

**THE LEGAL SYSTEM
OF MONACO**

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CHAPTER FIVE

THE LEGAL SYSTEM OF MONACO

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CHAPTER FIVE

THE LEGAL SYSTEM OF MONACO

§ 1.1. Introduction.

The Principality of Monaco is a sovereign independent state, much as any other. It is, however, contained in a surface area of under three square kilometres and has a population of approximately 25,000 (of whom only some 5,000 are Monegasque citizens).

The complexity of a legal system is not directly proportional to the size of the state in which it is applied, but nevertheless the compactness of the Principality has had an effect on the development of the laws by which it is governed, on the number and diversity of its institutions and, above all perhaps, on the volume of judicial precedent which has emanated from its courts. What Monaco needs from its Constitution, its laws and its government is a legal system which is adapted to the closeness of its geographical confines, the smallness of its population and the relatively small number of people involved in its administration. At the same time, the system must take account of the position of the Principality as a nation with many interfaces with the outside world.

These factors account to some extent for the brevity of the constitution, the absence of a system of legal education and the rather summary nature of some of the laws (especially in the fields of the structuring corporate and commercial activities and installation of foreigners in Monaco). Foreign lawyers are often baffled by their inability to elicit precise answers on points of law which, in their own countries, could be clearly obtained from the text-books or from the law reports. They have to understand that, in Monaco, much is left unsaid and a knowledge of the custom and practice of the courts and the various arms of government are as much a part of the practitioner's stock in trade as the texts of laws and judicial decisions.

Monaco has particular attractions as a place of residence for foreign nationals and a base for foreign-controlled businesses. This chapter will, therefore, contain short sections on these subjects, as well as a general description of the Principality, its institutions and its legal and fiscal systems.

§ 1.2. General.

Monaco is situated on the Mediterranean coast of Europe and since 1861 has been entirely surrounded by France. Its total area of 185 hectares would fit comfortably into Central Park of New York City. It has no natural resources.

Although the number of Monegasque citizens is very small compared with the total number of residents in Monaco, the Monegasque nationality exists and the Monegasque nation is very much alive, united and conscious of its traditions. There is a Monegasque language (a derivation of Latin), which is still taught in schools and sometimes heard in the streets although the official and everyday language of the Principality is French.

§ 1.3. History of Monaco.

Since 1215, apart from a period of annexation to France after the French Revolution, the Principality of Monaco has enjoyed an almost totally independent existence. It was in

that year that the Genoese built a castle on the rock dominating the sea, now the Prince's Palace. There followed a period of constant battle over Monaco which led, on 8th January 1297, to a successful invasion by François Grimaldi.

The Grimaldis, however, lost and had to reconquer Monaco over a period of nearly two centuries. The independence of Monaco was finally recognized by King Charles VIII of France in 1489: "The Segneury of Monaco is held by God and the sword and the Grimaldis have no other sovereign or prince than God".

In 1524, Monaco, because of its vulnerability in troubled times, found itself obliged to seek Spanish protection, a protection which lasted over 100 years. In 1641, a treaty signed with Louis XIII substituted French protection for the Spanish protection and thereafter the Monaco princes and the French kings remained allies until the French Revolution. Throughout this period, the neighboring communes of Menton and Roquebrune were integral parts of Monaco. The French Revolution had its repercussions on Monaco and the Principality ceased to exist, becoming part of Menton which, with Roquebrune, was annexed to France by a decree of 13th February 1793.

In 1814, the Treaty of Paris gave the Principality its independence again, on the same conditions as before 1793. However, the Congress of Vienna decided that all relations between France and Monaco should cease and relations were established between Monaco and Sardinia. There followed severe economic problems for Monaco leading to Menton and Roquebrune declaring themselves independent in 1848. They subsequently opted for incorporation into France. The Franco-Monegasque Treaty of 2nd February 1861 confirmed the Sovereignty of the Principality and so has it remained to this day.

§ 1.4. The Constitution and the Organs of Government.

§ 1.4(A). The Constitution.

The Principality has had its own written constitution since 1911. The Constitution of 5th January 1911, introduced by Prince Albert 1er, was suspended three times, modified and then replaced on 17th December 1962 by an entirely new Constitution which is in force today.

The Constitution is a fundamental law which defines the nature of the government, organizes the public administration and confers constitutional rights both on Monegasque citizens and foreigners. It thus defines the law-making process and is indirectly the source of inspiration of ordinary laws. It sits above the general body of ordinary law and its pre-eminence is guaranteed by the power conferred on the Supreme Court to declare ordinary laws invalid for being unconstitutional.

Only international treaties are above the Constitution, in recognition of the supremacy of international law over municipal law.

§ 1.4(B). Fundamental Principles of the Constitution.

The fundamental principles of the Constitution are summarized in the first chapter, the principal statements of which are as follows:

- (1) The Principality of Monaco is a fundamental and independent state, within the general framework of international law and the special agreements with France;
- (2) The Territory of the Principality is inalienable;
- (3) The principle of government is a hereditary and constitutional monarchy;
- (4) The Principality is a state of law, attached to the respect of liberties and

fundamental rights;

- (5) Executive power derives from the high authority of the Prince;
- (6) Legislative power is exercised by the Prince and the National Council;
- (7) Judicial power is exercised by the courts and tribunals;
- (8) The separation of administrative, legislative and judicial functions is assured;
- (9) The official language of the state is French; and the religion of the state is Roman Catholicism.

A fundamental change in the 1962 Constitution removed the absolute monarchy status of the Principality. The powers of the Prince must be exercised within the framework of the Constitution, and the Constitution may only be suspended or modified with the consent of both the Prince and the National Council.

In principle, the protection and benefits of the Constitution are available to all persons, regardless of nationality. There are however certain specified exceptions whereby certain rights are available to Monégasque nationals only.

It is appropriate to look briefly at the different organs of government created by the Constitution.

§ 1.4(C). The Prince.

The Prince is the Head of state and represents the Principality in its relations with other countries. Succession to the Throne is in line of direct descentance by order of age and with preference to males. The Prince exercises his sovereign authority in accordance with the Constitution and the laws. He has, however, the exclusive right to initiate new laws and carries out the legislative function together with the National Council (see below).

Executive power derives from the high authority of the Prince. Under the authority of the Prince the executive power is exercised by a Minister of State, appointed by and responsible to the Prince. He is assisted by a Council of Government. The members of the Council of Government also are responsible to, and hold office at the pleasure of the Prince.

Strictly speaking, judicial power also resides in the Prince, who has, however, by the Constitution, delegated that power to the courts and tribunals.

There are reserved to the Prince certain other fundamental rights, viz:

- (1) The right of amnesty;
- (2) The right of naturalization; and
- (3) The conferral of orders and distinctions.

§ 1.4(D). The Council of the Crown.

This is a consultative body, provided for by the Constitution and appointed by the Prince. Its function is to advise the Prince on important matters of state.

§ 1.4(E). The Council of State.

This is a consultative body, provided for by the Constitution, but whose composition and functioning are fixed by "Ordonnance". Its role is to advise the Prince on draft laws and "ordonnances" submitted for his approval.

§ 1.4(F). The National Council.

This assembly has many of the characteristics of the parliamentary bodies of

democratic nations, although its powers are perhaps less extensive than those of some other countries. For example, it does not control the government and it does not itself have power to initiate new laws. It is nevertheless a body which exercises a profound influence on the government and life of the Principality.

The National Council is composed of 18 members, elected by universal suffrage, for a period of 5 years. The right of vote at elections is reserved to those of Monegasque nationality. The National Council meets in open public session and its debates are published.

This elected body considers and votes on all new draft laws promulgated with the authority of the Prince and may itself submit draft laws to the Prince for his promulgation. It also votes on the annual budget for the Principality. New direct taxes may not be introduced without its approval.

§ 1.4(G). The Commune.

The Commune represents government at a local level, although, in the case of the Principality the whole of the territory constitutes a single commune whose boundaries are co-extensive with those of the state. The Commune is, in fact, the oldest organ of government in the Principality, with its origins in the 13th century. Its existence, structure and role have now been enshrined in the Constitution.

There exists an elected 15 member Communal Council (elected for a four-year period), presided over by the Mayor, himself elected by the Communal Council. The Mayor is also an executive officer responsible, under the authority of the Communal Council, for the administration of the Commune.

Since their territories are co-extensive, the definition of the separation of powers between State and Commune is especially important. The principal functions exercised at communal level are:

- (1) police and law enforcement;
- (2) administration of public buildings;
- (3) local services, transport, waste collection, etc.;
- (4) organization of local festivities; and
- (5) roads, open spaces, fire services, cemeteries, etc.

The Commune is also consulted by the appropriate government department on important questions of town planning.

Since there are no local taxes levied in Monaco, the Commune is dependent for its financing, over and above the reserves provided by its own activities, on subventions voted by the National Council.

§ 1.5. Relationships with France.

§ 1.5(A). In General.

It has been said that Monaco is an independent sovereign state. It is, however, geographically, totally surrounded by France. It thus depends on France not only for purposes of access by land, but also for supplies of essential services such as electricity, water, post and telecommunications. It is therefore inevitable that Monaco has a relationship with France which goes beyond that normally existing between two sovereign states. This special relationship is represented by a number of bi-lateral treaties

signed and, in certain cases, re-negotiated and re-signed between the two countries from the mid-nineteenth century onwards.

§ 1.5(B). Abolition of Income Taxes — 1869.

A customs union was created by a treaty of 5th December 1865 and still exists. However, the most contentious and important area of the special relationship was triggered when, in 1869, Prince Charles III destroyed the fiscal equilibrium by announcing the abolition of income taxes in Monaco. This bold and novel act, coupled with the introduction of gaming and the building of the casino, not only launched Monaco on a new wave of growth and prosperity, but also created for French individuals and businesses an irresistible temptation to benefit from the privileges of Monegasque residence, or from the establishment of businesses (more often than not mere “covers” for businesses being carried on elsewhere) in order to avoid payment of the French taxes.

This situation was an increasing source of friction from the start of this century to the Second World War and, during this period, a number of treaties were entered into in an attempt to limit the scope for using Monaco as a haven from French taxes. During the Second World War and the years thereafter, the abuses continued and various attempts were made by France, by the entering into of new treaties, to regulate the problem.

§ 1.5(C). The Treaties of 18th May 1963.

By the early 1960's, relations had, as a result of a number of incidents, become very strained, and, in 1962, the French government applied pressure on the Principality which resulted in the signing, on 18th May 1963, of a new series of treaties, which exist today in a largely unmodified form and which now form the basis of relations between the two countries. These treaties cover the principal areas of tax, customs duties, local relations, control of insurance and of post, telegraph and telecommunications.

The tax system, which resulted from the 1963 treaty, will be examined elsewhere. However, it is appropriate to give here a brief summary of the other measures.

§ 1.5(D). Customs.

Under the treaty, French and Monegasque soil and territorial waters form a single customs unit. Thus:

- (1) All French customs laws, rules and tariffs apply directly in Monaco without (as in the case of other measures of taxation) the need for adoption by the Monegasque legislature or government;
- (2) All customs and similar duties collected by Monaco are (subject to some exceptions) for the account of France;
- (3) All Monegasque customs officers must be of French nationality; and
- (4) French exchange control rules apply directly in Monaco. (Exchange control was introduced into Monaco by a Franco-Monegasque convention of April 1945, which rendered Monaco automatically subject to all French exchange control laws).

It is a corollary of the customs union that Monaco, incidentally and without having signed the Treaty of Rome, is now, for customs purposes, assimilated to the European Economic Community (EEC). Thus, no tariffs exist between Monaco and EEC countries. This does not, however, mean that Monaco is subject to harmonization and other non-

tariff measures promulgated by the EEC, although it is not infrequent that such measures are adopted specifically by the Principality.

§ 1.5(E). Local Relations.

Residents of France and Monaco each have the right of free circulation in the other territory. There are no barriers and no frontier controls. However, Monaco has agreed to subordinate the entry, visits and establishment of foreign nationals in Monaco to the same rules as are applied on French territory.

A number of other measures exist to co-ordinate local services such as police, fire-fighting, service by Monegasque citizens in the French army, and matters of a similar nature.

§ 1.5(F). Insurance.

Insurance business in Monaco is governed by rules which are co-ordinated with those of France. In practice, this means that the right to carry on insurance business in the Principality is subject to the same rules as those which govern companies in France, especially rules covering reserves and guarantees, types of policy and general operation. Also, the prior approval of the French "Direction des Assurances" is required in order to carry out insurance business in Monaco.

§ 1.5(G). Postal, Telegraphic and Telephone Services.

These services are provided by France. The Principality does, however, produce its own postage stamps which are used on all mail posted in Monaco.

§ 1.5(H). Treaties.

Whilst the 1963 treaties are probably the most significant existing instruments governing relationships between Monaco and France, they are by no means the only ones. A number of other treaties exist between the two countries dealing with specific matters. These are from time to time amended. The subjects covered are diverse and include for example, reciprocal judicial assistance, reciprocal social security arrangements, road transport, sale of works of art and the practice of pharmacy.

An interesting aspect of the modern treaties between the two countries is that they are terminable at any time by either party on six months notice. In view of the disproportion in size and power between them, an outsider may be forgiven for thinking that this theoretical possibility of early termination of arrangements and services, which are essential to the survival of the Principality, leaves it in a very vulnerable situation. However, since 1963, relations have been generally good and, inside Monaco, the possibility of France using the threat of terminating the treaties as a means of applying pressure is regarded as slight.

§ 1.6. Sources of Law and the Law-Making Process.

§ 1.6(A). In General.

Despite its small size, Monaco is endowed with a system of law and a law-making process scarcely less sophisticated or less complex than those of some larger nations.

During the attachment of Monaco to France between 1793 and 1814, French laws and, subsequently, the 'Code Napoléon' were applied in Monaco. These were then, after Monaco regained its independence in 1814, enshrined in the legal system and today still form the basis of the laws of the Principality. Thus, the Principality has its civil code, penal code and civil procedure code, all largely based on the French equivalents. The framework of the law, embodied in the codes, is amplified and developed by four other forms of enactment, the "loi", the "décret", the "ordonnance", and the "arrêté".

§ 1.6(B). The "Loi".

This is a statute voted by the legislature within the mechanism laid down by the Constitution. Laws are promulgated either by the government or by the National Council itself (although in order to promulgate a law itself the National Council must first obtain the approval of the government).

After the text has been drafted by appropriate government department, the "projet de loi" is submitted to the National Council. It is delegated to one of four permanent committees for debate and amendment, and finally, in its amended form, resubmitted to the full council for debate and vote. However, amendments can only be voted by the National Council when they have received the prior approval of the government and the debate must, if necessary, be adjourned for this purpose.

After adoption by the National Council, the law is resubmitted to the Prince for his seal of approval.

A law does not become enforceable until it has passed through all the above stages and has also been published in the "Journal de Monaco", the official gazette of the Principality. This "publication" is an essential ingredient in the law-making process.

§ 1.7. The Judicial System.

§ 1.7(A). The Prince.

Article 88 of the Constitution provides that judicial power resides with the Prince, who delegates it to the courts, thus assuring observance of the principle of separation of powers.

§ 1.7(B). Civil and Criminal Judicial System.

The Principality has its own judicial system in both civil and criminal matters, modelled on that of France and governed by procedural rules borrowed in most aspects from the French system. Thus, the procedure of the courts is the traditional continental inquisitorial procedure rather than the adversary procedure which characterizes common law systems.

As is usual in continental legal systems, the courts are not bound by precedent, although the persuasive value of precedent, both Monégasque and French, is strong.

§ 1.7(C). Law Reports.

The Principality does publish law reports but, because of its size and the number of cases coming before the courts, these are far from voluminous.

§ 1.7(D). Avocat and Avocat Défenseur.

Parties are represented before the courts by an “avocat” or by an “avocat défenseur” (see below). There is a very restricted number of lawyers practicing at the Monegasque bar and therefore it is not uncommon for a French “avocat” to prepare and plead the case, a practice which is permitted provided the foreign “avocat” employs an “avocat défenseur” from the Monégasque bar as postulant.

§ 1.7(E). The Judiciary — A Professional Body.

The judiciary is a professional body, appointed by the Prince, from lawyers who have qualified and practiced as judges in France.

§ 1.7(F). Justice of the Peace.

The lowest tribunal in the system is that of the Justice of the Peace (“Juge de la Paix”). This court, in which the judge sits alone, hears relatively minor cases of both civil and criminal nature. The “Juge de Paix” also presides over the Labour Court (“Tribunal du Travail”) where he is accompanied by an equal number of representatives of employers and employees. The function of the Labour Court is to hear disputes between employer and employee.

§ 1.7(G). Court of First Instance.

The next court in the hierarchy, after the “Juge de Paix” is the Court of First Instance (“Tribunal de Première Instance”). This court functions with a college of judges, presided over by its President. It also has civil, commercial and criminal jurisdictions, as well as deciding purely administrative cases.

The President of the Tribunal de Première Instance also presides over “référés”, urgent cases heard in chambers, frequently on the basis of “ex parte” applications.

§ 1.7(H). Appeal Court.

The Appeal Court (“Cour d’Appel”) hears appeals which are made to it as of right against the decisions of the Tribunal de Première Instance. Cases are always heard by at least three judges.

§ 1.7(I). Criminal Procedure.

Criminal procedure involves two stages. First the case is examined by the Examining magistrate (“Juge d’instruction”) who examines the evidence and decides whether or not the matter should proceed and, if so, before which court (Première Instance or Tribunal Criminel). He also decides on applications for bail.

The Criminal Court (“Tribunal Criminel”) is a special court, sitting only as and when necessary, to try more serious criminal cases. It comprises three professional judges and three lay judges chosen from amongst Monegasque citizens. It can award the highest penalty known to the law, life imprisonment, and its decisions cannot be appealed against save on questions of law, in which case appeal lies to the “Cour de Révision”.

The “Cour de Révision” is the final appeal court and fulfills a role similar to that of the “Cour de Cassation” in France, that is to say, it examines on appeal decisions of the Cour d’Appel or the “Tribunal Criminel” In criminal cases, the “Cour de Révision” cannot

itself render a judgment. It can merely refer a case back to the criminal court for re-examination. However, unlike the French “Cour de Cassation”, the “Cour de Revision” can itself reverse or modify judgments of the “Cour d’Appel” in civil or commercial cases.

§ 1.7(J). Tribunal Suprême.

Occupying a special position above all the other tribunals is the “Tribunal Supreme”, specially constituted in 1911 to safeguard the fundamental liberties guaranteed by the Constitution. It functions exclusively in constitutional cases and in certain administrative cases, such as deciding whether the administration has exceeded its constitutional or legal powers. It sits with five members, specially chosen by the Prince from candidates presented from the “Conseil National”, the “conseil d’Etat”, the “Conseil de la Couronne”, the “Cour d’Appel”, and the “Tribunal de Première Instance”.

§ 1.7(K). Special Function Courts.

There is also, within the judicial system, a number of special function courts with limited jurisdictions to deal with specific types of case (labour disputes, fixing of commercial rents, etc.). There is also a special judge, “Juge Tutélaire”, who deals with family problems, including guardianship of infants.

§ 1.7(L). Appealing a Judgement.

A judgement of a Monegasque court is not effective until it has been ‘signifié’, i.e., served by the party seeking to enforce it on the other party or parties. This service, effected by “Huissier” (bailiff) is an essential precursor to any steps to enforce a judgement. It is also the event which marks the beginning of the period set by law for appealing a judgement.

§ 1.8. The Legal Profession.

§ 1.8(A). Introduction.

The organization of the legal profession in the Principality closely follows that of France, not least perhaps because, owing to its size, Monaco does not have its own system of legal education. She is consequently obliged to rely on the educational institutions of her larger neighbor, although entry requirements are modified to suit local requirements.

§ 1.8(B). Judges.

The judiciary in Monaco is based on the traditional continental concept of professional judges, educated and trained as such, rather than the common law system of judges appointed from the ranks of experienced practicing advocates. In practice, the Monégasque judiciary consists mainly of French judges detached to the Monégasque courts. Monégasque nationals may however be appointed to the judiciary after graduating in law from a French University (“Maîtrise en Droit”) and after completing two years study in the French “Ecole Nationale de Magistrature”.

§ 1.8(C). Notaries.

The role of a Notary in Monaco corresponds largely to that of his French counterpart,

although with some important differences. Certain types of transaction can only be validly contracted by means of a deed in notarial form (for example, the transfer of title to real estate; the creation of joint stock companies). Certain other legal acts which, although they can be validly carried out in non-notarial form (for example, wills, leases), are often nevertheless frequently entrusted to Notaries to give them a certain validity and avoid future disputes about authenticity. In some circumstances, the role of the Monégasque Notary is more restricted than that of the French Notary. He may not, except in the most exceptional circumstances, function outside his own office, and he may not carry out any function other than preparing and recording deeds relating to legal transactions in the Principality.

The office of Notary is a concession granted by the Prince (known as a "charge"). There are, in fact, only three practicing Notaries in Monaco at the present time and it is unlikely that further "charges" will be granted. The "charge" is a saleable asset, and on death or retirement can be passed on to a successor.

To be a Notary it is necessary to have Monégasque nationality, to hold a law degree from a French University and to have served a three-year apprenticeship ("stage").

§ 1.8(D). *Avocats Défenseurs and Avocats.*

Pleading lawyers are "avocats défenseurs" or "avocats". The "avocats défenseurs" are appointed from "avocats" of at least eight years experience.

Every case pleaded in the courts has to be presented by an "avocat défenseur", although it is common practice for the "avocat défenseur" to allow his name to be used as "postulant" in a case which is both prepared and presented by an "avocat", either Monégasque or French. French "avocats" have the right of audience in Monégasque courts and frequently appear there.

In order to be called to the bar in Monaco, it is necessary to be a Monégasque citizen, to hold a degree in law and to have served a three year apprenticeship ("stage") and passed a final examination.

§ 1.8(E). *Huissiers.*

The Huissier is principally a process server, but also fulfills an important role in obtaining and confirming evidence. An attestation by a Huissier that he has confirmed certain facts or witnessed certain events is accepted by the courts as conclusive evidence of the facts or events recorded. Like the profession of Notary, the profession of "Huissier" is regulated by "Charges". There are only two such "Charges" in existence and thus two Huissiers in Monaco.

In order to become a Huissier, it is necessary to be of Monégasque nationality and to have a degree in law from a French University.

§ 1.8(F). *Foreign Lawyers.*

As with any other form of business activity, the practice of law in the Principality, with the exception of the recognized legal professions mentioned above, is regulated by government authorization. Authorizations to practice are not granted as a matter of course. The government has, however, recognized the needs of the international community to take legal advice in their own language and also to be advised on legal questions with international implications. There are, at present, two foreign lawyers practicing in Monaco with government authorizations. They act in a purely advisory role

and have neither the capacity of Notary nor access to the courts, although they do function regularly as a "bridge" between a foreign client and a Monegasque notary or "avocat".

§ 1.9. Residence and Its Implications.

§ 1.9(A). In General.

Monaco, generally speaking, welcomes foreigners who wish to take up "bona fide" residence, although certain formalities have to be observed. These formalities normally take about three months.

In order to obtain permission to reside in Monaco, the applicant must, before leaving his country of previous residence, apply to the French Consul in his country for a permanent visa to live in the Alpes Maritimes (the surrounding "department" of France). This visa application is processed entirely through French channels and may be refused by the French. In practice, the application will only be refused if grounds exist which would prevent the individual in question from being granted the right to live in France. For citizens of European Common Market countries, the granting of a visa is more or less automatic. However, in all cases, the applicant must show either that he has an offer of employment in the Principality or that he has sufficient means to live independently. If this application is concurrent with an application to the Monegasque government to start a business activity in Monaco, it will be held in suspense until approval is given by the government of Monaco to start the business.

It is also necessary for the applicant to show that he has living accommodation at his disposal. There is, however, no bar to non-residents buying or renting property in Monaco.

Anyone wishing to take up salaried employment in Monaco must obtain a work permit from the Monegasque authorities. Such permits are not difficult to obtain provided the job in question is not one for which suitable staff could be recruited locally.

The visa application finds its way via Paris to the French Consulate in Monaco where the necessary enquiries are made locally. The Consul in Monaco then gives his opinion to Paris, where a decision is taken to issue the visa or not. Once the visa has been issued, the applicant presents himself for interview to the police in Monaco. If this interview is satisfactory, he is issued, within about 10 days, with a temporary residence card, valid for one year. This card is renewed twice on an annual basis and is then replaced by an ordinary residence card, valid for three years. This also is replaced twice at three yearly intervals, after which the person concerned receives a privileged residence card, valid for 10 years.

After 10 years residence (and, very exceptionally, after 5 years), a resident may apply for Monegasque citizenship. This is a jealously guarded privilege, bestowed, even after 10 years residence, only rarely and after a profound enquiry which lasts up to 12 months.

A non-resident may stay in Monaco for up to three months without a break.

If a person is resident, he is expected to spend at least six months in each year in the Principality, although business travel is recognized as a necessity in appropriate cases.

Monegasque law does not recognize the Anglo-Saxon law distinctions between residence and domicile. The presumption exists that a person is domiciled in Monaco if he holds a residence card. However, this presumption is rebuttable until he has been a resident for five years

§ 1.9(B). Succession.

One of the principal consequences of Monegasque domicile is that the estate of the individual is subject to Monegasque succession laws on his death, at least in respect of real estate situate in Monaco and personal estate wherever situate. However, in cases of conflict, Monegasque law applies the succession laws of the country of nationality of the deceased. In most cases the operation of the doctrine of "renvoi" results in Monegasque substantive law being applied to the succession.

The effect of applying Monegasque laws to the succession to an estate is to create, in respect of children and remoter issue or, if there are no children, co-lateral and ascendent relatives, reserved rights to portions of the estate, which cannot be freely overridden by a testamentary instrument. Strangely to the Anglo-Saxon mind, the surviving spouse acquires no rights by law (except in an intestacy, in which case he or she receives the same portion as a child of the deceased), but may be granted by legacy the right to take or to share only in that portion of the deceased's estate which is freely disposable after satisfying the reserved rights of the issue or other relatives.

It is worthwhile noting, at this point, that the reserved rights of issue apply not only to dispositions on death but also to disposals "inter vivos". Thus a gift made during lifetime may be upset by the issue if, after death, it transpires that the gift operated to deprive the issue of their entrenched rights to share in the estate, even if at the time of making the gift the deceased was not domiciled in the Principality. Gifts from one spouse to another are always revocable.

An interesting and unique characteristic of Monegasque succession law lies in a special law applying only to foreigners (law 214 of 9th February 1936). Under this law, a foreigner whose country of nationality recognizes trusts is entitled to make in Monaco a trust (either "inter vivos" or testamentary) to dispose of his assets in accordance with the trust laws of his country of nationality. Residents of Monaco whose nationality is that of a common law country frequently avail themselves of this opportunity to avoid the above-mentioned rules of reserved rights for issue and other relatives.

Such a trust must be written in the French language and received by a Monegasque Notary. It must be accompanied by certificate of authenticity signed by a practicing lawyer in the country to the law of which the trust is subject, and who is enrolled on a special list kept by the court. Also, at least one of the trustees must be a trust corporation whose name is enrolled on another special list kept by the court. Should litigation ever arise over such a trust, although to the best of the author's knowledge it never has, the Monegasque courts would be competent and would apply the law of the country to which the trust is subject.

With this one exception of "Law 214 trusts", Monegasque law recognizes neither trusts nor nominee holdings, and the common law distinction between legal and beneficial ownership does not exist.

§ 1.9(C). Taxation of Individuals.

Monaco levies no income taxes or capital gains taxes on individuals, although French nationals resident in the Principality pay income taxes in France unless they had been resident in Monaco for at least five years prior to 13th October 1962 (one of the measures introduced by the 1963 Franco-Monegasque treaties).

Succession duties are not levied on dispositions to a surviving spouse or to children or remoter issue. On other dispositions, succession duties are on a sliding scale rising to a

maximum of 16% in the case of dispositions to non-relatives. Succession duties are payable by the recipient of the dispositions and apply only to assets situated in Monaco at the date of death.

Monaco has no double tax treaties with any country except France.

§ 1.9(D). Exchange Controls.

Monaco residents (including corporations) are subject to French exchange control regulations supervised by the Bank of France, whose authority is to some extent delegated to the clearing banks. New residents become obligatorily subject to exchange control only after two years of residence (although if they are citizens of an EEC country they may opt to do so earlier).

The effect of subjection to exchange control is that money may be transferred abroad only with the prior approval of the Bank of France (either specifically or under category exemptions). Furthermore, a resident may not borrow abroad without the consent of the Bank of France. However, on ceasing to be resident, a person of non-French and non-Monegasque nationality may transfer his assets abroad. French and Monegasque citizens may, however, transfer immediately only FF 150,000 in the first two years of non-residence without special permission.

Persons of French and Monegasque nationality are also forbidden to keep bank accounts abroad without special consent, and are obliged to bring into the French franc zone the whole of their income arising overseas. These particular restrictions were lifted from foreigners in 1982.

§ 1.10. Business Activities in Monaco.

§ 1.10(A). In General.

Over the last decade, Monaco has become more and more favored as a country for the establishment of business operations.

Its geographical situation and its tax system make it particularly suitable as a home for the headquarter and service companies of international groups, from which strategic co-ordination is exercised and central services are performed. Banks and stockbroking firms are also well-represented.

The government itself is keen to see Monaco develop as a business and commercial centre, and generally welcomes the setting up of service businesses by reputable companies with an established record of success. Relatively small scale and environmentally unharmed manufacturing and assembly operations are also possible, but space is very limited and factory premises are difficult to find. However, each case is studied on its merits. If an application is refused, no reasons are normally given.

§ 1.10(B). Licensing.

Any person or body corporate wishing to carry out any business activity in Monaco must first (with the one exception described below) obtain a license from the government. In order to obtain this authorization, background information must be provided both on the investors and about the proposed activity. This information is examined by interested government departments and the file is ultimately passed to the "Conseil du Gouvernement" for a decision. The whole process usually takes about four months.

If a license is granted, it will be limited to the specific activity described in the

application, and any change or extension of activity will require a new authorization. If the application is for the formation of a limited company, the license will be limited in duration only by the duration fixed for the life of the company by its own statutes (usually 99 years). In other cases, it is usual to grant licenses which are renewable every three years.

If the creation of the business ranks, under French exchange control law, as a direct investment in the French franc zone by a non-resident, then the consent of the French authorities (usually the Treasury Department of the Ministry of the Economy and Finance) is also required. Application for this consent is made concurrently with the application to the Monegasque government. However, if the application is by an EEC resident person or company, the requirement for consent is replaced by a requirement simply to give notice.

Since the granting of a business license is discretionary, many of the rules which govern the granting of such licenses are rules of practice rather than of law. Such rules are uncodified and unwritten and it is therefore essential for any potential applicant unversed in local practice to seek legal advice.

§ 1.10(C). Forms of Carrying On Business.

Business in Monaco may be carried on in any one of the following four forms:

§ 1.10(C) (1). Incorporated Individual.

As an incorporated individual, anyone may apply for a license to carry on business either in his own name or under a trade name with unlimited liability. This is the usual form of trading adopted by shopkeepers and 'artisan' tradesmen.

§ 1.10(C) (2). Corporate Bodies.

This is a body corporate, with a separate legal existence, but in which the participants have unlimited liability. It is in many ways more akin to the Anglo-Saxon concept of a partnership than to a company. Its capital, form, management and voting structure and the rules governing the relationships between the participants are governed by its statutes, and the law leaves almost complete flexibility in this respect. Such a company is normally granted a three-year license and any transfers of participations or admission of new participants requires government consent. Many smaller businesses are organized in this form, and the government frequently encourages new businesses to start in this way rather than in the form of a joint stock company, preferring to allow transformation from the one form to the other after a few years of successful trading and growth. A variation on the "Société en Nom Collectif" is the "Société en Commandite Simple". In this corporate form, there must be at least one participant who has unlimited liability (and who usually has a preponderant voice in management and control). The other or others have liability only up to the extent of their invested capital.

§ 1.10(C) (3). Branch of Overseas Company.

This form of organization is popular with foreign businesses wishing to establish an activity in the Principality on a relatively small scale. In practice, the government will only consider applications to form branches by companies which have been in existence for at least three years. It is also required that some person resident in Monaco be endowed with full power to represent the branch legally.

§ 1.10(C) (4). Société Anonyme Monegasque — Joint Stock Company.

This is a joint stock company, and is a suitable vehicle for the substantial business which wishes to trade with limited liability. The Monégasque company law is drafted in very broad terms. Much is left unsaid, and there is great flexibility in the drafting of company statutes. Much of the current practice is borrowed from the French law relating to “sociétés anonymes”, but this is largely a matter of practice rather than of law. However, by law, a company must have its accounts audited by two local auditors. Certain rules of practice have to be observed in order to obtain consent to form the company. The minimum paid-up share capital is FF 250,000; there must be at least one director resident in Monaco to whom are delegated full powers to represent the company, and the company must have at its sole disposal a registered office. It is not, as in many countries, permitted to domicile a company in the office of a lawyer or other professional person. Surprisingly, the law does not subject transfers of shares in a “société anonyme monégasque” to prior government consent (although where non-residents are involved, French Treasury consent may be required). However, there is not, as might be expected, a lively trade in unwanted Monégasque companies, since the objects clauses are normally, of necessity, very narrow in scope, and are rarely adaptable to the requirements of a new principal shareholder. A change of objects requires government consent.

§ 1.10(C) (5). Société Civile.

The one exception to the requirement of consent for the carrying on of a business activity is that of the “société civile”. This shares most of the characteristics of the “société en nom collectif”, but is formed for a civil purpose rather than a commercial one (although it does have to be registered at the Commercial Registry). This type of company, frequently used as a vehicle for real estate development or ownership, requires no consent from the Monegasque authorities although, where non-residents are involved, the consent of the Bank of France may be required.

All businesses in Monaco have to be registered in the “Répertoire du Commerce” (Commercial Registry).

§ 1.10(D). Taxation of Business Operations.

Unlike most other jurisdictions, in Monaco the taxation of a business depends not on its corporate form but on the nature of the activity. Thus, an activity carried on for gain, but which is not regarded as a commercial activity, e.g., the practice of medicine, law or accountancy is not subject to any form of tax on its profits. The distinction between “commercial” and “civil” activities has its roots in the French legal system. A “commercial” activity must have an element of trading, as opposed to, for example, the liberal professions, which are regarded as having a purely civil character and which consequently escape tax.

For commercial activities, in whatever form, a business profits tax was introduced in 1963 at the insistence of France. This tax was fixed at the rate of 35% and has remained so ever since, although the law provides for it to be increased to 40%. This tax on profits is, as a general rule, imposed on all businesses in which more than 25% of the turnover is realized outside the Principality. Thus, purely local businesses, even if they are of a commercial character, are exempt.

§ 1.10(E). Administrative Headquarters.

Although no legal definition of the term exists, special treatment is given in practice to "headquarters" offices, i.e., those which merely service foreign corporations. When the taxable profits of such headquarters operations cannot be determined by reference to accounting procedures, they may be subject to business tax on only 8% of their operating expenses, i.e., 35% on 8% or effectively 2.8%. Where, however, the headquarters operation receives from its client companies in the group outside Monaco, a fee representing more than the mere reimbursement of the expenses of the headquarters, the 35% tax charge will usually relate instead to the margin thereby achieved. All proposals for the establishment of headquarters operations are examined by the authorities on a case-by-case basis and are subject to negotiation. In some cases, where the full benefits of "administrative headquarters" status cannot be obtained, the government will agree to taxation on the basis of operating expenses, but on a higher proportion than 8%, (the current norm is 30%).

§ 1.10(F). Complete Commercial Cycle.

If all the operations involved in transactions which are necessary for the realization of profit take place outside Monaco, there is said to exist a "complete commercial cycle" abroad, and in these circumstances Monaco will, where such transactions are the responsibility of a Monégasque enterprise or company, tax only a proportion of the income thereby derived. Again, the precise proportion is a matter for negotiation, but as a general rule of thumb Monaco will tax only 30% of the income thereby derived, i.e., $35\% \times 30\% = 10.5\%$ effective rate of tax. For example, if a Monégasque wholesaler purchases and sells goods abroad or if a Monégasque service enterprise renders services abroad to a client resident abroad, both such operations would constitute a complete commercial cycle abroad with consequences mentioned above.

It should be noted that there is no provision for inventory or stock-relief in the computation of the taxable profits for the purposes of the Monégasque business income tax.

There are rules limiting the deductibility of remuneration from business profits. It is not, therefore, possible to convert the entirety of taxable income into tax free personal income.

Monaco operates a Value Added Tax which, as a result of the treaty relationship with France, is identical to the French system, itself based on the systems applied in countries of the EEC as a result of various EEC directives. This tax, the current standard rate of which is 18.6%, is applied to all supplies of goods and services (with special rules governing transactions with an international element). Approximately half of the total reserves of the Principality are produced by the Value Added Tax.

§ 1.11. Employment Law.**§ 1.11(A). In Principle.**

In principle, the contract of employment is one freely negotiated and entered into between employer and employee. This principle has, however, been eroded by a number of legislative and practical measures.

Every job vacancy must be notified to the Labour Office, which has a period of 10 days within which to submit potential candidates from amongst those seeking work in Monaco. There is no compulsion for the employer to engage a person so submitted to him; but should he not accept a candidate who is, in the eyes of the administration, suitable for the post, he risks refusal when he subsequently applies to engage the person of his choice, since all engagement of personnel is subject to prior approval by the Labour Office. All terminations of employment have also to be notified to the Labour Office.

§ 1.11(B). Termination of Employment.

Although an employer is free to terminate the employment of any employee at any time in accordance with the terms of his contract, certain periods of notice and terminal payments are laid down by law and convention. Furthermore, should the employee claim that he has been unfairly dismissed, or that no good reason exists for his dismissal, he is entitled to take his case to the Labour Court, which may, and frequently does, award substantial damages against the employer.

§ 1.11(C). Collective Agreements.

A number of collective agreements ("conventions collectives") have been signed between employers' and employees' organizations in various industries (banks, hotel industry, building industry, etc.) which lay down special conditions applying to workers in that particular industry.

§ 1.11(D). Employer Protection.

Article 28 of the Constitution provides that everybody may defend the interests of his profession or occupation by collective action. This Article not only sanctions the creation of trade unions to protect the interests of employees. It equally permits employers to form associations for protection of their particular interests.

The same article of the Constitution recognizes the right to strike, but "within the framework of the laws which regulate this right". No such laws have in fact been promulgated.

§ 1.11(E). Social Security System.

Monaco has a social security system which provides for employees' sickness insurance (on a partial re-imbusement basis), unemployment insurance, family allowances and old age pensions. Employees and employers are compulsory contributors to the social security system and the combined contributions amount to an on-cost of approximately 30% of salary payments up to a cut-off point which is refixed annually. A similar scheme exists for self-employed persons.

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