



## Banking activities

May 2011

Banking activities in Monaco fall within the ambit of the French and Monegasque regulatory authorities and banking laws. When conducting asset management activities, which are wholly distinct from banking activities, credit institutions operating in Monaco are subject to local asset management regulations. The asset management sector in Monaco is subject to a purely Monegasque and separate legislative and regulatory system that has recently been updated to encourage the development of financial products and services in the Principality.

Before carrying out any banking activity in Monaco, ie engaging in banking operations, it is important to understand the regulatory framework applicable.

### Regulatory framework

The French banking regulation system directly applies in Monaco. Some European texts can indirectly apply in Monaco, via the French system. As a consequence of the 1945 Exchange Control Treaty and subsequent exchanges of letters between France and the Principality of Monaco, banking operations and institutions in Monaco are regulated and controlled as though they

were located in France. This was recently confirmed by the Exchange of Letters of 26 November 2010 between France and Monaco which updates the regulation of the banking industry in Monaco following the evolution of banking regulations in France.

The French Banking Act of 24 January 1984 as amended applies directly in Monaco. This general rule is subject to some exceptions which are listed in the various Exchanges of Letters between France and Monaco and need to be reviewed on a case by case basis.

Furthermore, the application of European Directives in respect of banking should also be reviewed on a case by case basis. For example, the MIFID Directive has direct application for certain provisions regarding the prevention of systemic risks as mentioned in the 2001 Convention between France and Monaco.

Moreover, Monaco follows the European system of payment and, in particular, the Monaco Government and local professionals have established a joint national committee to assist in the introduction of SEPA (Single European Payment Area) with a view to coordinating the transition of the new payment system which will be fully implemented by late



2012.

The definition of banking operations and banking institutions has evolved through the various Exchanges of Letters between France and Monaco

In particular main banking operations cover the reception of funds from the public, credit operations and payment services.

## Authorisations required

Before starting business in Monaco, banks must obtain the approval of both the French and Monegasque authorities.

French regulatory authorities ("Bank of France") have considerably evolved during the past few years and have now merged into the French *Autorité de Contrôle Prudentiel* (ACP) endowed with the powers to authorise, control and sanction regulated banking entities.

Credit institutions must obtain a banking licence from the French ACP. Any substantial modification of the banking licence will also require an authorisation from the French ACP.

Monaco prides itself on the fact that banking operations are fully controlled and monitored by the French Banking Authorities.

A Monaco business licence is also required and the type of legal entity entitled to carry out banking operations must comply with the requirements of Monaco law.

Every credit institution must be a member of a French and Monegasque professional organisation: the *Fédération Bancaire Française (FBF)* and the *Association Monégasque des Activités Financières (AMAF)*.

## Anti-Money Laundering

Stringent anti-money laundering laws apply to banks in Monaco.

The laws and recommendations regarding money laundering and terrorist financing in Monaco join other jurisdictions in their attempts to curtail the activity. The relevant laws are Law n° 1,362 of 3 August 2009 and Sovereign Order n° 2,318 implementing the Law.

The Monegasque regulations require a risk based approach for due diligence and client identification procedures. A

compliance officer must be appointed and internal control procedures implemented to ensure compliance and, also, appropriate training on potential suspicious transactions must be provided for all relevant staff.

All transactions relating to sums which are suspected to come from drug trafficking or from organised criminal activities must be reported to the *Service d'Information et de Contrôle sur les Circuits Financiers* (SICCFIN – Financial Channels Information and Control Unit).

The SICCFIN is a specialist government unit responsible for finding, gathering, processing and circulating information about money laundering circuits. It is in charge of monitoring compliance with the anti money laundering legislation in respect of a wide range of professionals (financial and non financial entities) *inter alia* by conducting on site investigations. Its staff are commissioned and sworn government employees.

## Data protection

Monaco is not a member of the European Union, which means that the European data protection Directive does not apply in the Principality. Monaco has a separate set of rules that deal with data protection.

All data processing systems in Monaco, even if they are to be accessed or used abroad must be declared with the relevant independent administrative authority, *Commission de Contrôle des Informations Nominatives* (CCIN). The CCIN was set up in accordance with Monaco's data protection Law N° 1,165 of 23 December 1993 as modified in 2009.

The legislation provides that, in some cases, processing of data requires prior authorisation from the CCIN whereas in other cases a simplified declaration to the CCIN will be sufficient. The purpose of the data processing as well as the underlying reasons must be clearly stated. The measures taken to ensure the security of the data processing and of the data itself and a guarantee of secrecy for data protected by law must be included in the applicant's declaration.

Furthermore, the legislation contains specific provisions on transfer of data. When data is transferred to countries considered as having adequate levels of protection (the CCIN has issued a list of such countries) the data can be transferred without prior authorisation. However, authorisation is required when

data is to be transferred to countries which are not mentioned on the CCIN list.

## How can we help?

Our office has existed in the Principality since 1979. We are the only English based international law firm in the Principality. Between our Monaco, Dubai, Moscow and London offices we have the strength and depth to offer a full legal service to both local and international clients. We aim to advise our clients in an efficient and cost effective manner and with a particular emphasis on commerciality and confidentiality.

We speak a number of languages including English, French and Icelandic. We have a client base which includes entrepreneurs, entertainers, financial or banking services companies, fund managers, trust companies, sporting personalities and international families from many jurisdictions.

Beyond its London, Dubai, Moscow and Monaco offices LG has strong relationships with law firms throughout the US, Asia and around the world. These relationships enable us to advise comprehensively on any matters with an international dimension.

## Contact Details

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