

Moore Stephens: “Choosing the best law for the intended outcome.”

- Interviewed by Milena Radoman from “Monaco Economie”.



How does one plan one’s succession and juggle the Monaco private international law to avoid any surprises for one’s heirs?

Birgitta Bondonno of Moore Stephens shows us how.

A legal expert, she mentions in particular the benefits of trust funds.

Has Monaco private international law increased the appeal of the Principality?

Absolutely. Monaco has had a modern private international law in place since 2017, in line with European directives. It created a legal security, whereas beforehand there could be uncertainty sometimes when interpreting legal precedent. With 120 different nationalities, Monaco is an international metropolis, where it is very easy to live when one is from somewhere else. There are lots of mixed-nationality couples and other elements from abroad. Monaco has always been attractive to wealthy families, but I think that this first law could encourage more entrepreneurs to set up in the Principality. In particular, this law now allows one to choose one’s national law to manage one’s future succession.

It is reassuring to be acquainted with the applicable law, specially in the dreadful moments of such an event.

What advice would you give to someone planning their succession?

When planning an inheritance, the first thing is to know which assets are part of it (bank accounts, works of art, property, a yacht and so on), where these assets are based and how and by whom they are to be inherited. Then you have to see which is the most suitable law and check whether restrictions exist in the country where the assets are held. In the case of a couple, the

marriage contract must be checked to determine which assets belong to each person. It all depends on whether one comes from a country where common or separate ownership of assets applies. Perhaps there has been a prenuptial agreement. The way joint assets have been held can have different consequences from one country to another.

In England, for example, a joint bank account is given over in its entirety to the surviving spouse when his or her co-holder dies. In Monaco, however, a joint account is presumed 50%-owned by each spouse, meaning that the complete balance is not automatically transmitted to the surviving spouse. Finally, it’s important to pay attention to terminology, as the sense can vary from one jurisdiction to another.

For example, the notion of domicile or place of residence is different in Anglo-Saxon countries compared to countries where civil law applies. Basically, one must ensure that the will is recognised within Monaco and the other countries concerned; formalities in the countries where the assets are held must be expected and respected – for example, if they are in England, probate must be obtained for the heirs to inherit, so the ability to apply for and obtain this must be anticipated. In Monaco, the role of an executor is different compared to in Anglo-Saxon countries.

Which potentially detrimental inheritance restrictions should one beware of?

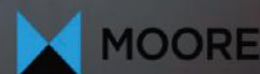
In countries where Sharia law applies, for example, there can be no succession between people of different religions and there are limits on how much can be passed down to a spouse. In these cases, a will can be of help and it is for this reason that, when planning a succession, the client’s wishes must be checked.

What happens if someone wants to favour a spouse or child?

Sometimes, clients do want to protect their children or make it so that the assets remain the property of the surviving spouse, even if there are children. Every case is different, and the client’s wishes must be respected and the legal tools chosen accordingly. Often, a client’s choice is based upon their national culture.

What do your clients expect from you?

It is variable and our objective is to guide the client, according to the intended outcome. Different tools can be used to ensure his or her wishes are respected: the will, the marriage contract, assets held in a company name and so on. For example, an SCP Monaco company is well-suited to hold a family’s assets.



What do your clients expect from you?

It is variable and our objective is to guide the client, according to the intended outcome. Different tools can be used to ensure his or her wishes are respected: the will, the marriage contract, assets held in a company name and so on. For example, an SCP Monaco company is well-suited to hold a family's assets.

When should one choose a trust fund?

They are traditional in Anglo-Saxon countries. In countries with civil law, they are less common. People really do need to feel comfortable with the concept. A trust fund is often used to protect an estate for future generations. It offers stability and continuity in management, which is in the interests of the beneficiaries. Professional management is particularly important where minors are involved, or those in a vulnerable situation. Sometimes, they are used in order not to upset the trading of a business, should the owner die.

Is Moore Stephens in fact a professional trustee in Monaco?

The fact is that Moore Stephens administers foreign and Monaco trust funds, under the 1936 Law 214. To qualify as trustees under this law, a company must be government-approved and this is, obviously, the case with Moore Stephens. Some social commentators thought that Law 214 would lose its relevance with the introduction of the new Monaco private international law; but this law allows the management, for example, of non-family relationships between the testatory and the beneficiary, with inheritance tax of between 1.3% to 1.7%. It has not been revoked by the private international law and continues to be an asset for the Principality.

How do you advise your clients on planning their succession when it's hard to anticipate changes in tax laws in other countries?

Obviously, we do have to check tax laws in countries where assets are held, in order to avoid nasty surprises. Monaco tax laws are based on where assets are held but the place of residence of the deceased and/or heirs can be a determining factor in other countries. One has to inform oneself constantly on legal changes. That is why it's good to be part of an international network like Moore Global. From Monaco, we have access to the expertise of 260 legal practices across the world; but be careful as you can choose a law applicable to the inheritance, the will and its transmission but you cannot choose the tax laws.