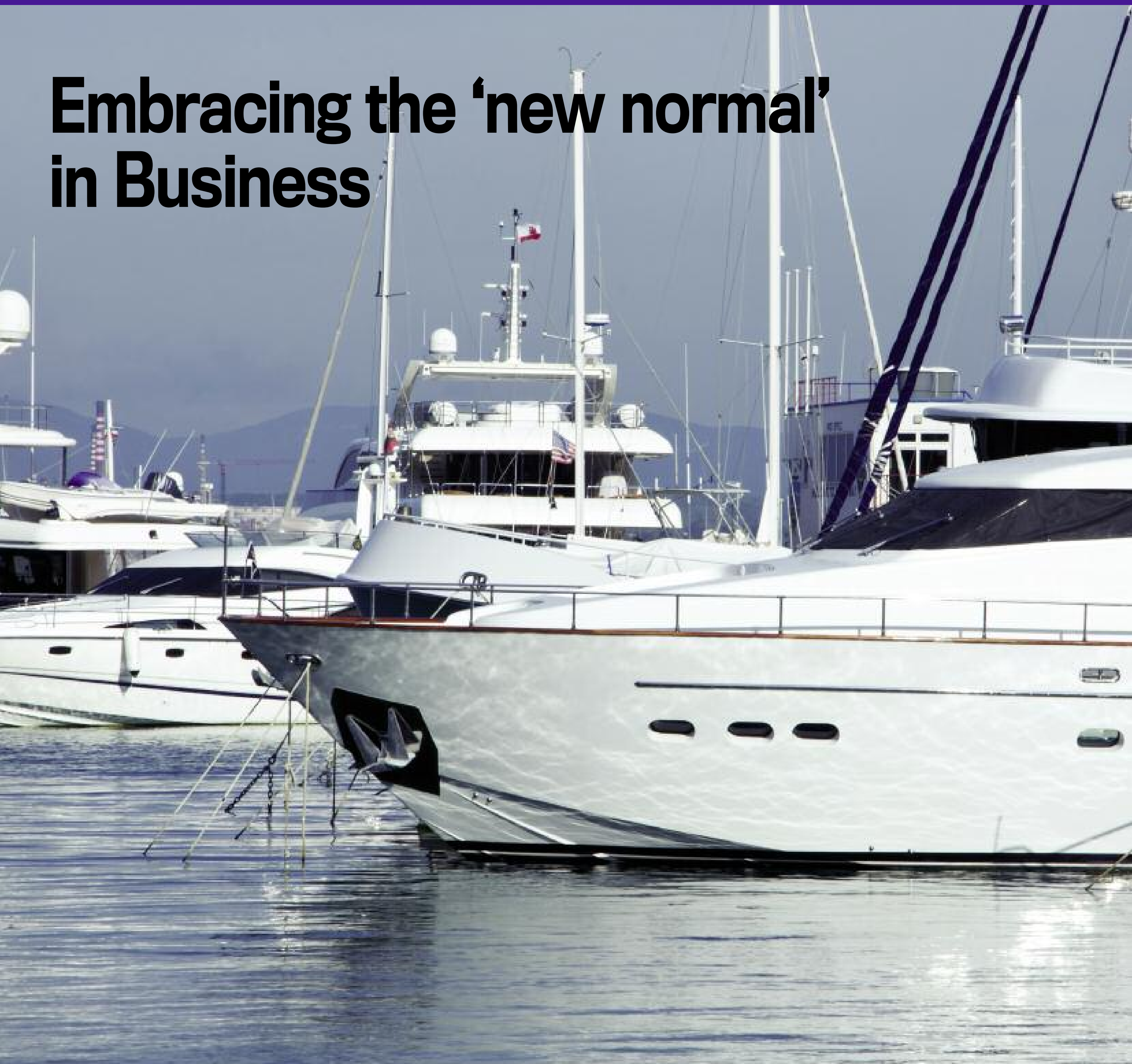
Aug/Sept/Oct 2020

GIBRALTAR INTERNATIONAL

FINANCE ■ INVESTMENT ■ BUSINESS

Embracing the 'new normal' in Business



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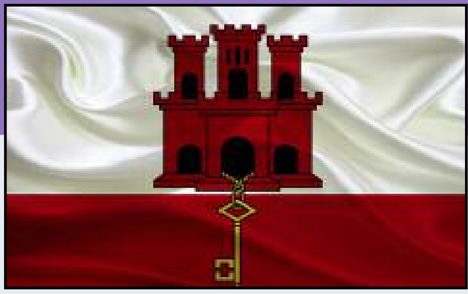

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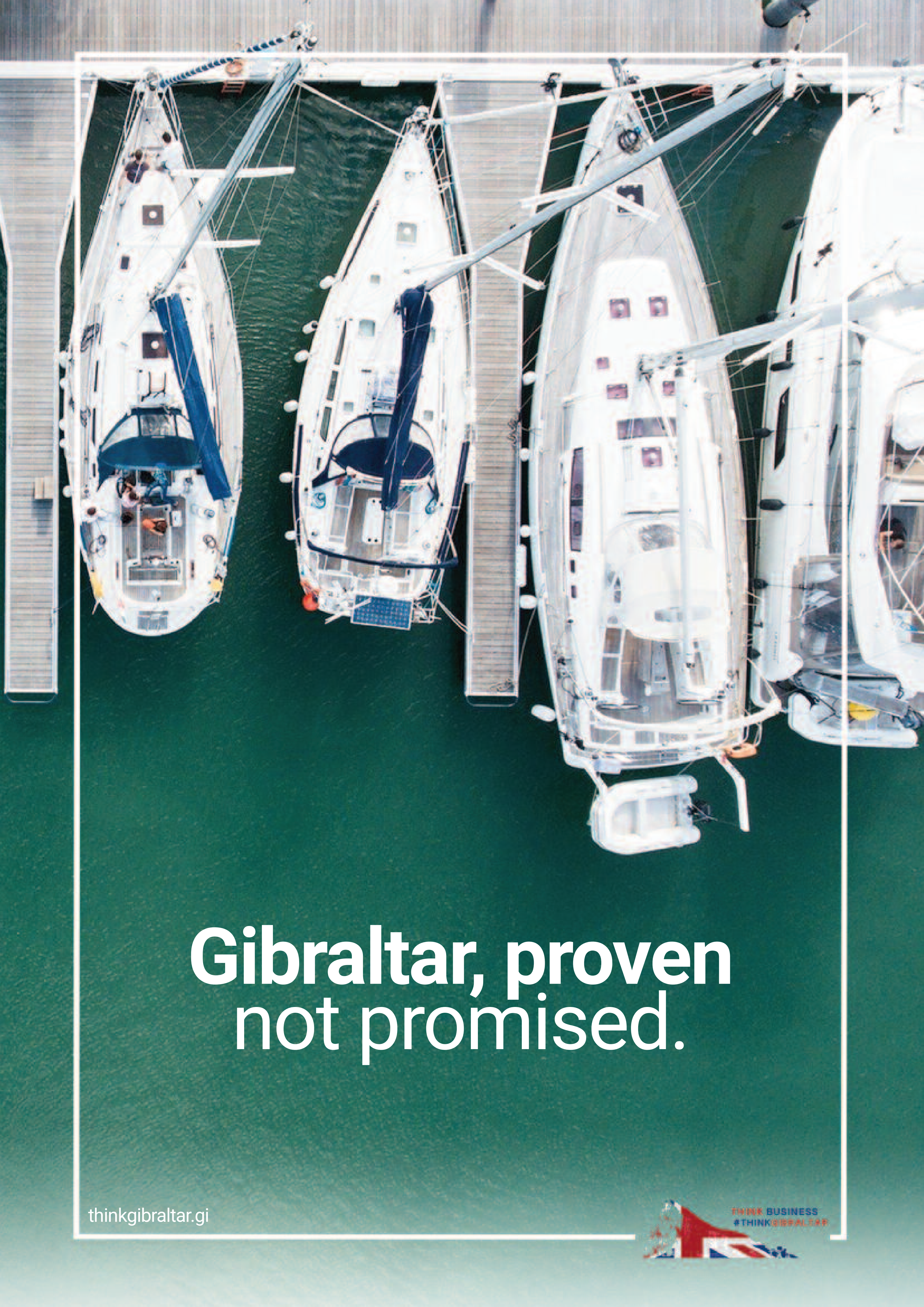
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Government implements business disruption scheme

HM Government of Gibraltar announced in July, the start of its Gibraltar Business Loan Disruption Guarantee Scheme, following the European Commission's approval.

The scheme is available through Gibraltar International Bank, Royal Bank of Scotland International (Gibraltar) and the Trusted Novus Bank. Each bank has up to £10 million, which potentially could release up to £30 million to local businesses. Under the scheme, each individual business is capped at a maximum borrowing of £500,000.

It has been designed to provide finance to qualifying businesses that have been disrupted by the Covid-19 pandemic, and is targeted at small and medium sized enterprises.

The government encourages any business seeking to participate in the scheme to contact their local bank for further information.

Chief Minister, Fabian Picardo stated: "I am proud to have delivered on yet another mechanism that will assist local businesses. We have been fortunate in how we have weathered the pandemic".

easyJet resumes flights to Gibraltar

At the end of July, easyJet resumed limited flights to Gibraltar from London Gatwick and Manchester, since the airline grounded its entire fleet of aircraft in March, due to the Coronavirus pandemic. The Minister for Tourism, Vijay Daryanani, commented in July: "I'm delighted that easyJet will resume some flying to Gibraltar on 20th July from Manchester and from London Gatwick on 25th July. We are very pleased to welcome the airline back to the Rock, along with all its customers and look forward to further flying resuming throughout the summer."

Gibraltar Airport adopts new Covid-19 measures

Gibraltar International Airport adopted a series of new measures in mid July, as part of its guidance to protect travellers and staff, in line with other airports around the world.

The airport announced that it would shortly be introducing further measures and issuing a 'Guidance for Travellers' Information Sheet to assist passengers in planning their journeys, so as to know what to expect when catching a flight.

Passengers departing Gibraltar will have to wear a face mask/covering when they enter the terminal. The elderly and those in the 'vulnerable' category will have their own security area, separate from the main queues. There will be limited areas for 'Meeters and Greeters' where the recommendation is that arriving passengers are met outside the terminal.

Gibraltar Airport will continue working to ensure the safety of passengers and staff and will follow any guidelines, recommendations and directives, to keep flying from Gibraltar as positive an experience as possible.

TOP RANKED
Chambers
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2020
ISOLAS

Top tier rankings for Isolas

Law firm Isolas LLP received the top ranking in the newly published 2020 Chambers and Partners High Net Worth Guide, with Band 1 practitioner status for Senior Partner, Peter Isola.

The highly respected legal directory, ranks law firms and their lawyers based on client feedback.

The guide is used by family offices and professional advisers to wealthy individuals, providing objective guidance on an international scale. Marcus Killick, Isolas CEO, said: "Gibraltar remains a leading location of choice for High Net Worth Individuals, thanks to the jurisdiction's robust, but flexible legislation".

Experienced Investor Funds

By James Lasry, GFIA

The Experienced Investor Fund (EIF) regime is Gibraltar's flagship fund product. It has proven to be an extremely versatile way of setting up a fund that is fully regulated and yet may be established quickly and without having to wait for regulatory approval

Authorisation and regulatory requirements

One of the key points of the EIF is the authorisation process, which may be via a notification or prior approval procedure. Under the notification procedure, there is no regulatory pre-approval necessary for launch. It is sufficient for the fund to be incorporated, appoint its service providers, produce its offering document and hold a board meeting to launch itself as a fund. Within 10 days of launch, the EIF must notify the Gibraltar Financial Services Commission (GFSC) of the launch and provide them with a copy of the offering document, the constitution documents, a legal opinion from senior Gibraltar counsel stating that the fund was established in accordance with the Financial Services (Experienced Investor Funds) Regulations 2020 (the EIF Regulations) and other relevant legislation, a form signed by the administrator and the registration fee. This is very significant as it means that effectively there is no regulatory downtime and the fund may be launched as quickly as necessary. Furthermore, there is regulatory certainty. If there are comments or questions from the regulator, those can be addressed while the fund continues trading.

An open ended EIF must generally have a depositary. The fund may also appoint brokers to assist with their trading activity. Neither the depositary nor the brokers need be in Gibraltar. EIFs must appoint a fund administrator that is licensed in Gibraltar or

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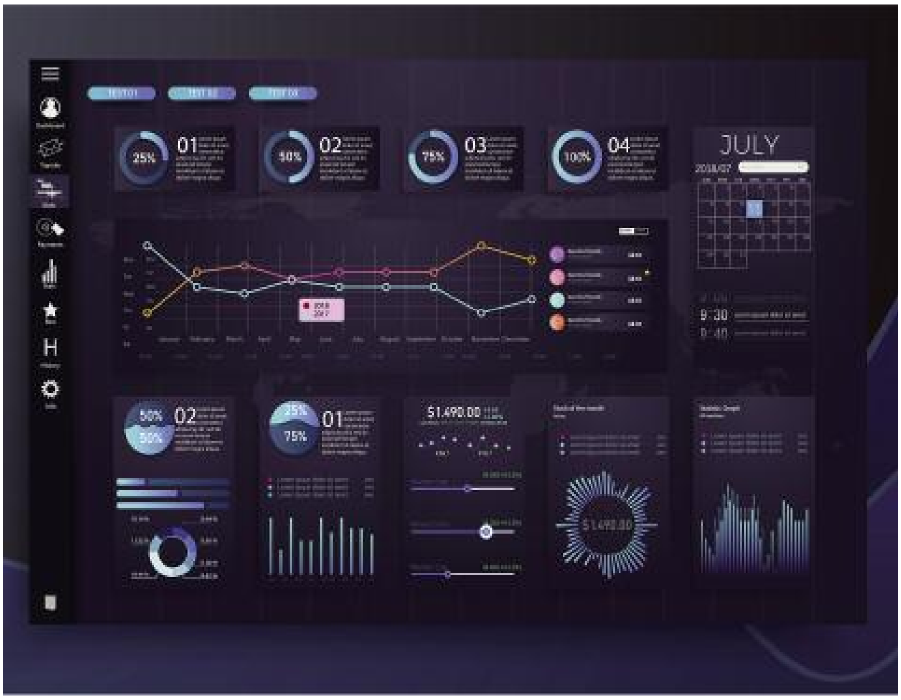

that is licensed abroad but has received Gibraltar regulatory permission to administer EIFs. A Gibraltar auditor must be appointed and annual audited financial statements as well as a regulatory return are annually submitted to the regulator.

An EIF must issue an offering document that complies with the EIF Regulations. These are consistent with industry standards and allow an investor to make an informed investment decision. The offering document must state the fees that are chargeable out of the property of the fund, the investment objectives, borrowing or investment restrictions if any, and the risks associated with such investment.

There are no restrictions on borrowing or owning investments. A fund may invest in any class of investment and at any percentage given that this is a fund that is targeted to experienced investors who are informed and are able to bear the risks of such investments. The fund may, however, impose certain restrictions on itself and these must be reflected in its offering document.

Management

The EIF Regulations require a fund board to include two GFSC-authorised directors, at least one of whom is resident in Gibraltar (unless regulatory dispensation is obtained in which case neither need be Gibraltar resident).

The fund may be managed by a manager in any jurisdiction provided that manager is entitled in that jurisdiction to manage funds. Many funds in Gibraltar do not have external investment managers and are managed by their boards of directors.

The AIFMD was transposed into Gibraltar legislation via the Financial Services (Alternative Investment Fund Managers) Regulations (AIFM Regulations). However, as mentioned, these obligations relating to the AIFMD shall only remain obligatory up to and until the end of the Brexit transition period (due to end on 31 December 2020). Going forward, managers of EIFs will be at liberty to opt out of the AIFMD regime altogether.

Marketing and distribution

EIFs are typically marketed in jurisdictions on a private basis under national private placement regimes. A private placement is a private offering of securities to a select group of investors without requirements to register the product with the national regulatory authority or undergo disclosure requirements common when financial products are offered to the retail market. Each jurisdiction will generally have proprietary private placement regulations that may differ significantly between one jurisdiction and the next. EIFs have no minimum requirements governing the invested capital.

In general, EIFs have no legislative restrictions on accepting US investors, provided that the fund and its manager adhere to the relevant US securities laws. Since Gibraltar funds can trade as private companies, they are eligible under US law to make a "tick the box" election and thereby be treated, for US tax purposes, as partnerships. In some cases, this obviates the need to set up a US feeder fund structure for US investors.

Taxation

Gibraltar has a territorial basis system of taxation. Companies are only taxed on profits accruing in or deriving from Gibraltar, meaning the location of the activities that give rise to the profits. The corporate tax rate for taxable profits is 10%. There is no capital gains tax, inheritance tax, value added tax or wealth tax in Gibraltar. There also is no withholding tax on dividends from a Gibraltar fund to its non-Gibraltar-based investors. Interest income, however, is charged at 10% for sums over £100,000. It is generally possible to structure funds in Gibraltar so that they do not suffer any Gibraltar taxation.

Conclusion

The quick and easy regulatory notification process, the possibility of setting up funds under the PCC or PCLP structure and a tax-neutral environment are all factors that are certain to make Gibraltar a very interesting and competitive jurisdiction for the setting up of funds.


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Embracing the 'new normal' in business

By **David Mazzucchi,**
Senior Consultant, EY

There has been a lot written about the 'new normal' since the severe, but necessary, restrictions caused by COVID-19. Too often, these discussions generalise and lack any tangible connection to the reality of operating a small or medium-sized business and the challenges that they are facing. It is not always the case that a business can simply shift to a remote working environment, but we must face the reality that those who can will be able to continue working, even in future lockdown scenarios. So what does this new normal entail for the employee and the business, given that any changes could present opportunities for employees, management and the business itself?

Remote working

Primary amongst these has arguably been the assertion that everyone is now going to want to work from home. On paper this might look like a positive shift but the practicalities of this are less encouraging. In fact, the problem here is that working from home is a solution to something and should not be the starting point for any re-organisation. Rather than assume that your team wants to leave the office permanently, one should start by assessing the benefits to your business before checking what appetite there is for this amongst employees.

Research by Prodoscore in the USA in May this year, widely quoted by the likes of Forbes and Businesswire, shows a year on year increase in productivity of those working at home in excess of 45%. Drill down further and CRM activity saw a lift of 176%. This means doing more of what businesses needs to thrive. If the goal is to do more to increase business effectiveness, then one solution could be the re-thinking of the office model. This does not mean downsizing the office space and sending home your teams with a laptop under their arms, although this in itself can offer cost reductions. Rather it suggests focusing on the objective; identifying where working from home can deliver on these productivity increases and where retaining others in the office makes more sense.

Combine this with a conversation between you and your people. This means planning for what working at home will actually look like, which could include hybrid models where a proportion of the working week is at home and the other in the office.

Employment and tax laws

Remote working means the potential to look further afield for recruitment, accessing new pools of talent for specific and often niche skills. Many companies may no longer feel they have to stay within their geographical constraints when recruiting for a specific role but instead, employers could consider broadening their recruitment process for specialists who do not necessarily have to be working in the office. There are key points to keep in mind including employment and tax laws, however with the right support and advice, these waters are entirely navigable and, with careful integration of remote workers, the integrity of the business culture can be maintained.

A key consideration prior to COVID-19 has been staff wellness. The objective has always been to make this mean something substantive and to involve staff in developing programmes that meet their needs. The period of lockdown has brought this back to the fore because of the uncertainty of the current working climate.

Healthier staff

As far back as 2016, a report from the Economist Intelligence Unit found evidence that 'wellness programmes align employer and employee goals more closely. They increase employee engagement with the company's mission and goals.' This means that businesses not only benefit from healthier staff who will take less time off work through illness, but also makes for more active and engaged team members. Thinking about health as a priority in business planning can have an impact on the bottom line as well as support a stronger company.

Remote working can be effective if planned properly. A careful assessment of business, but also staff needs, is essential if the most can be made of this change. When both are flexible and perhaps, able to compromise at times, the benefits will be tangible.

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Property outlook 2020

By Louis C. Montegriffo
Managing Director,
BMI Group

It is clear that our way of life, how we interact and how we do our business will not just be impacted for the short term but may also be with us for the medium to longer term. The fact that a great many of us are now able to work from home and are able to do so effectively will have a knock on effect on the future planning of businesses and their office space planning requirements; it will also influence how we choose to live our lives at home and how demand for property sizes may change because of this.

Changes although hard to adjust to, will invariably bring positive elements too and will have the capacity to teach and remind us of how we may take the simple things in life for granted, how we have ignored a real call for environmental change (the skies are cleaner) and how looking after our health and taking positive steps towards it can make a real change for the better; I refer to the latter as I do not recall ever having seen so many people, cycling, power walking, jogging or enjoying the many nature trails that we have locally.

The market is dead, long live the market

As outlined in our first BMI Covid-19 update in March, Gibraltar remains fully active and open for business, both in the office and remotely at home. Gibraltar has pushed hard to maintain a presence in the market.
Under the lockdown we were bracing ourselves and expecting all "new business" to grind to a halt, but were surprised with the general up take by applicants. Post lockdown this has continued.

Our focus has been to maintain and manage all existing and pending sales in the pipeline and we are delighted that all have either completed or are set to do so. We see this as a good indicator of the mindset in the market and the general view that, the market wants to continue to drive the market.

Although clearly still too early to say, we are optimistic that Covid-19 will not adversely affect the market in the medium to long term. So far, applications to let and interest in residential sales portfolios suggests that although the market is substantially quieter, there is movement in lettings and sales, albeit

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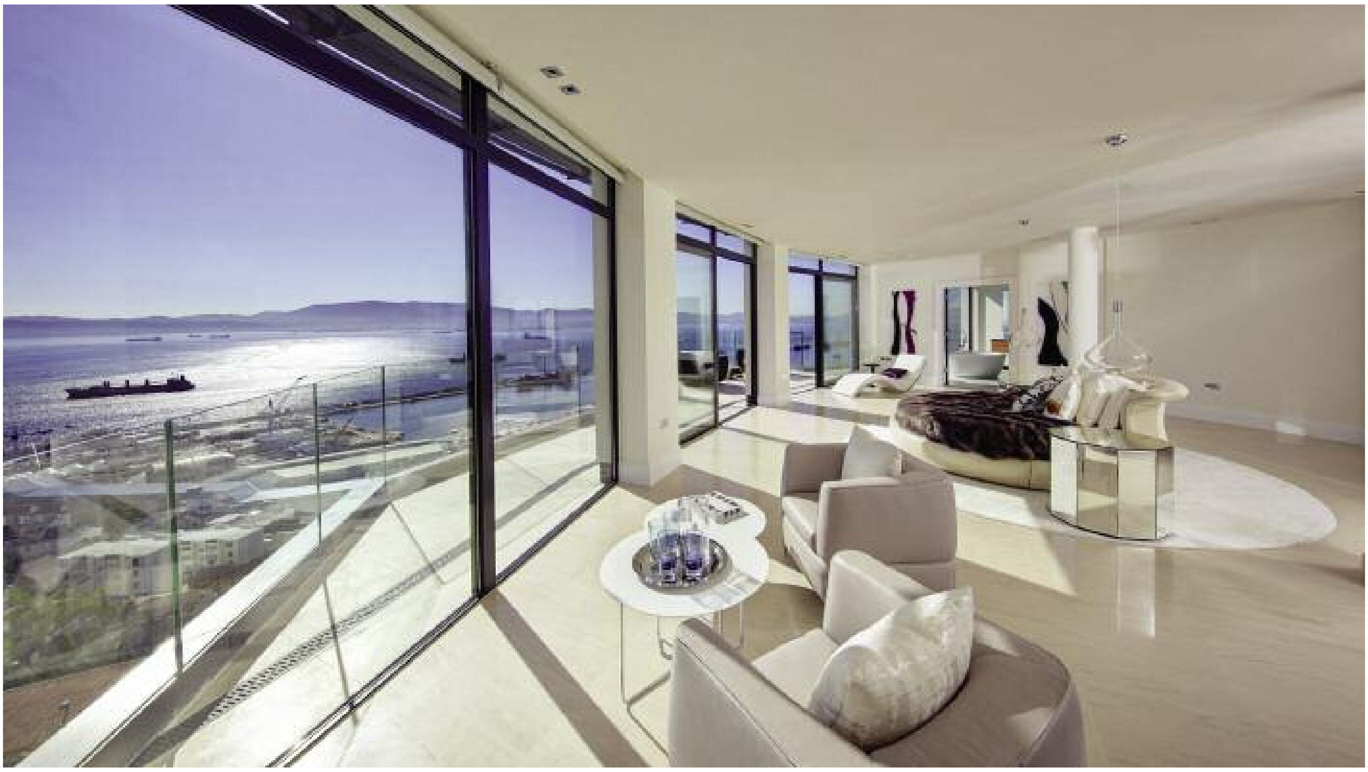

under a rather heavy cloud of uncertainty and somewhat different methods of showing properties listed.

There is no question that the volume of interest has slowed down, to suggest otherwise would be foolhardy, but the fact that there is activity is a positive during these difficult times; importantly, from our own perspective and akin to the sentiment taken by Gibraltar Inc, we all want to be in a solid position when we come out of this.

> **The Bank of England have reduced interest rates once again to the lowest levels ever, thereby providing cheaper access to borrowing.**

The market position prior to Covid-19

Prior to Covid-19, we had been warning of a slight over heating in the market in particular segments, these segments will no doubt be suffering the brunt of the impact of Covid-19; speculative markets will undoubtedly be the worst hit during down turns, but our belief in the four tier market which we have seen grow over the past two decades will hold its own and will not be dragged down by one segment of the market.

Portfolio listings in both sales and rentals in Gibraltar had seen substantial increases in volume, particularly in lettings and we had already seen a signal of adjustment in pricing, where there was already a clear oversupply in new build smaller buy to let, speculative units. Conversely, the owner / leasing occupier sector driven by larger units in all ranges, one to four bed units had held well given the lack of supply in this sector, and in some cases it experienced increased prices in sales and rentals because of this further underpinning the maturity of the sector in general.

2018 /2019 were crucial years in many respects and of course were highlighted by Brexit negotiations as a real factor on how the market would develop. New off-plan developments should be primarily driven by that fundamental sector known as the “owner occupier market”, without it there is no market and the sector falls prey to speculation. This is only further amplified under our current status quo.

We had expressed concern with proposals primed solely at the investors market and offering only one product such as the studio / small one bed unit with overly high rates / sqm. We will continue to follow and review this sector.

Historically, and during uncertain times, the safer investments have tended to feature mixed distributions of 1 - 4 bed layouts. These owner occupier lead developments have consistently rewarded investors because they (by default) reduce exposure to just one market or applicant profile, and thereby increase percentages of owner occupiers

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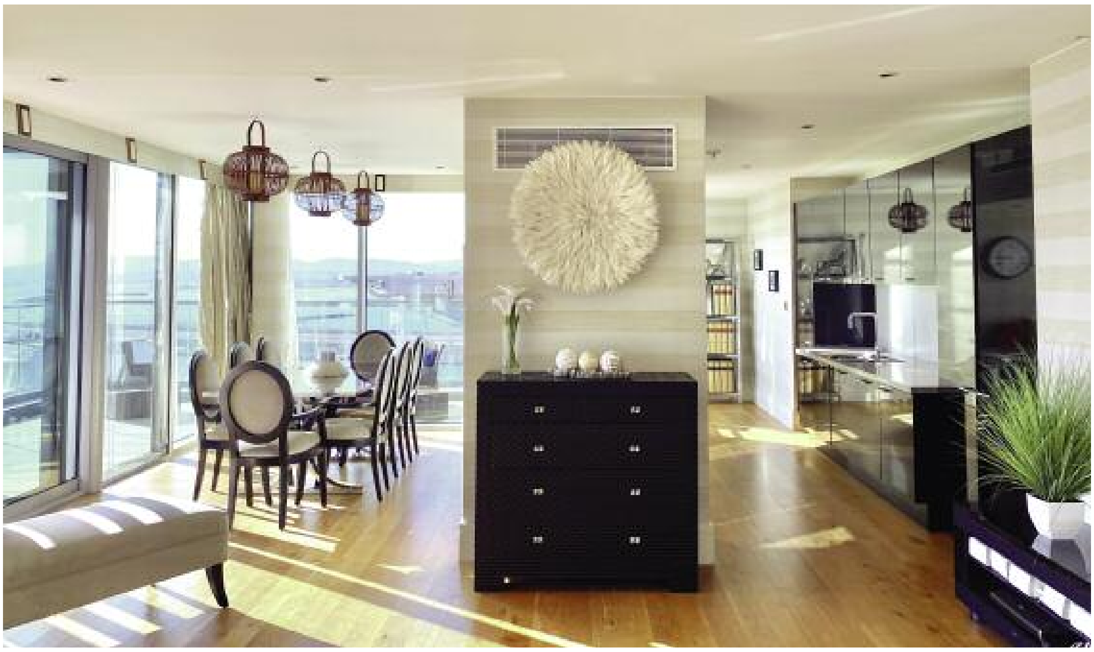


who tend to seek 3 / 4-bedroom properties; this reduces risks by splitting markets up and attracting varied profiles.

Opportunities will invariably present themselves

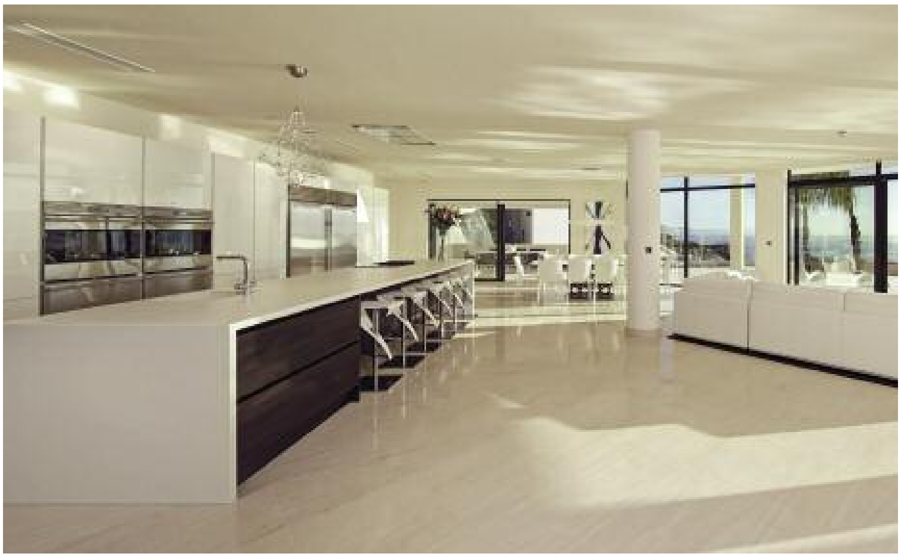
The Bank of England have reduced interest rates once again to the lowest levels ever, thereby providing cheaper access to borrowing. Some investors have been keen to jump into the market for the right deals, which do exist if you are looking at the medium to long term exposure.

Looking at the bigger picture and considering Gibraltar's historic ability to overcome hurdles, there are indeed opportunities for all, and not just the savvy investor. The appetite is there, albeit overshadowed by an uncertain eye; and true to the nature of our small, diversified and dynamic economy, our innate ability to seek new goals and new markets will be sought and found.

It is the very basis upon which Gibraltar has survived and flourished in the past.

In summary

Navigating this chapter in our story is of course crucial and to date we (Gibraltar Inc) have done phenomenally well in managing the

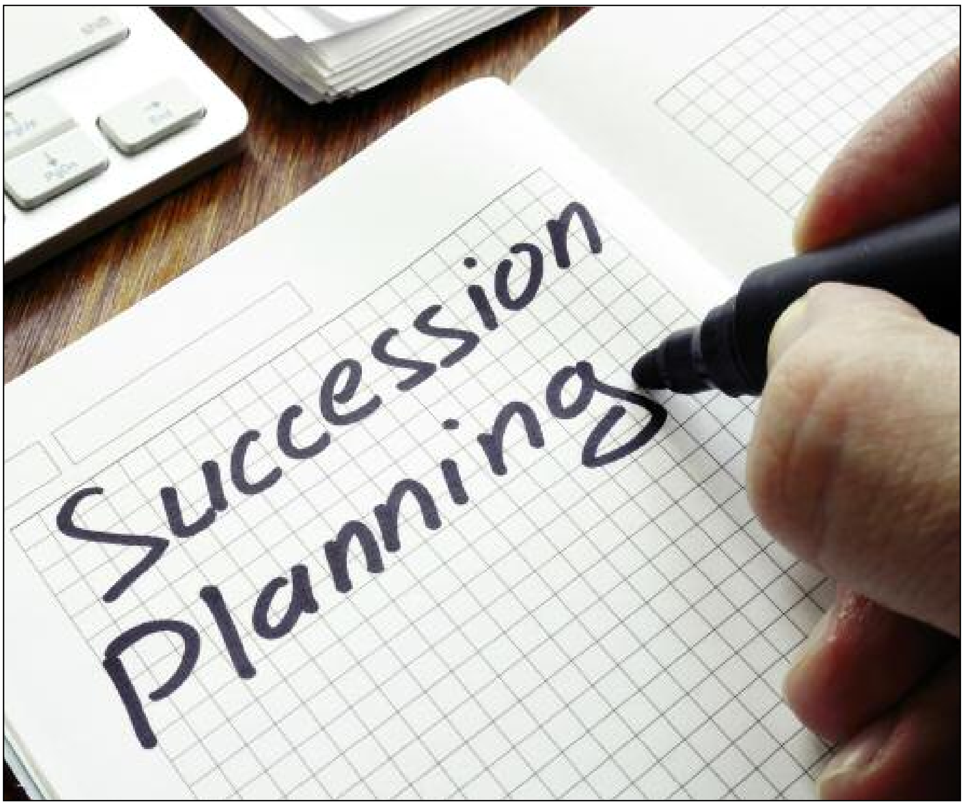


primary factor of this virus, that being the health and well-being of our health service. The government has also taken crucial steps in managing what is essentially an economy in partial levitation (the pause effect). The BEAT Covid19 facilities to business' in real need, have provided a much-needed fiscal lung and adds a level of comfort and confidence to our economy and in the governments handling of this crisis. Their steering and management to date has been nothing short of exceptional, in all aspects, but in particular, their steadfast grip and resolve in minimising the clear anxieties we all feel, from the personal to the fiscal. We say this with no agenda, but rather a show of support and thanks; and we do so with the firm belief that this will pass and we will be stronger, wiser and better placed to emerge from this in the best possible form.

Moreover and as mentioned by the Minister for Financial Services, it will be our capacity to deal with this crisis in the manner that we are, that will earn us the respect of those seeking to invest and re-locate to Gibraltar as we see brighter days emerge; for it is the example we show during this crisis that will instil confidence in our economy and way of life for the future.

We hope you are all staying safe and doing well and wish you the very best during these difficult times.

Choosing the right vehicle for your succession journey



By Darren Anton, KPMG

Choosing the right vehicle when transferring wealth from one generation to another is critical to ensure a smooth and successful journey for all those involved.

When it comes to succession planning, families often jump straight to the execution stage: selecting a trust or foundation and instructing advisors to set up the necessary structures in a tax efficient manner. While this arrangement may offer some tax and legal benefits to the transferor and to the individual that inherits, it may not allow for both of their visions of success to be realized. Sometimes those visions may not even be the same, something only recognised far too late.

Treating the process as a journey allows individuals and families to spend time clearly defining and understanding their goals from the outset. Where wealth is passed to more than one of the next generation and the wealth continues to be held and managed together, it can be critical to the future cohesiveness of the family that there is a shared purpose between the family members. This may mean involving as many generations and family stakeholders as possible in conversations on the future of the family's wealth.

Succession plan

Whether wealth continues to be managed collectively, or assets divided to ensure each family member has the resources to follow their own aspirations, once the goals are clearly defined, the family can chart a course towards an overall succession plan. This may have many different facets and involve different structures as well as simple tools such as outright gifts if this helps the family achieve their vision and if it provides sufficient tax efficiency.

When making their selection, families will need to compare the specific benefits each vehicle provides against the family's wider requirements. The most common benefits include:

- **Asset protection:** Protecting the family's assets against divorce, tax regime change, errant family members and even in some cases overly-risk averse family members.
- **Flexibility:** The ability to respond to the pace of change in the modern world and seize new opportunities with ease. This is particularly relevant where family members are internationally mobile as a vehicle may be treated differently for tax and legal purposes in different jurisdictions.
- **Tax efficiency:** Achieving a family's ambitions in the most tax efficient manner. Trusts, foundations and companies (limited by shares or guarantee) all offer these attributes to varying degrees, depending on how important tax efficiency is to the overall plan.

As with any true voyage of discovery, the 'end' of the journey is never truly reached. Families - and the world in which they operate - evolve, requiring ongoing monitoring and adjustments to ensure that the succession plan continues to meet the family's objectives and is aligned with the various legal frameworks and tax rules impacting the family members.

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Getting warmer

By Fahad Kamal, Chief Market Strategist, Kleinwort Hambros

The first half of 2020 is now behind us, but it is a period indelibly etched into our collective memories. We entered this year cantering towards the eleventh year of a bull market, a long rally seemingly impervious to its own impermanence. Of course, it all came to a shuddering halt as the breadth of the Coronavirus pandemic began to register. The first quarter saw global equities (i.e. MSCI AC World index) fall by 20.4%. Volatility was at an all-time peak; in March, the global equities index moved by more than 3% in any direction 11 times out of 22 trading days. Context is important: prior to 2020, the last time global equities moved by +/- 3% in a single day was in 2016. In this environment – with critical unknowns as to the Coronavirus health consequences or the length of imposed lockdowns – we reduced risk across multi-asset strategies.

Fiscal spending

What came next was nearly as surprising. Despite widespread lockdowns, near-total economic stasis, surging unemployment and a terrible toll in illness and death, the second quarter witnessed a powerful rally in risk assets, with global equities rising by 17.7%. With the benefit of hindsight, we can synthesise the underpinnings of the rally into two distinct categories: lockdowns – where enacted and complied with – worked well; Governments and central banks unleashed hitherto unthinkable levels of fiscal spending and monetary stimulus to help stabilise economies and provide liquidity to financial markets.

The critical question today, in the third quarter, is where do markets go from here? Indeed, volatility remains high, the Coronavirus is still surging across much of the globe – including in the US, the world's anchor economy. Interestingly, while risk-assets have rallied given the reasons above, safe-haven assets have been equally well bid, with gold trading above $1,800 – a near-decade high – and government bond yields near all-time lows.

It is exactly at times such as these – where uncertainty and imperfect information rule the roost – we must rely on the investment principles which underpin our investment process. Those principles are to get the big decisions right (i.e. the broad weight of risk assets versus safety assets in portfolios); to take risk only when it is likely to be well rewarded (i.e. when valuations for risk assets are attractive); and to avoid large losses (i.e. as they are harder to recover from than shallower losses). At present, this is how we view the world through the lens of our investment process which considers the economic regime plus valuation, momentum, and sentiment signals from markets:

- **Economic Regime:** Despite significant economic data surprises on the upside, the global economy is on track to suffer its deepest recession since World War II in 2020 according to the World Bank's latest forecast (8-June), with global output set to contract by 5.2%. Per capita income will fall in the largest proportion of countries globally since 1870. While they are opening, advanced economies are still projected to shrink by 7% this year. In perfect conditions, a rebound may begin as soon as the third quarter. Our inhouse Leading Economic Macro Indicator (LEMI) has just registered an uptick from a regime of "contraction" into one of "recovery", a favourable environment for risk-taking. However, given unusual noise around the indicators at present, we are awaiting further confirmation of economic stabilisation over the coming months.
- **Valuations:** Valuations for equities – the largest source of risk and return in most strategies – remain challenging on absolute terms. The US equity market, equal to nearly 60% of the global total, is currently trading at a forward price-to-earnings multiple of 22x, the highest since 2002. That is expensive. However, with rates near zero, there is a good case for a higher than usual tolerance to valuations, particularly for large-cap companies that appear to be immune to the business cycle ("secular growth"). Moreover, when compared to cash or government bonds, equities still have a clear advantage in terms of long-term expected returns. Therefore, while equities are expensive, there are few alternatives amongst the core asset classes.
- **Momentum:** The second-quarter surge in equity markets is a case in point of why momentum is a critical factor in our asset allocation process. Markets don't have to follow expectations, or even logic, and trends themselves can prove to be self-fulfilling. We view momentum on a slow-moving, month-end basis as it helps avoid whipsaw in oscillating markets, guiding us to take advantage of trends that have sufficient strength. As of the end of June, the global equity market just tipped into positive territory on the ten-month moving average metric that we favour. Should this be sustained, we will view it positively for risk-taking.
- **Sentiment:** Sentiment for risk assets has oscillated wildly over the last few months. Of the indicators we follow, some, such as the S&P 500 net speculative positions imply some bullishness. Others, such as the ten-year US treasury net speculative positions, imply more bearishness. Overall, we are in neutral territory.

Bottom line

Risk assets remain volatile (e.g. VIX near 30, well above its long-term average) and thus more unpredictable than usual; they are also expensive on most measures. Nonetheless, we note the economic regime and the momentum signals we follow have shifted towards increasing risk. Should these signals continue to be supportive, we may seek to add risk in the months ahead.

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Transfer pricing considerations

By Vickram Khatwani, Associate Director (Tax) and Gavin Gafan, Senior Manager (Tax), Deloitte

As multinational enterprise (MNE) groups expand their presence into additional countries, they need to consider the associated international tax implications. A major example of this is determining how profits should be allocated between those countries for tax purposes. The Gibraltar tax authorities, among many others, require transactions between the entities within an MNE group to be comparable to those which would reasonably be expected to take place between unrelated (third party) companies. This is what is commonly referred to as the "arm's length standard". The Organisation for Economic Cooperation and Development (OECD) have specific and widely-adopted Transfer Pricing Guidelines for assisting both MNEs and tax authorities in this respect.

Anti-avoidance provisions

Whilst Gibraltar's Income Tax Act 2010 (ITA2010) does not itself include detailed transfer pricing rules, it does include a number of anti-avoidance provisions aimed at transactions between connected persons related by virtue of common control. Section 40 ITA2010 states that where the Gibraltar Commissioner of Income Tax (the Commissioner) believes that a person has entered into an arrangement which eliminates, reduces or would eliminate or reduce the amount of taxation in Gibraltar and the arrangement is artificial or fictitious, the arrangement or those parts of it which eliminate or reduce the taxation payable may be disregarded and the taxpayer can be assessed on the amount of taxation due in the absence of said arrangements. ITA2010 defines 'artificial and fictitious' as (a) not real and not genuine; and/or (b) not consistent with the international standard of the arm's length principle as defined by the OECD.

In addition, Schedule 4 of ITA2010 includes provisions in respect of 'transactions with connected persons.' These provisions state that where a person carries on business with another connected person, and it appears to the Commissioner that the course of business between those persons is so arranged to enable a person to either generate no profits, less than the ordinary profits, losses, or increases in the loss in Gibraltar which might otherwise be expected to arise from that business, then the profits or losses of that person may be adjusted for Gibraltar tax purposes.

These provisions apply to, amongst other things, interest payments on intra-group financing between connected persons. If the interest terms cannot be demonstrated as being on an arm's length basis, the Commissioner can treat the interest as a dividend for the payer (which is non-deductible for tax purposes).

Likewise, the provisions of Schedule 4 may also apply to other deductions claimed by taxpayers in respect of expenses payable to a connected party or parties. If Schedule 4 does apply, the aggregate amount of the deductions allowed for tax purpose in computing the profits of the taxpayer would be restricted to the lower of:

1. The amount of the expenses;
2. 5% of the gross turnover of the taxpayer in the relevant accounting period; and
3. 75% of the net profit excluding the connected party expenses of the taxpayer in the relevant accounting period.

DAC6

This means that any non-arm's length transactions between connected parties could still be fully allowable (subject to the provisions of Section 40 of ITA2010 not being invoked by the Commissioner) if, under the above "safe harbour" rule, the lower of the three categories is the cost itself. It should be noted that reliance on the "safe harbour" may result in a transaction being a reportable arrangement under the EU's Directive on Administrative Cooperation (DAC6), the provisions of which have been transcribed into ITA2010. Hallmark E1 of DAC6 identifies cross-border arrangements that involve the use of unilateral safe harbour rules as reportable. Accordingly, cross-border intercompany transactions between connected persons that are not arm's length, but which are fully allowable under safe harbour rules, could be reportable under DAC6.

The examples highlight, to some extent, the importance of ensuring that the pricing of transactions between connected persons is carefully considered from a Gibraltar domestic tax perspective in order to ensure that pricing is in line with domestic legislation. Any transfer pricing rules or similar requirements in other relevant jurisdictions would also need to be considered carefully.

Arm's length profits

In addition, the recent Double Tax Agreement (DTA) entered into between the UK and Gibraltar could mean that more groups need to consider the profits attributable to any non-resident trading in Gibraltar. Prior to the DTA coming into force, a UK company would only be chargeable to Gibraltar taxation on profits deemed to accrue and derive in Gibraltar (i.e. on a territorial basis). Under Article 7 of the DTA, a UK resident company will be chargeable to taxation in Gibraltar if it carries on its business in Gibraltar through a permanent establishment (PE) (such as a branch, or a dependent agent). Accordingly, going forward where a UK entity has a PE in Gibraltar, a profit attribution exercise to determine arm's length profits of the Gibraltar PE would be required, normally on the back of a transfer pricing exercise.

Finally, Article 9 of the DTA also allows for taxable profits to be calculated, for treaty purposes, based on transactions between UK-resident and Gibraltar-resident 'associated enterprises' (broadly, connected persons) being arm's length.

As Gibraltar enters into more double tax treaties to aid international trade and prevent international tax avoidance, the tax implications of these treaties will need to be considered and understood by potentially affected businesses.

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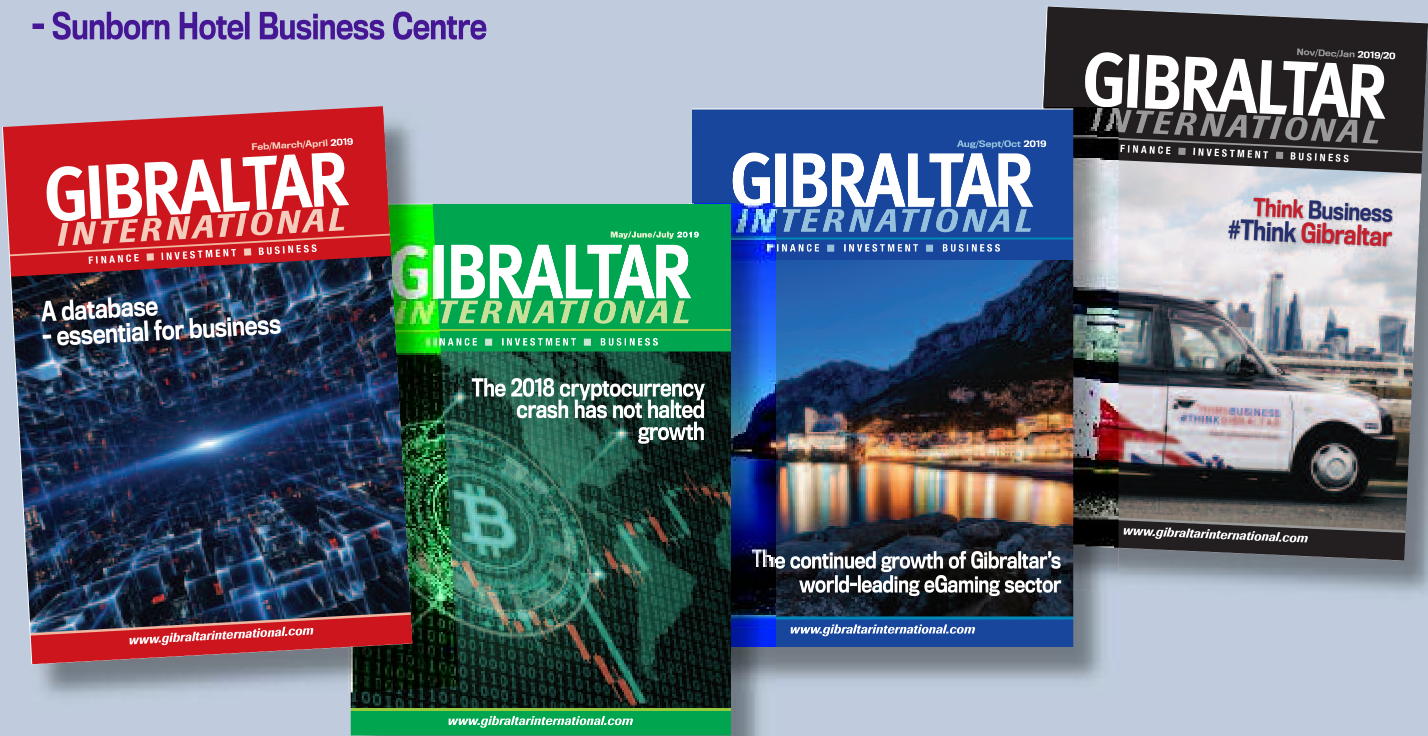

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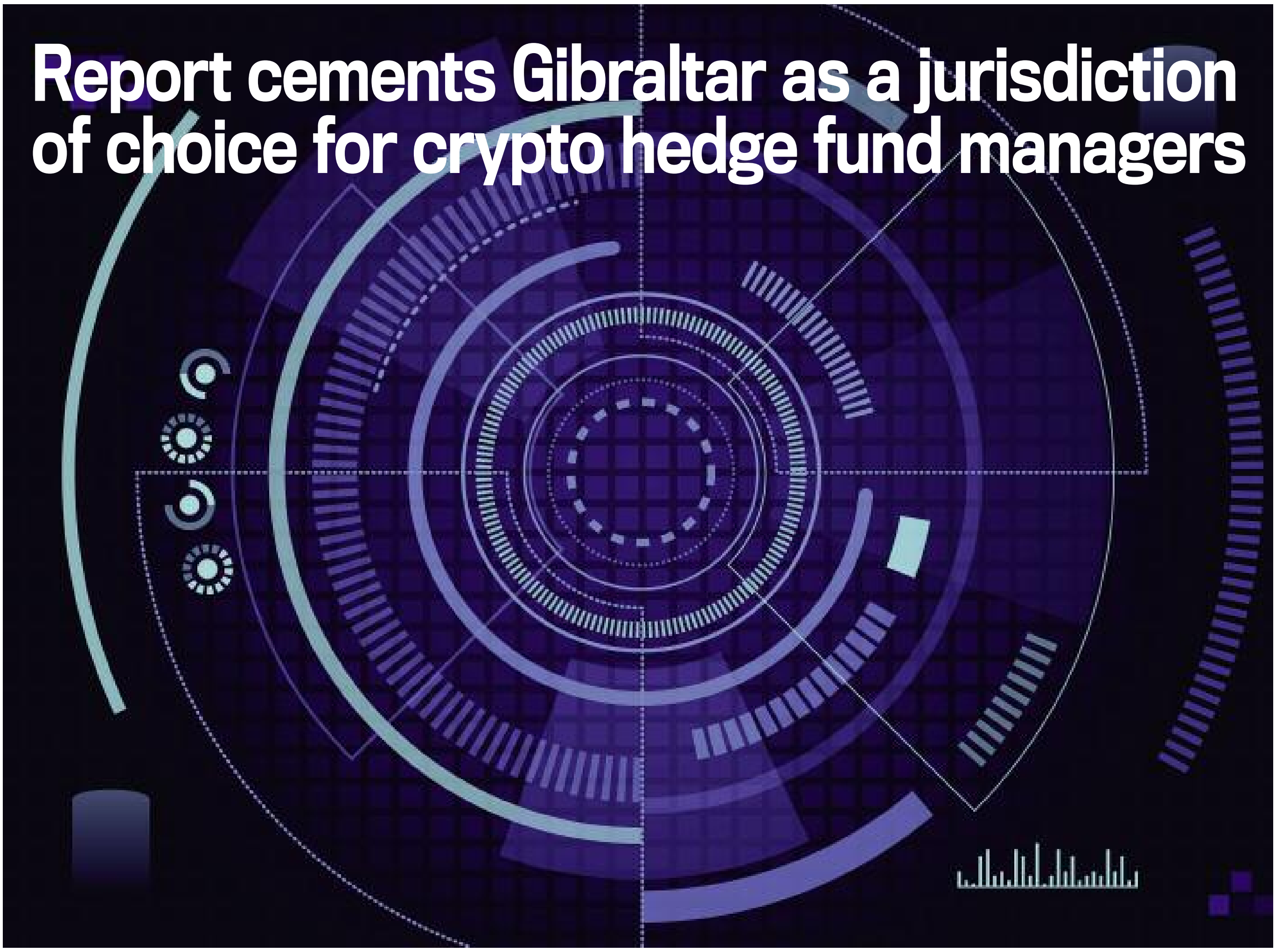
Report cements Gibraltar as a jurisdiction of choice for crypto hedge fund managers



By Joey Imossi, Business Development Director, Isolas LLP

A recent report into the global crypto hedge fund landscape from PwC and Elwood Asset Management has shown Gibraltar as the 3rd highest jurisdiction of choice for crypto hedge fund managers, only behind the US and UK.

Gibraltar, which is also listed as having the 4th highest number of domiciled crypto hedge funds, puts the jurisdiction ahead of financial centres such as Singapore, Malta, The Netherlands, Hong Kong, and Switzerland and many others, despite its relative size.

Gibraltar firms work with leading crypto funds, managers and exchanges who choose the jurisdiction for its regulatory approach, specifically its Core Principles based DLT regulations.

The data in the report points to significant growth in the crypto hedge fund industry in Gibraltar, as in the previous guide (2019) the jurisdiction was unranked on both indicators.

The report, compiled from data gathered in the first quarter of the year, provides an overview of the global crypto hedge fund landscape and examines both quantitative indicators, such as liquidity, and qualitative aspects, such as custody and governance best practice.

Jonathan Garcia, Partner at ISOLAS LLP, said: "Gibraltar has a great legal and regulatory landscape for crypto funds, evidenced by this report. The indicators put further weight behind Gibraltar's growing status as a 'go-to' financial market. The jurisdiction's strength is derived from its robust and dynamic regulatory framework thanks to our size, coupled with the willingness of regulators to consider input from external industry experts."

In the rest of the world, the report showed that the overall Assets Under Management (AuM) by crypto hedge funds

Continued p28

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doubled to $2 billion in the last year. Over the same period, the industry saw the percentage of crypto hedge funds with an AuM of over US$20 million increased in 2019 from 19% to 35%, broadly in keeping with the overall trends of crypto hedge funds getting larger, with average AuM increased from US$21.9 million to US$44 million, while median AuM increased from US$4.3 million to US$8.2 million.

Jonathan added: "The report doesn't just signal growing of interest in the sector in Gibraltar but points towards impressive overall growth. This is a sign of confidence in the crypto hedge fund industry as a whole and points to greater institutional confidence in the market, something that is very important as crypto joins the ranks of established asset classes.

"For Gibraltar to have a growing share of a quickly growing market is extremely encouraging news and a testament to the creativity of all involved in the sector".

Luke Walsh, a director and crypto-lead at PwC Gibraltar said: "The PwC Crypto Hedge Fund Report provides an overview of the global crypto hedge fund landscape and offers insights into the industry. Gibraltar's prominent position with regards to the percentage of funds and fund managers located in the jurisdiction adds to our positive reputation and further cements our place as a global player in the crypto industry.

Global crypto entities

"The jurisdiction's fund offering is attractive to crypto funds looking for a crypto friendly jurisdiction that welcomes regulation and continues to attract global crypto entities."

Joey Garcia, ISOLAS' fintech partner, also commented: "It's well known that Gibraltar led the way in respect of DLT and VASP regulation years ago, and the regulated DLT firms the jurisdiction has been able to attract show this quite clearly. However, it is also great to see that the work conducted in defining specific focus points and codes of practice for virtual asset denominated funds has led to an increase in the jurisdiction placing itself as a leader in the funds space.

"As a domicile for funds in this space, it makes a huge difference having lawyers, accountants, banks and fund administrators that firmly understand the technology and asset class, and are able to deal with the intricacies that come with it."

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