



## Business licences and incorporation in Monaco

### Autumn 2010

Monegasque law 1,144 of 26 July 1991, as modified, provides that any individual or corporate body wishing to carry out a business activity in Monaco (of an industrial, commercial, professional or artisanal nature) must first obtain a business licence from the Monegasque authorities. The exact process to be followed to obtain a business licence will vary according to the entity and activity for which approval is being sought.

### Approval

All non-Monegasque nationals must first obtain approval from the authorities to obtain a licence and proceed with incorporation in Monaco.

Approval generally takes about two and a half months from the time of submission of the application. For corporate registration, information required relates to the company to be formed, its shareholders, its planned activity, its anticipated turnover, how many people it intends to employ and the premises from

which it intends to carry out the activity.

A general business plan and details of the people who will run the Monaco operation will be required for substantial businesses.

Registration can take various forms, depending on business objectives and company structure. The choice will also largely depend on how the business is qualified under Monegasque Law. Indeed, certain activities are subject to supervision and specific regulations that will restrict their choice of business structure eg banking and financial services and insurance.

For businesses in corporate form the company will need to register an objects clause, that will be subject to the consent of the authorities, during the application procedure. The company must not subsequently carry on an activity beyond the terms of its objects clause. Businesses which are to be carried out in a personal name, or as a branch of a foreign company will need to comply with the terms of the business authorisation they receive. Breach of this obligation is a criminal offence.



# Monegasque business structures

## Individual or sole trader

This is generally restricted to Monaco residents. Sole traders have unlimited personal liability for their business debts. Retailers must register their business with the commercial registry.

Sales representatives must register with the commercial registry so that they can act as agents for a number of companies, dealing with a range of products.

## Société Civile

Depending on the type of activity envisaged, providing that it is an activity not within the ambit of the 1991 law (ie it is neither industrial, commercial, professional nor *artisanal*), a *société civile* might be appropriate. This type of company requires no Government consent for incorporation, no business premises and no auditors, although it requires a Monaco registered office. The company must be registered on a special list at the commercial registry in Monaco.

## Branch or administrative office

A branch or an administrative office of an overseas company (*succursale*) is often used for a foreign company wishing to set up a presence in Monaco. In some cases Government authorisation is only given for a short period of time (generally 2 years) after which it must be renewed.

In practice, the company must have existed for at least three years before the Monegasque authorities will consider an application to form a branch. In addition, the authorities usually prefer that an individual resident in Monaco is endowed with full powers to represent the branch, as an *agent responsable*.

## Unlimited liability companies

### Société en commandite simple (SCS)

This is comprised of one or several jointly liable partners, and one or several investor shareholders who have limited liability. It is a corporate body where the silent partner has limited liability and the managing partner has unlimited liability.

This company can be suitable where one person has the know-how but no money and is backed by a partner who would not have to bear the risk of unlimited liability.

The name of the partnership must include the name of one or more of the partners providing the financial backing and whose liability is unlimited.

### A Société en nom collectif (SNC)

This is a company established by two or more persons in which the participants have unlimited liability. The SNC may be run under a corporate name.

Two partners should ideally be Monaco resident.

Both the SCS and the SNC are relatively simple to set up. For example, there is no minimum share capital requirement.

## Limited Liability Companies

### Société à Responsabilité Limitée (SARL)

The SARL is a form of limited liability company introduced in the Principality in January 2007 and is largely modelled on the French SARL.

The SARL is suitable for small businesses as it allows for greater flexibility and lower costs than a SAM (see below). An individual must act as “*gérant*” (manager).

A SARL's activity must be of a commercial nature.

### Société en Commandite par Actions (SCA)

This company is similar to the SCS in that it has one or several jointly liable shareholders and one or several investor shareholders who have limited liability. The difference between the two is that the SCA issues shares which can be freely transferred to new shareholders whereas such transfers are subject to certain restrictions in an SCS. Furthermore, the SCA is subject to stricter rules which are in many respects similar to those of a SAM (see below). An SCA must be incorporated by a Monegasque notary.

### Société Anonyme (SAM)

A substantial business in Monaco will invariably take the form of a *Société Anonyme*. Approval for the incorporation

of a SAM will normally be granted only where it can be shown that the SAM will contribute to Monaco's commercial development and employment market. Applications for the establishment of a SAM are prone to greater scrutiny from the Monegasque authorities than applications to establish, say, a SARL, SNC or SCS.

Before proceeding with an application to constitute a SAM you should bear the following points in mind:

- the Monegasque government must approve the incorporation of a SAM and the government's decision is wholly discretionary;
- it is out of the question that a "brass plate" operation can exist within a SAM;
- certain minimum staffing levels and turnover criteria will have to be promised;
- there is a minimum capital requirement of at least € 150,000 which must be paid up, although it may be advisable to capitalise a greater sum in order to satisfy the authorities that the future SAM is financially healthy;
- the costs of incorporation are not negligible (2.4% of initial capital by way of costs and duties which includes notarial costs of 0.9%; publication fees for the Journal de Monaco and professional fees).
- the shares of a SAM are fully transferable without government authorisation;
- the company's right to conduct its activity is not generally limited in time.

A SAM must be incorporated before a Monegasque notary and on incorporation two Monegasque auditors must be named. The procedures for incorporation are such that, pursuant to signature of the Memorandum and Articles of Association (*statuts*) by the founder, the notary will register the *statuts* and then present a formal file to the government for consideration.

Within 3 months of the *Arrêté Ministériel* recording the authorisation, a shareholders' meeting (*Assemblée Générale*) must be held before the notary failing which the *Arrêté* becomes invalid and the company will not be incorporated.

The notary will subsequently organise publication of the signed *statuts* in the Journal de Monaco and provide the directors with copies.

Limited liability companies must prepare a balance sheet and a profit and loss statement which must be filed annually at the commercial registry.

## Incorporation

Incorporation procedures in the Principality will depend on the business entity envisaged. Details of the requisite formalities for each type of structure can be obtained from the *Direction de l'Expansion Economique* in Monaco or on the Government website ([www.gouv.mc](http://www.gouv.mc)). Information is available both in French and English. However, application forms and information relating to the business will need to be in French which is the official language in Monaco.

Certain activities such as Banking and Insurance also require a licence from the French authorities: this will involve having to lodge a separate file with the French authorities. Other activities regulated in Monaco, such as fund and portfolio management, will require a separate licence application to be lodged with the appropriate regulatory body in Monaco.

## Taxation

Within the application process the tax authorities will be consulted. Invariably they will seek to discuss the business's future taxability and will require a meeting with representatives of the business. Tax on net profits will arise save where tax on a limited basis is agreed (i.e. where administrative office status is sought).

As mentioned above, it is common for foreign companies to set up a branch in Monaco which is not permitted to trade in its own right or earn income on its own account but only in the name of and on behalf of its foreign parent company which, in return, provides it with sufficient funds to pay local expenses.

From a tax standpoint, provided the branch has no profits of its own, the usual business profits tax rate of 33.33% will apply but the branch will be taxed on a notional profit calculated by applying a percentage to its total local expenses in the accounting year. This percentage is usually agreed with the Monegasque tax authorities when the business is set up and can subsequently be renegotiated.

An administrative office which simply acts as the administrative headquarters of an international group of companies and whose activities are limited to the group's internal administration and management, will be subject to a taxation of 2.66% applied on its local expenses (this tax rate corresponds to 8% of the normal tax rate applicable to business profits of 33.33%)

When a business is engaged in industrial or commercial activity deriving profits in the normal way, and it is not acting as an administrative office, Monaco profits tax of 33.33% on net profits will apply.

## Authorisation

If notice of authorisation is granted, it will appear in the *Journal de Monaco* and the number and date of the relevant *Arrêté Ministériel* will be cited.

## Post-incorporation

Various post-incorporation formalities will have to be carried out including registration with the *Direction de l'Expansion Economique*, the *Service des Statistiques*, the *Services Fiscaux*, the *Service des Relations du Travail*, with the CCSS and CAR (being state social security and pension organisations), and with the ASSEDIC (unemployment office).

Once the above formalities have been dealt with, the company will be in a position to take on employees. Individuals resident outside Monaco who wish to move to Monaco will need to obtain a Monegasque residence card in order to obtain a Monegasque work permit.

## Conclusion

There are several types of business structure available in the Principality. The choice will depend largely on the type of business envisaged.

In addition to the forms of company described above, Charitable Foundations and *Groupements d'Intérêt Economiques* (joint ventures) are also available in the Principality in certain circumstances.

An activity which is personal or passive, for the entrepreneur's own account, will not require a licence. It may be appropriate for an individual entrepreneur to seek administrative office (*bureau administratif*) status; alternatively, it may be worthwhile seeking incorporation of a

*Société Anonyme Monégasque* with civil status, as a private or family office.

LG can assist with the choice of structure best suited to your business objectives.

## 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 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 in Monaco including English, French and Icelandic. We have a client base which includes entrepreneurs, entertainers, banking and financial companies, fund managers, sporting personalities and international families from many jurisdictions.

Beyond its London, Dubai and Monaco offices Lawrence Graham 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

For further information, please contact

William Easun  
E/ [william.easun@lg-legal.com](mailto:william.easun@lg-legal.com)

Peter Walford  
E/ [peter.walford@lg-legal.com](mailto:peter.walford@lg-legal.com)

Nathalie Tanzi  
E/ [nathalie.tanzi@lg-legal.com](mailto:nathalie.tanzi@lg-legal.com)

Ester Asbjornsdottir  
E/ [ester.asbjornsdottir@lg-legal.com](mailto:ester.asbjornsdottir@lg-legal.com)

These notes are for general information only and are not intended to provide legal advice.

Lawrence Graham LLP.  
All rights reserved.