



## Financial and insurance activities in Monaco

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### Asset Management Activities

Financial activities in Monaco are subject to specific Monegasque laws regulating activities, products and custodian funds:

- Law n° 1,338 of 7 September 2007 ("Financial Services Law"). All regulated companies, whether they be banks offering portfolio management services or asset management companies, or hedge fund / fund management companies must obtain authorisation from the *Commission de Contrôle des Activités Financières* (CCAF) in Monaco before undertaking any of the following:

- management of portfolios of securities (*valeurs mobilières*) and fixed term financial instruments for third parties;
- management of mutual funds or other Monaco law collective investment entities;
- receiving from and placing orders on the financial markets in respect of securities or fixed term financial instruments, for third parties;

- giving advice and assistance on the above activities;

- management of foreign funds

The Financial Services Law allows regulated entities to manage foreign investment funds and carry out other financial service activities (such as individual management for third parties).

Banks are also authorised and regulated by the French *Autorité de Contrôle Prudentiel* (ACP) for the banking operations they conduct (please see separate LG note on banking activities).

- Law n° 1,314 of 29 June 2006 relating to the conservation or administration of financial instruments by credit institutions ensures that savings are protected.

Asset management companies must offer the requisite guarantees to be authorised to carry out asset management activities in Monaco.

A number of requirements are set out in the Financial Services Law. These relate mainly to minimum capital requirements, financial guarantees, terms and conditions of doing business, experience and standing of the people responsible for running the business, number of



employees, offices in which the proposed activities are to be conducted and internal control procedures.

Credit institutions are also subject to supplementary guarantees imposed by the French regulator and are similar to those prevailing in the European Union.

## Specific Monaco regulations applicable to all financial services

### General business authorisation

Any commercial business activity conducted in Monaco requires a licence. This licence requirement does not apply only to financial services.

Monegasque nationals must make a formal declaration of their activity, whereas non-Monegasque nationals must obtain prior approval from the authorities. Such approval generally takes about two and a half months from the date of submission of the application. For corporate registration, information required relates to the company to be formed, its shareholders and its structure. The registration can take various forms eg branch of a foreign company, *Société Anonyme Monégasque* (SAM), depending on objectives and overall company structure.

For financial service activities, it will be necessary to incorporate a Monaco SAM to undertake the activity. Incorporation of a SAM requires consent from the Monaco authorities; this process is distinct from ACP / CCAF applications.

[ for further detail, see the LG Monaco note on business licences and incorporation in Monaco]

## Financial Products

Law 1,339 of 7 September 2007 regulates the creation of a wide range of mutual and investment funds composed of either financial or non-financial assets

A wide range of mutual funds can be created in the Principality, including index funds and structured funds. A range of investment possibilities are available to funds, as new types of financial instrument are eligible as fund assets. Different categories of shares can be created and the principle of suspending share issues is also set out in Law 1,339.

Investment funds can also be created in the Principality, including venture capital funds, hedge funds or other funds of funds using alternative strategies. Master feeder funds involving cross border structures can be created.

Funds dedicated to a particular type of client can be created within a short time frame.

The regulation of funds in Monaco ensures the competitiveness of the Principality's financial products.

### Other financial services

Financial services other than those referred to above may have dual status ie they can be governed by both French and Monegasque regulations. However, certain activities are outside the scope of both sets of regulations, although a Monegasque business licence will still be required.

## Activities regulated by both French and Monegasque laws

When carried out by banks, certain services are regulated by French law and fall under the supervision of the French banking authorities, such as, foreign exchange operations or other ancillary services, as defined by the French Banking Law.

Furthermore, insurance and reinsurance business in Monaco is separately regulated by French and Monegasque authorities in accordance with international conventions signed by both countries.

### Marketing and soliciting

The Monegasque authorities notably the CCAF pay particular attention to the way in which financial services are marketed in Monaco, by whom and to which clients.

Marketing and soliciting of financial products can only be conducted by or through regulated entities.

Although these activities are reviewed on a case by case basis depending on the type of promoter and the products involved, advice must be taken before marketing and soliciting in Monaco, depending on the types of products, risks entailed, geographical location of the promoters and the clientele targeted.

# Anti-Money Laundering

Stringent anti-money laundering laws apply to banks and financial service activities 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 who carries out his functions in Monaco 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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