

CORPORATION AND TAX LAWS OF MONACO

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Monaco is one of the oldest principalities in Europe, its complete independence having been recognized by France as far back as 1511. Between 1792 and 1815, Monaco was part of France. After that, until 1860, the area was under Sardinian, and then under Italian rule, pursuant to a treaty which nevertheless recognized the personal sovereignty of the Prince. Since 1911, the form of government of Monaco has been that of a constitutional monarchy.

The Monaco civil and commercial codes, especially in their sections relating to corporations, follow very closely the corresponding provisions of the French codes, but in regard to taxes, the laws which have been enacted in the Principality from time to time differ greatly from those of France.

I. TYPES OF BUSINESS ORGANIZATIONS IN MONACO

The commercial code of Monaco authorizes individuals who wish to engage in a commercial venture to form any one of four different types of business groups:

- (1) The *société en nom collectif* or partnership, whereby two or more persons agree in writing to do business together under a given commercial name and all members of the group thus formed are then fully liable for the debts incurred by the group.
- (2) The *société en commandite simple*, or mixed partnership, which is composed of *commandités*, i.e., active partners who are personally liable for the debts of the partnership both jointly and severally, and *commanditaires*, i.e. inactive partners whose liability for the debts of the partnership is limited to the amount of capital which each has brought into the venture.
- (3) The *société anonyme* (S.A.); or stock corporation which, as in our law, is liable as a rule to third parties only to the extent of its assets.
- (4) The *société en commandite par actions*, which is similar to the mixed partnership described above, but in which each

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limited partners' proportionate share is represented by stock which is transferable to third parties without the consent of the other partners.

It is important to note that the *société à responsabilité limitée* (SARL) does not exist in Monaco.

There is also another entity known as a *société civile*, which is non-commercial in nature and designed to manage real estate and "fortunes" of others. Because of its limited functions, it is not included within this article.

In the formation of any *société* under Monaco Law and essential to its existence, is the requirement of a written contract or compact (*status*). Added to this, in the case of any commercial venture, is the requirement of prior governmental approval, usually in the form of an *arrêté* or decree signed by the Prince. There is no requirement that any of the founders, directors or stockholders of a *société* shall be of Monégasque nationality, or residents of Monaco.

Since in any commercial venture the purpose of the *société* is to make a profit, it is essential that each founder shall bring to it something of value, what is known in French Law as an *apport*, either in the form of money, real or personal property, patents, know-how or special skills, or even a list of potential customers. In addition, there must be an agreement to share all future profits and losses in the proportion of existing shares or participations. Any preference in favor of certain shareholders or partners which does not conform in value and percentage to the investment that each party originally brought in to the venture may render the compact void.

As a practical matter, the *société anonyme* is by far the most common form of business organization now in use in Monaco and the number of incorporations in the Principality is constantly increasing. The *société en commandite par actions* is virtually non-existent. It has been estimated that there are at present no less than 1,000 incorporated companies in Monaco, of which more than 50 are in the million dollar category.

II. FORMALITIES REQUIRED FOR INCORPORATION OR FOR ESTABLISHING A BRANCH

If a foreign corporation extends its commercial activities into Monaco, either by establishing a branch or forming a subsidiary, it must first apply to the Ministry of State for permission to do so. In the case of a branch, such an application takes about three weeks to process; in the case of a subsidiary, six to ten weeks. If transactions involving foreign exchange are contemplated, approval must also be obtained from the French Exchange Control Office (see below).

In either case, publication in the *Journal de Monaco* of an outline of the proposed new venture, or of the text of the *statuts* (charter and by-laws) of any newly-formed corporation is required. The cost of such a publication is between \$200 and \$300.

The minimum capital required for a *société anonyme* in Monaco is 50,000 new French francs, or slightly over \$10,000. Notarial fees for preparing the incorporation papers for a company with minimal capital amounts to about \$140, and if the capital is greater, the fees will be slightly higher. In addition, in the case of a Monégasque corporation, there is a registration fee of 1% of the initial capital, plus a *droit de timbre* (stamp tax) of 0.5% of the nominal value of each stock certificate. If the *apport* is real estate, the stamp tax is 1%.

Where a foreign corporation establishes a branch, there is a registration fee equal to 1.5% on 1/20th of the total capital, but that fee in any event cannot exceed \$20.

III. FIRST MEETINGS OF THE STOCKHOLDERS

In Monaco, all incorporations require the services of a notary.

The *statuts* of the corporation must contain the following:

1. Name and form of the company, including any abbreviations.
2. Purposes.
3. Location of principal office.
4. Proposed duration of the company's existence and provisions, if any, to extend it.
5. Description of the *conseil d'administration* (Board of Directors) its membership and its powers; also, if necessary, the manner of designating the *directeur* (President) and a description of his functions.
6. Provisions as to the capital reserves and any other matters affecting the rights of third parties in their dealings with the corporation.

Before the corporation can be said, in a legal sense, to exist it must:

- (1) have received government approval of its existence in the form of an official decree, which must be filed within three months in the notary's office; and
- (2) have all of its capital subscribed for or if all of the capital is cash, one quarter of the shares must be fully paid-up prior to the first meeting of the corporation.

After the two requirements set forth above have been met, the first meeting of the stockholders is held. The purpose of this meeting is to verify that the notary's report on the initial subscription of capital is correct, to appoint the first *administrateurs* (directors), and also to select one or two auditors who, by law, shall serve for a term of three years and whose duty it will be to check all financial transactions of the new company. If the capital consists of property other than cash, the auditor named at the first meeting of stockholders must, acting either singly or with experts of his own choosing, make a valuation of the *apports* (other than cash) and make a report thereon either approving or disapproving the values stated in the notarial report. In such a case, a second meeting of the stockholders is required to discuss the accountant's report and either to adopt it or to approve such additional adjustments as may be required.

Reports of all subsequent annual and special meetings of the stockholders must be kept in the office of the notary who attended to the incorporation.

IV. REGISTRATIONS

Within one month after the incorporation, the new company must apply for registration with the Registry of Companies which is maintained in the office of the Secretary of the Finance Department.

Within two months after starting business, an application must also be filed with the Commercial and Industrial Registry to enable all pertinent information relating to the new company to be registered in that office. Failure to comply with this formality in all respects will result in the issuance of a Court order requiring compliance, and may entail severe penalties.

Any subsequent changes in the structure of the corporation or any of its activities (including cessation of its activities) must likewise be reported and recorded in both of the above-named Registries.

In addition, property rights in patents, trademarks and designs and models can, under certain circumstances, be protected by registration at the service of Industrial Property. Trademarks can be registered for 15 years and renewed for like periods indefinitely.

V. TYPES OF TAXES IN MONACO

There are no direct taxes of any kind on corporate or personal income earned in Monaco or accruing to individuals or corporations resident in Monaco. All such taxes were abolished in 1869 and the Constitution of 1911 expressly prohibits the levying of any direct income tax. However, French nationals who formerly resided in Metropolitan France remain subject to French taxes until they have had five years of continuous bona fide residence in Monaco.

Foreign corporations doing business in Monaco, either by means of a branch or of a subsidiary, are required to pay certain indirect

(turnover) taxes which are based on the nature of their activities and on the place where sales and services are effected. The rates of these turnover taxes are generally low, and the tax burden, as is generally the case with indirect taxes, is usually passed on to the consumer. The tax incidence on export transactions, i.e., sales effected elsewhere than in France or Monaco, is negligible, and this circumstance accounts in large measure for the recent increase in the number of international corporations which have established headquarters in the Principality.

The turnover taxes on transactions taking place in France or Monaco fall broadly into three categories which are identical in definition and in rates with those in effect in France:

- (a) Tax on Added Value (*taxe sur la valeur ajoutée*) or T. V. A., which is similar to a sales or excise tax.
- (b) Tax on the Rendering of Services (*taxe sur les prestations de services*) of T. P. S.
- (c) Local Tax (*taxe locale*) or T. L.

These three taxes do not apply to goods or services which are exported outside of France and Monaco.

Exported goods or services which are utilized anywhere (including France) outside of Monaco itself, are subject to a fourth type of indirect tax which is special to Monaco and is called the "compensatory export tax" (*droit de sortie compensateur*).

A brief description of these various taxes follows:

(a) *Tax on Added Value (T. V. A.)*

This tax is essentially a tax on the value which is added to any commodity in the course of its production. When the product is the result of several operations carried out by different persons or by different companies, each stage of the production is subject to the tax, but only on the value which has been added by that particular production stage.

The normal rate of this tax is 20%, which, since it is applied to the sales price including the tax, works out actually to 25%. In the case of certain commonly used commodities (fuels, minerals, oils, soap, ice sweets, canned goods, etc.) there is a reduced tax rate of 6.3% and 11.1%; and for certain luxury items (cut glass, hunting and fishing equipment, carpets, liquor, fancy foods, perfumes, cosmetics, fine watches, phonographs and radios, cameras, gas heaters and stoves), the rate of the tax is higher and is either 29.8% or 33.3%.

As already stated, the T. V. A. does not apply to exports outside of France and Monaco.

(b) *Tax on the Rendering of Services (T. P. S.)*

This tax is imposed on all charges made for services rendered in connection with sales of merchandise, rentals of equipment or the furnishing of management or commercial services. The effective rate of the tax is 9.29%. Since certain luxury trades are required to pay a higher T. V. A., the services rendered by artisans in those trades benefit of a reduced T. P. S. rate. Thus, in trades paying the 29.8% T. V. A. rate, the T. P. S. is 6.1% and in trades which are subject to a 33.3% T. V. A., the T. P. S. is 8.4%.

If the person who has performed services requests it, he can, upon producing the relevant invoices, recover the amount of T. V. A. or T. P. S. previously paid by him in connection with the product or the merchandise, after the goods have been sold by him to the next purchaser or ultimate consumer.

The T. P. S. does not apply to services which are to be utilized outside of France or Monaco.

(c) *Local Tax*

The local tax is a general sales tax which is imposed at the retail level on all sales or commercial transactions which, for one reason or another, have not been subjected to the T. V. A. or to the T. P. S. Services which have paid the T. P. S. are not subject to the local tax. Wholesalers are given the option to pay the local tax instead of the T. V. A.; and in such event, the T. V. A. is collected on the resale of the merchandise, as an additional tax.

The effective normal rate of the local tax is 2.82%.

In certain cases, such as prices charged for hotel rooms, food and drinks consumed on premises, theatrical productions and entertainment, the rate of the local tax is increased to 9.29%.

(d) *Compensatory Export Tax*

This tax is imposed on commercial transactions of all kinds which are carried out between persons or firms doing business in Monaco with persons or firms domiciled, residing or established outside of Monaco. The primary purpose of the tax is to restore some measure of equality between persons and firms which export goods from France, and are therefore subject to French income taxes, and ex-

porters from Monaco who are not subject to any direct tax. For that reason, the rate and method of calculating the tax will vary, depending on the place where the goods are manufactured and where they are sold.

Where the goods are exported to and sold in France through the intermediary of a firm of individuals established in Monaco, the compensatory export taxes is 1% and that rate is imposed on the gross turnover of the Monaco enterprise, minus an amount equal to ten times the social security and other social charges paid in Monaco. This tax applies equally to goods manufactured in Monaco and the goods of foreign origin handled by a Monégasque intermediary.

On the other hand, where the goods are manufactured in Monaco to be exported and sold in a country other than France, the compensatory export tax is 0.8% of the gross turnover of the Monaco enterprise minus ten times the social security and other social charges paid in Monaco. The same rate and method of computing the tax applies where the Monaco enterprise is acting merely as a commission agent for the sale of merchandise manufactured outside of Monaco for sale outside of France and Monaco.

Finally, in the case of goods which are not manufactured in Monaco, but which are sold through a Monaco enterprise office not on a commission basis to a buyer outside of France, a certain proportion of the amount of the invoice will be attributed to the Monaco company or branch for its "assistance" in making the sale. That proportion will be 20% of the first one million dollars of sales, plus 10% of any excess up to 5 million dollars of sales and 5% of sales over 5 million dollars. The compensatory export tax in such a case will be 0.8% of the thus established percentage of the amounts invoiced. Because of the contractual character of the computation in this case, there is no deduction made for social charges paid in the Principality.

In cases where royalties, equipment rental fees and the like are received from persons or firms domiciled or established outside of Monaco, the compensatory export tax rate is 5%.

(e) Taxes on Transfers of Property

In addition to the taxes described above, transfers of real and personal property in Monaco by persons and firms doing business there are subject to a transfer tax. The tax rates applicable to some typical transactions are as follows:

Sale of entire business	7.5%
Real estate	6.5%
Personal property	5 %
Stock transfers	1 %
Assignment of lease	1 %

VI. HOW THESE TAXES ARE APPLIED

In order to gain some understanding of how the turnover taxes described in the preceding section operate in practice, let us assume, for instance, that an American manufacturing company, with an established base or trading company in Switzerland, desires to sell its products in Italy. It may find it advantageous to establish a branch in Monaco to do the invoicing and to assist generally in its sales and promotion, or it may even decide through a subsidiary to engage in some light manufacturing activities in Monaco. How will the taxes which we have just described affect these operations?

If the Monaco branch serves merely as a commission agent, it performs what is considered to be a "complete commercial function" and its gross turnover (total commissions received) will be subject to the compensatory export tax on such commissions, less an amount equal to ten times the social security and other social charges paid in Monaco. The rate of the tax is 1%.

If the Monaco branch participates to a greater or lesser degree in the sale of merchandise on behalf of the Swiss company referred to above but is not paid a commission, the branch is deemed to perform "incomplete commercial functions," such as market research and development, invoicing, after-sales service, shipping, sales management, etc. However, these functions are an indispensable corollary to the sales activity, and a portion of the gross sales of the Swiss company in such a case will be attributed to the Monaco branch and will be subject to the compensatory export tax. The percentage of gross sales which will serve as the tax base will be negotiated between the Government and the foreign corporation as described above.

If the Monaco branch is organized merely to render management services to the Swiss company, or to participate in the furnishing of commercial services, such as advertising, management consultation, etc., the services actually utilized in France or Monaco are subject to the T. P. S. The tax base will be that portion of the overhead expenses or of total service revenue which represents services utilized in France or Monaco. Proper exclusion will be made of all services rendered by the branch which are being utilized outside of France or Monaco.

Finally, if the Monaco enterprise engages in some form of manufacturing in Monaco, it will pay no direct taxes whatever on its earnings. Indirect taxes will depend on where the products are sold. If sales of such products are made in France or in Monaco, the turnover taxes will be assessed on such sales in the same fashion and in the same amount as if the factory were located in France. Sales in France are subject to a Monaco compensatory export tax of 1% in addition to French turnover taxes. This is the "compensatory" feature of the tax, its purpose being to offset in part the absence of any income tax

in Monaco. For sales outside of France or Monaco no French turn-over taxes are due and the compensatory export tax is reduced to 0.8%. The tax base (gross sales) in both instances is reduced by ten times social security charges.

Further comment on French taxes is outside the scope of this article. It is sufficient to note that the sales tax burden on goods imported into France from foreign sources is at least as great as goods produced in France or Monaco. Goods made in Monaco are freely admitted into France without duty or import quotas. Foreign products, on the other hand, are not only subject to French tariffs, but also to French indirect taxes assessed on the duty-paid value of such goods.

By reason of the complete Customs Union with France, Monaco produced goods are considered identical to French goods and qualify for the preferential tariff rates which have been granted to France by her Common Market partners.

VII. REGULATIONS AFFECTING EMPLOYMENT

Americans going to Monaco with the intention of residing there less than three months need not comply with any formality. The same rule applies to residents of Western Europe.

Any alien intending to reside in Monaco for a duration of more than three months must apply to the police authorities there for a residence permit or *carte de séjour*. In order to be gainfully employed in the Principality, he must also apply for and obtain a worker's permit. In support of that application, he must submit proof from his employer, usually in the form of a written contract of employment as to the terms of his employment, and also his residence card.

Because of its desire to encourage foreign corporations to set up management and sales branches in the Principality, the Government of Monaco has indicated that it will readily grant work permits to bilingual secretaries, bookkeepers and other technical personnel which will be needed in such offices.

VIII. CURRENCY CONTROL REGULATIONS

Monaco, as a member of the Franc Zone, is subject to the same currency control regulations as obtain in Metropolitan France. These controls are administered by the Minister of State in Monaco, in cooperation with French authorities. Authorizations to invest, as well as the right to repatriate dividends and interest and to obtain loans or repay the same in foreign exchange, are administered by the Ministry of Finance, Department of Exterior Finance, in Paris. The payment of royalties, license fees, service charges, etc., are now subject to control by the Banque de France as a result of a recent administrative reorganization of the Office des Changes whereby controls

were divided between the Banque de France and the Ministry of Finance.

Investment Authorizations

With the emergence of a substantial dollar surplus in the French economy and the intensified program of Monaco to attract substantial investments of recognized foreign companies, the issuance of authorizations to invest and to repatriate dividends no longer presents any great difficulty. In practice, the foreign funds control authorities will not act on an investment application until the Government of Monaco has indicated that the proposed investment is acceptable to it as a matter of general or economic policy. Once this approval has been obtained, the processing of the foreign funds license requires about one month.

If the investment is in excess of \$40,000, the application is passed on by an inter-ministerial body known as the Committee on Investments which meets, in Paris, twice a month. Such an application may take six weeks before final approval.

Where a royalty or service fee is involved, the French Ministry of Industry requires that a study be made of the commercial and technical value of the patent; know-how or process in question and that report is sent to the Banque de France. The committee appointed to make this study will vary according to the subject matter of the license and the industry involved. The committee usually states its opinion as to whether the rate of the proposed royalty is reasonable and frequently will base its conclusions on a comparison of what competitive licensors have obtained from other Franc Zone licensees. Because of consultations by the technical ministry with the licensor and/or licensee, the review of the committee's report by the Banque de France may take several months. In most instances, a royalty rate not exceeding 5% of gross turnover will be approved.

Where time is of the essence, the investor should state in his application, if such be the case, that an application will be made later for the payment of license fees and that this will be the subject of separate negotiation with the Ministry of State of Monaco and the Banque de France. In this way, processing of the investment license will not be delayed. If this procedure is not followed, consideration of the general investment application by the Banque de France will be postponed while awaiting the report of the technical committee of the Ministry of Industry.

Where the proposed licensee is granted export rights from the Franc Zone, and where the potential export market is substantial, it is sometimes possible to obtain a higher royalty rate for goods exported than for goods sold internally. This procedure is adopted where a licensor does not succeed in obtaining from the control

authorities a royalty rate as favorable as in other areas where there are no currency controls. Frequently, the licensor has previously used a "most favored nation clause" with other licenses, and in order to avoid a chain reaction of reductions in all license fees, has to use a split license fee arrangement so as to average out on a general percentage consistent with that obtained in other areas.

Repatriation of Foreign Earnings

Payment of dividends is accomplished through a local bank, which is authorized to remit to foreign stockholders upon presentation of the annual balance sheet of the corporation and the corporate decision declaring the dividend. Likewise, royalties due to foreign licensors are paid by authorized banks, upon presentation of a certified statement as to turnover or whatever documents are used to determine the amount of royalties due. Royalties are usually payable on a quarterly basis. Dividends may be paid only once a year.

In the event of liquidation of the investment of the corporation, all proceeds realized therefrom are fully transferable abroad. There is no guarantee as to the rate of exchange for any conversions and therefore the Paris rate in effect as of the time of repatriation applies.

A Monégasque corporation, unless it receives a special derogation, must convert its foreign earnings into French francs within 90 days after receipt. Where it can be demonstrated that these funds are required for further transactions, it may be possible to keep same abroad.

If the Monaco enterprise, however, is in the form of a branch of, say, a Swiss corporation, then except for that part of the transaction allocable to the Monégasque activity, the proceeds of the transaction may be paid by the non-French customers directly to the main office outside of the Franc Zone and remain its property. This factor is important in determining the form of the Monégasque enterprise where sales of goods are envisaged and where, therefore, it is necessary to keep substantially all of the funds outside of Monaco for further purchases and resales.

CONCLUSION

The trend in Monaco is to reduce wherever possible the few taxes upon commercial operations, particularly where the activity extends beyond France. Activities from Monaco into France are rather closely controlled under the terms of the Franco-Monégasque Tax Convention. In spirit, this affects French corporations setting up in Monaco with the intent to do business in France more than foreign interests organizing in Monaco for international transactions.

Illustrative of the new tax approach is the recent change in the tax regulations making it possible to have "incomplete" sales transactions as above defined whereby only a portion of the transaction is attributed to Monaco and where, if the goods are not sent into France, the 1% export compensation tax is reduced to 0.8%. The same reduction applies where the Monaco office acts as a commission agent. Another instance is in the case of local manufacturing, where previously you deducted from the base twice local salaries and social security charges, whereas now the deduction is ten times social security charges.

It will be difficult to find a more reasonable tax burden in any country of Western Europe. While in certain areas (such as Lichtenstein) the tax may be a trifle less, you encounter other problems there such as difficulties in obtaining residence permits for executives and living conditions which the families of your executives may not accept.

Monaco offers advantages which can be added to the advantages already obtained in the earlier organization of your European base company. Frequently, these were established in haste, directly after the ratification of the Treaty of Rome, where European investments and acquisitions which had been pending for months or years were realized under circumstances in which time was of the essence. The first wave of U. S. holdings abroad having been accomplished, the time is coming when U. S. interests so organized will refine their foreign structure and achieve further tax savings and more acceptable living and operating conditions, at the same time reducing the turnover of personnel based abroad whose families refuse to live in isolated areas for the convenience of the corporation. In many places, key American personnel find that, while taxes on the base company are very small, as their salaries paid by the base company are very high compared to local standards, their personal income taxes equal or exceed comparable U. S. rates. In Monaco, where living conditions are excellent and personal income taxes are zero, you can achieve a fairly ideal situation with complete legality, and yet preserve the base company previously created.

The Customs Union of Monaco with France also gives advantages within the Common Market where facilities for local manufacturing or substantial assembly are plentiful. These advantages do not exist in the case of Liberian or Bermuda corporations.

The ideal solution would be to have the base company incorporated in Switzerland or Holland or in a similar area which has a network of double tax treaties, so that intangible income for royalties and dividends enjoy at the source the lowest possible local withholding tax. Then, for operations involving the rendering of sales or services, a Monaco branch of the treaty country base company can be organized. The turnover earned by or allocated to the Monaco establishment is

subject to the export compensatory tax or T. P. S. Tax, as appropriate, but net income is not subject to a local profit tax, as there is none. Furthermore, this net income will, in all likelihood, not be subject to income taxation at the domicile of the base company as this is considered to be earned outside the base country, and is exempt under the doctrine of "*territorialité*".

If the Monégasque establishment is only a branch, the earnings are payable directly at the domicile and these funds may be kept abroad with the requirement that there will be repatriated to Monaco only that share of the transaction allocated to Monaco. The remittance of dividends or profits from Monaco to the domicile does not give rise to local withholding taxes.

Finally, as Monaco pursues its purpose of attracting headquarters operations, it will give individual consideration to special cases in order to establish an equitable tax situation to meet the investor's requirements within the framework of its own tax concepts and obligations.