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## Venture capital: significant progress in Monegasque regulations

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The Principality of Monaco has just completed its regulations in order to allow the creation and development of venture capital funds.

Much awaited by professionals in the market, this new mechanism will enable the Principality to expand its investment offer.

Venture capital consists of taking equity stakes in the capital of unlisted companies, with the aim of achieving profitability in the medium and long term.

According to Monegasque regulations<sup>1</sup>, a fund is said to be a venture capital fund when its assets consist mostly of securities enabling it to invest directly or indirectly in unlisted companies.

It is now possible to establish a venture capital fund in Monaco with a minimum asset size of € 300,000.

[Ministerial Order No 2020-71 of 29/01/2020](#) on venture capital funds (hereinafter the "Order") specifies in particular the procedures for declaring a venture capital fund, its formation and the composition of its assets, as well as the conditions for the subscription, redemption and disposal of its shares and its valuation.

It supplements [Sovereign Order n°1.285 of 10/09/2007](#) implementing [Act n°1.339 of 07/09/2007 relating to mutual funds and investment funds](#).

You will find below a summary of the main provisions of the Order.

### ✓ Declaration of a venture capital fund

It should be noted that the establishment of a venture capital fund is not subject to the approval of the *Commission de Contrôle des Activités Financières* (hereinafter the "CCAF") but must be declared to it under the conditions defined by the Order.

The declaration file of the venture capital fund must include the following elements:

- a declaration form specifying the name of the fund, its founders, the statutory auditors and, where applicable, the agents, the date of establishment of the fund, its duration and the subscription period, any special features to which the management company wishes to draw the attention of the CCAF, and the name and contact details of the CCAF contact person;
- a document signed by the management company and the custodian, declaring themselves to be co-founders of the fund;
- the fund rules, which constitute the full prospectus of the fund;
- the fund's investment programme;

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<sup>1</sup> Article 66 of Sovereign Order n°1.285 of 10/09/2007.

- the auditor's work programme;
- the management company's commitment to inform CCAF of any changes affecting the fund;
- any document or information that the management company deems useful in view of the specific characteristics of the fund.

✓ **The sections of the fund rules of a venture capital fund**

The following information must be presented in the fund rules of a venture capital fund:

1. a warning indicating that the fund is a venture capital fund subject to a reporting procedure, not subject to CCAF authorization and which may adopt derogating investment rules, and specifying the categories of investors to which the fund's subscription is reserved;
2. the legal form of the fund and, where applicable, whether it is an umbrella fund/feeder fund/fund reserved for certain specified natural or legal persons;
3. 3) the management company, the depositary, their delegates and/or advisers, if any, the auditors and any other party (where applicable);
4. 4) the management objective and investment orientation of the fund;
5. 5) a description of the rules governing co-investment, co-disinvestment and the transfer of holdings; the services that the management company may be required to provide to the fund and/or the holdings held; the risks of possible conflicts of interest;
6. the risk profile of the fund;
7. the date of establishment and duration of the fund;
8. the currency of denomination of the fund;
9. the duties, rights and obligations of the management company and the depositary;
10. the procedures and frequency for determining the net asset value of the fund's units;
11. the fund's valuation methods and valuation rules;
12. the different classes of units;
13. the terms and conditions of subscription of units;
14. the conditions of redemption of units;
15. the conditions for the sale of units;
16. operating and management costs;
17. the terms of distribution of income and realised capital gains;
18. the terms of distribution of the proceeds from the sale of assets;
19. the procedures for informing unitholders in the event of changes to the fund and, where applicable, the procedures for prior consultation of unitholders;
20. the terms and conditions of merger/merger-split/split of the fund;
21. the minimum amount of net assets below which units may not be redeemed;
22. the duration of the financial year and the opening and closing dates of the financial years;
23. where applicable, the arrangements for implementing a preliquidation period;
24. the conditions for the winding-up of the fund and the arrangements for the distribution of assets;
25. the nature and frequency of the information to be provided to unitholders;
26. any useful and relevant information for the subscriber;
27. a reminder of the applicable regulations and jurisdiction.

The fund rules must be delivered free of charge to any Subscriber (or Purchaser) prior to subscription (or purchase).

✓ **Asset composition of a venture capital fund**

At least 50 % of the assets of a venture capital fund must consist, directly or indirectly, of securities of associations, participating interests or equity securities of companies (or giving access to the capital of companies) which are not admitted to trading on a regulated or similar market.

Also eligible for the aforementioned quota and within the limit of 20% of the fund's assets are:

- securities of companies with a market capitalization of less than 150 million euros;
- debt securities issued by companies whose securities are not admitted to trading on a regulated or similar market.

Also eligible for the quota referred to in the first paragraph and up to a limit of 15% of the fund's assets are current account advances granted to portfolio companies that are themselves eligible for the said quota.

These quotas must be respected at the latest at the end of the second financial year of the fund and until the end of the fifth financial year of the fund.

A venture capital fund may also be composed of assets provided for mutual funds and mentioned in Articles 7 and 8<sup>2</sup> of [Sovereign Order n°1.285 of 10/09/2007](#). A venture capital fund may grant current account advances to portfolio companies and use leverage.

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<sup>2</sup> Article 7 of Order No. 1.285 provides that the assets of a common fund shall comprise:

\* 1°) transferable securities and money market instruments dealt in on a regulated market which operates regularly, is recognised and open to the public.

Transferable securities or securities for which admission to trading on such a market has been applied for are considered as such. However, such assimilation shall cease to have effect one year after issue if, on that date, admission to trading has not been obtained.

\* 2°) Deposits made with credit institutions subject to prudential supervision. Deposits must either be redeemable on demand or withdrawable and their maturity must be twelve months or less.

\* 3°) Money market instruments other than those referred to in 1°) provided that the issue or issuer of such instruments is itself subject to regulations aimed at protecting investors and savings, under conditions laid down by ministerial order.

If it cannot justify that such holding corresponds to a management objective, a common fund may hold cash only on an ancillary basis.

Article 8 of Order 1.285 provides that the assets of a common fund may also include:

\* 1°) shares or units of undertakings for collective investment in transferable securities falling within the scope of Articles 10 and 11;

\* 2°) shares or units of other undertakings for collective investment in transferable securities and other undertakings for collective investment not falling within the provisions of paragraph 1°), provided that:

- the level of protection guaranteed to the holders of units in such undertakings is equivalent to that guaranteed to the holders of units in a common fund governed by Monegasque law and in particular that the rules relating to the division of assets, temporary acquisitions and sales of securities, short sales of transferable securities and money market instruments are equivalent to those laid down in this chapter;

- if these entities are governed by foreign law, they are approved in accordance with legislation subjecting them to supervision equivalent to that laid down by Monegasque law, in particular with regard to the preparation of annual and half-yearly reports, and that cooperation between the Principality of Monaco and the State to which they belong is sufficiently ensured;

- the proportion of the assets of undertakings for collective investment in transferable securities and undertakings for collective investment whose acquisition is contemplated and which, in accordance with their instruments of incorporation, may be invested in units or shares of other undertakings for collective investment or undertakings for collective investment in transferable securities, does not exceed 10%;

\* 3°) derivative financial instruments, including assimilated instruments giving rise to a cash settlement which are traded on a regulated market which operates regularly, is recognized and open to the public and/or derivative financial instruments traded over-the-counter in

✓ **Conditions for the subscription, redemption and disposal of units in a venture capital fund**

Different classes of units may be issued. These units may give rise to different rights. Units may be paid up in fractions.

The venture capital fund may issue units reserved for the management company, its shareholders, its managers or the natural or legal persons entrusted with the management of the fund.

The subscription or acquisition is formalized by the signature of a subscription or acquisition form containing the warning mentioned at the beginning of the fund rules. The investor acknowledges in writing that he/she has read the above-mentioned warning and the fund rules and accepts the terms thereof.

Subscriptions are made in cash or by contribution in kind if the fund rules permit.

Units of a venture capital fund may be sold to any holder or investor meeting the conditions set out in Article 78<sup>3</sup> of [Sovereign Order n°1.285 of 10/09/2007](#), and those of the fund rules, where applicable.

The fund rules of a venture capital fund may provide for a lock-up period for unit redemptions. Redemptions shall be made in cash. Upon liquidation of the fund, redemptions shall be paid in cash or in securities held in the fund's portfolio if the fund rules and the nature of the securities allow it.

✓ **Valuation of a venture capital fund**

The process for determining the net asset value of each class of units is described in the fund rules.

The net asset value of the units of the venture capital fund shall not be published in the “Journal de Monaco”, but shall be communicated directly to the unit holders once it has been established.

The valuation methods and rules for valuing the assets of a venture capital fund shall be determined by the management company, under the supervision of the auditor.

In view of the specific nature of unlisted assets, their valuation shall be based on the principle of prudence and the predominance of substance over appearance.

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accordance with the procedures defined by ministerial order and provided that these instruments are used for the purposes of efficient portfolio management;

\* 4°) up to a limit of 10% of warrants, cash warrants, mortgage notes, promissory notes and assets other than those subject to limits under the conditions referred to in the first chapter.

<sup>3</sup> Article 78 of Ordinance n°1.285 provides that the subscription of units of venture capital funds, directly or through an intermediary, shall be reserved:

\* 1°) to professional investors, as well as to the management company, its managers, employees and individuals acting on its behalf;

\* 2°) to natural persons or legal entities, initially subscribing a minimum amount of EUR 30,000 when they meet one of the three following conditions:

- they provide technical or financial assistance to unlisted companies included in the fund's purpose with a view to their creation or development;

- they provide assistance to the fund management company in the search for potential investors or contribute to the objectives pursued by the fund management company in the search for, selection, monitoring and disposal of investments;

- they have a knowledge of private equity acquired as a direct provider of equity capital to unlisted companies or as a subscriber to a venture capital fund or unlisted venture capital company;

\* 3°) to investors initially subscribing a minimum amount of 500,000 euros.

Any proposed changes to the valuation methods and valuation rules shall be sent to the fund's auditor and to the depositary for their prior opinion.

✓ **Annual accounts and periodic documents of a venture capital fund**

At the end of the financial year, the management company of the venture capital fund shall draw up an annual report under the supervision of the auditor. The annual report shall be made available to the holders by the management company and transmitted to the CCAF within four months of the end of the financial year.

At the end of the first half of the financial year, the management company of the venture capital fund shall draw up a half-yearly report under the supervision of the auditor. The half-yearly report shall be made available to the unitholders by the management company and transmitted to CCAF within two months of the end of the first half of the financial year.

Each year, the management company shall transmit to CCAF statistical information on the venture capital funds it manages.

✓ **Amendments and operations for mergers, divisions, liquidation of a venture capital fund**

Unitholders shall be informed of any changes to the fund rules of a venture capital fund. The fund rules may also provide for prior consultation of the unitholders.

Any amendment shall be reported to the CCAF within one month of its implementation.

The management company of a venture capital fund may, in agreement with the depositary, either contribute all or part of the assets included in the fund to another venture capital fund or split the fund into two or more other venture capital funds. Any proposed merger, merger-split or split shall be decided by the board of directors of the management company.

Holders shall be informed by mail of the terms and conditions of the operation at least thirty days before it is carried out.

Holders who would not be entitled to a whole number of units, taking into account the exchange parity, may obtain the reimbursement of fractional shares or pay in cash the supplement necessary for the allotment of a whole unit.

Creditors of the venture capital funds participating in the merger operation whose claim is prior to the publication of the draft terms of merger may lodge an objection to the draft terms of merger within 15 days before the planned date of the operation.

The merger, merger-split or division of a venture capital fund shall be notified to CCAF within one month of its completion.

The management company may decide to open a pre-liquidation period, starting from the close of the fund's fifth financial year.

In addition to the cases mentioned in Article 31<sup>4</sup> of [Law n°1.339 of 07/09/2007](#), the dissolution of a venture capital fund may be decided by the management company, including in the case provided for in Article 71<sup>5</sup> of [Sovereign Order n°1.285 of 10/09/2007](#). Unitholders shall be informed prior to the occurrence of the transaction.

At the close of the liquidation operations of a venture capital fund, the fund's statutory auditor shall draw up a report on the valuation of the assets, the conditions of liquidation and the operations that have taken place since the end of the previous financial year. This report shall be made available to the unitholders and transmitted to the CCAF within three months of the closure of the liquidation operations.

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<sup>4</sup> Article 31 of law n° 1.339 provides that the redemption of all units, the expiry of the period for which the common fund has been constituted where such period has been stipulated or the decision which has become irrevocable pronouncing the withdrawal of the authorization of the common fund shall entail its dissolution.

<sup>5</sup> Article 71 of Order n°1.285 provides that when the assets of a venture capital fund fall below EUR 300,000, redemptions of units shall be suspended. Where this situation continues for more than 120 days, the venture capital fund concerned shall be liquidated, merged or split.