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Supporting structures

Monaco Law 214 Trusts



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Succession planning in Monaco

Why write a will

A will ensures that your assets are passed on to the person/people that you wish to leave them to, that your estate is maintained and passed on in an orderly fashion and it may, in certain circumstances, reduce or eliminate inheritance and estate taxes.

Forced heirship in Monaco

In Monaco there is an additional reason for writing a will. As a civil law jurisdiction following the Civil or Napoleonic Code, the Principality applies **forced heirship** rules on death.

Under these rules, children are entitled to receive a certain percentage of the deceased's estate, depending on the number of children:

- 1 child at least one half
- 2 children at least one third each
- 3 children at least one quarter each

A spouse has no automatic right to a share of the estate so other planning is usually made.

While Monaco does not tax transfers from a deceased's estate to either children or spouse, transfers to others from the estate are taxed at between 8% and 16%.

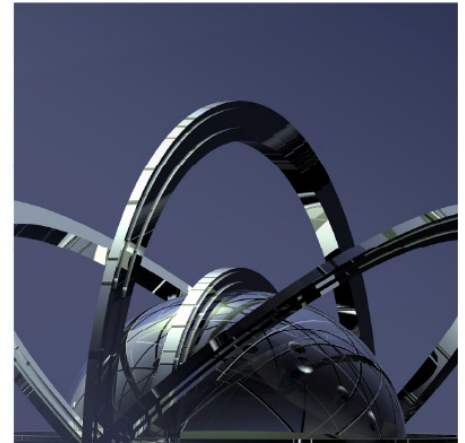
Wills & trusts

Even if a Monaco resident is comfortable with the forced heirship rules, an individual may prefer to avoid them for other reasons, such as the children being too young to inherit substantial wealth, spendthrift or have married unwisely.

Law 214

Monaco's Law 214 enables residents who are nationals of countries recognising trusts, to avoid the Monaco forced heirship rules by allowing them to create trusts in Monaco during their lifetime or by will.

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“The guiding principle behind Law 214 is that persons, who, by reason of their personal status, are able to regulate their estates according to a system of trusts, are entitled to have recourse to such system within the territory of Monaco.”

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Monaco Law 214 Trusts

Law 214 enacted

In 1936, Monaco enacted Law 214 (“Law”) designed to favour foreign national residents of the Principality by allowing them to dispose of their estates in accordance with rules familiar to them.

In 1999, Law 1216 added flexibility to the procedure required to conform to the law.

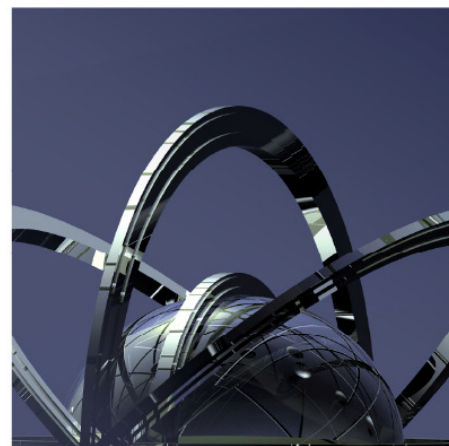
The guiding principle behind Law 214 is that individuals, who by reason of their personal status, are able to regulate their estates according to a system of trusts and entitled to have recourse to that system within the territory of Monaco.

The Law allows both new settlements and transfers to Monaco of existing arrangements for any person who, at the date of the settlement, was a foreign national even if there has been a subsequent change of nationality, including becoming a Monaco national.

Creation in Monaco of a new trust to replace an existing trust established abroad is treated as a transfer, although this supposes that the new settlement reproduces precisely the same terms as the old. A trust purporting to benefit from the provisions of Law 214 must conform to certain strict procedures. The integrity of the Law is safeguarded by Monaco notaries, who alone are empowered to preside over the formalities.

Proper law of trusts

Whereas Monaco law judges the correct appointment of the trustees, Law 214 does not create a Monaco trust. A Law 214 trust is therefore regulated, except for appointment of trustees, by the law under which it was drafted and certified by the opening *jurisconsulte*. In the event of dispute, Monaco courts expect to hear arguments from foreign advocates familiar with such law.



“...persons, who, by reason of their personal status, are able to regulate their estates according to a system of trusts....”

Monaco Law 214 Trusts

Procedure for a Law 214 trust

Since the advent of Law 1216, a Law 214 will trust is properly made if it is in "mystical" form; presented to a notary in a sealed envelope by an individual declaring that the contents constitute their testamentary dispositions.

The notary registers such declaration in the office minutes by means of a form of deed, either written directly on the envelope or securely attached thereto.

Four witnesses attest to the deed, following the procedure for wills in Monaco. *Inter vivos* trusts may also be established with the benefit of Law 214 status, although they are seldom seen in practice. They are not permitted to use the mystical form.

Before accepting the instrument the notary must receive a certificate confirming that the trust conforms to the relevant trust law issued by a lawyer qualified in the domestic law of the settlor.

He also receives confirmation that the trustee and the lawyer are included in approved lists maintained by the Monaco court. Only companies may be included in the Trustee list and individuals are admitted only as co-trustees.

Settlors may choose their trustees from among those on the list, but this may not always suit. Exceptionally, settlors may appoint an individual who is not listed and who will only be permitted to act in respect of that single trust.

Those registered, however, may serve in any number of settlements. Listed corporate trustees that are not Monaco registered companies must nominate a local representative.



"...a Law 214 will trust is properly made if it is in "mystical" form.."

Monaco Law 214 Trusts

Trust administration

Administration, investment, maintenance and advancement, variation of trust terms, and trustees' and beneficiaries' rights, (all the matters regulated either by the trust instrument or applicable foreign law) are not fettered by Law 214 rules, so the trust is run exactly as it would have been had there been no Monaco connection.

Confidential disclosure

Confidentiality is assured as a matter of professional good practice, although trust companies in Monaco are not bound or protected by the provisions of the Monaco Criminal Code that apply professional secrecy to certain other professions.

International rogatories calling for disclosure of information, once validated by the judiciary in Monaco, must be complied with. Equally, by virtue of its treaty arrangements with Monaco, France is able to discover information of a fiscal nature and, since the country is in a customs union with France and hence the European Union, French Customs, which is responsible for VAT matters among others, has direct access.

Rights of creditors

In many trust jurisdictions stringent rules deriving from the Statute of Elizabeth apply to protect the rights of creditors. In Monaco, a virtually identical notion known as the "action paulienne" applies.

A conflict of laws could arise between the law of the trust and that of Monaco on this matter. However, Law 214 is clear that the Monaco courts will apply the foreign law in matters relating to the trust's operations in Monaco.

Conclusion

Trusts set up under Monaco's Law 214 can therefore be advantageous for Monaco residents who are nationals of a country recognising trusts.

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“Trusts set up under Monaco’s Law 214 can be very advantageous for Monaco residents who are nationals of a common law jurisdiction.”

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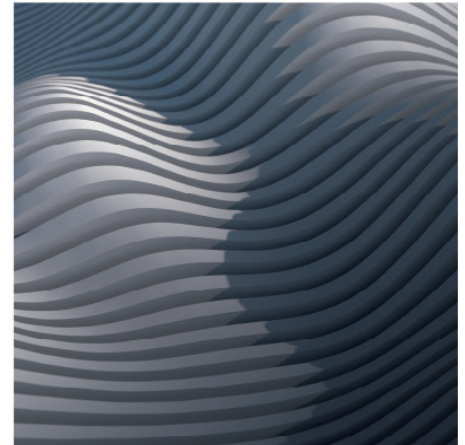
Carey Group Monaco - Key Contacts



Lindsay Leggat-Smith is Managing Director of the Monaco office. He holds a Law Degree from Edinburgh University and qualified as a Solicitor in Scotland. Moving to Paris in 1971, Lindsay practised commercial law there until 1980 when he transferred to Monaco. There, he dealt with all aspects of private client work, including high value asset transactions, before joining the international trust industry, working for a private banking group until 2003 when he established the Carey Group Monaco office. Lindsay is a member of The Society of Trust and Estate Practitioners and the current Chairman of the Monaco Association of Company Service Providers. He is fluent in English, French and German.



Stéphane Postiferri is a Director and Commercial Manager in the Monaco office. He graduated from Nice Sophia Antipolis University in 1995 with a specialisation in International Business Law Practice and Management. Prior to setting up the Monaco office in 2003 and being appointed Director in 2005, he gained 4 years experience providing commercial, trust and corporate services to private clients and 4 years experience in private banking in Luxembourg, Monaco and Paris. Stéphane is fluent in French, English, Italian and Spanish and is a member of the Society of Trust and Estate Practitioner.



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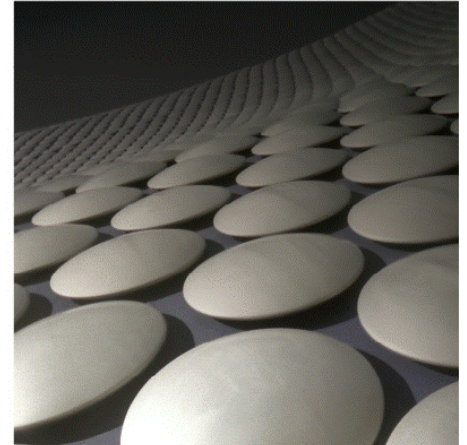
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Private Wealth Services

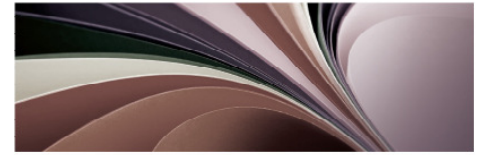
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- A trustee board with a broad mix of legal, investment, accounting and administrative experience
- Investment review committee function which uses expertise from external partners to review investment performance and highlight issues for further consideration
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- **Trust formation & administration**
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- **Pension services**
- **Marine registration**
- **Aircraft services**



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- Zurich
- Guernsey
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