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# The Legal 500 Country Comparative Guides

## Monaco

# REAL ESTATE

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

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# MONACO

## REAL ESTATE



### 1. Overview

The Principality of Monaco is a sovereign and independent State within the framework of the general principles of international law and the particular conventions with France. The territory of the Principality is unalienable. The principle of government is a hereditary and constitutional monarchy. The executive power is exercised by the highest authority of the Prince with a Minister of State at the head of the Government. The legislative power is jointly exercised by the Prince and the National Council.

The real estate market in Monaco is very attractive for many foreign investors. Its good performance emphasizes residential assets, where foreign capitals confirm their dominant role but the Monaco government guarantees by specific regulations the access to real estate assets to Monegasque citizens with a great focus on town planning and environmental issues.

Ownership and transfers of real estate, registration of securities, easements and lettings are strictly regulated in Monaco.

### 2. What is the main legislation relating to real estate ownership?

The legislation of real estate ownership is mainly governed by the civil code, without distinguishing commercial real estate, and the regulations applicable to the mortgage registry.

### 3. How is ownership of real estate proved?

Ownership of real estate is usually proved by notary deeds duly registered at the mortgage registry (Conservation des Hypothèques) in order to be binding on third parties.

Excerpts from the mortgage registry indicating all registered deeds relating to an owner can be obtained whereas no registry search can be made regarding a

property as the land registry is not public.

Ownership can also be proved by a thirty-year uninterrupted and publicly known possession (usucapion).

### 4. Are there any restrictions on who can own real estate?

There are no restrictions and foreign investors are not restricted from owning real estate. However, some restrictions exist relating to the occupation of certain properties which are subject to protective regulations and specific control by the Monegasque administration.

### 5. What types of proprietary interests in real estate can be created?

The most common form of ownership is freehold. It includes ownership of the ground of a specific land and of any construction on such land. Such type of ownership is unlimited in time. Ownership in real estate is the right to use and dispose of an asset in a full and exclusive manner. Such right may however be restricted by various circumstances (e.g. due to building or environmental laws, etc.), by means of contractual agreements (e.g. lease agreement) or by virtue of limited in rem rights (such as easements, usufruct, etc.).

Freeholds can be owned either by one sole owner or several co-owners who own such real estate jointly and proportionally to their percentage of co-ownership.

Joint ownership is the ownership right of a whole asset shared by two or more persons, each for an ideal quota of such asset. The creation and dissolution of the joint ownership, as well as the use and rights of the co-owners, are regulated by the monegasque civil code.

Co-ownership related to real estate is also created when several persons own exclusive rights of ownership on specific parts of a building and jointly own common parts which are structurally and functionally connected. This is

a condominium type of ownership. The regulation of rights and duties of the co-owners, as well as the management of common parts, are provided by a specific law which is of public order.

## **6. Is ownership of real estate and the buildings on it separate?**

Monaco law provides in principle that the owner of the land is automatically the owner of the building located on this specific land.

This is also the case, to a certain extent, in the condominium type of ownership, where each owner of an apartment or of part of the building is also a co-owner of the land on which it is built.

However, in the condominium type of ownership, specific rights of ownership have been created by the practice when the air space above the building (aire libre) could remain the ownership of a person without him/her being co-owner in the building. In such case, the ground and the air space above are owned separately in freehold. Such ownership right mainly tends to prevent anybody else to build or to keep the building rights above the building.

## **7. What are common ownership structures for ownership of commercial real estate?**

Monaco law does not provide any restriction on ownership structures relating to commercial real estate. Commercial real estate can be owned either by individuals or by legal entities.

The most common structure is ownership through companies which will either operate their own business activities or rent the premises for investment purposes.

The advantage of legal entities such as companies limited by shares (public limited companies called sociétés anonymes) and limited liability companies (private limited companies called sociétés à responsabilité limitée) is to provide the ultimate individual owner(s) with a protective corporate veil against potential litigation and limited liabilities.

Individuals also often choose the easy processing of setting up civil companies (called sociétés civiles immobilières) to own and rent commercial real estate but shareholders remain liable for the debts of the company in proportion of their shares.

## **8. What is the usual legal due diligence process that is undertaken when acquiring commercial real estate?**

Legal due diligence in respect of the acquisition of commercial real estate is generally operated by the purchaser and its counsel(s) in collaboration with the notary who will prepare the deed of sale to be signed.

The process to be undertaken includes the review of the full excerpt from the mortgage registry which will provide all necessary information regarding the ownership (historical of the real estate to be acquired, implantation, mortgages, easements, and liens). It will also include a complete review of all laws and regulations applying to the commercial real estate, in particular in respect of possible restrictions which would not appear on the excerpt (e.g. environmental, renting subject to specific law, etc.).

The process will also require the review of all agreements (e.g. insurance, lease agreements, etc) entered into by the seller which will be transferred to the purchaser as part of the purchase of the commercial real estate.

The due diligence process could also extend, when the real estate was recently built up, to the review of the contracts between the seller and the contractors (architect, engineers and/or construction companies) as well as insurance coverage, as all guarantees still pending will be transferred to the benefit of the purchaser.

## **9. What legal issues (if any) cannot be covered by usual legal due diligence?**

A comprehensive due diligence should cover all legal issues.

## **10. What is the usual process for transfer of commercial real estate?**

The transfer of real estate is usually executed in the form of a notary deed. The notary is generally chosen by the purchaser and the seller can be assisted by its own notary. It can also be implemented through a share transfer (see infra point 11).

Prior to the notary deed, a pre-agreement usually takes place. The purchaser often first signs an offer letter regarding the intended purchase which will summarize the specific conditions and the conditions precedent to be fulfilled. Once the offer is accepted, it will enable the purchaser to carry out the financing search. The pre-

agreement can also be in the form of a preliminary agreement subject to conditions precedent pursuant to which both parties are bound to execute the final deed of sale before the notary once the conditions precedent are fulfilled by an agreed deadline.

The more common conditions precedent are the obtaining of the waiver of the pre-emptive right of the State, of the evidence that no mortgage and/or lien remain registered on the real estate and the obtaining of a financing.

In practice, the purchaser usually pays a deposit of 10% of the purchase price in the hand of the notary. This deposit will be deducted from the purchase price but will be paid to the seller if the purchaser does not execute the deed of sale whereas all the conditions precedent have been fulfilled or reimbursed to the purchaser if the conditions precedent are not fulfilled.

Upon the execution of the notary deed, the purchaser has to arrange the payment of the sale price and will bear the notary's fees, registration duties and taxes.

The notary will provide the parties with a certificate of purchase and then implement the registration of the deed at the mortgage registry and cover the registration duties.

Once registered, the parties will be provided with a copy of the notary deed.

### **11. Is it common for real estate transfers to be effected by way of share transfer as well as asset transfer?**

The transfer of real estate can be effected either by way of asset transfer as well as share transfer when the seller owns the real estate through a legal entity.

Both structures are commonly used to complete real estate transactions. The choice of one form or the other will depend on tax, liability and commercial issues. The share transfer structure is more convenient in terms of transfer taxes as it does not entail mortgage and registration taxes which are applicable to asset transfer.

The share transfer structure is generally implemented through the same phases summarized above with the following specificities:

- it requires an extended due diligence process to corporate matters and accounting;
- the share purchase agreement does not have to be executed before a notary as the sale does not affect the owner itself but only its

shareholders. However, to be opposable to the company, the agreement needs sometimes to be notified to the company which will lead to its registration with the Tax department.

However, if the real estate is owned by a legal entity, any share transfer will lead to the payment of a specific tax as the Tax department considers that it leads to a change of beneficial owner of the real estate.

### **12. On the sale of freehold interests in land does the benefit of any occupational leases and income automatically transfer?**

Any lease agreement of real estate is, as of right, transferred to the buyer in case of the sale of such real estate. The lease agreement will continue with the new owner under the same terms and conditions.

There are no specific formalities as any real estate lease agreement will be mentioned in the deed of sale and the parties will acknowledge that such lease agreement is transferred to the buyer with the sale of the real estate who becomes the new landlord.

### **13. What common rights, interests and burdens can be created or attach over real estate and how are these protected?**

Many rights, interests and burdens can be created or attached over real estate, such as:

- Easements which are charges over a real estate, which burden a real estate asset for the benefit of another's. Easements can be created by law or contractually agreed. Examples of easements imposed by law are: public utility easements, right of way for landlocked real estate, limitation concerning distance to be respected or not creating any direct view between two plots. Contractual easements can be of many types and content (of access, of well, sewage, restriction on building height in order to preserve adjacent assets' access to sunlight and views of the surrounding area etc.). Contractual easements have to be formalised by means of a notary deed registered at the mortgage registry in order to be binding on third parties and transferred to successive owners.
- Mortgages which is the most common type of guarantee, used in all types of loans or credit lines in connection with the purchase of real

estate. See infra point 21 for more details on mortgages.

- Usufructs which give a person the temporary right to use and profit from someone else's property for a specific period of time.

#### **14. Are split legal and beneficial ownership of real estate (i.e. trust structures) recognised**

There is no legal provision under the Monegasque legal system which would, in substance, frame the creation of trusts. However, Monegasque law allows foreign citizens whose national law provides for the creation of trusts to set up a trust in accordance with the said foreign law, in Monaco. In addition, Monaco is a signatory of the Hague Trust Convention. Hence, trusts are recognized in Monaco according to the Hague Trust Convention also. Consequently, it is possible for a trustee to be recognized as the official owner of a property including in the land registries.

However, it should be noted that trusts may be challenged based on forced heirship rights in succession cases.

#### **15. Is public disclosure of the ultimate beneficial owners of real estate required?**

Public disclosure of the ultimate beneficial owners of real estate is not required.

However, by virtue of law no. 1.381, any legal entity owning real estate in the Principality, regardless of the location of its head office or its applicable law, is bound by an annual reporting obligation, with the Tax Department, of change or no change of one of its beneficial owner. However such report does not involve a public disclosure of the identity of the beneficial owner.

Are not required to subscribe to this report:

- Civil companies registered in Monaco, other than those with anonymous or limited partnerships, whose partners are exclusively individuals acting on their own behalf when their identity is known to the Tax Department and whose assets include real estate located in the Principality;
- These same civil companies, when they are owned by other Civil companies registered in Monaco, other than those in anonymous form or in limited sponsorship, whose partners are exclusively individuals acting on their own behalf when their identity is known to the Tax

Department;

- Companies whose shares are allowed to trade on a regulated market and which have been approved by the Monegasque authorities.

The legal entities concerned by the annual report are required to appoint an agent based in Monaco, under conditions and according to a list drawn up by ministerial decree.

The appointed agent is required:

- to be provided a valid mandate by the legal representative of the legal entity concerned for reporting annually and being advised by him without delay of any change of beneficial owner;
- to collect from the legal entity the official documents to be able to verify the identity and quality of the beneficial owner(s) as well as any change;
- to have the annual report referred above duly signed by the legal representative of the entity, confirming, as the case may, the change or absence of change of beneficial owner;
- to sign and file the report within the timeframe required;
- to keep any documents and information relating to the above obligations and, more generally, any supporting documentation necessary to verify the information referred to on the annual report.

As a consequence, the appointed agent is holding all information on the ultimate beneficial owner but no public disclosure is required.

Furthermore, should the legal entity owning real estate be registered in Monaco, it would be liable by virtue of the anti-money laundering law n°1.362 to provide information on the actual beneficial owner to the Minister of State. Information about beneficial owners is registered on a specific directory named "Register of Beneficiaries" which is attached to the company register and needs to be updated regularly.

Such provisions are currently the purpose of a bill in order to strengthen the anti-money laundering system. The amendment to the law will now require the disclosure of the actual beneficiary since the registration of the company on the company register.

The bill is also modifying the provisions regarding the "register of beneficiaries" in light of the new Directive (EU) 2015/849 of 20 May 2015, amended. The bill emphasises the importance of updating information from

the register.

It also lists the authorities which will have direct access to all the information provided on the "register of beneficiaries" without the person concerned, i.e. the person whose information is consulted, being informed. This was a requirement of the amended directive and the authorities are determined in accordance with the criteria of the said Directive.

## 16. What are the main taxes associated with commercial real estate ownership and transfer of commercial real estate?

Real estate ownership does not lead to any tax.

The sale and transfer of real estate is subject to a transfer tax of 7,5% paid by the buyer. Notary's fees also apply to all transfers.

However, property traders (marchands de biens) are exonerated from this tax as long as they re-sell the real estate within 4 years and are therefore only subject to a 1,5% tax on purchase.

Value added tax (VAT) at a rate of 20% applies on transfers of real estate completed for less than five years.

In addition, a transfer of shares of an entity owning real estate in the Principality would be subject to a tax of 4,5% calculated on the total value of the real estate (not only the value of the shares transferred) as it would be assimilated to a change of effective beneficial owner by virtue of law no. 1.381.

## 17. What are common terms of commercial leases and are there regulatory controls on the terms of leases?

Commercial leases are governed by law no. 490 which provisions are of public order and organise a protection of the tenant regarding the duration of the lease, its renewal and termination, the increase of the rent, etc.

The minimum term of a commercial lease is 3 years. Most of commercial leases are concluded for 3-6-9 years. The renewal is then automatic for the same duration as the original lease. Indeed, commercial leases guarantee the tenant a security of tenure ("propriété commerciale") in order to ensure the continuation of their business and the retention of their clientele.

In order to benefit from the provisions of the law, the tenant must have operated commercially in the

premises over the 3 years preceding the expiry date of the lease. Hence, the lease is renewed on the same terms and conditions as previously agreed.

Should the landlord wish to refuse the renewal at the end of a 3-year period and terminate the lease, he would be liable to pay to the tenant an indemnity for eviction in order to compensate the entire prejudice and loss suffered by the eviction which cannot take place before its payment (or at least before payment of a provisional advance settled by Court). The amount of the compensation could vary depending on the consequences of the non-renewal of the lease which could result in the loss of clientele and, thus, of the tenant's business.

Most of commercial leases provide an annual rent indexation and the index usually chosen for commercial leases is the INSEE index (French Index).

The review of the rent is also strictly regulated during the term of the lease. As long as 3 years since the last fixing of the rent by the parties or by the court have run, the review of the rent can be requested by either party when evidenced that the rental value, fixed according to the extent, location, comfort, and facilities of the premises, has changed due to a modification either in the general economic conditions of the Principality or in the specific conditions of the premises.

In order to fix the rent upon the renewal of the lease or during the term of the lease, when the parties fail to agree on the new rent, the most diligent party may apply to the judge who will appoint an expert with the duty to assess the rental value.

Sub-letting could be prohibited by the lease contract. Otherwise the tenant shall give notice to the landlord of his/her intents to sub-let which enable the landlord 15 days to decide if he/she wants to be part of the sub-let contract.

A clause of the lease contract that would prevent the tenant from assigning the lease to a purchaser or future owner of its business is null and void. However, subject to specific conditions, the landlord benefits from a pre-emptive right as well as the tenant in case of a sale of the premises by the landlord.

## 18. How are use, planning and zoning restrictions on real estate regulated?

The Urban Planning Regulations (Règlement d'Urbanisme) define the rules of construction which fall within the scope of the Principality's urban development. It provides for general principles and issues detailed

plans providing for zoning restriction. The Principality is divided in seven regulated districts themselves divided in various zones.

Use, planning and zoning restrictions on real estate are regulated by:

- Ordinance no. 3.647 of 9 September 1966 concerning urban development, building and road works, amended;
- Sovereign Ordinance no. 4.482 of 13 September 2013 defining and regulating urban planning in districts covered by the ordinance, modified.

The Urban Department (Direction de la Prospective, de l'Urbanisme et de la Mobilité) is competent to authorise any real estate construction or renovation as it requires the prior grant of specific permits and administrative consents. It also supervises their compliance with the regulations and authorisations granted.

### 19. Who can be liable for environmental contamination on real estate?

Eco-responsibility is a principle of political action. On the instigation of H.S.H. Prince Albert II, the environment and subjects related to sustainable development are among the most important political priorities in the Principality.

Specific regulations have been adopted by Law no. 1.456 dated 12 December 2017 and codified. Monaco has for example adopted the "polluter pays" principle.

The primary liability for the environmental contamination on real estate is a civil liability that falls to the operator of the concerned site who has caused the pollution without having to identify any fault.

The legislation above also establishes administrative and criminal penalties and sanctions on activities prohibited under the environmental code.

### 20. Is expropriation of real estate possible?

Expropriation of real estate is possible but restricted for the sole development of projects declared to be in the public interest. In such case, the expropriation must lead to a fair and equitable compensation which should correspond to the value of the expropriated real estate.

In case the public entity and the expropriated owner fail to agree on the amount of the compensation on an amicable basis, the first instance court has jurisdiction to determine it with the indications provided by expert's reports appointed by the parties.

### 21. Is it possible to create mortgages over real estate and how are these protected and enforced?

The creation of mortgages over real estate is possible in order to secure amounts due.

Mortgages are either legal, judicial or contractual.

Most of the mortgages are contractual and thus require the execution, by the owner of the real estate, of a notary deed and the registration of the mortgage with the mortgage registry.

Registration of a mortgage is required to be binding on third parties and it will take rank according to its date of registration. Mortgages are registered for a period of 10 years and could be renewed.

Concerning judicial mortgages, the President of the Court of First Instance has jurisdiction to grant an Order for the registration of a temporary mortgage on the grounds of an application filed by a claimant in order to secure a claim whose recovery seems endangered. Such authorisation requires the filing of a Court proceedings in order to sentence the debtor to pay and then validate the mortgage for its enforcement.

A claim secured by a mortgage over real estate can be enforced by way of a public auction proceeding. Such proceeding implies several procedural steps since the claim is final and ultimately ends with the forced sale by public auction. The entire proceeding cannot be completed in less than 4 months.

### 22. Are there material registration costs associated with the creation of mortgages over real estate?

The creation of mortgages over real estate requires registration fees of 0.65 % of the amount to be secured payable to the mortgage registry.

A contractual mortgage will also implies a duty of 3 % for mortgage agreement documents or for the engrossed copy.

### 23. Is it possible to create a trust structure for mortgage security over real estate?

As previously mentioned (see point 13), trusts are, in principle, recognised in Monaco.

Therefore, a trustee may be registered as the beneficiary of a mortgage over real estate.

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