

AML Tuesday's Session #37 on:

Legal Entities Risk Assessment

31 October 2023

National Risk Assessments

Important that risks are identified on the national level and are communicated to private sector so that every FI/DNFBP in Monaco can:

- Take the information into account when doing its own Business Risk Assessment, which is required by law and must be provided to AMSF /the Bar Association upon request.
Remember the document needs to be in writing and its is not focused on individual customers but your business as a whole.
- Determine to what extent and in which ways the identified risks may or do in practice affect your risk profile as a business.
- Align your whole internal controls environment to focus on those areas of risks that are most pertinent and material to your business. Strengthen the risk mitigation measures in those areas.

National Risk Assessments

This year, Monaco already completed the following ML/TF focused Risk Assessments:

- Terrorism Financing National Risk Assessment
- Non-Profit Organizations National Terrorism Financing Risk Assessment
- Virtual Assets National Money Laundering Risk Assessment
- Tax National Money Laundering Risk Assessment
- Legal Entities National Money Laundering Risk Assessment
- A number of Sectorial Risk Assessments Conducted by AMSF (forthcoming)

Of course also there is the National Risk Assessment Report of 2020 and the National Terrorism Financing Risk Assessment Report of 2021.

Legal Entities and Money Laundering

- Around the world, all major ML and TF cases ever identified underline that legal entities are the most heavily utilized instruments for channeling illicit funds and hide beneficial ownership of criminal assets and property.
- Consequence is that corporate transparency requirements have tightened drastically in recent decade, with FATF Recommendation 24 (Transparency and BO of Legal Persons) being at the center of this effort. Goal of R 24 is to *harmonize and tighten global approach for collecting and maintaining basic and beneficial ownership information on legal entities.*
- R 24 was mostly recently amended in March 2022 but already since 2012, countries are required to assess the ML and TF risks associated with all types of legal person created in the jurisdiction.

ML/TF Risks of Legal Entities

Specifically on ML/TF risks associated with legal persons, the MONEYVAL assessment team recommended the following:

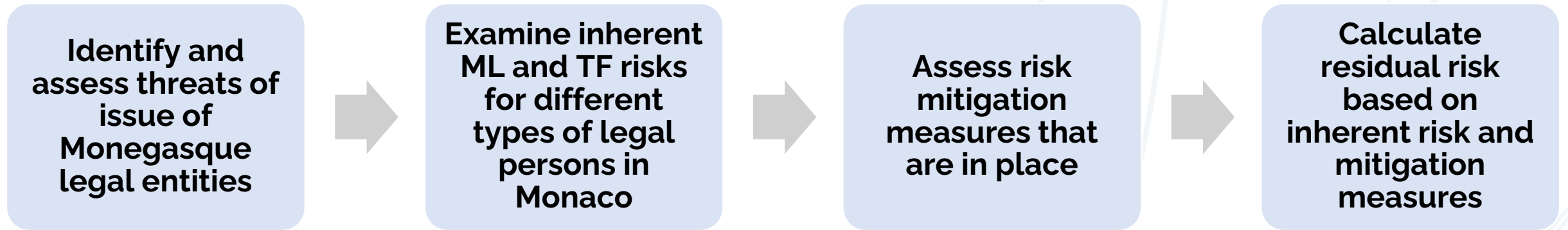
Enrich its **analysis of ML/TF risks associated with legal persons** and the authorities' understanding: (i) by looking at the vulnerabilities in terms of transparency of legal persons, (ii) incorporating certain additional vulnerabilities, including those related to the types of persons (natural/legal) and the geographical origin of members/shareholders and BO, (iii) incorporating a ML risk analysis for associations and foundations; and (iv) diversifying the sources of information used.



Led and Coordinated by Strategic Committee

2023 Legal Entities Risk Assessment

Methodology



Data sourced from DDE, AMSF (FIU), DSP, GPO, and open source specifically in relation to tax related links

Background Info on Legal Entities in Monaco

- Monegasque law allows for creation of **9** types of legal persons:
 - Limited Liability Company
 - Limited Partnership
 - Commercial Partnership
 - Limited Partnership with Shares
 - Monegasque Joint Stock Company
 - Civil Law Partnership
 - Economic Interest Group
 - Associations
 - Foundations
- **All types** are required to register with DDE (commercial companies and civil law partnerships) or the DOI (foundations and associations) to operate legally.

Background Info on Legal Entities in Monaco

During time of drafting, there were almost 17,000 civil law partnerships and 4,400 commercial companies registered with the DDE and 17 foundations, about 1,000 associations and 5 European Interest Groups registered with the DOI.

<i>Type of Company</i>	<i>Sub-Group</i>	<i>Number Registered as per March 2023</i>
<i>Commercial Company</i>	<i>Limited Liability Company (SARL)</i>	<i>2.993</i>
	<i>Limited Partnership (SCS)</i>	<i>62</i>
	<i>Commercial Partnership (SNC)</i>	<i>10</i>
	<i>Limited Partnership with Shares (SCA)</i>	<i>2</i>
	<i>Monegasque Joint-Stock Company (SAM)</i>	<i>1.363</i>
<i>Civil Law Partnership</i>	<i>Civil Law Partnership</i>	<i>16.607</i>
<i>Economic Interest Group (GIE)</i>	<i>N/A</i>	<i>5</i>
<i>Foundation</i>	<i>N/A</i>	<i>17</i>
<i>Association</i>	<i>N/A</i>	<i>1054</i>

Background Info on Legal Entities in Monaco

- Civil Law Partnerships are most common type of legal entity.
 - Can serve as holding and asset management vehicles whereas commercial companies are prohibited to engage in non-commercial activities.
 - Offer themselves as ideal asset management vehicles due to inheritance benefits associated with them.
 - Costs of a civil law partnership are low at the stage of their creation and no running costs are associated with their maintenance.
- All company types can be held 100% by foreign shareholders and corporate directors are permitted
- Financial institutions and DNFBPs may not take the form of a non-commercially active joint stock company or a civil law partnership (exemption exists for chartered accountants)
- Corporate sector is mostly international in terms of ownership, control structures, and business activities but still has strong ties to Monaco. Vast majority of shareholders and directors have Monegasque residency permit.

Threat arising from Criminality

- Monegasque legal entities feature prominently in FIU disseminations, law enforcement cases, criminal prosecutions and international cooperation requests.
- Between 2020-2022:
 - 22% of all STRs received involved a Monegasque legal entity
 - Requests for exchange of information from foreign FIUs to AMSF (FIU) frequently involved a Monegasque legal entity
 - Almost 40% of all intelligence packages sent from AMSF to GPO involved one or more Monegasque legal entities
- DSP and GDP conducted numerous ML investigations and prosecutions involving Monegasque legal entities
- Civil law companies and LLCs features most frequently, followed by joint stock companies

Threat arising from Criminality

- Predicate criminality of cases analyzed spread across 21 categories (e.g. fraud, corruption, human trafficking, smuggling of goods). Tax angle also included in some cases.
- Two main fact patterns stand out:
 1. Foreign generated proceeds are used to invest in or purchase real estate in Monaco through Monegasque Civil Law Partnership;
 2. Fake or actual commercial activities are carried out through a Monegasque LLC or joint stock company using false invoicing, forged goods, forged documentation or other falsification techniques.
- ML risk profile of the corporate sector is **high** (concentrated in LLCs, joint stock companies and civil law partnerships).
- The TF risk profile of Monaco in general is **low**, including for domestic legal entities.

Inherent Risks of Legal Entities

- Inherent risk assessed via three main risk factors:

1. Shareholders and Beneficial Owners

2. Corporate Activities

3. Structural Risks

Inherent Risks arising from Shareholders and Beneficial Owners

- For legal entities the risks arise from the natural person or persons who ultimately create, own or control the legal entity.
- Normally, a BO is not necessarily the same as the shareholder/manager of the company. In Monaco, however, about 90% of LLCs, joint stock companies and civil law partnerships are single layered, i.e. they are owned 100% by one or more natural person. This means that the likelihood that registered shareholder is also the BO is high.
- 44% of LLCs, joint stock companies and civil law partnerships are owned 100% by Monegasque residents. This means that there is a strong tie between Monaco's corporate sector and its domestic society.

Inherent Risks arising from Shareholders and Beneficial Owners

- Most shareholders that are foreign nationals are Italian, French, British. A strong focus on Europe.
- Intensity of the connections of Monaco's legal entities with shareholding rights for nationals from outside Europe is in the form of isolated cases rather through any large-scale or systemic use of Monaco as an incorporation hub by any particular nationalities.
- Both of these factors – few corporate shareholders and strong domestic ties – make Monaco quite different from other international financial centers, where the corporate sector is heavily utilized by foreign companies and where ties to the local population are weak. Example BVI or Panama.

Inherent Risks arising from Corporate Activities

- Risks may arise for legal entities from the type of activity they conduct and the geographic reach of their business pursuits.
- Top activities carried out by LLC's: business & management consulting, agents selling machinery/industrial equipment/ships/aircraft
- Top activities carried out by Joint Stock Companies: juridical arrangement of movable property management, fund management, business & management consulting
- None of the company activities listed involve high risk sectors such as the oil and gas industry, the adult industry, the online gaming, cryptocurrency trading, the precious stone or metal mining industry.
- Commercially active companies must file tax returns in Monaco if 25% of their annual revenue or more is generated internationally. Tax returns showed that majority of LLCs and joint stock companies generate revenues through business activities in Monaco.

Inherent Risks arising from Corporate Activities

- Civil law partnerships serve **non-commercial purposes only** (i.e. they do not get any identifying codes for exact activities).
- Civil law partnerships are known to serve as real estate holding companies.
- Civil Law Partnerships are not included in the tax filing requirement for international activities, whether they are linked to Monaco in the same way as commercial companies is thus not known but real estate sector seems to be a big part of why civil law partnerships are being created.

Inherent Risks arising from Structural Features

Corporate Structure Complexity:

- About 90% of Monegasque LLCs/Joint Stock Companies/Civil Law Partnerships have no legal person as shareholder – thus companies in Monaco are mostly single layered.
- For the limited number of legal entity shareholders that exist, most are established in Monaco or in a jurisdiction with sound systems in place for exchange of BO information - France, Luxembourg, and Switzerland.
- Broken down by legal entity type, corporate shareholders are more commonly used in commercially active companies than in civil law partnerships. 20% of all LLCs and 30% of joint stock companies have legal entities as shareholders, compared to only 13% of civil law partnerships.

Inherent Risks arising from Structural Features

Corporate Directors

- Corporate directors are permitted in Monaco for LLCs, joint stock companies and civil law partnerships.
- In practice, very limited use (around 10% of all commercial companies and less than 2% of civil law partnerships registered in Monaco have a legal entity as manager or director

Conclusions on Inherent Risks

- Relatively small corporate sector compared to other IFCs.
- Low levels of complexity and higher level of transparency – few shareholders are legal entities.
- High level of connectedness between the legal entities and the domestic population. Significant percentage of shareholders and directors across all categories of legal entities are residents of Monaco.
- Activities carried out by LLCs and Joint Stock Companies are mostly in lower risk industries. However, gaps exist regarding business activities of civil law partnerships.
- Most of the revenues of commercial companies are generated in Monaco. Again unknown though for civil law partnerships but anecdotal evidence suggests strong domestic link.
- Higher risk instruments such as corporate directors, bearer shares, and complex corporate structuring techniques involving legal entities in other jurisdictions exist but are used to a lesser extent and thus pose a lesser risk.

Conclusions on Inherent Risks

- The close linkage with the domestic population also means that Monaco even more than other financial centers caters to private high and ultra-high net worth beneficial owners.
- The combined assets under management of the corporate sector is very high.
- From the cases analyzed in the threat section, Monaco appears to be used as a destination for funds and assets of various types, which means also Monegasque legal entities and their domestic bank accounts are more likely to serve as an instrument for collecting and storing wealth rather than as a means passing through en-route to other jurisdictions or accounts held by companies domiciled abroad.
- Monaco is home to many prominent, high and ultra-high net worth individuals from all parts of the globe that invest heavily in the domestic economy, using LLCs, joint stock companies and civil law partnerships to purchase or develop real estate or participate in high value commerce or service industry. It is in this indirect and manner that international ML risks are brought into the corporate sector in Monaco.
- Inherent risk rating assigned to the sector is considered to be **high**.

Risk Mitigation Measures

Measure 1: Registration of Information and Creation Process of LLCs, Joint Stock Companies and Civil Law Partnerships

- Creation is subject to tight verification and scrutiny checks by the DDE, with tighter controls in place for commercial companies than for civil law partnerships.
- Authorization by Minister of State for non-Monegasque nationals that want to create a commercial company.
- Checks done by multiple agencies (DDE, Tax Services, Dept. of Social Welfare and Social Services, Tourist and Convention Authority, MOI, DBT, etc.)
- Statistics show that system is effective with numerous refusals for incorporations having been issued.

Risk Mitigation Measures

Measure 2: Customer Due Diligence Carried out by FIs and DNFBPs

- Monegasque law requires all commercial companies (but not civil law partnerships) to maintain a bank account in Monaco.
- Joint Stock Companies are required to have external auditors examine their accounts annually.
- Most commercial companies utilize the services of a range of different FIs and DNFBPs in Monaco as part of their commercial activities.
- Assumption is that all LLCs and joint stock companies and a large number of civil law partnerships are customers of Monegasque FIs and DNFBPs.
 - Undergo full range of CDD and ongoing monitoring mechanisms as per AML/CFT Law (incl. obligation to identify and verify the identity of BOs of legal entities)
- Tight system of due diligence checks significantly enhances the transparency associated with the ongoing activities and beneficial ownership of legal entities

Risk Mitigation Measures

Measure 3: Police Checks in relation to Monegasque Residents

- Any person wishing to reside in Monaco is obliged to apply for a residency permit. Issuance or renewal of residency permits is subject to the applicant meeting stringent conditions relating to housing, resources and morality.
- DSP collects a significant amount of information on natural persons present in the country. In addition, there is a strong police presence on the streets, a dense and efficient video protection network, as well as intensive controls on the flow of persons in Monaco. Control mechanisms contribute effectively to good reputation and security of economic and financial center based on morality investigations.
- In sum, there is a strong system of risk mitigating measures to all parts of the corporate sector, whereby commercial companies are subject to even tighter scrutiny than civil law partnerships. The risk mitigation measures in place in Monaco are thus considered to be **strong**.



*Thank you for your
time*

Financial Transparency Advisors GmbH
Zieglergasse 38/7/1070 Vienna, Austria

Phone: +43 1 890 8717 11

www.ft-advisors.com

<http://www.ft-advisors.com>

Next Session:

14.11.2023

Topic:

Supervisory Findings
2023

Today's Host and Presenter: Gabriele Dunker