

Decree N° 86 of 10 June, 2005

Registration on, keeping and consultation of the Register of Trusts and methods of authentication of the Trust Events Book

UNOFFICIAL TEXT

NOTICE

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SECTION I – THE REGISTER OF TRUSTS

Art. 1

(The Register of Trusts)

1. The Office of the Register of Trusts of the Republic of San Marino is created for the registrations contemplated by law.
2. The Register of Trusts is held at the Office of Industry, Commerce and Crafts, under the supervision of a magistrate delegated by the Chief Magistrate.
3. The Register of Trusts is public.
4. Registration on the Register of Trusts certifies the existence of the deeds which, pursuant to Law N° 37 of 17 March, 2005, must be registered, granting them the certainty of date and ensuring their conservation.

Art. 2

(Registration on the Register of Trusts)

1. Trusts created pursuant to Law N° 37 of 17 March, 2005, may be registered, according to the methods and under the terms and conditions contemplated herein. In accordance with Law N° 37 of 17 March, 2005, and with the requirements of article 12 below remaining valid, the following must be registered on the Register of Trusts:
 - i) pursuant to article 9, paragraph 4, of the aforementioned law, an extract of the deed creating the trust; registration of this extract exempts those responsible from the obligation of registration of the relative deed of incorporation, provided this has been prepared in writing and an authenticated signature affixed, failing which point (i) of article 12, paragraph 2, below, will be applicable;
 - ii) pursuant to article 14, paragraph 4, of the aforementioned law, modifications to the deed of incorporation relating to the elements indicated in the extract;
 - iii) pursuant to article 9, paragraph 6, of the aforementioned law, the request for cancellation of the trust;
 - iv) any other deed which, pursuant to Law N° 37 of 17 March, 2005, must be entered on the Register of Trusts.

2. The deed of incorporation of the trust and the relative extract, for which registration is required, must be drafted in Italian and, if in a foreign language, must be accompanied by the relative sworn translation into Italian.
3. Registration on the Register of Trusts is necessary for those required to do so by law and is carried out by the Office of the Register of Trusts. Before proceeding with registration, the Office must ascertain whether the conditions required by law for registration exist, including:
 - a) in the case of the foreign banks, trust companies and/or other investment firms referred to in Article 19.4 of Law N° 37 of 17 March, 2005, when they operate under a system of reciprocity;
 - b) if the registration is made late, when the fine referred to in Article 9.9 of said Law has been paid.
4. The Office performs registration through transcription of the authenticated extract of the deed of incorporation.
5. The Office returns the certification confirming registration of the trust to the applicant.
6. Refusal to register the trust must be notified promptly, via registered letter sent to the applicant. The applicant may submit an appeal against this decision within eight days to the delegated magistrate, who will pass an order on this.
7. Pursuant to and under Article 58 of Law N° 37 of 17 March, 2005, the Office of the Register of Trusts will reserve a special section of the Register of Trusts for foreign trusts with an administrative office in the Republic of San Marino. The provisions of this decree are applied in full to said special section and those applying to register a trust must, on submitting the application, specify whether the trust may be qualified as a foreign trust according to the aforementioned Article 58 of Law N° 37 of 17 March, 2005.

Art. 3

(Keeping of the Register of Trusts)

1. The Register of Trusts is held on an annual basis, in order to guarantee the integrity, completeness, availability and confidentiality of the registrations, and also identification of those who have access to the Register.
2. The Register of Trusts is held on paper. Complying with the special regulatory provisions, the Register of Trusts may also be held on a computer medium.
3. The Register of Trusts held on paper must not contain any writing between the lines, writing in the margins or erasures and any crossed out words must be legible.

4. The Register of Trusts held on paper must be authenticated at the start of each solar year, through stamping and progressive numbering of each page, with express indication of the solar year in question. The last page of the Register of Trusts authenticated for the year in progress must contain the declaration of the manager of the Office of the Register of Trusts, indicating the total number of sheets of paper forming the register of the current solar year, together with the date and signature of the manager.
5. If the information on the computer-based register are in contrast with and/or diverge from those on the paper copy, the latter will always be valid.

Art. 4

(Consultation of the Register of Trusts)

1. Consultation of the Register of Trusts is allowed to anyone and consists in the right to examine the contents of the Register of Trusts and request certification of the relative information, in accordance with Article 5 below.
2. Consultation takes place through the personnel responsible for this, who supervise and monitor it.
3. Consultation is made through written request submitted to the Office manager. The request must contain the details of the trust to which the request refers, or the elements which allow its identification, with indication of the reasons for the request.
4. The request is examined without formalities and immediately granted through indication of the document containing all the news and information requested, exhibition of the document itself, any certificate issued. If the request cannot be granted immediately, the consultation procedure must nonetheless be concluded within 10 days from the date of the request being submitted.
5. Consultation of documents takes place at the Office of the Register of Trusts, during the hours indicated by the Office, in the presence and under the supervision of the personnel responsible.
6. Without affecting application of all criminal regulations, it is prohibited to remove documents, make any mark on them or alter them in any way. During consultation, the applicant may take notes or transcribe all or part of the documents consulted, without these notes or transcriptions having any validity as certification.
7. Information which, if divulged, could cause a threat to national security, exercising of national sovereignty, continuity and correctness of international relations, protection of public order and law and order, may not be consulted.

Art. 5
(Certification)

1. The Office of the Register of Trusts may issue certification of the information on the Register.
2. Certification is issued on stamped paper as soon as possible and, in any case, within 10 days of being requested, unless this request requires complex documentary research. Conformance of the original with what is transmitted is certified by the manager of the Office of the Register of Trusts.
3. When payment of fees, duties or taxes is required, issuing of certification is conditional upon payment thereof and confirmation of payment is indicated on the certification issued.

Art. 6
(Modifications of and cancellations from the Register of Trusts)

1. Each of the modifications referred to in article 14, paragraph 4, of Law N° 37 of 17 March, 2005, subsequent to registration must be registered, using the same forms and methods required for registration of the extract of the deed of incorporation of the trust.
2. The trustee or, if they fail to do so, the notary public who has authenticated or affixed a seal to the deed of modification, is required to notify the Office of the Register of Trusts in writing of these modifications, simultaneously paying the corresponding tax. The Office will update the Register of Trusts, adding the modifications indicated and remitting the relative certification to the trustee.
3. If one of the events contemplated by article 9, paragraph 6, of the Law occurs, the trustee must request cancellation of the trust from the Register and must also return the certification confirming registration.
4. The Office will cancel registration of the trust, requesting return of the relative certificate or, in the absence of and as a substitute thereof, providing of a specific authenticated declaration of the trustee, confirming that it has been misplaced, lost, destroyed or removed.
5. If, under the terms and conditions required by law, the modifications referred to in paragraphs 1 and 2 above have not been communicated or the cancellations referred to in paragraphs 3 and 4 have not been requested, the relative annotation on the Register of Trusts is conditional upon payment, respectively, of the fines referred to in Article 9, paragraph 9, and Article 14, paragraph 6, of Law N° 37 of 17 March, 2005,.

Art. 7
(Official cancellation)

1. If a registration has taken place without the conditions required by law existing, the judge, after consulting those concerned, orders cancellation thereof.

Art. 8
(Nature of the Register of Trusts)

1. Registration of the extract of the deed of incorporation on the Register of Trusts has declaratory effectiveness.
2. The elements which must be registered by law on the Register of Trusts, if they have not been registered, cannot be used against third parties, unless it is proved that the third parties were effectively aware of them.
3. Unawareness of the elements which must be registered by law on the Register of Trusts cannot be claimed by the third parties once registration has taken place.
4. The limitations on the powers of the trustee contemplated by the deed of incorporation of the trust may be used against third parties, provided they have been registered on the Register of Trusts.
5. Failure to cancel the trust cannot be used against third parties, unless they were aware of the reason which necessitated cancellation of the trust.

Art. 9
(Recourse to voluntary jurisdiction)

1. Unless otherwise contemplated, the parties concerned may submit appeals to the delegated judge against the measures of the Office of the Register of Trusts within 8 days of communication of the appealed measure.
2. Against the measures of the delegated judge, and with specific reference to those concerning registration, denial of registration, cancellation, the parties concerned may submit appeals to the Single Court, under voluntary jurisdiction, within the 30 days following communication of the appealed measure.
3. Recourse to the Single Court suspends effectiveness of the appealed measure, unless otherwise ordered. After receiving the appeal, the Single Court may introduce the time-limits for

submitting evidence, counter-evidence and final allegations, and also pass sentence on the legal relationships which have arisen on the basis of the appealed measure.

4. The deed through which the appeal to the Single Court is submitted must be lodged through the defence counsel at the Court Records' Office, together with the reasons and with the documents which prove the interest of the petitioner and the basis of the claim. This is subject to the ordinary judicial tax. The measure of the Court passing sentence on the appeal must be officially registered on the Register of Trusts.
5. No further or different means of appeal are permitted.

Art. 10

(Tax provisions)

1. The provisions referred to in article 9 of Law N° 38 of 17 March, 2005, are applied.

Art. 11

(Transitory provisions)

1. Until appointment by the Chief Magistrate of the Delegated Magistrate referred to in article 9, paragraph 1, of Law N° 37 of 17 March, 2005, his powers are held by the Single Court, with the provisions which follow being applied.
2. The appeal referred to in paragraph 1, article 9, of this Decree, is submitted by the party concerned to the Single Court, under voluntary jurisdiction, within the 30 days following communication of the appealed measure.
3. The appeal referred to in paragraph 2, article 9, of this Decree, against the decision, adopted in accordance with the preceding paragraph by the Single Court, is submitted by the party concerned to the Appeal Judge, under voluntary jurisdiction, within the 30 days following communication of the appealed measure.
4. Performance of both proceedings referred to in paragraphs 2 and 3 is governed by the requirements of article 9 above, paragraphs 3, 4 and 5.

Art. 12

(Coordination provisions)

1. Pursuant to and under the effects of the combined provision referred to in article 9 of Law N° 38 of 17 March, 2005, and article 9 of Law N° 37 of 17 March, 2005, registration on the Register of Trusts, solely in the case of deeds subject to it, substitutes, to all intents and purposes, the registration on the Register required by Law N° 85 of 29 October, 1981, and subsequent modifications thereto, since, as a result of this, the parties concerned are exempted from the obligation of registration on the latter Register.
2. The requirement in paragraph 1 above is not applied when:
 - i) the deed of incorporation of the trust has been drafted in the form of a public deed, in accordance with article 6, paragraph 1, of Law N° 37 of 17 March, 2005, since, in this case, the notary public – or the parties appointed if he does not do so – must also arrange, in addition to registration of the relative extract on the Register of Trusts, registration of the public deed itself on the Register contemplated by Law N° 85 of 29 October, 1981, and subsequent modifications thereto;
registration of the public deed creating the trust will be exempt from the duties required by article 9, paragraph 2, of Law N° 38 of 17 March, 2005;
 - ii) reference is being made to any deed, even if created within and/or in execution of the trust, other than those referred to in Article 2, paragraph 1, for which, on the contrary, the requirements of Law N° 85 of 29 October, 1981, and subsequent modifications thereto, are applied in full, with application of article 9, paragraph 2, of Law N° 38 of 17 March, 2005, also remaining valid in this case.
3. Registration on the Register of Trusts does not exempt those responsible from the obligation of making public, through transcription on public registers, any acquisition or loss of real property rights, as indicated by Law N° 87 of 29 October, 1981, and subsequent modifications thereto. For this purpose, the requirements of Law N° 87 of 29 October, 1981, and subsequent modifications thereto, are applied in full, as well as the relative duties.
4. The deeds of disposal carried out as a trust, whether in constitution and/or execution of the trust itself, which relate to the acquisition or loss of real property rights, as indicated by Law N° 87 of 29 October, 1981, and subsequent modifications thereto, must be transcribed, as the suitable title thereof, on the public registers referred to in the aforementioned Law N° 87 of 29 October, 1981.

SECTION II – EVENTS BOOK

Art. 13

(Events Book)

1. The trustee creates, updates and keeps the Events Book, in which all events relating to the trust required by law and the deed of incorporation are entered, as well as all other events relating to the trust for which it is deemed appropriate to keep a note.
2. Each event will be registered in chronological order and the trustee must keep a complete and detailed collection of them.

Art. 14

(Authentication of the Events Book)

1. The Events Book is held on paper, in order to guarantee the integrity, completeness, availability and confidentiality of the relative information.
2. The Events Book must be authenticated by the notary public at the start of each solar year, through stamping and progressive numbering of each page, with express indication of the solar year in question. The last page of the Events Book authenticated for the year in progress must contain a declaration of the notary public indicating the total number of sheets of paper forming the Events Book.

Art. 15

(Consultation of the Events Book)

1. The Events Book must be exhibited to the parties indicated in the third paragraph of article 29 of Law N° 37 of 17 March, 2005, on their request, according to the methods and forms contemplated therein.
2. The Events Book may also be consulted by other parties to whom the deed of incorporation grants the relative right and according to any methods and forms contemplated for this.

Issued from our residence, on this day, 10 June, 2005/1704 d.F.R.

THE CAPTAINS REGENT

Fausta Simona Morganti – Cesare Antonio Gasperoni

THE SECRETARY OF STATE

FOR INTERNAL AFFAIRS

Rosa Zafferani