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To the Issue of Legal Persons` Criminal Liability in Monaco

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Abstract

The article deals with the aspects of legal persons` liability in Monaco. The author outlines contemporary criminal legislation of Monaco. The main attention is given to the description of existing types of legal persons and to the order of legal persons state registration.

Keywords: criminal liability of legal persons; Monaco; law of Monaco; criminal liability of legal persons; an accounting in Monaco.

Introduction

The law of Monaco regulates the different types of legal persons functioning. Under the legislation of Monaco they are divided into commercial and noncommercial organizations.

The functioning of organizations in Monaco is regulated by the Civil Code*, the Commercial Code† and other statutory acts. So, Act № 1.331 which provide the simplified procedure of registration and the reporting of societies which was passed on January 8th, 2007‡. The article concerns with the different types of the enterprises (societies and the mixed associations) positions of Act № 767 of 1864 (last edition).

The decrees by the Prince (Ordinance of the Sovereign) play a big role in regulations of enterprise activity in Monaco. For example, registration of holdings in Monaco is forbidden by Ordinance № 3.157 from January, 17th, 1946.

The commercial organizations in Monaco: general provisions

In Monaco legal persons are present the next organizational-legal forms:

1) General partnership (Société en Nom Collectif - SNC). According to the chapter of IV Commercial Code (art. 17 and so on.) the general partnership is based on two or more persons, each of them has a right to operate on behalf of the company. The names of partners are specified in the company name. The partners bear full liability for debts of the organization. The articles of incorporation should be registered in the Tax Service of the Principedom (La Direction des services fiscaux).

2) Simple limited partnership (Société en Commandite Simple - SCS). According to chapter IV of the Commercial Code (art.30 and so on) this enterprise is based on one or several companions bearing full responsibility, and one or several partners which bear responsibility

* Code Civil // <http://www.legimonaco.mc/305/legismc.nsf>

† Code de Commerce // <http://www.legimonaco.mc/305/legismc.nsf>

‡ la loi № 1331 du 8 janvier 2007 relative aux sociétés.

within the enclosed capitals. In the company name should be the name of all full companions is specified. The articles of incorporation and the company charter should be registered in the Tax Service.

3) The Monaco's joint-stock society (Société Anonyme Monegasque - SAM). Besides norms of the CC the establishment and activity of this kind of companies are regulated by Acts № 408, № 767, legislative decree № 152 from 2/13/1931 and Ordinance of the Sovereign from 3.5.1895. The minimum authorized capital of the company of the given kind should make 150 000 euros. It shares on actions (share). The shares of the company can be sold only after entering of the full sum for them by the founders and only two years later after the enterprise establishment.

The company should have, at least, two founders. The shareholders risk only their contributions. They sign articles of incorporation which should be certified by a notary.

The first meeting of the shareholders should take place within three months after registration. On such meetings the main office of the company, an executive office and auditors of the company (two of them should be authorized auditors of the Principedom of Monaco) are defined. The companies presented by the monopolists or the enterprises being in an exclusive position in their countries are supervised by special auditors.

At each annual meeting the shareholders owning no less than 25 % of actions should be presented. However, if the question on modification of the charter, authorized capital stock change, etc. is solved at the meeting, the shareholders owning no less than 50 % of voices should be presented. Otherwise a new meeting is appointed.

The decision of the general meeting on a modification of the Charter, any changes of the authorized capital stock or release of bonds should be confirmed by the government and comes into force from the moment of the official publication in the «Journal de Monaco».

According to the law an enterprise registered in Monaco, irrespectively of its organizational-legal form, must have at least one Director or the founder - the subject of the Principality. According to the Art. 587-591 of the Commercial Code the natural person, in respect of which the court determined the punishment for deliberate bankruptcy, is forbidden to be engaged into business, to be a proprietor, to manage or control any enterprise.

For registration of all types of legal entities in Monaco the following documents must be submitted: an application for registration to the Secretary of state of the constituent contract; the completed forms; the reports of the founders-legal persons of the profit and loss account for the three years.

In addition, physical persons (owners, directors, shareholders, investors should provide information about themselves: a) the date of birth and marital status; b) Carte de séjour (residence permit) or a passport; c) information on criminal records, dated from less than three months from the country of their nationality or the place of permanent residence; d) copies of the documents about education (founders and natural persons). The forms, published on the site of the Directorate*, are filled by the founders and are also attached.

For registration of a company in Monaco an application (with enclosures) should be sent to the Government (Gouvernement Princier) by e-mail. After the formal consideration of the application the documents attached to the Directorate of economic development (la Direction de l'Expansion Economique)† which starts the procedure of delayed registration. The project of the Charter should be deposited by the Directorate, and the applicant is given a formal answer on the acceptance of the documents. Then, the enterprise need to fill the statistical surveys, register in the police and performs other actions. The next level is the Directorate of the registered constituent agreement and the Charter of the company. At this stage of the procedure it can still be suspended on request of the third persons.

The final registration of an enterprise is performed after the completion of all procedures of the «delayed registration» by the decision of the Government of the Principality. After that the enterprise is entered in the Trade-industrial registry (Registre du commerce et de l'industrie - RCI‡).

* [http://www.gouv.mc/devwww/wwwnew.nsf/1909!/x13Gb?OpenDocument&Count=10000&InfoChap=Business area &13Gb](http://www.gouv.mc/devwww/wwwnew.nsf/1909!/x13Gb?OpenDocument&Count=10000&InfoChap=Business+area&13Gb)

† In Monaco Directorates perform the functions of ministries.

‡ <http://www.rci.gouv.mc>

The Directorate of economic development keeps the Register in Monaco. The Directorate is responsible for registration, introduction of amendments and exclusion of companies, sales representatives, non-profit associations and other procedures. It also shows excerpts from the Register. The Registry is a computerized system, including the information about the participants of the company and their addresses, about the legal address of each company and its branches, its financial structure. The Register also includes a complete annual report for the last financial year, accounting quarterly reports and other documents.

Foreign companies wishing to open an affiliate in Monaco should register in the Board of Administration and be added to the Register.

Individual businessmen are also registered in the Register. They are liable by their obligations with all their property. Married businessmen are officially notified that in case of their business «failure and insolvency» the losses may be collected at the expense of personal property of the spouse*.

All information related to the registered companies is open access. The abstracts from the Register can be provided for any person, simply by the request. The exceptions are the financial reports of the companies that are accessible only by two Monaco Tax Service officers and to the officers of Information and Financial Flows Control Service (Service d'Information et de Contrôle des Circuits Financiers, further - SICCFIN). The police may have an access to all data concerning the particular company for the investigation of a criminal case – by court judgment.

The Act № 1.331 of January 8, 2007 on Business Companies coordinates the mechanism of companies' registration canceling, according to a basis procedure provided by the Act № 767 of 1864 (with amendments and improvements).

In addition, by the Act 1.331 investigation can be launched against a company of any form of ownership. It is made by an auditing commission which may invite the company's directors in the following cases: if the company does not carry out business recorded in its accounting books for 6 month or longer; if there are no premises for business, no employees or, in case of company under investigation, when actual objectives of the company's business declared in its Charter were changed. The decision on actual lack of business is made, particularly, by the Economic Development Direction and SICCFIN by the fact of holding the general meeting of shareholders less than twice a year. Nearly thirty registrations of companies are canceled each year.

The legislation of Monaco allows formation of trusts (les trustees) in the Principality following the anglo-saxon legal model. Their establishment and functioning are regulated in details by the Act 214 of February 27, 1936[†] (with amendments under Act 1216 of July 7, 1999*) and the Ordinance of Prince of Monaco 14.346 of March 2, 2000[§].

Legislation of Monaco does not consider trusts as legal entities. At the same time it is established by the laws of the Principality that the number of trust agreement participants should be at least one legal entity incorporated in Monaco in the form of a stock corporation (Société Anonyme Monegasque, SAM), selected for this purpose from the list published by the government. The participants of the trust agreement are checked according to the Act 1.362 of March 3, 2009 on the prevention of capital washing up, financing of terrorism and corruption.

The application to register a trust is sent to files Greffe of the Court of Appeal (Greffe de la Cour d'Appel)**. The chairman of the Court of Appeal may reject an application by his motivated decision. However, he has no right to purpose or objective of a trust formation, its beneficiaries and the sources of its funds.

* [http://www.gouv.mc/devwww/wwwnew.nsf/1909\\$af05d5c157b84197c125751600465418gb?OpenDocument&Count=10000&InfoChap=%20Business%20area&InfoSujet=Individual%20business&13Gb](http://www.gouv.mc/devwww/wwwnew.nsf/1909$af05d5c157b84197c125751600465418gb?OpenDocument&Count=10000&InfoChap=%20Business%20area&InfoSujet=Individual%20business&13Gb)

† la loi № 214 du 27 fevrier 1936 portant revision de la loi № 207 du 12 juillet 1935 sur les trusts // <http://www.legimonaco.mc/305/legismc.nsf>

‡ la loi № 1.216 du 7 juillet 1999 modifiant la loi № 214 du 27 fevrier 1936 sur les trusts // <http://www.legimonaco.mc/305/legismc.nsf>

§ la loi № 1.362 du 03.08.2009 relative a la lutte contre le blanchiment de capitaux, le financement du terrorisme et la corruption // <http://www.legimonaco.mc/305/legismc.nsf>

** see: Бирюков П. Н. Судебная система Монако // Арбитражный и гражданский процесс. 2010. № 7. С. 27-32 (Biriukov P. N. Judiciary system of Monaco // Arbitration and civil law procedure. 2010. № 7. P. 27-32).

In general, these legality checks in the process of companies' registration in Monaco are sufficient for ensuring their good faith and cleanliness of their capitals. Nevertheless, the corpus of standards which regulate the subsistence of companies of various legal forms is considered to be rather non-uniform and contains a number of contradicting provisions, particularly, concerning the accounting standards and audit (see below).

Noncommercial associations in Monaco

The law of Monaco divided two basic forms of noncommercial organizations: associations (les Associations ou les Sociétés Civiles) and foundations.

1) Association (Les associations). Their formation and functioning are regulated by the Act 1.355 of December 23, 2008* and the implemented Ministerial Order 2009-40 of January 22, 2009†.

Associations by the Act 1.355 (Art.1) should not be registered with the objective of making profit. According to Art. 2 of the same Act, the Charter of an association should contain its name, legal address, purposes, term of registration, procedure for the adoption and withdrawal of its members, voting rights of the members; rules of formation of governing bodies, quorum, voting procedure and the authority of a governing body; the Charter amendment procedure, the conditions of voluntary dissolution of an Association or its liquidation and distribution of its property.

According to the provisions of Article 4 of the same Act, the Charter of an association should contain the following mandatory rules: the headquarters of an association should be in Monaco; it cannot be moved beyond the borders of the Principality. The activities of an association should be carried out mostly in Monaco. The supreme governing body of an association should be the general meeting of its members. The director should be an adult and use his civil rights. The major number of the directors that are the members of the Board of Directors should be residents of Monaco. In case of liquidation of an association and irrespective of its property distribution, the members of association cannot acquire this property in the amount exceeding their respective deposits in the fund.

According to Art.5 if the same Act associations are formed freely, without registration or prior notification. They enjoy legal personality. The agreement of association is invalid when: a) its purpose contradicts the law; b) it undermines the independence or institutions of Monaco; c) it offends the basic human rights and liberties; d) it contradicts the public order or morals; e) it is of a sectarian nature.

An association founded on the territory of Monaco must serve the respective information to the General Secretary of the Prime Minister (Le Secretariat General du Ministere d'Etat) within 30 days from the day of its formation. To form an association whose founders are both the nationals of Monaco and foreigners, or exclusively foreigners, the special permission should be issued by the Secretary General of the Prime Minister prior to the date of association.

The associations are registered by the Public Order and Security Directorship (la Direction de la Sureté Publique)‡ which is actually the Ministry of the Interior of Monaco§.

An association acquires the status of a legal entity and the respective legal capacity since the day of publication of its incorporation in the Journal de Monaco.

Personal data concerning all directors and officers of associations, unless they are published by those associations on their sites in the Internet, can be obtained from the Cabinet (the Section at the Ministry of the interior) which registers applications about the formation of associations**. However, whereas only the voluntarily served information is stipulated by law, any other official

* la loi № 1.355 du 23 decembre 2008 concernant les associations et les federations d'associations // <http://www.legimonaco.mc>

† Arrete Ministeriel № 2009-40 du 22 janvier 2009 portant application de la loi № 1.355 du 23 decembre 2008 concernant les associations et les federations d'associations // <http://www.legimonaco.mc>

‡ <http://www.police.gouv.mc>

§ see: Бирюков П. Н. Полиция Княжества Монако // Бирюков П. Н. Полиции государств мира. Воронеж: ВГУ, 2009. - P. 92-103 (Biriukov P.N. The police of Monaco // Biriukov P .N. The police of the states of the world. Voronezh: VSU, 2009. - P. 92-103.

** Cabinet de l'Interieur et au service qui recoit les demandes de creation // <http://www.gouv.mc>

bodies that are not involved in the registration procedure may be deprived of any such data or the data on any respective association itself.

Presently about 680 associations and federations are registered in Monaco, of which 85 receive the public grants (in particular, for the organization of various sports events and entertainments, e.g., 'Formula 1' races, tennis championships etc.). Associations which get and use public bounties are subject to regular obligatory inspections by the General Supervisor of the Expenses (la Controleur General des Depenses).

2) Foundations (Les fondations). All questions related to the formation and functioning of the foundations are regulated by Act 56 of January 29, 1922 * (in its version stipulated by Act 1373 of July 5 2010[†]).

Foundations are private establishments formed with purpose to finance particular projects, the money for which is obtained in the form of donations. According to Art. 5 of the Act 56, the establishment of a foundation should be rejected: a) if its purpose contradicts public order and moral; b) if there is no necessity to express the mutual interests (ne répond pas à un besoin d'intérêt général); and c) if the assets of the foundation are insufficient to implement the proclaimed project.

Compliant to Art. 6 of Act 56, the copies of the Charter and the Memorandum of Association of the foundation should be served to the General Secretary of the Minister of State (Secrétariat général du Ministère d'État) together with the application. Registration is then either allowed or rejected within the next 20 days.

The activities of a foundation are supervised by the Committee consisting of the State Councilor of the Interior (Conseiller de gouvernement pour l'intérieur), the Chairman with casting vote rights, a judge or an officer assigned by the Director of Judiciary Services (Dirécteur des services judiciaires), a member of the Municipal Council assigned by this Council (d'un membre du conseil communal, désigné par le conseil) and the representative of a fiscal administration. The activity of a foundation which has a permission to use public bounties is controlled by the Surveillance Commission (Commission de surveillance). Nowadays about 20 foundations are registered in Monaco; the reports on their activities are published in the Journal de Monaco.

Thus in Monaco the foundations, which number is reduced significantly whereas their abilities are very limited mostly to charity, have the least danger.

On the contrary, certain exceptions from the rigid administrative rules are made for some associations. Taking into account the role of Monaco in the all-European activities, associations have sufficient support. Certainly, the directors of these associations may cause problems (e.g., huge personal income, excessive expenses, favourable and much eased financial discipline etc.), therefore by the end of 2009 a new law was enacted to increase a further control over associations by the Supreme Auditing Commission (Commission Supérieure des Comptes) and by the General Supervisor of the Expenses (Contrôleur Général des Dépenses) over all the organizations using public financing.

At the same time, the competent authorities of Monaco have sufficient legal powers to control legal entities for the formation of which an official permission is required. They can reject registration if the 'guarantees of good faith and law abiding of an applicant is considered inadequate'. Moreover, the permission for any business activities may be withdrawn from associations of physical and legal persons which fail to present additional guarantees of 'good faith' according to section 5 of Art.9 of Act 1144 of July 26, 1991 which stipulates economic and legal activities[§].

It is also stipulated by Art. 2 of Monaco Ordinance of the Prince 1706 of July 2, 2008**, that "subventions may be used by legal entities of private law nature, both registered in Monaco and of foreign origin, which are engaged in social activities, serve to public benefit or promote popularity

* la loi № 56 du 29 janvier 1922 sur les fondations // <http://www.legimonaco.mc/305/legismc.nsf>

† la loi № 1.373 du 5 juillet 2010 // <http://www.legimonaco.mc>

‡ "de moralite des personnes considerees sont insuffisantes" - Fr.

§ la loi № 1144 du 26 juillet 1991 Contenu en attente concernant l'exercice de certaines activites economiques et juridiques // <http://www.legimonaco.mc>

** l'Ordonnance souveraine № 1.706 du 2 juillet 2008 // http://juribook-nantes.blogspot.com/2009/03/partie-2-la-responsabilite-penale-titre_122.html

of the Prince of Monaco”. The important role in the control of organizations using the bounties belongs to Act 885 of May 29, 1970 which stipulates the financial control of those organizations of private law which get bounties from the State, the conditions of use of this Act are defined with the Decree of the Sovereign of Monaco No.1.706 of July 2 2008 and the Order of the Minister 2008-337 of July 2, 2008*.

Transparency of legal persons’ business activities in Monaco

At the same time, several measures aimed to ensure transparency of legal persons’ business activities have taken into account in Monaco. The list includes:

1. A mandatory permission for sale (transfer) of the shares of a stock (shares in the chartered capital) for all companies except stock corporations of Monaco (Société Anonyme Monegasque, SAM);

2. A prohibition for stock corporations and limited liability companies to issue their shares, stocks and securities payable to a bearer which may entitle anonymous shareholders to company’s profit, and a ban to convert existing shares issued to a bearer to registered shares within one year from the date of this ban. However, the continued issuing and circulation of other kinds of securities issued to a bearer, e.g., the “short-term bonds” (les bons de caisse) issued by banks;

3. A prohibition of “substitution by other company – the nominee”†. This rule is stipulated by Act.144 of July 26, 1991 (latest amended version);

4. Article 10-bis of the Sovereign’s Ordinance of March 5, 1895 referred to stock corporations (Société en Nom Collectif, SNC) and companies limited by shares (Société en Commandite par Actions, SCA)‡, which provides that neither physical or legal person can be a member of more than eight Boards of Directors and other administrative bodies of companies registered in Monaco at the same time;

5. Companies rendering financial services are subject to additional target checks of their business in comparison with other companies (see: Act 1338 of September 7, 2007§).

Certain limitations are imposed on the execution of some administrative functions by legal and physical persons as well.

The criminal liability of legal persons in Monaco

Act 1.349 of June 25, 2008** introduced criminal liability for legal persons. The provisions of this Act were included in the Criminal Code of Monaco††. Article 4-4 of Monaco’s Criminal Code provides, that “any legal person, except for official bodies, municipal bodies and public institutions, bears the criminal responsibility as the executive or accessory (...) for any crime, offence or infringement connected with the use of the account by its affiliate or the representative”. This Act is not applied some kinds of organizations (particularly, political unions and associations, trade-union organizations and syndicates).

Penalties are stipulated as a basic punishment for crimes of legal persons. They are applied in the following amounts:

a) for crimes stipulated by Art. 26 part 4 of the Criminal Code - from 18,000 to 900,000 euros;

b) for offences of corruption – from 8,000 to 450,000 euros (for bribers and bribe takers - state or municipal officers, according to Art.113, 114 of the Criminal Code and for taking bribes by judges, arbiters and experts – according to Art.118 of the Criminal Code);

* la Loi № 885 du 29 mai 1970 relative au controle financier des organismes de droit prive beneficiant d'une subvention de l'Etat dont l'Ordonnance Souveraine № 1.706 du 2 juillet 2008 et de l'Arrete Ministeriel № 2008-337 du 2 juillet 2008 determinent les conditions d'application // <http://www.legimonaco.mc>.

† “de se substituer a une autre societe”, “prete-noms” – Fr.

‡ L'Ordonnance du 5 mars 1895 relative aux societes anonymes et en commandite par actions // <http://www.legimonaco.mc>

§ la loi № 1.338 du 7 septembre 2007 sur les activites financieres // <http://www.legimonaco.mc>

** la loi № 1349 du 25.06.2008 modifiant le livre premier du Code penal // Journal de Monaco du 4 juillet 2008. № 7867.

†† Code penal // <http://www.legimonaco.mc>

c) in other cases – from 9,000 to 90,000 euros (for corruption and bribery in private sector of business – according to Art.115 and 119 of the Criminal Code).

The Act 1.349 stipulates additional punishments for crimes of legal persons. They include, in particular: a) a temporary (up to five years) or complete ban on a professional or public activity in the sphere where corruption acts were accomplished; b) a ban on the conclusion of contracts with state organizations; c) a conditional sentence; d) a temporary (up to five years) cease of a company's activity; e) confiscation of the equipment and goods manufactured under the law-breaking.

The court may also make a decision to dissolve a respective enterprise.

The most recent example of this kind is the draft of Act 755 "Definition of Inability and Conditions of Commercial, Industrial, Handicraft or Professional Activity". The document establishes the signs of inability to accomplish by any person (directly or by mediators, for own or other's benefit) of any commercial, industrial or professional activity. Act 755 covers the following actions accomplished by a guilty person: larceny, concealment, bankruptcy, swindle, abuse of confidence, fraud in act of cheques, commercial fraud in act, embezzlement of public remedies, washing up of illegally received money, fabrication of accounting books of a commercial enterprise or a bank, illegal gambling business and swindle in gambling business, lotteries, grant or loan for pledge and usury. The infringement causes criminal punishment by confinement, conditional sentence or penalty. It is provided by law that "the criteria of inability" can be applied to an execution of any administrative functions, including the management of a stock corporation or society limited by shares, the retirement of the directors. This Act stipulates also criminal and administrative liability of a legal person for the "complicity" in the actions listed above.

Legal persons in Monaco may be called to action for some other particular actions (i.e., participation in financing terrorism, counterfeiting, infringement of the rights in the sphere of intellectual property, etc.).

International treaties play important role in the legal system of Monaco. Thus, Art.1 of the Tax Convention of 1963 between France and Monaco[†] stipulates that the tax on commercial profit of Monaco[‡] "is charged and collected on the same conditions as French profit tax from companies and other legal persons". Ordinance № 3152 of the Sovereign of Monaco on March 19, 1964 which defines the application rules of said Convention, indemnifies from tax by Articles 9 and 14 the expenses characterized as "the creation of privileges" according to common recognized rules of tax collection. They include those administrative expenses within the limits specified by the enterprise for taxation purposes, that should be taken into discounted from profit obtained by way of commerce in company's balance sheet. However these expenses should not exceed the reasonable limit of administrative expenses.

The specified preferential amounts are subtracted from total taxed profit only if they are included in the balance of a company and confirmed by the respective vouchers that specify a) the person who had incurred specified expenses; b) expense items and their actual relation to certain administrative decisions aimed at the receipt of profit from business.

The Direction of the Fiscal Services (the Tax Administration of Monaco) should notify the law-enforcement institutions of Monaco on all disclosed facts tax evasion. Decree № 653 of the Sovereign of Monaco on August 25, 2006[§] the Direction applies to the Prosecutor General for bringing a prosecution.

According to Ordinance 3085 of the Sovereign, Art. 1 on September 25, 1945 and the Criminal Code, Art. 308, all information concerning the tax service agents is strictly confidential except for the cases "when the law lays under obligation or allows to declassify them". This data may be disclosed exclusively to the court which in turn is entitled to require from the investigating body all tax data without exception, including the declarations or manifests signed by any physical or legal person.

The legislation of Monaco stipulates that bookkeeping is charged over:

* The Act is brought in for the discussion to the National Council in 2007, however, it is not in power yet.

† <http://www.senat.fr/questions/base/1990/qSEQ900409491.html>

‡ "l'impôt sur les bénéfices commerciaux" – Fr.

§ l'Ordonnance Souveraine № 653 du 25 aout 2006 relative a l'impôt sur les benefices et a la taxe sur la valeur ajoutee // <http://www.legimonaco.mc>

a. business associations receiving bounties from the State. Art.2 of Act 885 of May 29, 1970 establishes the financial control over each subject of private law which receives bounty from the State;

b. foundations, according to an Art. 13 of Act 56 on the foundations;

c. any persons engaged in the commercial activity according to Art.10 of the Commercial Code, any companies (irrespective from their form of incorporation or ownership) according to Note 51-7 to the Commercial Code of Monaco.

The infringement of bookkeeping in the form of vitiated, incomplete or false records, invoices and any other financial documents, for duplication or forgery of accounts which deforms final VAT and the profit tax amounts is punished by penalties imposed by tax organs. In some cases criminal prosecution is possible. In Monaco the prosecution for fabrication of the documents is stipulated as well (the Criminal Code, Art. 90).

Intentional destruction, damage or concealment of the accounting books is a crime. If after nine months from the date of the auditor's report for the respective accounting period the auditor's report was not submitted to the general meeting of a company under audit, the latter may claim from the Minister of State to nominate an auditor to check the accounts of a company suspected in swindle.

The director, the managing director of the company that are guilty of the concealment of information submitted for audit or of the concealment, destruction or the attempt of destruction completely or in part of the accounts according to current legislation or in case of intentional deception of an auditor or expert by the director or manager concerning the company's economic operations, may be charged as criminals. These standards are fixed in Art.40 of Act 408 of January 20, 1945, in the Decree of the Sovereign of March 5, 1895* on stock corporation and companies limited by shares†. The punishment for those particular actions by the Criminal Code is the confinement from one up to five years and a penalty from 150 to 3,000 euros, or one of them.

Concerning the bookkeeping and audit, in Monaco only the companies with clear purposes and objectives of their business, must have accountants. Small companies employ accountants and auditors only when necessary (irregularly). As a result, a number of companies could be excluded from the risk group that are not involved constantly in commerce, particularly, the noncommercial associations of physical persons which, at least: a) constitute over 80% of a total number of companies registered in Monaco; b) operate actively in real estate trading.

According to the Art.51-12 of Act 1.331 of January 8, 2007 concerning stock corporations, the refusal by the company's manager to submit all necessary documents and premises for the inspection to an auditor (or auditors) is qualified as a crime. According to Art.26 of the Criminal Code of Monaco the guilty person can be punished by a two year confinement and a penalty or one of the above charges.

According to the Art. 51-13 of Act 1.331, the revealing of the facts of cancellation of a current accounting by any manager or the director of the company, cancellation of final profits and losses accounts, or refusal to submit these documents to a general meeting of shareholders of the respective company and to the database of the Register of Commercial and Industrial Companies is punished according to Art.26, part 4 of the Criminal Code by a six month confinement and a penalty, or both.

Some words should be said concerning the duties of an auditor, an accountant and other experts in the suppression of money washing. In addition to the financial establishments, Act 1.362 of March 3, 2009 'on the prevention of money laundering from criminal sources, financing terrorism and corruption' is applied to those persons who, by their professional or official duties, by control or consulting of financial operations on capital transfers, except for the barristers in the court, became aware of the illegal transfer of capitals and who had not informed about it on time (Art.2).

By Ordinance №1 4466 of the Sovereign, the lists of the specified officials was complemented, particularly, with: a) professional auditors (including accountants-auditors); b) accountants,

* l'ordonnance sur les sociétés anonymes et en commandite par actions, du 5 mars 1895, notamment en ce qui concerne la nomination, les attributions et la responsabilité des commissaires

† la loi № 408 du 20 janvier 1945 Contenu en attente complétant l'ordonnance sur les sociétés anonymes et en commandite par actions, du 5 mars 1895

advisers and experts, c) bank managers; d) legal and financial advisers, e) real estate brokers, commercial agents, vendors of various kinds of goods; f) jewellers; g) persons engaged in merchandising of jewels, precious metals, art products, antiques etc. All those persons are obliged to inform to SICCFIN on all their suspicions concerning the money laundering of the illegal income.

The legislation of Monaco does not distinguish ‘experts’ who only perform the functions of auditors (experts-comptables) or accountants (comptables agréés). The only allowed category of experts can be accountants-auditors (commissaires aux comptes) or deposit commissioners (commissaires aux apports). According to the Commercial Code, Art. 51-8, the abovementioned experts are in charge of control checks, inspections and investigations of the most frequent infringements of financial legislation, regularity of operations and the companies’ accounting, for supervision of the official duties of the respective business managers and directors.

Moreover, according to article 32 of Act 408 of January 20, 1945* any commissioner (le Commissaire) in charge of a respective company’s audit and supervision, who supports the false testimonies made on purpose by a company manager or an officer or failed to inform duly the Procurator General (Procureur Général) about the infringements that became known to such commissioner, shall be punished by a five-years confinement (imprisonment) or a penalty, or both.

The analysis of the legislation of Monaco shows that the duties enacted by the international accounting standards are not observed in practice of companies of all possible registration and ownership except, probably, the stock corporations of Monaco (Société Anonyme Monegasque, SAM). The liability limits of the accountants should be expressed more accurately whereas there is a sufficient difference in the qualification of the accountants employed by the companies of different ownership forms.

One of the most frequently mentioned shortcomings in the accomplishment of supervising functions is that the computer communications, network and the equipment required for data transfer which is necessary for registration of both the commercial messages and accounting reports is not provided to companies which decided to address to Companies Service Bureau (le Entité offrant des services aux sociétés).

The decrees of the Prince of Monaco 2008 specify the volume of information and authority of companies of various types of ownership; specify the relations of companies with the state and civil establishments, the details of trusts and foundations management and funds; formalities of bank services, of the real estate and other bargains (i.e., the scope if mandatory data for transfer to the Register, a list of obligatory legal documents, accounting rules, receipt and transfer of orders and accounts, bank accounts control, customs and tax rules etc.), however, before this practice of obligatory registration in the Register of Industry and Commerce becomes common, without exception, for all bargains with the securities and all transitions of property right, this data should be available to a fiscal administration.

The law draft of a legal Act which was discussed at the time of a GRECO inspection will make it possible for the staff of the Register to update and amend the data stored in the Register, these laws should raise the speed of requests processing in the database and to find out the data (previously inaccessible in the existing databases and data processing systems).

The legislation of Monaco encourages the confiscation for the benefit of the state of money obtained from criminal sources, to repay to supervisory bodies the expenses from the assets which cannot be collected directly or indirectly within the scope of acting criminal legislation. For example, assuming that these assets and/or cash cannot be extracted from total illegal or criminal income, the Decree 1964 of the Sovereign allowed extracting from penalties the commissions, brokerage and entertainment costs etc., paid previously to a citizen of Monaco or a foreign citizen without showing these sums in the accounts of the respective company. In such case only a clause is applied according to which “under usual circumstances the assignment of specified sums does not cause doubt according to customary management practices” (i.e., the purpose of such payments is clearly identified by a taxpayer with indemnification of his expenses etc.). It is forbidden to allocate from a total of penalties the tributes and presents (pots-de-vin).

* This Act supplements the Decree of the Prince of Monaco on the stock corporations and companies limited by shares of March 5, 1895 concerning the assignment, authorities and responsibility of the commissioners

Conclusion

Thus, the changes in the current legislation of Monaco are aimed at the expansion of criminal responsibility scope for legal persons to a universal list of offences may be taken favorably. At the same time, the lower threshold of penalties for legal persons is still rather low; it does not reach the level of punishment for physical persons. Moreover, the creation of a database of judgments (or a register of other type) for the companies guilty of crimes is not stipulated in Monaco. Such register should help to differ the companies and reduce the impact of the sanction application.

The international organizations recommend Monaco, in particular:

- a) to make the accounting standards more stringent, especially, to set approbations and appropriate penalties uniform for all companies of any ownership;
- b) to take appropriate measures aimed at the improving of professional aptitude to the accountants in all noncommercial associations in Monaco without exception.

In conclusion we assume that in general the legislation of Monaco complies with its international obligations.

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