



# REPUBLIC OF SAN MARINO

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

*Having regard to Article 4 of Constitutional Law no. 185/2005 and to Article 6 of Qualified Law no. 186/2005;*

*Hereby promulgate and order the publication of the following Ordinary Law, approved by the Great and General Council during its sitting of 22 July 2013:*

**Law 29 July 2013 no.99**

## **LIABILITY OF LEGAL PERSONS**

### *Art. 1 (Definition)*

1. Under this Law, the term "legal person" shall refer to all bodies, companies and associations, also not recognised, as well as to public bodies carrying out economic activities and within its limits.
2. For the purposes of this Law, the definition of "legal person" shall not include the State, other public bodies not envisaged by paragraph 1 of this Article and independent authorities.

### *Art. 2 (Liability cases)*

1. A legal person shall be liable for:
  - a) intentional offences committed on its behalf or in any case in its interest by a person who had the power to act for the legal person;
  - b) for offences committed in carrying out the activity of the legal person if the offence was possible because of an organisational failure attributable to the legal person, to lack of supervision or control or if the offence was committed upon indication of the organisational or managerial leaders of the legal person.
2. If the offence is committed in the context of an activity subject to the direction or control of another legal person, liability under this Law extends to the legal person exercising the direction or



control. Such liability shall continue to apply in case of transformation and merger of the legal person.

### Art. 3

*(Transfer of a business, transformation, merger, demerger, dissolution and liquidation)*

1. The transfer of a business or of one of its branches, the transformation, merger, demerger, dissolution and liquidation of the legal person shall not preclude application of the sanctions envisaged by this Law.
2. In case of transfer, on whatever basis, of the organisational unit, in the activity of which the offence was committed, the transferor legal person shall continue to be liable. In civil law, the transferee is held jointly and severally liable for payment of the pecuniary sanction if he was or could be aware of the offence committed.
3. In case of transformation, the legal person so transformed shall be liable.
4. In case of merger, the acquiring legal person or the legal person resulting from merger shall be liable.
5. In case of demerger, both legal persons shall be liable for offences committed before the date of demerger.

### Art. 4

*(Applicable criminal rules)*

1. Criminal law provisions shall apply to liability of legal persons insofar as they are compatible.
2. Liability of legal persons shall not preclude that of natural persons who committed the offence.
3. Liability of legal persons shall apply also when the offender has not been identified, is not chargeable or is not punishable.
4. Legal persons having their registered office on the territory of the State shall be liable also in relation to offences committed totally or partially abroad.

### Art. 5

*(Applicable criminal procedural rules)*

1. Procedural rules relative to the defendant shall apply to legal persons.
2. The legal person takes part in legal proceedings through its lawyer or special attorney. It shall not take part in legal proceedings through a person accused of having committed the same offence.
3. Legal persons not having appointed an advocate of their choosing, or being deprived of their advocate, shall be assigned legal assistance ex officio.
4. The pursuit of civil claims shall be admitted vis-à-vis legal persons.



5. The Judge for criminal matters shall be competent to establish the liability of legal persons and to apply the relevant sanctions, including the administrative sanctions referred to in Article 6, paragraphs 2 and 3 hereunder.

#### Art. 6

##### *(Decision imposing a conviction)*

1. In case the liability of a legal person is established, the Judge shall order that such legal person pay an amount not less than the amount of the gain achieved by the legal person.

2. Moreover, the legal person shall be ordered to pay an administrative pecuniary sanction ranging from 2,000.00 to 100,000.00 euro.

3. When establishing the liability of the legal person, the Judge may also apply a further administrative sanction consisting of disqualification from three months to one year. Disqualification of a legal person shall entail:

- a) exclusion from facilitations, funding, public contributions or benefits;
- b) revocation of facilitations, funding, public contributions or benefits already granted;
- c) impossibility of concluding contracts with the public administration.

4. Legal persons shall be held jointly and severally liable with the offender for damage compensation, payment of the costs of the proceedings, reimbursements and amounts due by the convicted for confiscation of equivalent value.

5. The conditional suspension of penalty execution shall not apply to legal persons.

6. The Judge shall order the dissolution of legal persons exclusively or primarily used to commit offences. The assets remaining after liquidation shall be confiscated.

#### Art. 7

##### *(Criteria for the determination of sanctions)*

1. In determining the sanctions referred to in the preceding Article 6, the Judge shall take into consideration the seriousness of the offence, the degree of liability of the legal person, the activity carried out to prevent offences, also through the adoption of organisational models, as well as to eliminate or reduce the effects and to prevent that other offences be committed. The Judge shall also take into account whether the body or representative has acted primarily to achieve personal objectives, as well as the economic and financial situation of the legal person.

2. The pecuniary sanction referred to in paragraph 2 of Article 6 above shall be reduced by half if one or more of the following circumstances are present:

- a) the offender committed the offence primarily in his own interests or those of third parties and the legal person has not achieved any gains or has achieved insignificant gains therefrom;
- b) the offender has acted knowing that he was violating specific orders received;
- c) following the offence, an adequate organisational model has been adopted in order to prevent offences such as that committed;
- d) after the offence, the legal person fully compensated the damage and effectively committed to the elimination of the consequences of the offence.



Art. 8  
*(Confiscation)*

1. The provisions on confiscation provided for by the criminal law shall apply to legal persons.
2. If liability of legal persons under this Law applies, the things belonging to the legal person shall be subject to the same regime applying to the things belonging to the offender.

Art. 9  
*(Repeals)*

1. Law n. 6 of 21 January 2010 shall be repealed.
2. Delegated Decree n. 96 of 27 May 2010 shall be repealed.

Art. 10  
*(Entry into force)*

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

*Done at Our Residence, on 29 July 2013/1712 since the Foundation of the Republic*

THE CAPTAINS REGENT

THE MINISTER  
OF INTERNAL AFFAIRS