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The Legal 500 Country Comparative Guides

Monaco

LITIGATION

Contributing firm

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

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MONACO LITIGATION



1. What are the main methods of resolving commercial disputes?

The main method is judicial. However, it is possible to follow arbitration but it is not a common method to resolve disputes.

2. What are the main procedural rules governing commercial litigation?

Litigation is governed by procedural rules provided by the Code of Civil Procedure. The claim is initiated by a summons, served upon the defendant (for matters above €4,600). The claim is brought in front of the First Instance Court. Parties have the possibility to file writings in turn until final pleadings are set by the Court. Parties may freely appeal the First Instance Court decisions within the timeframe provided by the law.

3. What is the structure and organisation of local courts dealing with commercial claims? What is the final court of appeal?

Local courts are organized as follows:

- First Instance Court depending on the value of the matter (above €4,600). For values under €4,600, the Peace Judge has jurisdiction.
- Appeal Court
- Supreme Court, only for matters pertaining for breaches of the law.

4. How long does it typically take from commencing proceedings to get to trial?

The average timeframe in front of the First Instance Court before oral pleadings take place ranges between 12 - 18 months unless there are any exceptional delays or incidents.

5. Are hearings held in public and are documents filed at court available to the public? Are there any exceptions?

Outside the sanitary crisis period, hearings are held in public, unless the Court decides otherwise in order to protect personal dignity or public morality. As regards to documents, no access is permitted to any party other than those involved in the case.

6. What, if any, are the relevant limitation periods?

The general limitation is now 5 years. There may also be longer or shorter limitations depending on the nature of the claim or the parties involved.

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

Generally, there are no pre-action conduct requirements to consider. However, it is recommended to send a formal notice which enables to trigger the accrual of the legal interests.

8. How are commercial proceedings commenced? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

Proceedings are (generally) initiated by the service of summons on the defendant. Such service is performed through a bailiff appointed by the claimant. There is no possibility to start proceedings with postal delivery.

9. How does the court determine whether it has jurisdiction over a claim?

Domiciliation of the defendant in Monaco is the main criteria determining jurisdiction in the Courts of the Principality but specific contractual provisions regarding jurisdiction are enforced by the Courts. The law (Article 6 Law n° 1448 of 28 June 2017) provides other cases/situation where Monegasque courts have jurisdiction:

1. In the case of real rights in immovable property, tenancies of immovable property and rights in companies holding immovable property, where the immovable property is located in the Principality;
2. In contractual matters, where the goods have been, or are to be, delivered or if the provision of services was performed in the Principality.
3. For consumer contracts referred to in article 70, where the claimant is the consumer and is domiciled in the Principality;
4. In the case of individual employment contracts, where the claimant is the employee and is domiciled in the Principality, where the employee habitually carries out his working activities, where he is a teleworker as per the conditions set out by the legislative provisions regarding Teleworking or where the employment contract was executed in the Principality;
5. In matters relating to tort, where the tortious act occurred in the Principality or if the damage was suffered there;
6. In succession matters, where the succession has been opened in the Principality or 4. where an immovable asset belonging to the estate is also located in the Principality, as well as claims by third parties against an heir or executor and claims between heirs until the final division of the assets;
7. In corporate matters, until the final liquidation of the company if it still has its registered office in the Principality;
8. With respect of collective proceedings for settlement of assets and liabilities arising from the application of articles 408 to 609 of the Code of Commerce, where the commercial activity is carried out in the Principality;
9. With regard to the enforcement, validity or release of seizure orders or attachments granted in the Principality and generally all claims for interim or provisional relief, even where the Monegasque courts are not competent to hear motions regarding the substance;
10. In cases regarding the enforcement of judgements and foreign deeds.

10. How does the court determine what law will apply to the claims?

In contractual matters the applicable law is the law chosen either expressly or implicitly by the parties. Failing such choice, Article 69 of the Private International Law n° 1448 applies. It provides that, in the absence of a choice of the governing law being made, the contract shall be governed by the law of the State where the party required to effect the performance of the contract has his domicile. The party who effects the performance under the contract is :

1. In a contract of sale, the seller;
2. in a contract for the provision of services, the service provider;
3. in a franchise agreement, the franchisee;
4. in a distribution contract, the distributor;
5. in a contract of carriage, the carrier;
6. in an insurance contract, the insurer.

Notwithstanding the first paragraph of the above :

1. a contract for the sale of goods by auction shall be governed by the law of the State where the auction takes place, if such a place can be determined;
2. a contract relating to real rights in immovable property or to a tenancy of immovable property shall be governed by the law of the State where such property is situated.

Where the specific performance cannot be determined, the contract shall be governed by the law of the State with which it is the most closely connected.

There are numerous other rules of conflict-of-law in relation to non contractual matters (succession, divorce, personal status, marriage, matrimonial regime, adoption, maintenance obligations, torts, etc) which are provided for in the International Private Law Code.

11. In what circumstances, if any, can claims be disposed of without a full trial?

A claim can be disposed of without a full trial if the Court considers that the defendant has not been validly served or that the claimant is inadmissible or if the Court considers it does not have jurisdiction.

12. What, if any, are the main types of interim remedies available?

The main types of interim measures available are provisory attachments of assets (bank account,

furniture, cars, real estates attachments/liens) which have to be confirmed after Court proceedings occur on the merits of the claim.

13. After a claim has been commenced, what written documents must (or can) the parties submit and what is the usual timetable?

The Parties may exchange submissions to support their arguments within the time-table set by the Court. Usually each party is granted up to 3 months to file writings and supporting evidence to reply to the other party's submissions. Several writings exchanges may take place.

14. What, if any, are the rules for disclosure of documents? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

There is no general obligation of disclosure. One party may disclose only the documents it finds useful to support its pleas. However, before the initiation of any procedure, one party may ask for an ex-parte order from the President of the Court to be allowed to obtain through a bailiff the delivery of specific documents needed to support its claim. Once the proceedings have started such claim may be brought in front of the First Instance Court. Professional secrecy may prevent access to certain documents. This is particularly the case in relation to banking secrecy. Also, evidence which has been obtained in a disloyal manner may be rejected by the Court.

15. How is witness evidence dealt with in commercial litigation (and, in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

Written statements are admissible but need to comply with specific rules as to their content. Although the code of civil procedure provides for oral witness depositions, this is, in fact, rarely implemented by courts. In any case cross examination is not allowed. The questions may be only asked to the court who will in turn ask them to the witnesses.

16. Is expert evidence permitted and how is it dealt with? Is the expert appointed by the court or the parties and what duties do they owe?

Expert evidence is permitted. The Claimant may ask the Court to appoint an expert. They have to sign an oath, undertaking to perform their duties honorably and conscientiously. However, one party may also appoint an expert to file a report to support its claims. In such case, the only duties of the expert are towards his/her client. Privately obtained experts report may however be more easily challenged by the other party.

17. Can final and interim decisions be appealed? If so, to which court(s) and within what timescale?

Generally, First Instance Court decisions may be appealed within 30 days from the service of the decision in front of the Court of Appeal. However, Interim decisions rendered by the First Instance Court which do not end the case may only be appealed at the same time as the final First Instance Court decision. Interim decisions rendered by the Judge on ex-parte applications for the imposition of interim measures may be appealed within 15 days from the date of the decision.

18. What are the rules governing enforcement of foreign judgments?

Enforcement of a foreign judgment may be awarded by Monegasque Courts if: (1) It was rendered by a court having jurisdiction; (2) Rights of defence have been respected; (3) The enforcement of the foreign decision is not obviously contrary to public policy; (4) It is not contrary to a Court decision already rendered in Monaco; (5) A court case is not already pending between the same parties in the same matter in front of a Monegasque Court. The claimant must file specific documents provided by law to support the enforcement claim such as an original copy of the foreign decision and an original document proving service of the said decision.

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side?

Court fees and other similar costs may be recovered by

the successful party if so ordered by the court. However, lawyer fees are not recoverable. The Court may only award damages in a discretionary manner based on the prejudice duly evidenced by the winning party. When such damages are awarded, they usually only cover a small part of the legal fees incurred.

20. What, if any, are the collective redress (e.g. class action) mechanisms?

Monegasque law does not provide for collective redress mechanisms.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings?

Joining third parties must be allowed by the Court by judgement. A third party may however willingly intervene in a pending court case. Consolidation of separate proceedings may only be ordered by judgement and usually only occurs in the final judgement if requested by the parties.

22. Are third parties allowed to fund litigation? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

Third party litigation funding is neither provided for nor forbidden by Monegasque law. It seems unlikely that a third-party funder could be made liable for costs incurred by the other side.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction (and in particular, have the courts adopted remote hearings and have there been any procedural delays)?

Due to the COVID-19 pandemic, the most recent position of the courts (which has evolved over the past year) is that procedural hearings (hearings for directions), are now dealt with remotely and in writing only. Lawyers must send their requests by email to the Court. The Court then sends a couple of days later by email its decision as to the next procedural steps of each case.

Regarding actual trials, the instructions given to the lawyers by the Courts are to avoid inasmuch as possible

to effectively plead the case orally before the Court. Exceptionally, if they really must do so, then the time awarded for such pleadings is limited.

The Pandemic has also caused considerable delays in the first months. The situation has now improved but is still not back to what it was previously.

24. What, in your opinion, is the main advantage and the main disadvantage of litigating international commercial disputes?

Comparatively to other jurisdictions, the time frame to obtain a Court decision is rather short. It can also be seen as an advantage/disadvantage that the winning party's lawyer fees are not to be systematically and integrally supported by the losing party. Security is not commonly required from the applicant to obtain interim measures such as bank account attachments. Also, depending from the standpoint, the lack of full disclosure requirements may be an advantage or a disadvantage. In addition, there are no pre-requisites to file an appeal.

25. What, in your opinion, is the most likely growth area for disputes for the next five years?

Due to the ongoing building project of a new Monegasque territory on the sea (Sea extension project), it is likely that construction and real estate disputes will arise (this has already started to be the case).

26. What, in your opinion, will be the impact of technology on commercial litigation in the next five years?

The evolution of technology will probably have an impact on the form and admissibility of evidence.

27. What, if any, will be the long-term impact of the COVID-19 pandemic on commercial litigation in your jurisdiction?

Due to the financial difficulties encountered by the commercial sector generally, it is likely that debt collection cases and possibly insolvency cases will increase, once the support provided by the authorities will cease. Furthermore, collective lay-offs have been initiated by companies whose financial health has been jeopardized by the current situation. This is also likely to give rise to several disputes.

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