



REPUBLIC OF SAN MARINO

DELEGATED DECREE no. 128 of 30 September 2013

(ratifying Delegated Decree no. 85 of 19 July 2013)

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

Having regard to promulgated Delegated Decree no. 85 of 19 July 2013 "Proceedings before the Court for Trusts and Fiduciary Relationships":

Having regard to Article 8 of Qualified Law no. 1 of 26 January 2012;

Having regard to Government's Decision no. 8 adopted in its sitting of 2 July 2013;

Having regard to the amendments made to the above-mentioned decree when ratified by the Parliament in its sitting of 26 September 2013;

Having regard to Parliament's Decision no. 3 of 26 September 2013,

Having regard to Article 5, paragraph 3 of Constitutional Law no. 185/2005 and to Articles 8 and 10, paragraph 2 of Qualified Law no. 186/2005;

Hereby promulgate and order the publication of the final text of Delegated Decree no. 85 of 19 July 2013,

as amended following amendments approved by Parliament when ratifying it

PROCEEDINGS BEFORE THE COURT FOR TRUSTS AND FIDUCIARY RELATIONSHIPS

CHAPTER I GENERAL PROVISIONS

Art.1 (Definitions)

1. In this Delegated Decree the following definitions apply:
 - a) "Court" means the "Court for trusts and fiduciary relationships" referred to in Constitutional Law no. 1 of 26 January 2012;
 - b) "Registry" means the Court Registry;
 - c) "President" means the President of the Court;
 - d) "Fiduciary relationships" mean the legal relationships falling under the jurisdiction of the Court;
 - e) "Judicial fee" means the judicial fee referred to in Law no.99 of 25 July 2003 and subsequent amendments and supplements.

CHAPTER II PROCEEDINGS

Art.2

(Bringing a case to Court)

1. Actions concerning fiduciary relationships shall be brought to Court by filing a statement of claim, which shall contain the claims and the related pleas of fact and law, as well as specify the evidence and documents that the claimant attaches to the statement of claim.
2. The statement of claim shall be filed with the Registry accompanied by, under penalty of inadmissibility, proof of payment of the following:
 - a) the judicial fee;
 - b) the registry fees in the amount established periodically by the President, as a general rule, also in relation to the value of the claim.
3. The Registry shall prepare the case file and submit it without delay to the President.
4. After establishing the total or partial non-payment of the judicial fee and the registry fees, the President shall grant to the defaulting party a period of twenty consecutive days to pay and hence resolve the situation of inadmissibility.

Art.3

(Conflicts of jurisdiction)

1. If the President considers that the case does not fall within the jurisdiction of the Court, he shall immediately inform the Head Magistrate of the Single Court thereof. If the latter agrees, the President shall also inform the claimant, calling upon him to bring the case before the ordinary judicial authority.
2. The Head Magistrate shall take the same action where the issue is raised by a Law Commissioner of the Single Court.
3. In the event of a conflict between the Head Magistrate and the President of the Court, the conflict shall be solved by the Guarantors' Panel on the Constitutionality of Rules. The rules on conflict of jurisdiction referred to in Qualified Law no. 55 of 25 April 2003 and subsequent amendments and supplements shall apply *mutatis mutandis*.

Art.4

(Commencement of the proceedings)

1. The President, by means of an unchallengeable decree, shall:
 - a) authorise the statement of claim; fix a date for the first hearing and for the second hearing; determine the language(s) of the proceedings which is/are more suitable in considerations of the facts of the case and the parties involved; determine whether the case shall be decided by a single judge or a panel, whose members and President shall be specified, or by the entire Court members;
 - b) determine the variable amount of the remuneration due to the judge or to the panel of judges deciding on the case;
 - c) determine the variable amount, depending on the complexity of the dispute and/or of the value of the claim and according to general criteria, which the claimant is required to pay within seven days for the proceedings to continue; such amount shall be in relation to the total remuneration and reimbursement of expenses due to the judge or to the panel of judges deciding on the case. The above-mentioned amount shall be

determined by the President who shall apply a 10% - 20% increase to the costs incurred by the State for the remuneration and reimbursement of expenses to the judges, as well as for registry costs;

- d) establish the modalities for the case file maintenance and its access by the lawyers;
 - e) notify the defendant to appear before the Court, specifying that in case of failure to appear, all subsequent notifications, with the only exclusion of those concerning new claims and the judgement, will be validly made by public posting.
2. Article 5 of Law no. 106 of 21 October 1988 shall not apply.
 3. Representation in proceedings, even by a foreign layer, shall be governed by the rules on San Marino civil procedure.

Art.5

(Time limits)

1. Any time limit shall be calculated in consecutive days with reference to calendar days.
2. The time limits expiring on a day in which the judicial offices are not open shall expire on the next opening day.

Art.6

(Service)

1. The President shall set out the methods of service. He may establish that service is effected by means of a collated telegram with acknowledgement of receipt, of a courier with proof of receipt, of a registered letter with acknowledgement of receipt or in other ways, other from the typical ones envisaged for ordinary civil procedure. Service shall take place in these forms whenever the recipient is not resident or domiciled in the Republic of San Marino, or whenever special circumstances or reasons of promptness, confidentiality or protection of dignity would make that advisable.
2. The President may allow that service is effected in the forms that are appropriate for the State in which it shall be effected.
3. All measures issued by the President or by the Court and the documents the service of which is ordered by the President shall be notified *ex officio*.
4. If an agent residing in the Republic has been appointed, pursuant to Law no. 42 of 1 March 2010, all the documents of the proceedings, including the judgements, may be served on the resident agent of the trustee and of the protector, having the same effect as personal service.
5. The parties to trial shall be considered as having an address for service in San Marino, at the business address of their lawyers. Service at this address shall have the same effect as personal service. The party withdrawing its address for service shall in any case continue to be served at that address for the purposes of the proceedings until a new address is given.
6. There is no obligation to serve any proceedings document personally on the recipient and Section III, Book II of *Leges Statutae* in the part stating that service shall be repeated in case of failure of personal service shall not apply to service effected under this Delegated Decree. Personal service shall, in any case, be always valid.

Art.7

(Precautionary and provisional measures)

1. A party may request the President, before the first hearing and subsequently at any stage of the proceedings, to issue, on a precautionary and provisional basis, any measure provided for by the ordinary civil procedure, or to impose or prohibit a conduct whenever there are reasonable grounds to fear that, during the time required to secure the claimant's rights, irreparable prejudice would be caused to such rights.
2. The President shall adopt such measures after collecting summary information and, where deemed appropriate, hearing the person against whom the measure is requested. If the measure is adopted without having heard such person, the President shall fix a date for the hearing for the parties to appear within a period not exceeding twenty-one days. At this hearing, the President shall confirm, amend or lift the measure. The President may request the claimant to provide a deposit.
3. Upon request of one of the parties, the President shall establish, by means of an enforceable decree, the sum of money owed by the person affected by the measure to the requesting party in the event of non-compliance or delayed compliance with the measure, considering the prejudice that such non-compliance or delayed compliance would cause to the value of the claim.
4. The measures of the President shall not be challenged, but they may be lifted or amended by the President in the course of the proceedings or by the judge who decides on the merits.

Art.8

(Proceedings)

1. At the first hearing the claimant shall have the burden of providing the statement of claim again. The defendant shall be entitled to file a pleading with objections and answers, containing all his defense arguments with respect to the facts and the reasons of the claimant and shall also specify the evidence and documents enclosed with his pleading and any counterclaims.
2. Where a party is requested by the other party or by the Court to produce a document, even if not common to the parties, it may produce it in a sealed envelope, leaving it up to the Court whether or not to open it and to disclose its contents to the other parties.
3. At the second hearing:
 - a) The Court:
 - 1) shall decide on any issue raised by the parties about the regularity of the cross-examination;
 - 2) may request clarifications on the facts and indicate the issues to be addressed;
 - b) The parties, at the direction of the Court, shall:
 - 1) produce documents;
 - 2) provide fully and definitively their requests and objections;
 - 3) request the admission of evidence.
4. At the end of the hearing the Court shall:
 - a) decide on the requests for evidence through a decree which can be always modified during the proceedings; fix, after hearing the parties, the schedule and procedures for the taking of evidence and, where necessary, for the questioning of one or more parties;
 - b) or fix the date of the trial pursuant to Article 9 hereunder;
 - c) or shall postpone the decision on the case.
5. If the case has not been assigned to a single judge, the Court may appoint a judge entrusted with the taking of evidence.
6. The hearings shall not be attended by persons other than the parties, their lawyers and advisers, provided that the latter are allowed by the Court. A witness shall have access to the hearing only for the time necessary for giving testimony.

7. The Court may try to reconcile the parties at any stage. If reconciliation is achieved, the minutes of the reconciliation, in the same format as a judgement, but also signed by the parties or by those who have the power to reconcile on their behalf, shall have the same effect as a final judgement which cannot be appealed against.

Art.9

(Trial)

1. When the Court considers that the state of the proceedings permits a decision, it shall fix the date for the trial.
2. On pain of exclusion from the trial, each party shall be obliged to submit a detailed draft of the issues it intends to discuss at least seven days before the trial.
3. The trial may also be held by video-conference, according to the Regulation on video conferencing issued by the President. In this case, the Regulation shall provide for the following:
 - a) the trial is initiated and conducted by the Court or by the President of the Panel, assisted by the Registrar or a delegate, in a courtroom of the Single Court of the Republic of San Marino;
 - b) each participant shall be allowed to identify the others, speaking in real time in the debate;
 - c) each participant shall be allowed to see, receive and transmit documents relating to the meeting.

Art.10

(Decision on the case)

1. If a case shall be decided by the Court as a collegiate body:
 - a) meetings of the Court shall be validly held also by video conference, initiated and managed according to the Regulation on video conferencing referred to in preceding Article 9;
 - b) the Court shall take its decision by majority vote;
 - c) the President of the Panel shall entrust a judge with the drafting of the judgement;
 - d) if the reasons for the decision are not agreed upon by all or the decision is not approved by all judges, each judge shall have the right to enclose with the judgement his own opinion, which shall form an integral part thereof.
2. The judgement shall specify which party shall bear the costs of the proceedings and may establish that the fees of the successful party's defence are borne, in whole or in part, by the unsuccessful party.
3. The judgement shall be rendered in the language or in one of the languages of the proceedings. However, at any time, at the request of a party or *ex officio*, the decision or the decision and the underlying reasons shall also be drawn up in the language of the State in which the judgement is to be enforced.
4. The judgement shall be issued in the name of the Most Serene Republic of San Marino and shall contain the invocation of God, in addition to the signature of the President of the Panel or of the single judge and the official seal.
5. The judgement shall be filed with the Registry, publishing it at the hearing established by the Court.
6. The judgement shall always be immediately enforceable.
7. Without prejudice to the right of the parties to immediately obtain a copy of the decision, the judgement may provide that:
 - a) it is not accessible to the public and that copies thereof are not released, even to the parties, without the authorisation of the President;

- b) a copy thereof, not containing the names of the parties and other persons involved in the case, as well as other elements that can lead to the identification of the parties or the subject matter of the case, shall be filed with the Registry, so that the parties and third parties may freely extract copies.
8. The President may always amend these provisions or issue them if they are not contained in the judgement.

Art.11
(Appeal)

1. The appeal may concern any point of law, without prejudice to the Court's factual findings, provided it is allowed under the subsequent paragraphs.
2. The unsuccessful party may request the President, within fourteen days from the publication of the judgement, to be authorised to appeal. The President, with a reasoned order, shall reject or grant permission to appeal solely by reason of the uncertainty of the legal issues decided or of their importance in general.
3. In the event of rejection of the authorisation to appeal, the appellant, in the subsequent fourteen days from the President's rejection, may ask the Judge of Appeal to give leave to appeal in any case.
4. The appeal shall:
 - a) be lodged with the Judge of Appeal within fourteen days of the granting of the authorisation to appeal;
 - b) be served on the parties at their domicile or, if appearing as parties in the proceedings at first instance, at the business address of their lawyers in San Marino, as provided for by Article 6, paragraph 5;
 - c) be followed, under penalty of unprosecutability, by deposit of the specific grounds of appeal within fourteen days from the lodging.
5. Within fourteen days after deposit of the grounds, the Judge of Appeal shall request the *consilium sapientis* (Council of Wise Men), identifying the wise man in the register drawn up pursuant to Article 7, paragraph 4 of Qualified Law no. 1 of 26 January 2012. The Judge of Appeal shall identify a single wise man when the first instance judgement has been delivered by a single judge, or a panel composed of three wise men when the judgement has been delivered by a panel or the entire Court.
6. The Judge of Appeal shall comply with the principles of law laid down by the wise man. Subsequent resort to extraordinary remedies shall be barred.
7. Appeal proceedings shall be concluded within ninety days from commencement. The period running from the date of the request for the *consilium sapientis* to the date on which it is obtained shall not be considered in the calculation of the above-mentioned time limit.
8. The provisions of Articles 3, 5, 6, 9 and 10 shall apply to the proceedings with appropriate adjustments.
9. The judgement delivered by the Judge of Appeal shall be final. The principle of common law on "two concordant decisions" shall not apply.

CHAPTER III
VOLUNTARY JURISDICTION

Art.12
(Jurisdiction and procedure)

1. The measures provided for in Articles 53, 54 and 55, paragraph 1, of Law no. 42 of 1 March 2010 and in Article 16 of Law no. 43 of 1 March 2010 shall be requested to the President and shall be

issued by the latter, after collecting summary information and, if deemed appropriate, after having heard the person against whom the measure is requested or other interested persons.

2. The President shall decide by means of an immediately enforceable decree.

3. The authorisation to appeal shall be governed by Article 11, paragraphs 2 and 3.

4. The appeal, if authorised, shall be made to the President, who shall refer it to a panel composed of three judges. The provisions on first instance proceedings before the Court shall apply, with appropriate adjustments, to such procedure.

CHAPTER IV COMPENSATION

Art.13

(Remuneration of the President, the judge and the consilium sapientis)

1. Any judge shall be remunerated for each case he has been appointed to handle. Said remuneration shall consist of a fixed and a variable amount. The fixed amount is determined in the manner specified in an ad-hoc regulation issued by the President, whereas the variable amount is established through the decree referred to in Article 4 above.

2. The *consilium sapientis* shall be remunerated for each *consilium* according to Article 4 of Law no. 4 of 21 January 2004.

Art.14

(Reimbursement of expenses)

1. The subsistence and accommodation costs incurred on the occasion of the hearings by the judge with contracted hotel facilities, shall be borne by the State.

2. The judge, on the occasion of the hearings, shall also receive the reimbursement of travel expenses if incurred, equal to the full amount paid for an economy-class air ticket and/or a first class train ticket from the city of residence to Rimini.

Art.15

(Budgetary provisions)

1. The revenues and expenses resulting from the application of the provisions of this Delegated Decree shall be charged to specific chapters of the State Budget to be established pursuant to the Budgetary Law or other budget adjusting measures.

CHAPTER V FINAL PROVISIONS

Art.16

(Transitional rules)

1. As long as the Court Registry is not set up with its own staff and resources, its functions shall be carried out by the Registry of the Single Court.

Art.17

(Application of the provisions)

1. The provisions of this Delegated Decree shall become applicable upon completion of the procedures referred to in Articles 3 and 7, paragraph 4, of Qualified Law no. 1 of 26 January 2012.

Done at Our Residence, on 30 September 2013/1713 since the Foundation of the Republic

THE CAPTAINS REGENT

Antonella Mularoni - Denis Amici

**THE MINISTER OF
INTERNAL AFFAIRS**

Gian Carlo Venturini