

Gibraltar

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A touchstone for financial success

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Gibraltar is an offshore centre in a continual state of financial reinvention. Constantly adapting and reacting to the needs of the global economy, Gibraltar has been busy this past year, updating and rearranging its extensive canon of tax planning structures and incentives. The touchstone to Gibraltar's success is, and always has been, its ability to identify its unique strengths and build upon them by introducing legislative advantages designed to complement the colony's socioeconomic and political progress.

Dependent but strong

Our unique strengths are manifold; they spring forth from a singular relationship with the UK, one that in 1973 allowed Gibraltar accession to the EU as a dependent territory of the UK via Article 227(4) of the Treaty of Rome. Since then, the tiny peninsula has experienced an unprecedented rise in inward investment, especially in the last 15 years. No doubt this has been aided by Gibraltar's attractive location at the gateway to the Mediterranean, as well as at the crossroads between Europe and Africa. This unique location bodes well for Gibraltar's plans to form the financial hub for the multinational leisure industry along the southern European and North African coasts.

Although it is a dependent territory, Gibraltar enjoys considerable autonomy from the UK, virtually self-governing itself in all matters except defence and foreign policy. Gibraltar enacts its own legislation, applying English common law and transposing EU directives to engender a well regulated and international finance centre.

It is in the latter that Gibraltar's legislation drafters have been most recently occupied, especially in their efforts to transcribe directives that will allow Gibraltar's services to be passported throughout the European Economic Area. These have included advances in the insurance sector and the passporting of Undertakings for Collective Investment in Transferable Securities (Ucits) following the implementation of the amending EU Ucits Directive, meaning pan-European funds can now be set up in Gibraltar and run by the same managers across Europe.

The local implementation of the EU Interest and Royalties Directive, on a common system of taxation applicable to interest and royalty payments between associated companies of different member states, is another example of a recently enacted legislative enhancement that only Gibraltar, as the only offshore member of the EU, can offer its eager investors. Of similar European clout is the implementation of the amended Parent-Subsidiary Directive, exempting such structured companies from tax on certain transactions carried out between them.

Taxation and funds

Gibraltar is also envisaging an entirely new tax regime, abolishing the current 35% corporate tax rate and replacing it with a system of payroll taxes and business property occupation taxes, both capped at 15% of profit. This in effect would introduce a nil-rate corporate tax regime for companies with no physical presence in Gibraltar.

Unfortunately, and despite the UK's backing, Brussels has resisted these proposals. The UK and Gibraltar have litigated on the EU's decision, taking the case to the European Court of Justice (ECJ). Gibraltar's arguments are based on those expounded in the recent *Portugal vs Commission* judgment (the Azores Case). Confidence is high amongst both concerned parties and it is expected that the new tax regime will become law following a

favourable judgment this summer. This year's annual budget has already revealed a corporate tax cut of 2%; it is envisaged that corporation tax is to go down every year until 2010 when it should reach 10%.

On a purely domestic level, Gibraltar has recently introduced the experienced investor fund. This highly innovative class of fund is aimed at experienced investors and is capable of becoming fully operational in a very short space of time. Stamp duty has also recently been abolished, with the exception of low-cost real property transactions. The abolition of stamp duty is just the last instalment in a series of attractive tax incentives offered by Gibraltar, which include full exemptions on capital gains tax, wealth tax, sales tax, withholding tax and VAT.

Opportunities for high net-worth individuals continue to attract inward business with the ever-popular category 2 status tax planning strategy, as well as the asset protection trust. The former allows high net-worth individuals (worth over £2 million) the opportunity to pay a nominal amount of annual tax on their worldwide income (this may be as low as £18,000 and no higher than £25,000 per annum). The latter is based on the age-old common law concept of the trust and allows, through the transfer of assets to a third person, avoidance of execution, forfeiture, confiscation and naturalization of assets, as well as providing for the distribution of assets on death. The asset protection trust is specifically designed to keep assets contained within the structure from being reached by creditors.

This summer the launch of the Gibraltar Stock Exchange heralds a new era for the Gibraltar Finance Centre; one that will build on the amazing growth currently reported in the territory's insurance, banking and fund management sectors.

Financial and corporate

Recommended firms	
Tier 1	Hassans
Tier 2	Isola & Isola Triay & Triay Triay Stagnetto Neish
Tier 3	Marrache & Co
Tier 4	Attias & Levy Massias & Partners

Gibraltar is not the outpost it seems at first glance. The rocky peninsula is in fact opening a door to the captive markets of the EU. Or at least that's the view of American, Asian and Antipodean insurance companies. "Non-EU entities are looking to enter the European market," one lawyer explained. "Gibraltar is part of the common market and has a good tax regime so companies are using it as a gateway."

Over the past four years, the number of insurance companies in Gibraltar has increased from 11 to 56, a number described by one lawyer as a "critical mass" of insurance companies. These companies are now ready targets for foreign insurers seeking a Gibraltar base. Other insurers are reorganizing and consolidating through mergers with their Gibraltar kin.

As a result, M&A activity is booming for once in what is traditionally a finance-oriented jurisdiction. Real estate is very popular and investors across Europe are snapping up property portfolios. But although corporate lawyers are being kept busy, their activity is primarily in financial sectors such as insurance and real-estate investment. Even in a bumper year of mergers, finance is still Gibraltar's mainstay.

Hassans

"Our experience with them was excellent; the partner relationships we have are superb," said one client. "We used Nigel Feetham who is the leading expert in Gibraltar on insurance."

Feetham continues to lead the way on insurance work. In January 2007 he helped Euroguard Insurance Company become the first Gibraltar-based contractual cell company to convert to a protected cell company (PCC) and in April 2007 helped Martello attain PCC status. Feetham's expertise in this area goes unchallenged; he was involved in drawing up the legislation that created the PCC structure.

Gibraltarian insurance companies are also becoming targets for M&A activity. This year Feetham advised a Gibraltar-based insurer on a private-equity-backed management buyout.

And Hassans also has a good reputation with financial institutions. The firm has been Deutsche Bank's preferred counsel in Gibraltar for a decade. This year the firm advised Deutsche, as underwriter, on Eco Telecom's issuance of \$1.5 billion floating-rate bonds. Eco Telecom is a subsidiary of Alfa Bank.

In other developments at the firm, Feetham has been made a member of the Financial Services Commission (FSC) and three senior associates have been made up to partner. Competitors agree that the firm deserves to hold tier one on its own: "Hassans deserves to be ahead; it is by far and away the largest firm".

Leading lawyers

Nigel Feetham
James Levy
Anthony Provasoli

Isola & Isola

Isola & Isola has a distinguished history in law stretching back to the twenties. Peter J Isola's death in January 2006 was a big loss for the firm, but things are looking up. The firm now has seven partners and serves high-profile clients including Citibank, Lehman Brothers, BNP Paribas and JPMorgan.

As well as working for banks, the firm specializes in gaming law, telecoms and construction.

Leading lawyers

Peter A Isola

Triay & Triay

Clients and competitors alike rate the services of Triay & Triay. One rival lawyer said: "They perform well and every time I have a conflict case I refer it to them," while clients commended it for being "a very pukka English-style firm".

This year the firm advised Eco Telecom on its \$1.5 billion issuance of floating-rate bonds and, in real-estate work, continues to advise the government on the development of a £1 billion marina at Sovereign Bay on the east side of the island. Javier Triay is leading this project and has a good reputation with clients.

Leading lawyers

Abraham Serfaty
Joseph Triay
Raymond Triay

Triay Stagnetto Neish

Triay Stagnetto Neish has had an excellent 12 months acting on deals in three of Gibraltar's key sectors: insurance, gaming and real estate.

The firm counselled a Gibraltarian insurance company during its acquisition by an Australian insurer. Non-European companies are increasingly seeing Gibraltar as a gateway into the EU, and a gateway with the added bonus of minimal tax.

The tax regime has also made Gibraltar an attractive domicile for gaming companies. This year the firm advised bwin, Austrian-listed gambling company, which structures its activity through Gibraltar, on getting licences for activities in new jurisdictions and for new products.

The property sector is active Europe-wide and Gibraltar has seen a number of real-estate transactions. Triay Stagnetto Neish has advised the banks financing the acquisition of real-estate portfolios by property investment companies. Last year the firm assisted the lenders on property deals in the Netherlands, Germany and Switzerland, some worth several hundred million euros.

Leading lawyers

James Neish

Marrache & Co

Marrache & Co is "very commercial, very switched-on and very responsive", according to one client. The firm excels in property and banking work but corporate clients also choose the firm regularly.

This year the firm advised on the \$2.5 billion acquisition of shares in a software entity through Software Development Group and assisted Pfizer on acquiring a Gibraltar company as a vehicle to buy the shares of a French company. Pfizer also consulted the firm on a \$1.35 billion corporate restructuring involving a special-purpose vehicle in Gibraltar. Real estate also brought the firm some corporate work; Marrache & Co acted on a £1.7 billion takeover of property investments.

The firm's traditional expertise in banking attracts a steady flow of clients. This year the firm advised a high-street bank on refinancing its existing debt. The firm is also on the panel for Royal Bank of Scotland and Barclays in London, Gibraltar and Spain.

One client singled out the two named partners – Benjamin and Isaac Marrache – for praise: "Benjamin is a very hands-on and an excellent day-to-day lawyer. Isaac meanwhile is involved with the bigger picture. He has a wider remit but both are very good to deal with and very responsive."

Leading lawyers

Benjamin Marrache

Isaac Marrache

Other notable firms

Attias & Levy enters the rankings this year following observations from the market that this small firm is growing steadily and will be one to watch in the future. It joins **Massias & Partners** in tier four. Named partner Isaac Massias is well thought of, but the firm's small size – two partners – is still considered to hold it back.