

Monaco

International Estate Planning Guide

IBA Private Client Tax Committee

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I. Applicable law in matters of international succession

Law No 1.448 of 28 June 2017, enacting the Monegasque Code of Private International Law, entered into force on 8 July 2017. It governs successions where the deceased died on or after that date.

Under this statute:

- jurisdiction lies with the Monegasque courts where the deceased was domiciled in Monaco or in respect of immovable property situated in Monaco (jurisdiction in the latter case may be restricted to that property);
- 'domicile' is defined as the place of the deceased's principal establishment. Monegasque nationals and residents are deemed domiciled in Monaco; and
- Articles 56 to 67 of the Code specifically govern succession and wills.

The applicable law is:

- the law of the deceased's last domicile; or
- the law of the deceased's nationality, provided that this was expressly elected by the testator in a will.

The law of succession also governs the substantive validity of wills. However:

- Monegasque law requires that rules on forced heirship under the deceased's national law at death be applied where they exist; and
- conversely, such rules cannot be imported if the national law does not recognise them.

The Code applies substantive law only: no *renvoi* is admitted. Thus, the designated law governs the entirety of the succession (movables and immovables, wherever located).

A will is deemed formally valid if it complies with the law of:

- the place where the will was made;
- the deceased's nationality at the time of execution or death;
- the deceased's domicile or habitual residence at execution or death; or
- in the case of immovables, the *lex situs*.

II. Devolution of the estate

A. Intestacy (*succession on death without a will*)

Monegasque law recognises the principle of *seisin* (heirs succeed to the estate immediately on death, without court confirmation). There is no equivalent of probate (ie, validation of a will before a court) as in common law.

Heirs are called in order of priority:

1. Descendants (children and issue).
2. Privileged ascendants and collaterals (parents, brothers, sisters, and their descendants).
3. Ordinary ascendants (grandparents, great-grandparents).
4. Ordinary collaterals (uncles, aunts, cousins, etc).

The nearer degree excludes the more remote.

The surviving spouse is a legal heir but not a protected heir. The spouse's share varies depending on which relatives survive (children, parents, siblings, etc), and may range from equality with a child's share to the entire estate.

Forced heirship applies:

- Descendants and, in their absence, ascendants have indefeasible rights;
- The reserved portion is:
 - one-half for one child;
 - two-thirds for two children; and
 - three-quarters for three or more children.

Ascendants may claim up to one-half of the estate if there are no descendants.

An heir may be declared unworthy (disqualified) if, for example, they attempted the deceased's life or made calumnious accusations.

B. *Wills and testamentary dispositions*

Requirements: over 16, sound mind, not legally incapacitated.

Recognised forms:

- *Holographic will*: wholly handwritten, dated, and signed by the testator;
- *Authentic will* (notarial): executed before notaries and witnesses; and
- *Mystic will*: sealed, presented before a notary with witnesses.

Foreign wills are valid if compliant with the formal requirements of the testator's nationality, domicile, habitual residence, or the *lex situs*.

Testamentary trusts may also be created pursuant to Law No 214 (see below).

III. Administration and settlement of the estate

The notary supervises estate administration. Steps include:

1. *Acte de notoriété* (statutory declaration of heirs).
2. Inventory of assets.
3. Discharge of debts, taxes, and encumbrances.
4. *Partage* (deed of distribution).

Heirs may:

- accept purely;
- renounce; or
- accept under benefit of inventory (similar to 'conditional acceptance'), within statutory deadlines.

IV. Instruments for the transmission of property

A. Gifts inter vivos (donations)

Generally reportable (collatable) into the estate unless expressly exempted.

B. Gifts by manual delivery

Subject to collation unless categorised as customary gifts (reasonable in value, made on special occasions).

C. Agreements as to succession (inheritance pacts)

Permitted under Articles 59–60 of the Code of Private International Law. Their validity depends on the succession law that would apply if death occurred at the time of agreement.

D. Civil status and its effects on succession rights

Cohabitants and partners in a 'concubinage' agreement have no succession rights absent a will. Spouses retain statutory rights.

E. Life insurance policies

Life insurance proceeds pass outside succession and may benefit non-heirs. They are nevertheless subject to inheritance tax rules (rates vary by degree of kinship).

F. Trusts

- *Foreign trusts*: recognised under The Hague Convention 1985; and
- *Monegasque trusts*: created under Law No 214 (1936), subject to a specific duty regime (1.3 per cent to 1.7 per cent, or optional 0.2 per cent annual tax).

Trusts cannot override forced heirship rights; assets exceeding the disposable portion are reducible.

V. Incapacity and vulnerable adults

Law No 1.474 of 2 July 2019 introduced lasting powers of attorney and protective measures, implementing The Hague Convention of 2000.

Monaco residents may now grant a lasting power of attorney or seek recognition (*exequatur*) of a foreign protective mandate.

VI. Inheritance tax regime

- No income or wealth tax in Monaco;
- only assets located in Monaco are subject to inheritance or gift tax, regardless of domicile;
- rates:
 - 0 per cent between spouses or direct line;
 - 4 per cent civil partners;
 - 8 per cent siblings;

- 10 per cent uncles/aunts–nephews/nieces;
 - 13 per cent other collaterals; and
 - 16 per cent non-relatives;
- French nationals domiciled in Monaco remain subject to French income tax under the 1963 Franco-Monegasque Treaty.

Final note

This guide is for general information only and does not constitute legal advice. Given the complexity of cross-border estates, professional advice should always be sought.