

ACRONYMS

AMB	Association Monégasque Bancaire (Monegasque Bankers' Association)
AMC	asset management company
AML	anti-money laundering
BCP	Basel Core Principle for Effective Banking Supervision
CCGP	Commission de Contrôle de Gestion de Portefeuille et des Activités Boursières Assimilées (Supervisory Commission for Portfolio Management and Related Stock Market Activities, Monaco)
CECEI	Comité des Etablissements de Crédit et des Entreprises d'Investissement, (Credit Institutions and Investment Firms Committee, France)
CFT	combating the financing of terrorism
Cies	companies
COB	Commission des Opérations des Bourses (Stock Exchange Commission, France)
CRBF	Comité de la Réglementation Bancaire et Financière (Banking and Financial Regulatory Committee, France)
CSOM	Commission de Surveillance des OPCVM (Supervisory Commission for Mutual Funds, Monaco)
CSP	company and trust service provider
DEE	Direction de l'Expansion Economique (Division of Economic Expansion, Monaco)
ECB	European Central Bank
EU	European Union
FATF	Financial Action Task Force
FCB	French Commission Bancaire (Banking Commission)
FT	financing of terrorism
FIU	financial intelligence unit
ILR	international letter rogatory
IOSCO	International Organization of Securities Commissions
KYC	know-your-customer
MFD*	Monetary and Financial Systems Department
ML	money laundering
MOU	memorandum of understanding
SAM	Société Anonyme Monégasque (Monegasque limited liability company)
SBM	Société des Bains de Mer
SCA	Société en commandite par actions (limited partnership with shares)
SICCFIN	Service d'Information et de Contrôle sur les Circuits Financiers, (Service for the Information and Supervision of Financial Channels, Monaco)
SO	Sovereign Order
STR	suspicious transaction report
UCITS	undertakings for collective investments for transferable securities (investment funds, mutual funds)

* The IMF's Monetary and Exchange Affairs Department (MFD) was renamed the Monetary and Financial Systems Department (MFD) as of May 1, 2003. The new name has been used throughout the report.

I. INTRODUCTION

1. The detailed assessments in this volume of the Offshore Financial Center Assessment of Monaco were carried out during the mission of April 22 to May 3, 2002, by a team that consisted of Ms. Mary G. Zephirin (Mission Chief), Ms. Jennifer Elliott (both MFD), Messrs Louis Forget (Consulting Counsel, LEG), Marcel Maes (Banking Consultant), and Ronald Ranochak (Consultant on companies and trusts service providers). They were updated in May 2003 to take account of legislative changes made, and regulatory measures undertaken, since the mission. The assessments include assessments of the AML/CFT-related principles of the Basel Core Principles for Effective Bank Supervision, of the AML/CFT regime based on the April 2002 Bank/Fund Draft Methodology, and of securities regulation on the basis of the IOSCO Objectives and Principles of Securities Regulation.

II. BASEL CORE PRINCIPLES FOR EFFECTIVE BANKING SUPERVISION

2. As described in Volume I, the Monegasque banking system is subject to French banking law and regulation and the supervision by the French Commission Bancaire (FCB). In 2000, France completed a self-assessment and received an IMF-led assessment of its compliance with the *Core Principles for Effective Banking Supervision* as developed by the Basel Committee on Banking Supervision. By extension, the conclusions from these assessments are broadly applicable to the supervision of the Monegasque banking system.

3. However, given the specific responsibility of the Monegasque authorities for AML/CFT, the supervisory regime in place was assessed vis-à-vis Basel Core Principle (BCP) 1.6 and BCP 15.

Table 1.1. Detailed Assessment of Compliance of Two of the Basel Core Principles

Principle 1.	Objectives, Autonomy, Powers, and Resources An effective system of banking supervision will have clear responsibilities and objectives for each agency involved in the supervision of banks. Each such agency should possess operational independence and adequate resources. A suitable legal framework for banking supervision is also necessary, including provisions relating to the authorization of banking establishments and their ongoing supervision; powers to address compliance with laws, as well as safety and soundness concerns; and legal protection for supervisors. Arrangements for sharing information between supervisors and protecting the confidentiality of such information should be in place.
Principle 1(6)	Arrangements for sharing information between supervisors and protecting the confidentiality of such information should be in place.
Description	Considerable progress has been made to improve international cooperation among banking supervisors and to increase the ability of Monegasque banks to provide information to their parent banks in order for them to respond to the need for consolidated supervision. These developments are discussed in Volume I and Part 2, Module 2 of the detailed AML/CFT assessment.

	The main issues raised in this respect are related to the existence of supervision from two jurisdictions and to the need to provide, in each case, for the waiver of confidentiality requirements. Among these are professional secrecy rules in banking, the confidentiality requirements applied to supervisors, and possibly also laws enacted to limit the use of computerized personal data.
Assessment	Largely compliant.
Comments	<p>The chart in Volume I illustrates the absence of a direct formalized gateway between the primary supervisor of asset management activities (CCGP) and the FCB.</p> <p>However, the description of the interaction between CCGP and FCB as the two supervisory bodies of the Monegasque banks should be completed by pointing out that the Director of Budget and Treasury is a member of the FCB's committee on Monegasque banks and is privy to information about the supervision of portfolio management and mutual fund activities of these banks. In addition, SO No. 15.530 of September 27, 2002, created a Coordination Committee charged with organizing information sharing and supervisory coordination among the local supervisory authorities and comprising representatives from the Department of Finance and Economy, the Director of Budget and Treasury (who is a member of the CCGP), the Director of DEE, and the Director of SICCFIN.</p> <p>The framework should be enhanced by providing for direct formal channels of information exchange between these supervisors of the Monegasque banks.</p>
Principle 15.	<p>Money Laundering</p> <p>Banking supervisors must determine that banks have adequate policies, practices, and procedures in place, including strict "know-your-customer" rules that promote high ethical and professional standards in the financial sector and prevent the bank being used, intentionally or unintentionally, by criminal elements.</p>
Description	<p>The AML/CFT assessment reflects a detailed description and assessment of the AML/CFT sector specific criteria for the Monegasque banking industry.</p> <p>While the FCB (as the bank supervisor) continues to review all the aspects of the banking activities, including the internal controls and policies pertaining to customer identification requirements, SICCFIN assumes full responsibility for the supervision of compliance by the credit institutions with the legal anti-money laundering requirements.</p> <p>The great number of initiatives taken by SICCFIN during the two last years is also discussed below. They clearly demonstrate the firm intention to transform the institution into a supervisory authority for AML and CFT measures and to comply with BCP 15. The mission also acknowledges that most banks operating in Monaco are part of large international financial groups and comply with the stricter internal AML requirements of these groups.</p>
Assessment	Largely compliant.
Comments	<p>The Monegasque authorities are to be commended for the proactive attitude they have taken lately. SO 15.454 of August 8, 2002, amending SO 11.246 authorizes SICCFIN to "receive from and provide to a foreign supervisory authority information collected from financial undertakings installed in the Principality concerning internal procedures to counter money laundering", subject to reciprocity and provided the foreign authority is bound by equivalent professional secrecy obligations. The Coordination Committee created by SO 15.530 of September 27, 2002 also facilitates information exchange among Monegasque authorities. However, they will have to continue the ongoing work. The information sharing with foreign financial sector supervisors, permitted by SO 15.454, is limited to internal procedures and does not enable SICCFIN "directly or indirectly, to share with domestic and foreign financial sector supervisory authorities information related to suspected or actual criminal activities" (BCP 15 criterion). The pending FCB-SICCFIN agreement will have to fill this important gap.</p>

	<p>Full compliance with BCP 15 will also require SICCFIN to have a more formalized approach and issue a number of policy guidelines. The response of the banks to the questionnaires that have been issued in the past provided SICCFIN with the necessary material to that effect. The result allows SICCFIN to prioritize the banks that are receiving onsite examinations. SICCFIN also held seminars with financial institutions to ensure that they are familiar with the new law.</p> <p>Given the present AML workload and the problems that are inevitably linked with every new supervisory activity, a comprehensive review process of SICCFIN's ongoing work should be organized in due course, preferably no later than in the second half of 2003. At the same time, stock will be taken of the adequacy of the CFT measures.</p>
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Authorities' response to the assessment

4. The authorities' response is given in paragraph 17, Chapter III, Section F.

III. ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

A. General

5. The assessment of the AML/CFT arrangements in Monaco, based on the April 2002 Bank/Fund AML/CFT Methodology,¹ was coordinated by Louis Forget with sectoral inputs from Jennifer Elliott, Marcel Maes, Ronald Ranochak, and the legal input by Louis Forget.

B. Information and Methodology Used for Assessment

6. The assessment includes assessments of the legal and institutional framework under Part 1 of the Draft Methodology, the banking and securities sectors under Part 2 on prudentially-regulated institutions and company and trust service providers, and gaming under Part 3 of the Methodology covering non-prudentially-regulated institutions. Inclusion of these institutions was dictated by the characteristics of Monaco's financial sector and the features of its macroeconomy. In particular, account was taken of the reputational risk to which a small jurisdiction focusing on wealth management is potentially vulnerable. As discussed in Volume I, company and trust service providers are a key feature of the wealth management services offered by the jurisdiction and good, demonstrable AML coverage of these entities limits reputational risk. Gaming is an industry vulnerable to ML and the image of Monaco is closely associated with its casino with resulting reputational, and hence, macroeconomic implications for the jurisdiction. Only one company is licensed to operate games in Monaco—the *Société des Bains de Mer* (SBM), a company about 70 percent owned by the Monegasque government, and an important employer. The company owns not only the famous Monte Carlo casino, but four hotels, as well as entertainment and conference

¹ Since the assessment was undertaken, this has been superseded, in October 2002, by a revised methodology endorsed by FATF, the Fund, and the World Bank.

centers which cater to the other main (in addition to finance) growth sector of the economy—tourism. Ensuring that the casino has in place effective AML/CFT measures, protects the overall reputation of the jurisdiction and the sustainability of its growth strategy.

7. The assessment was based on information furnished by the authorities, including the completed OFC questionnaire, on the review of laws, regulations, and other documents describing the legal framework, supervisory provisions, and onsite inspections, and on interviews with public officials, private financial institutions, and professionals. In particular, discussions were held with SICCFIN, the FIU, and AML/CFT supervisory authority, the Attorney-General, the Director of Judicial Services, the gaming supervisor, the government representative in the SBM, and both Monegasque and French supervisory staff. Meetings were also held with the President of the Monegasque Bar Association, lawyers in private practice, and several private financial institutions. All of those interviewed provided the information requested and were very helpful.

C. Main Findings

8. Overall, the AML/CFT legal and institutional framework and supervisory system provides a sound basis for the prevention, detection, and prosecution of money laundering and the financing of terrorism. The penal code criminalizes money laundering and provides a list of predicate offenses (which does not yet include financing of terrorism offenses). The 1993 AML Law requires the reporting of suspicious transactions on the part of financial institutions and a number of professionals who may become aware of evidence of money laundering activities in the course of their work. The AML Law and supporting Sovereign Orders also require customer identification, record keeping, and internal controls by financial institutions. SICCFIN is actively engaged in monitoring compliance. Effective sanctions are provided for failure to apply the AML Law. Integrity standards are set out in the laws regulating each industry in the financial sector and are also implemented through licensing requirements under general laws on business activity. An amendment to the AML Law, enacted on July 12, 2002, added a requirement to report transactions related to terrorism financing and made CSPs subject to the full requirements of the AML Law. Freezing of suspect transactions is possible, first on the initiative of the FIU, and, after a period of 12 hours, by court order. Confiscation of laundered funds is also possible by court order.

D. Detailed Assessments

Part 1. Adequacy of the legal and institutional AML/CFT elements

Supervisory authority for financial institutions

General

9. Under the agreement between France and Monaco of April 14, 1945, and exchanges of letters between the two parties of May 18, 1963, November 27, 1987, and April 6 and May 10, 2001 (SO 14.892), the legislation in force in France concerning banks and financial institutions, and the regulations of a general nature issued in their implementation by the

Comité de la Réglementation Bancaire (CRB) apply to Monaco, and so do amendments to these rules. The French *Comité des Établissements de Crédit et des Entreprises d'Investissement* (CECEI) licenses banks to operate in Monaco, and the FCB is responsible, in those matters which concern it, for supervising credit institutions established in Monaco (Article 2 of the Exchange of Letters of November 27, 1963). However, certain provisions of French law, such as those regarding company law or criminal law, to which banking law may refer, cannot be applied in Monaco, which has its own laws on business entities and its own criminal code. Similarly, it is the Monegasque law on money laundering that applies to Monegasque banks and not the French law. Within these limits, French Law of January 24, 1984, on banking, as amended by the law of July 2, 1996, on the modernization of financial activities, applies in Monaco, but the provisions of the law of 1996 which regulate non-bank financial activities do not apply in Monaco. In this regard, Monaco has enacted its own laws on mutual funds (Law of January 8, 1990), and on portfolio management (Law of July 9, 1997).

Banks

10. With respect to banks, the FCB advises the Monaco authorities of the results of onsite controls pursuant to the provisions of Article 49 of the 1984 Law. As stated in the Exchange of Letters of November 27, 1987, decisions of the CECEI and of the FCB relating to Monegasque institutions “shall be notified to the Monegasque government which undertakes, where appropriate, to ensure compliance with decisions issued by the *Commission Bancaire* in disciplinary matters that apply on Monegasque territory” (Article 2 of the Exchange of Letters of November 27, 1987).

Insurance

11. The insurance sector is governed by the Franco-Monegasque convention on the regulation of the insurance activity of May 18, 1963, and the Decree No. 4.118 of December 12, 1968, defining the control of the State on insurance companies. In order to set up a subsidiary of an insurance company in Monaco, the prior authorization of the Ministry of State of Monaco is required and would be given only after the French authorities would have approved the establishment of the subsidiary. To date, no Monegasque insurance company has been established. All firms operating in this sector in Monaco (about 150) do so through some 50 brokers and agents. The companies they represent must be authorized by the French authorities, and they fall within the competence of the French *Commission de Contrôle des Assurances*. Brokers and agents are subject to Law No. 1.144 of July 26, 1991 relating to the exercise of certain economic activities, and must be authorized to operate in accordance with this law.²

² Source: Department of Finance and the Economy, Direction du Budget et du Trésor, *The Insurance Industry in Monaco*, June 6, 2001.

Securities

12. Mutual funds are regulated by Monaco Law No. 1.130 of January 8, 1990, relating to mutual funds, as amended by Law No. 1.230 of July 6, 2000. Portfolio management activities are regulated by Monaco Law No. 1.194 of July 9, 1997, related to portfolio management and similar stock market activities, as amended by Law No. 1.241 of July 3, 2001, and implemented by Sovereign Order (SO) No. 13.184 of September 16, 1997, and SO No. 14.966 of July 27, 2001.

Company Service Providers

13. The Minister of State is the competent authority for the regulation and supervision of the company and trust service providers as part of the Monegasque financial services sector. Operational responsibility resides with the Counselor for Finance and the Economy (equivalent to Minister of Finance and Economy). The General Administration Division of the *Direction de l'Expansion Économique* (DEE) carries out actual oversight.

The Monaco AML Law

14. Law No. 1.162 of July 7, 1993, relating to the participation of financial institutions in countering money laundering and the financing of terrorism (the AML Law) contains two lists of institutions which are subject to it. Under Article 1, financial institutions are subject to all provisions of the law regarding customer identification, special scrutiny for certain transactions, record keeping, vigilance, and internal controls and suspicious transaction reporting. Financial institutions covered by these provisions include banks, insurance companies, brokerage firms, securities houses, and bureaux de change. Under the July 2002 amendment to the AML Law, company service providers were added to this list. Under Article 2, persons who “in the conduct of their business, carry out, control or advise on transactions entailing the movements of funds”, who may become aware of evidence of money laundering in the course of their dealings with their clients, are made subject to suspicious transaction reporting requirements. A list of particular professionals, subject to STR requirements, is set out in SO No. 14.446 of April 22, 2000. The list includes statutory auditors, chartered accountants, and liquidators in bankruptcy; legal and financial advisers, business agents and property dealers; estate agents; cash transporters; retailers, and persons organizing the sale of precious stones, precious materials, antiques, works of art, and other valuable objects; company service providers; and persons carrying out investment and fund transfer activities on behalf of others.

Table 2.1. Detailed Assessment of the Legal and Institutional AML/CFT Elements

<p>1. Legal Requirements for Financial Service Providers (FSP) 1a. <i>Customer due diligence</i> FSP should be required to identify on the basis of an official identifying document, and to record the identity, of their customers, either occasional or usual, when establishing business relations or conducting transactions, and to renew identification when doubts appear as to their identity in the course of their business relationship.³</p>	
<p>Description</p>	<p>Article 10, first paragraph, of the AML Law requires that before opening an account, financial institutions verify the identity of their customer on the basis of an official identity document, or failing that, any reliable written document defined by Sovereign Order (SO). SO No. 11.160 of January 24, 1994, specifies that, for individuals, these documents must be official documents bearing a photograph of the individual, and for legal entities, the original, duplicate or a certified copy of a deed or extract from official registers stating the name, legal form and registered office of the legal entity and the powers of persons acting on its behalf.</p> <p>Financial institutions must also ascertain the identity of their occasional customers who carry out a transaction involving an amount of more than €15,000 or who rent a safe deposit box (Article 10, second paragraph, of the AML Law, and Article 2 of SO No. 11.160).</p> <p>Financial institutions must also ascertain the identity of persons on whose behalf an account is opened, a safe deposit box is rented, or a transaction is carried out, if the person requesting the service appears not to be acting on their own behalf, except if the requesting entity is also a financial undertaking subject to the AML Law (Article 10, third and fourth paragraphs, of the AML Law).</p> <p>All fund transfer operations must include information to be determined by a Sovereign Order to be issued (AML Law, Article 10bis).</p>
<p>Assessment</p>	<p>Compliant.</p>
<p>Comments</p>	<p>With respect to banks, the requirements set out in the AML Law are in addition to those stemming from the standards applied by the FCB in their supervision of Monegasque banks with regard to customer due diligence, and which are based on the BCP.</p> <p>The AML Law does not require that special attention be given to politically-exposed persons. Also, the AML Law does not require the periodic review of customer accounts (These were not requirements of the April 2002 Methodology).</p>
<p>1. Legal Requirements for Financial Service Providers (FSP) 1b. <i>Record keeping</i> FSP should be required to maintain records on customer identity and of customer transactions for at least five years following the termination of an account or business relationship, and following the completion of the transaction, respectively, for at least five years (or longer if requested by an authorized government official). These documents should be available for inspection by authorized government officials.</p>	

³ Financial service providers should ensure that the criteria relating to customer due diligence are also applied to branches and majority-owned subsidiaries located abroad, subject to local laws and regulations.

Description	<p>Under the AML Law, financial institutions must keep for five years: documentary evidence of the identity of their regular and occasional customers, for five years after the closure of their accounts or cessation of relations with them; and documents related to transactions carried out with all their customers (Article 14 of the AML Law).</p> <p><i>Banks:</i> French legal requirements regarding record keeping adopted in application of the 1984 Law on banking apply to Monaco banks which are subject to inspection by the Commission Bancaire in this regard.</p> <p><i>Securities:</i> Customer account contracts are required for all accounts, and these contracts are approved at licensing (any subsequent material amendments must also be approved). The law contains detailed requirements for these contracts and requires that all investment advice be suitable in the context of the client’s stated objectives, expectations and risk profile. The portfolio management firm is obligated to seek sufficient know-your-client information to enable it to fully understand the client’s profile although there are no specific information gathering or identification requirements. However, clients must open a bank account through which all of the portfolio management activity is conducted (the portfolio management firm is prohibited from accepting funds or securities) (Source: Part 2, Module 4, AML/CFT Sector-specific Criteria for Securities Regulation).</p>
Assessment	Compliant.
Comments	
<p>1. Legal Requirements for Financial Service Providers (FSP)</p> <p>1c. <i>Suspicious transactions reporting</i></p> <p>FSP should be required to scrutinize (i) all complex or unusual transactions, and complex or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, and to make available their findings in writing to authorized government officials; (ii) transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter ML or FT; and (iii) funds transfers that do not contain originator information. If an FSP suspects that assets in a transaction either stem from criminal activity or is to be used to finance terrorism, the FSP should be required to make a suspicious transaction report (STR) to the FIU.</p>	
Description	<p>The obligation to report suspicious transactions to SICCFIN is set out in the AML Law.</p> <p>The financial institutions subject to the reporting requirements under the Law as amended in July 2002 are: (1) banks and persons who carry out bank intermediation business on a regular basis; (2) the financial services of the Post Office; (3) insurance companies; (4) portfolio management companies (5) bureaux de change; and (6) company service providers.</p> <p>Financial institutions are required to report “all sums recorded in their books and all transactions relating to amounts that could come from drug trafficking or organized criminal activities and the facts and indices on which the reporting entity has based its report”, as well as “all sums recorded in their books and all transactions relating to funds that could derive from terrorism or terrorist acts or terrorist organizations or that are intended to be used to finance them, and the evidence which provides the basis for their report” (Article 3 of the AML Law as amended). Financial institutions are also required to report cases where they have refused to undertake a transaction suspected of concerning funds derived from drug trafficking or organized criminal activity (Article 5). Financial institutions are required to give special attention to transactions above a certain amount (currently €150,000) which are unusual or complex and appear not to have an economic justification (Article 13 of the AML Law and Article 3 of SO No. 15.453).</p> <p>The persons falling under Article 2 of the AML Law, and professionals listed in SO No. 14.446 of April 22, 2000, are subject to reporting requirements similar to those of financial institutions (Article 19). Representatives of the law and notaries must make their reports to the Principal State Prosecutor (Article 19 of the AML Law).</p>

	<p>Gaming establishments are subject to similar reporting requirements (Article 25 of the AML Law), and make their reports to SICCFIN.</p> <p>Managers and employees of reporting entities who report suspicious transactions in good faith are immune from civil liability, and so are the entities themselves (Article 7 of the AML Law).</p> <p>Managers and employees of reporting entities who knowingly inform the owner of an account or who divulges information concerning action taken on the basis of a suspicious transaction report can be fined up to € 27,000 (Article 8 of the AML Law).</p>
Assessment	Compliant.
Comments	There is no Monegasque insurance company, and as a result, no insurance company is subject to the AML Law. The French companies selling insurance products in Monaco do so through brokers and agents. In this connection, the following may be noted: (i) French insurance companies are prudentially supervised in France and are subject to French AML requirements, including the obligation to report suspicious transactions to the French FIU; (ii) by an amendment to the general provisions of the standard contract between insurance companies and their brokers and agents, French insurance companies have required the brokers and agents to implement AML procedures, including customer due diligence and suspicious transaction reporting requirements.
<p>1. Legal Requirements for Financial Service Providers (FSP) 1d. AML/CFT internal controls Regulated financial institutions should be required to establish and maintain internal procedures to prevent their institutions from being used for ML or FT purposes.</p>	
Description	The AML Law states that financial institutions “have a duty to be vigilant, to introduce internal control procedures, and to provide all appropriate training to the staff concerned (AML Law, Article 16). SO No. 11.160 of January 24, 1994, adds that financial institutions must state in writing the internal organizational measures they have taken in order to ensure compliance with the AML Law, and, in particular: (i) the measures they have taken having regard to the nature of their activities; (ii) the procedures for suspicious transaction reports; (iii) arrangements for the keeping of the information and documents related to suspicious transactions; (iv) the monitoring system whereby financial institutions can verify their compliance with these internal measures (Article 5 of SO No. 11.160).
Assessment	Compliant.
Comments	
<p>1. Legal Requirements for Financial Service Providers (FSP) 1e. Sanctions Adequate sanctions should be provided for failure to comply with any of the requirements, and one or more authorized government officials should have jurisdiction to enforce compliance with the above criteria by all covered persons.</p>	
Description	<p>Sanctions for breaches of the AML Law on the part of financial institutions and their managers are found in the AML Law. Sector-specific legislation also includes sanctions that may be brought to bear in the event of a breach of the AML Law.</p> <p><i>AML Law:</i> The AML Law provides for administrative and criminal penalties.</p> <p>Administrative penalties for failure to comply with the obligation of financial institutions under parts II and III of the AML Law reporting and other obligations of financial institutions) are: a warning, a reprimand, a ban on carrying out certain transactions, and withdrawal of authorization (Article 18 of the AML Law).</p>

	<p>Criminal penalties for failure to report suspicious transactions or a refusal to undertake a transaction because it appeared suspicious are fines of € 9,000–18,000 (Article 32 of the AML Law). Penalties for breach of certain other provisions of the Law, including those regarding record keeping, are € 2,250–9,000 (Article 33 of the AML Law).</p> <p><i>Banks:</i> In addition, banks are subject to the disciplinary powers of the FCB. Following failure on the part of a bank to act in accordance with the law, to respond to a recommendation of the FCB, or to heed a warning, or to act in accordance with the representations it made in seeking its authorization to operate, the FCB may impose the following sanctions: a warning, a reprimand, withdrawing the bank’s authorization to carry out certain types of operations, temporary suspension of its managers, or their removal and withdrawal of the authorization (Article 45 of French Law No. 84–46 of January 1984).</p> <p><i>Portfolio Managers:</i> Law No. 1.194 of July 9, 1997, as amended by law No. 1.241 of July 3, 2001, provides a comprehensive set of penalties for various breaches of the law, including imprisonment for senior managers and loss of license for the entity (Articles 19–29 of Law No. 1.194, as amended).</p> <p><i>Company and Trust Service Providers:</i> CSPs are regulated by the DEE under Law No. 1.144 relating to the exercise of certain economic and legal activities and are brought under the AML supervision of SICCFIN by the July 2002 amendment of the AML Law. In each case, sanctions are available.</p>
Assessment	Compliant.
Comments	
<p>2. Integrity standard Laws should be adopted to prevent criminals and criminal organizations from controlling regulated financial institutions. Laws should be adopted to ensure that shell corporations, trust and company service providers, charitable or not-for-profit foundations, or other similar entities are not used for criminal purposes.</p>	
Description	<p>Except in the case of bureaux de change, where integrity standards are set out in the AML Law, provisions regarding integrity standards are to be found in certain general laws on business organizations and on the regulation of business activities in Monaco, as well as in the sector-specific laws.</p> <p><i>General laws:</i> Business activities in Monaco are subject to licensing under Law No. 1.144 relating to the exercise of certain economic and legal activities, which requires that those who undertake such activities demonstrate their competence and integrity.</p> <p>Similarly, the establishment of partnerships including non-Monegasques is subject to prior authorization under Law No. 1.072 of July 27, 1984.</p> <p><i>Banks:</i> No one may be a member of the board of directors or of a supervisory board of a financial institution, nor directly or through another person administer, direct or manage under any title, a financial institution, or act as the legal representative of such an institution if the person has been convicted of a crime or of a number of listed offenses (Article 13 of French Law No. 84–46 of January 1984).</p> <p><i>Securities—Portfolio Management:</i> Under Law No. 1.194 of July 9, 1997, as amended by law No. 1.241 of July 3, 2001, the license to undertake portfolio management activities in Monaco is delivered by the Minister of State after a substantiated opinion from the Supervisory Commission for Portfolio Management and Similar Stock Market Activities furnishing evidence of, among other things, the integrity and professional experience of its senior managers (Article 3).</p>

	<p><i>Company and Trust Service Providers:</i> CSPs are subject to licensing under Law No. 1.144 relating to the exercise of certain economic and legal activities.</p> <p><i>Bureaux de change:</i> The AML Law contains a list of exclusions applicable to persons operating a bureau de change. The list includes persons who have committed a felony, theft, breach of trust, misappropriation, extortion, breach of legislation on foreign exchange, etc. (Article 22 of the AML Law).</p>
Assessment	Compliant.
Comments	
<p>3. Criminalization of ML and FT Laws should provide for the criminalization of ML and FT as serious offenses, and ML should extend to the proceeds of all serious offenses, including FT, with provision for proportionate and dissuasive sanctions, including loss of authority to do business.</p>	
Description	<p>ML is criminalized as a serious offense under Articles 218 to 218–3 of the Penal Code. A separate ML offense is provided for with respect to drug offenses in Article 4–3 of Law No. 890 of July 1, 1970.</p> <p>Predicate offenses are listed in Article 218–3 of the Penal Code and consist of forgery, forging, or illegally using seals, hallmarks, stamps and trade marks, misappropriation by persons exercising public authority, extortion, bribery, murder, procuring, kidnapping, and extortion, as well as proceeds from breaches of laws and regulations governing war equipment, provided the offence has been committed within the framework of an organized criminal activity (Article 219 of the Penal Code). FT has not yet been added to the list.</p> <p>It is possible to indict a person for a predicate offense even if the person is also indicted for ML, as the two offenses are separate. The predicate offense may have been committed outside Monaco, provided that the offense is also a predicate offense in Monaco (Article 218-1 of the Penal Code). It follows from the definition of ML that it is not necessary that any one be convicted of the predicate offense in order to convict someone of a ML offense related to that predicate offense. The proceeds of crime which constitute ML are all “assets and funds” (<i>“biens et capitaux”</i>), and not only monetary instruments and securities (Article 218 of the Penal Code). The law does not specify that knowledge, as an element of the offense, can be inferred from objective, factual circumstances, the test included in the Vienna and Strasbourg conventions. It is understood that there is no decision of the courts of Monaco on this point, and that the standard that would most likely be applied would be that knowledge can be inferred when factual circumstances lead to the conclusion that the indicted person “could not have ignored” the illicit origin of the funds in question.</p> <p>Sanctions for ML are five to ten years of imprisonment and basic fines of € 18,000–90,000. In case of aggravated circumstances, including when the person indicted was acting as part of a criminal organization or participated in other organized criminal activities, imprisonment is between 10 and 20 years, and fines are up to twenty times the basic amounts mentioned above. Loss of authority to do business could ensue under Law No. 1.144 of July 26, 1991, relating to the exercise of certain economic activities, which requires prior government approval before undertaking any economic activity in the Principality.</p> <p>FT has been criminalized as a serious offense under SO No. 15.320 of April 8, 2002, implementing the Convention for the Suppression of the Financing of Terrorism. The offenses established by the SO include the general financing of terrorism offense set out in the Convention as well as offenses based on eight (of the nine) treaties set out in the Annex to the Convention to which Monaco is a party.</p>

	<p>In implementing Article 5 of the Convention regarding the criminal liability of legal persons, the Order provides that legal persons (excluding the State, the City, and public agencies), domiciled in Monaco or established under its laws, may be held criminally liable for the offenses established under the Convention (Article 8 of SO 15.320).</p> <p>Sanctions for FT are five to ten years of imprisonment. FT sanctions for legal persons are fines of € 18,000–90,000 or the amount effectively furnished or collected, as well as the withdrawal of any administrative authorization previously given (Article 9 of SO No. 15.320).</p> <p>Monaco is a party to the Vienna Convention. It has signed and ratified the Convention on the Suppression of Financing of Terrorism as well as the Palermo Convention.</p>
Assessment	Largely compliant.
Comments	<p>Monaco complies with this principle with respect to both ML and FT, except for the need to add FT to the list of ML predicate offenses and, more generally, to review the list of predicate offenses.</p> <p>The definition of ML calls for the following comments:</p> <p>First, the assessor has not reviewed the entire Penal Code to ensure that all “serious offenses” (as the term may be defined) are included.</p> <p>Second, in order to constitute a predicate offense, an offense listed in the Penal Code has to have been committed “within the framework of organized criminal activity.” Such a restriction may unduly limit the scope of the ML definition and constrain the ability of the authorities to cooperate internationally in AML.</p> <p>On the occasion of adding FT to the list of predicate offenses as required in the Fund-World Bank Methodology, the authorities may wish to review the present list of predicate offenses to ensure that all serious offenses are included. In this connection, the authorities may consider the revised FATF recommendations to be issued in June 2003; these are expected to contain a minimum list of predicate offenses.</p> <p>In addition to the points mentioned above, Monaco has also taken other initiatives of interest.</p> <p>First, on May 10, 2002, Monaco deposited an instrument of accession to the Strasbourg Convention, which came into force with respect to Monaco in September 2002.</p> <p>Second, in addition to the ML offense described above, Monaco has established an offense which is committed when a person, by ignoring his or her professional obligations, assists in any transfer, placement, hiding, or conversion of goods or funds of illicit origin. The sanction is one to five years imprisonment (Article 218–2 of the Penal Code).</p> <p>Third, a proposal to broaden the scope for holding legal persons criminally liable for certain offenses (in addition to cases falling within the terms of the Convention for the Suppression of the Financing of Terrorism) is in the advanced stages of discussion within government.</p>
<p>4. Confiscation of proceeds of crime or assets used to finance terrorism</p> <p>Laws should provide in criminal cases for the confiscation of assets laundered or intended to be laundered, the proceeds of ML predicate offenses, assets used for FT, or the instrumentalities of such offenses (“assets subject to confiscation”), but should adequately protect the rights of bona fide third parties.</p>	
Description	<p>The Penal Code provides that the court orders the confiscation of assets and funds (“<i>biens et capitaux</i>”) of illicit origin (i.e., those which are the product of the predicate offenses) (Article 219, first paragraph). If these assets and funds are mingled with legitimately acquired assets and funds, the mingled assets and funds may be confiscated up to the estimated value of the illegitimate assets and funds (Article 219, second paragraph). Confiscation is without prejudice to the rights of third parties (Article 219, third paragraph). Except in the case of drug-related laundering, confiscation does not extend to assets which were used in the commission of the predicate offense or which</p>

	<p>facilitated it. Confiscation of assets of equivalent value is not provided for. Freezing and seizing of assets before confiscation is possible, first on the initiative of SICCFIN and, after a 12-hour period, by court order. Confiscation of assets of equivalent value is not provided in the law. In addition to seizure under a Criminal Court order, there is a procedure for obtaining seizure by decision of a civil court (<i>saisie sous séquestre</i>). Tracing of assets suspected of being proceeds of the predicate offenses is possible with a court order.</p> <p>Under Articles 986 and 988 of the Monaco Civil Code, contracts, which are entered into for an immoral or illicit purpose, may be voided by court decision under the civil law notion of immoral or illicit cause.</p> <p>With respect to FT, Sovereign Order 15.321 of April 8, 2002, requires entities which hold assets of persons and entities named in Ministerial Orders to freeze them. Further ministerial orders were issued in July, October, and December 2002, as well as in February and March 2003.</p>
Assessment	Largely compliant.
Comments	<p>There is a need for Monaco to broaden the definition of assets that may be confiscated to include “instrumentalities” of crime and to provide for confiscation of assets of equivalent value.</p> <p>The Strasbourg Convention requires that each State party “adopt such legislative and other measures as may be necessary to enable it to confiscate instrumentalities and proceeds or property the value of which corresponds to such proceeds” (Article 2, paragraph (i)). Instrumentalities are defined as: “any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences” (Article 1, paragraph c.). By modifying its legislation as stated above, Monaco would bring itself in compliance with the draft Methodology as well as with the Strasbourg Convention.</p>
<p>5. Processes for receiving, analyzing, and disseminating disclosures of financial information and intelligence</p> <p>An FIU should be established that meets the Egmont Group definition⁴ that is responsible for receiving, analyzing, and disseminating disclosures of financial and other relevant information and intelligence concerning suspected ML or FT activities. The FIU should be empowered to receive information necessary for the discharge of its functions, and to exchange information domestically or internationally. The FIU should have additional responsibilities, in particular to conduct research and provide training.</p>	
Description	<p>The Service d’Information et de Contrôle sur les Circuits Financiers (SICCFIN) was established by SO No. 11.246 of April 12, 1994, implementing the AML Law. SO No. 11.246 was amended by SO No. 15.454 of August 8, 2002. The following assessment is based on the amended AML Law and the amended SO.</p> <p>SICCFIN’s purpose is to gather, seek, process, and circulate information on financial circuits used to launder money (Article 2 of SO No. 11.246). It is also explicitly charged with monitoring compliance of financial institutions to the AML Law (Article 26 of the AML Law). In its <i>Rapport d’Activités</i> of January 8, 2002, SICCFIN describes its activities as follows: (i) AML supervision of reporting institutions, including onsite inspections; (ii) awareness-raising activities with industry associations of reporting entities, such as the Association Monégasque des Banques; (iii) staff training; (iv) participation in local and international meetings; (vi) receiving and analyzing reports of</p>

⁴ The FIU is a central, national agency responsible for receiving (and, as permitted, requesting), analyzing, and disseminating to the competent authorities, disclosures of financial information (i) concerning suspected proceeds of crime; or (ii) required by national legislation or regulation, in order to counter money laundering.

	<p>suspicious transactions; and (vii) cooperation with other FIUs.</p> <p>In order to accomplish its tasks, SICCFIN has wide powers to obtain any documents, such as contracts, accounting books and documents, minutes, audit and control reports, to obtain information from third parties which have undertaken controls for financial institutions, to ensure that financial institutions comply to their record keeping obligations, and to hear executives and staff of financial institutions and other persons who may provide information on the matters it is considering. SICCFIN staff may enter the premises, and inspect documents of reporting institutions. After hearing the representatives of a financial institution, SICCFIN may determine the measures the institution needs to adopt, and give it a specified time for this purpose (Article 26 of the AML Law and Article 3 of SO No. 11.246 as amended).</p> <p>Under Article 27 of the AML Law, when SICCFIN finds evidence of drug trafficking or organized criminal activity, or of terrorism, terrorist acts, or of terrorist organizations, it forwards a report to the Minister of State (a position largely equivalent to Prime Minister in many countries). Under Article 28, SICCFIN's staff are required to keep the facts that they collect confidential, except that when the facts may give rise to criminal prosecution, SICCFIN may communicate them to the Principal State Prosecutor. It is understood that, in practice, under these two provisions, information is sent to the Principal State Prosecutor, with a copy to the Minister of State.</p> <p>SICCFIN has the power to freeze a transaction for up to 12 hours on its own initiative. The transaction may be frozen for a longer time by decision of the President of the Tribunal of First Instance (a civil jurisdiction), who can also order the sequestration of the accounts concerned (Article 4 of the AML Law). In addition, under Article 219 of the Penal Code, the criminal court may order the confiscation of the assets and funds of illicit origin.</p> <p>SICCFIN has the power to obtain information from all State agencies. SICCFIN has direct access to the Monaco business registry (including its non-public data on partnerships), and can obtain other data on request from other government agencies.</p> <p>SICCFIN has issued questionnaires to reporting entities with respect to various elements of their AML obligations, and has started onsite AML inspections. With the participation of SICCFIN, the <i>Association Monégasque des Banques</i> (AMB) has issued a set of recommendations to its members, setting out the manner in which banks should discharge their obligations under the AML law.</p> <p>SICCFIN is a member of the Egmont Group. SICCFIN has entered into ten MOUs (at May 2003) on the exchange of information with other FIUs, and four more are under discussion. In the absence of an MOU, the Minister of State may provide other FIUs with information relating to transactions that appear to have a link with drug trafficking or organized criminal activity, subject to reciprocity and guarantees with regard to the confidentiality of the information provided (Article 31 of the AML Law). Also subject to reciprocity and guarantees regarding confidentiality, SICCFIN itself may give to other FIUs information on the internal AML measures taken by Monaco's financial institutions (Article 5 of SO 11.246 as amended). Information is also exchanged informally within the Egmont Group.</p> <p>Penalties for failure to report suspicious transactions or a refusal to undertake a transaction because it appeared suspicious are fines of € 9,000–18,000 (Article 32 of the AML Law). Penalties for breach of certain other provisions of the Law, including those regarding record keeping, are € 2,250–9,000 (Article 33 of the AML Law). Financial institutions are also subject to warnings, blames; the prohibition to undertake certain operation and the loss of license to operate are also available sanctions for failure to comply with reporting and other obligations under the AML Law.</p>
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Assessment	Compliant.
Comments	<p>As is mentioned above, under the AML Law, when SICCFIN finds evidence of drug trafficking or organized criminal activity, it forwards a report to the Minister of State, and when SICCFIN staff finds facts that may give rise to criminal prosecution, SICCFIN, which is otherwise bound by confidentiality laws, <i>may</i> communicate the information to the Principal State Prosecutor. There is a danger that this provision could be read as undermining SICCFIN's independence. However, in practice, it is understood that the evidence is sent to the Principal State Prosecutor with a copy to the Minister of State, and that the requirement to inform the State Minister is considered as a formality. On this basis, the 'compliant' rating is not modified by this provision of the AML Law. Nevertheless, the authorities may wish to consider an amendment to the AML law to require it to communicate its reports directly to the Principal State Prosecutor.</p> <p>The authorities may wish to consider that SICCFIN will soon reach a stage in its development where a set of internal rules would be useful to ensure that its staff are aware of their responsibilities and to provide a clear organization chart.</p> <p>It has been noted that by a court decision of 2001, the provision of the Sovereign Ordinance, which included attorneys in the list of persons subject to the reporting requirements, was struck down on the grounds that it was too vague. The authorities may consider reinstating attorneys in the list of professionals subject to reporting requirements under conditions that take into account the special situation of defense lawyers.</p> <p>The authorities may also wish to consider adding insurance brokers and agents to the list of professionals subject to the AML reporting requirements.</p> <p>Once SICCFIN has gained some experience under the amended AML Law and formalized cooperation arrangements with the <i>Commission Bancaire</i>, the Monaco authorities may find it opportune to undertake a thorough review of SICCFIN's activities, resources, and plans for the future. Such a review would be responsive to the provision of the Fund-World Bank Methodology which requires periodic reviews. If one assumes that the cooperation agreement with the <i>Commission Bancaire</i> will be finalized shortly, and taking account of implementation experience with the amended AML Law, it may be that the second half of 2003 would be an appropriate time to complete such a review.</p>
<p>6. International cooperation in AML/CFT matters</p> <p>Laws should permit bilateral and multilateral cooperation and the provision of mutual legal assistance (including exchange of information, investigation, prosecution, seizure and forfeiture actions, and extradition) in AML/CFT matters based on accepted international practices.</p>	
Description	<p>Monaco cooperates with other jurisdictions on AML/CFT in a number of ways: by providing mutual legal assistance in response to letters rogatory (and in issuing its own letters rogatory) on the basis of the MOUs entered into between SICCFIN and other FIUs (see Section 5, above) and informally.</p> <p><i>Mutual Legal Assistance</i></p> <p>With respect to mutual legal assistance in criminal matters, the Vienna Convention, the Strasbourg Convention (to which Monaco became a party in September 2002), the Suppression of the Financing of Terrorism Convention and the Palermo Convention, provide the legal basis for mutual legal assistance which in some cases goes beyond provisions applicable in the absence of such a</p>

	<p>convention. The conventions generally require that the parties give each other the widest measure of mutual legal assistance in investigations, prosecutions, and judicial proceedings in relation to criminal offences established in accordance with each convention.</p> <p>In addition to these multilateral conventions, Monaco is a party to bilateral conventions which also provide for mutual legal assistance in criminal matters. A bilateral agreement with France of September 21, 1949, provides for simplified requests for assistance between the two countries, under which the request for information or investigation may be sent directly to the judicial authorities, thus avoiding the lengthy diplomatic process. Simplified arrangements are also in place with Germany. In case of emergency, simplified procedures are possible with all countries.</p> <p>Informally, the judicial authorities cooperate with “liaison magistrates” (judicial officers who are designated to facilitate bilateral cooperation in judicial matters) in a large number of countries and its own judicial officers participate in numerous international meetings.</p> <p>There is no provision in the law for cooperative investigations, including controlled delivery. It is understood that this is usually not an obstacle to cooperation with other jurisdictions as Monaco is more likely to be a potential destination of laundered funds rather than a jurisdiction where predicate offenses are committed.</p> <p>With respect to extradition, Monaco is a party to some 17 bilateral treaties that provide for extradition. These, in addition to the Palermo Convention and other multilateral conventions, also provide a legal basis for extradition in matters involving organized criminal activity. In addition, Law No. 1.222 of December 28, 1999, provides for extradition in the matters it covers in the absence of a treaty. Extradition may be granted with regard to individuals who are indicted of an offense carrying an imprisonment term of one year or more, or convicted criminals who would have at least four months of their sentence remaining to be served. Extradition is not available in cases where the offense is of a political, fiscal, or military nature.</p>
Assessment	Largely Compliant.
Comments	<p>The authorities should consider establishing a formal legal basis for cooperative investigation, including controlled delivery.</p> <p>Mention should also be made of steps taken by the Monaco authorities to ensure that professional and banking secrecy laws do not unduly impede the ability of Monaco authorities to cooperate with foreign authorities in AML matters. In particular, under SO No. 14.892 of May 28, 2001, implementing an exchange of letters with the French Minister of Economy, Finance and Industry, on the harmonized supervision of credit establishments, Monegasque credit institutions are authorized to communicate to their head office information necessary for them to be supervised on a consolidated basis if this is required of them by a foreign supervisor (Article 2 of the exchange of letters). Also, the FCB may undertake, in specific cases, onsite verifications of a Monegasque credit institution at the request of a foreign banking supervisor, provided such supervisor is bound by the same secrecy rules as if the bank was a French bank and uses the information only for prudential supervision purposes (Article 3 of the exchange of letters). The issues that remain in this area are discussed in the detailed assessment of the banking sector, below.</p> <p>Similarly, in the field of securities, by an agreement of March 8, 2002, the French <i>Commission des Operations des Bourses</i> (COB) and the Monegasque Commission for Supervision of Portfolio Management and Similar Activities have agreed to promote mutual assistance and to exchange information required to fulfill their respective duties.</p>
<p>7. Controls and monitoring of cash transactions (for information only, not assessment)</p>	
Description of controls on the	Under the Customs Convention between Monaco and France of May 18, 1963, the provisions of the French Customs Code and of customs laws and regulations are applicable in Monaco. As a

import and export of bank notes	result, Monaco forms a customs union with France, and there is no separate Monegasque regulation of the import and export of bank notes
Description of procedures for monitoring and recording cross-border movements of large amounts of cash	Under the 1945 agreement with France, French procedures apply. French Law 89/835 of December 29, 1989 (Article 98) states that the transportation of any amount greater than €7,500 in cash, equities, or valuables must be declared to the French customs on leaving and entering. Entry by air or road into Monaco requires passage through France, and French customs officers are stationed at the harbor in Monaco.
Description of factors which influence the use of cash in transactions	No information specific to Monaco is available on this topic.

Part 2: AML/CFT Elements in the Prudentially-Regulated Financial Sectors

Module 1—AML/CFT Core Criteria for Prudentially-Regulated Financial Sectors

Table 2.2. Detailed Assessment of AML/CFT Core Criteria for Prudentially-regulated Sectors

<p>1. Organizational and administrative arrangements</p> <p>The supervisor/regulator monitors the prevention and detection of ML offenses, as well as for appropriate reporting of suspected money-laundering activities. The supervisor/regulator determines that regulated entities have in place policies and procedures that are adequate to deter improper use of the regulated entities by criminal elements. The supervisor/regulator promotes high ethical and professional standards by regulated entities.</p>	
Description	<p>As is explained in the introduction to Part 1, responsibility for monitoring of the AML elements with respect to financial institutions is vested in SICCFIN under the AML Law. SICCFIN’s mandate for monitoring the AML elements applies to banks, insurance companies (none operates in Monaco), brokerage and securities houses, bureaux de change, and company service providers. It may be noted that the AML Law also requires suspicious transaction reports on the part of a number of nonfinancial institutions; however, these institutions are not subject to the monitoring of SICCFIN.</p> <p>The banking industry dominates the financial sector and provides by far the most important point of entry of funds in the sector and the greatest number of suspicious transaction reports (in 2000 and 2001, suspicious transaction reports of banks represented slightly under 90 percent of all such reports received by SICCFIN). For this reason, the assessment of compliance with the AML/CFT core criteria for prudentially regulated industries is driven in large part by the assessment of the banking sector.</p> <p>A detailed description of the AML Law and of SICCFIN is included in Table 2.1 on the Legal and Institutional AML Elements.</p>
Assessment	Largely compliant.

Comments	While the arrangements for the monitoring of the AML elements in the prudentially regulated sectors are complex in view of the involvement of supervisors from two jurisdictions, the AML Law provides a sound basis for SICCFIN's monitoring of the AML elements for financial institution. With the conclusion of an agreement between the FCB and SICCFIN, the institutional arrangements for the monitoring of AML/CFT will be compliant.
<p>2. Customer identification and due diligence</p> <p>The supervisor/regulator determines that as part of AML/CFT requirements, regulated entities have documented and enforced policies for identification of customers and those acting on their behalf. There should be a minimum set of customer identification information with additional identification requirements commensurate with the assessed risk of ML.</p>	
Description	The common set of customer identification requirements for financial institutions is set out in Article 10 of the AML Law (see Part 1, above). For a detailed description of the implementation of these requirements with respect to banks, please see Table 2.3 below.
Assessment	Largely compliant.
Comments	The absence of a more extensive due diligence requirement for higher-risk customers, especially, politically exposed persons (PEP), their families and associates, is one of the major shortcomings.
<p>3. Monitoring and reporting of suspicious transactions</p> <p>The supervisor/regulator determines that regulated entities have adequate formal procedures to recognize and report suspicious transactions. Regulated entities and competent authorities (e.g., FIUs) should establish and regularly revise systems for detection of unusual or suspicious patterns of activity that provide managers and compliance officers with timely information needed to identify, analyze and effectively monitor customer accounts.</p>	
Description	Financial institutions are subject to the AML monitoring of SICCFIN to which they make their suspicious transaction reports. As part of its monitoring procedures, SICCFIN has started to require that financial institutions have adequate procedures for the detection of suspicious transactions. The increasing number of such reports in the last two years is due, at least in part to the actions undertaken by SICCFIN in this regard (the well publicized successful prosecution of two cases of failure to report on the part of banks may have also contributed to the increase). It may also be noted that the number of cases forwarded to the Principal State Prosecutor has increased dramatically in the last few years. From an average of two files per year transmitted from 1994 to 1999, the number has increased to 12 in 2000 and 21 in 2001.
Assessment	Compliant.
Comments	While the systematic monitoring of financial institutions' ability to detect and report suspicious transactions is relatively recent, SICCFIN's actions in this respect are compliant.
<p>4. Record keeping, compliance, and audit</p> <p>The supervisor/regulator determines that regulated entities have formal record keeping systems for customer due diligence and individual transactions including a defined retention period of five years. Record keeping procedures should be regularly reviewed for compliance with applicable laws, regulations, guidance notes, and the internal policies of the regulated entity.</p>	
Description	SICCFIN requires that financial institutions have adequate record keeping systems for customers and transactions. In this respect, SICCFIN has urged those banks that did not already have fully computerized systems to implement such systems as quickly as possible.
Assessment	Compliant.
Comments	While the systematic monitoring of financial institutions' record keeping systems is relatively recent, SICCFIN's actions in this respect are compliant.

<p>5. Cooperation between supervisors/regulators and competent authorities Competent authorities should be able to exchange information (typically through the FIU) related to suspected or actual offenses.</p>	
Description	<p>International cooperation in AML/CFT matters includes mutual legal assistance in criminal matters and extradition, and exchange of information between FIUs and other competent authorities.</p> <p>Mutual legal assistance is requested through international letter rogatory (ILR), the formal procedure under which governments and their judicial authorities request and furnish assistance in criminal matters, including the taking of evidence, the service of judicial documents, the execution of searches and seizures, the performance of onsite examinations, and the provision of evidence. From 1998 to 2001, the Principal Prosecutor’s office received 211 ILRs on all subject matters, executed 189 of them, was still processing 19 others (in 2002), and denied execution of 3. Of these ILRs, the following number was related to money laundering: 63 received, 55 executed, 8 still being executed, and none denied. Monaco also addresses ILRs to other jurisdictions. During the same period, 189 ILRs were issued by Monaco, 125 were executed, 60 are being processed, and 2 were denied (and Monaco decided to withdraw two). Of these, 32 related to money laundering, of which 11 were executed, 21 are being processed, and none were denied.</p> <p>SICCFIN is a member of the Egmont Group, which indicates that it is considered as meeting the definition of an FIU. SICCFIN exchanges information of a general nature with the other members of the Egmont Group. SICCFIN also cooperates with foreign FIUs, with which some eight information exchange MOUs have been signed and a further four are under discussion.</p> <p>Specific issues with regard to the sharing of information between cross-sector supervisors are discussed in Table 2.3, below.</p>
Assessment	Largely Compliant.
Comments	<p>Compliant with respect to mutual legal assistance and extradition, and with respect to SICCFIN’s cooperation with other FIUs. Largely compliant with respect to cross-border cooperation in the banking sector.</p> <p>Additional, formalized measures for exchange of information with supervisory authorities may be appropriate to enhance the cross-border cooperation in the banking sector.</p>
<p>6. Licensing and authorizations The licensing authority should take the necessary legal or regulatory measures to ensure that only qualified persons control financial institutions. Measures should prevent control or acquisition of a material participation in financial institutions by criminals or their confederates.</p>	
Description	<p>In Monaco, all business activity is subject to authorization by the DEE, whose procedures include a fit-and-proper test for persons applying for such authorizations, and managers of the concerned legal entities. In addition, certain activities, such as banking, are subject to specific authorizations. The administrative decision authorizing the activity (or denying it) must be substantiated with regard to the professional competence and to the financial guarantees and guarantees of good character presented by the applicant. Licensing of banks in Monaco is the responsibility of the French CECEI. French law requires a fit-and-proper test for members of boards of banks and bank managers. With regard to firms of portfolio managers, Monaco law requires that their managers and owners pass a fit-and-proper test, which includes a police check. The same requirement applies to insurance brokers and agents.</p>
Assessment	Compliant.
Comments	

Module 2—AML/CFT sector-specific criteria for the banking sector

Table 2.3. Detailed Assessment of AML/CFT Sector-Specific Criteria for the Banking Sector

<p>1. Organizational and administrative arrangements No applicable banking-specific criteria.</p>	
<p>2. Customer identification and due diligence The supervisor should require that banks (1) conduct more extensive due diligence in the case of high-risk customers; (2) establish a more systematic procedure for the identification of new customers before a banking relationship is established; (3) have appropriate due-diligence practices for introduced business and client accounts opened by professional intermediaries; (4) document and enforce policies regarding the identification of customers and those who act in their behalf; (5) have appropriate identification procedures when entering into activity with non-face-to-face customers; (6) refuse to enter into or continue a correspondent bank relationship with a bank incorporated in a jurisdiction in which it has no physical presence and which is unaffiliated with a regulated financial group; (7) pay particular attention when continuing relationships with respondent banks located in jurisdictions that do not apply sufficient AML/CFT measures; (8) pay particular attention to correspondent banking services; and (9) rules should require that banks include accurate and meaningful originator information on funds transfers and related messages.</p>	
<p>Description</p>	<p>By an agreement between Monaco and France on April 14, 1945, supplemented by exchanges of letters, the Monegasque banking system, which dominates the financial sector, is subject to French banking law and regulation and the supervision by France’s <i>Commission Bancaire</i> (FCB).</p> <p>In 2000, France completed a self-assessment and received an IMF-led assessment of its compliance with the <i>Core Principles for Effective Banking Supervision</i> as developed by the Basel Committee on Banking Supervision. By extension, the conclusions from these assessments are broadly applicable to the supervision of the Monegasque banking system.</p> <p>An area of difference from the French banking system is the supervisory arrangement to deter money laundering. Since 1994, responsibility for this area is vested in the <i>Service d’Information et de Contrôle sur les Circuits Financiers</i> (SICCFIN).</p> <p>This agency was set up by SO 11.246 of April 12, 1994, in order to gather, seek, process, and circulate information on financial operations and circuits used to launder money. The agency also deals with the reports on suspicious transactions (see Part I, Section 1c). In addition to the French account opening procedures, specific “know-your-customer “ rules are defined in Law No. 1.162 (Article 10) as amended by Law No. 1.253 of July 12, 2002 (Article 6).</p> <p>While the FCB (as the bank supervisor) continues to review all the aspects of the banking activities, including the internal controls and policies pertaining to customer identification requirements, SICCFIN assumes full responsibility for the supervision of compliance by the credit institutions with the legal anti-money laundering requirements.</p> <p>In addition to legal and official requirements, the professional associations collaborate with the authorities to reinforce general compliance with the AML prescriptions.</p> <p>SICCFIN has substantially increased the monitoring of AML compliance during the last two years. In June 2000, every bank was requested to update the SICCFIN files with a detailed description of the existing organizational and procedural measures in place in order to prevent money laundering.</p> <p>In a second phase SICCFIN has addressed the compliance of the financial institutions with these rules by issuing two questionnaires (July 19 and December 11, 2001).</p>

	<p>The July 19, 2001 questionnaire addresses the organizational measures taken by each institution in order to prevent money laundering. The first part of the questionnaire deals with the identity and hierarchical position of the SICCFIN correspondents. The second part seeks information on various aspects of the reporting process of suspicious operations.</p> <p>The December 11, 2001 questionnaire follows up on the compliance by the individual institutions with the AML requirements. Banks are asked to describe their due-diligence procedures for opening accounts, the identification of clients, the conservation of information, special transactions, information and training of staff, a permanent monitoring of the adequacy of the AML measures in place, the existence of adequate written rules, the internal communication of these rules, the SICCFIN correspondents, and the reporting process. However, no mention is made of any specific due diligence for higher risk customers; especially, politically exposed persons (PEP).</p> <p>These questionnaires are largely based on the anti-money laundering documents of the FCB.</p> <p>They serve the purpose of alerting banks to all requirements while providing SICCFIN with information on compliance.</p> <p>Furthermore, several documents related to the FATF requirements have been circulated to the financial sector. Certified public accountants have also been encouraged to establish a code of good conduct.</p> <p>In order to achieve greater synergy between them, FCB and SICCFIN have negotiated a cooperation agreement that is to be signed in the near future. The agreement will provide for a procedure regarding exchange of information between the two institutions and training.</p> <p>To cope with this substantial change in workload, SICCFIN's staff resources have been increased from three to eight (soon to be nine) persons and the supervisory approach has been strengthened (increase of onsite examinations). An intensive training program for SICCFIN staff members and exchange programs has been organized with the assistance of foreign FIUs.</p> <p>Furthermore, a third party has been contracted in order to provide for in-depth theoretical and practical training as to compliance of banks with AML requirements. A training manual has since been delivered and three days of theoretical training has been given to two SICCFIN staff. In the first week of May 2002, the contractual third party experts will accompany onsite examinations by SICCFIN staff. An examination manual has also been prepared to assist in this process.</p> <p>Given Monaco's adherence to the UN convention of November 2001 on CFT, the amendment to Law No. 1.162 requires reporting of transactions suspected to be linked with the financing of terrorism. SICCFIN is the administrative authority that ensures compliance with this requirement.</p> <p>It may be noted that most banks operating in Monaco are part of large international financial groups (only two banks belong to medium-seized international groups).</p> <p>Their representatives have pointed out that the Monegasque branches and subsidiaries have in fact to comply with the stricter internal AML requirements of their groups, which are imposed in a uniform way throughout their respective groups. These higher standards generally correspond with the requirements of the most demanding of the countries in which those groups are active ("positive" regulatory arbitrage). Reputation risk is also cited as being the most compelling factor in the proactive approach to AML, which characterizes the major financial players and this would appear to offer positive incentives.</p> <p>The response to the two questionnaires mentioned above have been examined by SICCFIN, and the results are serving as a basis for SICCFIN's supervisory action in individual cases.</p>
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	<p>A sample of individual examination reports and recommendations that have been produced to the mission on an anonymous basis, demonstrate detailed insight and professional thoroughness.</p> <p>In August 2000, the Monegasque Bankers Association (MBA) issued a set of AML recommendations for its members. These recommendations were drawn up in close collaboration with the supervisory authority and the external auditors. They are based on the existing legal requirements and the framework existing in foreign countries (i.e., Belgium, Luxembourg). As a result, the MBA recommendations go beyond the legal requirements on a few points.</p> <p>The recommendations relate to knowing the beneficial owner and highlight rules such as a signed document, economic background checks and regular monitoring of the interested party's situation. Altogether, and that seems to be their main objective, these written recommendations tend to keep the financial institutions heavily focused on the FATF requirements.</p> <p>The MBA, in close collaboration with SICCFIN has also prepared and distributed a CD-ROM for training purposes. Compliance officers are grouped in an association under the MBA to facilitate coordination on exchange of information.</p> <p>Another major development in the supervisory approach of the Monegasque banking system lies in the oversight of their private banking activities. Due to changes in the French institutional environment (oversight of securities activities of the French bank industry being transferred to the security supervisor COB), Monaco modified its own approach in July 2001.</p> <p>This legal reform brings the securities-related activities of the Monegasque banks (asset management, transmission of security orders, and investment advice) under the supervisory authority of the <i>Commission de Contrôle de la Gestion de Portefeuille et des Activités Boursières Assimilées</i> (CCGP). Twenty-eight nonbank portfolio-management companies managing €3 billion, as of end of December 2000, were already submitted to this authority that was created by Law No. 1.194 of July 1997. This compares with 43 banks managing assets totaling €20 billion.</p> <p>At the same time, the supervisory powers of the CCGP were substantially reinforced, especially as to onsite examinations. An examination manual has been elaborated and 25 nonbank asset-management companies have been examined. Ten of them were submitted to a follow-up visit. In 2000, 26 banks were examined and in eight cases a follow-up visit took place.</p> <p>The legislative changes also reduced bank secrecy restrictions in matters of consolidated supervision and allowed for the exchange of information with other supervisors.</p>
Assessment	Largely compliant.
Comments	<p>Absence of a more extensive due diligence requirement for higher-risk customers, especially politically exposed persons (PEP), their families, and associates, is one of the major shortcomings. Banking activity in Monaco has been traditionally focused on private banking and wealth management. These services are extended to a growing number of high net-worth clients, a large proportion of who also has Monaco resident status. The participating specialized banks are members of large international bank groups.</p> <p>Discussions with the authorities and the banking industry have demonstrated that overall bank safety does benefit from this relation because the Monegasque banks have to comply for instance with the more compelling anti-money laundering requirements of their respective international groups.</p> <p>The external auditors of the Monegasque banks and the examiners of the FCB have also access to the results of the periodic internal audits organized by the foreign parent banks. Furthermore, the Monegasque external auditors also convene with the external auditors of the parent banks on the audit program that has to be carried out annually.</p>

	<p>The May 2001 changes that have authorized the FCB to execute onsite examinations on behalf of foreign supervisors have also been put in practice, and in one case the PEP requirements have been addressed.</p> <p>Monaco must be commended for the comprehensive improvements in AML and extensions for CFT that have been realized in the last few years</p> <p>However, given the specific responsibility of the Monegasque authorities for AML/CFT, the supervisory regime in place must be assessed vis-à-vis Basel Core Principle (BCP) 15. This principle requires banking supervisors to determine that banks have adequate policies, practices, and procedures in place, including strict “know-your-customer” rules that promote high ethical standards in the financial sector and prevent the bank being used, intentionally or unintentionally, by criminal elements.</p> <p>The great number of initiatives have been taken by SICCFIN during the two last years clearly demonstrate the firm intention to transform the institution into a supervisory authority for AML and CFT measures and to comply with BCP 15. For example, SO 15.545 allows SICCFIN to share information on financial institutions’ internal AML procedures with foreign supervisors.</p> <p>In this respect, the Monegasque authorities will have to continue the ongoing work. The most important weakness relates to the limited nature of possible information sharing with foreign financial sector supervisors. The signing of the agreement with the FCB will have to fill this important gap.</p> <p>The Monegasque AML measures for the banking sector provide a good and internationally compliant anti-money laundering framework. In other words, Monaco, together with important French participation, has in place a supervisory and regulatory framework adapted to manage most risks confronting the financial sector. Ongoing efforts to keep pace with the new requirements and developments are substantial. The extension of the CCGP supervisory responsibility to asset management operations of banks has been accompanied by the execution of a comprehensive examination program.</p> <p>Reporting of suspicious operations is increasing especially since 2000, when several bank managers were sentenced for failing to declare suspicious operations (1999: 58; 2000: 210 and 2001: 307). SICCFIN transmitted the following number of suspicious declarations (mainly from banks) to the Office of the Prosecutor: 1999: 4; 2000: 12, and 2001: 21. Furthermore, SICCFIN addressed a growing number of inquiries to foreign FIUs: 1999: 40; 2000: 157, and 2001: 249.</p> <p>Following Monaco’s adherence to the UN convention of November 2001 on CFT, the amendment to Law No. 1.162 requires reporting of transactions suspected to be linked with the financing of terrorism.</p> <p>Given the present AML workload and the problems that are inevitably linked with every new supervisory activity, a comprehensive review process of SICCFIN’s ongoing work should be organized in due course, preferably no later than in the second half of 2003. At the same time, stock will also be taken of the adequacy of the CFT measures.</p>
<p>3. Monitoring and reporting of suspicious transactions The supervisor/regulator should require that banks monitor its customers’ accounts on a fully consolidated basis worldwide.</p>	
<p>Description</p>	<p>The Monegasque banks are mostly specialized entities of important international bank groups, and they do not have foreign branches or subsidiaries (only one Monegasque bank has a subsidiary in France). However, clients of a Monegasque bank may detain multiple accounts in the group. In that case, the supervisor of the consolidating parent bank should require aggregated individual accounts and monitoring of significant balances and activities in these accounts.</p>

	<p>In this respect, mention must be made of a number of potential legal impediments to comply with this requirement such as the professional secrecy requirement and privacy protection rules preventing the communication of individual information.</p> <p>However, periodical audits of Monegasque banks by their parent institutions are standard practice, and in this context full access to client accounts is thereby provided for.</p> <p>On a more general level, SO 14.892 of May 2001 has recognized the need for consolidated supervision and monitoring by amending the April 14, 1945 Franco-Monegasque Convention. The SO confirms the exchange of letters, dated April 6, 2001, between the two countries agreeing that Monegasque banks are authorized to transmit to their parent institutions all information required by the foreign supervisor for consolidated supervision.</p> <p>SO 14.892 also provides for the FCB to execute onsite examinations in Monegasque banks on behalf of foreign supervisory authorities. These examinations shall address all information related to the prudential standards of the foreign supervisory authority; in particular, on capital adequacy, liquidity, solvency, deposit guaranty, large exposures, and the administrative and accountancy organization. Information provided by the authorities also indicates that this SO allows the supervisor of a parent bank to acquire information on the individual accounts of a client if the client has multiple accounts in the bank group.</p>
Assessment	Compliant.
Comments	The Monegasque banks are part of international banking groups and are subject to regular audit procedures from their parent institutions.
<p>4. Record keeping, compliance and audit</p> <p>The supervisor/regulator should require that banking groups apply Know Your Customer standards on a global basis, including requirements for documentation, and compliance testing by the parent.</p>	
Description	The banks present in Monaco are mostly specialized institutions of international banking groups that have to comply with the standards and requirements of each and every country in which they exercise financial activities. Monegasque banks, as such, are not to be considered as the parent of a group.
Assessment	Not applicable.
Comments	
<p>5. Cooperation between supervisors and competent authorities</p> <p>The host jurisdiction supervisor/regulator should ensure that home jurisdiction supervisors have no impediments in accessing information, including from onsite examinations, needed to verify foreign operations' compliance with Know Your Customer policies and procedures of the home jurisdiction.</p>	
Description	<p>As noted above, SO 14.892 of May 2000 provides for the general possibility that the FCB execute onsite examinations in Monegasque banks on behalf of foreign supervisory authorities. These examinations can address all information related to the prudential standards of the foreign supervisory authority, in particular on capital adequacy, liquidity, solvency, deposit guaranty, large exposures, and the administrative and accountancy organization.</p> <p>Law No. 1.241 of July 3, 2001, confers supervisory responsibility for asset management that banks perform on behalf of their clients (private banking activities) to the CCGP. In order to allow for full international cooperation in this domain, three new offences were introduced in Monegasque criminal law (insider trading, communication of privileged information and deliberately providing false information).</p> <p>These changes paved the way for the procedure of international cooperation described in Article 17 of the amended Law No. 1.194. In order to facilitate consolidated supervision of the parent companies of the Monegasque asset management companies, the CCGP is allowed to inform foreign supervisory authorities and to make the necessary enquiry provided a formal information sharing arrangement is in place.</p> <p>However, it has been noted that Article 17 does not address the information or enquiry needs that could be raised as to banks.</p>

	<p>Foreign security authorities may also request the CCGP to exercise its supervisory duties provided an agreement on cooperation and exchange of information between the Monegasque authority and the foreign authority is in place.</p> <p>A formal memorandum of understanding was signed with the COB in March 2002, under which the supervisory commissions can share any information obtained from regulated entities provided it will be used for specified regulatory purposes. Confidentiality of the information is protected under the MOU.</p> <p>As to Law No. 1.162 of July 7, 1993, introducing an offence of money laundering in the criminal code, Article 31 gives the Minister of State the right to provide foreign authorities with information related to transactions that appear to have a link with drug trafficking or organized criminal activity. This information sharing is subject to reciprocity and the absence of criminal proceeding in the Principality on the basis of the same facts. The amendments to this Law, that have been prepared recently, provide for the inclusion of criminal activities of an organized nature that are linked to terrorist acts or terrorist organizations or financed by them.</p> <p>SO No. 15.454 of August 8, 2002, permits SICCFIN to share information on internal procedures to counter money laundering subject to reciprocity and professional secrecy obligations of the receiving authority.</p>
Assessment	Compliant.
Comments	<p>The general system that has been put in place has been assessed against Basel Core Principle 1.6. This principle requires that arrangements for sharing information between supervisors and protecting the confidentiality of such information be in place.</p> <p>Efforts should be undertaken in the future to entrust the CCGP with the necessary powers to inform the FCB and other banking supervisors.</p>
<p>6. Licensing and authorizations No applicable banking sector-specific criteria.</p>	

Module 4—AML/CFT Sector-specific Criteria for the Securities Sector

Table 2.4. Detailed Assessment of AML/CFT Sector-Specific Criteria for Securities Regulation

1. Organizational and administrative arrangements	
No applicable sector-specific criteria	
2. Customer identification and due diligence	
No applicable sector-specific criteria	
3. Monitoring and reporting of suspicious activities	
No applicable sector-specific criteria	
4. Record keeping, compliance and audit	
The competent authority should require that market intermediaries (i) comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and which management of the intermediary accepts primary responsibility for these matters, and (ii) maintain records necessary as confirmation that regulatory rules and procedures have been complied with; (iii) maintain records of all CIS transactions.	
Description	<p>Portfolio management firms: Firms are required to keep books and records as part of internal control procedures and are required to fully document all transactions. There is a general requirement, which applies to portfolio management firms, for Monegasque companies to keep all books and records for a period of ten years. The most important internal control function is carried out by the depository bank that holds client accounts. This custodian must operate separately from the portfolio management operations. A written agreement between the client and the portfolio management sets the terms under which the portfolio manager can cause cash or securities to be transferred in or out of the account. The depository supplies the client and the portfolio management firm with statements. The depository has a duty to report any noncompliance to the supervisory commission. The controls undertaken by the depository are reviewed by the commission inspection as well as by the external auditor. Each firm must have an independent internal control or compliance function (although this function can be outsourced or located in the parent company of the institution).</p> <p>Mutual funds: Rules governing the mutual fund must include a stated investment strategy, asset allocation plan, risk management details, net asset value calculation, commission and fee structure, and details of fund governance. Mutual fund operators must show they have competence and expertise sufficient to operate a fund. Senior management of the mutual fund bears direct responsibility for compliance with the law and form maintenance of internal controls. The mutual fund must show it has adequate systems in place, including technology and internal controls. Mutual funds are required to maintain full records of transactions including client account statements, recording of investments, redemptions, and distributions of income. Custodians are required to perform internal control reviews of the fund, including a review of compliance with investment strategy, asset allocation and risk ration rules, proper net asset valuation calculation, and a reconciliation of subscriptions, redemptions, and distributions.</p>
Assessment	Compliant.
Comments	
5. Cooperation with regulators and competent authorities	
Information sharing and assistance arrangements, whether formal or informal, should consider (i) assistance in obtaining public or non-public information, for example, about a license holder, listed company, shareholder, beneficial owner or a person exercising control over a license holder or company; (ii) assistance in obtaining banking, brokerage or other records; (iii) assistance in obtaining voluntary cooperation from those who may have information about the subject of an inquiry; (iv) assistance in obtaining information under compulsion; and (v) assistance in providing information on the regulatory process in a jurisdiction, or in obtaining court orders.	

Description	<p>The July 2001 amendments to the investment firm legislation allow the supervisory commissions to share information with foreign supervisors provided a formal information sharing arrangement is in place. A formal memorandum of understanding was signed with the COB in March 2002 under which the supervisory commissions can share any information obtained from regulated entities provided it will be used for specified regulatory purposes. Confidentiality of the information is protected under the MOU.</p> <p>There are no formal arrangements in place with other supervisors; however, Monaco has begun negotiations with the Italian securities regulator, CONSOB, and the Luxembourg regulator, CSSF.</p>
Assessment	Largely compliant
Comments	The 2001 amendments to the law have improved information sharing with foreign regulators a great deal. The Monegasque authorities are encouraged to continue to enter into information sharing arrangements. The recent changes, which allow such information sharing, are a very important step in establishing international cooperation.
<p>6. Licensing and authorizations Regulation should provide for minimum entry and eligibility standards for operators of collective investment schemes and market intermediaries.</p>	
Description	<p>Market intermediaries: Companies are prohibited from carrying out any activity that is not otherwise permitted under the terms of their registration in Monaco. Monaco law contemplates only one kind of intermediary—a portfolio management firm which must be organized as a registered company in Monaco. The portfolio management law permits only three activities for licensed portfolio management firms: portfolio management of discretionary accounts, provision of advisory services for non-discretionally accounts, and transmission of orders to facilitate trading by the accountholders. Portfolio management firms are required to apply for a license, and the requirements are clearly set out in the law. The firm must satisfy the government that it has adequate resources and competence to carry out a portfolio management business, must show it has internal control and other systems in place, management and owners of the firm are subject to fit-and-proper assessments (including a police check). The firm must set out relationships with custodian banks, subdelegate portfolio managers, and trade execution firms and must supply a model client account contract. Any material changes to these items must be submitted for reapproval.</p> <p>Branch offices of foreign companies are also required to seek a license before opening for business in Monaco. These offices must be branches of a foreign company that is subject to adequate regulation at home. Branches are exempt from capital requirements but must comply with all other licensing requirements.</p> <p>Mutual funds: All mutual funds require a license under Monegasque law—mutual fund legislation contains detailed requirements for mutual fund companies. An initial application must be accompanied by the rules of the fund, which include the investment strategy asset allocation plan, risk management details, net asset value calculation, commission and fee structure, and fund governance. Background checks, including a fit-and-proper test, are carried out for the owners and senior officers and directors of the mutual fund company.</p>
Assessment	Compliant.
Comments	

Part 3. AML/CFT Elements for Other Service Providers

Table 2.5. Detailed Assessment of AML/CFT Elements for Other Service Providers—
Company and Trust Service Providers

1. Organizational and administrative arrangements	
The competent authority should provide for the prevention and detection of ML and other criminal activity, as well as for appropriate reporting of suspected money-laundering activities. Legal obligations could include a training requirement depending on nature of specific activity.	
Description	<p>Legal Authority:</p> <ul style="list-style-type: none"> • Sovereign Order 11.986 regarding the establishment of an Economic Expansion Directorate and outline of responsibilities; • Sovereign Order of March 5, 1895 regarding <i>Societe Anonyme Monegasque</i> (S.A.M.) and <i>Societe en Commandite par Actions</i> (S.C.A.); • Law No. 214 February 27, 1936 regarding constitution and regulation of trusts modified by Law No. 1,216 July 7, 1999; • Ordinance No. 14.346 of March 2000; • Law No. 1.144 of July 26, 1991 relating to the exercise of certain economic and legal activities; • Law No. 1.162 of July 7, 1993, as amended, relating to the participation of financial undertakings in countering money laundering and the financing of terrorism; • Sovereign Order No. 14.446 of April 22, 2000 implementing Law No. 1.162; • Recommendations Concerning the Management and Administration of Foreign Entities (Code of Conduct). <p>The Minister of State is the competent authority for the regulation and supervision of the Monegasque financial services sector. Operational responsibility resides with the government Counselor for Finance and the Economy (equivalent to Minister of Finance and Economy). This responsibility extends to the regulation and supervision of company service providers (CSP). The General Administration Division of the <i>Direction de l'Expansion Economique</i> (DEE) carries out actual oversight. A staff of ten comprised of two line supervisors and eight support staff are fully engaged in regulatory activities. Three staff have been given enhanced training to ensure effective implementation of the new onsite review program.</p> <p>The July 2002 amendment to Law No. 1.162 has brought supervision of the 40 licensed CSPs under the same regulatory requirements as banks. In addition, the DEE will launch an onsite review program for CSPs commencing September 1, 2002.</p> <p>The DEE requires that all CSPs have a designated compliance officer. AML training is made available to all CSPs by SICCFIN by way of a video program prepared by the Bankers Association. Deloitte and Touche is currently training DEE staff who will conduct the compliance reviews of CSPs in September. Additionally, a large number of CSPs are branches, subsidiaries, or affiliates of larger international financial organizations and benefit from the controlling or parent entities AML/CFT policies, procedures, and compliance training.</p>
Assessment	Compliant
Comments	

<p>2. Customer identification and due diligence The competent authority should require that the legal provisions for customer due diligence are in place and observed commensurate with the assessed risk of ML or FT posed by the financial service activity. There should be a minimum set of customer identification information with additional identification requirements commensurate with the assessed risk of ML.</p>	
Description	<p>Law No. 1.162, Article 10 addresses AML responsibilities and requires all Monegasque financial undertakings to verify customer identity on the basis of official identity documents. The July 2002 amendment to Law No. 1.162 has extended these requirements to Company Service Providers (CSP).</p> <p>In August 2001, the Monegasque <i>Department des Finances et de l'Economie</i> produced a paper on Recommendations Concerning the Management and Administration of Foreign Entities (Code of Conduct). This document addresses internal control requirements for the CSPs and extends expanded KYC and AML requirements to foreign companies and trusts administered by the CSP. The DEE met with all licensed CSPs between November 2001 and February 2002 to ensure timely implementation and compliance. All CSPs were required to provide written acknowledgement of receipt and commitment to adhere to all elements of the Code of Conduct. In addition to enhancing regulator knowledge of this industry, the Code of Conduct will permit regulators to ensure compliance with the FATF 40. The written acknowledgement was also an agreement to be in compliance by September 1, 2002.</p> <p>Following the events of September 11 2001, the Department of Finance and Economic Affairs contacted all CSPs to require that they check client names and activities against lists provided by the Security Council of the United Nations. Results of this investigation were negative. The July 2002 amendment to Law No. 1.162 extends it to anti-terrorism measures.</p> <p>Bearer shares are legally addressed by Article 42 of the commercial code and Article 8 of Sovereign Order 1895. The September 25, 1945 act requires that all bearer shares of Monegasque companies be deposited with a bank in Monaco. In practice, bearer shares have not been issued for ten years. An amendment to the commercial code prohibiting the use of bearer shares has been prepared and will shortly be submitted to Parliament for approval.</p>
Assessment	Largely compliant.
Comments	<p>The Code of Conduct addresses FATF requirements for customer identification and due diligence. Monegasque authorities have taken concrete measures to ensure that CSPs comply with the Code of Conduct. On September 1, 2002, onsite visits by the regulator will have provided for the establishment of the mechanism for assurance that the CSPs are in compliance.</p> <p>At this time, the Monegasque authorities are well along the way towards full compliance. It is recommended that performance deadlines for both the CSPs and regulators be strictly adhered to ensure compliance at the earliest possible date. (Information provided by the authorities indicates that SICCFIN started its supervisory program in November 2002, and two entities had been visited by end-2002. DEE also began onsite examinations in October.)</p>
<p>3. Monitoring and reporting of suspicious transactions The competent authority should determine that financial service providers have procedures to recognize and report suspicious transactions.</p>	
Description	<p>Under Law No. 1.162 and Sovereign Order 11.160, CSPs are obligated to report all suspect transactions involving monies derived from drug trafficking or from organized crime. The Code of Conduct provides additional guidelines and rules regarding third party dealings. A training video prepared by the Monegasque Bankers Association is also made available to CSP Compliance Officers to assist them in developing the level of understanding of applicable policies and procedures essential for proper AML implementation.</p>

	The DEE has power under Law No. 1.144 of 1991 to conduct onsite reviews and, as a matter of practice, review suspicious reporting procedures and adherence to them by CSPs. As of September 1, 2002, the extensive onsite reviews, when implemented, will become an important part of the DEE's prevention protocols for money laundering and terrorist activities.
Assessment	Compliant
Comments	Of the 40 licensed CSPs 25 are S.A.M. for which the appointment of two statutory auditors is required. The auditors audit for suspicious transaction reporting requirement violations that are promptly reported to the DEE. Although the DEE has the authority to conduct onsite examinations, not all CSPs have been inspected. The September 1, 2002 implementation of onsite visits to confirm enforcement of the Code of Conduct will close this gap.
4. Record keeping	
The competent authority should determine that financial service providers maintain records regarding customer identification and individual transactions for a period of five years.	
Description	<p>Law No. 1.162 requires financial undertakings e.g., banks to retain all KYC documentation collected on their regular and occasional customers for a period of five years after account closing or cessation of relations with them. In addition, they must retain all documents evidencing undertakings for all customers for a period of five years. The July 2002 amendment to Law No. 1.162 has extended these requirements to CSPs.</p> <p>Sovereign Order No. 11.160 requires financial undertakings to document in writing measures undertaken to provide for safekeeping of information and documents relating to transactions as defined in Articles 3.5 and 13 of Law No. 1.162.</p> <p>Additionally, a large number of licensed CSP are branches, independent members of global correspondent firms, or affiliates of international financial service providers. These CSPs are required to comply with internal record retention protocols that generally reflect the maximum level of requirement within the group.</p>
Assessment	Compliant
Comments	The DEE, as a result of its ability to conduct onsite inspections, routinely enforces record keeping requirements.
5. Cooperation among competent authorities	
Competent authorities should be able to exchange information (typically through the FIU) related to suspected or actual criminal activities.	
Description	<p>Suspicious transaction reports initiated by CSPs are currently forwarded directly to SICCFIN. This requirement has not been altered as a result of the August 2001 DEE Code of Conduct for financial service providers nor the amendment to Law No. 1.162 which brought CSPs under the same regulatory requirements for banks. The DEE and SICCFIN will continue to have oversight responsibilities for CSPs.</p> <p>The DEE will ensure compliance with Laws No. 1.144 and No. 767. It will also continue as the principal supervisor with primary responsibility for confirming that appropriate policies and procedures are in place. DEE will implement this new authority by way of onsite examination of all CSPs. It has increased staff by two and is providing appropriate training to three supervisors who will conduct these examinations.</p> <p>SICCFIN retains its key AML role and responsibility for implementing Law No. 1.162. It is also conducting onsite examinations with a focus on implementation of KYC, record keeping and retention requirements, internal guidance notes, and staff training in AML measures. Under the new procedures, both DEE and SICCFIN will have onsite examination authority. Each will produce independent reports of their findings that will be submitted to the Government Counselor for Finance and the Economy.</p>
Assessment	Compliant.

Comments	<p>The enhanced supervision of CSPs that is provided for under the Code of Conduct and the amendment to Law No. 1.162 are important and welcomed steps. They give supervisors direct access to additional and potentially important information.</p> <p>It was recommended that consideration be given to establishing gateways and methods for cooperation and exchange of information between DEE and SICCFIN. The creation by SO 15.530 of September 2002 of a Coordination Committee for organizing information exchange among supervisory authorities provides a formal gateway for the cooperation.</p>
<p>6. Licensing and authorizations</p> <p>The competent authorities that authorize the provision of financial services should take the necessary legal or regulatory measures to ensure that delivery of financial services are by properly qualified persons. Measures should prevent control or acquisition of a material participation in financial service provider by criminals or their confederates.</p>	
Description	<p>Legal Authority:</p> <ul style="list-style-type: none"> • Law No. 1.144 of July 26, 1991, relating to the exercise of certain economic and legal activities; • Law No. 1.162 of July 7, 1993, relating to the participation of financial undertakings in countering money laundering; • Sovereign Order No. 14.446 of April 22, 2000, implementing Law No. 1.162 of July 7, 1993, relating to the participation of financial undertakings in countering money laundering; • Law No. 408 of January 20, 1945, supplementing the Order of March 5, 1895, relating to S.A.M. and S.C.A.; especially, as regards the appointment, duties and responsibilities of auditors; • Law No. 767 July 8, 1964, relates to the revocation of S.A.M. authorization; • Recommendations Concerning the Management and Administration of Foreign Entities (Code of Conduct). The Code of Conduct is implemented and is fully in force; • Commercial Code. <p>The Minister of State is the competent authority for the regulation and supervision of the Monegasque financial services sector. Operationally, responsibility for supervision and regulation resides with the Government Counselor for Finance and Economy. This responsibility extends to the regulation and supervision of Company Service Providers (CSP); the <i>Direction de l'Expansion Economique</i> (DEE) is the responsible licensing body. Within DEE, implementation of the supervisory regime is the responsibility of the General Administration Division.</p> <p>Monegasque regulators acknowledge their need to develop timely information regarding the scope and activities of the 40 licensed CSPs and the foreign companies and trusts they manage. Regulators have proactively moved to remedy this gap. A working group comprised of Monegasque regulator/supervisors and members of the financial service industry has produced written guidelines for the conduct of onsite review of all 40 CSPs. This review will commence September 1, 2002, and upon completion will be periodically repeated.</p> <p>All 40 CSPs were required to acknowledge receipt of and have executed a written commitment to accept, apply, and enforce the Code of Conduct. The Code of Conduct was implemented as of February 2002. In July 2002, CSPs were brought under the same regulatory/supervisory requirements as banks by amendment to Law No. 1.162.</p>

The DEE attaches considerable importance to prevention. Monaco has a comprehensive licensing process that permits it to develop a high level of relevant information on all proposed investors and key management staff.

Monaco has 3,893 licensed legal structures including individuals, partnerships, and corporate forms. Of this total, 40 are licensed as company service providers. Authorized services include company and trust service administration. Trusts are formed in common law jurisdictions and may be administered by the CSP in Monaco.

Monegasque regulators currently estimate that as of April 30, 2002, approximately 3,950 offshore companies and 725 trusts are under CSP management. In global terms, the number of offshore companies and trusts is small.

Monaco licenses four organizational forms for CSPs:

Organizational Forms for CSPs	Number as of April 30, 2002
Individual Business	5
General Partnerships (S.N.C.)	8
Limited Partnerships (S.C.S.)	2
Monegasque Limited Company (S.A.M.)	25
Total	40

Source: Monegasque authorities.

Law No.°1.144 establishes general conditions for Individual Businesses, General Partnerships (S.N.C.), and Limited Partnerships (S.C.S).

Individual Business

Legal authority: Commercial Code Subject to prior approval, any individual may undertake commercial or industrial professional activity in his name or on an independent basis. Approval is for a period of two years renewable. The person is responsible for his/her own movable property and real estate.

General Partnerships (S.N.C.)

Legal authority: Section IV, Article 27 and following of the Commercial Code.

Two individuals are required to establish an S.N.C. as general partners. The general partners are jointly responsible for all business commitments. Prior approval is required and the approval period is two years renewable.

Limited Partnership (S.C.S)

Legal authority: Section IV, Article 30 and following.

One or more jointly responsible partners, who are responsible for their own movable property and real estate, and one or more investors may form a S.C.S. The silent partner(s) are liable for company losses up to the amount invested in the company. A silent partner may not engage in management activity. Prior approval of both categories of partners is required.

	<p><i>Monegasque Limited Company (S.A.M.)</i></p> <p>Legal authority: Sovereign Order of March 5, 1895, the Law-Decree No. 152 of February 13, 1931, and Laws No. 408 and No. 767, in addition to the Commercial Code. Prior approval from government is required before permitted activity commences.</p> <p>The general licensing process for all CSPs is comprehensive. Applicants are subject to:</p> <ul style="list-style-type: none"> • a detailed client identification protocol; • a requirement to identify source of funds to minimize the possibility of employing the proceeds of crime; and • a police background check to assure that known criminals are not licensed; • special terms upon approval that are fixed and cannot be changed unilaterally. All changes in terms approved require special approval of the Minister of State. <p>Licenses for all entities, with the exception of the S.A.M., are approved for a period of two years with the full application process required for re-approval. The approval is nontransferable and contains a comprehensive list of authorized terms and conditions that may not be modified without prior approval.</p> <p>Entities applying for licensing as a S.A.M. must meet the following:</p> <ul style="list-style-type: none"> • Required to have the services of a notary; • the minimum capital requirement is €150,000 and must be held in the form of shares; • the minimum number of partners is two. Partners are prohibited from serving on more than eight boards of directors of commercial companies registered in Monaco; • every S.A.M. must appoint two statutory auditors; • an annual statement and statutory audit report is required; • the auditor is required to file a report if he discovers anything not in accord with the authorization. A consequence of an auditor's adverse filing could result in the referral of the matter by DEE to standing Monegasque commission for evaluation and possible withdrawal of license; • Law No. 408 requires that accounts be submitted in nine months from first year. The DEE can nominate a certified accountant expert to inspect if accounts are not submitted as required; • a five-test evaluation for withdrawal of license is provided for in Law No. 767 and a violation of any one can result in withdrawal of license: turnover insignificant over a period of two years; facilities consistent with that required for authorized activity; deviation from authorized activity; operation of another company without authorization; and bankruptcy. <p>A special category of trusts is permitted under Law No. 214. Trusts formed under 214 are unique to Monaco with in excess of 95 percent being testamentary trusts. The trust is essentially a will substitute and comes into force only upon death of the person forming the trust. The essential purpose of Law No. 214 trusts is to permit persons from any local jurisdictions, who are resident in Monaco, to retain common law as the governing law for their wills thus avoiding the forced heirship requirement under local Civil Code.</p>
Assessment	Compliant.
Comments	Measures to ensure that only qualified persons of good character and without criminal record or adverse regulatory judgments receive approval to operate as a CSP are in place and effectively implemented.

Table 2.6. Detailed Assessment of AML/CFT Elements for Other Service Providers—
Gaming Establishments

<p>1. Organizational and administrative arrangements</p> <p>The competent authority should provide for the prevention and detection of ML and other criminal activity, as well as for appropriate reporting of suspected money-laundering activities. Legal obligations could include a training requirement depending on nature of specific activity.</p>	
Description	<p>Casino operations are regulated by Monaco Law No. 1.103 of June 12, 1987, on gaming and the SO of July 15, 1987 (as modified), which, among other things, sets out a list of authorized games and the modalities of control of games. The Department of Finance is charged with the administration of the Law and does so through two commissions: the <i>Commission des Jeux</i>, charged with advising the government on all matters related to gaming establishments and the application of games regulations, and the <i>Service de Contrôle des Jeux</i>, which is charged with ensuring that the law of July 15, 1987, is applied.</p> <p>The operation of gaming establishments is a monopoly granted by the government to the <i>Société des Bains de Mer</i> (SBM), a Monegasque <i>société anonyme</i>, under a concession first issued in 1863 for 50 years, and renewed in 1987 for 20 years. A further renewal is under discussion. The State owns about 70 percent of the shares of the SBM, the balance being held by private shareholders. The shares are listed on the Paris Stock Exchange. The SBM operates four casinos in Monaco (three of which are active year-round, and one is active only in the summer season), as well as hotels and restaurants.</p> <p>All staff working in gaming establishments are subject to special administrative authorization.</p> <p>The AML Law requires gaming establishments to report suspicious transactions to SICCFIN on the same basis as financial institutions and charges SICCFIN with monitoring casinos' compliance to the AML Law. In addition, gains from games can only be paid in the same manner as the player provided the funds, that is, a player paying in cash will only receive cash if he wins, thus, ensuring that gaming does not result in additional "layering" of funds.</p> <p>The legal framework under which gaming establishments operate in Monaco appears to provide an adequate basis for the prevention and detection of money laundering activities in this sector.</p>
Assessment	Compliant.
Comments	Two features of the gaming industry in Monaco may be noted in the context of AML. First, the monopoly given to the SBM, a company majority-owned by the government whose shares are publicly traded protects the sector from the taking over of control of gaming establishments on the part of criminal organizations, which is the most obvious way in which such organizations can use gaming establishments to launder funds. Second, the fact that the clientele of the Monaco table games is made up of a relatively small number of wealthy individuals facilitates the identification of customers and the verification of their background.
<p>2. Customer identification and due diligence</p> <p>The competent authority should require that the legal provisions for customer due diligence are in place and observed commensurate with the assessed risk of ML or FT posed by the financial service activity. There should be a minimum set of customer identification information with additional identification requirements commensurate with the assessed risk of ML.</p>	
Description	<p>Under Article 10 of Law No. 1.103, undesirable individuals may be denied access to gaming establishments. Identity checks are performed systematically in the establishments offering table games, and with respect to important players in establishments offering automatic machines. Thorough background checks are performed on customers playing for large amounts. Under the July 2002 amendment to the AML Law, gaming establishments are required to ascertain the identity of all their clients who buy or exchange chips equal to or higher than an amount set by Sovereign Ordinance. This amendment in effect codifies current practice. Customer identification practices appear adequate to protect the gaming establishments against ML.</p>

Assessment	Compliant.
Comments	
3. Monitoring and reporting of suspicious transactions	
The competent authority should determine that financial service providers have procedures to recognize and report suspicious transactions.	
Description	<p>Gaming establishments are required to report suspicious transactions to SICCFIN and notify SICCFIN of the identity of the managers or staff authorized to make suspicious transaction declarations (Articles 25 and 19, paragraph 4 of the AML Law). Gaming establishments are also subject to paragraphs 6, 7, and 8 of Article 19 of the AML Law, under which: (i) the notification of suspicious transaction must be in writing; (ii) the reporting obligation extends to facts that become known after a declaration was made which is susceptible of modifying the contents of the notification; and (iii) declarations made in good faith are not barred by laws on professional secrecy, and persons who make them are immune from civil suits or professional sanction in relation with such notification.</p> <p>Under the July 2002 amendments to the AML Law, the definition of the transactions to be reported were brought in line with that which applies to financial intermediaries, and it includes transactions suspected of being related to the financing of terrorism.</p>
Assessment	Compliant.
Comments	
4. Record keeping	
The competent authority should determine that financial service providers maintain records regarding customer identification and individual transactions for a period of five years.	
Description	Gaming establishments established a register of their clients in 1997, and keep client records indefinitely. Under the July 2002 amendments to the AML Law, they are required to keep copies of the documents on which customer identification was based and those related to the purchase and exchange of chips for a period of five years.
Assessment	Compliant.
Comments	
5. Cooperation among competent authorities	
Competent authorities should be able to exchange information (typically through the FIU) related to suspected or actual criminal activities.	
Description	<p>Suspicious transaction reports filed to SICCFIN are treated as all such reports. If warranted, they may be transmitted to the State Prosecutor with a view to the initiation of legal proceedings, and to foreign FIU.</p> <p>The <i>Service de Contrôle des Jeux</i> cooperates with other similar entities through exchanges of information and visits.</p>
Assessment	Compliant.
Comments	
6. Licensing and authorizations	
The competent authorities who authorize provision of financial services should take necessary legal or regulatory measures to ensure delivery of financial services are by properly qualified persons. Measures should prevent control or acquisition of material participation in financial service provider by criminals or their confederates.	
Description	Legal authority to operate gaming establishments is controlled under the Criminal Code and Law No. 1.103, and is subject to agreement by way of SO. Only one such authorization has been granted, by way of concession, to the SBM.
Assessment	Compliant.
Comments	

Table 2.7. Summary of Compliance

Legal and Institutional Framework Requirements	Legal					
	Customer due diligence	1a	Compliant			
Record keeping	1b	Compliant				
Suspicious transactions reporting	1c	Compliant				
AML/CFT internal controls	1d	Compliant				
Sanctions	1e	Compliant				
Integrity standards	2	Compliant				
Criminalization of money laundering and terrorism financing	3	Largely compliant				
Confiscation of proceeds of crime or assets used to finance terrorism	4	Largely compliant				
Process for receiving, analyzing, and disseminating disclosures of financial information and intelligence	5	Compliant				
International cooperation in AML/CFT matters	6	Largely compliant				
Prudentially-regulated sectors and other providers requirements	Core Criteria	Banking	Insurance	Securities	CSPs	Games
Organizational and administrative arrangements	Largely compliant	n.a.	not assessed	n.a.	Compliant	Compliant
Customer identification and due diligence	Largely compliant	Largely compliant	not assessed	n.a.	Largely Compliant	Compliant
Monitoring and reporting of suspicious activities	Compliant	Compliant	not assessed	n.a.	Compliant	Compliant
Record keeping, compliance and audit	Compliant	n.a.	not assessed	Compliant	Compliant	Compliant
Cooperation with regulators and competent authorities	Largely compliant	Compliant	not assessed	Largely compliant	Compliant	Compliant
Licensing and authorizations	Compliant	n.a.	not assessed	Compliant	Compliant	Compliant

n.a. = not applicable

1/ This table provides compliance ratings in terms of the sections of the April 2002 assessment methodology rather than the AML/CFT standard, FATF's Forty Recommendations and the Eight Special Recommendations on Terrorist Financing.

E. Recommended Action Plan

15. The following actions are recommended to improve the legal and institutional framework and to strengthen the implementation of AML/CFT measures in the areas of banking, insurance and securities.

Table 2.8. Recommended Action Plan

AML/CFT Requirements	Recommended Action
Part 1: AML/CFT in the legal and institutional framework	
Suggested actions for the legal and institutional arrangements	
Criminalization of money laundering and terrorism financing	Add the financing of terrorism offenses as ML predicate offenses, review the list of predicate offenses to ensure that all serious offenses are included.
Confiscation of proceeds of crime or assets	Add confiscation of instrumentalities of crime and assets of equivalent value.
Part 2: AML/CFT in the prudentially-regulated sectors	
Suggested actions for AML/CFT core criteria	
Organizational and administrative arrangements	Conclude an agreement between SICCFIN and the FCB on cooperation.
Suggested actions for AML/CFT measures in the banking sector	
Customer identification and due diligence	Add a requirement to give special attention to high-risk customers, such as politically protected persons.
Monitoring and reporting suspicious transactions	Professional secrecy requirements and privacy protection rules require agreements to overcome potential legal limitation.
Record keeping, compliance and audit	
Cooperation between supervisors/regulators and competent authorities	Authorize the CCGP to provide information to the FCB and other foreign banking supervisors.
Suggested actions for AML/CFT measures in capital markets regulation	
Cooperation with regulators and competent authorities	The Monegasque authorities are encouraged to continue to enter into information sharing arrangements.

Authorities' response to the assessment

16. With regard to customer identification and due diligence, it should be noted that the Swiss supervisor recently asked all Swiss banks present in the center to carry out a thorough review of the application of Swiss standards concerning PEP (politically exposed persons). During 2001 and 2002, 11 Swiss subsidiaries/branches in Monaco were inspected by their group external auditors. The reports were made available to the local supervisor and resulted in the confirmation of the effectiveness of the procedures used.

17. With regard to SICCFIN information sharing with foreign financial supervisors, the authorities commented that, since 1992 Law 1.162, art.31 provides that: *“Subject to reciprocity, and provided that no criminal proceedings have already been instituted in the Principality on the basis of the same facts, the Minister of State (in practice SICCFIN) may provide foreign competent authorities with information relating to transactions that appear*

to have a link with drug trafficking or organized criminal activity, with terrorism, terrorist acts or terrorist organizations, or with the financing thereof". As mentioned in the report, SICCFIN, the Monegasque financial intelligence unit (FIU) also has an active supervisory role that goes beyond the core functions of an FIU. It supervises the anti-money laundering procedures of all financial institutions. Hence, it was deemed necessary to allow SICCFIN to cooperate in that field with foreign bank supervisors. Indeed, in many countries, including France, these supervisors, and not the FIU, are in charge of monitoring the AML procedures put in place by financial institutions. SO 15.454, Art. 1, broadens SICCFIN's ability to communicate information to foreign supervisors. By addressing a former major weakness in SICCFIN's role this amendment is making SICCFIN compliant with BCP 15. As a result, SICCFIN can now cooperate with other FIUs or financial supervisors in all the fields in its scope of competence. This comment also applies to paragraph 53 of volume 1 (p. 29) and to Section 5 of Table 2.2. With regard to Section 2 of Table 2.3, it is noted that "if the signing of an agreement with the FCB is still important to ensure cooperation and information sharing between SICCFIN and FCB, the new legislation makes this agreement unnecessary on the point of the information sharing with foreign supervisors—(re eighth paragraph of the 'Comment' area).

18. With regard to Table 2.1 on Legal and Institutional AML/CFT elements, Section 6 on International Cooperation in AML/CFT Matters, the authorities stressed that the report could make a clearer distinction between the two separate possible channels—one being the judicial authorities, the other the administrative authority, namely SICCFIN. Extradition is also possible on the basis of multilateral conventions such as the UN or EU conventions regarding narcotics. Finally, the comments made on Section 6 only address administrative exchange of information. Professional and banking secrecy cannot, and never could be, opposed to the judicial authorities. Further, the judicial authorities have demonstrated through statistics that their cooperation with their foreign counterparts is very efficient and that the requests are processed rapidly.

19. With regard to Table 2.3 on the banking sector, Section 5 on cooperation, the authorities noted that cooperation between banking supervisors is provided for through SO 14.892 implementing the exchange of letters of April 2001. It was not found necessary to entrust the CCGP with the powers to inform foreign banking supervisors, the useful information concerning prudential purpose for banks being collected directly by the FCB. In addition, the AML/CFT supervisor, SICCFIN, has been empowered by SO 15.454 to exchange information with foreign supervisors.

IV. IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION

A. General

20. A detailed assessment of the IOSCO Principles was carried out as part of the IMF OFC mission, April 22–May 3, 2002. The assessment was completed by Jennifer Elliott.

B. Information and Methodology Used in the Assessment

21. The assessment was based on the authorities' response to the OFC questionnaire, interviews with staff at the Department of Finance and Economics, and the two supervisory Commissions, interviews with portfolio management firms, collective investment schemes, external auditors, and a review of relevant legislation. Information was also obtained from the staff of the *Commission des Operations des Bourses* (COB), the French securities regulator, and the *Commission Bancaire*, the French banking supervisor. The commissions, the government and the private market participants were all extremely helpful and accommodating of requests for information.

22. The assessment is based on the IOSCO Objectives and Principles of Securities Regulation (1998). The assessment utilizes the four categories recognized by IOSCO: **implemented**, where the Principle is fully implemented, **partly implemented**, where the regulatory system addresses the concerns but there are shortcomings, and **nonimplemented** where the regulatory system does not address the area of concern and **not applicable** where there is no activity in this area of concern. Because of its unique market structure, Monaco, unlike most jurisdictions, has been given a number of “not applicable” designations—since many activities are not permitted in Monaco, many of the Principles did not apply.

C. Institutional and Macprudential Setting, Market Structure

23. Every company operating a business in the Principality must be registered and, as part of this registration, must have its activities approved. The Monegasque system therefore does not permit what is not specifically provided for. Securities legislation permits only two kinds of activity: the establishment, operation and distribution of mutual funds and operation of investment firms which are limited to portfolio management, investment advice and transmission of orders.⁵

24. Monaco securities law focuses on the institutions operating within Monaco. Monegasque residents also have access to a full range of services from outside providers—banks and securities firms in France and Italy and elsewhere.

⁵ “Transmission of orders” is interpreted by the Monegasque authorities to mean that the investment firm may pass an order to a brokerage firm for execution but may not itself execute an order or be a member of an exchange.

25. Market intermediaries in Monaco are all portfolio managers and are defined as such in the law—they do not execute orders on markets, do not offer margin accounts, and do not engage in proprietary trading, corporate finance, underwriting activities or any of the activities associated with traditional full-service brokerage firms. There are 67 companies in Monaco with a license to carry on portfolio management activities, 43 of which are banks, managing €20 billion in assets and 24 of which are portfolio management firms, managing €5 billion. The law allowing this activity was introduced in 1997—prior to this date, portfolio management took place inside banks alone. Portfolio management firms cater to wealthy individual clients although services are to a lesser extent also provided to smaller investors and corporations.

26. The mutual fund industry is relatively new to Monaco—the law allowing the operation of mutual funds was passed in 1987. The total size of the industry is €5.2 billion, including funds that are publicly available and “dedicated” funds which are open only to one investor or institution. A range of funds are offered to the public; 66.8 percent of those funds under management are in money-market funds, followed by 28.6 percent in diversified funds. Funds may invest in a wide-range of products, depending on their approved mandates. The mutual fund business is targeted to Monaco investors with accounts too small to justify private portfolio management fees and also to portfolio managers who outsource some asset management (for example, a portfolio manager who wishes to invest some client money in money market funds). The fund industry is concentrated, with a majority of funds under management located in three banking groups.

27. The Monegasque authorities have indicated they would like to have Monegasque mutual funds accepted as EU qualified UCITS (which would grant the funds a “passport” and allow them to be sold throughout the EU). Beyond that, there appears to be very limited interest in expanding activities to corporate finance, underwriting, or trading—these services and products are not currently contemplated by the legislation, and there does not appear to be demand for them. Residents of Monaco have full access to such services in France or Italy or elsewhere.

D. Regulatory Structure

28. The mutual fund law is contained in *Law 1.130 of January 8, relating to mutual funds* as amended by Law No. 1.230 of 6 July 6, 2000, and a number of Sovereign Orders and Ministerial Orders (collectively “the mutual fund law”). The law governing market intermediaries is contained in *Law No. 1.194 of July 9, 1997, relating to portfolio management and similar stock market activities*, as amended by Law No. 1.241, and two additional Sovereign Orders (collectively “the portfolio management law”). These laws are largely modeled on French securities law and on the relevant EU directives.

29. Authority to regulate securities activity in Monaco is vested in the Minister of State as the administrator of all laws in Monaco. The mutual fund law appoints a supervisory commission to advise the minister in matters related to mutual fund regulation and the portfolio management law appoints a separate supervisory commission to advise the minister

in matters related to market intermediaries. The mutual funds supervisory commission is made up of five members plus a president and the portfolio management supervisory commission has six members plus a president. Currently, the president of both supervisory commissions is the same individual. Three of five members of the mutual fund supervisory commission are senior staff from the COB (acting in their personal capacity), one an academic and one employed in industry—all members are resident in Paris. The portfolio management supervisory commission is made up of the Director of Budget and Treasury, two staff of the Bank of France (acting in their personal capacity), a staff member of the COB (acting in his personal capacity), a representative of the Monegasque Bankers Association and a representative of the Monegasque Chartered Accountants Association. The supervisory commissions act in an advisory capacity and make recommendations to the Minister of State but do not have binding authority in any matter.

30. Each supervisory commission has a staff secretary—the secretary to the mutual fund supervisory commission is a staff member at COB located in Paris, and the secretary to the portfolio management supervisory commission is a member of the staff of the Budget and Treasury division of the Department of Finance and Economics. Regulatory work is also carried out by staff of the Department of Finance and Economics, which is itself responsible to the Ministry of State. Inspections of mutual fund companies are undertaken by staff of the COB pursuant to a 1992 agreement between the Ministry of State and the COB. Enforcement activities are undertaken by the public prosecutor. Although the structure appears to be somewhat fragmented in description, the very small number of people involved and the centralized and concentrated nature of government in Monaco mean that, in practice, communication between the relevant parties appears relatively smooth and activity well-coordinated.

31. There are no self-regulatory organizations in Monaco. The Monegasque Bankers Association (the AMB) represents banks and portfolio management firms in Monaco and is in constant contact with the government on securities regulatory matters. The AMB produces voluntary codes of good practice and has an active Compliance Officers Committee which promotes good compliance practices at portfolio management firms.

E. General Preconditions for Effective Securities Regulation

32. The general preconditions to effective securities regulation are in place in Monaco—there does not appear to be any legal, tax, accounting, or macroeconomic policy obstacles to regulation and Monaco has an effective bankruptcy law and court system with effective enforcement of property rights.

F. Principle-by-Principle Assessment

33. **Regulator:** There is no independent regulator in Monaco—responsibility remains vested in the Minister of State although two supervisory commissions are in place to provide the Minister with recommendations. The supervisory commissions have the authority to inspect or investigate regulated entities; however, they do not have licensing or sanctioning

authority; nor do they have independent rule-making power. The Monegasque structure does not fully implement the IOSCO Principles concerning the regulator and its powers; however, it would appear that the structure is adequate at present in the context of the market. Monaco is by design a very controlled environment, and this style of regulation is in step with the overall control of commercial activity. It is also evident that, in practice, the Minister of State defers to the recommendations of the commissions. The merger of the two supervisory commissions, whose efforts are currently coordinated through Department of Finance and Economics staff but who cannot work directly together, which would capture the synergies involved and focus regulatory efforts, should be considered. Increased independence—specifically the conferring of licensing power on the commissions—might also be considered. Additional attention to transparency and accountability, including publication of reasons for withdrawal of licenses, greater reporting on regulatory activity, and the development of conflicts of interest policies, would further enhance the regulatory structure. The terms of removal of commission members should be set out in law, and commission members should also be explicitly protected from liability while carrying out their duties in good faith.

34. **Information sharing:** The recent changes to the law allowing sharing of information have been quickly implemented in the form of an information sharing arrangement between the portfolio management supervisory commission and the COB. This gives the supervisory commission full authority to obtain and share relevant information with their most important counterpart. Further development through formal agreements with other supervisors should be encouraged and extended to the mutual funds supervisory commission. Provision should also be made for information sharing between the two supervisory commissions. Information sharing between the *Commission Bancaire* and the portfolio management commission could also be clarified. The ability to share information on portfolio management activities of banks with the *Commission Bancaire* must be clarified in law.

35. **Mutual funds:** Mutual fund regulation in Monaco has kept pace with the European framework for collective investment schemes and includes licensing, internal control, and disclosure requirements. A full program of reporting and inspections is carried out. Rules regarding valuation of illiquid securities and related party transactions should be considered. The Minister of State's authority to put an end to a halt on redemption should be clarified. More frequent calculation and publication of net asset valuations for small funds would improve disclosure to clients as would clear disclosure to investors regarding the accounting standards used by the fund in preparing its financial reports.

36. **Market intermediaries:** Portfolio management firms are subject to comprehensive laws and a full inspection system. It is clear that great improvement has been made in this area since the portfolio management law was passed in 1997. The authorities could consider more frequent reporting of capital as a means of monitoring the industry more closely and should develop a contingency plan for the failure of a portfolio management firm. The securities regulatory authorities do not have the power to appoint a liquidator in the case of an insolvency and this should be clarified. For the majority of portfolio management which is carried on within banks or at subsidiaries of banks, coordination with the *Commission*

Bancaire would be required. The inspections program should, in future, address compliance with new insider trading rules.

Comments

37. The Monegasque system of securities regulation as it is currently structured is effective—but it must be understood in its own very unique context. Those who wish to carry out securities related activities in Monaco are already subject to a rigorous and controlled company registration system which requires that every company submit to a registration process that includes police and other background checks, and be subject to annual controls that they continue to meet the registration requirements. The mutual fund or portfolio management firm (or bank carrying on portfolio management activity) is then also subject to separate licensing for its securities business. The government is small and centralized and carefully plans its approach to all commercial activity. An additional layer of control is added through the explicit limits on permitted securities activities. The Monegasque authorities have very deliberately chosen mutual funds and portfolio management as businesses that complement the core industry of private banking in Monaco, and have chosen not to permit activities which would introduce greater risks and would require an expansion of the regulatory structure.

38. The IOSCO Principles envision an independent separately funded regulator with enforcement and rule-making powers—while in less controlled and larger environments such a regulator is necessary, in Monaco it would appear that regulation can be carried out efficiently and effectively through the central government, at least in the medium term. Given its careful planning and central control, there is little chance that securities activities will be lost in the general business of government or that the concerns of the industry or investors will go unaddressed. There appears to be adequate legal authority in place, and the authorities seem to have practical ability to manage the regulatory process. The legislative process appears to be a viable means of changing securities rules, and the use of the public prosecutor appears to be a reasonably efficient means of undertaking enforcement—whereas the ineffectiveness of these structures in larger jurisdictions would point to the need for a separate regulator. There do not appear to be any binding resource or budgetary constraints, and the government has made a concerted effort to bring expertise into the system through the use of the supervisory commissions, the hiring of experienced staff, and the outsourcing of mutual fund inspections to COB staff. The result is an effective system which controls mutual fund operation and portfolio management in Monaco—although, it must be stressed that the bifurcation of securities regulation in the two commissions is less than optimal, and in the longer term it is clear that some rationalization should be made, and that greater independence in the regulator should be considered.

Table 3.1. Detailed Assessment of Observance of the IOSCO Objectives and Principles of Securities Regulation

Principles Relating to the Regulator	
Principle 1.	The responsibilities of the regulator should be clear and objectively stated.
Description	<p>Monegasque law clearly vests authority over securities activity in the Minister of State. The duties and obligations of the two supervisory commissions are similarly clear in the legislation. In practice regulation is carried out by staff of the Department of Finance and Economics, the two supervisory commissions, and inspectors from the COB—although the details of these arrangements are not completely transparent to the public. The letter of agreement with the COB regarding mutual fund company regulation is a public document but has not been published.</p> <p>All areas of permitted securities activity are regulated and, since by design the Monegasque system tightly controls all business activity in Monaco, it would not be possible for an activity, product, or service that does not fall under the securities legislation to be undertaken in the Principality. There are therefore no ‘gaps’ in regulation. Furthermore, all products or services of a similar type are treated equally, and it is not possible for similar products or services to escape regulation under securities regulation.</p>
Assessment	Partly implemented.
Comments	<p>Because the organization of the Monegasque system of securities regulation is complex despite its size, the legislation does not clearly reflect the actual day-to-day responsibilities as they are undertaken by the COB, and the Budget and Treasury and Finance staff in the Department of Finance and Economics. While this could be more transparent, it is also obvious that in the context of this small financial community, there is little confusion amongst market participants as to who is responsible for regulation. Furthermore, it appears that excellent systems of communication exist between all of the relevant parties and there is little scope for confusion between the regulators.</p> <p>The use of two commissions may not be optimal—staff working on matters that make their way to the commissions for decision are common and the final decisions are made by the Minister of State for all matters but the commissions are, under the law, unable to share information between them.</p>
Principle 2.	The regulator should be operationally independent and accountable in the exercise of its functions and powers.
Description	<p>The Monegasque system does not employ a « regulator » per se but rather the Minister of State is generally responsible for regulation with advice from the two supervisory commissions. Day-to-day operations are carried out by staff of the Department of Finance and Economy. All regulatory work, including that carried out by the supervisory commissions, is funded under general revenue. Fees are not charged and no revenue is collected through the regulation of securities activities. In accordance with governing legislation, the members of the supervisory commissions are appointed by Sovereign Order for a term of five years, which may be renewed. The legislation does not state the criteria for removal from office although a new Sovereign Order could remove the member prior to the expiry of the five-year term. New legislation is not published for comment but is published in the weekly Journal de Monaco when passed by Parliament, the Prince, or a Minister.</p> <p>As civil servants, Department of Finance and Economics staff are protected from liability for actions undertaken in good faith. It is unclear whether members of the supervisory commissions are protected from liability for acts in good faith. There is no conflicts of interest policy in place but civil servants cannot accept any other employment. Commission members may be (and generally are) otherwise employed; however, those on the portfolio management supervisory commission are required to disclose shareholders, directorships, and employment with regulated entities and recuse themselves from discussion where there is a conflict of interest.</p>

	<p>The supervisory commissions are obligated by law to report annually to the Minister of State on their activities. In 2000, the commissions began publishing this report which includes an account of the regulatory activities undertaken with respect to regulated entities, a review of decisions recommended by the commissions (and taken by the Minister of State), a review of new licenses granted and licenses withdrawn.</p> <p>Decisions of the Minister of State, who makes the final decision with respect to regulated activities, are subject to appeal to court.</p>
Assessment	Partly implemented.
Comments	<p>Monaco does not have an independent securities regulator. Although the Principles stipulate that an independent regulator would be preferable, in such a small jurisdiction which exercises considerable control over all business activity it is not clear that it is necessary. The authorities might consider granting greater independence to the supervisory commission—for example, by allowing the supervisory commissions to grant licenses or withdraw licenses. If such a change were made, the supervisory commissions would need to institute administrative procedures in keeping with this authority. It is clear there has been a movement toward greater public accountability (through publication of the commissions’ annual report, for example). Should the commissions be granted decision making authority, accountability procedures would need to be augmented—for example, decisions of the commissions should then be subject to an appeal right.</p> <p>Notwithstanding any restructuring of the regulatory system, there should be greater transparency in the system. For example, reasons for withdrawal of license should be public. The structure of the regulatory system itself could be more transparent and the authorities could consider publishing new rules for comment prior to their adoption.</p> <p>The disclosure obligations imposed on members of the portfolio management supervisory commission should be extended to the mutual funds supervisory commission. A formal conflicts of interest policy should be in place for government staff handling securities regulatory matters, and for members of the supervisory commissions, and a system for monitoring compliance with the policy should be in place. Finally, the criteria for removal of a member of the supervisory commission should be clearly established in legislation.</p>
Principle 3.	The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.
Description	<p>The Minister of State has licensing and delicensing authority but does not have any direct enforcement authority. The supervisory commissions do not have decision-making power and make only recommendations on applications for licenses or amendments to a license; nor do the commissions levy sanctions. Legislative change is made by Parliament, Sovereign Orders by the Prince, and Ministerial Orders by the Minister of State which grants some limited rule making power to the Minister. The supervisory commissions do not have rule-making power. Regulatory work is carried out staff of the Department of Finance and Economics and, in the case of mutual funds, inspections staff of the COB. There are a number of policy staff, one inspector for portfolio management firms and one inspector for mutual funds. There appears to be an adequate level of staffing relative to the size of the workload and the Department of Finance and Economics is able to attract skilled and knowledgeable professionals.</p>
Assessment	Partly implemented.
Comments	<p>See comments under Principle 9. The supervisory commissions have no ability to adopt rules although it appears that the legislative process is efficient, and it is unclear that there is great demand for a more flexible rule making tool in Monaco—as is the case in larger jurisdictions where the legislative process cannot keep pace with commercial activity. The Minister of State does retain the ability to issue Ministerial Orders in a short time frame and these orders may be used to address issues quickly.</p>

Principle 4.	The regulator should adopt clear and consistent regulatory processes.
Description	<p>The regulatory framework in Monaco is governed by the Acts, Sovereign Orders, and Ministerial Orders, all of which are publicly available, and most of which are available on the website. The Department of Finance widely consults prior to amendment or enactment of rules. Consultations with industry often take place with the AMB, which represents both banks and independent portfolio managers. Consultation with the <i>Conseil Economique</i> (an official counsel made up of representation from business and labor in Monaco) is mandated where the legislation is deemed to have economic impact.</p> <p>The Minister of State, in making decisions, is subject to the general administrative law of the Principality. A regulated entity has the right to appear before the commissions should withdrawal of its license be considered by the commissions. Reasons for decisions are not made public. Prosecutions are undertaken in court and decisions may be appealed to the court of appeal.</p>
Assessment	Implemented.
Comments	Withdrawal of license decisions should be publicly available and published.
Principle 5.	The staff of the regulator should observe the highest professional standards including appropriate standards of confidentiality.
Description	Staff of the Department of Finance and Economics are bound by a very strict code of secrecy imposed on the Monegasque civil service which requires them to maintain confidentiality of information obtained in the course of their duties. The law imposes similar confidentiality requirements on members of the supervisory commissions. Staff of the COB are also subject to confidentiality provisions. There is no policy in place regarding use of information obtained in the course of duty, other than this confidentiality obligation and no monitoring system for enforcement of compliance with this requirement. There is no formal conflicts-of-interest policy but staff are prohibited from outside employment.
Assessment	Implemented.
Comments	A formal policy governing conflicts of interest for staff including reporting of trades and a system to monitor compliance with these rules should be considered.
Principles of Self-Regulation	
Principle 6.	The regulatory regime should make appropriate use of Self-Regulatory Organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence, and to the extent appropriate to the size and complexity of the markets.
Description	The Monegasque system does not utilize self-regulatory organizations, formally or informally.
Assessment	Not applicable.
Comments	
Principle 7.	SROs should be subject to the oversight of the regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.
Description	
Assessment	Not applicable.
Comments	
Principles for the Enforcement of Securities Regulation	
Principle 8.	The regulator should have comprehensive inspection, investigation and surveillance powers.
Description	<p>Under both mutual fund and portfolio management law, the supervisory commissions have the right to demand books and records and request any information from regulated entities. It is unclear whether the mutual fund supervisory commission has the right to enter premises of mutual funds; the portfolio management law clearly enables the portfolio management supervisory commission to order inspections of portfolio management licensees. In accordance with the 1992 agreement, the COB is permitted to enter premises and carry on inspections of mutual funds.</p> <p>The Minister of State retains full right to inspect or investigate regulated entities.</p>

	The authorities do not carry out market surveillance activity.
Assessment	Implemented.
Comments	The legal authority of the mutual fund supervisory commission to carry out or request an inspection should be clarified. While inspections are clearly permitted under the letter of agreement with the COB and the Minister of State retains full rights to inspect any company, the supervisory commission should have the clear right to order such inspections also.
Principle 9.	The regulator should have comprehensive enforcement powers.
Description	<p>The supervisory commissions have no power to levy sanctions on regulated entities. The Minister of State can send a letter of notification requiring a regulated entity to correct non-compliance with the law and can withdraw a license or threaten to do so. The Minister cannot levy fines or penalties. The Minister can refer continued noncompliance to the public prosecutor—under an expedited process, the prosecutor can ask the court to levy daily fines for noncompliance under some circumstances, and in general the prosecutor can ask the court to enforce compliance with the law.</p> <p>Under both mutual fund and portfolio management law, a number of transgressions are defined as criminal acts including failures to report for senior management and auditors, breach of client confidentiality, insider trading, misrepresentation, and fraud. These acts carry potential sanctions of fines and/or imprisonment.</p> <p>The supervisory commission can compel testimony of third parties and as part of general duties; the public prosecutor could compel such testimony. Both the mutual fund law and the portfolio management law deem it an offense to act without a license. One such prosecution of an unlicensed portfolio management firm has taken place since the portfolio management law was put into place in 1997.</p> <p>In 2001, two portfolio management licenses were withdrawn—one for a wind-up of a company in due course, another because the principals of the firm were non-compliant with capital requirements.</p>
Assessment	Implemented.
Comments	The supervisory commissions do not have enforcement authority and the Minister of State has only the ability to remove licenses. Enforcement proceedings are undertaken by the public prosecutor. Although not strictly required by the Principles, the ability to levy fines or other penalties on regulated entities would create more flexible enforcement tools—the withdrawal of a license is a somewhat extreme penalty that is used only in very serious circumstances and one which may cause disruption to clients. Fines or other penalties might prove quite useful without creating disruption. In other jurisdictions where a larger and more varied market is active, this is indeed a serious consideration. While the Monegasque authorities might consider extending some sanctioning abilities beyond license withdrawal and might consider granting sanctioning authority to the supervisory commissions, to do so would require that administrative apparatus be in place to ensure due process of law including hearings and investigations.
Principle 10.	The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.
Description	<p>Mutual fund inspections are carried out by the staff of the COB who are experienced in mutual fund inspections and familiar with Monaco. Three or four inspections are carried out annually. The annual, semi-annual, and quarterly reporting as well as industry statistics are used by staff of the Department of Finance and Economics to identify firms for inspections. Inspection reports are made to the mutual fund supervisory commission which approves findings and recommendations. Follow up from inspections is done through warning letters from the Minister of State and additional inspections.</p> <p>Inspections of portfolio management firms are carried out by staff of the Department of Finance and Economics. There are currently two inspectors, both of whom have extensive experience in this field. Such inspections began in 1999 and, since then, every licensed portfolio management firm has been inspected. Inspections focus on a review of internal control procedures and</p>

	<p>review of compliance with account contracts or mandates.</p> <p>In addition to these staff inspections, each mutual fund company and portfolio management firm is audited by a statutory auditor annually.</p> <p>There is no investigation department nor is there dedicated investigations or enforcement staff in Monaco. Inspectors may be used, and have been on occasion, to carry out investigations.</p>
Assessment	Implemented
Comments	<p>The inspection program in Monaco appears to be satisfactory. The authorities have taken steps to ensure that qualified inspectors are used and that the inspections are followed up effectively. The inspection system is deemed credible by market participants interviewed. In addition to this audit and inspection, there are few mutual funds or intermediaries operating in Monaco that are not affiliated with large international banking organizations, and subject to internal control audits by their parent banks and by banking supervisors responsible for these banks.</p> <p>It does not appear necessary to create a separate investigations function in Monaco given the limited and concentrated activity and the limited number of market participants.</p>
Principles for Cooperation in Regulation	
Principle 11.	The regulator should have authority to share both public and non-public information with domestic and foreign counterparts.
Description	<p>The July 2001 amendments to the investment firm and mutual fund legislation allow the portfolio management supervisory commission to share information with foreign supervisors provided a formal information sharing arrangement is in place. A formal memorandum of understanding was signed with the COB in March 2002, under which the supervisory commissions can share any information obtained from regulated entities, provided it will be used for specified regulatory purposes. Confidentiality of the information is protected under the MOU. The MOU has not been signed by the mutual funds supervisory commission. While in practice this may not be a pressing issue since the commission is largely composed of COB staff, and the main counterpart to an arrangement would be the COB, it is a limitation on information sharing authority, and also creates some legal confusion since COB staff on the commission are acting in their personal capacities, rather than as COB representatives.</p> <p>There are no formal arrangements in place with other supervisors; however, Monaco has begun negotiations with the securities regulators in Italy and Luxembourg.</p> <p>In addition to information sharing under a formal agreement, according to the July 2001 amendments to the portfolio management law, the government may provide information related to prudential regulatory matters to a foreign regulator or supervisor carrying out consolidated supervision where this information is obtained from a portfolio management firm. The circumstances under which this information could be provided appear fairly broad. It is not clear in the law that the commission could share information regarding the portfolio management activities inside banks</p> <p>Information sharing among staff at the Department of Finance and Economics and the Ministry of State is, of course, fully permitted. The law permits some information sharing between the Monegasque securities regulatory authorities and the <i>Commission Bancaire</i>, which is the domestic banking supervisor, and the Director of Budget and Treasury is a member of the Commission Bancaire committee on Monegasque banks and is privy to information about the supervision of portfolio management activities of these banks. However, it would be preferable for an explicit agreement on information sharing between the commissions and the <i>Commission Bancaire</i> to exist, setting out the precise terms of information sharing. Although the Department of Finance and Economics staff, who work on regulatory matters day to day, are the same for both mutual funds and portfolio management licensees, and the Minister of State is ultimately responsible for decisions in both areas, the two supervisory commissions cannot by law share</p>

	<p>information between them.</p> <p>The Monegasque FIU (SICCFIN) can share information regarding criminal investigations. Insider trading has recently been made a criminal act under Monegasque law and; therefore, request related to information concerning criminal investigations into insider trading would be honored.</p>
Assessment	Partly implemented.
Comments	<p>The 2001 amendments to the law have improved information sharing with foreign regulators a great deal. The Monegasque authorities are encouraged to continue to enter into information sharing arrangements. The recent changes which allow such information sharing are a very important step in facilitating international cooperation. This authority should be extended to the mutual funds commission.</p> <p>Article 17 of the portfolio management law should be amended to clearly permit information sharing regarding the portfolio management activities of banks. Although, in practice, information is shared through the common staff and cross-membership on committees, a formalized agreement between the Commission Bancaire and between the two supervisory commissions would be helpful. The capacity to share information between the two supervisory commissions should also be strongly considered.</p>
Principle 12.	Regulators should establish information sharing mechanisms that set out when and how they will share both public and non-public information with their domestic and foreign counterparts.
Description	Changes to the law in 2001 have allowed the Monegasque government to enter into information sharing arrangements with foreign counterparts. A memorandum of understanding is in place between the government and the French COB. This MOU sets out the information that can be shared, identifies assistance and types of information provided, and permitted use of the information, and provides confidentiality protections for the information.
Assessment	Partly implemented.
Comments	The MOU with the COB is a good beginning in establishing formal arrangements with counterparts; however, the number of MOUs should be expanded. Furthermore, the mutual funds supervisory commission should have the ability to enter into information sharing arrangements and should do so.
Principle 13.	The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers.
Description	The government can only obtain information for a foreign regulators if a MOU has been executed (see Principle 11). The portfolio management law also allows the supervisory commission to provide a foreign regulator carrying out consolidated supervision of a bank with information regarding a portfolio management licensee. A number of foreign regulators have carried out inspections in Monaco which have included inspections of portfolio management activities.
Assessment	Implemented.
Comments	See Principle 11.
Principles for Issuers	
Principle 14.	There should be full, accurate and timely disclosure of financial results and other information that is material to investors' decisions.
Description	Other than mutual funds, issuers are not present in Monaco. See Principles 17–20.
Assessment	Not applicable.
Comments	
Principle 15.	Holders of securities in a company should be treated in a fair and equitable manner.
Description	
Assessment	Not applicable.
Comments	

Principle 16.	Accounting and auditing standards should be of a high and internationally acceptable quality.
Description	Accounting standards in Monaco are specifically set out in law and are modeled, with minimal differences, on French accounting standards. Charter accountants in Monaco are authorized by the government to carry out annual audits of every Monegasque company, including mutual funds and portfolio management firms. All of these authorized auditors are qualified French CPAs.
Assessment	Implemented.
Comments	The Monegasque system largely employs French audit and accounting standards which are of an internationally acceptable quality.
Principles for Collective Investment Schemes	
Principle 17.	The regulatory system should set standards for the eligibility and the regulation of those who wish to market or operate a collective investment scheme.
Description	<p>All mutual funds require a license under Monegasque law—mutual fund law contains detailed requirements for mutual fund companies. An initial application must be accompanied by the rules of the fund, which include the investment strategy, asset allocation plan, risk management details, net asset value calculation, commission and fee structure, and fund governance. The application must also be accompanied by client disclosure documents and model client contracts. Mutual fund operators must show they have competence and expertise sufficient to operate a fund. Background checks including a fit-and-proper test are carried out for the owners and senior officers and directors of the mutual fund company. Senior management of the mutual fund bears direct responsibility for compliance with the law and for maintenance of internal controls. The mutual fund must show it has adequate systems in place, including technology and internal controls. Mutual funds are required to maintain full records of transactions including client account statements, recording of investments, redemptions and distributions of income. Investments must be reconciled to the stated investment strategy.</p> <p>The company must name its custodian, and the custodian must be located in Monaco. In practice, most custodians subdelegate custodial functions to custodian banks in France or Luxembourg. The company must also set out any subdelegation of asset management to portfolio managers elsewhere. These custodian and asset management arrangements must be approved.</p> <p>Mutual fund companies must show a minimum of FF2.5 million raised at subscription, and this amount cannot go below one million FF. Changes to the terms of the license must be approved.</p> <p>Mutual fund companies are required to have in place conflicts of interest policies and procedures. There are no specific requirements for these policies. Commissions and fees must be reasonable. Funds are subject to concentration limits on investments and limits on the amount of illiquid investment that can be made. Funds may lend up to 15 percent of their assets. Special rules are in place for funds investing in derivatives, venture capital funds, and funds of funds.</p> <p>Applications for license or amendments to a license are reviewed by the supervisory commission for mutual funds which makes a recommendation to the Minister of State, who in turn grants or refuses to grant the license or amendment. Exemptions to risk ratios set out in the law may be granted where the fund’s investors are considered to be sophisticated investors. Such exemptions have been granted to one third of all mutual funds in Monaco.</p> <p>The Ministry of State has the power to inspect mutual fund companies or require any books and records of the funds or carry out an investigation of any breach of requirement. The supervisory commission has the power to request any books and records of the mutual fund company or order an investigation or inspection of the company. Enforcement of compliance with requirements is undertaken through the inspection and reporting program, with the supervisory commission being informed of the findings and recommendations and any follow up to reports.</p>

	<p>Inspections of mutual funds are carried out by staff of the COB under a delegation from the Monegasque government. Inspection reports are controlled by the supervisory commissions and are confidential. To a large extent, asset management and custodial functions of mutual funds are located in France. Three or four inspections of funds are carried out each year. Funds are also subject to semi-annual reporting requirements (including number of subscriptions, number of redemptions, investments, etc.). Warning letters are issued by the Minister of State. Any prosecution would be referred to the public prosecutor. There have been no such prosecutions in Monaco since the inception of mutual fund legislation in 1987.</p> <p>Mutual fund companies must be audited annually by a statutory auditor, approved by the Monegasque government. This auditor is paid for by the mutual fund company and is required to audit all aspects of the books and records and internal controls of the fund, including compliance with the rules of the fund, reporting by the custodian, etc. The mutual fund company must publish annual audited financial statements.</p>
Assessment	Partly implemented.
Comments	The authorities should consider formal conflicts of interest policy requirements which should address trading restrictions and reporting requirements for staff and management of mutual funds. The authorities should also develop rules governing related party transactions by mutual funds.
Principle 18.	The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.
Description	Monegasque law defines mutual funds as unincorporated pools in common ownership of transferable securities and financial instruments. Mutual funds must be separate from the management company. A mutual fund is not a legal person and cannot be treated as such under the civil code (this protects the mutual fund from liability). Custody of funds must be located in a depository bank that is a separate legal entity from the management company, with separate staff and separate premises. In practice, most bank-owned mutual funds act as their own custodian but create a separate fund management company. Duties of the custodian are clearly set out in the mutual fund law: the depository must ensure that sale, issuance and redemption of units is in compliance with the fund's rules, ensure the net asset value of the units are calculated in accordance with the rules and ensure fund income is allocated in accordance with the rules of the fund. The custodian must also make an annual report of its activities to ensure compliance of the fund with its rules to the Minister of State.
Assessment	Implemented.
Comments	
Principle 19.	Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme.
Description	The law requires that all marketing and sales campaigns for subscription to a fund must be approved by the Minister of State. The mutual fund is then required to issue a prospectus in a prescribed form. The distributor (which is the mutual fund company in Monaco) must give the client a copy of the prospectus and fund rules. Fund rules contain all of the relevant information concerning the investment including investment strategy, asset allocation, commissions and fees and redemption conditions. The prospectus is reviewed by the supervisory commission which makes a recommendation to the Minister of State, who approves or rejects the fund rules. All changes to the rules must be approved by the Minister of State under the same process. Mutual fund companies must also make quarterly and semi-annual reports available to investors upon request.
Assessment	Implemented.
Comments	

Principle 20.	Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.
Description	<p>Net asset value must be published regularly. For funds in excess of €150 million the calculation must be calculated and displayed on the premises of the fund company daily and published weekly in the <i>Journal de Monaco</i>, the weekly, official government gazette. Smaller funds must calculate and display the calculation at least twice a month. The terms of net asset valuation must be clearly set out in the fund’s rules. Compliance with the law and the fund rules is monitored by the depositary and by the annual audit. Compliance with net asset valuation requirements is also checked through the inspections carried out by the COB.</p> <p>The mutual fund law specifies that for listed securities, assets must be marked to market daily on the most liquid market available. For less liquid securities, the fund must have a policy in place indicating how securities will be valued and must consistently follow this policy.</p> <p>Redemption rights should be set out in fund rules and disclosed to investors in the rules/prospectus. Any changes to redemption rights also require approval. Redemptions of funds may be suspended under emergency conditions but such suspension must be published in the <i>Journal de Monaco</i>. Liquidity concerns following September 11 prompted many funds to do this. It is unclear in the legislation whether the government would have the authority to prevent such a suspension of redemption if it was considered inappropriate or unfair to investors.</p> <p>The form of annual financial statements is set out in law and disclosed to investors. The accounting standard used is particular to Monegasque law but is modeled on French accounting standards.</p>
Assessment	Implemented
Comments	Consideration should be given to requiring daily net asset value calculations for all funds, regardless of size, even if publication daily is not required. Should the industry expand, more detailed requirements on the valuation of illiquid securities might be considered—currently there are few investments in such securities since Monegasque funds are concentrated in money market and general diversified funds. Clearer disclosure to investors of the accounting standard being used in financial statements would improve the quality of information available to investors. The authorities might also considering amending the legislation to clearly allow the Minister of State to prohibit a mutual fund from suspending redemption where such an action would harm investors.
Principles for Market Intermediaries	
Principle 21.	Regulation should provide for minimum entry standards for market intermediaries.
Description	<p>Companies are prohibited from carrying out any activity that is not otherwise permitted under the terms of their registration in Monaco. Monaco law contemplates only one kind of intermediary—a portfolio management firm which must be organized as a registered company in Monaco. A portfolio management license can also be granted to a bank. The portfolio management law permits only three activities: portfolio management of discretionary accounts, provision of advisory services for non-discretionary accounts, and transmission of orders to facilitate trading by accountholders. All client assets are held at custodian banks—portfolio management firms do not handle cash and securities, do not extend credit to clients, and do not undertake proprietary trading, underwriting or any corporate finance activity. Approximately 30 percent of all accounts are discretionary and 70 percent nondiscretionary.</p> <p>Portfolio management firms or banks carrying out portfolio management activities are required to apply for a license and the requirements are clearly set out in the law. The firm or bank must satisfy the government that it has adequate resources and competence to carry out a portfolio management business, must show it has internal control and other systems in place, management and owners of the firm are subject to fit-and-proper assessments (including a</p>

	<p>police check). The firm must set out relationships with custodian banks, subdelegate portfolio managers, and trade execution firms and must supply a model client account contract. Any material changes to these items must be submitted for reapproval.</p> <p>Branch offices of foreign companies are also required to seek a license before opening for business in Monaco. These offices must be branches of a foreign company that is subject to adequate regulation at home. Branches are exempt from capital requirements but must comply with all other licensing requirements.</p>
Assessment	Implemented.
Comments	
Principle 22.	There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.
Description	Portfolio management firms are subject to a minimum capital of €150,000. The amount is increased to €300,000 or €450,000 if 50 percent of the capital is not held by a large financial institution with a capitalization of €2 million. This minimum capital must be maintained continuously. Capital is monitored through annual reporting, audits and inspections.
Assessment	Implemented.
Comments	<p>Capital requirements for portfolio management firms are high relative to other jurisdictions. There is no complex formula of on-going capital adequacy as there would be for firms that engage in traditional brokerage activity but this is unnecessary given the limited permitted activity (particularly prohibition on handling cash and securities and extending credit to clients). The authorities could consider more frequent reporting requirements, for example on a quarterly basis as a means of more closely monitoring the financial condition of intermediaries. Furthermore, audited annual statements are due 6 months following the end of the fiscal year which is a significant time lag and would not assist regulators in detecting a problem. The authorities should consider shortening this period.</p> <p>The term “transmission of orders” in the definition of investment firm may cause some confusion as to the exact limitation on the investment firm’s business. It would be helpful to add a definition which clearly states that the firm may pass on orders but may not execute them itself.</p>
Principle 23.	Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility for these matters.
Description	<p>Portfolio management firms and banks carrying on portfolio management activities are required to have internal control procedures in place and must designate two officers of the company to be responsible for compliance with the law. Firms are permitted to outsource a compliance function (and often compliance functions are centralized at parent company banks), but responsibility for compliance is retained by senior management. Each firm must appoint two approved statutory auditors who carry out an audit of financials and internal controls annually and submit a report to the supervisory commission. Portfolio management firms and banks are required to make an annual report of activity carried on, details of human and technical resources, delegations, shareholders, quantity of assets under management (and whether held in discretionary or non-discretionary accounts), and an analysis of profit and loss for the year.</p> <p>Customer account contracts are required for all accounts, and these contracts are approved at licensing (any subsequent material amendments must also be approved). The law contains detailed requirements for these contracts and requires that all investment advice be suitable in the context of the clients stated objectives, expectations and risk profile. The portfolio management firm is obligated to seek sufficient know-your-client information to enable it to fully understand the client’s profile; although there are no specific information gathering or identification requirements. Clients must consent to a delegation of portfolio management.</p>

	<p>Clients must also be provided with a statement of risks regarding investments.</p> <p>Portfolio management firms are required to put the interests of the client first and must observe a best execution rule.</p> <p>Firms are required to keep books and records as part of internal control procedures and are required to fully document all transactions. There is a general requirement for Monegasque companies to keep all books and records for a period of 10 years which applies to portfolio management firms. Orders must be time stamped and there is a best execution requirement.</p> <p>The most important internal control function is carried out by the depositary bank that holds client accounts. This custodian must operate separately from the portfolio management operations. A written agreement between the client and the portfolio management sets the terms under which the portfolio manager can cause securities to be transferred in or out of the account. The law prohibits the portfolio manager from transferring assets between customer accounts or between the portfolio manager’s account and the client account. The depositary is required to check asset valuations and compliance with customer account agreements. The depositary supplies the client and the portfolio management firm with statements. The depositary has a duty to report any non-compliance to the supervisory commission. The controls undertaken by the depositary are reviewed by the commission inspection as well as by the external auditor.</p> <p>Recently, the law has been amended to establish insider trading as a criminal offence. Portfolio management firms and banks should have in place systems to identify insider trading issues. While the KYC requirements and the nature of the firms’ business support close monitor of client trades, there are, as yet, no specific requirements for insider trading monitoring. There is no insider trade reporting requirement in Monaco.</p>
Assessment	Implemented.
Comments	As part of its on-going efforts to improve internal compliance at portfolio management firms, the Department of Finance and Economics should work with portfolio management firms to establish policies and procedures for monitoring compliance with insider trade reporting and compliance with insider trading law. This could be followed up in the on-going inspection program.
Principle 24.	There should be a procedure for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.
Description	The Monegasque government has a general ability to appoint a receiver for an insolvent company that would apply to portfolio management firms. For those banks that also hold portfolio management licenses, an insolvency would be managed by the Commission Bancaire which has contingency plans in place. There is no separate contingency plan in place for managing the failure of a portfolio management firm. In the event of a failure, client assets would be located at custodian banks (since portfolio management firms are prohibited from accepting cash and securities). Transfers of clients would be an administrative matter—wherein mandates and contracts would have to be executed with a new portfolio manager.
Assessment	Partly implemented.
Comments	The risk of market disruption or loss of investor assets, should a portfolio manager fail, is more limited than in the case of a brokerage firm failure since the safety of customer assets is assured by the custodian banks. A failure of one of these banks, however, may endanger customer assets but because customer assets should be segregated appropriately, the risk is only in the event of a fraud. In any event, the Monegasque authorities should consider adopting an administrative plan to deal with the transfer of client accounts, notification to clients, and so on should a portfolio management firm fail. In addition, it would be prudent to discuss the procedure for coordinating matters in the event of a failure of a custodian bank with banking supervisory authorities, particularly the <i>Commission Bancaire</i> .

Principles for the Secondary Market	
Principle 25.	The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.
Description	There are no trading systems or exchanges in Monaco.
Assessment	Not applicable.
Comments	
Principle 26.	There should be ongoing regulatory supervision of exchanges and trading systems, which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.
Description	
Assessment	Not applicable.
Comments	
Principle 27.	Regulation should promote transparency of trading.
Description	
Assessment	Not applicable.
Comments	
Principle 28.	Regulation should be designed to detect and deter manipulation and other unfair trading practices.
Description	
Assessment	Not applicable.
Comments	
Principle 29.	Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.
Description	
Assessment	Not applicable.
Comments	
Principle 30.	Systems for clearing and settlement of securities transactions should be subject to regulatory oversight, and designed to ensure that they are fair, effective, efficient, and that they reduce systemic risk.
Description	
Assessment	Not applicable.
Comments	

Table 3.2. Summary Observance of the IOSCO Objectives and Principles of Securities Regulation

Assessment Grade	Principles Grouped by Assessment Grade	
	Count	List
Implemented	15	4,5,8,9,10,13,16,18,19,20,21,22,23
Partly Implemented	5	1,2,3,11,12,17,24
Not Implemented	0	
Not applicable	10	6,7,14,15,16,25,26,27,28,29,30

Recommended actions and authorities' response to the assessment

Recommended actions

Table 3.3. Recommended Plan of Actions to Improve Observance of the IOSCO Objectives and Principles of Securities Regulation

Reference Principle	Recommended Action
Principles Relating to the Regulator (Principles 1–5)	<p>Consider merger of the two supervisory commission. If division is maintained, the flow of information between the commissions could be improved.</p> <p>Consider granting supervisory commissions authority to grant or refuse or withdraw licenses.</p> <p>Additional transparency could be added, including publication of reasons for withdrawal of licenses, clarification of regulatory practices.</p> <p>Extend disclosure rules to mutual funds supervisory commission.</p> <p>Conflicts of interest policies for commissions and staff should be adopted along with monitoring of compliance.</p> <p>Commission members should be protected from liability while carrying out duties in good faith. Criteria for removal of commission member should be set out in the law.</p>
Principles of Self-Regulation (Principles 6–7)	Not applicable.
Principles for the Enforcement of Securities Regulation (Principles 8–10)	<p>Consider granting authority to impose sanctions to commissions.</p> <p>Clarify power of mutual fund commission to order an inspection of a mutual fund.</p>
Principles for Cooperation in Regulation (Principles 11–13)	<p>Amend Article 17 of the portfolio management law to clearly permit sharing of information regarding the portfolio management activities of banks.</p> <p>Amend law to allow mutual funds supervisory commission to enter into information sharing arrangements and establish MOU for information sharing with</p>