

Law 214 Trust briefing

Estate Planning for Individuals resident in Monaco – Dangers and Solutions

Residence in Monaco may result in Monégasque internal law determining how an individual's estate will devolve on death.

Monaco regularly refers to an individual's "national law" to determine issues. For example, on death an individual's national law will determine succession to movable property.

However, this principle is subject to two important limitations:

- Monaco's public policy may prevail over the national law.
- The national law may provide that the internal laws of Monaco (as the place of domicile) should in fact determine the matter.

Unlike Great Britain or the United States of America, the Principality of Monaco is a civil law country and national rules favour members of the immediate family and may conflict with the individual's wishes.

Monégasque internal succession law differs significantly from common law jurisdictions:

- certain close relatives of the deceased, primarily children, **even in priority to the spouse of the deceased**, are entitled to a certain fixed proportion of the estate of the deceased and any provisions in a Will to the contrary will be set aside, for example:

if the deceased has one child he may only dispose freely of half of his estate

if the deceased has two children he may only dispose freely of one third of his estate

if the deceased has three or more children he may only dispose freely of a quarter of his estate (known as the forced heirship rules)

- lifetime gifts made by the deceased when added to the estate on death can also be set aside to the extent that they infringe the rights of his immediate family to fixed proportions of his estate.
- it is not possible to postpone or restrict the enjoyment by an heir of his reserved share of the estate of the deceased, for example, until that heir reaches a certain age or fulfils some other condition chosen by the deceased.

The establishment of a Monaco Law No 214 Trust can provide a solution to these problems.

In order to alleviate the concerns of Monaco residents, particularly British and American who are used to being able to establish trusts and dispose of their assets freely on death, Monaco enacted Law No 214 which prevents a “renvoi” to Monegasque internal succession law.

Law No 214 is designed to allow certain foreigners to take advantage of their national law to enable them to create trusts, **during their life-time or by Will** and thus provide for

- the disposal of their estate on death or of their assets during their life-time, according to their wishes, free of the restrictions imposed by the Monégasque rules of forced heirship,
- the protection of a surviving spouse,
- the prevention of children inheriting substantial amounts of capital at too early an age.

Law 214 of 1936 authorises appropriate foreigners to create trusts either **during their lifetime or by Will** according to their national law.

Thus an Englishman resident and domiciled in Monaco can establish a Will or create an inter-vivos Trust, pursuant to Law 214, governed by English law.

Protection of foreign trusts by the creation of a Monaco Law No 214 trust

The estate planning of many residents of Monaco involves the establishment of foreign trusts in appropriate foreign jurisdictions. If such people die domiciled in Monaco, and the succession law of Monaco applies, then their heirs may have the right under Monaco law to set aside those trusts. This will have the effect that the trust assets will fall into the deceased's estate and be subject to the Monégasque succession rules as set out above.

Evidently, many of the jurisdictions in which such foreign trusts are created have passed legislation designed to prevent such claims succeeding, but there is no certainty. Assets distributed to beneficiaries, resident in other civil law jurisdictions sympathetic to forced heirship claims, or assets located in such jurisdictions, would not be covered.

The establishment of a Will under Monaco Law No 214 by such a Monaco resident, creating trusts reflecting the terms of the deceased's offshore trust, would virtually eliminate the risk.

If the aggrieved heirs of that resident succeeded in setting aside the offshore trust or gifts made by the deceased to individuals during his lifetime, then the assets concerned would fall into his estate, but would be protected by the terms of the trust created in accordance with Monaco Law No 214.

Situs of Assets

If Monaco internal succession law is applicable, then it is applicable to the totality of the deceased's estate wherever situated. However, it is uncertain whether claims, brought by aggrieved heirs in respect of assets situated in jurisdictions unfavourable to forced heirship rules, would be successful.

It is also uncertain whether it is possible to protect Monaco situs real estate from the effects of Monaco internal succession law, including the forced heirship rules.

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We believe that the information in Briefing to be correct at the time of going to press, but we cannot accept any responsibility for any loss occasioned to any person as a result of any action or refraining from action as a result of any item herein

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Who can take advantage of Law 214?

Only Monaco residents can qualify.

Only nationals of countries where the legal system includes a domestic trust law can qualify, such as British, American, Australian or Canadian nationals.

Who can act as Trustees?

At least one of the trustees must be a company which features on a list drawn up and updated by the first President of the Court of Appeal of Monaco.

However, a co-trustee may be designated by the settlor or the testator.

What are the costs?

Registration duties are payable as a percentage of the total value of the assets placed in trust depending on the number of beneficiaries and vary between 1.3% and 1.7%. Alternatively an annual tax of 0.2% may be paid.

On the testator's death the notary before whom the Will Trust was executed will impose his standard charge of 1.5% over the value of the trust assets.

This duty or tax is levied to the exclusion of any gift or estate duties.

There will be trustee costs for the Law 214 Trust which will be agreed between the settlor or testator and the trustee.

In the case of a Will Trust those fees will start to apply pursuant to death.

The dangers of failing to establish a Law 214 Trust

As a result of Monaco Law No 214, arguably any Will which seeks to create a trust and which is subject to Monégasque law is **void**, having no effect as a Will whatsoever, unless it is made in accordance with the strict formalities of Law 214.

The advantages of establishing a Law 214 Trust

It is most probable that nationals of common law jurisdictions who become resident in Monaco will not be satisfied with the standard testamentary laws of Monaco. They may wish to favour a spouse, an older child, or provide for the protection of a child for a period longer than his minority. Law 214 enables them to do so.

Law 214 provides an additional protection to foreign trusts which a Monaco resident has already established or intends to establish.

For those Monaco residents who qualify, Law 214 provides greater flexibility and better protection for intended beneficiaries.