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## **Gordon S. Blair**

# The attraction of Monaco Family Offices: unexpected effect of new international rules

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Interviewed in this magazine in 2017 about his perception of family offices within Monaco, Xavier de Sarrau, managing partner at Gordon S. Blair, indicated that the law passed by the National Council on 2 December 2016 on multi-family offices was “an encouraging first step” towards positioning the Principality as a prime location to open a family office.

As our Firm has been involved for several decades in setting up family offices and investment platforms, we have been in a position to observe how, in the space of two years, activities within family offices have evolved.

The main difference noted is definitely the recent changes in international rules and regulations and the gradual adoption of these new standards, which has highlighted a certain number of trends that were either in their infancy or theoretical in 2016. As we will see in this article, the good thing is that by dint of the very nature of these new rules,

Monaco has benefited (and will continue to do so) from a huge enthusiasm by Monaco-based families for starting up a family office. On the other hand, family offices, their service providers and staff must now face the challenge of increasing complexity in the issues they have to deal with.

Putting standards in place in 2017 in relation to the exchange of information, as well as the notion of a person's fiscal residence, have forced all fiscal bodies to clarify their rules. In Monaco, this has resulted in more and more requests for a Certificate of Residence,

to document official fiscal residency in the Principality. Traditionally, awarding this type of certificate means that the activities of the applicant are all “centred” within Monaco. This can actually be rather difficult to judge, as there is first a personal aspect (family, leisure time and so on) and then a financial situation (where one's wealth is located, revenue sources and the place where assets are managed). Therefore, it is sometimes hard for a truly international family to prove a presence or attachment to the Principality, particularly if the family has retained links with its original jurisdiction.



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In this context, setting up a family office in Monaco is not only a practical way to organise family affairs but it is also a strong indication that the family has chosen Monaco as pivotal to its existence. In other words, a well-organised and suitable Monaco family office can considerably simplify proving Monaco residency to local authorities, as well as to foreign administrations, which is most useful since Monaco has only a few fiscal agreements with other jurisdictions.

This observation is even more relevant, since most European countries now take the Anglo-Saxon approach of Substance over Form, which aims to give more importance to the financial reality of someone's situation, rather than to legal documentation.

This is typically the case with the 2018 Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI), aiming gradually to banish any fictitious or potentially false information in the chain of ownership, particularly in relation to offshore jurisdictions. For example, evidencing the substance of holding and demonstrating the competence of their company representatives have become standard things to check in relation to tax audits. Taking these new issues into account, a person is more than ever required to use the legal tools or services within his or her jurisdiction in order to prove they are anchored there. Monaco family offices, whether they be multi or single, should

therefore be used mainly by Monaco residents.

It can also be seen that certain countries, including France and Germany, have recently stepped up legal action, fiscal sanctions and sometimes even prosecutions when faced with false applications, clandestine activities or attempted money laundering.

The so-called European directive for the prevention of money laundering, dated 30 May 2018, made it obligatory (amongst other things) to identify the financial beneficiaries of legal entities based within the EU or outside the EU (Monaco) and their business relationships with those within the EU. To our knowledge, there is no official definition of a "business relationship" as such but one assumes that buying a property located in Europe would fall within this category. Data is collected and stored in local records which, in the long term, will be consolidated and cross-checked.

Once again, it seems that the new compliance regulations have encouraged the opening of more family offices, which can centralise data and consolidate the different obligations for reporting for a family and its members who are financial beneficiaries. The fact is that discretion is often a priority for these families and, in practice, there are sometimes a number of errors and misunderstandings by service providers who can be badly organised, resulting in the inadequate communication of sensitive information.

All these recent rules and their resulting obligations have considerably increased our clients' needs in terms of tailor-made advice and services. It is, therefore, to be applauded that the Principality has tools in place that can meet these new needs.

It is, therefore, logical that since 2017 we are seeing a large number of family offices created in the Principality, in line with the December 2016 law. It is, of course, difficult (and too early) at this stage to pass judgement upon the success and future development of these new entities.

However, whilst it is clear that organising and administering the affairs of these families has generated a strong appetite for family offices in the Monaco marketplace, it should also be underlined that all the new standards described in this article have considerably complicated the daily running of a family office. Now more than ever, competence and knowledge of very specific domains such as international tax law, private international law and conformity are indispensable. Therefore, we recommend to our clients who are interested in setting up a Monaco family office to consider its structure (single or multi?) well in advance, as well as its management (in-house or outsourced to service providers?) and its functions (reporting, investment and care taking). In this area, there are no standard or one-size-fits-all products, so what is needed are specific services that are tailored to the needs of each client.