



How to buy and sell Monegasque real estate

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The Principality of Monaco is very attractive to foreigners keen to take up residence. Whilst renting a property will suffice to become a resident, you may wish to buy a property to ensure security of tenure and reinforce your links with the Principality. International investors have become more attracted to Monaco real estate by reason of the relatively high yields and healthy capital gains which may be made totally tax free in Monaco. If you intend to invest in Monegasque real estate, the chances are that the Monegasque conveyancing system and the consequences of owning real estate in Monaco will be new to you. This guide is designed to help explain the conveyancing procedure, in practical terms, and to highlight the choices of ownership vehicle which exist.

The purchase

The agent

Your first contact with the Monegasque property world will be with the estate agent (*agent immobilier*), who will put you, the Vendor and a property together, and charge a commission for doing so. You should be aware that, in budgeting for his

net sale price, the Vendor will have taken into account the agent's commission which invariably is fixed at 5% (plus *TVA*) of the sale price. As Purchaser, you will generally have agent's commission of 3% (plus *TVA*) to pay.

The notary (*notaire*)

The notary is the Monegasque lawyer who will draw up the transfer deed and must intervene in its signature to receive the Purchaser, the Vendor and eventually the Lender. The notary will usually act for both you and the Vendor. The notary is responsible for making the usual enquiries before completion (i.e. checking the Vendor has good title, that existing mortgages are cleared, the planning situation and so on). The notary's intervention means that the sale deed is a document which is both probative and enforceable.

The contract

The purchase usually takes place in two stages: signing the contract and executing the transfer deed before the notary.

On signature of the contract, you are generally asked to pay a deposit of 10% of the price which may be held by the



notary or the estate agent.

You may be asked to sign an offer or a pre-contract. This is common practice but you should take care in styling your offer because, if accepted, it will be binding. There are no consumer protection or "cooling off" principles which entitle you to reconsider a hasty purchase and recover your deposit. So once you have made an offer, and once accepted, you are on the hook.

Costs And Fees

Purchase of real estate itself

In general, on the purchase of "second-hand" property, costs and fees will amount to approximately 6% of the purchase price and will be due by the Purchaser. This 6% comprises registration duty (4.5%) and notarial fees (1.5%). This rate applies where the purchase is made by individuals or a Monaco SCI. A higher rate of 7.5% registration duty applies if the acquisition is made by, say, a foreign company.

In some cases (e.g. where the property is new or under construction) registration duty will not apply and rather the sale price will include value added tax (*TVA*) at the rate of 19.6%. Notarial fees and transcription duty amounting to a total of 2.5% will be due, payable by the Purchaser, regardless of whether the Purchaser is an individual or a corporation.

Purchase of a foreign property-holding company

Where the Purchaser intends to purchase not the real estate itself, but a foreign company which owns the real estate, registration duties of 4.5% on the property value will be levied where there is a change of beneficial ownership pursuant to a sale.

It should be borne in mind when purchasing shares in a company which owns Monegasque real estate, that the Purchaser takes on any potential inherent problems in the company and care should be taken to obtain appropriate warranties and guarantees on completion of the acquisition. Questions over the original source and legitimacy of the money which served to capitalise the company and fund the original real estate acquisition will arise, as will questions over powers of attorney and their eventual misuse. By buying the company the Purchaser does not benefit from the guarantees of the

notarial process (see above) and this should be measured carefully against the relatively minor saving in costs and fees. It may be wise to consider buying the property itself, rather than buying shares in an existing company if there are any possible doubts whatsoever over the existing company's record and status.

Tax implications

Monaco levies no income taxes, capital gains taxes or wealth taxes on individuals. French nationals resident in Monaco nonetheless pay income tax and wealth tax in France in certain circumstances.

Monaco gift and estate duties exist but only on Monegasque-sited assets. The rate of such duties is 0% on dispositions to parents, a surviving spouse, children or remoter issue. On other dispositions, gift and estate duties are due at differing rates depending upon the degree of relationship between donor and donee; the maximum rate of 16% applies in the case of dispositions to non-relatives. Duty is payable by the recipient.

Monegasque rules of succession

Monegasque law will be paramount insofar as Monegasque real estate succession matters are concerned. If any conflict between the terms of your Will and the Monegasque rules should arise, Monegasque law will apply to the devolution of Monegasque-sited real estate. So, if you own the real property in your own name and regardless of your nationality or where you reside, on your death title to the property (irrespective of the terms of your Will) will pass in accordance with Monegasque law which reserves a major portion of your estate to your descendants (legitimate and illegitimate). Where you have no descendants, your ascendants will largely benefit.

In respect of personalty, Monaco will refer to the succession laws of your country of nationality.

Professional advice should be taken on the inheritance implications of your purchase in terms of the Monegasque rules of succession.

Structuring the purchase

You will want to consider whether the purchase should be made in your own name or through some corporate vehicle. You may wish to consider purchasing the

property through a Monegasque SCI, reserved for holding real estate. One of the advantages of the SCI lies in your ability to apportion its shares where several purchasers are contributing in relation to each party's actual contribution. Another advantage is that this option is cheaper than using some other corporate form where second hand property is concerned. At present, the constitution of a SCI does not require the approval of the Monegasque government, although this may be reviewed. No annual fees are levied on a Monegasque SCI and no accounts or declarations are filed. It is very easy to form and maintain. Alternatively you may prefer to purchase through a foreign company which will have potential advantages:

- It may be vital that you buy free from the constraints of Monegasque reserved property laws on your death. Opting to buy through a company, so that you own personalty (ie the shares of the company) may permit you to do so since your national law will prevail which may ensure that your personalty devolves freely to your chosen heirs. For example, English law does not contain reserved property rights so an Englishman domiciled in England will be able to give personalty in accordance with English law free from Monegasque constraints; but if you are an Englishman domiciled in Monaco, the English rules of private international law and doctrine of "*renvoi*" refer the question back to the law of your last domicile which will mean Monegasque substantive law with its forced heirship rules will apply. In such circumstances it is still possible to avoid the Monegasque forced heirship rules by creating a special trust under Monegasque Law 214 of 1936. This law effectively allows nationals of common law countries to elect that their national succession law will apply to their estates through the use of an inter vivos or testamentary trust;
- Some degree of anonymity may be afforded through the registration of the company as owner which may dissuade attacks from potential creditors (eg. vexatious litigants, family members). Please note that the Monegasque Property Register is a matter of public record; nevertheless, recent changes in Monegasque law require details of the beneficial ownership to be filed with an authorised Monaco representative

even if this information remains discretely with the representative;

- It is to be remembered that on transfers of shares in a foreign company which owns Monaco real estate a duty of 4.5% arises on the value of the real estate itself (an exception arises if the shares are transferred by way of inheritance).

Choosing a foreign company

Whilst perhaps tempting to make a choice of ownership vehicle purely on a cost-basis, care should be taken and you will want your adviser to consider the best choice for you given your personal needs and wishes.

First and foremost, the jurisdiction selected should be politically and economically stable, and also be sufficiently sophisticated to provide competent local staff to manage the company. Is your company capable of being "nationalised" by an acquisitive foreign power? Is there a risk of civil unrest or revolution which might deprive you of your company, or at least, cause concerns over who is entitled to manage and contract for it?

Next, cost is of course an important element, both in terms of set-up costs and annual maintenance. Set-up costs can vary from as little as €850 to well over €1,500. Annual costs also differ widely starting at around €300. Is payment of higher fees really suggestive of a more stable political or corporate environment?

The choice of directors should also be considered : should nominee directors be appointed or should you act? On a future sale of the company, will they/you be able or willing to give appropriate warranties to the Purchaser? Should you pay for professional directors who can give guarantees of good standing and management on a future sale?

Is there a risk that your foreign company is not a company at all? Will the corporate registration be looked through to reveal a nominee arrangement that creates problems on sale or death?

The transfer

Where you purchase the Monegasque real estate (either in your own name or through a company), as distinct from shares in a property-holding company, title to your real estate will be transferred only upon registration of the transfer deed

which must be executed before a Monegasque notary. Where it is not possible for you to be present in person on signature of the transfer, you may be represented.

The sale

When the time comes for you to sell the property and once a Purchaser is found, you will instruct a Monegasque notary who will draw up the sale's contract and subsequently the transfer deed.

No capital gains tax or withholding tax will be payable on the sale of Monegasque real estate whether owned by you personally or through a company, and you will be free to repatriate the sale proceeds including any profit without consent or restriction where you wish

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.

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