

Monaco The fraudulent organisation of insolvency, new offence (Bill No. 1002 passed)

Bill No. 1002 relating to the fraudulent organisation of insolvency, received on 11 October 2019 by the Monegasque Parliament (*Conseil national*), was voted in Public Session of 30 June 2020 (awaiting publication in the *Journal de Monaco*).

The text creates new articles 368-1, 368-2 and 368-3 of the Criminal Code.

The offence of fraudulent organisation or aggravation of insolvency punishes fraud resulting from various acts of impoverishment carried out by the debtor in order to claim insolvency and thus prevent the recovery of the debt from his assets." (Explanatory memorandum to Bill No. 1002, 2019-12, 17 September 2019, p. 3).

What are the constituent elements of the fraudulent insolvency organisation?

In order to be constituted, the offence involves acts of organisation or aggravation of insolvency (even before the final conviction decision establishing the debt), with the intention of evading the execution of final conviction decision of a patrimonial nature and thus evading payment.

Final conviction decision of a patrimonial nature

– DEBTOR

The offence covers all convictions handed down by the criminal courts, as well as convictions handed down by the civil courts in matters of tort, delict or quasi-delict or maintenance. By extension, judicial decisions and judicially approved agreements imposing an obligation to pay benefits, subsidies or contributions towards the expenses of the marriage are assimilated to decisions for the payment of maintenance.

– DIRECTOR AT LAW OR IN FACT OF A LEGAL PERSON

The offence covers convictions of a patrimonial nature pronounced in criminal, in matters of tort, delict or quasi-delict.

Acts of organisation or aggravation of insolvency

- Increase liabilities or decrease assets, or
- Decrease or conceal all or part of its income, or
- Hide some of his property.

What are the sanctions of the fraudulent insolvency organisation?

- **DEBTOR, DIRECTOR AT LAW OR IN FACT OF A LEGAL PERSON:** 1 to 3 years imprisonment, and a fine of €18,000 to €90,000.
- **ACCOMPLICE:** May be held jointly and severally liable, up to the limit of the funds or the market value of the property received, whether or not in return to payment, for pecuniary obligations arising from the decision from which the offender has sought to escape.

What is the starting point of the limitation period (3 years)?

- The limitation period for public proceedings starts from the decision, which the debtor has sought to avoid.
- However, in the case of an action whose purpose is to organise or aggravate the insolvency of the debtor after this decision, the limitation period starts from the last action.