MON-01

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Part I General Law

Introduction

William Easun [1]

MON-01 The Principality of Monaco ("Monaco") is a sovereign independent state and has had its own written constitution since 1911. In 1993, Monaco became a full member of the UN and in 2004 the Principality became a member of the Council of Europe. In 1997, Monaco celebrated its 700th anniversary under the ruling Grimaldi family. The head of state is the Prince, currently Prince Albert II.

On 24 October 2002 a new Treaty was signed between Monaco and France which governs how the two countries will co-operate ("the 2002 Treaty"). This replaces a 1918 Treaty between the two countries. The 2002 Treaty is based on the equality of the two countries in sovereign terms. France ensures the defence of the independence of Monaco and guarantees the integrity of Monaco's territory. Monaco agrees to act in accordance with the fundamental interests of France in the political, defence and economic arenas. Monaco's right to decide on how its head of state is selected is also confirmed.

Following signature of the 2002 Treaty, a Treaty was signed in late 2005 between Monaco and France whereby Monegasque citizens can occupy all government and public functions (hitherto certain functions were reserved to French citizens).

Monegasque legislation can be found at http://legimonaco.mc; anti-money laundering legislation can also be found at http://siccfin.gouv.mc.

Footnotes

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Relations with France

MON-02 From 1869 onwards, when income taxes were abolished, Monaco witnessed a wave of growth and prosperity, coupled with an influx of French individuals and businesses keen to benefit from the privileges of Monegasque residence or from the establishment of businesses in Monaco. On 18 May 1963 a series of Treaties was signed ("the 1963 Treaty") which exist today in a largely unchanged form and cover the principal areas of tax, customs duty, control of insurance, post, telecommunications and local relations. There is still no tax on the personal income of individuals who are resident in Monaco, other than for persons of French nationality who are generally obliged to pay normal French taxes as if they were resident in France. There is a customs union with France, and Monaco enjoys some of the benefits of European Union membership without itself being a member.

The 1963 Treaty also provides for residents of France and Monaco to have the right of free circulation in the other territory, although Monaco has agreed to subordinate the entry, visits and establishment of foreign nationals in Monaco to the same rules as are applied in French territory. As of 1 March 1998, however, the entry rules were relaxed substantially in respect of all nationals of the European Economic Area (EEA) (i.e. the EU Member States and Norway, Iceland and Liechtenstein). EEA nationals and Swiss citizens no longer require a visa from the French authorities before becoming Monegasque residents. Non-EEA or non-Swiss nationals must still obtain such a visa.

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MON-03 Judicial system

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Relations with France

Judicial system

MON-03 Monaco, like France, has a Civil Code (MCC), Penal Code (MPC) and Civil Procedure Code (MCPC); there is also a Criminal Procedure Code and a Commercial Code. It has its own judicial system both in civil and criminal matters which is modelled on the French judicial system. The continental inquisitorial procedure (rather than the English adversarial procedure) is normal. Parties before the courts are represented by an avocat who may be French or Monegasque or an avocat-défenseur who must be Monegasque, although an avocat will always require an avocat-défenseur to present formally the written pleadings to the court.

The role of a notary in Monaco corresponds largely to that of his French counterpart.

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Legal persons and organisations

MON-04 Monegasque law provides for the creation of the legal entities set out below.

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MON-05 Corporate entities

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Legal persons and organisations

Corporate entities

MON-05 Article 26 of the Monaco Commercial Code provides for four different types of commercial company which are as follows:

(a)société en nom collectif;

(b)société en commandite simple;

(c)société à responsabilité limitée; and

(d)société anonyme.

A further form of corporation (a société civile) exists in Monaco, the objects of which must be civil, as opposed to commercial.

The main elements of these four companies are outlined as follows.

Société en nom collectif

MON-06 A société en nom collectif is similar to the Anglo-Saxon partnership, but the interests of the partners (associés) are represented by numbered shares (known as *parts*), although no share certificates are issued.

The company is formed pursuant to signature of its statuts in which are set out the rights and obligations of the associés, an objects clause, a capital clause, and powers relating to the nomination of a manager (gérant) who is responsible for day-to-day management of the

company and is answerable (as are all associés) jointly and severally for the company's debts, where the company's objects are commercial in nature.

Société à responsabilité limitée

MON-07A Introduced by Law 1,331 of 8 January 2007, this is a limited liability company largely modelled on the French SARL. It is suitable for smaller entrepreneurs as it allows for greater flexibility and lower costs. An individual must act as gérant (manager) and other formalities include the requirement to have a minimum paid up and issued share capital of €15,000 and a minimum of two shareholders (associés). The company must hold an annual meeting for the approval of the accounts, which must then be deposited with the commercial registry, and depending on the amount of share capital and the financial results of the company it may be obligatory to appoint a local auditor. For non-Monegasque individuals, authorisation to set up a SARL must be obtained from the Secretary of State.

Société en commandite simple

MON-07B A société en commandite simple is similar to an Anglo-Saxon limited liability partnership. Those associés who have limited liability are unable to carry out any action in the name of the company even under a power of attorney.

Any transfer of the shares in a société en nom collectif société à responsabilité limitée or a société en commandite simple requires prior authorisation by the Monegasque Government.

Limited auditing obligations exist for all three forms of companies.

Société anonyme monégasque

MON-08 A société anonyme monégasque/SAM is a limited liability company whose creation is subject to the following requirements:

(a)minimum paid up capital of at least:

i.€150,000 for standard companies where no higher minimum capital rules exist;

ii.€450,000 for those carrying out the activity of portfolio management of securities and fixed term financial instruments;

iii.€300,000 for those carrying out the activities of placing orders on the financial markets or of advising or assisting—however, this amount may be reduced to €150,000 where at least 50 per cent of the capital is held by a credit institution or

an insurance or reinsurance company subject to this company itself having available capital amounting to at least €2,000,000; and

iv.for banking activities special rules apply.

(b)minimum of two directors, one of whom should be a Monegasque resident;

(c)minimum of two shareholders;

(d)signature of the Memorandum and Articles of Association (statuts) before a Monegasque notary; and

(e)share certificates issued in respect of all company shares.

An annual audit in Monaco must be carried out by two statutory Monegasque auditors.

The transfer of shares in a société anonyme monégasque is not subject to review by the government, save that exchange control consent or dispensation may be required from the French Treasury in very specific circumstances.

The creation of the companies referred to above requires the consent of the Monegasque government and, in the case of a société anonyme monégasque, publication of the text of the statuts pursuant to their signature before a Monegasque notary.

Société civile

MON-09 A société civile shares most of the characteristics of the société en nom collectif, but is formed for a civil (i.e. non-commercial) purpose (e.g. real estate holding). The creation and any subsequent change in this company's constitution or shareholding is not currently subject to governmental review although this may change. Such a company is registered in a civil company registry, and, in order to qualify for continued registration, the objects of the company must remain civil. Consequently, a société civile may not engage in any form of regular commercial activity, failing which its objects will become commercial and the company will be required to seek authorisation for its activity.

The contract by which a société civile comes into being contains the company's objects. It must be formed in the common interest of its shareholders, and each shareholder must make a contribution known as an *apport* in the form of money, goods or effort. Subject to the company's statuts, each shareholder's profit or loss is proportionate to his participation in the company's capital.

Details of Monegasque commercial companies can be obtained from the Monaco Company Registry at http://rci.gouv.mc [Accessed 12 March 2021].

Multi-Family Office

Legislation was passed in late 2016 and it is now possible with Monaco Government consent to incorporate, necessarily as a SAM, a company which has as its dual purpose to offer classic *Multi-Family Office* services that straddle corporate/Trust services *and* (although this is not obligatory and many Multi-Family Offices will probably not seek to undertake this category of work) regulated financial services relating to advising, receiving and transmitting financial orders, such that in the same entity a mix of unregulated and regulated services can now be found. It is to be noted that a *Multi-Family Office* SAM which offers a mix of these services will itself necessarily be regulated by Monaco's Financial Services Regulator (the CCAF). There will also be increased capital requirements. Those carrying out financial services regulated activities will need to satisfy certain strict requirements as to qualifications. Similarly, owners of the business in the non-regulated arena of a *Multi-Family Office* (such as those offering Trust-related services for example) will also have to satisfy certain professional obligations in terms of their diplomas, experience and professional qualifications.

MON-10 Trusts

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Legal persons and organisations

Non-corporate entities

Trusts

MON-10 Under Law 214 of 27 February 1936 (as modified in 1999, 2011, 2018, 2020 and 2022), an individual may, in certain circumstances, create a trust in Monaco, whether inter vivos or by will, subject to the terms of the individual's national law, although the forum for any debate will be the Monegasque courts. Law 214 is discussed in detail at para.MON-31 onwards and is reproduced at para.MON-36 onwards (to include the modifications as made in 1999 and subsequently).

Article 2 of Law 214 provides that a trust must be made by Monegasque notarial deed on sight of an attestation of the foreign law to which the trust is subject, signed by a qualified person, failing which the trust will be void (see para.MON-38 below). Any trust, therefore, to which Monegasque law applies, not constituted in accordance with the form required by that law may technically be void.

In September 2008, Monaco ratified the 1985 Hague Trusts Convention: it was the intention in ratifying this Convention to allow greater certainty to be afforded to the status of non-Law 214 trust assets held in Monegasque institutions.

Historically, foreign trusts, not purporting to be made in accordance with Law 214, have tended to enjoy the support of local institutions, and the settlor's/testator's intentions have been applied even though strictly the relationships created by the trusts are unknown in the Principality's civil law: this has been so where local principles of ordre public have not been infringed (e.g. the réserve héréditaire). However, in a 1994 case, the courts invoked Law 214's avoiding provisions

where a testatrix *specifically* invoked Monegasque law over her will and yet failed to respect the terms of that law, which are principally rules of form, in executing the will.

> *"Case summary: F v D (Unreported 30 April 1992 and 29 November 1994)* The testatrix was a British national, resident in Monaco, who left a Will in English form but which was expressly declared to be subject to Monegasque law. Such a will would normally have been valid in Monaco. However, the Will contained the usual English provisions leaving the estate to named executors and trustees on trust to sell, call in and convert into money, pay the debts and funeral expenses and then distribute to the beneficiaries. The Monaco courts regarded these clauses as an attempt to create a trust. As the formalities prescribed by Law 214 for the creation of trusts had not been respected, the trust was held to be void. Furthermore, the court held that the Will and the trust could not be separated. Therefore, the Will was also void and the estate was administered under Monegasque law as an intestacy."

In 1994, it was unclear whether this case signaled a change in attitude to foreign trusts constituted outside the ambit of Law 214 or whether it was limited to its own very special facts. Monaco's new Private International Law Code (see *below*) has reconfirmed the effect of the 1985 Hague Trusts Convention and reiterated when trusts will be recognised in Monaco. In practice, in spite of these advances, settlors and testators particularly, are urged to err on the side of caution and in appropriate circumstances should ensure compliance with the formalities provided for under Law 214 whenever they execute a trust to which Monegasque law might apply.

The issue of settling Monaco sited assets on trust is further complicated (where that trust is not itself made subject to Law 214) by the fact that the transfer may be subject to Monaco gift/succession duty (*see* para.MON-86 below). Care should be taken when transferring Monaco sited assets to a trust if it is desired to avoid such duty whether *inter vivos* or by will outside the ambit of Law 214.

Where it is not possible or appropriate to resort to constituting a trust in accordance with Law 214, individuals may prefer to constitute an offshore corporation to acquire Monegasque sited assets, the shares of which might then be settled on a trust created in a common-law jurisdiction. Such foreign companies, provided they carry out no commercial activity in Monaco (and the ownership of assets such as real estate, even if let, does not generally constitute an "activity" for these purposes), require no Monegasque consent and will be recognised as properly registered owners of assets by the authorities. Monegasque real estate has not only been registered in the names of foreign corporations (e.g. companies registered in Jersey and the British Virgin Islands), but also in the names of Liechtenstein Anstalts and Foundations, although such registrations have not yet extended to registrations in the name of trustees of Anglo-Saxon trusts in their capacity as trustees.

Foundations

MON-11 Under Law 56 of 29 January 1922 Monaco provides for the creation of foundations (subject to governmental authorisation and enquiry) which are similar to trusts but not confined to persons who are nationals of Anglo-Saxon jurisdictions. Unlike trusts, a foundation must have a Monegasque "public" or charitable purpose.

Any person who has the relevant capacity is able to create a foundation destined to take effect during his lifetime or on his death. In either case, a foundation is formed by notarial deed, failing which it will be void. Authorisation is given for its creation only if:

- sufficient funds or assets are transferred to the foundation in order that its purpose be satisfied;
- the foundation is constituted for purposes which do not conflict with public policy; and
- its creation is in the public interest.

The person(s) named to administer the foundation must be of age and not subject to any bar on the exercise of their civil rights. If foreign, they must have habitually resided in Monaco for at least a year.

Associations

MON-12 Law 1,355 of 23 December 2008 defines how an association (i.e. an agreement by which several persons decide to group their activities together in a permanent manner for reasons other than those of dividing profit) may be formed. In order to form an association certain notification requirements must be met and the statutes must define, inter alia, the name, the object, the term and the registered office which must be situated in Monaco.

The activities of an association must principally be exercised in Monaco unless, by their very nature, they must be carried out elsewhere.

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Forms of ownership

MON-13 The right of ownership is, in principle, an inviolable right. There are, however various exceptions to this principle, resulting in the existence of different types of co-ownership by which two or more persons have identical concurrent rights over the same property. Further, it is possible for a life interest (usufruit) in property to be carved out so that one individual is entitled to use and enjoy the property by virtue of a droit d'usufruit whilst the ownership of the property is vested in another (the nu-propriétaire). This droit d'usufruit is an alienable right. Alternatively, a mere licence to use the property may be held (a droit d'usage et d'habitation) which is purely personal and may not be assigned to third parties.

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MON-14 Indivision

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Forms of ownership

Indivision

MON-14 The concept of *indivision* may arise either when there are several heirs to an individual's estate or inter vivos by contract.

Each coïndivisaire has notional rights over the whole property, and does not have exclusive rights over any part of the property. Each coïndivisaire may transfer or mortgage only his rights in the property. Where *indivision* arises upon death, each heir possesses proportionate rights. Where *indivision* arises contractually, the proportions owned will be specified in the contract. Provided the co-owners act unanimously, they have the right to enjoy, deal with and administer the property.

Upon the death of the coïndivisaire, his share will be dealt with either in accordance with the terms of the contract (by which the other coïndivisaires may have been granted rights of pre-emption), subject always to rules of Monegasque public policy and in particular to the rules relating to property rights, or in accordance with the usual rules of succession.

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MON-15 Co-propriété

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Forms of ownership

Co-propriété

MON-15 Co-propriété arises where the intended use of the property makes physical division impossible.

A common example of co-propriété occurs in respect of a Monegasque block of flats where the co-propriétaires will individually own their own flats, and own jointly the common parts which cannot be sold separately from the rest of the building.

In Monaco a syndicat de co-propriétaires (or householders' association) has a legal personality. Decisions are taken by majority vote at general meetings of the association and unanimity is required for any fundamental change of use. A managing agent (syndic) appointed by the association is employed to put the decisions of the meetings into practice.

On the death of the co-propriétaire, his share will be dealt with in accordance with the usual rules of succession.

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MON-16 Matrimonial regimes

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Forms of ownership

Matrimonial regimes

MON-16 Foreign nationals who marry in Monaco are, since 1 October 1970 and in the absence of a specific agreement to the contrary, prima facie subject to the matrimonial legal regime known as séparation des biens (arts 1244–1249 of the MCC). Article 1244 provides that each spouse is free to deal with, enjoy and dispose of his or her personal property as he or she thinks fit. Unless contrary evidence is produced, all other personal assets (other than clothes, jewellery and purely personal effects) are deemed to belong to the couple jointly.

Article 141(2) of the MCC states that where the spouses are (or one of them is) foreign and where they declare that they have not entered into any ante-nuptial agreement, the séparation des biens regime is applicable (see C. Gastaud in Le régime de séparation des biens à Monaco et en France) unless they declare that they will adopt the regime applicable in the country of which they are (or one of them is) a national. A foreign husband and wife may adopt an alternative regime, but an agreement to this effect must be entered into before the marriage in the presence of a notary. Examples of other regimes which may apply are, briefly, as follows:

- communauté universelle (community property regime);
- communauté de biens réduits aux acquêts (communal estate comprising only property acquired during the marriage).

Whilst the foregoing is expressly not affected by it, in July 2017 a Private International Law Code (the PIL Code) came into effect in Monaco. In art.36 of the PIL Code it is stated:

> "The matrimonial regime is regulated by the law chosen by the spouses. The spouses may choose the law of the State on the territory of which they establish their home after celebration of the marriage, the law of a State of which one of them is a national at the

time of making the choice the law of the State on the territory of which one of them has their domicile at the time of making the choice or the law of the State in which the marriage is celebrated. The law so designated extends to all their assets."

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MON-17 General

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Lifetime gifts

General

MON-17 The MCC sets out the conditions for making valid gifts, whether *inter vivos* or by will. Lifetime gifts, other than certain important exceptions, which are generally admitted by Monegasque case law, are deemed to be void if the requirements of the MCC are not met. These exceptions are as follows:

(a)dons manuels (i.e. gifts of tangible assets made by physical delivery) which include, for instance, a gift of money made by cheque;

(b)donations déguisées (i.e. gifts disguised as transfers for valuable consideration), provided they do not conflict with Monegasque public policy; and

(c)transfers of registered securities.

Further, *substitutions* (i.e. a gift made to the donee/legatee on condition that he pass it on to a third party) are forbidden; and gifts generally are not valid unless the donee accepts them.

As far as gifts made in accordance with the provisions of foreign laws are concerned, these will generally be recognised by Monegasque law provided the gifts do not conflict with Monegasque public policy, even when the requirements of the MCC are not met. Thus, where an individual resident in Monaco makes a gift of shares in a foreign company, the gift will be recognised as valid in Monaco, if the gift was validly made in accordance with the appropriate formalities of the foreign country.

Disposable assets

MON-18

Articles 780–786 of the MCC set out the formulae for defining that part of one's property which may be disposed of freely (the quotité disponible). The remainder is known as the réserve légale over which persons in the direct blood line have reserved property rights upon the death of the individual (*see* para.MON-26 below).

In accordance with art.788 those persons benefiting from the reserved property rules (*see* para.MON-25 below), or their heirs, can seek to set aside all or part of the dispositions effected either during the deceased's lifetime or by will, during the administration of the deceased's estate, in proceedings known as réduction.

Article 789 provides that the calculation of the réduction is made by aggregating all the assets owned at the date of death with those disposed of *inter vivos*. The value of assets disposed of by lifetime gift in accordance with art.796 of the MCC is taken as at the date of the donor's death. Therefore, on a person's death, the reserved property rights set out in arts 780–789 will apply to the value, not only of those assets owned by the deceased in his own name, but conceivably also of those assets which he disposed of by gift or generally at an undervalue (e.g. on an earlier disposition to an *inter vivos* trust).

No distinction is generally made as to the date of any lifetime gifts made in accordance with the MCC, so even those made before the donor's arrival in Monaco may be taken into account.

The réduction proceedings may result in lifetime gifts being declared void (in whole or in part), but only after those assets comprising the estate of the deceased have been exhausted (art.790).

Where the value of *inter vivos* gifts equals or exceeds the value of the freely disposable estate, all testamentary dispositions will be void (art.792).

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MON-19 Formalities

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Part I General Law

Lifetime gifts

Formalities

MON-19 Article 798 provides that any *inter vivos* gift (other than the exceptions described above) must be effected before a notary and recorded, failing which it will be void.

Under art.799, a gift is not binding on the donor until it has been expressly accepted by the donee. Any gift of movable estate will be valid only where a list giving the value of the objects so transferred signed by the donor and the donee has been attached to the transfer document.

A gift of Monegasque real property must be registered at the Monegasque Property Registry.

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MON-20 Revocation/avoidance

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Part I General Law

Lifetime gifts

Revocation/avoidance

MON-20 Any lifetime gift will be revoked where a legitimate child is subsequently born to the donor and any agreement by which the donee attempts to renounce this right will be void.

Any gift made between married persons during their marriage is always revocable, unless it is evidenced by a deed executed before a notary, but it will not be revoked by the subsequent birth of children.

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MON-21 Conclusion

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Lifetime gifts

Conclusion

MON-21 Lifetime gifts must, in general, satisfy certain conditions as to form and, even if validly made, may be held void where they conflict with reserved property rights or where children are born after the gift is made. However, Law 214 (see paras 31–45 below) may provide a partial solution to this problem, giving nationals of countries which recognise trusts greater flexibility in disposing of their estate. To this we must add that the PIL Code has greatly altered the freedom of individuals to avoid reserved property rights extending over lifetime gifts (*see particularly* para.MON-48 below) wholly depending upon their national Succession law.

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MON-22 Form:

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Estates of deceased individuals

The validity of domestic and foreign Wills

Domestic Wills

Form:

MON-22 A valid Monegasque will must be either a holographic will, a will by acte public or a "mystical" will.

A holographic or handwritten will is valid if signed and dated by the testator. However, the case of *HD v DD* which reached the Cour de Révision, demonstrated that equitable principles may be applied if it can be shown that the will was a true expression of the testator's intention, despite, in this case, it not having been completely handwritten.

A will by acte public will be valid provided that certain formalities as to its witnessing are fulfilled. The will, which may be typed or handwritten, must be read aloud before one or two notaries and contain an express confirmation that the formalities have been respected.

A "mystical" will may be written either by the testator or by a third person but must always be signed at the end by the testator if written by him and on each page if written by a third party. The "mystical" element is that the will is sealed (arts 842-3 of the MCC).

Regardless of the form of will in question, a witness must be 18 or over, a Monegasque national or resident in Monaco for at least three months and must not have been deprived of his civil Monegasque rights. A husband and wife cannot witness the same will.

Capacity:

MON-23 A will is not valid if the testator did not have the mental capacity to execute it nor if made by a minor (N.B. for these purposes, a person over 16 years old who is not a "major" under his national law may only dispose of one half of those assets which he could leave by will if he were of full age). We will not attempt to expand on this but, by way of example, if made in a moment of anger this is not sufficient to render the will invalid; neither is it sufficient to show that the testator was influenced by a beneficiary.

Foreign Wills

MON-24 Historically in so far as form is concerned, Monaco would generally have respected the form of a foreign will and would have given effect to its provisions if the requisite formalities of the testator's national law were satisfied, save conceivably where art.2 of Law 214 can be invoked (*see* para.MON-10 *above*).

With the advent of the PIL Code the matter has been clarified and extended so that according to art.58 of the PIL Code a testamentary disposition is valid as to form when it corresponds to the requirements of one of the following laws:

- That of the State of the place where the testator made the will.
- That of the State of which the testator was a national, whether at the moment of making the testamentary disposition or at the moment of death.
- That of the State on the territory of which the testator had his domicile, whether at the moment of making the testamentary disposition, or at the moment of his death.
- That of the State on the territory of which the testator had his habitual residency, whether at the moment of making the testamentary disposition, or at the time of his death.
- For real estate, that of the State where it is situated.

However, the question of substance is a separate issue. The Monegasque courts will look to the testator's national law (*see* para.MON-30 below) for rules of devolution and administration if a national Succession law election is validly made.

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MON-25 Reserved property rights

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Estates of deceased individuals

Reserved property rights

MON-25 A Will takes effect subject to reserved property rules which cannot be overridden if Monaco Succession law is regulating the estate (see infra). These rules provide that a certain proportion of the estate must be left to certain relatives of the deceased and this proportion, as described in para.MON-18 *above*, is known as the réserve légale.

Réserve légale

MON-26 The réserve légale is outlined as follows:

(a)if the testator leaves only one child, the réserve légale consists of one half of the estate;

(b)if the testator leaves two children, it consists of two-thirds;

(c)if the testator leaves three or more children it consists of three-quarters;

(d)children must always take the réserve légale in equal shares;

(e)if a child predeceases the testator, leaving issue of his own, such issue take equally per stirpes the share which such deceased child would have taken; and

(f)if the testator leaves no issue but leaves parents or other ancestors, the réserve légale is one quarter per ancestral line. However, ancestors other than parents can benefit from the réserve légale only if the testator left no brothers or sisters.

It should be noted that only ancestors and issue can benefit from the réserve légale. Neither the spouse nor any other relatives are automatically entitled to a proportion of the testator's estate. However, where the testator leaves a spouse, provided that the testator has no children from a

former marriage/relationship, he can opt to grant to her in his Will a life interest (usufruit) in the whole of his property or the "quotité disponible" of his property, absolutely.

That proportion of the testator's estate which is not covered by the réserve légale is known as the quotité disponible and can be freely given by the testator in his Will to whomever he chooses.

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MON-27 Revocation

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Estates of deceased individuals

Revocation

MON-27 Articles 890–893 of the MCC govern the position on the revocation of a Monegasque Will. Article 890 provides that a Will may be expressly revoked only by a later Will, or by a deed signed before a notary and witnessed by two individuals. In both cases, the testator should further clarify his desire to modify his earlier wishes as the last Will is always taken to be the valid Will. A later Will need not be of the same type as the earlier.

Apart from express revocation, a Will may be tacitly revoked (art.891 of the MCC) by a new Will containing dispositions which conflict with those contained in a previous Will.

Article 892 provides that a revocation contained in a later Will is effective even if that Will is incapable of execution by reason of the beneficiaries' incapacity or refusal to accept the dispositions, provided the testator's intention to revoke the previous Will is stated.

Any lifetime transfer of any asset made by the testator (in whole or in part) and which forms part of the subject matter of the Will, results in the Will being partially revoked. This remains so even where the transfer is deemed void and the asset returned to the testator (art.893).

As described in para.MON-18 *above*, a gift made during one's lifetime may be "reduced" by the deceased's issue if, after death, it transpires that the gift operated to deprive the issue of their reserved rights.

End of Document

MON-28 Intestate leaves no spouse

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Intestacy

Intestate leaves no spouse

MON-28 If the intestate leaves no spouse, the main provisions for division of the estate among family members are as follows:

(a)issue in equal shares per stirpes;

(b)if the intestate leaves no issue but leaves both parents and brothers and sisters or their issue, one quarter of the estate will pass to each parent and one half will pass to the brothers and sisters and their respective issue, in equal shapes, per stirpes;

(c)if the intestate leaves no issue and only one parent, that parent will have one quarter with the remaining three-quarters passing to the brothers and sisters and their issue, in equal shares per stirpes;

(d)if the intestate leaves no issue or brothers and sisters or their issue, and only one parent, that parent will have one half with the other half passing to the grandparents or, if the grandparents are dead, ascendants in the other ancestral line. The surviving parent also takes a life interest (usufruit) in one third of the property which does not devolve to him or her;

(e)in the absence of issue of the intestate and of his parents, the intestate's brothers and sisters or their issue inherit the whole estate, in equal shares per stirpes;

(f)if the intestate leaves no issue or brothers and sisters or their issue, the paternal grandparents or great grandparents take one half and the maternal grandparents or great

grandparents take the other half with the closest relatives in each ancestral line taking the half that devolves to that line;

(g)if the intestate leaves no issue or brothers and sisters or their issue or grandparents or great grandparents, the paternal uncles and aunts or cousins take one half of the estate and the maternal uncles or aunts take the other half of the estate with the respective shares passing to the closest relative on each side;

(h)if the intestate leaves no issue, parents and grandparents, sisters and brothers or their issue or uncles and aunts or cousins, then the succession devolves upon the state.

Intestate leaves a spouse

MON-29 If the intestate leaves a spouse, the following rules apply:

(a)if the intestate leaves one or more children, the surviving spouse takes a share in the estate equivalent to the share that each child receives, provided that such share is not less than one quarter of the entire estate;

(b)if the intestate leaves no issue, but one or both parents, then the spouse takes one half of the estate, or three-quarters if only one parent survives;

(c)if the intestate leaves no issue but one or both parents and brothers and sisters or their issue, then the spouse takes one half and the parents take one half or, if only one survives, the surviving parent takes one quarter and one quarter passes to the brothers and sisters or their respective issue, in equal shares, per stirpes;

(d)if the intestate leaves no issue or parents but leaves brothers and sisters or their issue, then the spouse takes one half and the remainder passes to the brothers and sisters or their respective issue, in equal shares, per stirpes;

(e)if the intestate leaves no issue or parents but leaves grandparents or great grandparents, then the spouse takes one half of the estate absolutely (and a remainder in the other half of the estate) or if there are ancestors in only one ancestral line then three-quarters of the estate absolutely (and a remainder in one quarter of the estate); and

(f)if the intestate leaves no issue, parents and grandparents, sisters and brothers or their issue, then the spouse takes the whole estate absolutely.

End of Document

MON-30 General

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Renvoi and Anglo-Saxon trusts

General

MON-30 In advance of the PIL Code Monegasque rules of private international law looked to an individual's national succession law in order to determine, inter alia, the devolution of a deceased person's movable estate. Real property situated in Monaco would always have passed in accordance with the internal Succession laws of Monaco, subject possibly to the effect of Law 214.

The rules of private international law prevailing in the deceased's country of nationality then came into play so that, either the internal rules of the receiving country prevailed, or, as is often the case, a renvoi is effected to, say, the Succession law of the country in which the individual was domiciled at the time of death was applied.

Case study (pre July 2017)

An English national dies domiciled in Monaco. Monaco will look to the deceased's national succession law to govern the devolution of his worldwide movable estate. However, the English rules of private international law will effect a renvoi to the succession law of the deceased's last domicile, i.e. English law will refer the question back to Monaco.

In order to mitigate the effect of the operation of renvoi and that of the reserved property rules described above, Monaco has, unlike other civil law jurisdictions, enacted a law on trusts (i.e. Law 214) so as to achieve the desired result of allowing certain individuals to circumvent Monaco public policy rules which would have applied and caused reserved property rights otherwise to prevail. It was not felt appropriate when Law 214 was enacted in 1936 to go so far as to change Monaco's Civil Code directly and specifically to permit the avoidance of reserved property rights by those people resident in Monaco hailing from countries which did not know such rights, and Law 214 was the device by which this could be achieved by those whose national law comprehended trusts (*see* para.MON-31 below).

With the advent of the PIL Code, notions of renvoi in terms of Succession law are now expressly rejected. Either Monegasque Succession law in its entirety will apply, or an individual's national Succession law in its entirety will apply, but not so that a renvoi from that national Succession law's conflict of law rules will apply to refer to another country's Succession law.

Law 214 of 1936

MON-31 Law 214 of 1936 revised Law 207 of 1935 and introduced the Anglo-American concept of trusts to Monaco. Historically, it arose as a result of regrets expressed by numerous foreigners who, whilst recognising the many advantages of residing in Monaco, believed its legislation was very restrictive with regard to the disposition of property inter vivos or by will.

In a report made to the Legislature on the draft law, it was stated that the objective was to allow foreigners to dispose of their assets in the same way as they might in their own country; this would therefore consist of modifying either the MCC or principles of international private law.

The former route was not considered acceptable and so the principle of modifying private international law had to be adopted. The system of trusts, it was said, as applicable in England, the US and Canada, would be transposed onto Monegasque law, insofar as foreigners whose national law accepted such a system were concerned.

Consideration was given to the constitution and functioning of trusts and certain strict requirements as to their creation were set out. The capacity of the trustees was an important matter of debate and only those institutions in Monaco or abroad which were used to acting in such a role were to be eligible, to protect the settlor or testator. It was proposed that an approved list should be drawn up by the authorities containing the names of those lawyers qualified to give attestations and those trustees eligible to take on such a role in Monaco.

It was also considered how a trust constituted outside Monaco might be transferred to Monaco and it was proposed that such a transfer would be effected if the prerequisites of a trust constituted in Monaco were respected. In this way, a trust so transferred would be received by a notary in Monaco, a certificate given by a qualified lawyer and an approved trustee nominated.

It was suggested that a transfer of an existing trust would be possible for any person who, on the date of the original constitution of the trust was a foreigner, even though he might have become a Monegasque national in the meantime.

The draft law was finally adopted in 1935 but within a few months had been modified. It is important to note the principal change since it highlights the very philosophy which caused the law to be introduced. In its original form, art.1 of the law read as follows:

> "Persons who according to their national law either during their lifetime or upon their death are able in the country of which they are nationals to regulate the disposition of their property according to the Anglo-Saxon system of trusts may in the Principality of Monaco, insofar as movable estate is concerned only, resort to such a system in accordance with the rules of the law to which such individuals are subject on the date of such a disposition."

In its revised 1936 form, art.1 reads as follows:

> "Those persons who by virtue of their personal status have the ability to control the destination of their property either during their lifetime or after their death in accordance with a system of trusts chosen by them, have the right to resort to such in the Principality with the concurrence and support of local institutions."

Consequently, in its original form, the law specifically restricted the use of trusts to foreigners whose national law comprehended such trusts and it is implicit that the national law would be necessarily the proper law of such trusts. In its revised form, Law 214 is arguably open to the interpretation that the individual's national law per se is not relevant in determining his ability to resort to Law 214, as art.1 merely refers to the individual's "personal status". If the law applicable to the individual's "personal status" (which might include the law of a person's place of habitual residence) itself entitles him to resort to the use of trusts, it would seem that the 1936 legislation has given the individual the opportunity to choose such system of trusts to regulate the disposition of his property as may be permitted by the law appropriate to his personal status.

For all practical purposes, however, and in the absence of judicial comment, practitioners in Monaco interpret the statutes strictly so that a national of a country which does not itself include a system of trusts is unlikely to be advised to test the meaning of the statute. Legal practice is to apply the 214 trust only to individuals whose national law directly includes trusts as opposed to those countries which simply recognise, enforce or tolerate foreign trusts.

Furthermore, legal practice assumes that only those persons resident in Monaco are entitled to execute a Law 214 trust. Again, the law is silent on the point and there is no case law on which to base such a practice: it is admittedly rare for any person to wish to opt into a trust regulated by Law 214 unless he is a resident in Monaco, for reasons which will emerge.

But that is to state the historical position. Whilst Law 214 (especially in the context of those who wish to set up testamentary trusts which are going to be recognised and enforced under Monaco law) still very much has its place, the PIL Code has removed one of the fundamental reasons which caused certain individuals to resort to making a Law 214 Will Trust (for further comment see infra), giving them an opportunity to make a will in another form to achieve a similar result.

Creation of a Law 214 trust

MON-32 In order to create a 214 trust, whether by will or *inter vivos*, certain strict rules as to form must be respected.

The trust must be created by authentic deed (i.e. before a Monegasque notary) or in "mystic" form (i.e. in a sealed envelope delivered to a Monegasque notary before witnesses) and on sight of the relevant certificate of law provided by a qualified person whose name appears on a list held with the Court of Appeal of Monaco. English solicitors and American attorneys-at-law are entitled to inscription on the list.

Each Law 214 trust specifically requires nomination of a corporate trustee whose name figures on a list drawn up by the Court of Appeal. An individual co-trustee may also be nominated but only if his name is on the same list.

An exception is the law of 18 October 1939 which entitles a person whose name does not appear on the list to act as a trustee provided he acts only with regard to one such trust. The practical effect is that a spouse or a child can act as co-trustee with the corporate trustee.

End of Document

MON-33 Subject matter of Law 214 trust

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Subject matter of Law 214 trust

MON-33 The earlier law of 1935 limited itself to movable estate (see para.MON-31 above). However, Law 214 makes no such limitation with the effect that Monegasque-sited immovable estate within a Law 214 trust should pass in accordance with the trust even if this conflicts with Monegasque rules of public policy. This point was not unanimously conceded by practitioners, but in the light of the PIL Code and its effects and opportunities in terms of choice of Succession law, and the fact that a single Succession law must now equally pervade movable and immovable estate, arguably the position has been clarified so that a national Succession law choice made in the context of an individual executing a Law 214 Will trust will cause the corresponding Succession law to apply to all assets, including real estate (see below).

Duties payable

MON-34 Duty is charged at between 1.3 per cent and 1.7 per cent of the net value of the trust fund valued as at the date of death. In the case of trusts created *inter vivos*, this charge is immediate. It is also possible to opt for an annual duty of 0.20 per cent to arise instead, for so long as the trust exists. Lesser rates of Law 214 duty may apply depending upon the nature/situs of the asset.

The tax authorities of Monaco consider that such duty is payable not only on the value of the trust fund when constituted, but also on any subsequent injections of monies or assets into the trust. Furthermore, whilst the law is silent on the point, it has been known for the tax authorities not to charge duty at the rate of 1.7 per cent in respect of specific bequests and legacies in Law 214 will trusts. Rather, standard Monegasque succession duty might apply so that, depending

upon the circumstances, either the legacy or the bequest may give rise to no tax whatsoever (where the property is situated outside Monaco, or the property is situated in Monaco but the beneficiary is a member of the immediate family of the testator), or tax may apply at any of the defined rates up to the maximum rate of 16 per cent (where the property is situated in Monaco and the beneficiary is unrelated to the deceased).

Conclusion

MON-35 Since 1936, nationals of common law countries have had a means of regulating the disposal of their assets, whether sited in Monaco or elsewhere, at a relatively modest cost, in a manner known to them in their country of origin. This represents a unique and remarkable facility when compared with the legislation and case law still prevailing in other civil law countries, although these are generally moving towards an acceptance and recognition of trusts.

With the advent of the PIL Code, Law 214 has not lost its lustre, certainly when used in a testamentary context, both because it is a means of setting up a trust over Monaco-sited assets without incurring the risk of duty at a rate of 16 per cent (*see* above) and because it remains a certain way of invoking a trust over Monaco assets since that was the specific purpose of Law 214 and remains so.

End of Document

MON-36 Text of Law 214 of 27 February 1936 revising Law 207 of 12 July 1935 on trusts (as modified)

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Text of Law 214 of 27 February 1936 revising Law 207 of 12 July 1935 on trusts (as modified)

MON-36 *Part I—Settling of trusts–Rules*

Article 1

MON-37 Those persons, who by virtue of their personal status have the right to determine how their property will pass either during their lifetime or after their death by means of a system of trusts chosen by them, may exercise the right in the Principality with the assistance and support of local institutions.

End of Document

MON-38 Article 2 (Modified by Law n° 1,216 of 7 July 1999)

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Article 2 (Modified by Law n° 1,216 of 7 July 1999)

MON-38 A trust should be set up, failing which it will be void, in so far as testamentary trusts are concerned in accordance with the formal rules required by Monegasque law for wills made by public or mystic deed, and insofar as inter vivos trusts are concerned in accordance with the formal rules required for inter vivos gifts. An attestation that the deed conforms with the essential requirements of the foreign law to which it subjects itself should be produced. This attestation will be given by a qualified lawyer.

The qualification will result from registration on a list drawn up and updated by the first President of the Court of Appeal at the instigation of the Procureur Général.

By right are registered on this list at their request: for the UK any Solicitor of the Supreme Court; for the US any Attorney at Law.

End of Document

MON-39 Article 3 (Ordinance Law of 18 October 1939; modified by Law n° 1,216 of 7 July 1999)

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Article 3 (Ordinance Law of 18 October 1939; modified by Law n° 1,216 of 7 July 1999)

MON-39 May act as trustees only those companies, and eventually as co-trustees or as local representatives those individuals who feature on a special list drawn up and updated by the first President of the Court of Appeal at the instigation of the Procureur Général.

Monegasque law alone, to the exclusion of the foreign law, is competent to determine both the nomination of trustees and local representatives who consequently do not fall within the scope of the attestation provided for in art.2, first paragraph.

When the trustee is not established in the Principality, he/it must nominate a local representative.

The conditions for registration of trustees and local representatives will be fixed by Ordonnance Souveraine.

Exceptionally, in accordance with the foreign chosen law, the co-trustee may be freely nominated by the settlor without being registered on the list described in art.2 but on condition that he/she, in accordance with the foreign chosen law, only acts in respect of that single trust.

End of Document

MON-40 Article 4 (Modified by Law n° 1,216 of 7 July 1999)

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Article 4 (Modified by Law n° 1,216 of 7 July 1999)

MON-40 The transfer to the Principality of a trust set up elsewhere works in the same way as the setting up of a trust, as provided for in the foregoing articles. This transfer is permitted for any person who, on the day the trust was set up, was a foreigner even though he/she might have changed nationality whether or not to become Monegasque.

The setting up in Monaco of a new trust in accordance with the present law destined to replace a trust previously set up elsewhere will be considered, from the point of view of this Article, as equating to a transfer.

This transfer will be determined by the effective filing officially with a Monegasque notary by the settlor and the trustee of an original of the deed creating the foreign trust.

End of Document

MON-41 Article 5

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Article 5

MON-41 Any disputes relating to the constitution, the transfer or the operation of trusts in the Principality shall be heard by the Monegasque courts, which shall not be bound by Monegasque rules of public policy and shall, in conformity with this Law, apply the provisions of the foreign law.

End of Document

MON-42 Article 6

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Article 6

MON-42 The only duties to which the creation, transfer and functioning of trusts give rise are registration duties set out in Pt II hereafter.

Corporate trustees will pay a duty on registration and thereafter every three years, the amount of which will be fixed by Ordonnance Souveraine.

Article 6–1 (Created by Law n° 1,462 of 28 June 2018; replaced by Law 1,503 of 23 December 2020)

MON-42A The trustee must possess and maintain adequate, exact and current information on the effective beneficiaries of each trust it administers. To this end the trustee takes up and keeps information relating to the identity:

- of the settlor/testator;
- of the trustees;
- as the case may be, of the protector;
- of the beneficiaries or of the category of beneficiaries; and
- of any individual who has effective control of the trust.

The trustee provides this information to the organisations and persons set out in the first and second Articles of Law n° 1,362 of 3 August 2009, as modified, in order to satisfy the obligations imposed on it by the said Law.

Should the trustee fail to respect these obligations, it will be subject to the fine set out at 3 of art.26 of the Criminal Code.

Article 6–2 (created as of 28 February 2021 by Law no 1,503 of 23 December 2020)

MON-42B The trustee and any person carrying out an equivalent function within legal constructs similar to trusts, declare their status and provide in good time to the organisations and persons concerned by articles 1 and 2 of the Law n° 1,362 of 3 August 2009, as modified, the information set out at article 6-1 when acting in an official capacity on behalf of the trust or similar legal constructs they establish a business relationship or carry out, occasionally, a transaction which arrives at or exceeds the amount set out in the second sub clause of 1°) of article 4 of Law n° 1,362 of 3 August 2009, modified.

End of Document

MON-43 Article 7

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Part II—*Taxation*

Article 7

MON-43 Instruments setting up trusts, or transferring trusts to the Principality, are subject to a proportional registration duty which varies according to the number of beneficiaries, and applies at the following rates:

One beneficiary	1.3%
Two beneficiaries	1.5%
More than two beneficiaries	1.7%

This duty may be converted into an annual tax of 0.2% if the parties so request in the instrument setting up the trust.

The duty or tax is levied to the exclusion of any gift or estate duties.

In either case the tax is raised on the total value of the assets placed in the trust, with the exception of Monegasque transferable securities which are dealt with in art.8.

The capital value of transferable securities for the purposes of calculating duty shall be the average price quoted on the Stock Exchange on the day the trust is set up or, in the case of a testamentary trust, on the date of the testator's death. The average price shall be that of the London Stock Exchange if the settlor is of British nationality and of the New York Stock Exchange if the settlor is of any other nationality.

If the relevant securities are not quoted on the Stock Exchange, the capital value shall be determined by the tax return submitted by the "trustees" without deduction of charges.

The tax of 0.2% tax is payable in advance yearly instalments. The first instalment falls due when the instrument is registered and subsequent instalments are payable within the first 10 days of January each year. Non-payment may result in a fine equal to one quarter of the tax due.

The trustees are personally liable for the payment of all annual instalments except the first.

End of Document

MON-44 Article 8

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Article 8

MON-44 Any part of the trust fund consisting of Monegasque transferable securities is subject to a reduced proportional registration duty, set at the following rates according to the number of beneficiaries under the trust:

One beneficiary	0.05%
Two beneficiaries	0.25%
More than two beneficiaries	0.45%

This duty, which is paid on registration of the instrument setting up the trust, covers all gjft or estate duties.

It is levied in the same manner as the fee payable on foreign transferable securities described in the previous article.

End of Document

MON-45 Article 9

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Article 9

MON-45 The aforementioned duties and taxes are levied in accordance with the provisions of the Ordonnance Souveraine of 29 April 1928 and subsequent Ordonnances insofar as those provisions are not modified by the present Law.

Part 111 Accounting obligations (Created by Law n° 1,385 of 15 December 2011)

Article 10 (Created by Law n° 1,385 of 15 December 2011)

MON-45A Trusts are subject to the obligation to keep accounts in accordance with rules set by Arrêté Ministériel.

Accounting documents as well as all corresponding documents must be maintained at the premises of the trustee for a period of at least five years.

If the trustee infringes this obligation it will be subject to the fine set out at number 4 of art.26 of the Criminal Code.

Part 1V Registration on the Trusts Register (Created by Law n° 1,462 of 28 June 2018—replaced as of 28 February 2021 by Law n° 1,503 of 23 December 2020).

ARTICLE 11 (CREATED BY LAW N° 1,462 OF 28 JUNE 2018)

MON-45B

The trustee who administers a trust constituted or transferred to the Principality must communicate the information required under art.6-1 to the Minister of State, in order that it be recorded and conserved on a specific “Trusts Register”.

(Title created by Law n° 1,462 of 28 June 2018—replaced as of 28 February 2021 by Law n° 1,503 of 23 December 2020 and described as follows: “On entry in the Trusts Register”).

Article 11 (Created by Law n° 1,462 of 28 June 2018; replaced as of 28 February 2021 by Law n° 1,503 of 23 December 2020).

The trustee established or domiciled in the territory of the Principality who administers a trust set up in or transferred to the Principality is required to communicate the information set out in article 6-1 to the Minister of State, in order that the information can be recorded and maintained on the specific trusts register called “Register of Trusts” on the conditions set out in a Sovereign Ordinance.

The same obligation befalls any trustee or any person carrying out an equivalent function for a legal construct similar to that of a trust established or domiciled outside the European Union when acquiring real estate or when they establish a business relationship in the territory of the Principality.

A business relationship is as described in the last paragraph of article 4 of the Law n ° 1,362 of 3 August 2009, as modified.

When the trustees or those occupying equivalent positions in a similar legal construction are established or resident in several member States of the European Union, or where the trustee or the person occupying an equivalent position in a similar legal construction establishes multiple business relations in the name of the trust or the legal construction in several of those States, the obligation to register is satisfied by the communication to the Minister of State of an attestation containing proof of registration on the Register of one of those States or an extract containing information on the beneficial owners maintained in the Register of one of those States;

(Title created by Law n° 1,462 of 28 June 2018—replaced as of 28 February 2021 by Law n° 1,503 of 23 December 2020).

Article 12 (Created by Law n° 1,462 of 28 June 2018; replaced as of 28 February 2021 by Law n° 1,503 of 23 December 2020)

MON-45D

The registration request signed by the trustee sets out:

- the identity of the persons constituting the trust;

• the identity of the trustees, that is the person or persons physical or corporate authorized to administer or represent the trust;

• as the case may be, the identity of the person acting as protector of the trust;

• when the beneficiaries or future beneficiaries have been designated, the individual or individuals who are beneficiaries of the assets of the trust; when the future beneficiary or beneficiaries have not yet been designated, the class of persons in the primary interest of whom the trust was created and produces its effects.

• the identity of any other individual who exercises a control over the assets of the trust;

• the ownership and controlling structure of the trust.

(Title created by Law n° 1,462 of 28 June 2018—replaced as of 28 February 2021 by Law n° 1,503 of 23 December 2020).

Article 13 (Created by Law n° 1,462 of 28 June 2018)

MON-45E

Any change to the elements set out in the previous article, in respect of them featuring in the Trusts Register, must give rise to a further or rectifying declaration. This declaration must be made within a month of the change.

The information contained in the Trusts Register is available, within the carrying out of their role, to the following competent public authorities:

• the Service d'Information et de Contrôle sur les Circuits Financiers;

• the judicial authorities; and

• officers of the Tax Authorities. The conditions by which they may access the information are fixed by Sovereign Ordinance.

(Title created by Law n° 1,462 of 28 June 2018; replaced as of 28 February 2021 by Law n° 1,503 of 23 December 2020)

ARTICLE 13 (CREATED BY LAW N° 1,462 OF 28 JUNE 2018; REPLACED AS OF 28 FEBRUARY 2021 BY LAW N° 1,503 OF 23 DECEMBER 2020)

MON-45F

The request to feature or be mentioned on the register of trusts must be accompanied by all documents proving the exactitude of the declarations.

Any modification to the information described in the foregoing article must be the subject of subsequent or rectifying declaration in order to be mentioned in the Trusts

Register. The declaration must be notified to the Minister of State within a month of the modification occurring.

On receipt of the request to register, the service in charge of the management of the register must ensure that it contains all the information required and is accompanied by all requisite documents. If that is not the case the registration does not occur and the person making the request must provide the missing declaration and produce the requisite documents.

The service checks that the declarations conform with the documents produced. If anything is incorrect or gives rise to difficulty the Minister of State invites the trustee to regularise the situation. If no reply is given within two months or if an inadequate reply is given things occur as set out in Article 13-2.

When the file is complete, the request to register is registered and the receipt which is delivered sets out the documents provided. As necessary a duplicate of the receipt is provided to the trustee, against payment of the fee.

The mode of application of the current article is defined by Sovereign Ordinance.

(Title created by Law 1,462 of 28 June 2018—replaced as of 28 February 2021 by Law n° 1,503 of 23 December 2020).

ARTICLE 13-1 (CREATED WITH EFFECT FROM 28 FEBRUARY 2021 BY LAW N° 1,503 OF 23 DECEMBER 2020)

MON-45G

The bodies and persons referred to in Articles 1 and 2 of Law n° 1,362 of 3 August 2009, as amended, and, insofar as this requirement does not unnecessarily interfere with their functions, the authorities referred to in the third and fourth paragraphs of art.13-3, shall report to the Minister of State any discrepancy they find between the information kept in the Register of Trusts and the information on the beneficial owners of trusts in their possession.

The Minister of State shall inform the trustee or the person occupying an equivalent position in a similar legal arrangement of the discrepancy reported, with a view to obtaining his observations or making his acceptance known.

In the event of acceptance, the information kept in the register shall be amended.

In the absence of a response or in the absence of a sufficient response, the discrepancy shall be mentioned in the Register of Trusts. The methods of application of the foregoing provisions shall be defined by Sovereign Ordinance.

(Title created by Law n° 1,462 of 28 June 2018. Title replaced as from 28 February 2021 by Law n° 1,503 of 23 December 2020).

ARTICLE 13-2 (CREATED AS FROM 28 FEBRUARY 2021 BY LAW N ° 1,503 OF 23 DECEMBER 2020)

MON-45H

The Court of First Instance hears disputes arising from applications for registration, additional or corrective statements.

It is seised by summons in accordance with the rules of civil procedure.

(Title created by Law n° 1,462 of 28 June 2018. Title replaced as from 28 February 2021 by Law n° 1,503 of 23 December 2020).

ARTICLE 13-3 (CREATED WITH EFFECT FROM 28 FEBRUARY 2021 BY LAW N° 1,503 OF 23 DECEMBER 2020; MODIFIED BY LAW N° 1,520 OF 11 FEBRUARY 2022; MODIFIED BY LAW N° 1,520 OF 11 FEBRUARY 2022)

MON-45I

The information on the trusts register is accessible to the Service d'Information et de Contrôle sur les Circuits Financiers, without restriction and without informing the person concerned.

This information is also accessible, under the same conditions and within the sole framework of the fight against money laundering or terrorist financing, to the competent public authorities and to the following persons:

1°)the judicial authorities;

2°)the judicial police officers of the Public Security Directorate acting upon written requisition and upon delegation of the powers of the Public Prosecutor or upon delegation of an investigating judge;

3°)authorised agents of the Tax Services Directorate; and

4°)the President of the Bar Association of Defence Lawyers (“avocats”).

The said information is, moreover, accessible under the same conditions to the authorised agents of the Commission de Contrôle des Activités Financières (Financial Activity Control Commission), within the framework of its missions provided for by Law n° 1,338 of 7 September 2007, as amended.

(Title created by Law n° 1,462 of 28 June 2018. Title replaced as from 28 February 2021 by Law n° 1,503 of 23 December 2020)

ARTICLE 13-4 (CREATED WITH EFFECT FROM 28 FEBRUARY 2021 BY LAW N° 1.503 OF 23 DECEMBER 2020; MODIFIED BY LAW N° 1,520 OF 11 FEBRUARY 2022)

MON-45J

The information on the trusts register is also accessible to the bodies and persons referred to in Articles 1 and 2 of Law n° 1.362 of 3 August 2009, as amended, in the context of customer due diligence measures, after informing the trustee or the person holding an equivalent position in a similar legal structure.

The Minister of State shall communicate this information in the form of an extract from the register of trusts.

The bodies and persons referred to in arts 1 and 2 of Law 1.362 of 3 August 2009, as amended, may not rely solely on the examination and content of the extract from the register to fulfil their duty of due diligence. These obligations are fulfilled by applying a risk-based approach.

The conditions of access to the register and the conditions of application of this Article shall be laid down by Sovereign Ordinance.

(Title created by Law n° 1,462 of 28 June 2018. Title replaced as from 28 February 2021 by Law n° 1,503 of 23 December 2020)

ARTICLE 13-5 (CREATED WITH EFFECT FROM 28 FEBRUARY 2021 BY LAW N° 1,503 OF 23 DECEMBER 2020)

MON-45K

Information from the trust register relating only to the name, month and year of birth, country of residence and nationality of the beneficial owner, as well as the nature and extent of the beneficial interests held is also accessible:

1°)where the trust is set up or transferred in the Principality, to any other person who can demonstrate a legitimate interest in the fight against money laundering, terrorist financing and corruption; and

2°)where the written request relates to a trust or a similar legal arrangement which holds or has a controlling interest in a company or other legal entity other than those referred to in the third paragraph of art.21 of Law n° 1,362 of 3 August 2009, as amended or those registered in a Member State of the European Union, by direct or indirect ownership, in particular by means of bearer shares or by control by other means, to any natural or legal person making such a request.

The conditions of access to the information in the register of trusts as well as the duration of its storage are defined by Sovereign Ordinance.

(Title created by Law n° 1,462 of 28 June 2018. Title replaced as from 28 February 2021 by Law n° 1,503 of 23 December 2020)

ARTICLE 13-6 (CREATED WITH EFFECT FROM 28 FEBRUARY 2021 BY LAW N° 1,503 OF 23 DECEMBER 2020)

MON-45L

For the purposes of the application of paragraph 1°) of the first subparagraph of the preceding article, information relating to the beneficial owner may be communicated to any person authorised by a final court decision.

The request for communication shall be made by application to the President of the Court of First Instance. It shall contain the subject and basis of the request and an indication of the documents on which it is based.

The President of the Court of First Instance shall give his decision by order. The order shall be served, on the initiative of the appellant, on the entity which is the subject of the application. Such service must include, on pain of nullity, an indication that the entity concerned must bring the order to the attention of the beneficial owner or owners, as well as the procedure and time limit for exercising the remedies to which the order may be subject.

The order may be appealed against within thirty days of service under the conditions of Article 852 of the Code of Civil Procedure, in particular by the trustee or the person occupying an equivalent position in a similar legal arrangement, including where the trustee is mandated by the beneficial owner.

(Title created by Law n° 1,462 of 28 June 2018. Heading replaced as from 28 February 2021 by Law n° 1,503 of 23 December 2020)

ARTICLE 13-7 (CREATED WITH EFFECT FROM 28 FEBRUARY 2021 BY LAW N° 1,503 OF 23 DECEMBER 2020; MODIFIED BY LAW N° 1,520 OF 11 FEBRUARY 2022)

MON-45M

When they are entered in the register of trusts or subsequently, the trustee or the person occupying an equivalent position in a similar legal arrangement may request from the Minister of State, by way of derogation from Articles 13-4 and 13-5, a restriction of access to all or part of the information relating to the beneficial owners.

Following a request for access to the Register of Trusts and by way of derogation from arts 13-4 and 13-5, a restriction of access to all or part of the information

concerning the beneficial owners may also be requested, by application to the President of the Court of First Instance, by the persons referred to in the previous paragraph.

The restrictions on access referred to in the preceding paragraphs may be requested when the beneficial owner is a minor or is incapacitated or when such access could expose the beneficial owner to a disproportionate risk, a risk of fraud, extortion, harassment, kidnapping, blackmail, violence or intimidation.

The application is based on a detailed assessment of the exceptional nature of the circumstances as defined by Sovereign Ordinance.

The applicant shall send a copy of the application provided for in the first paragraph, or of the application referred to in the second paragraph referred to by the Registry of the Court of First Instance to the service in charge of the trusts register.

As long as an irrevocable decision has not been made on the application referred to in the first paragraph, no information may be communicated by the service in charge of the trusts register, except to the Service d'Information et de Contrôle sur les Circuits Financiers and to the competent public authorities in paragraphs 1) and 4° of Article 1 of the Law n° 1,362 of 3 August 2009, as modified.

As long as an irrevocable decision has not been rendered regarding the request referred to in the second paragraph, no information may be communicated by the said service to any of the persons having requested access to the trusts register pursuant to Articles 13-4 and 13-5 other than the *Service d'Information et de Contrôle sur les Circuits Financiers*, the competent public authorities and the organisations and persons set out in paragraphs 1) and 4) of the first article of Law n° 1,362 of 3 August 2009, as modified.

The derogations provided for by this article may only be granted for the duration of the circumstances which justify them without exceeding a maximum period of five years. They may be renewed by decision, as the case may be, of the Minister of State, or of the President of the Court of First Instance, following a reasoned request for renewal from the trustee, or from the person occupying an equivalent position in a similar legal arrangement.

In the context of the implementation of their due diligence obligations pursuant to the provisions of art.13-4, the exemptions provided for in this Article are not applicable to the bodies and persons referred to in figures 1°) to 3°) of Article 1 of Law n° 1,362 of 3 August 2009, as amended.

(Title created by Law n° 1,462 of 28 June 2018. Title replaced as from 28 February 2021 by Law n° 1,503 of 23 December 2020)

ARTICLE 13-8 (CREATED WITH EFFECT FROM 28 FEBRUARY 2021 BY LAW N° 1,503 OF 23 DECEMBER 2020)

MON-45N

Any procedural act performed by one of the competent authorities referred to in the second and third paragraphs of art.13-3 on the basis of information contained in the register of trusts on grounds other than those provided for in that Article shall be null and void.

The fact that regular consultation of the register of trusts reveals offences or breaches other than those relating to the fight against money laundering or terrorist financing shall not constitute grounds for the nullity of the incidental proceedings.

(Title created by Law n° 1,462 of 28 June 2018. Title replaced as from 28 February 2021 by Law n° 1,503 of 23 December 2020)

ARTICLE 14 (CREATED BY LAW N° 1,462 OF 28 JUNE 2018)

MON-45O

A trustee who has not fulfilled the obligations provided for in Articles 11 to 13 shall be liable to the fine provided for in art.26(3) of the Criminal Code.

(Title created by Law n° 1,462 of 28 June 2018. Title replaced as from 28 February 2021 by Law n° 1,503 of 23 December 2020 and worded as follows: “On entry in the Trusts Register”)

Article 15 (Created by Law n° 1,462 of 28 June 2018)

MON-45P

A trustee who communicates in bad faith an inaccurate or incomplete information shall be liable to the fine provided for in art.26(4) of the Criminal Code.

End of Document

MON-46 Introduction

European Cross-Border Estate Planning

Other European States

Monaco

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Part I General Law

International estate planning issues

Introduction

MON-46 Foreign nationals represent approximately 80 per cent of all Monegasque residents. International estate planning is therefore the norm rather than the exception in the Principality. As a result many of the principles set out below have already been explained in the previous section.

End of Document

MON-47 Property belonging to spouses

European Cross-Border Estate Planning

Other European States

Monaco

Monaco

Part I General Law

International estate planning issues

Property belonging to spouses

MON-47 Under Monegasque law the property rights of spouses are determined by the "matrimonial regime" governing their marriage. Couples will often elect a particular matrimonial regime by executing a pre-nuptial (or post-nuptial) contract before a notary. If no such election is made, the marriage will generally be governed by the matrimonial regime of the country in which the couple established their first matrimonial home (see para.MON-16 above).

Generally in civil law countries, including Monaco, title deeds to immovable property will specify the matrimonial regime (if any) governing the title holder's right to deal with the property in question.

As explained in para.MON-16 above, foreign nationals who marry in Monaco are, since 1 October 1970 and in the absence of a specific agreement to the contrary, prima facie subject to the Monegasque regime of séparation des biens.

End of Document

MON-48 Forced heirship

European Cross-Border Estate Planning

Other European States

Monaco

Monaco

Part I General Law

International estate planning issues

Forced heirship

MON-48 Until July 2017 and the advent of the PIL Code Monegasque forced heirship rules, described in paras MON-25 and MON-26 above, would only be applicable to movable property where Monegasque internal Succession law governed the devolution of a deceased person's movable estate. The devolution of a deceased person's Monegasque-sited immovable property would have been subject to Monegasque forced heirship rules. Monegasque forced heirship rules would generally not have applied to immovable property situated outside Monaco.

The effect of Monegasque forced heirship rules could (and still can) be removed by creating an Anglo-Saxon type trust pursuant to Law 214 of 1936 (see paras MON-31–MON-45 above).

An individual might also have been able to transfer immovable property to a Monegasque société civile immobilière (SCI). Shares in the SCI would then have devolved on the owner's death in accordance with the law governing the devolution of his movable property.

But the PIL Code has radically changed how forced heirship and Succession law interact.

The starting point is art.56 of the PIL Code: the estate is regulated by the law of the State on the territory of which the deceased was domiciled at the moment of his death.

Pausing there, we already see a marked change with the past. Until July 2017 Monaco looked to the national Succession law automatically to determine what Succession law applied to the devolution of movable estate for an individual dying resident in Monaco. Monaco did not seek to look at the law of a person's "*domicile*" to determine this.

However, art.57 of the PIL Code introduces the following principle: a person can choose to designate, to regulate his estate, the law of a State of which the person is a national at the moment of making the choice. The designation of the applicable law must be express and contained in a declaration taking the form of a testamentary disposition ….

We know from art.24 of the PIL Code that: the law of a State means the material rules of the law of that State, to the exclusion of its rules of private international law.

Taking these principles together we arrive at the following conclusion. Monaco Succession law will apply to anybody who dies habitually resident in Monaco. In the absence of any choice to the contrary, made in a testamentary disposition, Monaco Succession law will apply to that individual's worldwide estate, both movable and immovable.

Only if an election is made in a testamentary disposition, deliberately appropriating the national Succession law to themselves can such an individual opt out of Monaco Succession law.

But once an election has been made, it is total. It at once applies to all assets anywhere (movable or immovable) but at the same time Monaco will not entertain a renvoi from the national Succession law to another law (should a renvoi exist within the private international laws of the national law).

The choice is therefore to the internal Succession laws and indeed the Administration of Estates laws known to the national law: but not to the conflicts of law rules of the national law. That effect is specifically excluded by the PIL Code.

End of Document

MON-49 Immovable property

European Cross-Border Estate Planning

Other European States

Monaco

Monaco

Part I General Law

International estate planning issues

Immovable property

MON-49 The devolution of immovable property situated in Monaco was always governed by Monegasque law, subject possibly to the existence of a Law 214 trust. If the owner dies intestate, Monegasque intestacy rules described in paras 28 and 29 above will apply.

Immovable property situated outside Monaco was governed by the law determined by the private international law rules of the country where the property is situated.

But the PIL Code has swept away these effects such that it is now possible to find that Monaco Succession law purports to extend to foreign-sited immovable estate (that is where a relevant person has not made a national Succession law election); conversely, a foreign (national) Succession law can apply to Monaco-sited immovable estate where a person has made a national Succession law election.

End of Document

MON-50 Movable property

European Cross-Border Estate Planning

Other European States

Monaco

Monaco

Part I General Law

International estate planning issues

Movable property

MON-50 The devolution of a deceased person's movable property (whether by will or on intestacy) was governed by the law of the country applied by the Monegasque principles of private international law (see para.MON-30 above) hitherto that being the law of the country of which an individual was a national at the time of death.

We have now seen that since July 2017 and the introduction of the PIL Code this is no longer so. The applicable Succession law is either that of Monaco save that, where an election is made in a valid testamentary disposition, this can be the national Succession law of the individual. Where there is more than one nationality held by the individual (not uncommon) the person can choose their preferred national Succession law to regulate how their worldwide estate devolves.

End of Document

MON-83

European Cross-Border Estate Planning

Other European States

Monaco

Monaco

Part II Taxation

Taxes

William Easun [1]

MON-83 Monaco levies no income taxes or capital gains taxes on individuals, although French nationals who are resident in Monaco generally pay income taxes in France, as though they were resident in France, unless any one of the following three situations apply:

(a)they were resident in Monaco for at least five years prior to 13 October 1962 (one of the effects of the 1963 Treaty);

(b)they are attached to the Prince's household; and

(c)they are the French spouses of foreigners residing in Monaco, the marriage took place before 1 January 1986 and they took up residence in Monaco prior to 1 January 1986.

As a result of a revision in 2001 of the 1963 Treaty between Monaco and France, French nationals who took up residence in Monaco after 1989 are obliged to pay French wealth tax as of 2002.

Succession duties and gift taxes are not levied on dispositions to a spouse, or to children or remoter issue. On other dispositions, succession duties and gift taxes are payable on a sliding scale rising to a maximum of 16% in the case of dispositions to non-relatives. This favourable taxation regime means that there is little need for individuals to engage in estate-planning in relation to Monegasque taxes. General tax information can be found at: http://www.gouv.mc [Accessed 30 March 2021].

Footnotes

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End of Document

MON-84 Capital gains

European Cross-Border Estate Planning

Other European States

Monaco

Monaco

Part II Taxation

Taxes

Capital gains

MON-84 No separate capital gains tax legislation exists. Subject to certain exceptions, gains and losses on sale of fixed assets are included in the taxable results of the period and taxed accordingly.

Gains realised by an individual on the sale of his business, the cessation of his business or on death, are exempt from tax provided the business is carried on by either:

(a)one or more heirs or persons in direct line;

(b)the surviving spouse; or

(c)a general partnership (société en nom collectif) or limited partnership (société en commandite simple) of which the partners are either the heirs or persons in direct line; or the heirs or persons in direct line and the surviving spouse or individual himself.

End of Document

MON-85 Withholding taxes

European Cross-Border Estate Planning

Other European States

Monaco

Monaco

Part II Taxation

Taxes

Withholding taxes

MON-85 There are no withholding taxes in Monaco.

End of Document

MON-86 Succession duties and gift taxes

European Cross-Border Estate Planning

Other European States

Monaco

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Part II Taxation

Taxes

Succession duties and gift taxes

MON-86 Succession duties (droits de succession) and gift taxes (droits de donation) are payable in Monaco only when property situated in Monaco is transferred inter vivos or by reason of a testamentary disposition, and then only when transferred to persons other than one's spouse or persons in the direct blood line. Until recently, fiscal practice historically will have said that a transfer to trustees of Monaco sited assets constitutes a transfer to a third party, and will have been taxed accordingly (at a rate of 16 per cent) regardless of the identity of the ultimate beneficiary. This is no longer so and a new Law (Law Number 1,529 of 29th July 2022, notably in its Article 1), has confirmed that tax will follow the reality of who is entitled to the asset qua beneficiary with a trust just as in a standard transfer of property between parties where no trust arises: we have seen elsewhere (see para.MON-93 below) that it is the degree of relationship between donor/donee (and this will follow for a settlor/testator and beneficiary) which determines the potential existence and rate of tax. Where a Law 214 trust is invoked then the specific duty arising for Law 214 trusts will still arise. The new Law 1,529 affects only trusts made outside of the ambit of Monaco Law 214. However, also exempt are transfers to the *commune*, public hospitals, and certain charitable organisations and charitable foundations whose objects are for the benefit of the local community. (Transfers of residue effected under a Law 214 Will trust, which are also probably exempted from succession duties, are discussed para.MON-34 above.)

Valuation of the property

Situs of property

MON-87

The situs of immovable property is determined by reference to its physical location. With regard to corporate shares, however, the location of the share certificates determines the situs and, if under the control of a Monegasque-authorised depository, they are deemed to be located in Monaco. In other cases, it is usually advisable to seek a ruling from the tax authorities.

Property valuation

MON-88 Property valuation concerns real property and personal estate. Real property will be valued as at the date of death or gift in accordance with its market value.

The value of personal estate is determined by the following, subject to any specific provisions which may cover particular items of property such as insurance policies, cars, and bank accounts:

(a)the price quoted in the sale agreement, if any, if the property was purchased by way of a public sale and that sale took place within two years of the date of death;

(b)if no such sale agreement exists, the estimate given in the inventory attached to the estate declaration, if in the form prescribed by art.886 of the MCPC and if made within two years of the date of death; or

(c)if no sale agreement or inventory exists, then the value is taken to be 40 per cent of the amount quoted in any insurance policy which may have been taken out in the ten years preceding the date of death.

In the event that none of the above is applicable, the value will be based on an estimated declaration by the parties concerned.

Usufruit

MON-89 As a result of the reserved property rights benefiting the testator's children (see para.MON-26 above), Monegasque wills often contain provisions giving the testator's spouse an usufruit in all or part of the estate for life or a fixed period.

The value of the usufruit is determined by a sliding scale of percentages based on the age of the usufruitier. However, no succession duty or gift tax will apply where an usufruit is granted in favour of a surviving spouse (see para.MON-93 below).

Deductions from the estate

MON-90

The debts for which the deceased was liable on the date of death may (subject to some exceptions) be deducted from the estate in calculating the succession duty due, provided that they can be properly proved.

Non-deductible debts

MON-91 Certain debts may not be set off against the estate value, including testamentary debts, debts secured on foreign real estate and debts which are statute-barred. Debts due to the deceased's heirs, and debts or mortgages where the due date fell more than three months prior to the deceased's death must be properly evidenced in order to be deductible.

Payment of succession duties

MON-92 Succession duties payable on a testamentary disposition prior to the registration of the relevant legal instrument are payable by the beneficiaries, guardians and executors. Gift taxes are also payable before registration of the relevant legal instrument. Certain time limits apply depending on the type of property, duty or estate involved. Notarial fees may also be payable.

Tariffs applicable

MON-93 No succession duties nor gift taxes are payable on transfers made to the transferor's spouse or to relatives in the direct blood line.

In the event that the transfer or gift is made to a person other than those included in the above classes, the following duty applies to the net amount of property received:

To recognised cohabitees	4%
To brothers and sisters	8%
To uncles, aunts, nephews and nieces	10%
To other relatives not included in the above list	13%
To non-related persons	16%

It should be noted that such duty only applies to assets situated or deemed to be situated in Monaco.

End of Document

MON-94 Stamp and registration duties

European Cross-Border Estate Planning

Other European States

Monaco

Monaco

Part II Taxation

Taxes

Stamp and registration duties

MON-94 A nominal duty of €1 is payable on the registration of various instruments, such as instruments required for the acceptance of an estate or of legacies, or instruments which formally repudiate or renounce an estate.

Insofar as the acquisition of real estate in Monaco is concerned, the transfer of title to Monegasque real estate gives rise either to Monegasque VAT (i.e. when the real estate is new) or registration duty (when the real estate is second-hand).

The rate of registration duty levied is now at the reduced rate of 4.75 per cent if the purchaser is an individual purchasing in his own or joint names or a Monaco société civile that is itself directly owned by individuals, and the normal rate of 7.5 per cent in all other cases save that a new rate of 10 per cent exists where the transfer is to a non-transparent structure.

Historically, real estate in Monaco has been purchased by offshore entities, which have occasionally changed hands without any corresponding change of title in Monaco, and hence no registration duty will have arisen on each successive change of beneficial ownership. This practice is no longer possible because legislation provides that any entity that owns Monegasque real estate must nominate an approved representative who is required to declare to the tax authorities any change in beneficial ownership that may occur. Such a change in beneficial ownership, even if only partial, gives rise to payment of registration duty of 4.75 per cent of the full underlying real estate value and it is the representative's immediate responsibility to see that this occurs. There are some exceptions to this rule, e.g. if an immediate family member inherits the interest in the entity on the death of the beneficial owner then the registration duty does not arise. Transitional provisions offered the choice to entities that own real estate to convert and transfer the real estate into the

individual names of the existing beneficial owners on payment of a reduced rate of registration duty (1 per cent).

End of Document

MON-95

European Cross-Border Estate Planning

Other European States

Monaco

Monaco

Part II Taxation

Anti-tax avoidance

MON-95 The very nature of the tax system in Monaco precludes any real anti-tax avoidance legislation for individuals, since no income tax nor capital gains tax exist to which such legislation might normally apply. Nevertheless, there are treaties between Monaco and France which contain certain anti-tax avoidance machinery as between the two countries.

Legislation exists to penalise tax evasion in respect of those limited taxes which are payable by individuals, notably Taxe sur la Valeur Ajoutée (TVA), business profits tax (which may arise in Monaco on commercial or industrial activities carried out in or from Monaco), stamp duty (e.g. on the purchase of real estate), or gift and succession duties.

End of Document

MON-96 VAT/TVA

European Cross-Border Estate Planning

Other European States

Monaco

Monaco

Part II Taxation

Anti-tax avoidance

VAT/TVA

MON-96 Chapter XIII of the Monaco Code des Taxes sets out the various penalties which apply for any breach of VAT law. These vary from fines up to €1,500 and interest for late payment, to penalties of 80 per cent of the amount due in cases of fraud.

Criminal fines in cases of fraud may be levied and sentences of one to five years' imprisonment may also be imposed. The tax authorities are barred from taking action after four years.

End of Document

MON-97 Registration duty

European Cross-Border Estate Planning

Other European States

Monaco

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Part II Taxation

Anti-tax avoidance

Registration duty

MON-97 Instruments giving rise to stamp, gift and succession duties will trigger payment of either a fixed or a proportional duty. Where the value of goods given appears lower than their true value, the tax authorities may resort to formal valuation in accordance with Law 474 of 4 March 1948. Where the true value is over a sixth more than the declared value, the deficient duty is due in addition to a penalty.

Furthermore, the tax authorities may apply their rights of pre-emption in accordance with Ordonnance No.1,016 of 4 November 1954. If so, the authorities must give formal notice to a purchaser of their intention to invoke their rights by declaring that the price stipulated in the sale deed as increased by 10 per cent (plus costs) will be made over to the purchaser in exchange for the property.

End of Document

MON-98 Gift and succession duties

European Cross-Border Estate Planning

Other European States

Monaco

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Part II Taxation

Anti-tax avoidance

Gift and succession duties

MON-98 Penalties exist where the donee or legatee fails to declare the existence of, or under-declares, the value of assets which have been transferred to him.

End of Document

MON-99 Application of tax treaties between France and Monaco

European Cross-Border Estate Planning

Other European States

Monaco

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Part II Taxation

Anti-tax avoidance

Application of tax treaties between France and Monaco

MON-99 The 1963 Treaty provides for:

(a) the imposition of a business profits tax in Monaco on certain "enterprises" or companies;

(b) income tax to be levied against French nationals who have transferred or will transfer their residence to Monaco; and

(c) administrative assistance between the two countries, so that one government will authorise, at the request of the other, the furtherance in its territory of enquiries commenced in the territory of the other state. The two states will also exchange information held or obtained, either on request or voluntarily.

The Franco-Monegasque Tax Treaty of 1 April 1950 ("the 1950 Treaty") deals with the avoidance of double taxation in succession matters. This Treaty, which was not affected by the 1963 Treaty, prima facie applies only to French or Monegasque nationals and does not address the question of duty on inter vivos gifts. However, it is now recognised that the 1950 Treaty potentially extends to all residents of Monaco (not just French or Monegasque citizens) by invoking non-discrimination principles. A French Supreme Court (Cour de Cassation) case of 2 October 2015 shows that a Monaco resident may dispose of shares (*parts*) in a Monegasque société civile which owns French real estate without giving rise to French Estate Duty precisely by invoking the extended interpretation of the 1950 Treaty.

End of Document

MON-100

European Cross-Border Estate Planning

Other European States

Monaco

Monaco

Part II Taxation

Double taxation relief/unilateral relief

MON-100 The 1963 Treaty is not a double tax treaty, but rather an agreement defining the privileged relationship and tax rules applicable between France and Monaco.

The major tax effects of the 1963 Treaty have ostensibly been dealt with elsewhere (see para.MON-99 above) and, reflect the application of the criterion of "territoriality".

End of Document

MON-101 Succession

European Cross-Border Estate Planning

Other European States

Monaco

Monaco

Part II Taxation

Double taxation relief/unilateral relief

Succession

MON-10 If the deceased is a French national resident (as defined by the 1950 Treaty) in Monaco at the time of his death, Monegasque succession duties will apply only to his Monegasque-sited assets. French succession duties will be levied only on his French assets.

But possibly (see para.MON-99 above) citizens of any nationality resident in Monaco can now invoke the beneficial terms of the 1950 Treaty.

If the deceased is neither French nor Monegasque, his assets in Monaco will be subject to Monegasque succession duties even though his beneficiaries may already have paid similar duties in the deceased's country of residence on the Monegasque assets and there will be no tax credit from Monaco.

End of Document

MON-102 Companies

European Cross-Border Estate Planning

Other European States

Monaco

Monaco

Part II Taxation

Double taxation relief/unilateral relief

Companies

MON-102 If a Monegasque company (usually a Monegasque société anonyme/SAM) has a branch office in a foreign country, the turnover generated by this branch office will not be included in the calculation of the overall turnover of the company. Consequently, Monegasque business profits tax will not be charged on profits made by the branch office, provided the "branch office" falls within the Monegasque definition.

If, on the other hand, the Monegasque company is taxed by a foreign country on business realised in its territory without having a local branch there, the income so realised in this foreign country will be included in the calculation of the taxable Monegasque turnover. Subject to prior authorisation from the Monegasque administration, the amount of taxes paid abroad will be "imputed" onto the Monegasque taxable profits in order to avoid double taxation (Ordonnance No.3,152 dated 19 March 1964).

Where a foreign group has a branch in Monaco, Monaco will tax the profits of this Monegasque branch. This rule will apply even though the country where the mother company is based may also directly or indirectly tax the Monegasque turnover included in the group accounts. There will be no tax credit from Monaco.

End of Document

MON-103 Exchange of information

European Cross-Border Estate Planning

Other European States

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Part II Taxation

Enforcement and exchange of information

Exchange of information

MON-103 The 1963 Franco-Monegasque Tax Treaty was mainly implemented to apply specific rules to French nationals residing and/or working in Monaco and to Monegasque companies having 25 per cent or more of their turnover deriving directly or indirectly from activities outside Monaco.

Article 20 of the Monegasque Law n° 3,037 of 19 August 1963 which gives effect to the 1963 Treaty provides that:

> "The contracting States mutually agree that their respective tax authorities will exchange all information they hold or will hold under their respective legislation and that the exchange of information will be automatic or upon request."

Further, a French Law n° 91-150 of 7 February 1991, which defined the application of Law No.89-935 of 29 December 1989, states that this statute applies to French nationals resident in Monaco (excluding French nationals who were resident in Monaco for at least five years prior to 13 October 1962 in accordance with the 1963 Treaty) so that such persons must declare to the French tax authorities on filing their annual income tax declaration the existence of any foreign accounts in relation to which they have signatory powers.

Each year, detailed returns and accounting records are filed by companies with the Monegasque tax authorities for scrutiny, as well as declarations of remuneration made to non-Monegasque, non-privileged salaried employees, for French personal income tax purposes where a French individual is concerned.

The 1945 Franco-Monegasque Exchange Control Treaty provides that bankers in Monaco must respond to enquiries from the Banque de France. Information obtained may be communicated to the French tax authorities and it may also be used in the context of French criminal proceedings or in accordance with French law on international judicial assistance in criminal matters. In this way, the information may be passed on to the appropriate authorities in a third country.

Where authorised government agents become aware of facts which may relate to drug trafficking or criminal conduct, they will prepare a report which is submitted to the Ministre d'Etat. The Ministre d'Etat may send information to competent foreign authorities, save where such an authority is not subject to the same rules of professional secrecy as the Monegasque government agents.

As part of the Monaco Savings Directive Agreement of December 2004, Monaco agreed to exchange information on request in criminal or civil cases of tax fraud. This is solely with respect to fraud on the European Union Savings Directive.

In April 2009, Monaco made a commitment (in tandem with numerous other countries) to reach an agreement with the EU and certain other States over exchanging information in specific cases. This has now occurred. Over 35 Tax Agreements have been signed by Monaco and various other states including, for example, with Australia, the United States, India, the United Kingdom, Italy, Germany, Sweden, Denmark, Belgium, the Netherlands, and Austria in respect of Exchange of Information; Double Tax Agreements have been signed with France, Guernsey, Liechtenstein, Luxembourg, Mali, Malta, Mauritius, Montenegro, Qatar, St Kitts & Nevis and Seychelles. This is in response to the Organisation for Economic Co-operation and Development initiative to ensure compliance with certain internationally-agreed standards on the subject of tax information exchange between States. These Agreements are bilateral in nature and are naturally distinct from any obligations arising under CRS (see text, below). The latter give rise potentially to the automatic exchange of information by Monaco (or in favour of Monaco) within the terms of the Common Reporting Standard amongst numerous countries, whilst the former only give rise to exchange on request and subject to any rights flowing from the specific terms of a particular Agreement to prevent or limit the exchange of information so requested.

End of Document

MON-103A Common Reporting Standard (CRS)

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Common Reporting Standard (CRS)

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In October 2014 Monaco signed the OECD Convention on Mutual Administrative Assistance in Tax Matters (MAC).

In December 2015 Monaco signed the OECD Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (MCAA).

On 12 July 2016 Monaco signed an Amending Protocol with a view to implementing the Standard for Automatic Exchange of Financial Account Information developed by the OECD and to improve international tax compliance based on reciprocal automatic exchange of information subject to the confidentiality and other protections referred to in the Amending Protocol, called the "Agreement between the European Union and the Principality of Monaco on the exchange of financial account information to improve international tax compliance in accordance with the Standard for Automatic Exchange of Financial Account Information in Tax Matters developed by the OECD".

Residency in Monaco for Common Reporting Standard purposes can notably be established via a Certificate of Residency ("certificat de résidence") delivered pursuant to Sovereign Ordinance No 8,566 of 28 March 1986". It is issued by the Monaco Police. Individuals are eligible to obtain such a Certificate as set out in the Sovereign Ordinance of 1986, and this was modified by Sovereign Ordinance n° 8,372 of 26 November 2020, which now provides that they may obtain a Certificate as follows:

(a)Individuals of Monegasque nationality, on providing proof of their identity and address in the Principality,

(b)Foreigners who:

(i)already hold a valid Monaco Residency Card (delivered by the Monaco Police);

(ii)attest on their honour (subject to criminal sanctions laid out in art.98 of the Criminal Code) that they reside in Monaco for more than six months per year or that they have the principal centre of their activities in Monaco;

(iii)present any document which may assist to prove their residency.

Individuals established in Monaco for less than six months cannot take up a Certificate of Residency for administrative purposes unless they can present a derogation.

The Sovereign Ordinance of 26 November 2020 specifically creates a separate type of Certificate of Residency issued for "for fiscal purposes". To obtain this a person can do so if:

a)being of Monegasque nationality they produce a document establishing their identity and residency in Monaco;

b)being of another nationality they:

-produce a valid Monaco residency card, and

-declare on their honour, and subject to the penalties set out in article 98 of the Criminal Code, that they have their principal place of stay, or their home, on the territory of Monaco, or they have the principal centre of their activities in Monaco subject to the terms of any bilateral treaties,

-they justify that they occupy a dwelling in Monaco by producing a title deed, a lease or a certificate of lodging,

-they present water, electricity and telephone bills relative to the past year as well as any other document proving residency,

-and provide such other documents as may be requested of them by the authorities in order to support their enquiries.

The home ("foyer") will not be taken into account as a criterion unless the principal place of stay of the individual cannot be established.

The principal or main place of stay corresponds to a stay of at least 183 days per year in Monaco, or to a stay of less than 183 days if the person making the request is physically present on Monaco territory for a period longer than that spent in any other countries.

The principal centre of activities is the place where the interested party carries out his principal investments, or has the seat or the effective management of his affairs, or where he administers his assets.

End of Document

MON-103B FATCA

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FATCA

MON-103 Monaco has not entered into a FATCA agreement with the US. However, credit institutions in Monaco apply FATCA and have entered into a US Qualified Intermediary Agreement (IQ Agreement) with the US tax authority, the IRS, which grants them the status of a Qualified Intermediary. This status obliges them to declare income from US sources received by their clients.

The absence of a FATCA agreement with Monaco does not mean however that the existence of FATCA has gone unrecognised in Monaco. That is Monaco's Data Protection Regulator—the CCIN—has issued a recommendation regarding the processing and transfer of information by Monaco credit institutions in respect of US persons.

End of Document

MON-104 Enforcement of tax liabilities

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Enforcement of tax liabilities

MON-104 A foreign judgment, whether tax-related or otherwise, will not be enforceable in Monaco unless:

(a)the Monegasque Court of First Instance has declared it enforceable; or

(b)a Treaty between Monaco and another state provides for enforcement without such *homologation*.

As a general rule, the Monegasque Courts will declare enforceable a foreign judgment without re-hearing the substantive issue if the state from which the judgment emanates would, in reverse circumstances, offer reciprocal enforcement.

In such a case, the courts of Monaco will not reopen the case, but limit their considerations to determine:

(a)whether the judgment is regular in its form;

(b)if it emanates from a court of competent jurisdiction in accordance with local law, provided it does not offend Monegasque law;

(c)if the parties have been properly cited and given an opportunity to defend themselves;

(d)if the judgment is definitive and capable of being enforced in the country in which it was rendered; and

(e)if it contains nothing contrary to Monegasque public policy.

Where such reciprocity does not exist between Monaco and the other state, the Monegasque court will re-examine the foreign judgment and revise it in whole or in part.

There is no specific distinction made in the Monegasque Codes between the possible enforcement of foreign tax-related judgments and other judgments.

In the absence of judicial comment, it is not possible to say with certainty how a foreign tax judgment will be treated in Monaco, save that it is arguable that no little weight will be given to the view that the foreign court would take of enforceability of Monegasque tax-related judgments in that other jurisdiction.

End of Document

MON-105 Information points

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Useful websites

Information points

MON-105

• Monaco Government: http://en.gouv.mc

• Case law and legislation: http://legimonaco.mc

• The Hague Convention on Private International Law: https://hcch.net/en/states/hcch-members/details1/?sid=55

• Official Journal of Monaco: http://journaldemonaco.gouv.mc/en

• Trade and Industry Registry (Registre du Commerce et de l'Industrie): http://rci.gouv.mc

• Government Directory: http://cloud.gouv.mc/webweb/Annuoff.nsf/(ListCh)/IntroNewsHomeFR!OpenDocument&Count=300

• Monaco Welcome Office: http://monaco-welcome.mc/en

• Department of International Relations: http://en.gouv.mc/Government-Institutions/The-Government/Ministry-of-Foreign-Affairs-and-Cooperation/Department-of-International-Relations

• IMSEE—Monaco statistics: http://monacostatistics.mc/IMSEE

• Police of Monaco (Direction de la Sûreté Publique): http://en.gouv.mc/ Government-Institutions/The-Government/Ministry-of-Interior/Police-Department

• Monaco Department of Economic Activities (Direction de l'Expansion Economique): http://en.gouv.mc/Government-Institutions/The-Government/Ministry-of-Finance-and-Economy/Business-Development-Agency

• Monaco Economic Board: https://meb.mc/en

• Monaco Tax Authorities (Direction des Services Fiscaux): https://gouv.mc/Gouvernement-et-Institutions/Le-Gouvernement/Departement-des-Finances-et-de-l-Economie/Direction-des-Services-Fiscaux

• Automatic Exchange of Information for tax purposes: http://en.gouv.mc/Policy-Practice/Monaco-Worldwide/Agreements-on-Tax-Matters/FAQ-on-automatic-exchange-of-information-for-tax-purposes

• Financial Authority (Commission de Contrôle des Activités Financières): http://ccaf.mc/en/

• Financial Activities Association (Association Monégasque des Activités Financières): http://amaf.mc/

• Anti-Money Laundering Authority (Service d'Information et de Contrôle sur les Circuits Financiers): http://siccfin.gouv.mc/364/wwwnew.nsf/HomeGb

• Monaco Compliance Officers Association (Association Monégasque des Compliance Officers): http://amco.asso.mc/

• Monaco Data Protection Authority (Commission de Contrôle des Informations Nominatives): https://ccin.mc/en/

• Monaco Real Estate Chamber (Chambre Immobilière de Monaco): https://chambre-immo.monte-carlo.mc/en/accueil

• Public Service for businesses in Monaco: http://en.service-public-entreprises.gouv.mc/Public-Services-for-Businesses

• Public Service for individuals in Monaco: http://en.service-public-particuliers.gouv.mc/

• Monaco publications: http://en.gouv.mc/Publications

• Society for Trust and Estate Practitioners (STEP) Monaco: http://step.org/branches/step-monaco

End of Document