and the impact of the additional items referred to in the first paragraph, as well as the modalities for the allocation and payment of the performance-based remuneration and the remuneration for the assignment to staff.
8. The amount and impact of the remuneration items referred to in this Article may be amended by means of a delegated decree.

**Art.20**  
*(Replacement of the Director)*

1. In the event of the Director's occasional absence of not less than 26 days and lasting, indicatively, up to three months, the management of the Organisational Unit shall be delegated to an employee already assigned to such Unit, who follows in hierarchical order and who holds a

functional position for access to which a degree is required, upon the order of the competent Head of Department or of the Director acting as Head of Personnel in the relevant Entity of the Overall Public Sector.

2. In the event of the temporary absence of the Director for a period exceeding the period envisaged in the preceding paragraph, the Congress of State shall either directly assign or delegate the assignment of this task to the competent Head of Department or to the Director acting as Head of Personnel of the Entity of the Overall Public Sector in favour of an employee who shall preferably already be assigned to the same Organisational Unit, and who shall hold a functional position for access to which a five-year university degree or a degree under the former system is required.

3. The procedures and criteria for the replacements referred to in the preceding paragraph shall be defined by a specific regulation pursuant to Article 13 of Qualified Law no. 186/2005 upon proposal of the Directorate General of Civil Service.

4. A Director who intends to be absent from duty for such a period that a replacement has to be arranged, or who intends to retire, shall give notice of it well in advance, including for the purpose of timely implementation of the necessary procedures.

## **Art.21**

### *(Staff assignments)*

1. A permanent Director or a Director with a fixed-term contract in force and until its natural expiration, may be called upon to perform, at the same time as the direction of the Organizational Unit or exclusively, upon order of the Congress of State, advisory, study and research, control or other specific assignments.

2. The activity referred to in the preceding paragraph may be assigned:

- a. in the event that the Administration intends to avail itself of Directors with specific expertise and professional skills for the implementation of particular projects;
- b. in the event of restructuring and reorganisation involving the modification or elimination of the Organisational Unit to which the Director is assigned or the modification or elimination of the post of Director held or the modification of its requirements. In this case, the Director shall have priority in the allocation of posts of Director that have become vacant, taking into account the nature and characteristics of the programmes to be implemented, the requirements and professional skills acquired in previous experiences;
- c. in cases of temporary incompatibility or in the presence of situations that do not allow the continuation of the assignment without causing damage to the Administration;
- d. upon request of the Director, in accordance with the needs of the Administration.

3. Staff assignments may only take place provided that the conditions set out in the preceding paragraph are justified.

4. The Congress of State shall periodically decide, based on the changing needs of the Administration, the maximum number and maximum duration of exclusive staff assignments with a view to the rational use of resources and the reduction of costs.

## **Art.22**

### *(Administrative-management assessment)*

1. The assessment of the administrative and management action of Directors shall be aimed at encouraging and motivating Directors. Therefore, it shall be designed to assess the effectiveness, efficiency and cost-effectiveness of the activities performed by the Director in the direction of the Organisational Unit, taking into account the plans and programmes assigned, as well as human resources and instruments available, in order to elaborate strategies to improve administrative action.

2. A delegated decree shall define the modalities, criteria and competences, the procedure for the assessment of the performance of Directors, with the aim of:



- a. improving the performance of Directors in relation to their job specification;
- b. carrying out the assessment of the probationary period, of the performance and the final assessment;
- c. defining the performance-based remuneration.

3. The criteria and modalities of the assessment shall be objective and transparent and shall provide for adequate information to and involvement of the Director. The assessment shall concern the performance of the Director in relation to the achievement of the objectives assigned, the results achieved in terms of appropriateness and quality of the services and orientation for users, the effectiveness of the organisational models adopted, the ability to motivate and guide collaborators, the management of the financial resources assigned, the improvement of services, and in any case the respect for duties and managerial and professional skills.

### **Art.23**

#### *(Transitional provisions. Tasks and Assignments)*

1. The employment relationships for posts of Director in the Overall Public Sector which, for whatever reason, are ongoing on the date of entry into force of this Law, shall be governed by this Law, as far as its regulatory aspects are concerned, from the date of its entry into force, subject to special rules insofar as they are compatible.
2. Within six months of the entry into force of this Law, the Congress of State shall decide on the tasks and assignments of the existing posts of Director to be appointed by the Congress of State, also for the purposes of their start and duration, in application of the provisions of this Law, without prejudice to their expiry on the date of entry into force of the legislation on the new missions and functions of Offices and Services. Until a decision is made in this regard, the tenure of the post being held and the ongoing assignment, in whatever capacity, shall be extended for both temporary and permanent Directors.
3. Those holding permanent posts of Director at the time of the entry into force of this Law shall be entitled to remain assigned to their respective permanent positions as set forth in Annex "A" to Law no. 106 of 17 September 1993, and subsequent amendments, unless a different decision is adopted due to the occurrence of circumstances allowing a modification of the assignment pursuant to Article 9 and Article 21.
4. Permanent Directors who, on the date of entry into force of this Law, are assigned to a specific post of Director within the personnel structure, if they have given their consent or consent to a different assignment due to the needs of the Administration, have the right to return to their permanent position upon expiry of the different assignment, and may return in advance if this is in line with the needs of the Administration.
5. For fixed-term employment relationships, new private law contracts shall be concluded on the basis of uniform models.
6. Directors with an ongoing employment relationship on the date of entry into force of this Law may continue in office even if they do not meet the requirements set forth in Article 6, letters c) and e).
7. Permanent Directors, who on the date of entry into force of this Law are assigned to a specific post of Director, may remain assigned to the position and under the conditions set forth in paragraph 3, even if the legislation on the new functions of the Organisational Units of the Overall Public Sector provides for a different qualification for the relevant position from that required by the regulations in force on the date of entry into force of this Law.
8. Until the definition of the new missions and functions of the Offices and Services within the framework of the reform of the Public Administration, the powers already envisaged for the respective Organisational Units shall continue to be held by the Directors.

## **Art.24**

### *(Transitional provisions. Remuneration)*

1. On the date of entry into force of the decree establishing the new remunerations referred to in Article 19 and the legislation on the new functions of the Organisational Units of the Overall Public Sector, the remunerations in force on that date, including any allowances, or remunerations, however denominated, ordered by means of a decision, shall cease to apply.
2. By means of the decision referred to in Article 23, paragraph 2, the Congress of State shall decide on remuneration by applying the rules in force before the entry into force of this Law.
3. With the entry into force of the rules referred to in the first paragraph, the Directors who, at the time of the entry into force of this Law, hold permanent posts of Director may maintain the remuneration referred to in the legislation in force prior to the date of entry into force of this Law, excluding any allowances and *ad personam* remuneration, or opt at any time for the new remuneration referred to in this Law. The option shall not be revocable.
4. Until the entry into force of the rules on the evaluation of Directors, performance-based remuneration may be paid following the achievement of the results set out in the act of appointment or in the contract, based on the evaluation of the Congress of State, upon proposal of the competent Minister, in accordance with the principles set out in Article 22.

## **Art. 25**

### *(Coordination provisions)*

1. The provisions of this Law shall constitute special provisions with respect to those on public employment, which shall apply insofar as they are compatible and for matters not expressly provided for.
2. This shall be without prejudice to any special provisions that may be laid down for Health Directors of the Social Security Institute.
3. Future organisational and regulatory acts of the Entities of the Overall Public Sector shall, in any case, transpose the remuneration regime laid down in this Law.
4. The powers provided for by this Law for the Department and Directorate General of Civil Service, on the one hand, and the Heads of Departments, on the other, shall be the responsibility of the Head of Personnel and Department Coordinators respectively, to whom the provisions of Laws no. 23/1995 and no. 28/1995 shall apply until new provisions are laid down in this regard.

## **Art. 26**

### *(Repeal)*

1. Law no. 118 of 23 October 1990, and any provision contrary to this Law shall be repealed.

## **Art. 27**

### *(Entry into force)*

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

*Done at Our Residence, on 31 July 2009/1708 since the Foundation of the Republic.*

THE CAPTAINS REGENT  
*Massimo Cenci - Oscar Mina*

THE MINISTER OF INTERNAL  
AFFAIRS

