

QUALIFIED LAW NO. 1 OF 26 JANUARY 2012

**PROVISIONS CONCERNING THE OPERATION AND FUNCTIONING OF THE COURT
FOR TRUSTS AND FIDUCIARY RELATIONSHIPS**

UNOFFICIAL TEXT

NOTICE

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TITLE I GENERAL PROVISIONS

Article 1 (Definitions)

- 1 For the purpose of this Law:
- a) "Fiduciary Relationships" shall mean the legal relationships referred to in Article 2, paragraph 9 of Constitutional Law no. 144 of 30 October 2003, introduced by Constitutional Law no. 1 of 26 January 2012 establishing the Court for Trusts and Fiduciary Relationships;
 - b) "Court" shall mean the Court for Trusts and Fiduciary Relationships referred to in Constitutional Law no. 144 of 30 October 2003, introduced by Constitutional Law no. 1 of 26 January 2012 establishing the Court for Trusts and Fiduciary Relationships;
 - c) "President" shall mean the President of the Court.

TITLE II ESTABLISHMENT OF THE COURT FOR TRUSTS AND FIDUCIARY RELATIONSHIPS

Article 2 (Functions)

1. The Court shall exercise the functions indicated in Article 2 of Constitutional Law no. 144 of 30 October 2003.

Article 3 (Election and appointment)

- 1. The President and the members of the Court shall be elected, by two thirds majority, by the Great and General Council. The Captains Regent shall put the names of the candidates designated within the Bureau to the vote of the Great and General Council.
- 2. At least three months before the expiry of the mandates of the Court's President and members, the Captains Regent shall convene the Bureau of the Great and General Council with a view to proposing the candidates.
- 3. The candidates may be either San Marino or foreign citizens and shall be appointed for a 5-year mandate.
- 4. The mandates of the President and the members of the Court shall be renewable, unless in case of voluntary resignation or disqualification.
- 5. The President and the members of the Court shall take office by swearing before Their Excellencies the Captains Regent.
- 6. After the expiry of their mandate, the President and the members shall continue to exercise their functions until the appointment of the new President and members or until the renewal of their mandate.
- 7. The President and the members of the Court shall not be members of the Judicial Council.

Article 4 (Incompatibility)

1. The President and the members of the Court shall not hold posts or in any case carry out activities within political or trade union associations, stand for political or administrative elections,

carry out commercial or industrial activities, hold the position of company directors or auditors, both in the territory of the Republic and abroad.

2. The President and the members of the Court shall not exercise a professional activity in the territory of the Republic.

Article 5

(Resignation and disqualification)

1. Resignations shall be placed in the hands of the Captains Regent. Resignations shall be immediately effective.

2. The President and the members of the Court shall be disqualified from office if the incompatibilities referred to in Article 4 of this Law occur.

Article 6

(Abstention and objection)

1. The causes for abstention and objection provided for in Article 10 of Qualified Law no. 145 of 30 October 2003 shall apply to the President and the members of the Court.

2. The decision shall be adopted by the Guarantors' Panel in conformity with the procedural provisions in force, including those provided for by Law no. 55 of 25 April 2003, in so far as they are compatible.

Article 7

(Composition of the Court; functions of the President)

1. The Court shall be composed of a President and of six members.

2. The President:

- a) shall organise the judicial activity of the Court and shall not be subject to supervision by the Head Magistrate;
- b) shall submit, on an annual basis, to the Head Magistrate of the Single Court a report on the activity carried out by the Court.

3. A regulation issued by the Court, and published in the Official Gazette, shall establish and govern additional powers of the President, including the power to regulate recourse to the *consilium sapientis* (Council of Wise Men), which is appointed from among experts of repute for trusts and fiduciary relationships and the powers attributed by the delegated decree issued under Article 8.

4. With a view to choosing the experts referred to in the preceding paragraph 3), the Bureau of the Great and General Council shall, within sixty days following the installation of the Court in office, draw up an ad hoc list, which shall be submitted to the Great and General Council for its acknowledgement.

Article 8

(Proceedings)

1. A delegated decree shall regulate the proceedings before the Court, with a view to guaranteeing expeditious proceedings, while respecting the fundamental principles of procedural law and in particular the rights of defence and to be heard.

2. The delegated decree:

- a) shall establish that the President is responsible for determining the language(s) of the proceedings, by reason of the closer connection of the language with the facts of the case and the parties, and the possibility to determine whether the case shall be dealt with by the Court as a single-judge body, a collegiate body or with all members, by reason of the complexity of the case and its connection with different legal systems, for which it would be more appropriate to resort to the competence and assessment of different judges;

- b. shall establish rules and procedures to simplify the mechanisms of the proceedings and to speed up the service of legal documents by proving, *inter alia*, for notifications also by registered letter, telegram or similar means;
 - c. shall attribute to the President the power to establish, case by case, who shall consult the case-file and on what terms;
 - d. shall govern the granting of precautionary and provisional measures, including atypical measures;
 - e. shall order the immediate enforcement of the Court's decisions;
 - f. shall provide for the simplification and reduction of procedural time-limits compared to those of civil procedure before the Single Court, with a view to speeding up the time frames for the adoption of a decision;
 - g. shall discipline representation of lawyers before the Court, while respecting the rules governing the profession of Lawyers and Notaries in the Republic;
 - h. shall regulate the formal and substantive aspects of the decision in the case and the possibility for each judge to express views different from the decision adopted by the majority;
 - i. shall discipline the appeal phase, by limiting appeals to questions of law, without prejudice to the findings of fact made by the judge of first instance and by introducing mechanisms to prevent appeals only aimed at postponing the time when the decision appealed against becomes final;
 - j. shall establish that the appeal phase does not exceed 180 days following the date of the appeal. Otherwise, the decision appealed against shall become final;
 - k. shall regulate compulsory recourse to the *consilium sapientis* by the Judge of Appeal;
 - l. shall establish that the judgement rendered by the Judge of Appeal shall not be appealed against before the Highest Judge of Appeal;
 - m. shall establish the remuneration of the Court's judges, according to the number of judgements rendered by each of them;
 - n. shall establish the procedures and arrangements for the covering of the running costs of the Court by the parties;
 - o. shall provide for any other matter necessary to guarantee swift and speedy proceedings before the Court, as well as its smooth functioning, also by delegating powers, to this end, to the Court itself.
3. The procedural rules of this Article shall be modified with ordinary law.

TITLE III FINAL PROVISIONS

Article 9 *(Entry into force)*

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

Done at Our Residence, on 26 January 2012/1711 since the Foundation of the Republic

THE CAPTAINS REGENT
Gabriele Gatti - Matteo Fiorini

THE MINISTER
OF INTERNAL AFFAIRS
Valeria Ciavatta