



COSTS AND FEES TO CONSIDER WHEN SETTING UP A MONACO LIMITED LIABILITY COMPANY - SOCIETE ANONYME MONEGASQUE/SAM - OF A STANDARD NATURE NOT IN THE FINANCIAL SERVICES REGULATED ARENA.

AUTOMOBILE CLUB DE MONACO

INTRODUCTION

A *SAM* will require paid-up capital of a minimum sum of **150,000€**.

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 4 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 *SAM* 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*. If the *SAM* is to carry out a purely “civil” activity and that is reflected in its objects clause (such as that encompassed by a standard *Single Family Office*) no Monaco Profits Tax will arise, because a “civil” activity does not attract Profits Tax at all, hence no such fiscal conversation is required.

Conversely if the activity of the *SAM*, as reflected in its objects clause, is of a commercial and/or an industrial nature then Profits Tax will potentially arise and such a discussion must be engaged (Profits Tax is a tax on net Monaco profits where turnover of the *SAM* arises as to at least **25%** outside the Principality: it is levied at a rate of **31%** as of January 2019, although this is decreasing over time to **25%**, as of January 2022).

The **Accountant** will discuss 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 goods and 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 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 regime 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, Intellectual Property...).

Invariably it is usual to ask one of 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 described 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 and agree a fee structure with his client.

THE LEGAL ADVISER

This may not constitute an exhaustive list but here are the issues which will broadly arise for a Group wishing to incorporate a *SAM* 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.

The incorporation process will consequently include:

- Naming the **Notary**
- Naming the **Accountant**
- Naming a **Banker** (share capital must be paid into a Monaco Bank Account before Incorporation of the future *SAM* occurs).
- Naming an **Insurer** (the Premises need to be employed; accident at work Insurance must be taken out)
- Consulting with an **Estate Agent** (to find Premises)

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

1. 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 which will require the intervention of an **Estate Agent**)
- Employment contract issues
- Identifying roles of future Directors and other Officers
- Addressing Director/Staff and Residency/Visa issues
- Insurance/Social Security, and Data Protection/Compliance issues: 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.

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2. POST-INCORPORATION COSTS

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 and registered with the Tax Authorities: 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 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/Manual drafting need to be addressed (usually by the **Accountant**):

- Data Protection Manual
- Health & Safety Manual
- (Possibly) Anti-Money Laundering Manual

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.