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EDITORIAL COMMENT

Seek and you shall find – hopefully!

Where is demand for Gibraltar's offering going to come from? That's the big question for 2013 as the Labour-Liberal Alliance moves into the second of its four-year term of office.

The priority is identifying markets to target, with Ministers Bossano (Employment & Inward Investment) and Licudi (Financial Services & e-Gaming) keen to map out the strategy that will help deliver the government's pre-election promise of 50 per cent growth in the economy by 2015.

Bossano was the architect of that challenging 10.5 per cent average year-on-year growth in Gross Domestic Product (GDP) - the national income from corporate profits, self-employed, employees and rent. He's an economist with form at making fairly accurate Gibraltar growth predictions; on the night before the 2007 elections, former Chief Minister, Peter Caruana allegedly described Bossano as "a back of the envelope economist".

Yet Bossano admits to having no real idea yet where business will come from. Apart from inflation and what he calls 'organic' growth, he sees half of the GDP improvement coming via inward investment, particularly from BRIC countries (Brazil, Russia, India and China) – another of his manifesto inputs. Licudi from personal experience has added South Africa, to make it BRICS, and his new super sales team for insurance, funds and private client (investment) work has quickly to identify market opportunities worldwide.

That will include the UK, from where most new business already originates, on the grounds that you can never tell people too often just how good an opportunity Gibraltar presents. But other EU countries are likely to be identified, Switzerland and even Luxembourg, where one of Gibraltar's most prominent lawyers was called pre-Christmas to advise on the proposed transfer of some very large funds!

Government spending adds to GDP in the sense that it taxes the extra wages and profits earned, but it must be revenue generating, not cost investment, such as the new air terminal originated by the previous government. (In addition to an annual £3m running expense, there's understood to be £4m cost of servicing the loan to build the £80m terminal, that theoretically could handle 2m passengers a year - but the sea-locked airstrip cannot.)

Tourism has been suggested as the one certainty of the territory's economy – they can't take The Rock's appeal away. Or can they? Continued political and actual skirmishes by Spain in the battle to break Britain's 300 years hold of The Rock, have at times severely affected frontier crossings and British Gibraltar Territorial Waters, and now threatens the 2007 Cordoba Agreement which allows flights approaching Gibraltar to fly over Spain.

All very frustrating and probably borne as much out of jealousy at Gibraltar's obvious and growing economic success (compared to the neighbouring Campo's comparative poverty and Spain's economic woe), as it is of any claim to 'rightful' ownership.

Continuing media and parliamentary coverage of these events may cause some potential investors to hesitate, but that would just be a waste of the opportunity to have a foothold in a mainstream, compliant EU jurisdiction – no matter what Spain says.

Ray Spencer

NEWS

Ministers to decide 50% economic growth strategy

By *Ray Spencer*

Gibraltar is depending on inward investment to meet at least half of the promised 50 per cent growth in its economy to reach £1.65bn in 2015 by staying "one step ahead".

"Organic growth" – natural expansion of existing businesses, plus the effect of inflation – will provide the balance, according to Joe Bossano, veteran politician and a former Chief Minister. His background in economics encouraged him to add the ambitious 10.5 per cent year-on-year compound growth Gross Domestic Product (GDP) commitment to the government's Election Manifesto.

Changing priority

As Minister responsible both for Employment and new business from overseas, his first year has been focused on the former, but from this year his priorities change.

By the end of the first quarter of this year, the government hopes to be able to say exactly where and what it will target to help obtain the planned economic success.

"I can't say where it is coming from, because we have not identified who the professional customers are, but I can tell you that there is no doubt in my mind that we can achieve it and it will be the inward investor that will produce more than half of the growth", he told me in mid-December.

"The economy, even without inward investment, can grow: I am confident that it will grow the other 50 per cent", he said.

Emphasising his commitment, Bossano declared: "I think I am the only guy in Gibraltar that actually puts down in black and white what the targets are. It's easy to say 'if we are elected we will create economic growth', but you make a rod for your own back if you spell out by how much!"

Gilbert Licudi is Minister for financial services, accounting for an estimated fifth of GDP and 14 per cent of total employment. While he envisages it "growing in proportion to the GDP growth", Licudi emphasises: "It is not a mathematical or scientific calculation – what we are saying is that we have a target in relation to overall growth and a market strategy, because we see areas of potential growth and therefore areas we can develop within the finance centre, both in existing business and new areas (which we have already started to target)."

Funds ambition

Changed regulations last year removed the need for funds to have Gibraltar administrators in an area Licudi sees has "potential for significant growth – we are ambitious in the area of funds; it is clearly not going to happen overnight, but it is necessary to have the logistic framework in place, which we have now".

Many funds outside of Europe – some in the Caribbean – were looking at the possibility of having a European base with the EU Alternative Investment Funds Directive (AIFD) coming into force this year. It was very clear to Licudi, from a Monaco funds-specific event, that fund managers were considering "setting up parallel structures in Europe, not necessarily re-domiciling the existing structure; the other [possibility] is where the fund is held under a company, it simply re-domiciled to a new base in Europe such as Gibraltar, so the whole company and fund comes to Gibraltar."

Inward investment Minister Joe Bossano set the GDP target and identified the BRIC opportunity

Although "we certainly didn't come away with a number of cheques for funds in Gibraltar", the main outcome said Licudi, was "the creation of awareness, so Gibraltar is on the radar.

Enticing decision makers

"So when decision makers are deciding where to go – particularly in Europe where traditionally funds have been located in places such as Luxembourg, Dublin and Malta – we are at least on the paper of possible locations, and to be aware of what advantages Gibraltar can bring to entice those decision makers."

He's drafting in three senior executives, who "are primarily going to be engaged on strategic analysis and development of policy in various areas, in particular on funds, insurance and private clients, and developing a marketing approach." Michael Ashton joined in January with 15 years insurance sector experience and Paul Astengo, a Gibraltarian working over 30 years in banking, arrives in mid- February to promote private client work. The funds specialist is still to be announced.

"The idea is to develop a strategy with them; we haven't said you need to come in to do XYZ and this is your target. It has to be a joint strategy and determined fairly early on," he asserted. "We are developing a plan, which will include events in relation to countries that we want to specifically target; I have asked for a strategic approach to be developed for 2013 – early in [2013]."

Now it's BRICS

The government has already said that fast-developing BRIC countries – Brazil, Russia, India and China – will be targeted. Licudi has added South Africa, which following a visit to sign a Tax Information Exchange Agreement (TIEA) he felt "clearly is growing, vibrant, with numerous opportunities, and on the same time zone as Gibraltar (CET). Having Gibraltar as a base for South Africa business for Europe is an ideal location."

The BRIC approach was another Bossano idea and "came from my input before the election in reading what people were saying, and analysing the direction that the world was

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going." He perceived a shift in the sources of wealth and Bossano, who has had 40 years in politics, concluded: "Consequently, we needed to be looking for a customer base outside of our traditional areas so we could be one step ahead."

Last year, as a result of invitations rather than specifically seeking out opportunities, he visited the former Russian state of Azerbaijan and hosted a reception for business people looking at the EU as a potential market. "It's resulted in contacts that I have to go back to. The first trip that establishes a contact never produces anything other than an expression of interest," he noted.

India best prospect

In China in 2012, he presented at a global economic summit, and found an opportunity to meet participants; at a following Rio global economic symposium on inward investment, Bossano met business leaders and academics.

In his view, India presents the best early opportunity for Gibraltar. After a Commonwealth Ministers conference in Delhi, he concluded: "Having been part of the British Empire, as it were, the people in India can understand the business community and understand the way business works, something they are familiar with from dealing with the UK."

Bossano considered "selling the jurisdiction to Indian businessmen and entrepreneurs is an easier task... whereas when talking to the Chinese, or people from Azerbaijan, Brazil and from Russia, they are people from a completely different structure and [ours] is not one they are familiar with."

Like Licudi, Minister Bossano declared: "We are not looking for a given sector, effectively we are putting our stall out and making people aware. I organized a reception in Delhi and had 80 businessmen turn up at 24 hours notice, and some had come in deliberately from Mumbai overnight." Some already had business relationships with the UK, while others were interested in the possibilities of using Gibraltar as a place for a home and for wealth planning.

However, 2013 sees a new phase in promotion of Gibraltar, with Russia being his early target.

"In the absence of any other factor, I have to bring inward investment that will create jobs", he said (see also story Page 20). Bossano admitted: "There is a time lag between going to get investment and it actually taking place – there may be 18 months before starting the process - and in the meantime, the number requiring jobs is still growing."

The new Labour / Liberal Alliance government said it would establish a Economic Advisory Council to assist Chief Minister Fabian Picardo and "to include people from different shades of political opinion to work with Government in developing Gibraltar."

When asked about progress, a government spokesman told me vaguely: "A Business Council is already in place, but it is confined to commercial affairs, eg. Chamber, GFSB, etc." No information was forthcoming about when meetings had taken place, nor of outcomes.

However, the spokesman said progress had been made on a commitment to tax breaks for businesses using Gibraltar as a jurisdiction for research and development in the software / IT industries, which are now established in Gibraltar, as well as production by television, cinema and the music industry. "There are already discussions in progress with interested parties, but this is commercially sensitive," the spokesperson revealed.


Paul Astengo (left) and Mike Ashton join the Finance Centre to promote internationally private client work and insurance respectively.

In a new year TV broadcast, the Chief Minister admits: "Although Gibraltar is in a relative state of calm in the financial storms that rage around the world, we are not immune."

The economic crisis, Picardo said, was starkly evident across the frontier – high unemployment, and people losing their homes - in communities such as La Linea and across the region, "which are closely intertwined with ours in many ways." He added: "The disastrous state of the Spanish economy therefore impacts on our business here and on some of our families too."

Tax concerns

In June's budget he warned that the better than expected revenue in 2011-12 from corporation tax may not be sustainable and business tax in the current year is expected to fall.

Gibraltar's 10 per cent corporation tax is less than half the UK's present 23 per cent. Asked whether the move by UK and other EU nations to crack down on "tax tourism" by international companies that pay little or no tax when based outside of their area of principle sales, Licudi conceded: "Gibraltar offers financial services; I am sure there are many companies in Gibraltar that are based here."

And he noted: "There is clearly a drive in some countries – unfortunately driven by the economic crisis – where there seems to be a need to stamp out what they might call tax dodgers, but there is a fundamental difference between what is considered a criminal offence of tax evasion or fraud, and what is perfectly legitimate tax planning, which might involve a lower tax in one jurisdiction and higher taxes in another."

A barrister, Licudi said financial planning inevitably meant "lots of people set up structures in Dublin, Luxembourg, Jersey, Guernsey, so Gibraltar is not unique." He added: "Gibraltar provides financial services and people come here because it is an attractive jurisdiction."

Change inevitable

Asked about the tough target of 50 per cent growth for the economy over four years, Licudi was sanguine. However, he pointed out: "We cannot be complacent and say we have established our model - we know the sorts of companies we want to attract - we have to continually re-invent ourselves."

"Things evolve, things move on, we have to continually adapt to a changing world. We now have the ethic of Tax Exchange Information we didn't have 4 years ago!"

Challenges loom to bring pressure on growth target

Fresh challenges are emerging that weren't anticipated when Gibraltar's ambitious 50% growth target was set in late 2011. They will test the government's resolve to attract more private investment

A fifth of Gibraltar's Gross Domestic Product (GDP) comes from its Port, combining a growing cruise ship business and substantial bunkering – such that it is known as 'a giant fuel filling station' for ships – but now requiring "serious infrastructure investment" to permit expansion, according to Minister for the Port, Neil Costa.

In an interview for a Guardian newspaper report on Gibraltar in late December, Costa made clear: "If we are serious about radically increasing the number of [cruise line] passengers that come to Gibraltar, we need to change the infrastructural mechanisms that will allow a doubling of that passenger number."

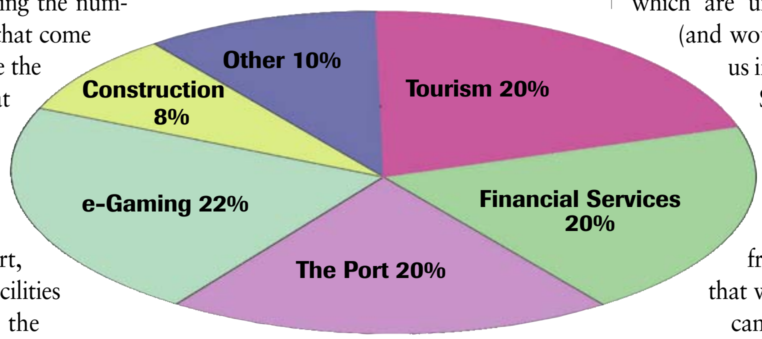
There is growing competition too from neighbouring La Linea and Algeciras Port, where new and expanded facilities are planned, and from the immanent opening of Tangier's new port across the Strait of Gibraltar attracting liners with a similar 'duty free' offering and greater bunkering capacity.

Costa was upbeat on the 20 per cent or £240m annual contribution to the economy from tourism – such as hotels, land, sea and air visitors – which also is his responsibility. "My aim is to convert tourism into Gibraltar's principal engine of economic growth", he said.

Although the government was committed to generate growth in the "critical" area of financial services, he insisted: "Ultimately, the only asset that Gibraltar can always rely on is the Rock of Gibraltar and the inherent and magnificent opportunities in tourism". And private sector money is needed there too, he conceded.

The fast-expanded remote gaming sector, accounting for more than 20 per cent of GDP, is under threat from a planned UK tax from 2014 that could have "serious consequences" for Gibraltar's e-gaming sector, says Minister Gilbert Licudi, with reduced government income from duty, corporation tax, fewer employed and reduced social security payments in prospect.

Apparently not talking up the danger as a negotiating political ploy to oppose the UK plan, Licudi says he's seen figures for each of the 26 licenced e-gaming companies on the extent of exposure to the UK – but they remain confidential.



Gross Domestic Product estimated sector contribution

Attracting more gaming companies is not the answer. "We have to be selective and cautious. We have built up over 15 years a very significant element of quality – not quantity – of major players. It's not about numbers.

"Malta has taken a different route with hundreds of licences – it is not a model we want to emulate," he emphasised.

Licudi explained: "I don't foresee gaming having a bigger share of the economy. We have to be careful that we have prudent economic management. No matter how popular or easy it might be to attract players in a particular sector, we don't want most of our eggs in one basket, because things change over time."

Charged with attracting inward investment, Minister Joe Bassano says "its quite obvious that one of the selling points is that Gibraltar is an entry point". Investment in Europort, the territory's largest group of offices, signified entry to Europe - promoting Gibraltar, not as inward investment in order to access the market of Gibraltar, but in order to access Europe from Gibraltar".

The Rock can succeed, "because we have got the EU next to us and that potential has not been exploited. The development of Gibraltar has not been because there has been a deliberate, targeted policy of growing the economy, it's happened by default," Bossano said.

Listing advantages, he suggested: "The unique situation for Gibraltar is first, we have got all of the powers of a EU member State in a town of 30,000 people – there is no other part of the EU that has that. Second, we have conditions of membership, which are unobtainable by anybody else (and would not have been available to us if the border had been open and Spain a member)."

Gibraltar's then isolation, having to bring everything in by air and sea, enabled negotiated exceptions from a raft of EU requirements that were market orientated. "That cannot be changed without UK agreement since 1972. The unique situation is the one that makes possible the growth. I would not be able to sell, if Gibraltar did not have the situation [EU access]", Bossano noted.

Being small also has advantages. A business person arriving on a tight timescale, could not get a meeting in the UK with a top decision-maker such as David Cameron, unless offering 10,000 jobs, but in Gibraltar Bossano declared: "If you come to offer 10 jobs, I can make that meeting happen with the Chief Minister.

"We have to sell a reality – you can do from Gibraltar what you can do from other places, but you can do it here more efficiently, quicker and you can make more money. The only way you can get people to invest money is if you can persuade them that the jurisdiction you are offering is going to be more profitable for them," Bossano boasted.

Ray spencer

What's Your Target?

By Eran Shay, Head of Financial Advisory Services, Deloitte Limited

Over the last few years, the processes for mergers and acquisitions (M&As) have become more complex and require a disciplined approach as credit markets have tightened. Done well, target screening can improve the odds of a successful transaction.

A well-defined process can also greatly increase the efficiency of a company's M&A strategy, as many potential value killers are identified much before significant organisational resources are deployed to unproductive deals or transactions.

Know your target- know the red flags and pitfalls

Target screening is the systemic first level review of potential acquisition candidates to identify a refined list of companies for further due diligence and consideration.

For companies seeking to acquire other companies, there's a large list of potential targets ranging from standalone companies to subsidiaries to divisions of other companies or even carved out entities.

A disciplined target screening process can create a focused list of targets which are more likely to meet the needs of the acquirer.

Red flags - avoiding common pitfalls

As part of target screening and the initial evaluation process, many of our clients find it is important to give due consideration at an early stage to a few key factors that can undermine the potential value of a target or its strategic fit. Some examples include:

● **Look for financial and operational red flags.**
Is one customer driving significant revenue? If so, what is their creditworthiness? Are there any key suppliers or components that could be at risk? Is this an industry where a transaction may cause employees or customers to leave immediately after announcement? While not all of these can be identified at an early stage, early identification can eliminate a target as a potential candidate.

● **Know the tax considerations.**
Analysing some tax considerations up front also allows you to introduce key structuring decisions early on in the process.

● **Understand the capital requirements for the transaction.**
Beyond the initial purchase price, will the target require a significant cash infusion for working capital and growth? If significant capital is required is it financeable in a tight credit market?

If you as the buyer are already carrying significant debt, how much cash reserves do you need to keep to service that debt? What impact will this transaction have on certain key credit covenants?

● **Think about liabilities that may not be on the books.**
Is there a major contingent liability lurking behind the scenes that could be a deal killer?

A quick search of potential litigation or environmental claims may save significant time down the road if there is an issue not disclosed in financial statements.

● **Consider deal risks holistically.**
What do you know about the individuals with whom you are negotiating?

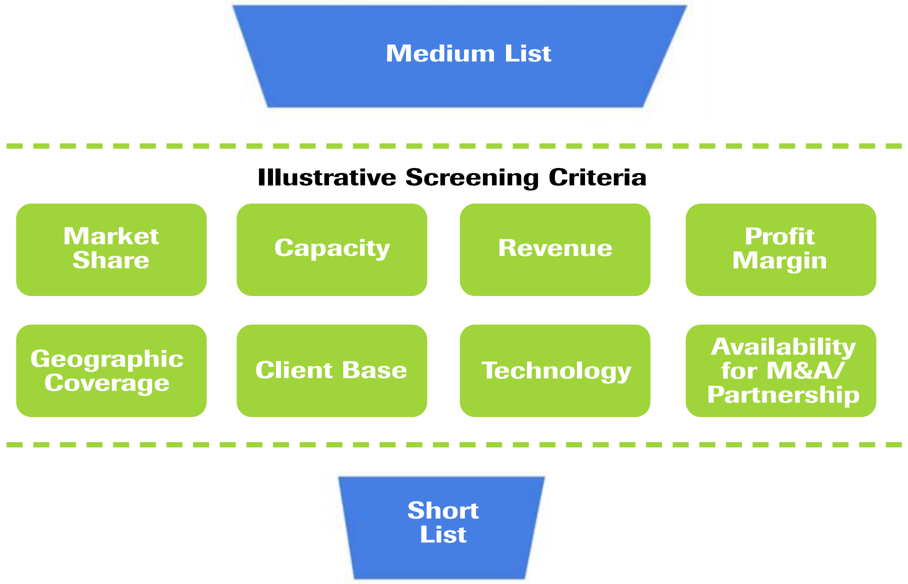
High level background checks or negative article and other internet searches on the company and selected management could easily flush out key risks or concerns about a company's or management's background and reputation.

● **Beware of window dressing.**
In preparation for a sale many companies put their best foot forward. In some cases, adjustments are made to paint the rosiest possible picture to the buyer universe. Cutting through short-term increases in sales, profit or cash flow to understand if they are driven by operational improvements or window dressing is key.

Benefits of screening

The rewards of a well-executed target screening process can be invaluable. If screening is done properly, CFOs and deal teams will be more focused, aware of viable alternatives, confident as to the benefits and risks, and better equipped to respond to competitive M&A situations. Similarly, a good screening process can provide the board with a thorough acquisition story consistent with the company's strategy.

Finally, a good process provides a deeper understanding of potential integration pitfalls which can help maximize the probability of integration success. If not, companies may miss important considerations that can increase the potential for integration failure.



Removal from 'black lists' will see DTAs in 2013


Financial Services Minister Gilbert Licudi raises tax black list issue with Joao de Vallera, Portugal's Ambassador to London.

Double Taxation Agreements (DTAs) with several countries are expected to be in place this year, something the Gibraltar Finance Centre community has long advocated to removing perceived barriers to gaining new business.

The DTAs complement Tax Information Exchange Agreements (TIEAs) that the OECD Global Forum has promoted to eliminate "harmful tax practices" through developing practical tax co-operation between jurisdictions. Gibraltar has signed 23 TIEAs, so far and says it is open to conclude still more.

The present Gibraltar government in its first year in office established an industry-led working group to explore the possibilities; now going into the second of its four-year term, the Minister for Financial Services, Gilbert Licudi revealed: "We have made an initial approach to a number of countries, including the UK."

He told me: "We are convinced that DTAs would be useful; they are useful generally in [financial] planning - Malta, Jersey, Guernsey, for example, all have a number of them."

No reason why not

Business areas that could benefit include banking, insurance, pensions and private client work. "There is no reason in principle why we shouldn't have them [DTAs] - no impediment - and it's something we need to explore," Licudi said.

However, smaller jurisdictions can find it difficult to secure DTAs, because frequently they stand to benefit to a greater extent than large countries. Despite any potential "imbalance", Licudi takes comfort from the fact that "there is in any event, a greater drive for co-operation in tax matters and that includes TIEAs, so this is part of the co-operative process."

He is also confident of making progress with some countries that have Gibraltar on an unofficial "black list" of tax havens, in particular Portugal and Italy. "We have TIEAs with both and they have promised that we will be removed – but we will have to wait and see," he declared.

Spain, (for obvious wider political reasons), is unlikely in the short term to remove The Rock from its 'black list'; France, is also thought to operate such a second-tier approval process that affects Gibraltar. But a practical change in attitude towards Gibraltar and tax has been a long time coming.

"Portugal has Gibraltar on an unofficial black list DTA, most certainly," Minister Licudi admitted to me in an exclusive interview. Gibraltar had been encouraged when the Portuguese TIEA was signed in 2009. "We were expressly told this was something that would be sorted out in terms of so called 'tax haven'. It is unfortunate that it hasn't been resolved yet, even though there has been co-operation, as with any other country with which we sign a TIEA," Licudi stated.

He expressed concern to Portugal's Ambassador in London early in December. "Our message was very clear. We were promised that this would happen and it hasn't happened yet – it needs to happen and there isn't any reason why it shouldn't happen." Licudi emphasised.

Hold up purely administrative

The government believes the hold up "is purely administrative; that there isn't, so we have been led to believe, a political agenda, or an issue that Portugal is concerned about with Gibraltar."

The TIEA was signed in 2009 and implemented in 2011, and since then Gibraltar has substituted tax-exempt company status for some businesses to a low flat rate 10 per cent corporation tax for all businesses, and other measures taken to encourage openness in tax matters.

"We have had requests [from Portugal] under that TIEA, so there has been co-operation already in terms of tax information exchange. There are historical links from the finance centre in terms of property held, investments and structures using Gibraltar successfully… and we have discussed with Portugal those areas where Gibraltar offers services that can be improved and provide further services to Portuguese nationals," Licudi explained.

Italy presents a similar situation, although the TIEA with Gibraltar was only signed in October. However, Licudi was emphatic: "Again we have been led in effect to believe that there is absolutely no impediment, nor reason in practice or in principle, why we should be considered as a black listed jurisdiction."

No discussion had yet taken place with France, but Licudi reasoned: "Ultimately, it is up to each country to decide what criteria they use; my understanding, is that those countries that still have a black list – it's not many, quite frankly – look on two basis; is there a taxation regime that is essentially mainstream, and is the country co-operative from the point of view of any investigations."

Fighting tax fraud

Whilst Gibraltar waits to see whether both Italy and Portugal will stand by their undertakings to remove the 'tax haven' label, Minister Licudi assured that his government was not simply "going through the motions" with regard to international tax and money laundering requirements.

"When at the OECD conference, I made clear to the 82 countries present - sending out the message - that tax evasion is wrong and everybody has to fight tax fraud by every means possible. When we talk of co-operation on tax exchange and transparency, we cannot just mean paying lip service to those principles," he said.

Gibraltar had demonstrated that it meant what it said. "We are not simply saying we want to be regarded as mainstream and onshore in Europe and therefore be removed from whatever black list is in place," Licudi asserted. It was important for practical measures to be in place, "so that transparency means transparency and co-operation means co-operation in practice."

Ray Spencer

Investment Managers: Regulatory Overload – AIFMD

Aaron Payas, an Associate at Hassans International Law Firm reports on the impact of the Alternative Investment Fund Managers Directive, on investment managers

Few investment managers would disagree that the current global state of affairs has translated into one of the most challenging periods in the history of the investment industry. Not only is this the worst economic downturn since the Great Depression of 1929, but investment professionals are also facing an unprecedented amount of new wide-reaching legislation as regulators attempt to avoid another financial crisis of this magnitude.

Alternative Investment Fund Managers Directive 2011/61/EU (AIFMD)

Implementation date: 22nd July 2013.

Official purpose: "To establish common requirements governing the authorisation and supervision of AIFMs in order to provide a coherent approach to the related risks and their impact on investors and markets in the EU."

Types of investment managers affected: All EU investment managers, non-EU investment managers who manage EU funds and non-EU investment managers who market funds in the EU.

AIFMD is the new piece of regulation which is most concerning to investment managers, especially those who are based in the EU or who intend to market their funds within the EU. As from 22nd July 2013, all alternative investment fund managers (AIFMs) will need to comply with AIFMD should they fall within its scope.

AIFMD applies to all AIFMs that manage alternative investment funds (AIFs):

(a) whose assets under management, including any assets acquired through the use of leverage, in total exceed €100 million; or

(b) whose assets under management in total exceed a threshold of €500 million when those AIFs are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of the initial investment in each AIF.

Any investment manager that does not fall below these thresholds will have to mandatorily comply with the AIFMD. Investment managers that fall outside the scope of AIFMD will have to register with the relevant competent authority and will need to provide such competent authority with some information on itself and the funds it manages. However, such so-called "small AIFMs" may choose to opt-in and obtain full authorisation under the AIFMD for example to take advantage of the passporting provisions of the directive. Investment managers must pay particular attention to the following implications of AIFMD:

Depositary costs

The depositary is the key independent party in AIFMD and is charged with protecting the investors in the AIF. The depositary has three major roles as safe keeper of assets, monitor of cash, and overseer of NAV calculation and fund administration.

The depositary is liable for the loss of assets and financial instruments in its control unless the loss is out of the depositary's reasonable control and was unavoidable.

This liability goes beyond negligence and is more resemblant of strict liability. These increased responsibilities for depositaries will translate into increased depositary costs and larger total expense ratios which will ultimately be passed on to the investors.

Capital requirements

Self-managed AIFs must have an initial capital of at least €300,000. Where an AIFM is appointed as external manager of AIFs, the AIFM must have an initial capital of at least €125,000.

Where the value of the portfolio of the AIFs managed by an AIFM exceeds €250 million, the AIFM must have additional capital of 0.02% of the amount exceeding €250 million, up to but not greater than €10 million.

Delegation

AIFMs can delegate certain tasks subject to specific procedures being followed. Delegation of portfolio and/or risk management is limited only to authorised and supervised asset managers. The AIFM may not delegate its functions to the extent that it becomes a letter-box entity. The AIFM will still be liable towards the AIF and the investors notwithstanding any delegation.

The directive requires that the AIFM carries out substantially more functions than it delegates. This means that the common model where a self-managed fund delegates the day-to-day management to an investment manager and other functions to service providers (such as valuation), whilst retaining overall control and supervision, will not be compatible with AIFMD. These models will need to undergo significant restructuring and insource enough functions in order to comply.

Private placement

Managers with non-EU funds face uncertainty over which distribution channels will be available to them once AIFMD comes into force. According to AIFMD, such non-EU funds may be marketed under the private placement regimes of each EU jurisdiction until 2018. After 2018, such managers will have to rely solely on the so-called 'third country provision' which will first be available as from 2015. These provisions require the signing of supervisory and exchange of information cooperation agreements between all the jurisdictions involved which

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may result in this route to market being unworkable or even unavailable for some countries.

Changes in contractual arrangements

Managers will need to revise all agreements with each service provider to ensure that they can meet, as AIFMs, the requirements under AIFMD. In addition, there have been indications that a single entity will not be able to simultaneously hold a MiFID and an AIFM licence, which means that some investment managers may need to consider restructuring their firm or group of entities. Tax residency must also be taken into consideration if the fund management shifts from one jurisdiction to another.

Remuneration

These new requirements form part of a wider EU initiative to set conditions on remuneration to combat excessive risk taking and to harmonise remuneration provisions across financial sectors. Investment managers will need to revise their remuneration policies to ensure compliance.

Operational changes

General changes to the investment manager's operations will also be required to comply with new rules relating to risk management, leverage, calculation methodologies, regulatory reporting and others.

Summary

Investment managers should be running a full gap analysis to identify the areas in which they would not be compliant with AIFMD. Once authorised, AIFMs will be able to passport their services and market their AIFs freely within the EU. In addition, many are of the opinion that the AIFMD product may create its own brand and reputation similar to the UCITS product in the retail sector.

Such branding may enhance investor confidence in the AIFMD product making it more appealing to investors. However, becoming AIFMD authorised carries the burden of compliance plus the significant additional costs.

Conclusion

In light of all the new legislation already, or soon to be, in force, it is unclear how investment managers will tackle the regulatory challenge, whether it be through the appointment of compliance officers, training individual asset managers within the firm or by engaging third party compliance advisers.

It will be crucial however that they keep their costs down and be operationally efficient if they intend to be competitive in their particular market. In economic terms, the barriers to entry of this industry are being raised higher than ever which means that new firms or latecomers will struggle to gain market share whilst the biggest and most efficient investment managers will thrive.

Full article

This article is a short version of a larger one. For the full article, please visit the Hassans website www.gibraltarlaw.com or simply search for "Aaron Payas Regulatory Overload" in your internet browser.

www.gibraltarlaw.com
www.gfia.gi

BANKING

State-run bank counting on expansion

Business people strapped for cash to expand their operations and individuals unable to find a mortgage are being promised a helping hand by the 130 years old Gibraltar Savings Bank (GSB), when its role is expanded from March.

Fabian Picardo, Chief Minister, opened new premises for the Bank at Main Street in early December and said expansion of services at a time when other banks were reducing showed how "different the performance of Gibraltar is to the rest of the EU."

In January, a government statement added: "The Savings Bank will indeed be expanding its deposits-taking function and this will include the provision of interest-bearing current accounts and business accounts free from any bank charges, including free cash handling services."

The development meets a December 2011 Socialist/Liberal Alliance election Manifesto commitment to widen the Bank's services beyond deposit taking to include "loan facilities for small businesses to help them expand and see them through periods of difficulty" by operating "a loan guarantee scheme for small business."

Low initial deposits to open current accounts at the Bank - not to be confused with the US-based Gibraltar Savings Bank of New Jersey - means access to balances by debit card, and future on-line banking.

According to reports, some investors are having difficulty in opening accounts with Gibraltar's three existing retail banks.

Other retail banks on The Rock - Barclays, NatWest and Jyske – are closely monitoring SBA developments, fearing it may have an 'unfair' advantage. They face UK head office-imposed restrictions on interest rates and conditions for their lending to business. Some have reached a quota for 'acceptable' lending at certain government-sponsored housing projects.

The government claims "the Savings Bank is more highly regulated (with its own Act of Parliament) than any Bank that is regulated by the Financial Services Commission (FSC)." It went on: "Unlike any other bank, however, the repayment of all moneys deposited in the Gibraltar Savings Bank, together with interest thereon, is fully guaranteed by the Government."

In response to GSD Opposition questions, the government insists GSB will be subject to the same 'Know Your Client' and anti-money laundering requirements as any other bank in Gibraltar.

Daniel Feetham, acting GSD and Opposition Leader, is concerned to see that GSB "has an experienced and independent managerial team with a fully staffed compliance function," issues that an independent regulator would examine before allowing expansion of GSB services.

The Opposition Manifesto promised Government funded home loans for first time buyers unable to raise mortgages from banks, but committed only to "promoting a locally owned and controlled bank, with such Government participation as may be necessary".

Gibraltar Savings Bank had £330m in deposits at end-March 2011: 10-Year Accumulator Bonds', were launched last year, guaranteed by Government for deposits of £100 or more and paying 2 per cent interest in Year 1, increasing by 1 per cent each year, "as part of the continuing expansion of the role of the Gibraltar Savings Bank."

More new businesses with EU help to reduce unemployment

Gibraltar is fighting for a bigger share of EU funds to help launch businesses, having achieved 20 in 2012 - the highest level yet of any year. But there could have been more start-ups if the territory's £3m allocation was greater.

With private sector entrepreneurs putting up £7m - 70 per cent of the total - 70 new jobs have been created in areas that promote a green economy, jobs for long-term unemployed, and include catering and telecoms. EU money covers a third of capital needed for the structure, premises, etc., and another Euro fund provides money to support trainees' wages.

However, Employment Minister Joe Bossano argues Gibraltar should get more of the funds, which come via the UK as the EU member. "This [financial] year we have used to the full our allocation and as the UK has failed to use up all of the money available to it, rather than send it back [to the EU], they should give us a bigger amount," he maintains.

In all, nearly 400 new businesses were registered last year providing some100 more jobs so far.

But despite increasing the number of Gibraltar residents working in the last 12 months, Bossano says unemployment still remains at 7 per cent, "because there were a group of people who no longer sought work when there was no prospect of getting a job and who did not bother to register as unemployed."

He explained: "In a small place like Gibraltar, if we get someone a job, the next day I get three other guys turning up looking for work, because they've just met a mate who had gained that job."

There are 19,000 full time jobs recorded by the government in Gibraltar, plus 1,000 part time, "but that includes, say, 8,000 cross border workers, which distorts the overall result on [local] unemployment and understates the real extent of the issue", Bossano emphasises.

When including people without a job guarantee at the end of their training, the unemployed total was over 1,000, double that previously thought. "The real pressure of the labour market in Gibraltar is not simply the local worker, but everyone who comes across [the border]", he said.

No restriction on staffing

Bossano denies pressure on businesses to employ only Gibraltarians. "Any EU national can come across the border and run from shop to shop, bars and construction sites offering themselves for work – and there is nothing we can do about that," he admitted.

"But we are saying to employers that we expect them to accept that it is in the public interest and in their own interest, to increase the level of the working population, because the more people in jobs here the less

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money we [as the government] are spending on social assistance and the more spending power the consumer has in Gibraltar." Whilst some jobs were specialist and the skill not available locally, others – such as support staff – were on hand and should be taken on with training as required.

Employers had responded well; around 450 trainees this year are covered by Business Partnership Agreements, "where the provider has a contract to provide jobs at the end of the training and so far, no-one has reneged on that commitment", Bossano added.

People despairing of getting employment have turned up. "I finished up with some 500 more people working and 500 more people, who were already unemployed but not registered. I employ one guy and two turn up. It's a nightmare scenario," he declared ruefully.

"That hidden labour market - some of whom logically must have been in the black economy (otherwise they would have been begging in the streets, but doing odd jobs here and there, wherever they could) – is an element that is reducing and we have now got to a point where we have peaked; I hope." This year, he expects less unemployment.

Graduates jobless too

Amongst the unemployed, however, are 68 graduates in a territory that generously supports eligible school leavers paying all major costs to attend UK universities: half of the 400 youngsters reaching 16 last summer took up the offer!

"We should provide, in terms of manpower planning, for 400 job seekers every year, minus 150 retirees – so we expect the market to grow by 250", he declared.

And Bossano claimed: "Gibraltar experiences possibly the largest churn or turnover of labour in any economy in the EU – out of something of the order of 15,000 jobs in the private sector there is a turnover of 5,000 – 33 per cent pa. Given that there is a flow of labour in and out, it means that even with zero growth, jobs become vacant."

Bossano predicted: "By the end of our first term of office in 2015, I aim to get unemployment down to the level I left it in 1996 [when he was Chief Minister], to a total of 330, which represents just under 3% of the resident population."

Betting on more people

Victor Chandler, Gibraltar's pioneer of e-gaming 14 years ago, and already the territory's largest employer after the government, is in the midst of a "huge" recruitment drive to bring his total local staff to 500 by the end of this year.

As chairman of BetVictor, he recently said: "Most people have got bases elsewhere, but we focus on keeping people here. It's more expensive than having offices in Eastern Europe, for example, but I believe in keeping my directors nearby and being able to talk to them."

At the peak of the Victor Chandler operation in the first decade there were 350 staff, mostly from Gibraltar, but with the growth of internet use, the number went down to 280 two years ago. Today, he has a significant number of employees crossing the border from Spain.

Product and software development is fuelling the expansion. "We try to recruit people from Gibraltar, as that's cheaper, but when you need such a spread of different talents, it's impossible," Chandler stated.

Known as "the gentleman's bookmaker", Chandler noted: "It's the same as anyone that's producing cutting edge IT; you're looking for people that can innovate and that can produce new things."

Round the world bid to boost visitors

Alan Priddy will start his second world record attempt from Europa Point.

Gibraltar is to become the focal point this year for a "Formula 1 type of round-the-world race for power boats" that promises to provide a significant business gain for The Rock, attracting an expected 0.5m visitors over the six months from July.

The 'Circumnavigation Challenge', pits America against Britain, in a bid to break the eleven years old New Zealand-held world power boat record of 61 days.

With an eight-strong crew, Portsmouth's Alan Priddy, Captain of "*Accomplish More*" and instigator of the Challenge, leaves Europa Point on November 2nd, aiming to complete the 23,850 nautical miles race "in far less than 40 days - certainly well before Christmas", he told *Ray Spencer*.

The 90ft-long, single hull aluminum vessel will be based at Ocean Village Marina – one of the local sponsors – for five months of trials and at least another month after achieving the hoped-for record. Hundreds of thousands of spectators are expected to see the craft that's about the same length as a Boeing 737 jumbo jet.

According to research by Priddy, who boasts 37 boating world records, 3,000 people will watch the race start, swelling to 5,000 visitors for the planned finish in early December.

The visitor influx will bring substantial new business to Gibraltar adding world-wide awareness of its location at the end of the Iberian peninsular - but problems may arise in meeting demand for hotel rooms. The new tourist attraction will be included on new 'Rock Experience' tours that another local Challenge sponsor, Bland Group International, will aim at cruise line visitors.

Priddy's £2.5m project will be the foundation from 2015 of an all-comers bi-annual world challenge – five countries have already shown interest – and this event also will use Gibraltar as the focal point.

The American challenger has a smaller catamaran boat leaving on the same day and time from Puerto Rico and is expected to call en-route at Gibraltar to refuel. Both craft must pass through the Suez and Panama Canals, cross the Tropic of Cancer and the Equator.

Accomplish More is being built shrouded in secrecy at Hayling Island before being moved to and registered in Gibraltar, giving the project an appropriate strapline, "British – from start to finish".

With a support team of 25 working much as with Formula 1 racing cars, Priddy's route takes in Puerto Rico, Panama, Acapulco, Honolulu, Guam, Singapore and Oman.

It will be his second attempt at this world record – in 2002 he failed shortly after leaving Gibraltar having battled storms, mechanical problems, illness, injury - and pirate attacks!

Business ROUND UP

New Investor Services Firm

ADM Investor Services International (ADMISI) have appointed Chad Thomson to manage their recently opened Gibraltar branch.

ADMISI is a full service investment brokerage company, with a 75 year corporate history in London and the international investment markets. The company has membership to over 20+ global exchanges with offices in Chicago, New York, Kansas, Mumbai, Hong Kong, Singapore, and Taipei.

Chad Thomson stated: "The draw of Gibraltar for the company is the increasing growth in the Finance Sector, especially the Funds Industry. We provide high quality wholesale brokerage, specialising in execution services, utilising leading trading technology backed up by a 24 hour dealing facility."

He points out: "The strength lies in the company as a counterparty. Although a leading investment brokerage company, we are not owned by a bank or larger financial services firm."

ADMISI is part of the ADM Group, net sales for 2012 were $89 billion.

www.admisi.com

Isolas launches mobile web App

Isolas Law Firm has announced the launch of the mobile optimised version of their website.

The web app is designed to add value to the client and partner experience. Barrister & Business Developement Manager, Selwyn Figueras stated: "From the very beginning, our focus has been on usability, on ensuring ease of use and that clients and partners alike be able to contact a relevant lawyer within three thumb taps of arriving on the site.

The site seamlessly blends into the desktop version and automatically displays the right version depending on the OS the visitor is using." He added: "Mobile web traffic is set to surpass desktop internet traffic by the end of Q1 2013, a staggering statistic when you consider how far mobile has had to come and the relatively short space of time in which it has gone from frustratingly slow and practically useless, to a key feature of our daily lives."

www.gibraltarlawyers.com

Google Street View

Following their previous announcement last year that the Google car had taken photos of Gibraltar, U.S. based company Google are pleased to announce that the Street View imagery is now available to be viewed.

Gibraltar joins over forty other countries available in Street View. Tourists, business travellers, and locals can now explore the scenery and see points of interest.

Local businesses, from hotels and restaurants to shops, can also benefit from the Street View technology by embedding Google Maps directly into their site for free, helping them to promote their businesses.

Street View is also used in many countries to help disabled people check wheelchair accessibility.

www.maps.google.co.uk/streetview

Europa Trust supports Nelson Mandela charity

Europa Trust Company Ltd is proud to announce that it has chosen The Nelson Mandela Children's Fund as its charity for the year.

The Nelson Mandela Children's Fund is an international, non-profit organisation.

It was set up by Nelson Mandela in 1995, a year after he became president of South Africa. He wanted to create a fund for children that promoted child health, with the aim of giving them a better future.

He commited one third of his Presidential salary for five years to ensure the international continuation of the fund and as his charitable legacy for children.

www.europa.gi
www.mandela-children.org.uk/

New terminal's internet appeal

Flight information, airline timetables and detailed layout maps are amongst features on a pioneering, user-friendly

Gibraltar Airport terminal website and Smartphone mobile version just launched.

Intended for passengers and airport users generally, local firm Piranha Designs worked with government airline business consultant Stuart Finlayson and Terminal Director, Terence Lopez, to list airlines serving The Rock, retail and catering facilities and reduced mobility travel information.

The site lists the terminal's corporate area for private jet travellers, with separate entrance, dedicated security processing, and "various lounges designed to make your stay as comfortable as possible".

The airport handled 387,219 passengers last year, 1 per cent above 2011.

www.gibraltarairport.gi

Promises to bring power and right to know

A solution to Gibraltar's urgent need for a long-term, stable electricity power supply to underpin the economy – the finance centre and e-gaming sectors, in particular - is to be revealed by end March.

By mid-year, private sector partnership arrangements for renewable energy supply will be unveiled, as part of the jurisdiction's bid to become a world-leading carbon neutral jurisdiction. The government will not generate renewable energy itself, but buy electricity from renewable sources, and a revised Environmental Action Plan is imminent.

The developments form part of the Gibraltar Socialist / Liberal Party government's pledge to be achieved in its four-year term in office to 2015. In year one, "151 Manifesto commitments have been delivered".

Promising greater "openness and transparency", Gibraltar's parliament now sits monthly – previously three times annually – and live radio, TV and internet broadcasts of proceedings are planned, while Chief Minister Fabian Picardo answers citizens' questions quarterly via TV, radio and social media. He says it has "transformed Gibraltar into one of the most transparent democracies in the world".

Neil Costa became Minister for Small Business – he also runs the Port, Tourism and public transport – and is reviewing all consumer-related legislation prior to the formation later this year of an Office of Fair Trading (OFT), which will have power to investigate and enforce decisions.

Other developments of concern to business include a Public Interest Disclosure Act that protects "whistle-blowers', while legislation for an independent anti-corruption and anti-bribery authority and a Financial Services Ombudsman have been allocated for drafting "over the term of office", a government spokesman confirmed.

A 10 per cent discount for early payment of business rates has been introduced, along with 20 per cent discount for start-up companies in the first year. Electricity and water costs are to remain frozen until the next election.

The greatest non-infrastructure change potentially is a Freedom of Information Act, based on the UK seven years' experience, which Dr Joseph Garcia, deputy chief minister, says will give citizens access to all Government information and documents - "one of the best ways to prevent corruption and bad practice in Government".

The UK Act applies to government departments, public authorities and Parliament, and any recorded information held by or on behalf of an authority, including paper records, emails, information stored on computer, audio or video cassettes, microfiche, maps, photographs, handwritten notes or any other form of recorded information, normally should be supplied within 20 working days!

Information can only be withheld if the cost of doing so exceeds set limits, is vexatious, covers security issues, or fails "a public interest" test, but an independent Information Commissioner can order disclosure.

However, scrapping of the previous government's plans for a €150m diesel oil-fired power station that would have meant increasing electricity supply costs by 5 per cent a year for 20 years, "is probably one of the best decisions we have made", Picardo believes.

Professional Bodies based in Gibraltar

Association of Pension Fund Administrators (APFA)
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Association of Trust & Company Managers (ATCOM)
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Bar Council
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Monarch.co.uk