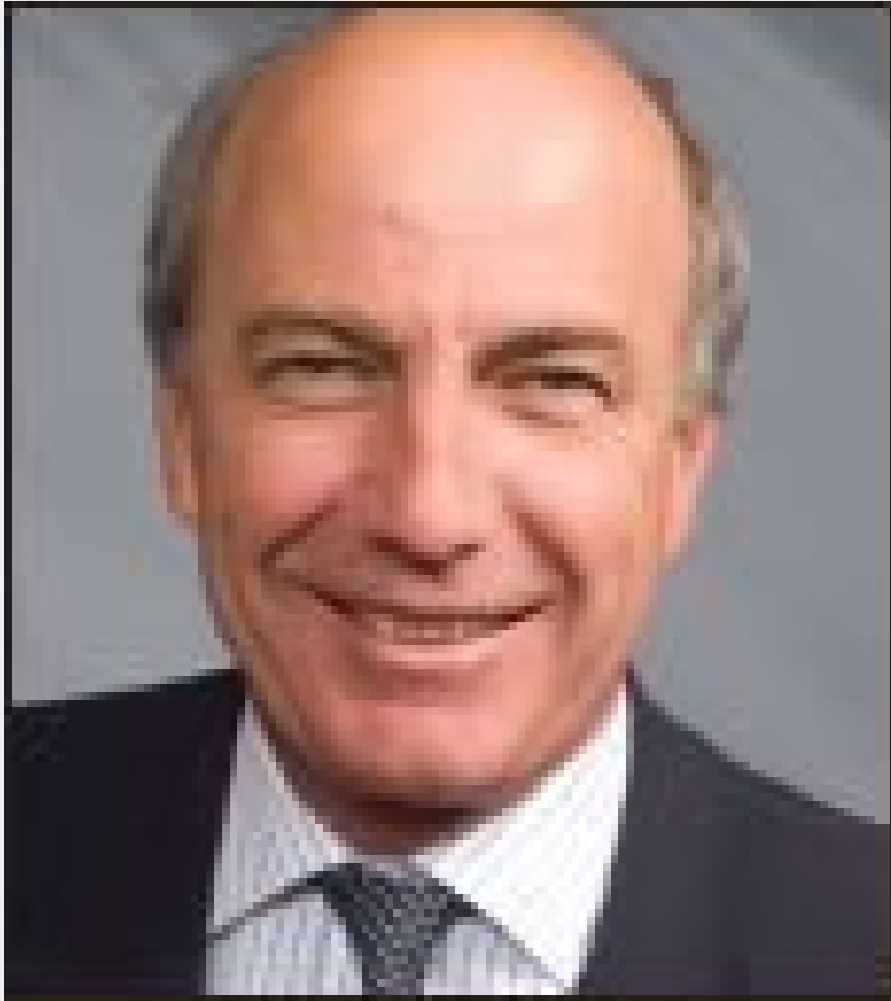
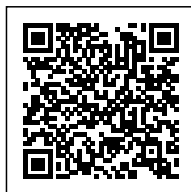


A JUDICIAL TESTING GROUND - TRIAY & TRIAY

Posted on 25/04/2009



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Gibraltar is finding itself at the forefront of the judicial interpretation of some of the key issues now emerging from the global economic crisis, say Joseph Triay and Robert Vasquez of Triay & Triay in Gibraltar

The growth of Gibraltar's financial centre and its position as an international conduit for investment in and out of Europe is being reflected in an increase in finance-related litigation in the Territory, says Joseph Triay the managing partner of Triay & Triay.

'The position of Gibraltar and the role it now plays in the international finance world mean that we

are seeing disputes emerge as a direct result of both the current financial crisis and the slowdown in business internationally,' he says. 'Matters encompass issues as diverse as unfulfilled expectations emanating from previously concluded cross-border transactions and inevitably the fall-out from the regulatory investigations and corporate failures now emerging across the US and Europe.



An issue soon to be debated before the Gibraltar courts is in relation to the ability of the US authorities to recover or 'claw back' funds repaid to investors from the fraudulent Madoff brokerage before its downfall, explains Robert Vasquez, a partner in the firm, who is dealing with the litigation.

'We are finding ourselves at the forefront of the judicial analysis and interpretation of contrasting US and English/European legal and insolvency principles,' he says.

In dispute is the ability of the American authorities to exert a US statutory 90-day claw back rule in contrast to Gibraltar laws, and the position of 'preferential payments', which offer a defence against claw back in specific defined circumstances.



The circumstances surrounding the case are among those that are helping to throw light on the robust policies of Gibraltar's Financial Services Commission, they say, but also the effects of its transposition of European Union rules, for example, on antimoney laundering, savings tax and financial services.

'What has also proved useful has been the lack of banking secrecy laws in Gibraltar, beyond the common law rules also applicable in England and Wales, and looking forward there is tremendous interest in Gibraltar concluding tax exchange of information agreements that are now at a well advanced stage,' says Vasquez.

'The necessary 12 agreements required by the OECD will be entered into before November 2009, with the first one signed recently with the US. Three others are already in an advanced stage of negotiation and likely to be completed in the next quarter.'

But in other respects, litigation is on the increase in areas where there is no unified international system of laws notably in respect to company insolvencies, adds Triay.

'It is a field in which clear discrepancies are coming to light despite the common law concept of 'universalism'. A principle that leaves much yet to be argued and determined. The lack of a uniform international approach means that we are now seeing disputes emerge with the focus on asset tracing involving both Gibraltarbased companies and those from elsewhere with local subsidiaries or trusts.'

In addition, they also report consistent levels of insurance, investments, funds and shipping litigation, again reflecting Gibraltar's international business niches. Those with uncertainty over the robustness of Gibraltar's legal and judicial system are comforted by the substantial influence of English procedural rules, believes Vasquez.

'The robustness of the Gibraltar judicial system is beyond doubt, but what can still surprise people is the relative speed of the process and the ease of parties to seek interim relief – including freezing

orders, search orders and interim injunctions.'

The Territory is also a signatory to and has implemented all EU rules on the enforcement of judicial awards, and is a signatory of the New York Convention on the Enforcement of Arbitration Awards. 'In some respects it may be easier to enforce an arbitral award than a judicial decision,' says Triay.

But in any event, the enforcement of judicial awards is straightforward. In Gibraltar, including of Spanish decisions. Gibraltar awards registered in the Foreign Office in London are enforceable in Spain, as may be Spanish awards for enforcement in Gibraltar.

'The fundamental strengths of the Gibraltar legal and judicial system are that it is open, autonomous and commercially aware, but also internationally accessible,' concludes Vasquez.