GIBRALTAR: PUSHING AHEAD DESPITE RECENT FLAMES

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Gibraltar continues to move to the 'onshore'™ mainstream but events inside and outside the Territory continue to impact on its economic evolution, while a recent scandal has placed the legal market itself under scrutiny.

The start of the new decade promises much for Gibraltar. International business and political momentum is helping to push the 'Rock' towards its stated goal of becoming a mainstream 'onshore' finance and business centre. In addition, the Territory's lawyers report continuing international demand for their niche expertise.

What is vital however is that through the current testing economic times Gibraltar maintains it international business and finance credibility, say lawyers.

'We have to continue to sell Gibraltar PLC as a transparent and highly regulated place in which to do business. To reiterate that we are in the EU and that we offer specific advantages, in the funds, insurance, shipping and gaming sectors. That Gibraltar is a good place to do business in,' says Melo Triay, Managing Partner of Triay & Triay.

Challenges remain for the ambitious albeit compact Territory both as a result of external and internal developments. Nonetheless last year saw it removed from the Organisation for Economic Co-Operation and Development's (OECD) 'grey list' of financial centres. In addition, last October's British Government Review of Financial Centres helped to support Gibraltar's positioning as an international investment and finance gateway to the European single market.

The Report concluded that Gibraltar has proved less susceptible to the downturn than any of the UK's other Crown dependencies or Overseas Territories. In the face of the worst financial downturn for 60 years, its economy has proved resilient thanks to good medium-term planning resulting in a diversified economy. The government maintains a fiscal surplus and tax revenues remain relatively stable.

White list

Among the most significant developments of the past year is the elevation of Gibraltar from the OECD's 'Grey List' to the 'White List´.

This was achieved last October following the signing of Tax Information Exchange Agreements (TEAs) with Finland, Greenland, Faroe Islands and Portugal. The White List comprises countries that have signed 12 or more TEAs (with Gibraltar having now signed around 17) a transparency criteria decided by the G20 and OECD in April 2009.

'It is early days for Gibraltar but there is no doubt that our inclusion on the White List is an important development. But that said, it is just another example of the Government's commitment to maintaining our EU and international obligations;' says Christian Hernandez, partner with Isolas.

Gibraltar has to date signed TEAs also with Austria, Australia, Denmark, Finland, France, Germany, Ireland, New Zealand, United Kingdom, and US. Its International Co-operation (Tax Information) Act 2009 came into force in December.

'It is not however how many TEAs you have but the reality of them. We now have a number of Agreements in force and the rest, it is hoped, will come into effect over the coming year,' says James Tipping, Director of the Gibraltar Finance Centre, who has been charged with implementing the Government's strategy in this regard.

Effective implementation will also be seen as an important test of Gibraltar's commitment not only to the letter but also the spirit of international standards, agree lawyers. Financial services now accounts for around a quarter of GDP – with tourism, construction and real estate, shipping services and online gaming, making up much of the rest. Gibraltar now has 19 licensed banks, with assets of around £12 billion, almost 100 licensed insurance companies, including captive insurance companies, 120 investment funds and over 70 trust and company services providers.

A TEA has also been proposed with Spain, which has yet to formally respond but if accepted it will remove Gibraltar from the country's 'fiscal paradise' register and enable Spanish companies to operate more freely in Gibraltar. 'There appears to have been a more positive approach in certain quarters in Spain that we are truly serious about the transparency issue,' says one prominent law firm partner.

In any event, Gibraltar is already subject to the EU Savings Directive, which has in part the aim of increasing transparency, and in most cases already applies automatic exchange. Lawyers talk of further developments, including the prospect of double taxation agreements, but Tipping says any further progress in this area will depend on governmental priorities.

'The emphasis last year was on TEAs and by any measure the results have been very positive. But looking ahead the issues we are now placing increasing emphasis on include the implementation of the EU's Solvency II Directive, and its impact on Gibraltar's growing insurance industry, and inevitably issues affecting the funds arena including the UCITS IV Directive and proposed Alternative Investment Fund Managers Directive.'

Corporate tax

Another significant development will be the demise of Gibraltar's historic tax exempt company scheme, which had already closed to new market entrants in 2006, and the reduction of the current 27% domestic corporate tax rate. January 2011 will see the launch of a new 'across the board' corporate tax rate of 10% for all Gibraltar companies.

'The Government has been clever to introduce the new rate and apply it to new businesses entering Gibraltar, thereby allowing Gibraltar to market the new tax rate internationally without there being an immediate negative effect on the domestic economy,' notes Melo Triay at Triay & Triay.

The new tax rate means that all businesses, whether local or international, will be taxed consistently. Despite there having been concerns that some businesses originally established under the exempt company scheme, notably online gaming companies, might reconsider the rationale for being in Gibraltar, there has been no movement as yet.

'Companies have made strong investments in Gibraltar and that is not likely to change. In any event where would they go and still enjoy the same regulatory protections, relatively low tax environment and be able to passport their operations right across the EU,' says Hernadez at Isolas.
Implementation of the new regime is part of the culmination of an almost decade-long evolution for Gibraltar, explains Tipping. 'It was decided a long time ago that there was a very limited future in positioning Gibraltar as a tax exempt jurisdiction – that world has now gone forever. It is clearly more beneficial for the entire economy to play a growing role in the mainstream financial and corporate arenas.'

Lawyers report continuing growth notably in the insurance, reinsurance and captive insurance sectors, and in funds areas, including real estate (USITS) and foreign exchange.

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Kenneth Bonavia, Hassans

'We are seeing strong interest among sophisticated investors to utilise Gibraltar as a channel for investments both into and out of the EU. Funds here are easy to establish, efficient and cost-effective – it can cost as little as £20,000 to establish a new fund' says Melo at Triay & Triay. In support of such growth, lawyers also point to the growing interest in Gibraltar as a tax domicile for UK high-earners. The increase to 50p of the top rate of UK tax is generating notable interest among London City-based fund mangers, say some.

'Gibraltar may not suit everyone, and we do not expect a flood of applications, but we also do not need to attract a lot of people to make a noticeable impact,' says Tipping.

Internal issues

The Great Recession has not however bypassed Gibraltar. Its shopping area, Main Street, may still bustle with tourists but lawyers acknowledge that events outside of Gibraltar have had an impact on the level of client work being seen. In addition, the collapse of the Air Andalus service to Madrid has also done little to help reinforce commercial (and political) links with its neighbour.

Undoubtedly the major event affecting the legal market has been the collapse of one of Gibraltar's most high profile law firms, Marrache & Co, following the arrest of its Managing Partner and Finance Director on charges of false accounting. Client funds of around £1.8million are reported to be missing and investigations are now ongoing into possible further wrongdoings as well as the role of the other partners in the firm.

Nine of the law firm's trustee licences were cancelled by the Financial Services Commission for 'serious and persistent breaches of Gibraltar's financial services legislation'. Its plans to enter into the banking sector with Close Brothers were dropped by the UK-based merchant bank following the arrests, after two years of planning. 'The legal and business community has been devastated by the claims surrounding the Marrache practice. If these claims are found to be substantiated, then it potentially raises the sort of perception that we have all worked so hard to overcome and which would be totally unrepresentative of the legal and business community as a whole,' says Kenneth Bonavia, Head of the Hassans Spanish practice, and formerly Managing Partner of Stephenson Harwood and DLA Piper in Madrid. Such a development has therefore to be put into context. What is important is not so much that the case has arisen, financial centres around the world face much bigger and more constant issues, but how Gibraltar and the legal community deal with the issue, believe many. Three of Gibraltar's leading firms, Hassans, Triay Stagnetto Neish and Isolas are helping the Adminstrator to manage the legal issues that have arisen out of the collapse, and to look after the ongoing legal needs of the firm's clients; Triay & Triay declined such a role over concerns about potential client conflicts and independence.

Lawyers, along with Gibraltar's Finance Centre are already looking at measures to prevent any kind of repeat of the circumstances that have arisen. A new legal regulator has already been proposed, financed by lawyers registration fees, with the power to inspect and audit law firms client accounts.

'There are many suggestions as to how we can move forward, including raising the fees paid to the Bar Council to support a new regulatory body that will have the power to really investigate the legitimacy and transparency of firms business operations,' says Melo Triay, of Triay & Triay.

Genuine growth

Such a development, alongside the wider impacts of the global economic crisis, has nonetheless helped forced firms to reassess their own trajectories, say lawyers. 'Putting the brakes on is no bad thing for clients, law firms or Gibraltar as a whole. It has helped put the emphasis once again on sustainable economics,' says Guy Stagnetto, partner with Triay Stagnetto Neish.

His firm is among those to have added new lawyers over the past year, as well as building a new floor to the firm's offices. 'We have been pleasantly surprised at how strong the demand has been even with the onset of the financial crisis. We have a continuing book of business and all the indicators are that we may now have to look as adding more capability.'

Isolas too has added new lawyers including a rare lateral partner hire, of litigation and employment specialist Mark Isola from Triay & Triay. 'Since last year we have added three new lawyers at senior and junior levels. We are seeing more restructuring, refinancing, and litigation work and looking to bring people in with the requisite skills,' says Hernandez at the firm.

Smaller firms too report consistent demand. 'Gibraltar has been affected by the global downturn, but not anywhere near as hard as Spain or the UK. Some local companies have experienced a slowdown and similar issues with international companies have affected the volume of business passing through Gibraltar. Notwithstanding, we are busier than we have ever been,' says Paul Borge, partner with Cruz & Co.

The firm recently expanded into Morrocco via a joint venture with Spanish referral firm Balms

Abogados. 'The country is undergoing a process of economic liberalisation and to date things have gone well in Tangiers. We are though a small firm and do not have the large expense base of others. Our size is our strength," he adds.

Spain too remains a point of focus, particularly for Gibraltar's largest firm Hassans, which has expanded its Sotogrande practice. 'We are now seeing interest from international investors who are keen to hear what Gibraltar may offer beyond mere local capability. They are interested in exploring opportunities and doing deals across all of Spain, in the leisure, retail, hotel and finance sectors. We have been extremely busy over this past year, notwithstanding the severe recessionary climate,' says Kenneth Bonavia, who leads the Spanish practice.

Regulation

Despite the evident challenges Gibraltar continues to look to the future, say lawyers. Gibraltar's new £50 million airport terminal, being constructed by Spanish constructor Dragados, should be open by early 2011, a new £100 million power facility has been proposed, and new ship bunkering (refuelling) facilities may soon come into commercial operation – it is now the main area of operation for the Port of Gibraltar, generating revenues estimated to be in excess of £1billion.

Significant investment is also being made in Gibraltar's judicial system. Gibraltar has a new Chief Justice and new Supreme Court Judge while a new judicial complex is under construction – effectively doubling Gibraltar's current judicial capacity. Rights of appeal will remain with England's Court of Appeal and new Supreme Court. 'Gibraltar has seen a lot of large-scale complex litigation in recent years and this has only been heightened by the financial crisis. We have not been adversely affected, no major frauds have come to light involving Gibraltar, but the free-flowing nature of the financial markets means that any major financial centre will see an impact,' says Robert Vasquez, litigation and commercial partner at Triay & Triay.

Gibraltar still needs further investment, admit lawyers. Gibraltar's economy may have changed dramatically over the past decade, and much of the former Royal Navy dockyard may have been reborn as luxury marina and apartment complexes, but it not yet a mini Monte Carlo. Nonetheless it continues to forge a unique and independent path even in the face of continuing adversity, of its own and others making.

'Gibraltar has a very resistant mentality. It has had to find new ways of doing things and to make a place for itself in the world. Part of its recurring strength and attraction lies in its inherent adaptability and the creative way it rises to new challenges,' says Kenneth Bonavia of Hassans.