

[BANKING LAW] ACKNOWLEDGEMENT OF THE RIGHT TO OPEN A BANK ACCOUNT IN THE PRINCIPALITY

A fundamental right. The right to open a bank account is a fundamental right. It can be defined as the minimum banking service for people who do not have a deposit account. The bill n° 991 relating to the *introduction of the right to a bank account* was passed on June 30th 2020 in the Principality.

This measure aims at maintaining a balance between the private interests of the banks established in the Principality and the general public interest underlying the acknowledgement of the right to open a bank account:

- For the banks, the principle of contractual freedom prevails. The banker may refuse to open a bank account, provided that it is not discriminatory;
- For the underlying general public interest, the right to open a bank account has a social role (fight against exclusion), an economic role (key tool in business life) and an ethical role (key tool in the fight against money laundering, terrorist financing and corruption).

A right to "basic banking services". In principle, given the principle of contractual freedom and the very personal nature of the contractual relationship, the bank can not be forced to open an account. However, in the event of refusal, the person may ask the Budget and Treasury Department to designate a credit institution, appearing on a list to be drawn up by ministerial order, to open an account for him or her, with access to certain basic banking services.

This procedure is in line with European law, and in particular with Directive 2014/92/UR "PAD" (Payment Accounts Directive), which basically states that any person legally resident in a European Union country has the right to access a payment account with basic services.

What are the terms and conditions (and limits) of the right to a bank account in the Principality?

THE BENEFICIARIES

Nationality or domiciliation in the Principality. The right to open a deposit account is open to the following people who do not already have an account opened in the Principality :

- Individuals of Monegasque nationality ;
- Individuals or Businesses domiciled in Monaco, under article 2 of the Code of Private International Law (any foreigner holding a residence permit is presumed, in the absence of proof to the contrary, to be domiciled in the Principality, as are companies and legal entities having their registered office there).

Taking up residence or Setting up a company in the Principality. Likewise, the right to open an account is available to all :

- Individuals in the process of taking up residence in Monaco (holders of relevant administrative receipt) ;
- Businesses in the process of being set up in Monaco (justified by relevant administrative documents).

Financial representatives appointed by the candidate(s) for elections. They possess the right to have a bank account. As a reminder, Law No. 1.389 of July 2, 2012 relating to the financing of electoral campaigns requires that any candidate for an election to have and declare a financial

representative, in charge of accounting for all electoral expenses incurred by the candidate or on his behalf.

The right to hold multiple bank accounts. By way of derogation, certain beneficiaries have the right to hold more than one deposit account. This applies to :

- Individuals acting within the framework of their professional activities (even if they already hold an account for their personal needs);
- Financial representatives appointed by the candidate(s) for an election (even if they already hold an account for their personal needs);
- Businesses holding the authorization to make an offer of tokens for the opening of a deposit account as part of this fundraising (even if they already hold an account for the needs of their professional activity). cf. <https://zabaldano.com/wp-content/uploads/2020/06/EXTENDED-MONACO-LOI-N°-1.491-DU-23-JUIN-2020-RELATIVE-AUX-OFFRES-DE-JETONS.pdf>

THE RIGHT OF REFUSAL OF THE INITIAL CREDIT INSTITUTION

Terms and conditions. The bank may refuse to open an account. In the event of this initial refusal, the legitimate beneficiary may refer the matter to the Budget and Treasury Department so that it may designate, within 15 days, another credit institution, appearing on a list to be drawn up by ministerial decree, to open an account for him or her, with access to certain basic banking services (maintaining an account, issuing bank account references, direct debit of bank transfers, cashing of checks, etc.).

In the event of a refusal, the bank has two obligations:

- to provide the applicant, free of charge, with a certificate of refusal (on paper or another durable medium);
- to inform the applicant of his or her right to appeal to the Budget and Treasury Department.

Request to open a deposit account. Rejected applicants must provide the Department of Budget and Treasury with a sworn statement showing whether they have been the subject of an over-indebtedness procedure in the five years preceding the request. If necessary, the designated credit institution may adjust the means of payment made available and adapt the services offered.

THE LIMITED RIGHT OF REFUSAL OF THE DESIGNATED CREDIT INSTITUTION

Reasons for refusal.

The designated credit institution can only reject the application for opening an account in a limited number of cases:

- Convictions for laundering the proceeds of an offense (Articles 218 to 219 of the Criminal Code);
- Convictions for narcotics (law n ° 890 of July 1, 1970 on narcotics);
- Convictions relating to terrorist financing (Sovereign Ordinance No. 15-320 of April 8, 2002 on the suppression of the financing of terrorism);
- Non-compliance with the conditions of this law relating to the beneficiaries of the right to have a bank account;

- Failure to comply with the provisions relating to the information to be provided concerning transactions in precious metals and foreign exchange transactions (article 7 of law n ° 1.362 of 3 August 2009 on the fight against money laundering, financing of terrorism and corruption).

Any rejection of the request by the designated credit institution is subject to appeal.

TERMINATION OF A DEPOSIT ACCOUNT

Reasons. The designated bank may only unilaterally terminate the deposit account agreement for certain reasons:

- Suspicion of using the account for illegal purposes;
- Inaccurate information provided by the requester;
- Repeated rudeness towards staff;
- Conviction for one of the reasons for rejection (see above).

Notification. For any termination on one of these grounds, the bank must provide a written notification free of charge to the customer. As a matter of principle, termination must be justified and sent for information to the Budget and Treasury Department.

Time limit. As a matter of principle, unilateral termination by the designated credit institution can only take place after a minimum notice period of two months has expired. As an exception, when the termination is based on suspicion of using the account for illegal purposes or on a criminal conviction, this may occur without delay.

Our team at Zabaldano Lawyers remains at your disposal to answer all your questions.