TRUST ACT

LAW NO. 42 OF 1 MARCH 2010

as amended by Law no.194 of 22 December 2010

UNOFFICIAL TEXT

NOTICE

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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;
b) “Judicial Authority”: the Judicial Authority of the Republic of San Marino;
c) “Supervisory Authority”: the Central Bank of the Republic of San Marino;
d) “property”: any interest, power, right or expectation susceptible to economic evaluation;
e) “beneficiary with a fixed interest”: a person who has been granted interests (conditional or unconditional) in the trust fund or its income;
f) “trust assets’: assets and property held in the trust fund;
g) “capital”: trust assets, whether originally or subsequently held in the trust fund, their swap or replacement, their value increase, income attributable to capital;
h) “settlor’: the person creating a trust;
i) “domicile”: the place where a person has established the centre of his civil life;
j) “trust fund”: total trust assets and property and legal relations concerning them;
k) “protector”: the person supervising the trustee’s actions and performs 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 registered as resident or a company has its registered office;
n) “beneficiary trust”: a trust created for the benefit of one or more beneficiaries;
o) “purpose trust”: a trust created to pursue 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 a trust)

1 A trust exists when a person holds property in the interest 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 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 beneficiary trusts and purpose trusts.

Art 3.
(Scope of the Law)

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

Art 4.
(Governing Law and recognition of foreign trusts)

1 The Hague Convention of 1 July 1985 on the law applicable to trusts and on their recognition shall be applied for the identification of the governing law and the recognition of foreign trusts created voluntarily by the settlor and evidenced in writing.

Art 5.
(Jurisdiction of the Republic of San Marino over trusts)

1 The Judicial Authority shall exercise jurisdiction over trusts when the defendant has his 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 take the dispute to the San Marino Judicial Authority.

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

TITLE II
TRUSTS

Chapter I
Creation, duration and invalidity of trusts

Art 6.
(Creation of trusts)

1 A trust shall be created by an instrument in writing inter vivos or by a will.

a) When the trust deed is made inter vivos in the Republic of San Marino, either a public deed, without the presence of witnesses, or a written document with the authenticated signature of a notary public shall be required. The authenticated signature of the notary public shall affirm the legality of the deed.
b) When the trust deed is made inter vivos outside of the territory of the Republic of San Marino, it shall be accompanied by a declaration by a lawyer or a notary public of the Republic of San Marino, who shall certify the validity of the deed in accordance with this Law.

2 The trust instrument shall include the following trust elements:

a) The settlor's will 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 the identification
e) the trustee's obligation to inform the resident agent of any fact or act which shall result from the Book of Events, referred to in Article 28;
f) In the case of purpose trusts:
    i) The identification of a specific purpose, achievable and not contrary to mandatory law, the public order and bones mores;
    ii) The identification of a protector with the duty to ensure that the provisions contained in the trust instrument are observed, or the criteria which enable him to be identified;
g) In the case of beneficiary trusts:
    i) the identification of the beneficiaries, or the criteria which enable them to be identified, or the identification of the person who has the power to identify the beneficiaries;
    ii) the rules ensuring the presence of a protector, authorised to take action against the trustee in case of breach of trust 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 the termination of the trust for reasons other than the revocation of the trust.

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

4 The trust instrument and dispositions through which trust assets are transferred may be established by power of attorney, general or special, which has the same form envisaged by the trust instrument.

Art 7.
(Certificate of trust)

1 Within 15 days of the date of creation of a trust, 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 absent, by the trustee;
b) an indication as to whether the trust is revocable or irrevocable;
c) details of the trustee and any limitations placed upon his powers;
d) details of the protector, if so required, and the nature of his powers;
e) details of the settlor;
f) in the case of beneficiary trusts or also for beneficiaries, details of the beneficiaries with a current interest in the trust fund;

g) the date of the trust instrument and the duration of the trust, if envisaged in the trust instrument;
h) the governing law of the trust;
i) one of the following expressions:
    i) "This instrument creates a beneficiary trust";
    ii) "This instrument creates a purpose trust";
    iii) "This instrument creates a beneficiary trust and a purpose trust";
j) a description of the purpose of the trust in case of a purpose trust;
k) details of the local agent, if so required.

2 The certificate shall be signed by the resident trustee or the resident agent, with the authenticated signature of a notary public who certifies that the contents are true.

3. The person keeping the Trust Register shall apply an administrative sanction of € 3,000.00 to the resident trustee and the resident agent who have failed to draw up the certificate of trust within period specified in paragraph 1.

Art 8.
(Trust Register in the Republic of San Marino)

1 A Trust Register shall be established in the Republic of San Marino. The Register shall be kept in the Office of the Trust Register set up by delegated decree to be issued within 120 days of 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 public who has authenticated the signature of the certificate of trust shall deposit it with the Office of the Trust Register within 10 days of the date of authentication.

4 The Office shall register the trust in the Register, by transcribing the certificate and it shall submit the documents certifying the registration of the trust to the notary public.

5 If the notary public fails to deposit the certificate within the period specified in paragraph 3, the resident trustee or the resident agent shall provide it 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 persons entitled subsequent to the termination of the trust;
b) from an amendment to 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 its judicial finding by a court.

7 A failure to cancel the trust cannot be upheld against third parties, unless they knew about the existence of the cause requiring the cancellation of the trust.

8 The person keeping the Trust Register shall apply an administrative sanction of € 2,000.00 to the notary public, the resident trustee and the resident agent who have failed to register the trust within the time limits laid down by paragraphs 3 and 5 respectively. A resident trustee or 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.

Art 9.
(Duration of trusts)

1 A trust shall come into effect from the time 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 creating a beneficiary trust does not provide for its duration or provides for a duration 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, the public order or bones mores;
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 absent or are unspecified in the trust instrument;

d) the requirements envisaged by Article 7 of the Law are absent in the trust instrument, except those requirements for which the Law otherwise provides;
e) the trust instrument or the transfer of property to the trustee is a sham.

2 The invalidity shall be revoked 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 periods.

5 The invalidity of a trust shall not be detrimental to third parties who, in good faith, have acquired rights from the trustee for valuable consideration after the registration of the trust in the Register referred to in Article 8.

6 The invalidity of individual provisions 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 individual provisions shall not entail the invalidity of the trust instrument when the invalid provisions are replaced with mandatory rules by law.

8 A trust shall be invalid in the cases envisaged by San Marino law as causes of invalidation for vitiated will of records pertaining to property.

Art 11.
(Trust fund)

1 Any property under the Law may be included in the trust fund without any necessary claim.

2 Assets held by the trustee in the exercise of his office shall belong to the trust fund Such assets shall include:

a) those resulting from the transactions carried out by the trustee, including investing and disinvesting 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 obligations shall also be included in the trust fund.

4 A trustee may accept assets to be included the trust fund from anyone having an interest thereof, unless otherwise established by the trust instrument.

Art 12.
(Separation of the property and destination bond)

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

a) trust assets shall not be subject to any action on the part of personal creditors of the trustee;
b) in case of concurrence of creditors or insolvency procedure of the trustee, the trust assets shall be separate from the other assets of the trustee and shall be excluded from the concurrence of his personal creditors;
c) trust assets shall not be subject to the family property regime and shall not be included the succession of the trustee.

2 At his 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 destination bond, unless otherwise provided by the trust instrument.

Chapter II

Amendment, revocation and termination of trusts

Art 13.
(Amendment to 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 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 8 by means of a certification, within fifteen days from the date he makes or receives such amendments. The Office shall make the relevant notes in the margin of the original certificate.

4 The certificate shall be signed by the resident trustee or the resident agent, with the signature being authenticated by a notary public who shall confirm that the contents are true.

5 A resident trustee or a resident agent who fails to make the communications envisaged by paragraph 3 within the relevant time limits shall be subject to an administrative sanction of € 2,000.00.

6 Any amendment to a trust instrument shall not be detrimental to the effects of the actions effectively performed by the trustee prior to such amendment.

Art 14.
(Revocation of trusts)

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

2 Revocation shall require the same procedure envisaged to amend the trust instrument, and it shall be notified to the Register by the resident trustee or 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 successors.

4 Revocation shall not be detrimental to the effectiveness of the actions 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 causes 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:
    i) where there are no beneficiaries, as well as no persons who can be beneficiaries or can identify any beneficiary;
    ii) when a beneficiary dies within the period 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 any applicable rule.

3 When a trust terminates in accordance with paragraph 1, letters (d)(i) or (ii) above and there are no successors of the settlor, trust assets shall be transferred to the State.

Art 16.
(Distribution of trust assets)

1 Once one of the events leading to the termination of the trust has occurred, the trustee shall complete any operations underway and shall not carry out new ones.

2 Once his final accounts and the trust fund inventory have been drawn up, the trustee shall transfer the fund to the persons entitled, 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 successors and, if absent, to the State.

3 Any obligation owed by the trustee shall pass de jure to anyone 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 accept the appointment to the office expressly or tacitly. 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 takes an action which suggests the willingness to accept the office.

2 A person who does not wish to act as trustee may refuse the office expressly by means of a written declaration sent to the settlor or to those entitled to succeed to his property, 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 persons, natural or legal, none of whom shall be a trustee of more than one trust subject to this Law, or by one or more persons, natural or legal, identified as obliged parties in the framework of the anti-money laundering regulations issued by the Republic of San Marino or other States in order to implement the European Union Directives or other laws substantially equivalent to them.

2 The professional exercise of the office of trustee in the Republic of San Marino shall be governed by 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 absent, 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 as an abstract, by means of an authentic deed deposited with the Trust Register within 15 days of the appointment.

4 A 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 to exercise his own rights and powers, and provide him, without delay, with the records and documents relating to the trust.

Section II Obligations
of trustees

Art 20.
(Good faith and diligence)

1 A trustee shall fulfil the obligations and exercise the powers relating to his office in good faith and with the diligence of a good father of a family who shall take care of the interests of other people.

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

Art 21.

(Protection of trust assets)

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

2 A trustee shall keep the trust assets separate from any other property at his disposal, including those relating to other trusts.

3 A trustee shall deposit:

a) anonymous bearer shares or certificates representing anonymous bearer shares in companies under San Marino law with a notary public of the Republic of San Marino, in compliance with the law in force;
b) any other bearer security with banks or 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, a 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 experience 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 interest 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 is aware between the interests he holds by any right 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 interest 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 interest with one or more beneficiaries or 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, except if he acts as trustee of another trust and this is allowed by the trust instrument;
c) compete on his own behalf, or on behalf of third parties with the business activity carried out as a trustee.

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

Art 24.
(Duty of impartiality - Derogation)

1 Unless otherwise provided by the trust instrument, when the trust has more than one beneficiary, or more than one purpose, the trustee holding discretionary powers may favour only one or more of them.

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 in application of the criteria set out by relevant delegated decree to be issued within 120 days of 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 not be affected.

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 beneficiary trust, if any.

2 Unless otherwise provided by the trust instrument, in the beneficiary trust the trustee shall be required to inform each beneficiary holding a fixed interest of:

a) the existence of the trust, the name and domicile of the trustee, and of 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 people representing minors, unborn or conceived children, unless required by the trust instrument.

4 If the trust instrument excludes or completely limits the obligations referred to in paragraph 2, it shall ensure that there is always a protector, authorized to take action against the trustee in case of breach of duty.

Art 28.
(Book of Events)

1 The resident trustee or the resident agent shall create, update and keep the Book of Events of the trust, in which they shall register, in chronological order, the acts and events relating to the trust of which they are aware. 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 instruments of delegation;
f) proceedings in which a trustee takes part in that capacity;
g) 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) changes in the trustees or protectors;
j) the exercise of the powers relating to the identification of beneficiaries and the attribution of a fixed interest.

2 Every year the resident agent shall ask the non-resident trustee to inform him of any fact or act which should result from the Book of Events.

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

4 The procedures for the authentication shall be set forth by delegated decree to be issued within 120 days of the date of entry into force of this 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.

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

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 holds the trust assets in the capacity of 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 a 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 provides that the trustees make decisions by a majority of votes, the dissenting trustee shall note his dissent in the Book of Events.

4 When a trust may be administered disjointedly, 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 the individual trustee shall note his dissent in the Book of Events.

Section III
Trustee's powers

Art 31.
(Trustee's powers)

1 A trustee shall exercise all powers conferred upon the entitled person in relation to trust assets, except for the limitations noted in the Trust Register.

2 The trustee shall have standing to sue and to be sued in his 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 or obtains the consent of another person before exercising a particular power.

3 A person shall not become a trustee merely because he has been consulted, or he has given or refused to give his consent under the preceding paragraph.

Art 33.
(Power of delegation)

1 Unless otherwise provided by the Law or the trust instrument, a trustee may delegate his own powers relating to the execution of actions or transactions concerning the management of the trust fund and dispositions 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 with a relevant measure by the Supervisory Authority. Such banks and investment companies shall select investments according to the criteria specified by the trustee in a relevant document.

4 A power delegated to more than one person shall be considered to be delegated jointly.

5 Anyone being delegated to exercise a power under this Article shall comply with the same obligations of 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 empowered to take action against the trustee, and the protector agrees.

7 A trustee shall supervise the action of the person delegated and shall bee 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 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 made to allow or to help other trustees to violate the obligations 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 dispositions of the trust assets are delegated to only one of them, exempting 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, so that the annual balance sheet may be drawn up collectively.

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 be 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 for which it is made;

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 own substitute;
b) exempts the person delegated from liability or limits his liability against the trustee or the beneficiaries, but within the limits in favour of 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 power to appoint new trustees.

Art 35.
(Power to insure trust assets)

1 Unless otherwise provided by the trust instrument, a trustee shall insure trust assets which are liable to perish or be damaged. Insurance premiums and damages may be charged to capital or income, as determined by 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, a trustee may make advancements to a beneficiary having a fixed interest in the trust fund, so that he is able to deal with important events in his own life.

2 In any case, the trustee shall bring such advancements into account in making further assignments 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 a trustee to increase the capital by accumulating all or any 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 fixed interests who are minors or incapable parties.

Art 38.
(Remuneration, costs and expenses of trustees)

1 Remuneration of the trustee shall be set by the trust instrument and be paid out of the trust fund. A trustee shall not be entitled to remuneration for the services rendered, if the trust instrument does not provide for remuneration and does not set forth the procedures for the determination of the amount.

2 Sums that are needed to pay the expenses incurred by a trustee in the exercise of his office shall be taken from the trust fund.

3 A trustee shall satisfy the claims arisen for his remuneration, expenses with priority given in respect of 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 and causes envisaged by the trust instrument, a trustee shall cease to hold office if:

a) he is removed from office in accordance with the provisions of the trust instrument;
b) he resigns, in the manners provided for by the trust instrument or, in absence of provisions, by means of a written communication bearing a specific date which shall be sent to the his co-trustees, if any, to the protector, if there is one, and, in the case of a beneficiary trust, to the beneficiaries with fixed interests;
c) he is replaced by order of the Judicial Authority;
d) he becomes subject to concurrence of creditors or other insolvency proceedings;
e) he dies or cannot hold the office due to health reasons;
f) he is subject to winding up, provided that he is a legal person or another entity.

2 Unfitness of a person to hold office due to health reasons shall be determined and proven by a specialist medical panel appointed in accordance with the trust instrument, or, if absent, by the Judicial Authority. The panel shall assess whether a person is unfit to hold office due to a condition which is not merely temporary and can affect the trustee's ability to act in a clear and efficient manner.

3 Resignation by a trustee in order to permit or to facilitate a breach of trust by the other trustees shall have no effect.

Art 40.
(Transfer of trust assets)

1 By way of derogation from 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 continuing trustees;
c) when a trustee is added, the trust fund passes into the common ownership of all the office-holders.

2 When a cause of ceasing to hold office has occurred, a trustee shall without delay carry out all the acts necessary to give effect to the provisions above.

3 In the case of death or inability of a trustee to continue in office, his heirs, legal representative or those who assist him shall fulfil such obligations without delay.

4 A new trustee shall replace the trustee ceasing to hold office in every pending legal proceedings.

Art 41.
(Delivery of records and documents)

1 A trustee who has ceased to hold office shall deliver without delay all the records and documents relating to the trust to the continuing trustees or the new trustee.

2 In the case of death or inability of the trustee, his heirs, legal representative or those who assist him shall fulfil such obligations without delay.

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 that does not comply with his obligations shall be bound, upon request of a beneficiary or of the protector, to pay an indemnity for the damage and loss caused to the trust fund, or to the beneficiary making the claim, unless he proves that the loss was due to a cause for which he was not responsible.

2 Indemnity shall include both direct damage and loss of profits.

3 A trustee shall not be not relieved from liability merely because the loss is made up wholly or in part by a profit resulting from the breach, unless the profit is made from the same act producing the loss.

4 A trustee shall not be liable for a breach of trust committed by other persons prior to his appointment. A trustee who becomes aware of a breach of trust shall however take all reasonable steps to have such breach remedied.

5 Except as provided by Article 33, paragraph 7, a trustee shall not be liable for any failure by a delegated person, where the delegation was made in good faith and with appropriate care.

Art 43.
(Liability of trustees)

1 Trustees shall be jointly and severally liable for losses and damage resulting from violations of law and 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 a breach of trust committed by another trustee, where the former has noted his dissent in the Book of Events and has immediately informed any person appointed in the trust instrument or, if absent, the beneficiaries entitled to a fixed interest and the protector, if any.

3 In any case, trustees shall be jointly and severally liable if, becoming aware of a breach of trust, they have not done what they could to avoid the breach to be committed or prevent or mitigate the loss.

Art 44.
(Joint and several liability of beneficiaries)

1 A beneficiary inducing, requesting or authorizing a breach of trust by a trustee shall be jointly and severally liable for it.

Art 45.
(Exemption from liability)

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

2 A beneficiary may exempt a trustee from liability for losses caused to his interests, if he is fully aware of the facts.

3 Under the same circumstances, a beneficiary may shoulder the debts of a trustee being liable for breaches committed without fraud or gross negligence.

Art 46.
(Prescription)

1 The right to compensation for damages shall lapse after five years from the time when a beneficiary or, in case there are no beneficiaries, the protector became aware of facts establishing the liability of the trustee.

Art 47.
(Liability of trustees for obligations towards third parties)

1 Anyone other than the other trustees, beneficiaries or the protector who has rights against the trustee resulting from obligations undertaken or acts expressly carried out as a trustee or from acts or facts nevertheless pertaining to that capacity, may satisfy his claim only out of the trust fund.

2 A trustee shall have the right of recourse to the trust fund, in preference to all others, in relation to any obligation he has personally undertaken, unless he is obliged to compensate the fund or any beneficiary or any pending compensation claim against him.

Chapter II
Beneficiaries

Art 48.
(Legal position)

1 A trust shall terminate if, there not having been any beneficiaries in existence at the time of the creation of the trust, at least one of them comes into being within the next thirty years.

2 The trust instrument may provide that one or more persons become or cease to be beneficiaries, stipulating the maker and the form of the decision.

3 The trust instrument may limit the legal position of beneficiaries by reference to conditions or a period of time.

4 The trust instrument may provide that the interest of a beneficiary in the trust fund or in the income of the trust fund

a) shall be neither subject to seizure, garnishment and nor be included in the property of the beneficiary in the case of concurrence of creditors; or
b) shall endure until one of his creditors effects seizure or wages garnishment, or the beneficiary becomes subject to the concurrence of his creditors, so that such interest ceases or is overtaken by other beneficial interests.

5 Anyone that receives or may receive assets or benefits from a purpose trust shall not be granted the legal position of beneficiaries.

Art 49.
(Rights of beneficiaries)

1 Unless otherwise provided by the trust instrument, every beneficiary with a fixed interest shall have the right to examine the records and documents concerning his own rights and make a copy thereof.

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

Art 50.
(Disclaimer, transfer of beneficial interest and termination of the trust by beneficiaries)

1 A beneficiary may wholly or partly disclaim his interest by instrument in the forms envisaged by the trust instrument. Such disclaimer shall have irrevocable effect from the moment that it is notified to the trustee.

2 Unless otherwise provided by the trust instrument, a beneficiary may request in writing to the trustee to transfer the trust assets in his favour or to make the transfer to a party designated by him.

3 Unless otherwise provided by the trust instrument, all beneficiaries with fixed interests in the trust fund or, if there are none, all beneficiaries may require the trustee to terminate the trust and transfer the trust assets to themselves or according to their indications.

Art 51.
(Dealings with the interest of a beneficiary)

1 Unless otherwise provided by the trust instrument, a beneficiary may alienate, charge or otherwise dispose of, in whole or in part, his interest by instruments taking effect against the trustee upon they are notified to him or, in the case of a beneficiary with a fixed interest not limited to his life, also by will.

2 If a beneficiary makes more than a disposition inter vivos in favour of different persons, the first disposition to be notified to the trustee shall take effect.

Chapter III
Protectors

Art 52.
(The office of protector)

1 The instrument creating a purpose trust shall provide for the office of protector, and shall authorise him to act against the trustee in case of breach of duty.

2 The instrument creating a beneficiary trust may provide for the office of protector, but it shall provide for him for any period during which there are no beneficiaries in existence.

3 A protector shall fulfil his own obligations and duties and exercise the powers relating to the office in good faith and with the diligence of a good father of a family. If he 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. The protector shall be entitled to the reimbursement of his expenses and costs incurred in matters pertaining to his office, unless otherwise provided by the trust instrument.

5 The trust instrument may confer upon a protector various powers, including the power:

a) to appoint a new or additional trustee;
b) to appoint a new protector to be added to him if necessary;
c) to remove a trustee from office;
d) to put a veto over the exercise of certain powers of 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 the office of trustee upon a protector.

7 A protector may be one of the beneficiaries with a fixed interest.

8 Unless otherwise provided by the trust instrument, if there is more than one protector of a trust, they shall decide by a majority. Each protector shall be entitled to take part in the decision-making process, whether decisions are to be adopted unanimously or by a majority, and shall be properly informed of the subject matter of the decision. A protector who dissents shall note, without delay, his dissent in the Book of Events of the trust.

9 Without prejudice to this Law or the trust instrument, a protector shall not disclose to third parties at any time any information obtained by virtue of his office, nor make use of it for his own benefit or that of a third party.

10 Unless otherwise provided by the trust instrument, an outgoing protector shall appoint his successor; if he fails, a new protector shall be appointed by the Judicial Authority.

11 Articles 39 and 41 of this Law shall be applied mutatis mutandis to protectors.

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 they shall exercise by issuing any necessary 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 an obligation or the exercise of a power of the office of trustee or protector;
b) the replacement of the trustee or the protector who has violated the law or the trust instrument or, for reasons of convenience or for the absence of the trustee, the requirements referred to in Article 18 of this Law;

c) the appointment of a new or additional trustee or protector;
d) measures of management and dispositions of trust assets.

3 A trustee shall be required to request without delay to the Judicial Authority to appoint a protector if, for whatever reason, there is none or the protector ceases to hold office, and the Law requires that there should be one.

4 A trustee may apply to the judge to be authorised to carry out some useful action which is not included among his powers, or for confirmation of an act already carried out, or to request the judge to introduce changes to the trust instrument which have become necessary or desirable.

5 By reasoned application, a trustee who is uncertain as to whether to carry out an act within his powers may ask the judge to pronounce a decision on the matter, also giving him precise directions.

6 A person appointed as a trustee by the Judicial Authority who finds himself in a position of conflict of interest shall apply to the judge to obtain the measures envisaged by Article 23 paragraph 2.

7 In appointing or replacing a trustee, a judge shall make provision for the custody and transfer of the trust assets, as well as of the relevant records and documents.

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

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

Art 54.
(Preventive action)

1 A beneficiary with a fixed interest or a protector who have well-grounded reasons to believe that the trustee is going to fail to perform an act within his duties or he is going to perform an action violating 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 relevant proceedings.

Art 55.
(Actions for segregation and recovery)

1 If a trustee has mixed trust assets with other assets, the trustee that is not involved in the mixing, any beneficiary or the protector shall have the right to have them segregated. The

claim shall be extended to the assets of any kind with which original assets have been replaced and to their fruits.

2 If a trustee has disposed of trust assets by violating the provisions of the trust instrument or for no or an expressly inadequate consideration, any other trustee not involved in the disposal, any beneficiary and the protector shall be entitled to claim that the trustee's successor return the assets to the trust fund, unless, in the case of a disposal violating the provisions of the trust instrument, the successor was not in a position to be aware of the violation. The claim shall be extended to the assets of any kind with which original assets have been replaced and to their fruits.

3 The foregoing shall not affect, in any case, the actions for compensation for loss and damages and any other action aimed at protecting the trust.

4 The action for segregation of assets shall not be subject to any limitation period. The action 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 residing 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 seat 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 this Law shall be applied.

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 by terms of second-degree imprisonment and a fine amounting to between € 8,000.00 and 12,000.00.

Art 58.
(Embezzlement and misappropriation of trust assets)

1 If a trustee embezzles or misappropriates trust assets, whether for his own or another'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 with fourth-degree disqualification from the office of trustee.

Art 59.
(Conflict of interest)

1 A trustee who, with the aim of securing for himself or others an unjust profit, acts in conflict of interest, 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 by terms of second-degree imprisonment, a fine amounting to between € 8,000.00 and 12,000.00 and second-degree disqualification from the office of trustee.

Art 60.
(Violation of accountability requirements)

1 A trustee failing to keep wholly or in part the accounts relating to the trust assets shall be punished by terms of second-degree arrest and second-degree disqualification from the office of trustee, if such a fact causes 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.

Art 61.
(False accounting records relating to the trust)

1 A 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 the law on the tax treatment of trusts governed by the law of the Republic of San Marino, enters data or facts which are wholly or in part untrue, or conceals wholly or in part true data or facts shall be punished by terms of second-degree imprisonment and 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 entrusted with the keeping of 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, deeds and instruments drawn up and authenticated abroad shall be deposited with and be kept by a Notary Public practicing in San Marino, before being used in the Republic of San Marino. The Notary shall certify their legality through the record of deposit.

Art 64.
(Repeal, transitional provisions and entry into force)

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

2 Trustees of trusts already established under Law no. 37 of 17 March 2005 shall make any necessary amendment to the trust instruments so that such trusts can comply with and be subject to the regime set out in this Law by 31 December 2010.

3 A trustee may introduce further amendments to the trust instrument allowed by the provisions of this Law with the consent of the settlor if alive and capable.

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

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

Done at Our Residence, on 1 March 2010