

# PROVISIONS ON CIVIL PROCEDURE AND CIVIL LAW

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## Law 154 of 27 August 2021

### UNOFFICIAL TEXT

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## REPUBLIC OF SAN MARINO

### PROVISIONS ON CIVIL PROCEDURE AND CIVIL LAW

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#### Art. 1

*(Leasing and Patto Marciano)*

1. The first sentence of paragraph 1 of Article 148 of Law no. 165 of 17 March 2005 and subsequent amendments shall be amended as follows:

“1. If an authorised person buys real estate located in San Marino for the purpose of leasing it to users who would be entitled to buy it without the authorisation of the Council of the Twelve, such authorisation shall not be required from the lessor either. The authorisation from the Council of the Twelve shall also not be necessary in the following cases:

- a) where a new lessee takes over the lease and he would not be required to apply for the authorisation from the Council of the Twelve, if he wishes to directly buy that property;
- b) transfer of ownership to another lessor, where the user remains the same;
- c) transfer to supervised entities or companies controlled by supervised entities pursuant to acts concerning the Patto Marciano (transfer of property as a collateral).

This shall be without prejudice to special provisions for the purchase of buildings which derogate from general provisions.”

#### Art. 2

*(Appointment of an expert to estimate, publicity requirements and enforcement of assets under the Patto Marciano)*

1. The Patto Marciano shall be concluded by a public deed. The Patto Marciano may be concluded with an authorised person pursuant to Law no. 165/2005 and subsequent amendments in conjunction with the loan agreement.

2. Assets to be transferred under the Patto Marciano may be owned by the debtor or by a third party.

3. Assets may also be transferred to a company controlled by the creditor, in accordance with the applicable legal provisions, which is authorised to carry on real estate activities. The subsidiary, which is a necessary party to the contract, shall receive the asset solely to perform the obligations of the Patto Marciano.

4. In the event of default, the creditor shall be entitled to settle the debt through the transferred asset, if the owner is paid any difference between the appraised value of the asset and the amount of the debt at the date of calculation of the final debt.

5. The parties shall determine in the contract the degree of seriousness of the default giving rise to the condition contained in the Patto Marciano, which in any event, in long-term contracts, may not occur before:

- 1) one year after maturity, even of a single instalment, in case of regular repayment instalments;
- 2) one year after the due date for the repayment of the capital provided for in the loan agreement, when repayment by instalments is not envisaged.

If, on the due date of the first of the unpaid instalments, the debtor has already repaid at least 85 per cent of the principal amount of the loan received, the period of default shall be doubled.

6. Upon the occurrence of the default referred to in the preceding paragraph, the creditor shall give the debtor 30 days' notice to perform his payment obligation and shall warn him that, if default persists, the condition precedent is fulfilled and the sale contract becomes effective. Payment notice and the implementation of the condition precedent shall be communicated by registered letter with acknowledgement of receipt or other equivalent means.

7. If the Patto Marciano covers property used, at the time of its conclusion, as the principal residence of the owner, of his or her spouse or of his or her relatives within the third degree, the relevant time

limits, if the condition persists after the default, shall be three times longer than those indicated in paragraph 5. Moreover, in such a case only, if the appraised value is less than the amount of the defaulted debt, including all expenses and costs of the transfer, the debtor shall be nevertheless relieved of its obligation to the creditor, once the transfer has been completed and the asset delivered.

8. In the event of default, if the parties have not appointed by agreement an expert to value the asset covered by the Patto Marciano, the Law Commissioner at the request of the party concerned shall appoint the expert. If the Patto Marciano covers an immovable property, the expert shall be preferably chosen from among those enrolled in the Register of Engineers and Architects of the Republic of San Marino or in the Register of Surveyors and Graduate Technicians of the Republic of San Marino. The expert shall perform the task in the presence of the persons entitled, to whom, before the beginning of the evaluation, the Law Commissioner shall give fifteen days to appoint an expert witness who can participate in the evaluation, ask questions, and make observations.

9. If, after the registration of the sale deed under the Patto Marciano, the asset transferred under the Patto is subject to enforcement action by a third party, the purchaser secured by the Patto Marciano shall be asked to ascertain whether default occurred and a period of twenty days shall be given to him, at the end of which:

- a) in the absence of default, the third party creditor who brought the enforcement action shall be entitled to proceed with the sale of the asset and, in case of award, the purchaser protected by the Patto Marciano shall be entitled to claim to the share of proceeds in accordance with the ordinary distribution criteria. To that end, the amount subject to a judicial lien, shall be deposited in a special current account in the name of the Registry;
- b) In the event of default by the debtor, if the purchaser protected by the Patto Marciano does not declare his intention to avail himself of the Patto, he shall participate in the distribution of the proceeds of the sale in accordance with the ordinary distribution criteria. The protected creditor shall declare his intention not to avail himself of the Patto even if the transfer is made to a

subsidiary;

- c) if, finally, in the event of default, the purchaser protected by the Patto Marciano declares that the condition has been fulfilled, the Law Commissioner shall establish a deadline within which the creditor must deposit, with the Registry, an amount not less than the enforcement costs incurred by the proceeding creditor and equal to the difference, if any, between the appraisal value of the property and the debt amount, and, if any, to the claims having a pre-emptive right prior to that of the proceeding creditor.

The distribution of the proceeds shall be carried out in accordance with the applicable legal provisions.

10. The provisions of the preceding paragraph shall also apply, to the extent compatible, to the assets covered by the Patto Marciano subject to enforcement pursuant to the provisions of Law No. 70 of 25 May 2004 and subsequent amendments.

11. When, after the transcription of the sale deed under the Patto Marciano, insolvency proceedings are opened against the debtor or the third party providing the asset, if the creditor beneficiary of the Patto has been admitted to the liabilities, he may apply to the Law Commissioner so that, after hearing the attorney in the proceedings, he may proceed in accordance with paragraph 9, to the extent compatible.

12. For the purpose of credit ranking, a loan guaranteed by a transfer under a Patto Marciano shall take the same rank as a mortgage. For the ranking of credits guaranteed by the Patto Marciano, the rules in force for credits guaranteed by mortgages shall apply *mutatis mutandis* and the date of transcription of the sale deed under the Patto Marciano shall be taken as a reference.

13. The provisions in force on transactions subject to conditions precedent, on the application of registration tax and the formalities required for registration, recording and transfer shall apply to the Patto Marciano.

### **Art. 3**

#### *(Transcription and recording formalities for sale deeds under the Patto Marciano)*

1. If the asset to which the contract relates is an immovable property, a registered movable property or other asset whose ownership transfer is subject to registration formalities, the parties shall record in the appropriate register the fact that the contract is subject to conditions precedent in accordance with the applicable rules.

2. As regards immovable property, the transcription note shall indicate the conditions precedent, the amount and duration of the obligation.
3. Within 30 days from the full clearance of the debt or from his waiver of the use of the Patto Marciano, the creditor shall give his consent to record the fact that the conditions precedent has not finally fulfilled and his waiver. Such recording shall be in the form of a public deed or an authenticated private agreement. Any decree of the Law Commissioner shall also be enforceable.
4. In the cases referred to in paragraph 9 of Article 2, the purchase by a third party shall be recorded against the debtor or the third party providing the asset and against the secured creditor or the acquiring subsidiary.

**Art. 4**  
*(Simplified claw-back)*

1. After having unsuccessfully used the instrument permitting enforcement, the creditor, who has been adversely affected by the sale free of charge of the immovable property or registered movable property that had taken place after the credit had been granted, being in possession of an enforceable title, may proceed to enforcement by recording the attachment decree within one year from the date of transcription of the sale deed, even if he has not already received the judgement stating that the sale for free was not valid. The provision of this paragraph shall also apply to a prior creditor who, within one year of the registration of the detrimental act, intervenes in the enforcement initiated by another party.
2. The creditor shall bring an enforcement action against the recipient of the sale and against the debtor.
3. The debtor, the third party subject to enforcement and any other person involved in the purchase may oppose the enforcement by contesting that the requirements set out in the first paragraph are not met or that the debtor did not know the detriment which the act causes to the creditor's interests.
4. The oppositions referred to in the preceding paragraph may be lodged within thirty days of the attachment. The judge, having completed the cross-examination of the opposition, shall give the opposing party a time limit of 10 days in which to submit supporting evidence. Once all admissible evidence have been taken, the judge shall give the opposing creditor a time limit of ten days for the counter-evidence. Once the taking of rebuttal evidence has been completed, the judge shall give the parties a common time-limit of ten days to file their final pleadings, after which the file shall be retained for decision by judgement to be filed within the following twenty days. Any appeal shall not suspend the enforcement, unless it is ordered by the Judge of Appeal on the grounds referred to in Article 19-bis, paragraph 1, of Law 55 of 17 June 1994 and subsequent amendments.

**Art. 5**  
*(Summary procedure based on documents)*

1. The first paragraph of Article 1 of Law No 55 of 17 June 1994 and subsequent amendments shall be amended as follows:  
"The summary procedure based on documents, governed by Section VII paragraph 154 of Book II of the *Leges Statutae*, in addition to public and probate deeds, shall apply on the basis of the following documents:
  - accepted, expired bills of exchange and drafts;
  - bad cheques;
  - insurance premiums not paid when due;
  - loan contracts and guarantees;
  - fees and professional expenses paid by the judicial authority;
  - authentic extracts from the accounting records stamped and endorsed as required by law and duly kept;
  - authentic extracts from accounting records required by tax laws;
  - extracts from the accounting records of public entities and State-owned companies relating to health care or the provision of services."
2. Paragraph 1 of Article 30 of Law no. 71 of 27 November 2013 shall be amended as follows:

"1. The summary procedure based on documents, governed by Section VII, paragraph 154, of Book II of the Leges Statutae and by Article 1 of Law No 55 of 17 June 1994 and subsequent amendments, shall apply not only on the basis of the documents referred to in the aforementioned Article 1 of Law No 55 /1994, but also on the basis of statements of payment accounts showing the amount of the enforceable claim which are produced by companies carrying on one or more of the reserved activities referred to in Annex 1 of Law No 165 of 17 November 2005 or by their transferees, including financial vehicle corporation created to be a holder of securitised assets, bearing the certification of conformity with the accounting records in writing by the legal representative or managing director or general manager."

#### **Art. 6**

##### *(Integrations on documents for the registration of judicial mortgages)*

1. After paragraph 3 of Article 37 of Mortgage Law of 16 March 1854, the following paragraph shall be added:

"3bis) a certified copy of the document on which the summary procedure based on documents referred to in Book II, Section VII, paragraph 154, of the Leges Statutae is based, to which the document instituting the procedure and the decree by which the Law Commissioner assigns the time-limit referred to in that section shall be annexed, together with the certificate of the Registrar that there are no opposition;

3ter) decrees containing payment orders issued pursuant to Article 9 of Law No. 63 of 20 May 1985".

2. As for the other documents referred to in article 37 of the Mortgage Law, the Registry and Record Keeping Office shall carry out the registration formalities at the request of the creditor for the amounts mentioned in the documents in addition to the interests indicated in the document by the creditor.

#### **Art. 7**

##### *(Provisional enforceability)*

1. In the proceedings stage following an opposition to the summary procedure based on documents, governed by Section VII paragraph 154 of Book II of the Leges Statutae, in the case of unchallenged sums, Article 9 of Law no. 63 of 20 May 1985 shall apply.

2. If the opposition to the summary procedure based on documents is only partially upheld, the enforcement acts implemented shall maintain their effects to the extent ascertained by the judgement.

#### **Art. 8**

##### *(Effects of the termination of the lawyer's mandate for litigation on the domicile of the party)*

1. Article 2, paragraph 8.3 of Law no. 55 of 17 June 1994 and subsequent amendments shall be modified as follows:

"- 8.3 - The power of attorney may always be revoked by the lawyer and he may always renounce it. However, election of domicile by the assisted party with an attorney whose mandate has terminated, shall remain in force until the appointment of a new lawyer or until the time limit set by the judge for his replacement has expired. If, following termination of the defence mandate, it is impossible to notify the decree of assignment of the time limit for the replacement of the defending lawyer or the judgement at the last known place of residence or registered office of the party, after a period of thirty days from the unsuccessful notification, the notification is considered to have been validly made by displaying it in the Government Building. All time limits shall remain suspended for the time necessary to send and receive the notification of non-receipt of the notification and until the expiration of the time limit following the displaying in the Government Building."

2. Article 2, paragraph 8.0 of Law no. 55 of 17 June 1994 and following amendments shall be amended as follows:

"- 8.0 - The parties to the litigation shall be deemed to have elected their domicile, for proceedings purposes, with the office of their lawyer and therefore all the acts of the proceedings may be validly notified at such domicile with the same effects as if the notification had been made to the party personally. The election of domicile shall remain valid throughout the proceedings of first instance, appeal and third instance until the termination of its effects as regulated in paragraph 8.3 below".

## **Art. 9**

*(Searching for assets to be attached)*

1. After Article 17 of Law no. 17 of 1 June 1994 and subsequent amendments the following Article shall be added:

### *“Art. 17-bis*

*(Searching for assets to be attached)*

1. Following the authorized issue of the writ of execution and upon request of the creditor, if the debtor fails to pay the amount due within the allotted time, the Law Commissioner shall authorize the search for the assets to be attached pursuant to this Article.
2. With the authorization referred to in paragraph 1, the creditor, also through his defending lawyer, may request a survey of the debtor's economic and asset situation from the CBSM Tax Collection Service, which shall include at least the information listed below. The request to the Tax Collection Service shall be made through the delivery of the decree issued by the Law Commissioner, indicating debtor's name and surname, Social Security Number and Economic Operator Code and:
  - a) the existence of retirement benefits;
  - b) owned real estate;
  - c) owned registered movable property;
  - d) owned shares in companies, ownership of sole proprietorships, administrative positions held in San Marino enterprises and companies;
  - e) existence of employment relationships.
3. The Tax Collection Service shall deliver to the creditor a document showing the results of the survey carried out. The provision of the service by the Tax Collection Service shall be subject to the payment of service fees, which shall be defined and updated by the Central Bank and published on its website.
4. Once the survey has been deposited in the files, at the request of the creditor and subsequent authorization by the Law Commissioner, the judicial officer shall attach the assets or credits indicated by the creditor, in accordance with the general criteria in force.
5. Following a report showing a failure to locate one or more assets, upon request of the creditor, the Law Commissioner shall order the debtor to indicate within fifteen days the location of such assets and to cooperate for the enforcement, while warning him that a failure to communicate or the provision of a false communication shall be punished pursuant to Article 384 of the Criminal Code.
6. If survey has allowed to identify the debtor's credits or assets owned by him, but used by third parties, the judicial officer shall notify the inspection to the debtor and the third party ex officio. The inspection warrant shall also mention the credit claim, the the writ of execution, the order as well as the injunction to the third party not to make use of the assets or sums due. An extract of the inspection report referred to in this paragraph mentioning only the necessary data shall be notified to the third party."

## **Art. 10**

*(Recording of the real estate foreclosure)*

1. The following paragraph 2 *bis* shall be added to Article 6 of Law n.87 of 29 July 1981:

"2 *bis*. Upon request of the creditor, indicating the cadastral data necessary to identify the real estate subject to foreclosure, the decrees authorizing the foreclosure of the real estate may also be recorded in accordance with the procedures set forth in the first paragraph of this Article.

## **Art. 11**

*(Attachment limits)*

1. Paragraph 1 of Article 66 of Law no. 15 of 11 February 1983 shall be amended as follows:

"Retirement benefits and allowances payable under this Law may not be transferred, seized or attached beyond one-fifth. Transfer documents, seizures and attachments related to the aforesaid allowances may not, in any case, may not exceed totally an amount equal to twice the value of the social pension. The Social Security Institute shall certify the amount of the portion available of retirement benefits and allowances for the above purposes."

## **Art. 12**

### *(Sale of goods subject to enforcement)*

1. The Judge may delegate auctions to the Tax Collection Office according to the procedures specified by law and applicable secondary regulations governing sales in the context of forced collection by the Tax Collector's Office. The procedures to collect assets, the time limits, within which efforts to sell the asset shall be made, the possibility of sub-delegating the sale to third parties, the remuneration for the service rendered, and any other useful element will be defined in an addendum to the agreement for the Tax Collection Service pursuant to Law no. 70 of 25 May 2004 and subsequent amendments, signed by the Court and the Director of the Tax Collection Service within two months of this Law coming into force.

2. Paragraph 9 of Article 26 of Law no. 55 of 17 June 1994 and subsequent amendments shall be amended as follows:

"If the value of the attached assets does not exceed 50,000.00 euro, after hearing the attached party, the Judge may directly arrange for the assets to be assigned to the creditor without the obligation to first carry out procedures for the sale of such assets".

3. After paragraph 9 of Article 26 of Law no. 55 of 17 June 1994 and subsequent amendments the following paragraphs shall be added:

"9 *bis*. In enforcement proceedings and in attachment proceedings, the proceeding creditor and the parties legitimately intervening may directly request that the property attached or subject mortgage enforcement to them or to a subsidiary, if the first effort to sell fails. The assignment request shall be submitted by the creditor together with the sale request and shall be disclosed to third parties by publishing it in the notices of sale. In any case, the maximum time limit for filing the request shall be ten days prior to the sale and shall in any case be disclosed by displaying it in the Government Building.

9 *ter*. The assignment request shall indicate:

- (i) the writ of execution and/or mortgage credits referred to in the request;
- (ii) the allotment value and, in particular, the bid to pay an allotment price that must be, at the same time:
  - a) not less than the value of the credits having a right of pre-emption over the credits of the bidder referred to in point (i) above and belonging to parties involved in the proceedings;
  - b) not less than the appraised value established by the expert;
- (iii) the value of the assignment consisting of an offer to pay a cash settlement equal to the positive difference, if any, between the appraised value of the immovable property and the value of its credit as indicated in point (i) above, if none of the creditors involved in the recording of the immovable property or other creditors in addition to the proceeding creditor do not take part in the enforcement procedure.

9-*quater*. At the hearing fixed for the sale, the Law Commissioner, having ascertained the lack of valid bids, shall decide on the assignment requests. If there are several requests, the Law Commissioner shall give preference to the submitted request for assignment having the highest assignment value or, if there are equal bids, to the credit with the highest rank or to the request submitted at an earlier date.

9-*quinquies*. At the same hearing fixed for the sale, the Law Commissioner, if necessary, shall establish the time limit within which, under penalty of forfeiture, the applicant shall pay the price or the balance, as the case may be. The Law Commissioner shall order the transfer of the asset once the price or the balance has been paid and the discharge of the any attachments, mortgages and any other liens.

9-*sexies*. The amount collected in the sale procedure or following the assignment shall be deposited in a special current account in the name of the Registry and shall be used for the payment of credits according to the ordinary distribution criteria, and, in compliance with the same criteria, for holders of liens, registrations and other encumbrances pending on the property for which there have been no defaults, for the residual part of each credit, this amount shall be subject to a judicial lien until the maturity of the respective credit.

At the end of the latter period, after the creditor and the debtor have submitted a document attesting as to the occurrence of a default or not, the Law Commissioner shall order to complete the distribution of the remaining amount.

9-septies. If the appraised value exceeds the claims in the procedure, the Law Commissioner shall order that the difference be paid to the debtor. Both the sale and the assignment shall discharge any encumbrance or lien or detrimental acts regarding the property."

**Art. 13**  
*(Collaterals)*

1. In the case of a merger, a division or a transfer of assets and liabilities, the collaterals supporting legal relationships forming part of the assets of the companies involved, shall not be extinguished, even if they are provided between the companies taking part in those transactions, except where, as a result of those transactions the main collateralised relationship is estinguished.

**Art. 14**  
*(Procedural rules on lessee default)*

1. Article 22 of Law No. 26 of 20 February 1991 and subsequent amendments shall be amended as follows:

**Art. 22**  
*(Lessee default)*

In the event of lessee default, at the first hearing of the lawsuit on the lease termination, the Law Commissioner, if requested, may grant the lessee a time limit not exceeding ninety days to cure the arrears.

Payment of the arrears, ancillary fees, legal interest and court costs shall prevent termination.

The time limit referred to in the first paragraph may not be granted to the same lessee more than once in any two-year period.

3 bis. If he fails to do so within the period referred to in paragraph 1, the report referred to in that paragraph shall become enforceable within the limits of the amount of the credit indicated therein."

**Art. 15**  
*(Procedural rules on lease enforcement)*

1. Article 23 of Law no. 26 of 20 February 1991 and subsequent amendments shall be amended as follows:

**“Art.23**  
*(Date of enforcement)*

In the order providing for the vacation of the property, the judge, taking into account the opposing reasons of the parties, shall establish the date of enforcement within a maximum period of three months from the date on which the order become enforceable.

1-bis. If the vacation of the property is enforced, as referred to in the first paragraph, if the household leasing the property includes minor children and if it is in economic difficulty and with insufficient means of subsistence, may apply for accommodation to the Cooperatives Section of the State Accounting Office. The Congress of State may provide for the temporary direct allocation of accommodation free of charge in accordance with the availability of suitable buildings owned by the State".

**Art. 16**  
*(Transitional provisions)*

1. For loan agreements in force as of the date of entry into force of this Law, the Patto Marciano referred to in Article 2 may be concluded, in the form of a public deed, when contractual conditions are amended.



2. The provisions of Article 12, paragraph 2 and 3 of this Law shall also apply to the legal proceedings for the recovery of credits pending at the entry into force of this Law.
3. The provisions of Article 4 shall apply to all deeds of transfer subsequent to the entry into force of this Law, even if not yet registered. These provisions shall also apply to the protection of credit claims already existing before the entry into force of this Law.
4. The procedural provisions shall also apply to proceedings pending at the time of their entry into force with effect on their continuation.
5. Any necessary amendments to Article 11 shall be adopted by delegated decree.
6. The provisions of Article 13 shall also apply in relation to exposures outstanding at the date of entry into force of this Law.

**Art. 17**  
*(Entry into force)*

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