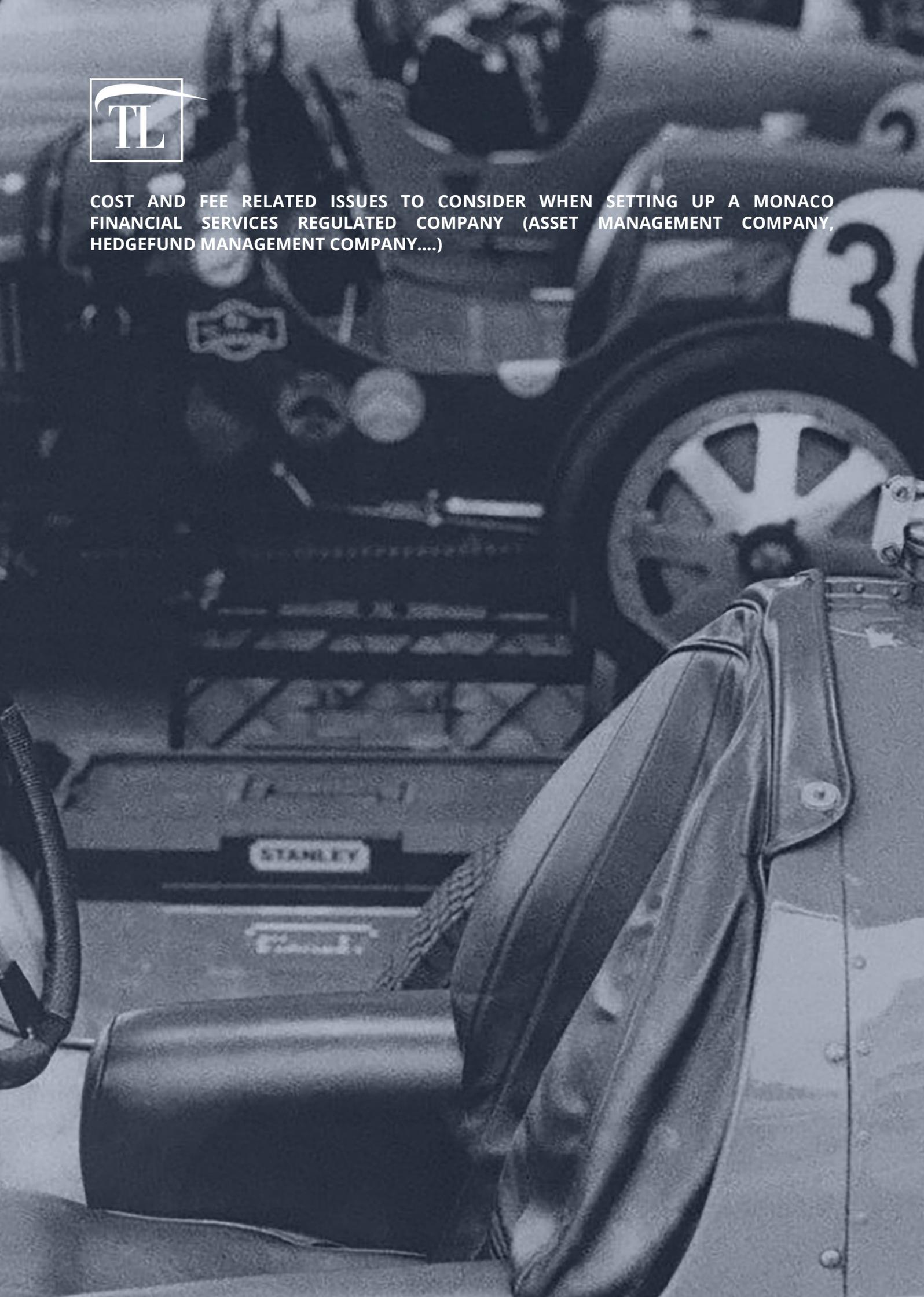




**COST AND FEE RELATED ISSUES TO CONSIDER WHEN SETTING UP A MONACO
FINANCIAL SERVICES REGULATED COMPANY (ASSET MANAGEMENT COMPANY,
HEDGEFUND MANAGEMENT COMPANY....)**



INTRODUCTION

By definition such a company must be a *Société Anonyme Monégasque* ("SAM").

A SAM will require paid-up capital of a defined minimum sum depending upon its precise objects clause: minimum capital ranges from **150,000€** through **300,000€** to **450,000€**.

If this capital has to be paid up onto a blocked account in Monaco on incorporation it is largely available as working capital once the company has been incorporated and business has commenced.

The amount of capital of a SAM has a direct impact on the costs/fees payable on incorporation because a statutory fee calculated as a percentage of the capital will arise.

THE NOTARY

In Monaco a SAM is formed with the assistance of a **Notary** ("*Notaire*").

It is the **Notary's** role to define the Mems & Arts ("*Statuts*") of the future SAM and present the file to the Monaco Government to obtain consent to incorporate the SAM.

Once that consent has been granted the **Notary** then receives the parties to carry out certain incorporation formalities (this involves the signature of four separate deeds at which point capital is paid up) and subsequently to arrange for publication of the Mems & Arts and other documents in Monaco's Official Journal.

The **Notary's** role gives rise to certain **fixed** statutory costs, duties and fees. These amount to 2.4% of the capital of the company, plus disbursements (e.g. publication costs).

Once the Company has been incorporated there is no further role for the **Notary**.

Post-incorporation costs and fees will arise and these will be raised by other professionals for work they undertake outside of that carried out by the **Notary**.

THE ACCOUNTANT

An **Accountant** is required to discuss and comment on the fiscal circumstances of the future *SAM*. This will extend to analysing the exposure to Monaco's Profits Tax (this is a tax on commercial business net Monaco profits, and arises at a rate of **31%** - as of January 2019, although this is decreasing over time to **25%** - as of January 2022), and eventually discussing those issues with the Tax Authorities in advance of incorporation to determine how precisely the future *SAM* is going to be taxed in its specific circumstances.

Separate questions of TVA/VAT (which arises in Monaco at a rate of 20%, on certain services to be provided by the future *SAM*) will be dealt with by the **Accountant**.

Further, Monaco has an excellent level of Social Services (extending into Health Care and Unemployment and Retirement Benefits). This gives rise to Social Charges due on Salaries payable to Employees.

The **Accountant** can explain how these work in detail but they vary because they are made up of a number of contributions which are capped at different levels, such that no single percentage is due. A rule of thumb applicable for those people on relatively low salaries is to say that the Employee will pay about **9%** of their Salary as an Employee contribution, whilst an Employer will pay about **35%** of the Employee's salary by way of the Employer's contribution (to give rise to Health, Unemployment, and State Pension cover), which are obligatory contributions.

The *SAM* may wish to suggest or even put in place a system of private "top up" cover to improve upon the benefits available from the State cover system (this is optional). A slightly different State régime applies, and this affects the amounts due, if the Employee has executive ("*cadre*") status.

The **Accountant** will generally cover Employment law related issues too, extending to Employment contracts and Employment formalities (Offer of Employment, Work Permits and so on).

Similarly, the post incorporation formalities directly relating to the company's start-up obligations, enabling it actually to commence business, will tend to be carried out by the **Accountant** (i.e. registration of the *SAM* with Government related agencies: DEE, Statistics, TAX/TVA Departments).

Invariably it is usual to ask the *SAM*'s future **Auditors** (2 Statutory Monaco **Auditors** are required in Monaco once the *SAM* has been incorporated) to advise on these **Accountant** related subjects above.

There is no statutory fee raised by the **Accountant** for his role in assisting with these pre and post incorporation issues: his fees will depend upon the extent of his professional involvement and he will need to quote for them.

THE LEGAL ADVISER

The **Legal Adviser** interacts with the **Notary** and the **Accountant**.

The **Legal Adviser** has no statutory fee, and his fee will totally depend upon the level of his involvement (possibly a fee will arise on a time-spent basis therefore, or on a set fee basis for specific and defined parts of the project) to cover any or all of the stages of incorporation and, most importantly, the extraneous subjects which arise outside of the incorporation process itself.

This may not constitute an exhaustive list but here are the issues which will broadly arise for a Group wishing to incorporate in Monaco both before, during and after incorporation, and which will usually be addressed by the **Legal Adviser** in conjunction with the **Notary** and the **Accountant**, as required:

- Analysis of the type of *SAM* which is to be set up (essentially the desired category of regulated *SAM* by reference to its objects clause).
- Drafting of a broad business plan for discussion with the authorities (in this instance, with the Monaco Regulators and the Government).
- Consideration of the number of Officers and Employees of the future *SAM*, and their roles (Commercial, Compliance, Administrative...).
- Liaison with the Monaco Financial Services Regulator (*CCAF*) and meeting them to outline the project and participants, notably the identity of the Shareholders: consent to incorporate the future *SAM* needs to be obtained from the *CCAF* before the process with the **Notary** to incorporate the *SAM* is engaged (this liaison role will extend into preparing a file for consideration by the Financial Services Regulator/*CCAF* of the future *SAM*'s desire to set up in Monaco by the **Legal Adviser**).
- Analysis of Compliance requirements of the future *SAM* and extent to which these processes can be outsourced once the *SAM* exists.
- Comment on the Regulatory environment which will confront the future *SAM* (Anti-Money Laundering, Data Protection, Financial Services, Professional Certification, Health & Safety...).
- Assistance with preparation of a file of papers to provide to the **Notary** for the formal incorporation/authorisation process.
- Profits Tax analysis.
- TVA/VAT analysis.
- Employee related questions (Contracts of Employment, Work Permits ...).
- Visa/Residency issues.
- Status of Directors of the *SAM* (Employee status or not).
- State Social Security related issues/ "Top up" Insurance.

- Premises (a *SAM* must have defined premises from which its operations are carried out): this will require the intervention of an **Estate Agent** to source office space which must be specifically approved for the use of the *SAM* before business can commence.
- Insurance (Employees/ Professional Liability) for which an **Insurance Agent** in Monaco will be required. Consequently the following professionals will be required in addition to the **Legal Adviser**:
 - The **Notary**
 - The **Accountant**
 - A **Banker** (share capital must be paid into a Monaco Bank Account before Incorporation of the future *SAM* occurs).
 - An **Insurance Agent**
 - An **Estate Agent**

The **Legal Adviser** can intervene to work in liaison with the **Notary** and the **Accountant** to divide the work between them, having regard to the fact that certain issues must be handled by the **Notary** and the **Accountant** respectively.

There are 3 phases which can be identified in the setting up of a *SAM* of the type described:

1. LIAISON WITH THE FINANCIAL SERVICES REGULATOR (CCAF), AND THE SEPARATE ANTI-MONEY LAUNDERING REGULATOR (SICCFIN).

This is the first formal issue to address. Without the Financial Services Regulator's (*CCAF*) prior consent to incorporate it is not possible to take the matter forward for incorporation of the *SAM* with the **Notary** and the Monaco Government - so consent to allow incorporation, which is solely a matter for the Monaco Government in its sole discretion - is totally dependent upon prior consent from the Financial Services Regulator.

No statutory fees or costs are involved in this stage. So, the **Legal Adviser's** professional fees (based on contractual arrangements possibly linked to time spent or some other formula agreed) for this particular stage are all that is involved.

The future *SAM* can doubtless agree a clear idea of the **Legal Adviser's** fees related strictly to the liaison with the Regulator and the lodging of the file with the Regulator to provoke a response in respect of this specific phase.

The Anti-Money Laundering Regulator (*SICCFIN*) should also be approached at this stage, by the **Legal Adviser**, to alert them to the plan.

2. PRE-INCORPORATION COSTS

The **Notary's** statutory fees and related duty (2.4% as advised above) and disbursements arise. The **Accountant** will raise his fees (these are not statutory and are based on contractually agreed terms). The **Legal Adviser** will raise his fees again on a contractually agreed basis. Other than the **Notary** this stage is not therefore subject to a set fee and the professional fees of the **Accountant** and the **Legal Adviser** will be determined entirely by the complexity of the process, the specifics and the precise details which the application gives rise to: this must be discussed with the **Accountant** and the **Legal Adviser**.

Pre-incorporation will focus on liaising with the **Notary** to sign the draft Mems & Arts for presentation to the Government with the application file generally; this leads to an incorporation process which turns around a formal meeting for the representatives of the future *SAM* to attend before the **Notary** to sign 4 various incorporation deeds once the Monaco Government has given its formal consent to do so: this leads to notice being given in an Official Journal that the company has been incorporated.

It will focus on:

- Tax and Book-Keeping questions
- Identifying and securing Premises (and negotiating an appropriate Lease)
- Employment contract issues
- Identifying roles of future Directors and other Officers
- Addressing Director/Staff and Residency/Visa issues
- Insurance/Social Security, and Regulatory/Compliance functions

The **Accountant** and the **Legal Adviser** between them will deal with these matters the cost of which will be proportional to the numbers of individuals involved in the future *SAM* and the complexity of the application.

3. THE *SAM* NEEDS TO BE REGISTERED WITH A VARIETY OF MONACO GOVERNMENT AGENCIES BEFORE IT CAN START BUSINESS: THESE TASKS ARE USUALLY CARRIED OUT BY THE ACCOUNTANT.

A Lease of defined Premises which the *SAM* has taken on, specifically approved for the activity to be undertaken needs to be in place: this is usually carried out by the **Legal Adviser**.

Employment Contract and related Social Security issues, and Work Permit related questions need to be addressed, as do issues relating to the insurance of the Employees: these matters are usually carried out by the **Accountant**.

Applications to hire any Employees must be filed, and the Labour Department/Social Security consequences of such filings dealt with (usually by the **Accountant**).

A variety of formal Procedures, Training and Manual drafting need to be addressed (usually by the **Legal Adviser**):

- Anti-Money Laundering Manual
- Data Protection Manual
- Health & Safety Manual
- Any Manuals filed with the appropriate Regulator.

In addition, any contractual issues relating to the operations of the *SAM* will need to be addressed by the **Legal Adviser**.

CONCLUSION

The costs and fees of the **Notary** are fixed by Statute in Monaco.

The costs and fees of the **Accountant** and the **Legal Adviser**, are freely negotiable and will vary depending upon the exact work required of them.

With the exception of the capital duty sum (1% included in the costs of the **Notary** of 2.4%) no significant sums are due by way of duty or taxes on incorporation of the *SAM*.

The true costs of incorporating a *SAM* can be felt in the following subjects once business has commenced:

- Rent
- Salaries and Directors' remuneration
- Social Charges on Salaries
- Business Profits Tax
- Insurance
- Operating costs (Power, IT, Communications...)

But there are no Rates or Community Charges, Annual charges or Professional taxes in the Principality of Monaco