

NEW MONEGASQUE LEGISLATION ON THE PRIVATE INTERNATIONAL LAW

ON THE 22ND JUNE 2017, A NEW ACT ON PRIVATE INTERNATIONAL LAW (*LOI N° 1448 RELATIVE AU DROIT INTERNATIONAL PRIVÉ*) WAS ENACTED BY THE NATIONAL COUNCIL (*CONSEIL NATIONAL*). THE DISCUSSIONS ON THE PROJECT STARTED IN 2011 AND THIS LONG-AWAITED NEW ACT ORGANIZES AND COMPLETES EXISTING BUT LIMITED PROVISIONS IN ONE SOLE SET OF RULES WITH THE PURPOSE OF ENSURING LEGAL CERTAINTY AS TO COMPETENT JURISDICTION AND APPLICABLE LAW IN SITUATIONS INVOLVING VARIOUS JURISDICTIONS AS WELL AS ESTABLISHING RECOGNITION OF FOREIGN DECISIONS AND INSTRUMENTS. IT WILL SIGNIFICANTLY IMPACT MONACO NATIONALS AND RESIDENTS ON BOTH THEIR PERSONAL AFFAIRS AND BUSINESSES CONTAINING AN INTERNATIONAL ELEMENT. IN PARTICULAR, THE LAW APPLICABLE TO MATRIMONIAL REGIMES AND SUCCESSIONS MAY BE IMPACTED WITH SIGNIFICANT CONSEQUENCES ON SPOUSAL AND HEIRSHIP RIGHTS. YET, THE NEW ACT PROVIDES HIGHLY FLEXIBLE SOLUTIONS, OPENING NEW OPPORTUNITIES FOR ESTATE PLANNING.

Prior to the entry into force of the Act n°1448, Monegasque rules of private international law consisted of sparse provisions that were scattered in various texts, completed by judicial precedents frequently dating back over 20 years. The absence of a systematized structure and, in some cases, of relevant provisions often made settlement of international situations, in particular those relating to personal matters, rather difficult and sometimes hardly predictable.

Monaco being the home of citizens from over 130 countries, representing about three quarters of its population, the need and expectation for a unique set of rules of private international law has been growing by the day.

Adaptation to an ever-evolving European legal system (new regulations on successions and matrimonial regimes, in particular) made it even more necessary. The new Act is expected to offer to Monegasque nationals and residents the appropriate level of legal security in their private and business projects.

▪ Legal issues addressed by the Act

In general, the Act allows to anticipate conflicts of competent jurisdiction and applicable law. It particularly addresses following points:

- criteria of determination of nationality and domicile;
- international competence of Monegasque courts;

- recognition and enforcement of foreign judgements and public acts;
- law applicable to the status and legal capacity of natural persons;
- law applicable to family and estate matters (marriages, matrimonial regimes, divorce, maintenance obligations, filiation, adoption, successions);
- law applicable to contractual and non-contractual obligations (contracts, torts, titles of property);
- law applicable to trusts (direct reference to The Hague Convention on Trusts of 1 July 1985).

▪ What are the impacts of the Act?

The new rules of the private international law adapt Monegasque legislation to the practical needs of Monegasque nationals and residents as well as any person having any interests in doing business with the Principality.

(i) Competent jurisdiction

The general ground of jurisdiction of Monegasque courts is the defendant's domicile in Monaco.

Monegasque courts also have jurisdiction over certain matters explicitly specified by law, in particular:

- all claims relating to succession procedures opened in Monaco (on the basis that the deceased last

domicile in Monaco) and related Monaco-located real estate assets;

- all legal actions relating to real estate assets located in Monaco (e.g. lease agreements, real estate companies etc.);
- in contractual matters, when the object of the agreement was or is to be delivered or a service is to be provided in the Principality.

An important place is given to the choice of the parties, which can decide to subject any disputes relating to freely disposable rights to the competence of Monegasque courts (e.g. contractual obligations).

Finally, apart from ground of jurisdiction mentioned above, the Act also provides for double-edge privilege of nationality which allows matters to be brought before Monegasque court whenever one of the parties is a Monegasque national.

(ii) Applicable law

The first innovation of the new Act consists in the mandatory application of its conflict-of-laws rules. Concerning the main principles of these rules, nationality and domicile are chosen as the main connecting factors used to determine the law applicable to concerned situations.

Another significant innovation introduced by the Act is the exclusion of *renvoi* (of any degree) where the law applicable according to Monaco conflict-of-laws rules designates a foreign law, which constitutes rather unique example in an European environment.

In other words, and as opposed to the previous situation, and what is applicable in most European jurisdictions where Monegasque law designates the law of a foreign State as applicable, it refers to the internal law of that State instead of its conflict of law rules, giving absolute certainty as to applicable material provisions.

Also, the new Act introduces the possibility to “choose” the law applicable to most of personal life matters (*Professio Juris* i.e. matrimonial regimes, divorce and judicial separation, successions, as well as contractual matters), although this choice is generally limited to the jurisdictions with which the matter is strongly related.

As for succession matters, the choice is limited however to the law of the deceased citizenship instead of the law of his last domicile.

This is of particular interest to citizens of certain common law jurisdictions as, they will be able to choose their national law, instead of the Monegasque law, which contains provisions either unknown to them or undesired and in particular forced heirship rules.

On the contrary, in the absence of specific provision in their will, the law of their last domicile will directly apply (generally, Monegasque law).

As for matrimonial regimes, the option is broader as the following laws can be designated by the spouses:

- The law of the State of their first matrimonial domicile;
- The national law of any of the spouses at the time of the election;
- The law of the State of any of the spouses’ domicile at the time of the election;
- The law of the State where the marriage has been celebrated.

Those rules are generally (but not always) similar to those applicable in the European Union, and to some extent Switzerland. However, they significantly differ from the rules applicable in common law or middle-eastern jurisdiction.

Therefore, conflicts may arise between Monegasque rules and those applicable in the country of citizenship or where assets are located unless timely addressed, in which case they open a whole new world of opportunities.

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