



REPUBLIC OF SAN MARINO

The Italian text shall be legally binding

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

Having regard to Article 4 of Constitutional Law no. 185/2005 and 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 26 February 2010:

LAW NO. 42 OF 1 MARCH 2010

AS AMENDED BY LAW DECREE NO. 98 OF 25 JULY 2013, BY LAW NO. 123 OF 5 AUGUST 2019 AND BY ARTICLE 17 OF LAW 19 NOVEMBER 2019 NO. 157

TRUST ACT

TITLE I GENERAL PROVISIONS

Art 1

(Definitions)

1 For the purposes of this Law, the following expressions shall mean:

- a) “resident agent”: a professional who is member of the Association of Lawyers and Notaries or of the Accountants’ Association of the Republic of San Marino, or a company with registered office in the Republic of San Marino, submitted to the anti-

money laundering obligations and having among its Directors or Auditors at least one of such professional;

- b) “Judicial Authority”: the Court for trusts and fiduciary relations of the Republic of San Marino;
- c) “Supervisory Authority”: the Central Bank of the Republic of San Marino;
- d) “asset”: any right, power, faculty or expectation susceptible to economic evaluation;
- e) “beneficiary with vested interests”: a person who has been granted rights, subject or not to conditions, on the trust fund or its income;
- f) “trust assets”: assets held in the trust fund;
- g) “capital”: trust assets, whether originally or subsequently held in the trust fund, their exchange or replacement, their increase and the income attributable to capital;
- h) “settlor”: the person creating a trust;
- i) “domicile”: the place where a person has established the center of his/her civil life;
- j) “trust fund”: all trust assets and inherent legal positions;
- k) “protector”: the person supervising the trustee’s actions and performing any other function assigned under the trust instrument;
- l) “Law”: this law and any subsequent amendment and supplement thereto;
- m) “residence”: the place where a natural person is resident or a company has its registered office;
- n) “trust for beneficiaries”: a trust created to the advantage of one or more beneficiaries;
- o) “purpose trust”: a trust created to accomplish one or more purposes;
- p) “foreign trust”: a trust whose applicable law is a law on trusts of a foreign State;
- q) “resident trustee”: a trustee resident in the Republic of San Marino;
- r) “non- resident trustee”: a trustee resident outside the Republic of San Marino.

Art 2

(Notion of trust)

- 1 A trust exists when a person holds assets in the interests of one or more beneficiaries, or for a specific purpose under this Law.
- 2 The fact that the settlor holds the office of trustee or reserves some rights or powers to himself/herself shall not be inconsistent with the existence of a trust.
- 3 The settlor and the trustee may be beneficiaries of the trust, but the trustee cannot be the only beneficiary of the trust.

4 The same trust instrument may establish trusts for beneficiaries and purpose trusts.

Art 3

(Scope of the Law)

1 The Law shall apply exclusively to trusts created voluntarily by the settlor.

Art 4

(Governing Law and recognition of foreign trusts)

1 The identification of the governing law and the recognition of foreign trusts created voluntarily by the settlor and evidenced in writing are disciplined by the Hague Convention of 1 July 1985 on the law applicable to trusts and on their recognition

Art 5

(Jurisdiction of the Republic of San Marino over trusts)

1 The Court shall exercise jurisdiction over trusts when the defendant has his/her domicile, residence or registered office in San Marino, or the trust is administered in San Marino, or the law applicable to the trust is the Law of the Republic of San Marino, or the parties have agreed to submit the dispute to the San Marino Court.

2 The jurisdiction of the Judicial Authority may be derogated in favour of a foreign judge, if such derogation is provided by the trust instrument or agreed in writing.

TITLE II TRUSTS

Chapter I

Creation, period and invalidity of trusts

Art 6

(Creation of trusts)

1. A written document *inter vivos* or a will are required for the creation of a trust. If the instrument is stipulated *inter vivos* it shall be either a notarial deed where the presence of witnesses is not required, or a private deed with signatures legalized by a Notary, attesting to its validity.

2. The trust instrument shall include the following elements:

- a) the settlor's intention to create the trust;
- b) the identification of the trustee;

- c) the identification of the resident agent, if the trustee is not resident;
- d) the identification of the trust assets or the criteria allowing their identification;
- e) the trustee's duty to inform the resident agent of any fact or act which shall result from the Trust Register of the Republic of San Marino;
- f) in the case of purpose trusts:
 - f.i) the identification of a specific purpose, achievable and not contrary to mandatory law, the public order and good morals;
 - f.ii) the identification of a protector having the duty to ensure that the provisions contained in the trust instrument are observed, or the criteria allowing to identify the protector;
- g) in the case of trusts for beneficiaries:
 - g.i) the identification of the beneficiaries, or the criteria allowing to identify them, or the identification of the person who has the power to identify the beneficiaries;
 - g.ii) the rules ensuring the presence of a protector, empowered to take action against the trustee in case of breach of duties when, for any reason, there are no beneficiaries and in the other cases envisaged by the Law;
- h) the criteria for the distribution of the trust fund upon termination of the trust for reasons other than the trust revocation.

3 Unless otherwise provided by the trust instrument, a trust shall be irrevocable.

4 The trust instrument and the acts of disposal through which trust assets are transferred may be drawn through a general or a special power of attorney, having the same form envisaged by the trust instrument.

Art 7

(Certificate of trust)

1 Within 15 days from the date of the trust creation, the resident trustee or the resident agent, on the basis of the information provided by the non- resident trustee, shall draw up a certificate containing:

- a) the name of the trust chosen by the settlor or, if failing, by the trustee;
- b) the indication as to whether the trust is revocable or irrevocable;
- c) the indication of the trustee and any limitations placed upon his/her powers;
- d) the indication of the protector, if so required, and the nature of his/her powers;
- e) the indication of the settlor;
- f) in the case of trusts for beneficiaries or also for beneficiaries, the indication of the beneficiaries with vested right on the trust fund, if any, or, if the trust instrument so provides, the names of the beneficiaries and of their rights on the trust fund;

- g) the date of the trust instrument and the period of the trust, if envisaged in the trust instrument;
- h) the governing law of the trust;
- i) one of the following indications:
 - i) “This instrument creates a trust for beneficiaries”;
 - ii) “This instrument creates a purpose trust”;
 - iii) “This instrument creates a trust for beneficiaries and a purpose trust”;
- j) in case of a purpose trust, the description of the purpose of the trust;
- k) indication of the resident agent, if so required.

2. The person keeping the Trust Register shall apply an administrative sanction ranging from a minimum of € 3,000.00 (three thousand/00) to a maximum of € 15,000.00 (fifteen thousand/00) to the resident trustee or to the resident agent failing to draw up the trust certificate within the time-limit established in paragraph 1.

Art 8

(Trust Register of the Republic of San Marino)

- 1 A Trust Register is established in the Republic of San Marino. The Register shall be kept by the Office of the Trust Register, set up by delegated decree to be issued within 120 days from the date of entry into force of the Law.
- 2 The Office of the Trust Register may issue certificates about the information contained in the Register. The procedures relating to the issuing of certificates shall be set out by means of the delegated decree referred to in the preceding paragraph.
- 3 The Notary who has legalized the certificate related to the trust instrument shall deposit it with the Office of the Trust Register within 10 days from the date of legalization.
- 4 The Office shall register the trust in the Register, by transcribing the certificate, and shall forward to the Notary the certificate attesting to the registration of the trust.
- 5 If the Notary fails to deposit the certificate within the time-limit specified in paragraph 3, the resident trustee or the resident agent shall proceed autonomously within the following 10 days.
- 6 The resident trustee or the resident agent shall request the cancellation of the trust from the Register within 20 days:
- a) from the assignment of the trust fund to the entitled persons, subsequent to the termination of the trust;
 - b) from the change in the governing law of the trust, without prejudice to the provisions referred to in Article 56;

- c) from the discovery of a cause of invalidity relating to the trust instrument or from its judicial finding by a court.

7 The failure to cancel the trust cannot be upheld against third parties, unless they knew about the existence of the reason for the trust cancellation.

8 The person keeping the Trust Register shall apply an administrative sanction ranging from a minimum of € 2,000.00 (two thousand/00) to a maximum of € 10,000.00 (ten thousand/00) to the Notary, the resident trustee and the resident agent failing to register the trust within the time limits laid down by paragraphs 3 and 5 respectively. The resident trustee or the resident agent omitting to request the cancellation of the trust from the Register when the conditions referred to in paragraph 6 apply, shall be subject to the same administrative sanction. For the resident agent, the time limit shall start to run when he/she receives notification of the occurrence of the events referred to in paragraph 6.

Art 9

(Period of trust)

1 A trust shall come into effect when the trustee becomes holder of some trust assets, and it shall not last more than one hundred years from the date of the trust instrument, unless it is a purpose trust.

2 If the instrument establishing a trust for beneficiaries does not provide for its period or provides for a period exceeding one hundred years, the trust shall last one hundred years.

Art 10

(Invalidity of trusts)

1 A trust shall be invalid when:

- a) the trust instrument is contrary to mandatory law, public order or good morals;
- b) the trust instrument does not meet the requirements envisaged by Article 6, paragraph 1 of the Law;
- c) the requirements set forth by Article 6, paragraph 2 of the Law are failing or are unspecified in the trust instrument;
- d) the requirements envisaged by Article 7 of the Law are failing in the trust instrument, except for those requirements for which the Law otherwise provides;
- e) the trust instrument or the transfer of assets to the trustee is a sham.

2 The invalidity shall be put right when its cause has been removed.

- 3 A trust shall also be invalid if the trust assets or a part thereof were used or were intended to be used to commit an action constituting an offence under San Marino law, or they represent the price, product or profit thereof.
- 4 The invalidity can be invoked by anyone having an interest therein, and may be declared *ex officio* by the Judicial Authority. The relevant action shall not be subject to any limitation period.
- 5 The invalidity of a trust shall not be detrimental to third parties who, in good faith, have acquired rights for value from the trustee after the registration of the trust in the Register referred to in Article 8.
- 6 The invalidity of any provision shall entail the invalidity of the whole trust instrument if it results that the settlor would not have created the trust without the invalid provision of the trust instrument.
- 7 The invalidity of any provisions shall not entail the invalidity of the trust instrument when the invalid provisions are replaced by mandatory provisions established by law.
- 8 A trust shall be invalid in the cases envisaged by San Marino law as causes of invalidation for defects of will of acts with patrimonial contents.

Art 11

(Trust Fund)

- 1 Any asset under the Law may be included in the trust fund without need of public notice (*insinuatio*).
- 2 Assets held by the trustee in the exercise of his/her office shall belong to the trust fund. Such assets shall include:
 - a) those resulting from acts carried out by the trustee, including investment and disinvestment activities;
 - b) those resulting from the proceeds and income generated by the aforesaid assets.
- 3 Any profit made by the trustee as a result of acts or omissions carried out in breach of his/her duties shall also be included in the trust fund.
- 4 Unless otherwise provided for by the trust instrument, a trustee may accept assets to be included in the trust fund from anyone having an interest thereof.

Art 12

(Separation of assets and dedicated fund)

1 The trust fund shall be separate from the personal assets of the trustee and from those relating to other persons or other trusts. In particular:

- a) trust assets shall not be subject to any action by personal creditors of the trustee;
- b) in case of bankruptcy or insolvency proceedings concerning the trustee, the trust assets shall be separate from the other assets belonging to the trustee, and the personal creditors of the trustee shall have no recourse against the trust assets;
- c) trust assets shall be neither subject to the matrimonial property regime of the trustee nor part of the trustee's estate upon his/her death.

2 At his/her discretion, the trustee may divide the trust fund into several sub-funds, unless otherwise provided by the trust instrument.

3 The trustee shall manage and administer the trust fund for the benefit of one or more beneficiaries or for one or more purposes.

4 The trustee shall carry out any necessary formality to protect the effectiveness of the fund destination unless otherwise provided by the trust instrument.

Chapter II

Amendment, revocation and termination of trusts

Art 13

(Amendment of the trust instrument)

1 The trust instrument may provide that the provisions contained therein and the choice of the governing law may be amended in the interest of the beneficiaries or to promote the purpose of the trust.

2 Any amendment to the trust instrument shall be subject to the requirements envisaged by Article 6, paragraph 1 of the Law.

3 Anyone making or receiving amendments to the elements indicated in the certificate referred to in Article 7 shall inform the trustee thereof within thirty days from the date when such amendments are made or received. If the trustee is not resident, he/she shall inform the resident agent within fifteen days from the date when he/she has made or received such amendments.

4 The person holding the Trust Register shall apply the administrative sanction ranging from a minimum of € 2,000.00 (two thousand/00) to a maximum of € 10,000.00 (ten thousand/00) to the person non abiding by the communication duties described in the preceding paragraph.

5 The resident trustee or the resident agent shall inform the Office of the Trust Register of any amendment relating to the elements specified in the certificate referred to in Article 7 by means of a certification, within fifteen days since he/she has made or received such amendments. The Office shall make the relevant notes on the original certificate.

6 The certificate is signed by the resident trustee or by the resident agent with signature legalized by Notary, attesting that the signature is true.

7. The person keeping the Trust Register shall apply an administrative sanction ranging from a minimum of € 2,000.00 (two thousand/00) to a maximum of € 10,000.00 (ten thousand/00) to the resident trustee or the resident agent failing to make within the time-limit the communications required at paragraph 5.

8. At least once every six months, in March and in September of each year, the resident agent shall ask the non- resident trustee to inform him/her of any change as to the elements contained in the certificate referred to in Article 7, through registered mail which shall also be forwarded, for information, to the Office of the Trust Register.

9. The administrative sanction ranging from a minimum of € 2,000.00 (two thousand/00) to a maximum of € 10,000.00 (ten thousand/00) shall be applied by the Office of the Trust Register to the resident agent not properly complying with the duty imposed at the preceding paragraph.

10. The amendments in the trust instrument shall have no impact on the acts that the trustee has validly operated before such amendments.

Art 14

(Revocation of trusts)

1 The trust instrument may provide that the trust is revocable.

2 Revocation shall require the same procedure envisaged to amend the trust instrument, and shall be notified to the Register by the resident trustee or the resident agent in accordance with Article 8 of the Law.

3 If the trust is revoked, the trustee shall transfer the trust assets in accordance with the provisions of the trust instrument and, in absence thereof, to the settlor or his/her successors.

4 Revocation shall not be detrimental to the effectiveness of acts performed by the trustee in accordance with the law and the trust instrument prior to the notification of the revocation.

Art 15

(Termination of trusts)

- 1 Besides the reasons envisaged by the trust instrument, a trust shall terminate:
 - a) on expiry of the term;
 - b) by virtue of the declaration of revocation;
 - c) if it is a purpose trust: when the purpose has been achieved, or it is not possible to achieve it;
 - d) if it is a beneficiary trust:
 - d.i) when there are no beneficiaries and persons who can be beneficiaries, or persons who can identify the beneficiaries;
 - d.ii) when at least one beneficiary fails to come into existence within the time-limit specified by Article 48 paragraph 1;
 - iii) when the trust is terminated by the beneficiaries under Article 50 paragraph 3.
 - e) if the trust fund is exhausted.
- 2 The termination of a trust shall not be detrimental to the effectiveness of the actions previously performed by the trustee in accordance with the trust instrument and with the applicable law.
- 3 When the trust is terminated in accordance with paragraph 1, letters (d), (i) or (ii) above and the settlor's successors are failing, trust assets shall be transferred to the State of San Marino.

Art 16

(Distribution of trust assets)

- 1 Once one of the events leading to the trust termination has occurred, the trustee shall bring to end any operation under way and shall not start new ones.
- 2 Once his/her final report and the trust fund inventory have been drawn up, the trustee shall transfer the fund to the entitled persons according to the provisions of the trust instrument. If the provisions of the trust instrument cannot be applied to the whole fund, the trustee shall transfer the residual trust assets to the settlor or his/her successors or, if failing, to the State of San Marino.
- 3 Any obligation owed by the trustee shall pass *de jure* to the person to whom the trust fund is transferred, up to the limit of the value of the assets received.

**TITLE III
PARTIES TO THE TRUST**

**Chapter I
Trustees**

Section I
Appointment and authorization to exercise the office

Art 17

(Acceptance and refusal of the appointment to the office of trustee)

1 A trustee appointed by the trust instrument may expressly or tacitly accept the appointment to the office. Acceptance shall be express when it is contained in a written document, or when the person appointed undertakes the office of trustee in relation to third parties. Acceptance shall be tacit when the person appointed makes an act suggesting his/her intention to accept the office.

2 A person not having the intention to act as a trustee may refuse the office expressly, by means of a written declaration sent to the settlor or to his/her successors, or to the trustees already in office.

Art 18

(Qualifications for a trustee)

1 The office of trustee may be held by one or more natural or legal persons, none of whom shall be a trustee of more than one trust subject to the Law, or by one or more natural or legal persons identified as obliged parties in the framework of the anti-money laundering regulations in force in the Republic of San Marino or in other States, in order to implement the European Union Directives or other provisions substantially equivalent to them.

2 The professional exercise of the office of trustee in the Republic of San Marino shall be governed by a delegated decree.

Art 19

(Appointment of a new trustee)

1 A new trustee shall be appointed in accordance with the provisions of the trust instrument or, if failing, by the Judicial Authority.

2 Unless otherwise provided by the trust instrument, if the trust has a plurality of trustees, a new trustee shall be appointed unanimously by the trustees holding the office. In case of disagreement, the Judicial Authority shall appoint the new trustee.

3 The appointment of a new trustee shall be notified in the form of an extract, by means of a legalized deed deposited with the Trust Register within 15 days from the appointment.

4 The new trustee shall replace or, if there are other trustees, shall become a co-owner of the trust fund together with the other trustees, and the outgoing trustee or the other trustees shall take, without delay, any necessary action to enable him/her to exercise his/her own rights and powers, and provide him/her without delay with all the documents relating to the trust.

Section II **Duties of trustees**

Art 20

(Good faith and diligence)

1 A trustee shall fulfil the duties and exercise the powers relating to his/her office in good faith and with the diligence of a good family father who shall take care of the interests of third parties.

2 With respect to trustees who professionally carry out this activity or other persons having professional skills and qualifications, diligence shall be assessed with regard to the professional nature of the activity performed.

Art 21

(Protection of trust assets)

1 The trustee shall assure that he/she has the legal ownership of the trust assets. He/she shall protect the integrity and ownership of the trust assets, by taking all necessary or useful actions for such purpose.

2 The trustee shall keep the trust assets separate from any other asset at his/her disposal, including those relating to other trusts.

3 The trustee shall deposit any bearer security with banks or with other deposit holders authorised to keep securities in custody and required to comply with anti-money laundering legislation.

Art 22

(Management of trust assets)

1 Unless otherwise provided by the trust instrument and allowed by the nature of the trust assets, the trustee shall manage the trust assets with a view to preserving and increasing their value, by diversifying investments and evaluating their composition on a regular basis, with the assistance of persons having specific professional skills and qualifications in the field of asset management.

2 The trust instrument may limit or exclude the power of the trustee to invest, manage or dispose of the trust assets.

Art 23

(Conflict of interests and patrimonial advantage)

1 Before accepting the office, a person appointed as a trustee by means of an *inter vivos* instrument shall inform the settlor in writing of any possible cause of conflict of which he/she is aware between the interests he/she holds in any respect and those of the beneficiaries or the purpose of the trust.

2 A trustee appointed by will who is in a position of conflict of interests shall promptly inform the Judicial Authority, which shall adopt the appropriate measures to protect the interests of the beneficiary or the purpose of the trust.

3 Unless otherwise provided by the trust instrument, a trustee cannot act in case of conflict of interests with one or more beneficiaries or with the purpose of the trust.

4 The trustee cannot, even through a third party:

- a) acquire the legal position of beneficiary or accept it under guarantee;
- b) draw up deeds relating to the trust assets with himself/herself, except if he/she acts as the trustee of another trust and this is allowed by the trust instrument;
- c) be competitor on his/her own behalf, or on behalf of third parties, in the business activity carried out as a trustee.

5 Unless otherwise provided by the trust instrument, a trustee may conclude agreement with himself/herself if it is a company authorised to carry out banking or financial activities and it draws up agreements relating to its own business activity.

Art 24

(Duty of impartiality - Derogation)

1. Unless otherwise provided by the trust instrument, when a trust has more than one beneficiary or has more than one purpose, the trustee having discretionary powers may advantage only one or more beneficiaries.

Art. 25

(Duty of confidentiality towards third parties)

1. The trustee shall never disclose to third parties any information in his/her possession by reason of his/her office or use them for his/her own benefit or for the benefit of third parties, unless to abide by law, by the trust instrument provisions or by the anti-money laundering legislation.

Art 26

(Accounting and inventory)

1 A trustee shall keep regular and complete accounting of the facts concerning the trust assets.

2 A trustee shall assess the market value of the trust fund on a regular basis according to the methods and applying the criteria set out by relevant delegated decree to be issued within 120 days from the date of entry into force of this Law.

3 By 31 March of the subsequent year, the trustee shall annually draw up and transcribe in the Book of Events:

- a) the trust's balance sheet;
- b) the inventory of the trust fund;
- c) a report containing the summary and the description of the main events changing the size and composition of the trust fund.

4 Different provisions of the trust instrument shall prevail.

Art 27

(Communications)

1 The balance sheet, the inventory and the report referred to in Article 26 shall be sent by the trustee to the protector of the purpose trust and to the protector of the trust for beneficiaries, if existing.

2 Unless otherwise provided by the trust instrument, in the trust for beneficiaries the trustee is required to inform each beneficiary holding vested interests of:

- a) the existence of the trust, the name and domicile of the trustee, and the provisions of the trust instrument envisaging such a right;
- b) all acts or facts amending or terminating such a right;
- c) upon request of a beneficiary, within an adequate time limit, an inventory limited to the trust assets in respect of which the beneficiary claims a right, and an estimate of their market value comparable to the value claimed by the beneficiary.

3 The communications referred to in the preceding paragraphs shall not involve persons representing minors, unborn or conceived children, unless required by the trust instrument.

4 If the trust instrument excludes or radically limits the duties referred to in paragraph 2, it shall ensure that there is always a protector entitled to file legal actions against the trustee in case of breach of duty.

Art 28

(Book of Events)

1. The trustee shall create, update and keep the Book of Events of trust, in which he/she shall register, in chronological order, the acts and events of which he/she is aware relating to the trust. In any case, the Book of Events shall contain:

- a) any information which the non- resident trustee has provided to the resident agent;
- b) a description of the events concerning the beneficiaries and the purpose;
- c) a description of the trust assets;
- d) the assignments made in accordance with the trust instrument;
- e) the acts of delegation;
- f) the proceedings in which the trustee is a party in such capacity;
- g) the disagreement expressed under Article 30 or Article 52;
- h) the documents referred to in Article 26, paragraph 3, subject to Article 26, paragraph 4;
- i) the changes in the trustees or protectors;
 - j) the exercise of the powers relating to the identification of beneficiaries and the attribution of vested rights.

2. *suppressed*

3. The Book of Events of Trust shall be numbered progressively on every page and legalized on every sheet.

4. The procedures for the legalization shall be set forth by delegated decree, to be issued within 120 days from the date of entry into force of the Law.

5. The Book of Events shall be shown, upon request, to the protector and the Judicial Authority, as well as to the Supervisory Authority in accordance with the provisions issued by the latter.

6 The trust instrument may confer upon other persons the right to consult the Book of Events and to take extracts from it.

Art. 28 bis

*(Termination of the mandate of
the resident agent)*

1. If a resident agent ceases to hold office, the trustee shall appoint a new one within thirty days.
2. A sanction of € 5,000.00 (five thousand/00) shall be imposed on the trustee failing to appoint the new resident agent within the time-limit set forth in the first paragraph of this Article and the trustee shall be required to carry out all the fulfillments pertaining to the resident agent.
3. Articles 39 and 41 of the Law shall apply to the resident agent, where applicable.

Art 29

(Fulfilment of publicity requirements)

1 Unless otherwise provided by the trust instrument, a trustee shall fulfil any necessary requirement for publicity to make known that he/she holds the trust assets in his/her capacity as a trustee or, in any case, to make the existence of the trust be known according to the law of the place where the assets are held.

Art 30

(Plurality of trustees)

- 1 Each trustee shall have the right to take part in the decisions to be adopted unanimously or by majority.
- 2 Unless otherwise provided by the trust instrument, when a trust has a plurality of trustees, they shall act upon a decision made jointly and unanimously, but each one shall have the power to take urgent actions for the preservation of the trust assets.
- 3 If the trust instrument allows the trustees to make decisions by majority, the dissenting trustee shall note his/her dissent in the Book of Events of Trust.
- 4 When a trust may be administered disjointly, every action relating to the trust assets shall be communicated in advance by the trustee concerned to the other trustees. Any trustee dissenting from the action intended to be taken by one trustee shall have his/her dissent noted in the Book of Events of Trust.

**Section III
Trustee's powers**

Art 31

(Trustee's powers)

- 1 The trustee shall exercise all powers conferred upon the entitled person, except for the limitations noted in the Trust Register.
- 2 The trustee shall have standing to sue and to be sued in such capacity.

Art 32

(Power of consultation)

- 1 A trustee may ask for professional advice on acts to be performed in respect of the trust and entrust the advisors with professional services.
- 2 The trust instrument may provide that the trustee consults with or obtains the consent of a third person before exercising a particular power.
- 3 A person shall not become a trustee merely because he/she has been consulted, or because he/she has given or refused to give his/her consent pursuant to the preceding paragraph.

Art 33

(Power of delegation)

- 1 Unless otherwise provided by Law or by the trust instrument, a trustee may delegate his/her own powers relating to the execution of actions or operations concerning the management of the trust fund and acts concerning the disposal of the trust assets.
- 2 The following powers cannot be delegated:
 - a) the power to decide how and when trust assets shall be assigned to beneficiaries;
 - b) the power to appoint a new trustee;
 - c) the power of delegation.
- 3 In managing the trust, a trustee may delegate the decision about investments only to banks and investment companies which are subject to prudential supervision and are not established or administered in countries identified under special provisions by the Supervisory Authority. Such banks and investment companies shall select investments according to the criteria specified by the trustee in a specific document.
- 4 A power delegated to more than one person shall be considered to have been delegated jointly.
- 5 Anyone being delegated to exercise a power under this Article shall comply with the same duties as the trustee under Sections II and III of this Chapter.

6 A trustee may delegate powers to beneficiaries, but only when the trust has a protector entitled to take action against the trustee and the protector agrees.

7 A trustee shall supervise the action of the person delegated and shall be answerable for the instructions and orders given to the latter.

8 Any beneficiary or the protector may take action directly against the person delegated.

9 If more than one trustee has been appointed, each trustee may delegate the exercise of his/her own office to other trustees, provided that there are at least three trustees. The delegation cannot last longer than one year and shall not be effective if it is made to allow or to help other trustees to breach the duties arising from the trust.

10 If there is more than one trustee, the trust instrument may provide that the administration of the trust fund and the acts concerning the disposal of the trust assets be delegated to only one of them, with exemption of the other trustees from liability for the acts performed by the delegated trustee. However, the delegated trustee shall be required to annually inform the other trustees of all actions carried out in order for the annual balance sheet to be drawn up jointly.

Art 34

(Form and content of the instrument of delegation)

1 An instrument of delegation, under penalty of nullity, shall:

- a) be in written form and dated;
- b) identify the person delegated;
- c) identify the trust;
 - d) specify the powers delegated;
 - e) specify the date from which it comes into effect and the period or the occasion on which it is given.

2 Unless otherwise provided by the trust instrument, the trustee cannot make a delegation of power which:

- a) allows the person delegated to appoint his/her own substitute;
- b) exempts the person delegated from liability or limits his/her liability against the trustee or the beneficiaries beyond the limits provided for the trustee;
- c) makes the delegation irrevocable;
- d) allows the person delegated to act in conflict of interest with the beneficiary or with the purpose of the trust.

3 If the trust has a single trustee, the trustee shall communicate in writing the delegation of power, without delay, to the person having the powers to appoint new trustees.

Art 35

(Power to insure trust assets)

1. Unless otherwise provided by the trust instrument, the trustee shall insure trust assets which are liable to perish or be damaged. Insurance premiums and compensations may be charged either to capital or to income, according to the trustee.

Art 36

(Power to make advancements to beneficiaries)

1 Unless otherwise provided by the trust instrument and if the trust assets consist mainly of money or other easily liquidable assets, the trustee may make advancements to a beneficiary having vested rights on the trust fund, in order for him/her to be able to face significant events in his/her own life.

2 In any case, the trustee shall take such advancements into account in making further advancements in favour of the same beneficiary and when the fund is finally distributed.

Art 37

(Power to accumulate fruits and income)

1 The trust instrument may oblige or empower the trustee to increase the capital by accumulating all or part of the income or fruits of the trust fund for a certain period.

2 Unless otherwise provided by the trust instrument, a trustee may always use the fruits and income of the trust fund in order to maintain, educate or otherwise for the benefit of beneficiaries with vested rights who are minors or incapable.

Art 38

(Remuneration, costs and expenses of trustees)

1 The trustee remuneration shall be determined in the trust instrument and paid out of the trust fund. The trustee shall not be entitled to remuneration for the services rendered if the trust instrument does not provide for remuneration nor establish the modalities for the determination of the remuneration.

2 The sums necessary to pay the expenses incurred by the trustee in the exercise of his/her office shall be paid out of the trust fund.

3 The trustee shall satisfy the credits concerning his/her remuneration or the expenses with priority respect to what is due to the beneficiaries.

Section IV
Termination of the trustee mandate and transfer of trust assets

Art 39

(Termination of the trustee mandate)

1 In addition to the grounds provided by the trust instrument, the trustee shall cease to hold office if:

- a) he/she is removed from office in accordance with the provisions of the trust instrument;
- b) he/she resigns, with the modalities provided for by the trust instrument or, failing such provisions in the trust instrument, by means of a written communication bearing a specific date to be sent to his/her co-trustees, if any, to the protector, if any, and, in the case of trust for beneficiaries, to the beneficiaries with vested rights;
- c) he/she is replaced by order of the Judicial Authority;
- d) he/she becomes subject to bankruptcy or insolvency proceedings;
- e) he/she dies or cannot hold the office due to health reasons;
- f) he/she is subject to winding-up procedures, if the trustee is a legal person or a different entity.

2 Unfitness of a person to hold office due to health reasons shall be determined and proven by a specialistic medical panel appointed in accordance with the trust instrument provisions, or, failing them, by the Judicial Authority. The panel shall assess whether a person is unfit to hold the office due to a not merely temporary impediment affecting the trustee's ability to act in a clear and efficient manner.

3 Resignation by a trustee in order to allow or to ease the breach of duties by the other trustees shall have no effect.

Art 40

(Transfer of trust assets)

1. In derogation to the rules of *ius commune* concerning delivery:

- a) whenever a trustee is replaced by another trustee, the trust fund is transferred by law to the new trustee;
- b) when a trustee ceases to hold office, the trust fund remains in the ownership of the remaining trustees;
- c) when a trustee is added, the trust fund becomes the common property of all the office-holders.

- 2 When a cause for ceasing to hold office occurs, a trustee shall without delay carry out all the acts necessary to give effect to the provisions above.
- 3 In case of death or inability of a trustee to continue in the office, his/her heirs, the legal representative or those who assist him/her shall fulfil such obligations without delay.
- 4 The new trustee shall replace the ceased trustee in every pending law-suits.

Art 41

(Delivery of records and documents)

- 1 The ceased trustee shall deliver without delay all the documents belonging to the trust to the remaining trustees or the new trustee.
- 2 In case of death or inability of the trustee, his/her heirs, the legal representative or those who assist him/her shall fulfil such obligations.

Section V Liability of trustees

Art 42

(Failure to comply with the obligations required by law and the trust instrument)

- 1 Unless otherwise provided by the trust instrument, a trustee not complying with his/her duties shall be bound, upon request of a beneficiary or the protector, to pay an indemnity for damages and loss caused to the trust fund or to the acting beneficiary, unless he/she proves that the loss is due to a reason for which he/she is not liable.
- 2 Indemnity shall include both damage and loss of profits.
- 3 The trustee shall not be not exempt from liability merely because the loss is wholly or partly compensated by profits resulting from the non-fulfillment, unless the profits derive from the same act producing the loss.
- 4 The trustee shall not be liable for breaches committed by other persons prior to his/her appointment. However, the trustee becoming aware of the breaches committed shall take all reasonable steps to have such breaches remedied.
- 5 Except as provided by Article 33, paragraph 7, the trustee shall not be liable for any failure by delegated persons, if the delegation was given in good faith and with appropriate care.

Art 43

(Liability of trustees)

1 Trustees shall be jointly liable for losses and damages resulting from breaches of law and of the trust instrument, committed in the exercise of their office.

2 Unless otherwise provided by the trust instrument, a trustee shall not be liable for damages created by a different trustee, if the former has noted his/her dissent in the Book of Events of Trust and has immediately informed the person indicated in the trust instrument or, failing such person, the beneficiaries with vested rights and the protector, where appointed.

3 In any case, trustees shall be jointly liable if, being aware of a breach, they have not done what they could have done to avoid the breach or to prevent or mitigate its harmful consequences.

Art 44

(Joint liability of beneficiaries)

1 The beneficiary inducing, requesting or authorizing the breach of duties by the trustee shall be jointly liable with him/her.

Art 45

(Exemption from liability)

1 Any provision of the trust instrument and any agreement exempting from or limiting in advance the trustee liability for fraud or gross negligence shall be void.

2 A beneficiary may exempt a trustee from liability for losses caused to him/her, if he/she is fully aware of the facts.

3 Under the same circumstances, a beneficiary may take upon himself/herself the debts of the trustee being liable for breaches committed without fraud or gross negligence.

Art 46.

(Limitation periods)

1 The right to compensation for damages shall expire after five years from the time a beneficiary or, failing him/her, the protector becomes aware of the facts generating the trustee liability.

Art 47

(Trustee liability for obligations towards third parties)

1 Any person other than the other trustees, the beneficiaries or the protector, holder of rights against the trustee resulting from obligations undertaken or acts carried out by the trustee having made known his/her capacity as a trustee, or from acts or facts pertaining to such capacity, may satisfy his/her claims only on the trust fund.

2 The trustee shall be entitled to reimbursement from the trust fund, with preference to any other person, for any obligation he/she has personally fulfilled, unless he/she is obliged to compensate the fund or any beneficiary, or any request for compensation is pending against him/her.

**Chapter II
Beneficiaries**

Art 48

(Legal position)

1 A trust shall be terminated if, no beneficiary being alive at the time of the trust creation, no beneficiary comes into existence within the next thirty years.

2 The trust instrument may provide that one or more persons are added or excluded as beneficiaries, determining the person who will make the decision and the form the decision shall have.

3 The trust instrument may submit the legal position of beneficiaries to conditions or time-limits.

4 The trust instrument may provide that the rights of a beneficiary with reference to the trust fund or to its income

- a) shall be neither subject to seizure or attachment or included in the bankruptcy assets when bankruptcy or insolvency proceedings take place; or
- b) shall last until one of his/her creditors makes seizures or attachments, or the beneficiary becomes subject to bankruptcy or insolvency proceedings, with the consequence that such rights cease to exist or are overtaken by other beneficial positions.

5 Anyone who receives or may receive assets or advantages from a purpose trust shall not be granted the legal position of beneficiary.

Art 49

(Rights of beneficiaries)

1 Unless otherwise provided by the trust instrument, every beneficiary with vested rights shall be entitled to examine all the documents concerning his/her own rights and make a copy thereof.

2 A trustee shall not be not required to disclose to the beneficiaries the reasons why he/she has exercised in a particular way a discretionary power given to him/her, nor shall be required to communicate acts or documents which may disclose such reasons, unless disclosure or communication is ordered by a court.

Art 50

(Disclaimer, postponement assignments and termination of the trust by beneficiaries)

1 A beneficiary may wholly or partly disclaim his/her legal position through an instrument in the forms envisaged by the trust instrument. Such disclaimer shall have irrevocable effect from the date it is notified to the trustee.

2 Unless otherwise provided by the trust instrument, a beneficiary may request in writing to the trustee to postpone the transfer of the trust assets in his/her favour or to transfer the trust assets to the person designated by him/her.

3 Unless otherwise provided by the trust instrument, all beneficiaries with vested rights fixed on the trust fund or, failing them, all beneficiaries, may require the trustee to terminate the trust and transfer the trust assets to themselves or according to their indications.

Art 51

(Acts of disposal of the legal position of beneficiary)

1 Unless otherwise provided by the trust instrument, a beneficiary may alienate, give as a guarantee or otherwise dispose, in whole or in part, of his/her legal position through instruments taking effect against the trustee when notified to him/her or, in case of a beneficiary with vested rights not limited to his/her life, also through will.

2 If a beneficiary makes more than one act of disposal *inter vivos* in favour of different persons, the first act which is notified to the trustee shall prevail.

Chapter III

Protector

Art 52

(The office of protector)

- 1 The instrument establishing a purpose trust shall provide the office of protector and shall entitle him/her to act against the trustee in case of breach of duties.
- 2 The instrument creating a trust for beneficiaries may provide the office of protector, but it shall provide for it for any period during which existing beneficiaries are failing.
- 3 A protector shall fulfil his/her own obligations and duties and exercise the powers relating to the office in good faith and with the diligence of a good family father. If he/she has professional skills, the degree of diligence shall be assessed according to the professional nature of the activity carried out. Unless otherwise provided by the trust instrument, powers conferred upon a protector shall be fiduciary powers.
- 4 The trust instrument may provide for remuneration of the protector. Unless otherwise provided by the trust instrument, the protector shall be entitled to reimbursement of his/her expenses and costs incurred in fulfilling the duties pertaining to his/her office.
- 5 The trust instrument may confer upon a protector a number of powers, including the powers:
 - a) to appoint a new or an additional trustee;
 - b) to appoint a new protector to be added to him/her if necessary;
 - c) to remove a trustee from office;
 - d) to put a veto over the exercise of certain powers by the trustee;
 - e) to add or exclude beneficiaries;
 - f) to amend the law governing the trust;
 - g) to audit trust accounts.
- 6 The exercise of any of the powers referred to in paragraph 5 shall not confer upon a protector the office of trustee.
- 7 A protector may be one of the beneficiaries with vested rights.
- 8 Unless otherwise provided by the trust instrument, if there is more than one trust protector, they shall decide by majority. Each protector shall be entitled to take part in the decision-making process, whether decisions are to be adopted unanimously or by majority, and shall be properly informed of the subject of the decision. The dissenting protector shall note, without delay, his/her dissent in the Book of Events of Trust.
- 9 Without prejudice to the Law or to the trust instrument, a protector shall never disclose to third parties any information obtained by virtue of his/her office, nor make use of it for his/her own benefit or for the benefit of a third party.

10 Unless otherwise provided by the trust instrument, the outgoing protector shall appoint his/her successor; if he/she fails to do it, a new protector shall be appointed by the Judicial Authority.

11 Articles 39 and 41 of the Law shall apply to protectors, where applicable.

TITLE IV POWERS OF THE JUDICIAL AUTHORITY

Art 53

(Powers of the Judicial Authority)

1 The Judicial Authority shall have a general jurisdiction to control and supervise any trust governed by this Law, which shall exercise by issuing any appropriate order.

2 In addition to the powers conferred on the Judicial Authority by law, the trustee, a beneficiary, the protector or any other interested party may apply to the judge for an order regarding:

- a) the fulfilment of a duty or the exercise of a power of the office of trustee or protector;
- b) the replacement of the trustee or the protector having breached the law or the trust instrument, or for reasons of convenience or, as to the trustee, in case of failure of the requirements referred to in Article 18 of the Law;
- c) the appointment of a new or additional trustee or protector;
- d) measures of management and transfer of trust assets.

3 The trustee shall be required to request without delay to the Judicial Authority to appoint a protector if, for whatever reason, the protector is failing and the Law requires that there should be one.

4 Whenever the trustee deems it advisable, he/she may apply to the judge to be authorised to carry out a useful action which is not included among his/her powers, or to receive ratification for an action already carried out, or to make amendments to the trust instrument which have become necessary or desirable.

5 By a motivated application, the trustee who is uncertain as to whether to carry out an act within his/her powers may ask the judge to pronounce a decision on the matter, even by giving him/her precise guidelines.

6 A person appointed as a trustee by the Judicial Authority finding himself/herself in a situation of conflict of interests shall apply to the judge to obtain the measures envisaged by Article 23 paragraph 2.

7 In appointing or replacing a trustee, the judge shall decide on the custody and transfer of the trust assets, as well as on the relevant acts and documents.

8 Unless otherwise ordered by the judge, the trustee and the protector appointed pursuant to this Article shall have the same rights, duties and powers as the trustee or protector appointed by virtue of the trust instrument.

9 The judge shall decide about the amount of costs for the judicial proceedings.

Art 54

(Preventive action)

1 A beneficiary with vested rights or a protector having well-grounded reasons to believe that the trustee is about to omit a duty, or that he/she is about to perform an act breaching the Law or the trust instrument, shall apply to the Judicial Authority as a precautionary measure to obtain an appropriate order.

2 The effects of the precautionary measure adopted by the Judicial Authority shall not be suspended by the start of the proceedings on the merits.

Art 55

(Actions for separation and recovery)

1 If a trustee has mingled trust assets with different assets, the trustee who is not involved in the mingling, any beneficiary or the protector shall be entitled to have them separated. The claim shall be extended to assets of any kind with which original assets have been replaced and to their fruits.

2 If a trustee has disposed of trust assets in breach of the provisions of the trust instrument or for no compensation or for a clearly inadequate compensation, any trustee not involved in the act of disposal, any beneficiary and the protector shall be entitled to claim that the trustee who did the act of disposal returns the assets to the trust fund, unless, in case of a disposal breaching the provisions of the trust instrument, the person having acquired the rights on the fund assets was not in a position to be aware of the breach. The claim shall be extended to assets of any kind with which original assets may have been replaced and to their fruits.

3 The foregoing shall not affect claims for compensation for loss and damages and any other claims aimed at protecting the trust.

4 The claims for segregation of assets shall not be subject to any limitation period. The claims for return of assets shall be subject to a limitation period of ten years.

TITLE V PROVISIONS APPLICABLE ONLY TO FOREIGN TRUSTS

Art 56

(Form of trust instruments and registration of foreign trusts in the Trust Register of the Republic of San Marino)

- 1 Instruments creating foreign trusts where the settlor is a natural or legal person resident in San Marino shall be subject to the same formal requirements set forth by Article 6, paragraph 1 of the Law.
- 2 Foreign trusts with an administrative office in the Republic of San Marino shall be registered in a relevant section of the Trust Register. Article 7 and paragraphs 3, 4, 5 and 6 of Article 8 of the Law shall apply.
- 3 Resident trustees of foreign trusts shall meet the requirements set out in Article 18 of the Law.

**TITLE VI
CRIMINAL PROVISIONS**

Art 57

(Unlawful exercise of the office of trustee)

1 Anyone exercising the office of trustee without meeting the requirements envisaged by the Law shall be punished with second-degree imprisonment and with a fine ranging between € 8,000.00 and € 12,000.00.

Art 58

(Embezzlement and misappropriation of trust assets)

1 If the trustee embezzles or misappropriates trust assets, whether for his/her own or for a third person's benefit, the provision of Article 197, paragraph 3 of the Criminal Code shall apply. Fourth degree disqualification from the profession or art shall be replaced by fourth degree disqualification from the office of trustee.

Art 59

(Conflict of interests)

1. The trustee who, with the aim of securing for himself/herself or third parties an unjust profit, acts in conflict of interests causing financial damage or loss to the beneficiaries of the trust or to the persons intended to benefit from the fulfilment of the purpose of the trust, shall be punished with second-degree imprisonment, with a fine amounting between € 8,000.00 and € 12,000.00, and with second-degree disqualification from the office of trustee.

Art 60

(Violation of accountability requirements)

1 The trustee failing to keep wholly or partly the accounts relating to the trust assets shall be punished with second degree arrest and second degree disqualification from the office of trustee, if such fact causes financial damage or loss to the beneficiaries of the trust or to the persons intended to receive benefits from the fulfilment of the purpose of the trust.

Art 61

(False accounting records relating to the trust)

1 The trustee who, in the accounts or in the inventory relating to the trust assets, or in the accounting records relating to the trust envisaged by the Law or by the law on tax treatment of trusts governed by the law of the Republic of San Marino, enters data or facts which are wholly or partly untrue, or wholly or partly conceals true data or facts, shall be punished with second degree imprisonment and with a third degree daily-fine, as well as with second degree disqualification from the office of trustee.

**TITLE VII
FINAL PROVISIONS**

Art 62

(Administrative sanctions)

1 The administrative sanctions envisaged by the Law shall be applied by the person in charge of keeping the Trust Register and shall be regulated by Law no. 68 of 28 June 1989.

Art 63

(Requirements relating to the registration and the deposit of deeds and instruments)

1 Without prejudice to the provisions of Article 52 of Decree no. 56 of 26 April 1995, before being used in the Republic of San Marino deeds and instruments drawn up and legalized abroad shall be deposited with and kept by a Notary practising in San Marino. The Notary shall certify their legality through the record of their deposit.

Art 64

(Repeal, transitional provisions and entry into force)

1 Law no. 37 of 17 March 2005 and any provision contrary to this Law shall be repealed.

2 Trustees of trusts already created under Law no. 37 of 17 March 2005 shall make by 31 December 2010 the necessary amendment to the trust instruments for them to comply with and be subject to the regime set out in the Law.

3 Having obtained the consent of the settlor, if alive and capable, the trustee may introduce further amendments to the trust instrument, where allowed by the provisions of the Law.

4 The administrative sanction of € 12,000.00 shall be imposed on the trustee breaching the provision referred to in paragraph 2.

5 The Law shall enter into force on the fifth day following the day of its legal publication.

Done at Our Residence, on 1 March 2010

THE CAPTAINS REGENT

Francesco Mussoni – Stefano Palmieri

THE SECRETARY OF STATE
FOR INTERNAL AFFAIRS

Valeria Ciavatta

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