

Gibraltar

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Benjamin Marrache Marrache & Co Gibraltar

A plethora of factors, including Gibraltar's location as the gateway to the Mediterranean, an attractive tax regime, an undertaking by the British government enshrined in the Gibraltar Constitution to maintain a British Gibraltar, and full membership of EU as a dependent territory under Article 227(4) of the Treaty of Rome following the UK's accession to the European Community, has seen a dramatic increase of inward business to Gibraltar in recent years. So it is fundamental that Gibraltar's legislature evolves to protect and enhance its burgeoning finance centre.

Although a dependant territory of the UK, Gibraltar enjoys considerable autonomy, and is self-governing in that it enacts its own legislation (known as ordinances) that closely mirrors UK statutes, and applies English common law. Being a full member of the EU, Gibraltar has, and continues to transpose, EU Directives, therefore reinvigorating the consequential regulatory standards that apply.

Perhaps the biggest corporate law development recently was the EU Commission's decision to challenge the Gibraltar exempt-company regime under the existing aid procedure. This resulted in extensive and protracted negotiations between Gibraltar and the European Commission, which culminated in an agreement announced earlier this year to allow the tax exempt status to continue until 2010. Uniquely, it allows new exempt companies to be formed until June 30 2006, albeit with certain provisos in respect of the next five years. The attraction of the exempt company is that, apart from an annual payment of £225 (\$393), the company does not pay any further Gibraltar company tax.

While Gibraltar companies continue as a popular vehicle in corporate international reorganizations, and the triumph of the exempt status agreement therefore provides much international and investor comfort to this change, Gibraltar as a reputable international offshore centre offers the offshore trust and the high-net-individual status, which are booming in popularity.

In its simplest form, the attraction of a trust arises from the fact that the settlor transfers part or all of its assets to a third person, and as such avoids execution, forfeiture, confiscation or

naturalization of the assets, and provides for the distribution of assets, which avoids the inheritance laws. In particular, Gibraltar has enacted legislation to enable the asset protection trust to protect the assets settled from the reach of any creditors of the settlor. The income received by the trust or beneficiary under it is exempt from all taxation, provided that no Gibraltar or local resident is a beneficiary to the trust and that the income arises either outside Gibraltar or is otherwise exempt.

Gibraltar has prescribed legislation designed to give high-net-worth individuals (HNWIs) the opportunity to pay a nominal amount of annual tax (a minimum of £14,000) on their worldwide income. The HNWI must have a net worth of more than £2 million and own or rent government-approved residential property in Gibraltar. These rules, enacted in 1992, were relaxed in 1999 at the time of the abrogation of the 30-day residence requirement in Gibraltar.

In conjunction with the above tax opportunities that Gibraltar has to offer, the expedient evolution of a strong legal framework must form the cornerstone of its reputable financial services industry. This unquestionably constitutes a pillar of Gibraltar's economy and comprises of the four main markets: banking, insurance, investment services (including private funds), and company and trust management.

The transposition of most, if not all, EU Directives in the financial services sector is a further manifestation of the dynamism of Gibraltar's legislature. As such, Gibraltar now enjoys the benefits of recognition of passporting its financial services throughout the European Economic Area without the need to apply for separate licensing procedures. Similarly, the statutory creation of the Gibraltar Investor Compensation Scheme in 2002, set up to compensate Gibraltar's investors who have suffered financial loss, serves to enhance Gibraltar's reputation as a financial services industry.

This article merely provides a cross-section of the principal legislative advancements made over the last few years. Gibraltar continuously strives to maintain and protect its position as an attractive offshore jurisdiction within the EU. To achieve this, it is sacrosanct that its legislation evolves effectively and efficiently in accordance with socio-economic and political progress.

The contents of this article demonstrates the legislative flexibility that Gibraltar as a small offshore jurisdiction is subjected

to, to stand as a showpiece to other jurisdictions of how the legislature of a small territory can encourage inward investors through the adoption of ambitious and innovative legislation. This success is reflected to an extent in the growth of HNWIs, trusts and financial services providers in Gibraltar. In addition, with the implementation of protected cell company legislation Gibraltar forms part of a niche jurisdiction that allows for the statutory segregation of assets and liabilities in different cells in these type of structures.

Corporate and commercial

Recommended firms

Tier 1

Hassans

Tier 2

Isola & Isola

Marrache & Co

Triay & Triay

Tier 3

Denton Wilde Sapte

Massias & Partners

Triay Stagnetto Neish

Hassans

Founded in 1939, Hassans has grown to become the largest law firm in Gibraltar, with 14 partners and 40 lawyers overall. Leading finance specialist James Levy QC heads up the firm, and is described by the market as “by far the best lawyer in Gibraltar”. Hassans is a unique law firm in Gibraltar. Around three-quarters of the firm’s work involves international clients, many of whom seek to use Gibraltar companies or trusts to structure their taxes and investments. Despite remaining independent, Hassans maintains links with other firms in London, Europe and the US.

The client roster at Hassans reflects the esteem in which the firm is held by leading financial institutions and companies. The firm’s “rising star” in insurance is Nick Feetham, who is said to be “leading the way in this increasingly expanding field”. His clients include the Admiral group, the Saga group and the Guardian group.

The government of Gibraltar regularly turns to the firm for advice on the transposition of EU directives into Gibraltar law. More often than not, these directives focus on the financial services and telecoms sectors, both of which are areas of specialist knowledge for the firm.

Hassans is particularly well known for its banking and finance work, and the firm has a wealth of experience advising large financial institutions on banking regulation and licensing matters, the establishment of offshore operations and numerous transactions involving repackaging and securitization structures. For example the firm set up the first special purpose vehicle to issue notes in Gibraltar for long-term client Credit Suisse First Boston. The bank praised Hassans for advice that is “just as beneficial as ever”.

Leading lawyers

James Levy

Anthony Provasoli

Key contact partner

Michael Castiel

Isola & Isola

Isola & Isola is a stalwart member of Gibraltar’s “top three” law firms. It is also the island’s oldest, having been established in 1892. Close competitors of the firm rate it highly, and claim that “Isola probably has the largest corporate department in Gibraltar”.

The distinguished Peter J Isola is the firm’s most senior partner, and was elected leader of the Opposition twice in the mid-1960s and also in the late 1970s. Two of his sons, Peter and Albert Isola, are partners in the firm. Isola & Isola has 18 lawyers overall, but the firm’s company management businesses, Fiduciary Management Limited and Fiduciary Trust Limited, bring the headcount up to 60 full-time employees.

Key contact partner

Peter J Isola

Marrache & Co

Marrache & Co has had one of the most successful years in the firm’s history. The firm has grown considerably, taking on five barristers and three lawyers over the last 12 months, bringing the firm’s size up to 28 fee earners. In banking and finance the firm acts for local banks such as the Royal Bank of Scotland Gibraltar, Jyske Bank and NatWest Bank. International clients, including Credit Suisse First Boston and the Nationwide Building Society, also instruct the firm on a regular basis. Marrache & Co has a well-developed corporate and commercial practice that has coped this year with an ever-increasing workload. Such a strong year across the board sees the firm promoted to the second tier in this year’s *IFLR1000*.

Isaac Marrache is the firm’s senior partner, and runs the firm with his brother, managing partner Benjamin Marrache. At the time of going to press, he and 11 colleagues were acting for Multiplex and Duelguide on the Eastside project, worth £1.7 billion (\$3 billion). Renowned architect Norman Foster designed the development, which features over 2,000 apartments, a marina, a cruise liner terminal and two hotels. The project is due to start in 2006 and upon completion will cover around 500,000 square metres, making it the largest single investment made to date in Gibraltar. Isaac Marrache has also spent three years leading the restructuring of a global pharmaceutical company, in Gibraltar’s largest financial transaction ever. Benjamin Marrache has also been active this year, advising Russian corporation Evraz Securities on its \$150 million bond issue.

This year, all Spanish lawyers were called to the Gibraltar bar, allowing them to practice in Gibraltar for the first time in 300 years. Marrache & Co’s Spanish law department is headed by Gabriel Garcia Benavides, and is one of the largest in

Gibraltar – over the past year it has handled more than £300 million-worth of deals. The group specializes in advice on mortgages for properties in Spain and Portugal, and has represented financial institutions in the structuring of developments along the Spanish and Portuguese coasts.

In another standout mandate, litigation specialist Tony Christodoulides advised Club Class Holidays on a money laundering investigation that reached the Privy Council in London. The firm's restructuring and financial services department has restructured property portfolios held by the Bank of Scotland, Bank of Ireland and Canada Life, and advised McGregors in a property transaction worth over £183 million.

Leading lawyers

Benjamin Marrache
Isaac Marrache

Key contact partners

Benjamin Marrache
Isaac Marrache

Triay & Triay

Triay & Triay celebrates its centenary this year and, according to peers, the firm "has always been near the top in Gibraltar". The 11-partner firm is one of the oldest in Gibraltar and is highly regarded for its expertise in shipping and admiralty law.

Joseph Triay, son of one of the firm's founding partners, is the firm's most senior lawyer and one of its three Queen's Counsel; leading lawyers Abraham Serfaty and Alfred Vasquez are the other two. As a firm, Triay & Triay approaches its work with a focus on the client's business needs. The firm has an associate company, T&T Management Services, which has provided accounting, insurance and offshore administrative services for over 20 years.

The firm's strong corporate practice is complemented by its experience of handling top-level government mandates. In the most prominent of these, Javier and Julian Triay advised the government of Gibraltar on the £1.7 billion (\$3 billion) Eastside development project designed by celebrated architect Norman Foster. The construction of 2,200 apartments and a marina is due to start in 2006, and is expected to cover half a million square metres when complete.

Leading lawyers

Abraham Serfaty
Joseph Triay
Raymond Triay
Robert Vasquez

Key contact partner

Joseph Triay

Other notable firms

Denton Wilde Sapte is the only the only international law firm with an office in Gibraltar. Brendan Murphy is the resident partner; the practice is equipped to handle structured interna-

tional transactions, the licensing of gaming operations and financial services issues. He was joined this year by lawyer Diego Shin, who is qualified in the UK, Spain and New York. Also recommended is local firm **Massias & Partners**, led by Isaac Massias. Formed in 2001, **Triay Stagnetto Neish** is the product of a merger between Louis W Triay & Partners and Stagnetto & Co. The former firm specialized in tax and trust work, while Stagnetto & Co had a recommended admiralty law practice.