



The
**LEGAL
500**

**COUNTRY
COMPARATIVE
GUIDES 2022**

The Legal 500 Country Comparative Guides

Monaco

BANKING & FINANCE

Contributor

CMS Pasquier Ciulla Marquet Pastor
Svara & Gazo



Olivier Marquet

Avocat Associé | Managing Partner | olivier.marquet@cms-pcm.com

Michaël Dearden

Senior Associate | michael.dearden@cms-pcm.com

This country-specific Q&A provides an overview of banking & finance laws and regulations applicable in Monaco.

For a full list of jurisdictional Q&As visit legal500.com/guides

MONACO BANKING & FINANCE



1. What are the national authorities for banking regulation, supervision and resolution in your jurisdiction?

For the conduct of banking activities, Monaco credit institutions are licensed and supervised by the French Prudential Control and Resolution Authority ("*autorité de Contrôle Prudentiel et de Résolution*" – ACPR) pursuant to the Exchange of Letters between the Republic of France and the Principality of Monaco dated 20 October 2010. Locally, banks are also informally supervised by an administrative department of the State ("*Direction du Budget et du Trésor*") in charge to ensure the compliance of agreements pertaining to banking activities entered into France and Monaco, on the one hand, and the European Union and Monaco on the other hand.

For the conduct of financial activities, Monaco credit institutions are licensed exclusively by the local financial regulator, i.e. the Financial Activities Control Commission ("*Commission de Contrôle des Activités Financière*" – CCAF).

Finally, please note that credit institutions – just as any other businesses concerned in Monaco – are supervised by (i) the Financial Circuits Information and Control Department ("*Service d'Information et de Contrôle sur les Circuits Financiers*" – SICCFIN) as far as compliance with AML requirements are concerned, and by (ii) the Personal Data Control Commission ("*Commission de Contrôle des Informations Nominatives*" – CCIN) as far as data protection issues are concerned.

2. Which type of activities trigger the requirement of a banking licence?

A banking license must be requested for all activities falling within the scope of banking activities as defined under the French Monetary and Financial Code – whose provisions are applicable for the most part to Monaco credit institutions pursuant to the 2010 Exchange of Letters with France, as well as the Monetary Agreement

concluded with the European Union on 29 November 2011.

The main banking activities are the receipt of repayable funds from the public, banking payment services and credit operations. Ancillary banking activities also cover foreign exchange operations, transactions related to gold or precious metals and coins, advice and assistance in asset management, leasing operations, the issuance and management of e-money, etc.

3. Does your regulatory regime know different licenses for different banking services?

The ACPR is empowered to deliver three types of licenses in Monaco, depending on the activities to be performed:

- A "credit institution" license, according to which a Monegasque entity may grant credits and collect reimbursable funds from the public, issue electronic payment and offer payment services as well.
- An "electronic payment institution" license, according to which the Monegasque entity may offer electronic payment and payment services in Monaco.
- A "payment institution" license, according to which the Monegasque entity may offer payments services to customers in Monaco.

4. Does a banking license automatically permit certain other activities, e.g., broker dealer activities, payment services, issuance of e-money?

A full banking license (i.e. the "credit institution" type of license) allows to offer payment services to customers as well as the issuance of electronic payment money (i.e. e-money).

Monegasque banks, as credit institutions, are also

authorized to perform ancillary activities, such as representation, commissioning, brokerage for subsidiaries, real estate management or service providing (if deriving from a banking activity) to the extent these activities do not represent more than 10% of its net banking annual income.

5. Is there a “sandbox” or “license light” for specific activities?

To date, in Monaco, no regulatory sandbox or light licensing has been implemented yet.

One should however note that requirements are lighter for a “payment institution” license than for a full banking license.

6. Are there specific restrictions with respect to the issuance or custody of crypto currencies, such as a regulatory or voluntary moratorium?

To date, there is no specific regulation on crypto currencies in Monaco. A Law No. 1.491 was recently passed on 23 June 2020 regulating token offerings. Yet, nothing is provided under this Law on crypto currencies or moratorium.

7. Do crypto assets qualify as deposits and, if so, are they covered by deposit insurance and/or segregation of funds?

Under Monaco laws, crypto assets do not fall into the category of financial product listed by Article 2 of the Commercial Code. Consequently, it can not, to date, be covered by deposit insurance and/or segregation of funds.

8. What is the general application process for bank licenses and what is the average timing?

The application process requires submitting an application both to the ACPR and to the Monegasque government.

Pursuant to the ACPR’s application process, a meeting with the ACPR is settled in order to present the global project consisting in establishing a new bank in Monaco. Thereafter, a formal application is to be submitted online with all the supporting documents.

The ACPR will deliver its license within six months of the

receipt of the complete application file.

Previously or simultaneously, the petitioner must apply for a local authorization delivered by the Monegasque Minister of State. This authorization is necessary for the incorporation of a company or the establishment of a branch in Monaco, one of the requirements to perform banking activities in the Principality.

9. Is mere cross-border activity permissible? If yes, what are the requirements?

The Principality of Monaco is not a member of the European Economic Area, therefore the European principles of freedom of services and freedom establishment are not applicable in Monaco.

Consequently, cross-border banking and financial activities are strictly prohibited in Monaco. Any foreign entity (from the European Union or not) intending to conduct banking activities or financial activities in Monaco must be licensed accordingly by the ACPR, the Monegasque Government and, if applicable, by the CCAF (for the conduct of financial activities).

10. What legal entities can operate as banks? What legal forms are generally used to operate as banks?

There are two legal forms to operate as a bank in Monaco: either as (i) a Monegasque branch of a foreign banking institution duly licensed to conduct banking activities in Monaco; or as (iii) a Monegasque public limited company (*Société Anonyme Monégasque* or *SAM*) incorporated in Monaco. Both legal forms would require, in addition to the ACPR’s licensing (except for branches of French authorized credit institutions), a prior authorization of the Monegasque Government.

11. What are the organizational requirements for banks, including with respect to corporate governance?

Monegasque banks are subject to equivalent requirements level than banks incorporated within the European Union.

Monegasque banks must mainly take sound corporate governance policies and implement a clear organization ensuring a well-defined, transparent and consistent division of responsibilities and aligned with the organization structure required under the Financial and

Monetary Code. To this end, the general management of a bank is split into a supervision body (the Board) and an executive body (the executive directors).

On the one hand, the supervision body (being usually the Board) of the bank is responsible for conducting regular reviews of the governance, prudential and compensation policy requirements, assessing its effectiveness and ensuring that corrective measures are taken to remedy any shortcomings. In some banks reaching certain thresholds, additional requirements exist such as the implementation of specialized committees (Compensation Committee, Risks Committee and Nomination Committee) to supervise the general activity of the bank and support the management in its supervisory function.

On the other hand, the executive body is in charge of the bank's daily management. It is composed of at least two individuals, appointed in consideration of their skills, experience and fitness to the functions.

Banks shall also draft and apply sound administrative and accounting procedures to monitor and manage various risks pertaining to the banking activities. To control the regular implementation of those procedures, Monegasque banks are required to maintain an adequate internal control framework.

Whatever the bank, the organizational and corporate governance's requirements shall be in line with the activity and size of the banks (i.e. proportionality principle).

12. Do any restrictions on remuneration policies apply?

In Monaco, as in the European Union, banks' remuneration policies are regulated.

Banks' compensation policies shall be in line with the bank's objective and long-term strategy and, particularly designed to promote a sound and effective management of the risk.

To this end, applicable legislation and regulation provide rules aiming at limiting, diversifying and/or deferring the payment of variable compensation for key risk takers. If, in general, remuneration policies are restricted, the level of restrictions would depend on the size, activity and group structure of each banks based upon a proportionality principle.

13. Has your jurisdiction implemented the

Basel III framework with respect to regulatory capital? Are there any major deviations, e.g., with respect to certain categories of banks?

Monaco has indirectly implemented the BASEL III framework, as the provisions taken by France to transpose directive 2013/36/EU dated 23 June 2013 ("CRD IV directive") and directive 2019/878/EU dated 20 May 2019 are applicable and enforceable against Monegasque banks in accordance with the Monetary Agreement entered into Monaco and European Union on 29 November 2011 (the "**Monetary Agreement**"). The regulatory capital requirements are consequently similar and at the same level than those in force within the European Union.

14. Are there any requirements with respect to the leverage ratio?

Since 28 June 2021, and in accordance with the EU Regulation 2019/876 of 20 May 2019 («CRR 2») directly applicable in Monaco by virtue of the Monetary Agreement, Monegasque credit institution are required to observe a 3% leverage ratio.

15. What liquidity requirements apply? Has your jurisdiction implemented the Basel III liquidity requirements, including regarding LCR and NSFR?

In accordance with EU Regulation n°575/2013 of 26 June 2013 (CRR), local Banks must maintain a liquidity coverage requirement (LCR) of 100% since 1 January 2018. These liquidity requirements are controlled on an ongoing basis by the ACPR.

As far as the net stable funding requirements (NSFR) is concerned, this ratio has been implemented in Monaco through EU Regulation n°2019/876 of 20 May 2019 (CRR II) applicable in Monaco in accordance with the Monetary Agreement. At any time, credit institutions are due to maintain a NSFR ratio of at least 100%.

16. Do banks have to publish their financial statements? Is there interim reporting and, if so, in which intervals?

Monegasque banks (either branches or incorporated legal entities) must publish annually their financial statement in the Official Journal of Monaco. An annual report containing information relating to the bank's financial statement is also issued and communicated to

the ACPR on an annual basis.

17. Does consolidated supervision of a bank exist in your jurisdiction? If so, what are the consequences?

Pursuant to the Exchange of Letters between the Republic of France and the Principality of Monaco dated 16 May 2003, banks established in Monaco which are subsidiaries or branches of EU credit institutions can disclose to their EU mother company all information necessary for purposes of consolidated supervision. Such communication constitutes an exception to banking secrecy, to be interpreted restrictively.

This information can be communicated to the ACPR as well, and – provided prior notice is given to the Monaco Government – the ACPR can communicate the said information to foreign banking regulators for the sole purpose of prudential supervision, subject to banking secrecy equivalence.

18. What reporting and/or approval requirements apply to the acquisition of shareholdings in, or control of, banks?

In the event of the acquisition of the control over the management of a bank, or of at least one-tenth of the voting rights of the bank, the potential acquirer will need to obtain the prior authorization of the ACPR. For all other changes affecting the ownership of the bank, a simple notice to the ACPR will be necessary.

Please note that any modification to the ownership of a Monegasque bank licensed to conduct *financial* activities in Monaco shall require a prior authorization to the CCAF as well.

19. Does your regulatory regime impose conditions for eligible owners of banks (e.g., with respect to major participations)?

Any eligible owner of a bank shall meet several requirements that will be verified by the ACPR.

The main *criteria* examined by the ACPR are the following:

- The reputation of the potential acquirer;
- The reputation and the experience/skills of any person who, as a result of the projected acquisition, perform the effective direction of the bank;
- the reputation and the experience/skills of key

functions such as internal control or compliance of the bank;

- The financial soundness of the potential acquirer;
- The ability of the potential acquirer to comply with prudential requirements, for example if the bank's group has a structure that enables an effective supervision and the exchange of information between the competent authorities; and
- Possible reasonable grounds to suspect the existence of money laundering or terrorist financing in connection with the projected acquisition.

20. Are there specific restrictions on foreign shareholdings in banks?

There are no specific restrictions on foreign shareholding in banks in Monaco.

21. Is there a special regime for domestic and/or globally systemically important banks?

Monegasque banking regulation is broadly identical to the European Union banking regulation, which has implemented a special regime for globally systemically important banks.

However, in Monaco, there is no Monegasque entity considered to be, individually, a globally systemically important bank. That being said, the level of regulatory requirements of each Monegasque bank (prudential requirements, corporate governance, remuneration policies, etc.) is driven by a proportionality principle and depends on the size, nature and complexity of the activity of each bank.

22. What are the sanctions the regulator(s) can order in the case of a violation of banking regulations?

Banks in Monaco are under the supervision of the ACPR as far as banking activities are concerned, and as such, they can be subject to several measures and sanctions in case of violation of banking regulations.

The ACPR can impose an injunction or various corrective (such as a preventive recovery program) or precautionary measures for the bank to achieve compliance with its prudential obligations, or to restore or strengthen the bank's financial or liquidity position, improve its management methods or ensure the

suitability of its organization to its activities or development objectives.

When sanctions need to be taken, the ACPR can impose a warning, a reprimand, a restriction to the execution of certain transactions or business restriction, temporary suspension or dismissal of one or several members of the management, a partial or complete withdrawal of the banking license, etc.

Decisions of the ACPR are notified to the Monaco Government who is responsible for their enforcement in Monaco.

23. What is the resolution regime for banks?

The ACPR is competent to launch and supervise resolution procedures against a Monaco bank, pursuant to French provisions transposing the EU Directive 2014/59/EU of 15 May 2014 (BRRD) and the EU Directive 2019/879 of 20 May 2019.

The ACPR will launch a resolution procedure when (i) the situation (financial or else) of a bank is impaired or highly likely to be impaired in the near future, (ii) no remedy exists, and (iii) it is in the public interest to launch such a resolution procedure.

Resolution measures can in particular consist in modifying the administration or management of the bank or the capital structure or the activities of the bank (creation of a bridge institution, sale of business, split of activities, etc.) or affecting in priority losses to shareholders and subordinated creditors (bail-in measures).

Since the entry into force of the BRR Directive, the ACPR and Monegasque banks have set up resolution and recovery plans (at individual and group level) in order to anticipate the measures to be taken in the event of a bank failure.

24. How are client's assets and cash deposits protected?

Pursuant to an Exchange of Letters between the Republic of France and the Principality of Monaco dated November 2005, Monaco banks contribute to the French Deposit Guarantee and Resolution Fund ("*Fonds de Garantie des Dépôts et de Résolution*" – FGDR).

The FGDR has been funded in order to indemnify clients whose cash deposits have become unavailable, under certain conditions and following a failure of their bank.

Client's cash deposits are consequently guaranteed by the FGDR up to 100,000 EUR per client. In addition, investors may also be indemnified with respect to securities deposits under certain conditions and up to 70,000 EUR per investor.

25. Does your jurisdiction know a bail-in tool in bank resolution and which liabilities are covered?

As described in question 22, resolution measures can be adopted against Monegasque banks under certain circumstances. Among these resolution measures, bail-in measures can be adopted in order to recapitalize the insolvent by affecting the losses in priority to shareholders and subordinated creditors and avoid bail-out measures taken by the State.

By principle, all liabilities are covered and be subject to the bail-in tool except the liabilities expressly provided in article L 613-55-1 of the French Monetary and Financial Code (in particular clients' deposits up to 100,000 EUR and certain guaranteed financial liabilities).

26. Is there a requirement for banks to hold gone concern capital ("TLAC")?

The TLAC ratio applies since 2019. However, as far as Monegasque banks are concerned, none of them are falling into the category of global systematically important banks (aka G-SIBs). Therefore, in practice, Monegasque banks are not concerned by the TLAC ratio. However, Monegasque banks belonging to a group classified as G-SIB could indirectly be subject to this ratio at the group level.

27. In your view, what are the recent trends in bank regulation in your jurisdiction?

On a banking regulation perspective, the recent trends in banking regulation (2021) is the global reinforcement of the governance and internal control requirements of banks.

Since the entry into force of the Sovereign Order No.8.600 of definitely Anti-money 1st April 2021, the new generation of EU capital requirements regulation are enforceable in Monaco.

Beyond the new ratio requirements deriving from CRR 2, significant new governance and internal control rules are to be implemented at the level of the Monaco bank in addition to revised rules on the scope of application of

the variable compensation regulation.

In addition, one should note that the ACPR has recently issued two compliance notices to the EBA guidelines EBA/GL/2021/04 on sound remuneration policies and EBA/GL/2021/05 on the internal governance on 7 December 2021. Monaco banks shall also be required to implement requirements provided by these guidelines as requested by the French banking regulator.

28. What do you believe to be the biggest threat to the success of the financial sector in your jurisdiction?

The rise of the Fintech sector and cybersecurity risk could be considered as ongoing threats to the success of the financial sector in Monaco.

A Law No. 1.491 of 23 June 2020 was recently passed in Monaco, providing a clear legal framework for token offerings, which constitute a new and competitive way for companies in Monaco to access financing solutions without involving the active intermediation of a credit institution.

Besides, remote activities have also significantly increased cybersecurity risk for Monaco credit institutions, and it is now considered as a growing concern for risk departments of banks and one of the major risks to monitor.

Contributors

Olivier Marquet
Avocat Associé | Managing
Partner

olivier.marquet@cms-pcm.com



Michaël Dearden
Senior Associate

michael.dearden@cms-pcm.com

