

PRIVATE INTERNATIONAL LAW

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PART I – GENERAL PROVISIONS

CHAPTER I – PRELIMINARY PROVISIONS

Article 1: The nationality of a natural person shall be determined according to the law of the State in which such nationality is in question.

Where a person has two or more nationalities including the Monegasque nationality, only the latter is used to determine the jurisdiction of the Monegasque courts or the applicability of Monegasque law.

Where a person has two or more foreign nationalities, the law applicable is determined by the law of the State with whom the individual has the closest ties, in particular their habitual residence.

For those persons with no nationality or whose nationality cannot be established, any reference to the State to which these nationals belong is the State in which they have their habitual residence.

Article 2: Within the scope of this Code, the domicile of a person shall be where he has his principal establishment.

In accordance with the provisions of Article 79 of the Civil Code, all Monegasque nationals shall be deemed domiciled in the Principality unless they establish their domicile in another country.

Unless proven otherwise, a foreigner holding a residence permit is presumed to have his domicile in the Principality.

Companies and legal entities having their registered office in the Principality shall be deemed to be domiciled in Monaco.

CHAPTER II – JUDICIAL COMPETENCE

Article 3 : Except as otherwise provided by law, the international jurisdiction of the courts of the Principality shall be determined by the provisions of the present chapter.

Article 4: The courts of the Principality have jurisdiction where the defendant is domiciled in Monaco when the claim is initiated.

In the absence of a known domicile, residency in the Principality shall be presumed.

Article 5 : In the case of multiple defendants, the Monegasque courts shall have jurisdiction if any one of the defendants is domiciled in the Principality, unless the claim has been made solely for the purpose of removing a defendant outside the jurisdiction of his domicile or of his habitual residence abroad.

Article 6: The courts of the Principality shall also have jurisdiction, irrespective of the domicile of the defendant in the following cases :

- 1. in the case of real rights in immovable property, tenancies of immovable property and rights in companies holding immovable property, where the immovable property is located in the Principality;*
- 2. in contractual matters, where the goods have been, or are to be, delivered or if the provision of services was performed in the Principality.*

For consumer contracts referred to in article 70, where the claimant is the consumer and is domiciled in the Principality;

In the case of individual employment contracts, where the claimant is the employee and is domiciled in the Principality, where the employee habitually carries out his working activities, where he is a teleworker as per the conditions set out by the legislative provisions regarding Teleworking or where the employment contract was executed in the Principality ;

- 3. in matters relating to tort, where the tortious act occurred in the Principality or if the damage was suffered there ;*

4. *in succession matters, where the succession has been opened in the Principality or where an immovable asset belonging to the estate is also located in the Principality, as well as claims by third parties against an heir or executor and claims between heirs until the final division of the assets ;*
5. *in corporate matters, until the final liquidation of the company if it still has its registered office in the Principality ;*
6. *with respect of collective proceedings for settlement of assets and liabilities arising from the application of articles 408 to 609 of the Code of Commerce, where the commercial activity is carried out in the Principality ;*
7. *With regard to the enforcement, validity or release of seizure orders or arrestments granted in the Principality and generally all claims for interim or provisional relief, even where the Monegasque courts are not competent to hear motions regarding the substance ;*
8. *in cases regarding the enforcement of judgements and foreign deeds.*

Article 7: *The Monegasque courts which are competent to hear one claim are also competent to hear:*

1. *claims on a warranty or guarantee, unless it was made solely to remove a defendant outside the jurisdiction of his domicile or of his habitual residence abroad ;*
2. *a counterclaim ;*
3. *a related claim.*

Article 8: *Where the parties agree, in a matter where they can freely dispose of their rights under Monegasque law, that the courts of the Principality shall have jurisdiction to hear disputes that have already arisen or which may arise in connection with a particular legal relationship, such courts are the only competent courts, provided that the dispute has a sufficient link with the Principality.*

The choice of forum shall be made in writing or by any other means of communication making it possible to provide evidence in text.

It is enforceable only if the party was aware of it and accepted it at the time of the formation of the contract.

Article 9: *If the parties agree in accordance with the conditions set out in the preceding Article, to the jurisdiction of a foreign court, the Monegasque court petitioned in breach of this clause shall stay proceedings while the designated foreign court has not yet been petitioned or, after having been petitioned, did not decline jurisdiction. However, the Monegasque court petitioned may hear the dispute*

if a foreign proceeding proves impossible or if it is foreseeable that the foreign decision will not be rendered within a reasonable period or cannot be recognised in the Principality.

The choice of a foreign court cannot deprive the consumer or the employee domiciled in the Principality of his right to appeal to the courts of the Principality on the basis of sub-section 2 of article 6.

Article 10: The Monegasque courts which are not petitioned in accordance with the rules of the present chapter are automatically declared incompetent.

Article 11: Where no rule of jurisdiction of the courts of the Principality is applicable, the Monegasque courts shall be competent if one of the parties is of Monegasque nationality, unless the dispute relates to an immovable asset situated abroad or in relation to enforcement procedures abroad.

Article 12: Where an action having the same subject-matter is pending between the same parties before a foreign court, the Monegasque court petitioned in second place may stay proceedings until the foreign judgement is granted. It shall decline jurisdiction in the event the foreign decision can be recognised in Monaco according to the present Code.

CHAPTER III - RECOGNITION AND EXECUTION OF FOREIGN PUBLIC DEEDS AND JUDGEMENTS

Article 13: Judgements rendered by foreign courts which have the status of res judicata are automatically recognised in the Principality if there is no ground for refusal within the meaning of article 15.

Any interested party may bring proceedings before the courts of the Principality in recognition or non-recognition of a judgement rendered by a foreign court.

Article 14: Where they are enforceable in the State in which they have occurred, judgements rendered by foreign courts, which have the status of res judicata, as well as deeds received by foreign public officials, are only enforceable in the Principality once they have been declared enforceable by the Court of First Instance, unless stipulated otherwise in the treaties.

Article 15: A judgement rendered by a foreign court is neither recognised nor declared enforceable in the Principality if:

- 1. it has been rendered by a court which did not have jurisdiction within the meaning of article 17 ;*

2. the rights of the defendant have not been respected, especially where the parties have not been duly summoned and been given the opportunity to defend themselves ;

3. the recognition or enforcement is clearly contrary to Monegasque public policy ;

4. it is contrary to a decision rendered between the same parties in the Principality or to a decision previously rendered in another State and recognised in the Principality ;

5. a litigation is pending before a court of the Principality which was petitioned first, between the same parties and regarding the same subject-matter.

Article 16: *A judgement rendered by a foreign court may in no case be reviewed as to its substance.*

Article 17: *A foreign court which has delivered a judgement is considered as incompetent where the courts of the Principality had exclusive jurisdiction to hear the claim, or if the litigation did not have a sufficient connection with the State to which claim jurisdiction, in particular where the claimed jurisdiction was based solely on the temporary presence of the defendant in the State which claimed jurisdiction, or relating to assets belonging to the defendant unrelated to the litigation or relating to the exercise by the defendant in such State of a commercial or professional activity which is unrelated to the litigation.*

These provisions shall not apply where the jurisdiction of the foreign court has been accepted by the party opposing the recognition or enforcement of the judgement rendered by that court.

Article 18: *The claimant for execution or recognition must produce the following:*

1- an authenticated original copy of the judgement ;

2- the original of the deed of service or of any other deed serving as such in the State where the judgement was rendered ;

3- a certificate issued, either by the foreign court from which the judgement was delivered, or by the registrar of that court, acknowledging that the decision is neither appealed nor liable to opposition or appeal, and that it is enforceable in the territory of the State in which it occurred.

Such documents shall be legalised by a diplomatic or consular agent of the Principality accredited to the foreign State or, failing which, by the competent authorities of that State.

In addition, where the above-named documents are not drafted in French, they must be submitted with a translation into French by a sworn or official translator and duly legalised.

Article 19: The provisions of articles 14 to 17 shall be observed for deeds received by foreign public officials in so far as they are applicable to such deeds.

Article 20: Claims for the execution or recognition of foreign judgements and deeds shall be introduced and judged in the ordinary manner.

CHAPTER IV - CONFLICTS OF LAWS

Article 21: In order to determine the conflict of law rule applicable to the case, the classification of a legal relationship shall be carried out according to the rules of Monegasque law.

For the purposes of assessment, the analysis of the elements of a legal institution unknown to Monegasque law is to be carried out by taking into account the foreign law of which it is a part.

Article 22: The courts of the Principality automatically apply the conflict of laws rule established by this Code, unless the parties agree to the application of Monegasque law when they have ability to so do.

Article 23: The courts of the Principality shall establish the content of the foreign law applicable under this Code with the assistance of the parties. To this end, they shall order all appropriate investigatory measures.

Monegasque law is applicable where the content of foreign law cannot be established.

Article 24: For the purposes of this Code, the law of a State refers to the substantive rules of the law of that State to the exclusion of its rules of Private International Law.

Article 25: Where the law elected by this Code is that of a State comprising two or more legal systems, the legal system applicable shall be that designated by the law of that State, or failing which, the one with which it has the closest ties.

Article 26: As an exception, the law designated by the present Code is not applicable if in the light of all circumstances, it is obvious that the situation does not have a sufficient tie with such designated law but has closest ties with Monegasque law or with any other law. In such a case, Monegasque law or this other law shall apply.

This provision shall not apply in the event of an election of law.

Article 27: The application of foreign law does not apply if it leads to a result that is clearly contrary to Monegasque public policy. In particular, this discrepancy is assessed by taking into account the degree of connection of the situation with the Monegasque legal system. The provisions of Monegasque law then become applicable.

Article 28: The provisions of this Code shall not affect the application of the criminal and security laws which, because of their nature are mandatory and must be applied to govern the situation, irrespective of the law designated by the conflict of law rules.

PART II. - PHYSICAL PERSONS

CHAPTER I - STATUS AND CAPACITY

Article 29: This chapter applies to the status and capacity of natural persons, especially surnames and forenames, absence, age of majority and emancipation.

It shall not apply to the following :

- parental responsibility and measures for the protection of children, governed by the Hague Convention dated 19 October 1996 regarding jurisdiction, law applicable, recognition, enforcement and cooperation in respect of parental responsibility and measures relating to the welfare of children ;

- measures relating to the welfare of adults and their property governed by the Hague Convention dated 13 January 2000 relating to the international protection of adults.

Article 30: The Monegasque courts shall have jurisdiction to hear and determine any claim in relation to the status or capacity of a person who, at the time of the claim, is a Monegasque national or has his domicile in the Principality.

Article 31: The status and capacity of persons shall be governed by the law of the State of which they are nationals.

Nevertheless and in case of emergency, both judicial and administrative authorities may take provisional measures for the protection of persons in application of Monegasque law.

CHAPTER II - MARRIAGE

Section 1 - Formation of Marriage

Article 32: The form of the marriage celebrated before the Monegasque

authorities is governed by Monegasque law.

Article 33: Subject to the provisions of article 27, the substantive conditions of the marriage celebrated in Monaco shall be governed for each of the spouses by the law of the State of which each spouse is a national at the time of the marriage.

Article 34: A marriage celebrated abroad in accordance with the law of the State in which the marriage is celebrated shall be recognised as valid in the Principality, unless it is contrary to Monegasque public policy or if it has been celebrated with the obvious intention of evading the provisions of Monegasque law.

Section II – The respective rights and duties of spouses

Article 35: The respective rights and duties of the spouses shall be governed:

- 1. by the law of the State where either of them have their domicile, living together, or separately ;*
- 2. where the spouses are not domiciled in the same State, by the law of the State where the spouses had their last domicile together ;*
- 3. and failing which, by Monegasque law.*

Notwithstanding the provisions of the preceding paragraph, third parties who have dealt in good faith in the Principality with a spouse domiciled there, may avail themselves of the provisions of Monegasque law concerning the rights and duties of spouses.

In any case, the provisions of Monegasque law ensuring the protection of the family home and of the furnishings thereof are applicable when such home is located in the Principality.

Section III - Matrimonial regime

Article 36: The matrimonial regime is governed by the law chosen by the spouses. Spouses may elect the law of the State in which they establish their domicile after the marriage, the law of a State of which one of them has the nationality at the time of the election, the law of the State where one of them has his domicile at the time of the election or the law of the State in which the marriage is celebrated.

The law elected applies to all of their assets.

The provisions of this article shall not disapply those of Articles 141 and 1235 of the Civil Code.

Article 37: The election of the law applicable must be made in writing, dated and signed by both spouses. It should take the form provided for under the law elected in the marriage contract or under the law of the State where the deed is made.

This election shall be expressly stated or shall result from the provisions of a marriage contract in one of the forms prescribed.

The election of the law applicable may be made or amended at any time. If such election occurs after the celebration of the marriage, it is effective for the future only. Spouses may waive it, without prejudice to the rights of third parties.

The existence and validity of consent in respect of such election shall be governed by the designated law.

The provisions of this article shall not disapply the provisions of Article 1243 of the Civil Code or those of Article 141 of the Civil Code.

Article 38: In the absence of an election of law applicable, the matrimonial regime is governed:

- 1. by the law of the State where spouses establish their domicile after marriage ;*
- 2. in the absence of residence in the same State, by the law of the State of which both spouses are nationals at the time of the marriage ;*
- 3. in the absence of residence in the same State or of a common nationality, or in the case of a plurality of common nationalities, by Monegasque law.*

Article 39: The effects of the matrimonial regime on a legal relationship between one of the spouses and a third party are governed by the law applicable to the matrimonial property regime.

However, if the law of a State provides for formalities for the publication or the registration of the matrimonial regime and if these formalities have not been complied with, the law applicable to the matrimonial regime may not be used by one of the spouses against a third party when one of the spouses or the third party has his habitual residence in that State.

Similarly, if the law of a State in which an immovable property is situated provides for formalities of publication or registration of the matrimonial regime and if these formalities have not been complied with, the law applicable to the matrimonial regime cannot be used by one of the spouses against a third party for legal relations between one of the spouses and a third party in respect of that property.

The provisions of the second and third paragraphs shall not apply if the third party knew or ought to have known the law applicable to the matrimonial regime.

Section IV - Divorce and legal separation

Article 40: *Monegasque courts are competent to deal with divorce and legal separation:*

- 1. where the domicile of the spouses is in the territory of the Principality ;*
- 2. where the last domicile of the spouses was in the territory of the Principality and one of the spouses still resides there ;*
- 3. where the defendant spouse is domiciled in the Principality ;*
- 4. one of the spouses is a Monegasque national.*

The Monegasque courts are also competent to make an order converting the legal separation into divorce when the legal separation was ordered in Monaco.

Article 41: *The law applicable to divorce or legal separation before Monegasque courts is Monegasque law, unless the spouses claim the application of the law of the State of which they both have the nationality.*

Spouses may also agree before the celebration of the marriage on the application of the law of a State of which either of them has the nationality or of the law of the State in which they are domiciled together.

CHAPTER III - PARENTAGE AND ADOPTION

Section I. - Parentage

Article 42: *In addition to the cases provided by the general provisions of this Code, Monegasque courts shall have competence to deal with the establishment or the dispute of parentage, where the child or one of his parents whose paternity or maternity is sought or disputed is domiciled in the Principality or is a Monegasque national.*

Article 43: *The establishment and dispute of parentage shall be governed by the law of the State of which the child is a national. The nationality of the child shall be assessed on the day of his birth, or, in the event of judicial finding or dispute, on the day on which the claim is submitted.*

Article 44 : *Voluntary recognition of paternity or maternity shall be valid if it is valid in a State of which the child, or the person who has recognised the child, is a national or in which had his domicile at the date of the recognition.*

Article 45: The law which governs the parentage of a child, when this parentage is determined by the law, determines the effect on this parentage of a deed of recognition.

The law governing the first recognition of a child determines the effect on it of a subsequent recognition.

Section II – Adoption

Article 46: Monegasque courts are competent to grant an adoption when the adoptive parent(s) or adopted person are Monegasque nationals or have their domicile in the Principality.

Article 47: The conditions of the consent and legal representation of the adopted person are governed by his national law.

Article 48: The conditions relating to, and effects of the adoption are governed by the national law of the adoptive parent or, in case of adoption by two spouses, by the law applicable to the marriage. However, adoption cannot be granted if it is prohibited by the national law of either spouse.

The adoption of a foreigner can never be granted if its national law prohibits adoption.

Article 49: The adoption procedure is determined by the law of the forum.

Article 50: The application for revocation of a simple adoption granted abroad is admissible before the Monegasque courts only if the revocation of the adoption is allowed by the law of the place where the adoption was granted.

Article 51: Adoption duly granted abroad shall automatically apply in Monaco provided that its effects are not contrary to public policy.

CHAPTER IV – MAINTENANCE OBLIGATIONS

Article 52: In addition to the cases provided for in the general provisions of the present Code, courts of the Principality are competent to hear all claims concerning maintenance obligations where the person claiming maintenance, or the person from whom maintenance is being claimed, is domiciled in the Principality or is a Monegasque national.

The Monegasque court competent to hear an action relating to the status of a person is also competent to hear a claim relating to a maintenance obligation ancillary to that action.

Article 53: The maintenance obligation between ascendants and descendants shall be governed by the law of the State where the person receiving maintenance is domiciled.

However, Monegasque law applies where the person receiving maintenance cannot obtain such maintenance from the person from whom the maintenance is due under the law referred to in the preceding paragraph.

Article 54: The maintenance obligation between spouses is governed by the law governing the respective rights and duties of the spouses.

The financial penalties intended to compensate for the losses created by the dissolution of the marriage are governed by the law under which divorce is granted.

Article 55: The right of a public body to claim reimbursement of the benefit provided to the person who is claiming maintenance in place of the person from whom the maintenance is due is subject to the law governing such public body.

CHAPTER V - SUCCESSION

Article 56: Succession is governed by the law of the State where the deceased was domiciled at the time of his death.

Article 57: In order to settle his succession, a person may elect the law of a State of which he is a national at the time the election is made.

The law applicable to the succession must be expressly stated and included in a declaration in the form of a disposition of property upon death.

The existence and validity of consent in respect of such election shall be governed by the law elected.

The modification or revocation by the person making the election of the law applicable to the succession must satisfy the formal conditions for the modification or revocation of a disposition of property upon death in accordance with such law.

Article 58: A will is valid as to its form when it is made in accordance with one of the following laws:

- 1. the law of the State where the testator deposited the will ;*
- 2. the law of the State of which the testator possessed the nationality, either at the time he deposited the will or at the time of his death ;*
- 3. the law of the State where the testator was domiciled, either at the time of the deposit of the will or at the time of his death ;*

4. *the law of the State where the testator had his habitual residence, either at the time he deposited the will or at the time of his death ;*

5. *in respect of immovable property, the law of the State in which it is situated.*

The question as to whether the testator was resident in a particular territory of a State is governed by the law of that State.

Article 59: *A succession agreement of a single person shall be governed by the law which would have been applicable to the estate of that person as if he had died on the day on which the agreement was executed.*

Article 60: *A succession agreement concerning the succession of several persons is valid only if this validity is admitted by the law which would have applied to the succession of all these persons as if they had died at the time of the execution of the agreement.*

Article 61: *The parties may choose as the governing law of the succession agreement, the law which any one of the parties could have chosen under article 57.*

Article 62: *The application of the law governing the succession agreement under articles 59 to 61 does not affect the rights of any person who is not party to the agreement who, under the law applicable to succession in accordance with articles 56 and 57, would benefit from a reserved portion or other right to which the person who is not a party to the agreement cannot be deprived of by the person whose estate is concerned.*

Article 63: *The law applicable to succession according to this chapter shall govern the succession as a whole, from its opening until its final transfer of assets to the beneficiaries.*

However, it can neither deprive an heir of the reserved portion guaranteed to him by the law of the State of which the deceased is a national at the time of his death nor apply the reserved portion to the succession of a person whose law of the State of which he is a national at the time of his death does not have that regime.

This law shall govern in particular:

1. *the matters relating to, and the timing of, the opening of the succession ;*
2. *the inheritance rights of the heirs and legatees, including the succession rights of the surviving spouse, the determination of the respective portions of such persons, the charges imposed on them by the deceased, and any other rights due to the death ;*

3. *particular causes of incapacity to dispose or receive ;*
4. *disinheritance and exclusion from benefit in the succession ;*
5. *the transfer to the heirs and legatees of the assets, rights and obligations of the estate, including the conditions and effects of the acceptance of the succession or legacies or any disclaimer of the succession or legacies ;*
6. *the powers of the heirs, executors and other administrators of the estate, in particular with respect to the sale of property and the payment of creditors ;*
7. *the conditions for the payment of the liabilities of the estate ;*
8. *the free estate, the reserved portions and the other restrictions on the freedom to dispose of property on death ;*
9. *any obligation to restore or account for gifts and the taking of them into account when determining the shares of heirs ;*
10. *the validity of the substance of dispositions of property upon death ;*
11. *the division of assets.*

Article 64: *The law applicable to the succession shall not preclude the application of the law of the State in which the asset is located where it:*

1. *subjects to certain formalities the transfer of ownership of an asset or the entry of that transfer in a public register ;*
2. *requires the appointment of an administrator or executor of the will by an authority located in such State ;*
3. *subjects the final transfer of the assets to the beneficiaries to the prior payment of the debts of the deceased in the territory of that State.*

Article 65: *Where a trust is settled by a person or where a person places assets in trust, the application to the trust of the law which governs it shall not preclude the application to the succession of the law which governs it under this Code.*

Article 66: *Where two or more persons whose successions are governed by different laws die in circumstances which do not allow the order of death to be determined and where the laws deal with the situation through provisions which are incompatible or which do not provide for it at all, none of the persons shall have any rights in the estates of the other party or parties.*

Article 67: *Where, in accordance with the law applicable in accordance with this Regulation, there is neither an heir nor a legatee as determined by a disposition of*

property upon death and where no natural person is an heir by operation of law, the application of the law thereby determined shall not preclude the right of the Monegasque State to seize the assets of the estate located in the Principality.

PART III. – OBLIGATIONS

CHAPTER I. - CONTRACTUAL OBLIGATIONS

Article 68: A contract shall be governed by the law chosen by the parties. The choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case. The parties can choose for the chosen law to apply to the whole or part of the contract.

The parties may at any time agree to subject the contract to a law other than that which previously governed it. Any change in the governing law made after the execution of the contract shall not prejudice its formal validity under article 73 or adversely affect the rights of third parties.

Where all other elements relevant to the situation at the time of the choice of governing law are located in a State other than the State whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other State which cannot be derogated from by agreement.

The existence and validity of the consent of the parties as to the choice of the governing law shall be determined in accordance with the provisions of articles 72 and 73.

Article 69: In the absence of a choice of the governing law being made, the contract shall be governed by the law of the State where the party required to effect the performance of the contract has his domicile.

The party who effects the performance under the contract is :

- 1. in a contract of sale, the seller ;*
- 2. in a contract for the provision of services, the service provider ;*
- 3. in a franchise agreement, the franchisee ;*
- 4. in a distribution contract, the distributor ;*
- 5. in a contract of carriage, the carrier ;*
- 6. in an insurance contract, the insurer.*

Notwithstanding first paragraph of this article,

- 1. a contract for the sale of goods by auction shall be governed by the law of the State where the auction takes place, if such a place can be determined ;*
- 2. a contract relating to real rights in immovable property or to a tenancy of immovable property shall be governed by the law of the State where such property is situated.*

Where the specific performance cannot be determined, the contract shall be governed by the law of the State with which it is the most closely connected.

Article 70: This article shall apply to contracts for the supply of movable or immovable property or services to a natural person, the consumer, for a use which may be considered as being outside his professional activity, by a person acting within his professional activity.

Where the professional carries out his business in the country where the consumer has his domicile or where, by any means in particular by computer technology, he carries on his business in that country and the contract falls within the scope of such business, the governing law determined according to articles 68 and 69 shall not deprive the consumer of the protection afforded to him by the mandatory provisions of the law of the country where he is domiciled at the time of execution of the contract, unless the supplier establishes that he is unaware of the country because of actions of the consumer.

The preceding paragraph shall not apply:

- 1. where the consumer has been in the supplier's country and has entered into the contract there,
or,*
- 2. where the goods or services were or ought to have been supplied in the country where the establishment in charge of that supply was located, unless the consumer was induced by the supplier to go into that country in order to conclude the contract ;*
- 3. a contract of carriage other than a contract for a trip, tour or package holiday.*

Article 71: An individual contract of employment shall be governed by the law chosen by the parties in accordance with article 68. Such a choice of law may not, however, have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law that, in the

absence of choice, would have been applicable pursuant to the 2nd sub-paragraph of such article.

To the extent that the law applicable to the individual employment contract has not been chosen by the parties, the contract shall be governed by the law of the State in which or, failing that, from which the employee habitually carries out his work in performance of the contract. The State where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another State.

Where the law applicable cannot be determined pursuant to the foregoing subparagraph, the contract shall be governed by the law of the State where the place of business through which the employee was engaged is situated.

Article 72 : The existence and validity of a contract, or of any term of a contract, shall be determined by the law which would govern it under this Code if the contract or term were valid.

Article 73: A contract concluded between persons or their representatives, who are in the same State at the time of its conclusion is formally valid if it satisfies the formal requirements of the law which governs it under this Code or of the law of the State where it is concluded.

A contract concluded between persons or their representatives, who are in different countries at the time of its conclusion is formally valid if it satisfies the formal requirements of the law which governs it in substance under this Code, or of the law of either of the countries where either of the parties or their representatives are present at the time of its conclusion, or of the law of the State where either of the parties had his domicile at that time.

A unilateral deed intended to have legal effect relating to an existing or contemplated contract is formally valid if it satisfies the formal requirements of the law which governs or would govern the contract in substance under this Code, or of the law of the state where the deed was granted, or of the law of the State where the person by whom it was granted had his domicile at that time.

The provisions of the first two sub-paragraphs shall not apply to consumer contracts provided for in article 70, which form shall be governed by the law applicable under the second sub-paragraph of the said article.

Notwithstanding the provisions of the four preceding sub-paragraphs, any contract relating to a real right in immovable property or to a tenancy of immovable property shall be subject to the formal rules of the law of the State where the immovable property is situated, on condition that according to this law, such rules apply regardless of the place of conclusion of the contract and the law governing it as to the substance, and that it cannot be derogated from.

Article 74: *The law applicable to a contract by virtue of this Code shall govern in particular:*

- 1. its interpretation ;*
- 2. performance of the obligations resulting from the contract ;*
- 3. the consequences of a total or partial breach of those obligations, including the assessment of damages in so far as the law governing the contract allow ;*
- 4. the various ways of satisfying or terminating those obligations, and prescription and limitation periods of actions in relation thereto ;*
- 5. the consequences of nullity of the contract.*

The law applicable to the contract shall not govern measures taken by the creditor in the event of default in enforcement which are subject to the law of the State in which territory the enforcement is to take place.

Article 75: *In a contract concluded between persons who are in the same State, a person who would have capacity under the law of that State may invoke his incapacity under the law of another State, only if the other party to the contract was aware of such incapacity at the time of the conclusion of the contract or was not aware thereof as a result of negligence on his part.*

Article 76 : *For the purposes of this chapter :*

- 1. the domicile shall be determined at the time of the conclusion of the contract ;*
- 2. Where the contract is concluded in the course of the operations of a branch, agency or any other establishment, or if, under the contract, performance is the responsibility of such entity, the place where such entity is located shall be treated as the domicile.*

CHAPTER II – NON-CONTRACTUAL OBLIGATIONS

Article 77 : *If a non-contractual obligation arising from an unjust enrichment, including payment of amounts wrongly received, relates to an existing relationship between the parties, such as one arising out of a contract or a tort closely connected with that unjust enrichment, the governing law shall be that law governing the existing relationship.*

Where the law applicable cannot be determined on the basis of the preceding subparagraph and the parties have their domicile in the same State when the event giving rise to unjust enrichment occurs, the law of that State shall apply.

Where the law applicable cannot be determined on the basis of the two preceding sub-paragraphs, the law of the State in which the unjust enrichment took place shall apply.

Where it is clear from all the circumstances of the case that the non-contractual obligation arising out of unjust enrichment is manifestly more closely connected with a State other than that indicated in the preceding three sub-paragraphs, the law of that other State shall apply.

Article 78 : If a non-contractual obligation arising out of business management relates to an existing relationship between the parties such as one arising out of a contract or under tort that is closely connected with that non-contractual obligation, the governing law shall be that law governing the existing relationship.

Where the law applicable cannot be determined on the basis of the preceding sub-paragraph, and the parties have their domicile in the same State when the event giving rise to the damage occurs, the law of that State shall apply.

Where the law applicable cannot be determined on the basis of the two preceding sub-paragraphs, the law of the State in which the act was performed shall apply.

Where it is clear from all the circumstances of the case that the non-contractual obligation arising out of business management is even more closely connected with a State other than that referred to in the three preceding sub-paragraphs, the law of that other State shall apply.

Article 79 : Unless otherwise provided for the preceding chapter, the law applicable to a non-contractual obligation arising out of a tort shall be the law of the State in which the tortious act occurred irrespective of the State in which the event giving rise to the damage occurred or irrespective of the State in which the indirect consequences of that event occurred.

However, where the person who is subject to a claim for liability and the person sustaining damage both have their domicile in the same State at the time when the damage occurs, the law of that State shall apply.

Article 80 : The law applicable to product liability shall be:

- 1. the law of the State in which the damage occurred, if the product was marketed in that State and if the person sustaining the damage had his or her domicile in that State ;*
- 2. failing which, the law of the State where the person claimed to be liable had his domicile.*

Article 81 : The law applicable to liability arising out of a restriction of competition shall be the law of the State where the market is, or is likely to be, affected.

Article 82 : The law applicable to liability arising out of nuisance from an immovable property shall be the law of the State where the immovable property is situated.

The law governing liability for violation of privacy (private and family life) or of rights relating to the person, where such violation has occurred by means of written or audiovisual press, as well as by any means of publication or electronic communication, shall be chosen by the injured party :

- 1. the law of the State in which territory the event in question occurred or is likely to occur ;*
- 2. the law of the State in which territory the damage occurred or is likely to occur ;*
- 3. the law of the State in which territory the party whose liability is claimed is domiciled ;*
- 4. the law of the State in which territory the injured party is domiciled.*

However, the law of the State referred to in numbers 2 and 3 of the first subparagraph shall not apply where the party whose liability is in question establishes that he could not have foreseen that the damage would occur in the territory of that State.

Article 84 : The parties may agree to submit non-contractual obligations to the law of their choice by an agreement entered into after the event giving rise to the damage occurred, or where all the parties are pursuing a professional activity, also by an agreement freely negotiated before the occurrence of this event.

This choice shall be express and shall not prejudice the rights of third parties.

Article 85 : The law applicable to non-contractual obligations under this chapter shall govern in particular :

- 1. the basis and extent of liability, including the determination of persons who may be held liable for acts performed by them ;*
- 2. the grounds for exemption from liability, any limitation of liability and any division of liability ;*
- 3. the existence, the nature and the assessment of damage or the remedy claimed ;*

4. *within the limits of powers conferred on the Monegasque courts by its procedural law, the measures which this court may take to prevent or terminate injury or damage or to ensure the provision of compensation ;*
5. *the question whether a right to claim damages or a remedy may be transferred, including by inheritance ;*
6. *persons entitled to compensation for damage sustained personally ;*
7. *liability for the acts of another person ;*
8. *the manner in which an obligation may be extinguished and rules of prescription and limitation, including rules relating to the commencement, interruption and suspension of a period of prescription or limitation.*

CHAPTER III. - COMMON RULES

Article 86: The person having suffered damage may bring his claim directly against the insurer of the person liable if the law applicable to the non-contractual obligation or the law applicable to the insurance contract so provides.

Article 87: Whatever the law applicable to the obligation, the courts of the Principality shall take into account, as a matter of fact, the rules of security and conduct in force at the place and day of the occurrence of the act giving rise to the liability.

Article 88: Under this Code, the law applicable to the contract between the assignor and the assignee or the transferor and the transferee shall also govern their obligations relating to the receivable against the third party debtor.

The law governing the receivable shall determine its assignability or the agreement with a third party for a subrogation payment by the latter ; it shall also determine the relationship between the assignor or the transferee and the debtor, the conditions under which the assignment or subrogation can be invoked against the debtor and whether the debtor's obligations have been discharged.

Assignment in this article includes transfers of receivables outright or with security, as well as pledges or other security rights over receivables.

Article 89 : Where a third party has a duty to satisfy the creditor, or has in fact satisfied the creditor in discharge of a contractual or a non-contractual obligation, the law which governs the duty of such third party to satisfy the creditor shall determine whether and to what extent the third party is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship.

Article 90 : If a creditor has a claim against several debtors who are liable for the same claim, and one of the debtors has already satisfied the claim in whole or in part, the law governing the debtor's obligation towards the creditor also governs the debtor's right to claim recourse from the other debtors.

The other debtors may rely on the defences they had against the creditor to the extent allowed by the law governing their obligations towards the creditor.

Article 91: Where the right to set-off is not agreed by the parties, such set-off shall be governed by the law applicable to the claim against which the right to set-off is asserted.

PART IV. - PROPERTY

Article 92: Real rights relating to immovable property shall be governed by the law of the State in which the immovable property is situated.

Article 93: The acquisition and loss of real rights in respect of movable property shall be governed by the law of the State in which the movable property is located at the time of the facts on which the acquisition or loss are based.

Where movable property is shipped to the Principality from overseas and the acquisition or loss of real rights has not yet taken place abroad, the facts occurring abroad shall be deemed to have occurred in the Principality.

The content and the exercise of real rights in movable property are governed by the law of the State in which the movable property is located at the time when the rights are claimed.

Article 94: The claim of in respect of movable property which was improperly acquired by the person in possession of the movable property under the law of the State in which it was located at the time shall be governed at the owner's discretion either by the law of the State in which the movable property was located at the time of its acquisition or of its loss in the event of lost or stolen movable property, or by the law of the State where it was located when the claim was made.

Article 95: The action of a State in the claim or return of property forming part of its cultural heritage but which was exported unlawfully and contrary to its law applicable at the time of exportation, shall be governed at the discretion of that State by the law in force at the time of such action or by the law of the State in which the property is then situated.

However, if the law of the State of which the property forms part of its cultural heritage does not provide protection to the bona fide possessor of the property, such

possessor may rely on the protection provided to him by the law of the State in which the property is located at the time of the claim.

Article 96: Real rights regarding movable property in transit shall be governed by the law of the State of the destination provided for by the parties.

Article 97: The rights of an aircraft, a ship or any other means of transport registered in a public register shall be governed by the law of the State of the territory in which the register is kept.

PART V. – TRUSTS

Article 98: The law applicable to trusts is determined exclusively by application of Articles 6 and 7 of the Hague Convention dated 1 July 1985 in relation to the law applicable to trusts and their recognition.

Article 99: Subject to article 65, the law applicable to trusts pursuant to the preceding article shall govern all questions listed in Article 8 of the Hague Convention of 1 July 1985 in relation to the law applicable to trusts and their recognition.

Article 100 : A trust established in accordance with the law determined pursuant to article 98 is recognised in Monaco and produces the effects provided for in Article 11 of the Hague Convention of 1 July 1985 in relation to the law applicable to trusts and their recognition.