The provisions of the Code of Private International Law apply immediately
including to successions opened before it came into force

16/05/2018

The Monegasque Code of Private International Law, as set down by Act n°1448 of 28 June 2017, has been in force in the Principality’s legal system since 8 July 2017. While the code entails some major innovations, the law which introduced it includes no transitional provisions.

A transitional provision is a stipulation of a legislative text specifying the conditions in which it will come into effect, and how it will be incorporated into the existing body of law over time. This may be done by delaying the date on which all or part of the new law comes into force, arranging a transitional period, or stipulating the precise scope of the new law, as compared with the previous one.

If there are no transitional provisions, any conflicts between the old and new legal regimes will be resolved by following two general rules:

- a law does not apply retroactively
- the new law applies immediately

The courts of Monaco have opted for the latter solution. Consequently, the provisions of the Monegasque Code of Private International Law will apply immediately with effect from 8 July 2017.
However, are all disputes concerned by this immediate application?

This question is particularly relevant as regards succession disputes, and more specifically disputes concerning successions opened before 8 July 2017.

The Court of First Instance recently ruled that the Code’s provisions were applicable to a succession opened and partially distributed 30 years before the Code itself came into force. Furthermore, the judges were acting of their own motion when they found that the Code’s provisions were applicable to the dispute, and ordered proceedings to be re-opened, to enable the parties to submit their arguments regarding the law applicable to the estate, under the Code’s new rules.

This judgement, which is currently an isolated ruling and has not yet been upheld on appeal, represents merely a first piece of early case law in the application of the Code of Private International Law. However, it lays down the principle that all successions are subject to the Code’s provisions, including those opened before it came into force.

Authors

Christine Pasquier Ciulla
Avocat Associé | Partner
Monaco

Raphaëlle Svara
Avocat Associé | Partner
Monaco

Key contacts

Christine Pasquier Ciulla
Avocat Associé | Partner
+377 97 984224
christine.pasquierciulla@cms-pcm.com

Expertise

Private Clients, Trust & Estates, Succession & Estate planning, Family estate law