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## GFSC welcomes new board member

The Gibraltar Financial Services Commission (GFSC) announced in January, the appointment of Peter Caetano to its board. Minister for Digital and Financial Services, Albert Isola, appointed Mr Caetano to succeed Kerry Blight whose term on the board ended in October, when Mr Blight was appointed as the CEO of the GFSC.



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Mr Caetano, a Gibraltarian who spent the majority of his 35 year banking career abroad, returned to Gibraltar in 2014 to work at Lombard Odier. He has subsequently started his new role as

Managing Director and CEO of Logistable Limited, a GFSC licensed firm.

Mr Caetano commented: "I am delighted to be joining the GFSC Board, and I look forward to fulfilling my role in the best interests of Gibraltar. I would like to thank Minister Isola for providing me with this fantastic opportunity."

## Chief Minister congratulates Spanish Prime Minister and Vice President

The Chief Minister, Fabian Picardo, in January sent a letter to Pedro Sanchez to congratulate him on being re-elected as Prime Minister of the Kingdom of Spain.

In his letter, Mr Picardo referred to the two men's shared desire to look beyond 'the eternal issue' of sovereignty and he extends the hand of friendship on behalf of the people of Gibraltar.

Mr Picardo also offered his support for the promotion of 'policies based on the principle of dialogue, understanding and

co-operation between our respective people'.

Simultaneously, the Chief Minister sent a letter to congratulate Pablo Iglesias, the leader of Podemos on becoming Vice President, and expressed his sincerest hopes for genuine dialogue that is respectful of the rights of the people of Gibraltar to determine their own future.



Picture Credit: The Times

## Major upgrade for Marina Bay

Work has begun on a £30 million major rebuild project at Gibraltar's Marina Bay, that is expected to be completed by early 2021.

Marinetek, Finland, who won the competitive tender to rebuild the marina, signed the contract in November last year. The company will replace the marina's Mediterranean mooring system, which was originally installed in the 1980s, with new Marinetek pontoon berths. The rebuild will increase the number of berths from 252

to 300, including a significant number of 15-18m (49-59ft) and 12 superyacht berths.

The project is being funded through the new Marina Club 144 high-end waterfront rental apartments, with rooftop spas and green areas, which are all linked by walkways.



## Government EU Withdrawal Bill

In mid January HM Government of Gibraltar published the European Union (Withdrawal Agreement) Bill for Gibraltar.

This followed the third reading of the United Kingdom Bill in the House of Commons and its adoption by a large majority, before it moved on to the House of Lords.

The EU Withdrawal Agreement Bill provides the mechanism to give effect in Gibraltar to the Withdrawal Agreement.

The Bill was presented to the Gibraltar Parliament by the Deputy Chief Minister, Joseph Garcia, who is the Minister with responsibility for Brexit work related to the departure from the European Union.



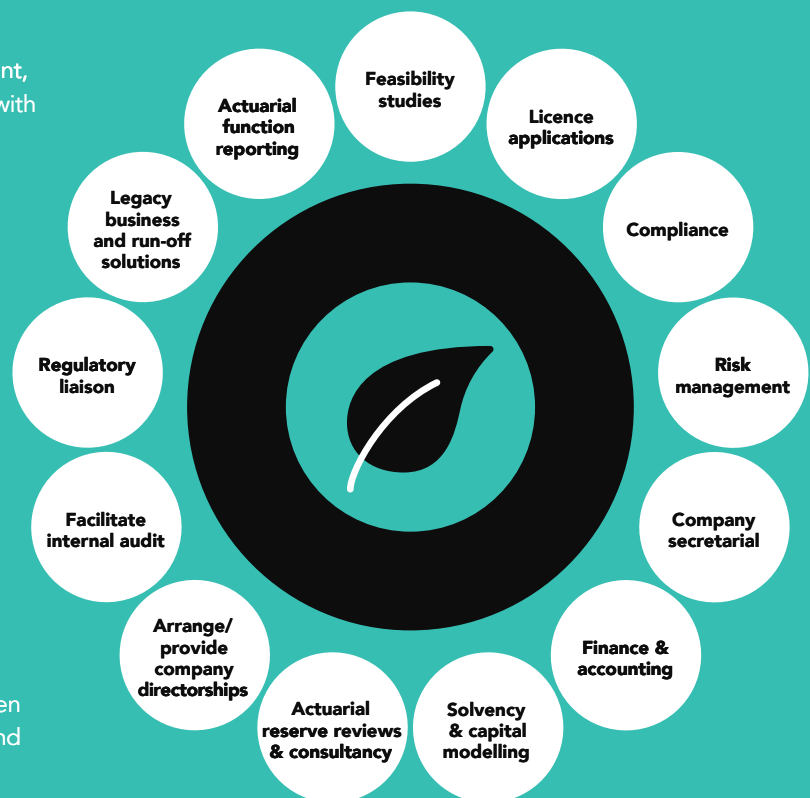


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## Is your compliance compliant?

By **Dale Cruz,**  
Partner EY

**A**s compliance teams struggle to manage the ongoing workload from the Fourth Money Laundering Directive, how do they ensure their systems are up to scratch? External validation can be a great opportunity to calibrate internal controls and processes. The directive requires firms to have an internal audit function that determines the need for independent audits.

An independent AML/CFT audit ensures that businesses keep on track and prioritise change and implementation addressing new risks identified. It can be carried out by internal staff members providing the individuals involved in the audit team are independent of the compliance function and sufficiently competent to undertake the work. The difficulty faced by smaller organisations is that this kind of expertise is generally only available within the compliance function. In places like Gibraltar, this is very common and so the only option is to outsource this to an external firm.

The outsourced firm would carry out an assessment of compliance with the Regulations and of effectiveness of controls. It can also highlight changes in regulations which may affect risk ratings, and therefore require changes in the mitigations and controls. The reach is both broad and deep and the implications for an independent audit, significant. Interestingly, the requirement to undertake an audit is determined by each firm on a risk based approach and should be assessed at least annually as to the frequency and scope.

Not all entities are captured. The entities captured by the GFSC are as follows:

- All financial institutions (FI) as defined in Section 7 of POCA 2015 which include Banks, Electronic Money Institutions, Life Assurance Companies, Investment Firms, and DLT Providers.

- Relevant Financial Businesses as defined in Section 9 of POCA 2015, which are not FIs, such as real estate agents, exchange

bureaus, accounting and audit firms if they have: five or more full time employees or have a turnover of £1,000,000 or more.

- Trust and Company Service Providers if they have 50 or more trusts under management or have 100 or more companies under management.

The GFSC guidance states this as an expectation but a clear inference could be drawn from this 'expectation' to need if the

directive that have direct implications for risk:

1. Regulation of virtual currencies and pre-paid cards to prevent terrorist financing
2. The improvement of safeguards for financial transactions to and from high risk countries
3. Ensuring centralised national bank and payment account registers, or central data retrieval systems, are accessible in all member states

The final text was published in June of 2018 and it allowed EU member states 18 months to transpose this into law. Some states moved quickly but some have lagged behind only completing this work in December. The implementation is in three key stages. The first two were on 10th January for the set up of Beneficial ownership for corporates. The 10th March will be for the set up of Beneficial ownership of trusts.

The third key date to be aware of is 10th September when automated centralised mechanisms should be set up to allow identification of those who hold, or control, payment accounts and bank accounts.

What this means for business is a sharper focus on risk and the need to treat risk as live and an on-going concern. Firms have always known that risk management and client relationships are not a one-off function but what the Fifth Directive seeks to achieve is the cementing of those processes, i.e. having processes in place to facilitate continual screening and monitoring of all relationships.

All in all we are seeing increasing transparency of beneficial ownership, tighter controls for high risk countries, clarification of PEPs etc and so the element of assessing and enacting an independent audit looks less like an expectation and more like an essential function of a firm's risk management.



firm is operating with a coherent risk assessment that includes on-going monitoring of risk exposure to risk appetite and all within the demands of the Fifth AML Directive. In short, to know what has changed and what impact this might have on how the firm operates.

### What's next?

No sooner does the Fourth Money Laundering Directive become embedded in the financial system than a fifth looms large on the horizon.

Although not considered as extensive as the Fourth Directive, which required a wholesale change in how businesses approach money laundering, it does continue the focus on the risk elements. In fact, the Fifth Directive constitutes a series of amendments to the structure of the Fourth Directive which adds a range of additional provisions. These focus on enhanced powers for direct access to information and increased transparency around beneficial ownership information and trusts. There are three key developments on the fourth

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## Key challenges for the online gaming industry



**By Jon Tricker,  
Managing Director,  
and Elaine McCormack,  
Senior Manager, Risk  
Consulting, KPMG  
Gibraltar**

**P**utting Brexit aside, one of the key challenges for the online gaming industry is regulation. This is a topic that is hotly debated at the KPMG eGaming Summits in both Gibraltar and the Isle of Man, and it was interesting this year to see some positive thinking from operators about regulation and discussion of how it is changing the industry for the better.

Recent regulatory changes, for example, have not only strengthened player protection but have also been good for the industry as a whole by creating a more level playing field. The changes are intended to generate a mentality whereby everybody is focused towards the same goals and outcomes, which is really important.

There has been a lot of very public regulatory action over the last few years, and some may see this as the regulators trying to flex their muscles. But industry is also now seeing evidence that these regulations are

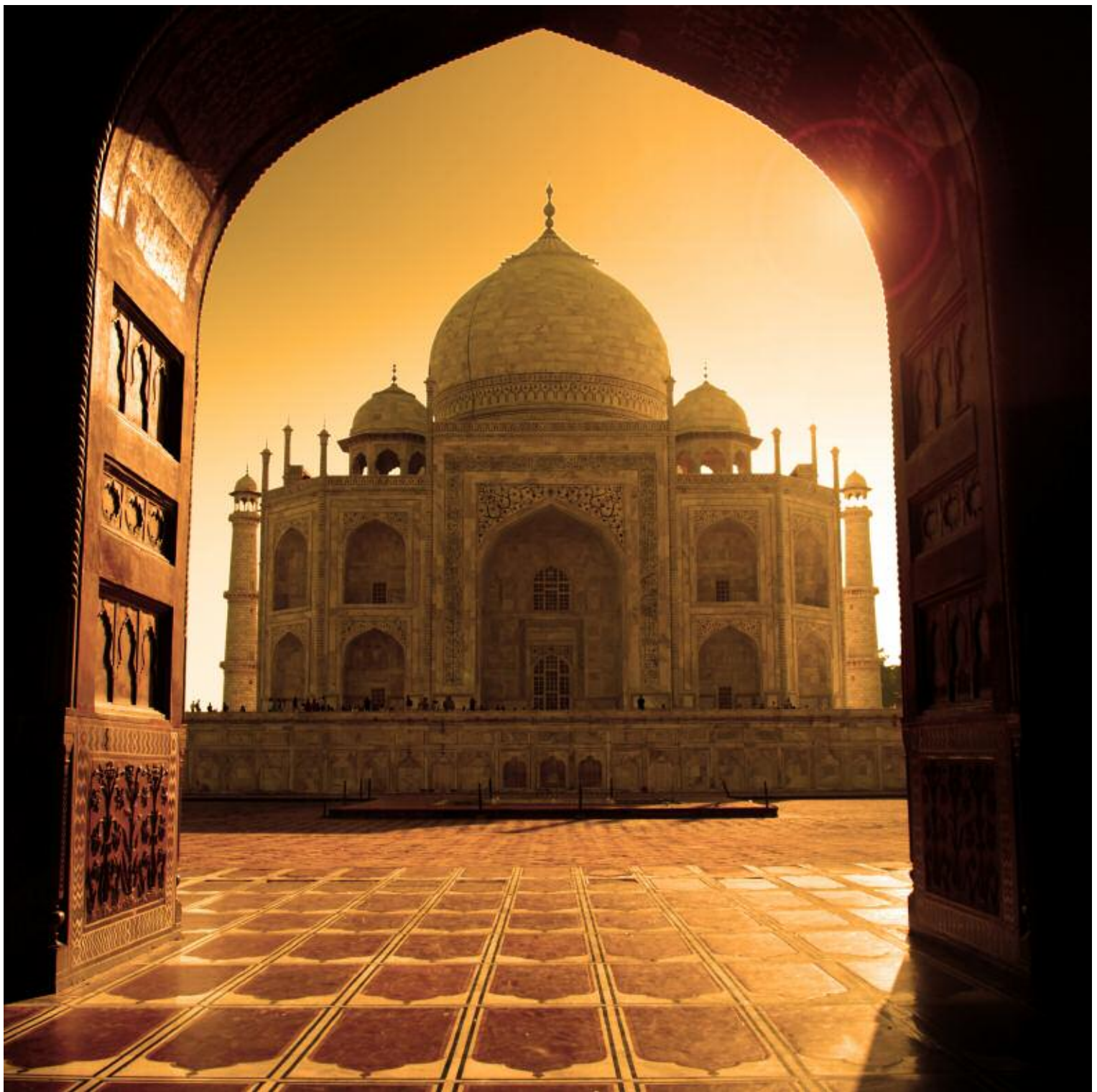
there to enhance business and customer enjoyment, particularly because everybody is playing to the same rules.

On a technology front, operators continually strive for a safer industry, but it isn't always easy. Firms gather an awful lot of data about their customers as part of their on-boarding processes. The challenge is how that data is used on an ongoing basis to help and support customers if, and when, they need it.

There are also some fantastic tools available to help customers gamble responsibly, but customers aren't always aware of them. It's unfortunate that a lot of these technological advances only rear their heads when customers realise they have a problem and it may be too late, whereas if they were prompted earlier, then it could really help solve many issues the industry is facing when talking about responsible gambling.

*Continued p12*





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There is a perception that the gaming industry is not as mature as some of the other more traditional financial services industries, and that it looks to those industries when it comes to implementing some best practices. All industries can always learn from each other, and it's been interesting to see

whereby the operator actually gets in touch with their customers when there are indications there may be an issue. That prompt may just be the nudge the customer needs to recognise that there is a problem.

Invariably, changes within a business on the back of regulatory requirements are

**Regulation definitely isn't ruining the industry, it is actually trying to enhance the industry and make it a safer and fairer place in which to operate**

that the Financial Conduct Authority in particular have been very vocal recently about what financial services firms can learn from the gaming industry. They cited the gaming industry's investment in technology, and the use of it, to help become more proactive when it comes to responsibility and collaboration with customers.

The ideal is for firms to use the data they collect to prompt customers when there may potentially be a problem. Imagine a world

implemented with the assistance of compliance departments. Historically (and this isn't limited to the gambling industry), compliance has often been seen as the "business prevention division" within a company but it is encouraging to see this perception slowly changing over the past few years.

Within a lot of businesses, departments can be very siloed, each with their own agenda. Thankfully that is also changing but

there's still a lot to do. Compliance was something of an afterthought for some companies however latterly they've been pulled to the forefront, and it's becoming standard practice for compliance to sit right across the whole organisation. This allows involvement from a really early starting point so, no matter what the business is planning, whether it be new features, new games, new markets etc, now there is compliance involvement at the start of a project. It is here that potential pitfalls and considerations can be discussed and addressed from the outset rather than a day before launch, which could save so much heartache going forward.

## A good compliance department

Businesses never like spending money on departments that are going to cost them money but firms are now realising the true value of a good compliance department on protecting their business.

Firms are always judged on their culture and how they treat their most at-risk customers. Many are now realising that when they get this right the whole perception of their business and brand is impacted positively.

Regulation definitely isn't ruining the industry, it is actually trying to enhance the industry and make it a safer and fairer place in which to operate. There is still work to do, media stigma to break and more investment needed in technology but the increasing desire for a collaborative approach, where everyone is striving for the same end goal, will enable the industry to grow and its reputation to flourish. It can become an industry to which others look and aspire to be like.

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## LSRA to bring client benefit

**Gibraltar's legal profession is experiencing one of its greatest shake-ups in 50 years, while events have brought it into the international spotlight, Ray Spencer reports**

**T**he jurisdiction's legal profession has grown significantly since the 90s, largely the result of expansion in financial services and eGaming, as well as burgeoning property development in more recent years, all requiring support from attorneys.

Extensive use has been made of government legal drafting services supported by lawyers in private practice to prepare new and updated statutes to cover EU directives and emerging markets. In recent years, the workload has intensified from the BREXIT issue, which affects Gibraltar as being part of the UK's membership of the EU.

But from May all 300+ lawyers – working in Gibraltar law firms, government departments, official bodies and, for the first time, within businesses – must be registered to receive practicing certificates from the embryo Legal Services Regulatory Authority (LSRA), a recently-created statutory body responsible for the registration and regulation of the jurisdiction's legal profession.

At present, there is no complete list of lawyers: the Gibraltar Courts Service in November identified 245 people – barristers and solicitors in a fused profession for court appearances (unlike England where only

barristers are able to do so) – working in some 40 law firms. The Bar Council (now known as the Law Council) list from January 2019 gave 156 names as members, including some from the private sector.

Founding Chairman of the LSRA, Sir Peter Caruana QC, a former Chief Minister for 15 years and arch litigator, revealed his initial budget of £480,000 would be met from a tariff of varying annual fees ranging from £300 to £1,250 for individuals, including business in-house lawyers. Law firms will need to pay £1,000–£2,500pa dependent on the number of practice partners.

### All being regulated

"The Bar Council has never been more than a representative body of lawyers – almost the lawyers' trade union – but it is not essential, nor mandatory, to be a member although most lawyers are," Caruana declared. He added: "We will be publishing a list, and although we have not discussed it, I cannot imagine that a register and role of certificated lawyers should be anything other than public, certainly by May when the 2020 practicing certificates are issued."

David Dumas QC, one of Gibraltar's most senior lawyers with a wealth of experience of the legal profession and its practice, including serving for many years as chairman of the

former Bar Council – has the task of forming the LSRA. As chief executive, the ex-Hassans partner, is ensuring money laundering and other staff are in place as well as "an outreach programme to the wider legal profession".

As Caruana put it: "There is a supposition that lawyers will be familiar with the new legislation, but it can't be assumed; the outreach will be privately and through the media to ensure that people comply with the registration process."

Over the next three years Dumas will sift any complaints made against lawyers to establish their veracity, prior to more detailed consideration and adjudication by the six-strong LSRA Board made up of a mix of appointees external to the profession and lawyers, including the Law Council chairman at the time.

"My aim is to ensure that this new LSRA regime gets off to a good, credible start and that consumers, who may have complaints against lawyers, realise appreciate and perceive this is not the inmates running the asylum, and if they make complaints that they will be investigated in a timely and effective fashion, and [if appropriate] proper redress will be given" Caruana declared. "It [the LSRA] has got to have credibility from birth."

### Conduct code

According to Caruana, "there are more than 20 cases in the pipeline ranging from the "unmeritorious ones to complaints that may be meritorious, but relate to completely unimportant matters, to the more important things".

*Continued p16*



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Continued from p14

Also coming into effect under the Law Services Act 2017, being progressively enacted, is a new Code of Conduct for lawyers based on the New Zealand model (where there is also a fused profession allowing solicitors and barristers to attend the Supreme Court). He declared: "Why reinvent the wheel?"

The LSRA chairman, explained: "The new Code will more clearly and explicitly set out what most prudent lawyers probably would be adhering to already. It's not that lawyers have to behave to a different standard. It is a more robust, tighter and better system for the legal profession and for consumers in the sense that it is resourced, with a dedicated, properly funded regulator that should respond more quickly and efficiently."

Melo Triay, senior partner of Triay & Triay (T&T), first promoted changes to lawyers' regulation in 2012 when chairman of the former Bar Council. "It is something that we have needed since the profession became so big", he said. "Under the old system, law firms had to, inter alia, comply with the Solicitors Accounts Rules and file an annual report certified by an auditor that said the client account was properly managed with client money kept separate from the firm's. Complying with these rules and obtaining professional Indemnity insurance cover would result in the issue of practicing certificates; it was the minimum form of regulation", Triay explained.

"Now we expect the Regulator to be more 'hands on' and not so dependent on whether a client makes a complaint or not. Previously, when complaints were made they were dealt with by the Admissions and Disciplinary Committee, which operated on a pro bono voluntary basis; it was inherently cumbersome and a little slow – hopefully, under the new system complaints will be dealt with effectively and expeditiously!"

Marcus Killick, chief executive officer at ISOLAS, noted: "The LSRA changes will be evolutionary and incremental. Bringing the legal profession into the same standing as auditors, financial services and gaming companies, with a degree of regulatory oversight, is beneficial to the jurisdiction. It will give clients a greater feeling of protection and encourage law firms to move further in the direction of treating their clients fairly."

## Changing status

He suggested all regulators spend 80% of time dealing with 10% of licence holders, "who may occasionally lapse". However, the importance of a regulator to in-house counsel was less clear-cut, Killick felt, "because they effectively acted

for a single client, rather than a multiplicity of clients as with law firms".

ISOLAS morphed in 2017 from a traditional partnership into a Limited Liability Partnership (LLP), mirroring the set-up at most English law firms, which "has been good for us: the business discipline and feel that being a limited partnership brings to a legal practice" tended to draw the 13 partners more closely together, he maintained.

T&T last summer became one of very few law firms locally to transform its partnership into a limited company as allowed under new LSRA rules, which brought welcome limited liability and taxation benefits, Triay observed.

Hassans, Gibraltar's largest law firm celebrates its 80th anniversary this year and has also formed a limited company, but is delaying



implementing changes to its organizational structure until the LSRA comes fully into force.

Ian Felice, a Hassans partner in the corporate and commercial team, confirmed: "Limited liability is a strong driver when you have joint and several liability personally under a partnership, because the larger one gets the greater the potential exposure." The firm, with 92 fee earners, including 38 active partners, in September consolidated four offices around the Rock into over 5,000 m<sup>2</sup> on seven floors at Madison, part of the new Midtown development.

Felice revealed his firm's business "grew around 5.5% in 2018-19, despite seeing the bubble of excitement in the fintech field reversing the expected big growth seen a year earlier. Yet there remains a solid workflow from that sector and we are advising on four new Distributed Ledger Technology (DLT) enterprises and four token sales projects, making 17 Initial Coin Offering (ICO) enterprises handled so far."

Felice who recently assisted Vietnamese-based, Rooke Investments, to purchase the

Gibraltar interests of Danish-owned, Jyske Bank, reported: "Probably over two thirds of our work has an international dimension – working with clients that are international in nature and on work that doesn't have a Gibraltar element."

Commercial and residential real estate work had been "very busy and remains our bedrock, as well as private client and commercial structuring work." Fellow tax partner, Grahame Jackson, disclosed: "We have seen a substantial increase in queries from private clients in relation to their tax position since the introduction of the Spanish/UK (including Gibraltar) Tax Treaty and also the Double Taxation Agreement with UK and we have held seven seminars on this subject attended by over 500 people."

## Work widening

Income at ISOLAS in 2018-19 had seen "low double digit growth – 10-15% up in a year" – with strongest areas being in DLT and commercial transaction-based work, "including gaming, where there has been considerable activity, and in property which shows no sign of abating", Killick declared.

He detected that despite warnings from government, industry and trade bodies a number of firms did not recognise exactly what was required under EU-wide GDPR (General Data Protection Regulation), which became law a year ago. "For some firms it has increased costs – people did not want to spend the money, or decided to put it off for as long as possible."

Michael Nahon, Hassans' GDPR expert, recounted a surge in work and was "beginning to see bigger fines across the board for privacy failures, which only serves to emphasise the importance of compliance with GDPR. It is especially true in a digital market where trust is an essential component of doing business electronically."

T&T business is "steady year on year and very similar to the past 3-4 years", declared Triay, adding: "Business is tough in these uncertain times, so I regard maintenance of last year's levels as acceptable and in some cases might be actual growth. Commercial, property and private client work play "a significant part, but also litigation is a big aspect. There is always litigation in Gibraltar and there are big trust, commercial and negligence cases currently going on", Triay intimated.

Andrew Cardona, a specialist personal injury and medical negligence barrister at Phillips, a medium-sized nine-lawyer firm, concurs. "We are growing steadily, adding one lawyer each year to the team," he said.

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*Continued from p16*

However, as a committee member of the former Bar Council he's concerned at "the situation that has been happening quite a lot over a long time, where cases in Gibraltar, on Gibraltar law, being not only led by English counsel, but also by English solicitors – and they are not regulated".

From spring however, English lawyers will also need to be registered with the LSRA. "It's not a matter of protectionism, but a matter of regulation", Cardona insists. "Part of the problem is with smaller firms that may not have senior advocates of their own: instead of instructing local advocates, they may look elsewhere and it may be in part due to fear of losing their clients."

UK and other EEA counsel can visit Gibraltar for specific cases and be called to the local Bar ad hoc, but from May they must be registered with the LSRA: six or seven overseas QCs have obtained permanent access.

## No closed door

Caruana wants the LSRA "to consider the extent to which there is recourse to barristers from the UK and the extent to which that is having an adverse effect on the development of advocacy in the local Bar, and whether there is anything that should and could be done."

"On the one hand the case can easily be made that people should be free to bring in specialist counsel if they want to, but on the other we have to be sure that we are not thereby making it so easy and commonplace that local lawyers – young and old – are not able to cut their teeth so that eventually, the advocacy Bar in Gibraltar would simply die on its feet, becoming just part of the UK," he held.

Small countries had faced similar access issues, but "very few have the open door policy that we still have", Caruana observed. [In the Channel Islands for example, only locally qualified solicitors and advocates can appear in the courts.] "It's not a question of shutting the door, but it is a question of regulating and permitting access in a way that does not kill the local Bar for the future", Caruana opined.

Even so, Triay pronounced that because legal work in Gibraltar is so varied, practitioners tend not to specialise and "the level of knowledge is necessarily less in specialist fields: it naturally results in London Silks being instructed for complicated or other cases requiring a degree of expert specialization; it is impossible to be a specialist or expert in everything".

## Briefs review

Two barristers were appointed Silks last summer – Nigel Feetham, a Hassans partner specialising in insurance, was only the second

non-litigator to become a QC and Christian Rocca, who early in 2019 became Gibraltar's first Director of Public Prosecutions in charge of the day-to-day running of the Criminal Prosecution Service.

But that fourth QC ceremony since 2011 raised another issue – how many Silks there should be – when Chief Justice Anthony Dudley, declared a limit of 24 QCs on the Rock had been reached, given that no more than 10% of lawyers in private practice can be appointed! He called for a "measured and constructive debate" on whether the rules remained appropriate.

Doyen of Gibraltar's legal community, 90 years old Louis W Triay, QC, is believed to be the oldest practising lawyer in the world and is founder and now consultant at the jurisdiction's fourth largest law firm, TSN (formerly Triay, Stagnetto, Nash), where he specialises in trust and tax law.

"There is a view that in a fused profession and with senior partners of some of our law firms not being litigators, they too should be able to become QCs," Caruana noted. "I believe it should be only for practicing court lawyers, yet I see the force of those who say that you can't appoint QCs as a percentage of all lawyers – whether they go to court or not – and then only appoint that percentage that go to court: it's polemic."

## Foremost authority

Barristers and solicitors wishing to practice in Gibraltar must first attend a 24 week, part-time Professional Certificate of Competence in Gibraltar Law course to ensure understanding of differences from English law. The 23 students on the current course bring the total to 95 since November 2015.

Gibraltar's lawyers gained an unexpected work boost last summer when Port and Law Enforcement agencies detained a crude oil super tanker, the Grace 1, on the grounds it was believed to be acting in breach of EU sanctions against Syria. A day earlier ("rather fortuitously" as a local barrister remarked), the Gibraltar government published an enforcement Notice against the vessel and its cargo under the Sanctions Act Shipping Regulations. The Act, prepared by the government Law Office, came into force in March, but was instigated as part of BREXIT preparations.

After six weeks of diplomacy and with Triay & Triay representing the Attorney General (AG) Michael Llamas, at the Supreme Court, Gibraltar's Chief Minister, Fabian Picardo, received assurances from Iran and the owners of the oil that the released tanker and its cargo

would not be taken to Syria; the vessel departed under the changed name, Adrian Darya, (however, media reports suggest that after some weeks, the cargo was eventually off-loaded to Iran!)

Nevertheless, as a result of the Grace 1 incident, the jurisdiction has become the foremost EU authority on implementation of sanctions-busting legislation. As pointed out by the AG at the opening in November of the 2019-20 Legal Year: "Our jurisdiction came under the international spotlight like few times before. It was a truly intense month. We upheld the rule of law in difficult circumstances." Hassans acted for the Captain of the Port and Phillips for two of the ship's crew.

## Gender focus

Llamas added: "The Grace 1 served as a further reminder of the importance of our geographical location and the exposure it gives us to world affairs of the highest order. It is one of the reasons why the Government has continued to pursue its programme for the enactment of legislation in the area of security."

As part of International Women's Day in March, Hassans held an event attended by 100 clients and staff, including Samantha Sacramento, Equalities Minister and [since the November General Election] also Minister for Justice, to discuss diversity, inclusion and general equality issues. She told Gibraltar International: "Gender equality is a new phenomenon in Gibraltar for the past few years and that has been a contributory factor to getting the conversation going and people feeling empowered to recognise situations that may not be fair and then doing something about it."

Whilst in government, Sacramento, a qualified barrister, who has not practiced for six years, admitted there were comparatively few female lawyers – "just look around" [59 of 245 lawyers listed on Gibraltar Courts Service website] – and she said while information gathered last year on the gender pay gap identified all within organisations having more than 20 employees, "next time, I expect it to be broken down into professions and common work positions".

Gibraltar's most senior female lawyer is Gillian Guzman, a Hassans Partner specialising in employment law, who was appointed the first female QC in 2014 and aged 39 years, she was then also the jurisdiction's youngest Silk.

Minister for Justice and legislative authority for the three years prior to standing down at the recent general election, Neil Costa, in October returned to private practice and joined ISOLAS litigation and dispute resolution team.



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# Double taxation agreements

**By Grahame Jackson,  
Tax Partner, Hassans**

**B**efore October 15th 2019 Gibraltar had no double taxation agreements which followed the international standard form laid out by the Organisation for Economic Cooperation and Development. Over the last few years the UK has been refreshing its double taxation agreements with its crown dependencies and overseas territories and Gibraltar remained one of the few, if not the only, which had never had such an agreement. It seems that, amid the fog of Brexit and general elections that have descended on both Gibraltar and the UK, a tax agreement was not a major priority. However, on October 15th the Government of Gibraltar and the UK Government signed the first double taxation agreement between the two jurisdictions.



override domestic law that certainty is guaranteed by international law, and the uncertainty caused by domestic political upheavals is somewhat eliminated.

Of course, this will work the other way around. For example, if a Gibraltar bank lends money to a UK company to finance a transaction then under the agreement it knows that the interest payments will be free of tax in the UK (otherwise chargeable at 20%), under Article 11. Students from Gibraltar will know that payments they receive from outside the UK for the purposes of maintenance will not be subject to tax in the UK under Article 19, employees who are seconded to UK from Gibraltar will know (subject to certain rules) that they have 183 days before they become subject to UK tax (Article 14). All examples of certainty not previously available.

The double taxation agreement may only just re-articulate the effect of pre-existing provisions of local law (such as the granting of double tax relief under Article 22, which would already be given under Gibraltar's existing rules in section 37 of the Income Tax Act), but because it articulates those rules in a clear, and universally accepted way, it demystifies the process for foreign businesses.

## A more robust trading base

This has been hailed as a great step forward, a safeguarding of Gibraltar's trading relationship with the UK, and an opportunity for more agreements and a more robust trading base. But what real difference does a double taxation agreement make?

Double taxation agreements certainly are useful, they bolster the certainty that international traders have when they trade across boundaries and allow multi-nationals to understand how they will be treated in a jurisdiction, but how will they practically effect people? It may be helpful to understand the effect by giving examples of some of the ways the UK Double Taxation Agreement will work in practice.

Let's imagine a scenario, of an international firm that owns coffee shops. It's based in the UK, and wants to open a coffee shop in Gibraltar. Prior to the UK agreement, opening a coffee shop would have appeared a daunting task for the company. Their internal tax team would not have understood the tax treatment of that income, or whether opening a local subsidiary would have been the best option, how a branch might have been taxed or whether the tax would have been more

than a local entity would have paid. In short, they would have doubted whether or not this was worth it, or whether it was merely a minefield of cost and complications. They may well have been put off from opening a branch at all, and there would be a subsequent loss of investment in Gibraltar.

## Gibraltar tax

With a double taxation agreement all those questions and doubts are eliminated. the company will know that their business profit from Gibraltar will be taxed in accordance with the rules in Article 7 of the UK-Gibraltar double taxation agreement if they use a branch structure. They will know the rules which will govern the distribution of dividends from a Gibraltar subsidiary if they choose to incorporate a local subsidiary, and they will know that there will be no difference in the tax treatment of them based on whether they are a resident or a non-resident in Gibraltar under Article 23 (non-discrimination). The company will still need to pay Gibraltar tax (and will have their UK tax bill reduced by a credit equivalent to that Gibraltar tax under Article 22, Elimination of Double Taxation) but they have certainty as to what the rules are in an internationally recognised form. As treaties

## Global trade

Double taxation agreements have contributed immensely to the increase in global trade over the last one hundred years. Businesses crave certainty. They don't want rules to be unique, esoteric, or complex, they want clarity and if clarity is not available, they want the issues to be consistent. The international framework which delineates the UK-Gibraltar Tax Agreement provides that. The jurisdiction will benefit from an active network of treaties, its trade should increase as a result, and its markets open up to exciting new opportunities.

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# The Future of MGA's in Gibraltar



**Should there be a separate licensing and regulatory regime?**  
**David Coupe, Senior Partner, EC3 Legal, an insurance law firm based in the City, reports**

**W**hilst insurance businesses in Gibraltar have achieved prominence in the UK market, (around 27 % of the UK motor risks are underwritten by Gibraltar insurers), the Managing General Agents (MGA) market has not seen much traction until recent years. With the recent Gibraltar Government's legislative changes in respect of the intermediated market in the jurisdiction, could a new dawn be rising which will be exciting for the Gibraltar insurance market and, in particular, the MGA market?

### **Why Gibraltar? Why now?**

As Brexit occurs, the EU door closes – but opportunities in the UK increase. Both governments have announced the continuation of a single market between Gibraltar and the UK in respect of financial services which means there is a guaranteed access to the UK market, and vice versa.

There are many existing positives for the jurisdiction. It is currently undergoing legislative reforms on financial services with

the enactment of a comprehensive new legislation to provide a sound base across all financial services, aiming to be comparable to that of the UK. It has an insurance sector with many experienced professionals who know the UK market well. It has the relevant insurance infrastructure. There is a favourable tax regime with no VAT. It also has a well-developed regulator (the GFSC) offering “right touch” not “light touch” regulation (to quote the minister of digital technology and financial services).

And with a new insurance intermediary regime as announced, there really won't be much not to like.

### **The opportunity**

The regulation both in the UK and in Gibraltar of the insurance sector has been (and will probably remain to a large extent) highly influenced by EU rules. Solvency II Directive and, in the last year, the IDD were introduced to prevent systemic failure in the insurance industry across the EU and to enhance consumer protection. As a result, regulation and supervision of insurance activities can be challenging, not only for the regulators, but also for market players.

It is widely recognised that the UK offers a slow and sometimes inflexible regulatory regime as regards the setting up and on-going supervisory regulation of these businesses. For instance, applying for a UK regulated intermediary status can typically be an 8 (or longer!) month process, often full of questions that have little benefit to the process, and cause immense frustration to the applicant. Indeed, because the UK insurance market changes so quickly, by the time the business is regulated, it often needs a whole new business plan since the original opportunity has gone. Sometimes funding evaporates in the meantime.

The same applies for the vast majority of on-going conduct enquiries where one has no direct reporting line, no continuity of approach, and, sadly, rarely much appreciation of the issues. To be fair to the UK regulators, they have a vast number of

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diverse businesses to regulate, and the ability to offer a “bespoke” service is nigh on impossible for all of them.

Could Gibraltar offer a speedier and better solution in terms of regulation, in particular to smaller intermediaries operating in the UK market? Should the MGAs and others in the intermediated market be subjected to same rigid cumbersome regulatory regime as larger players, when they do not carry the insurance risks for their own account, nor where they are not end user/consumer facing?

Due to its size, Gibraltar has often prided itself as being nimble in terms of its ability to adapt to market needs. Its regulator (the GFSC) has a “speed to market” policy, and is often known for being approachable on short notice. This makes it a responsive regulator and should tick the boxes of UK businesses.

## Going forwards

Gibraltar Finance has announced that significant changes are to occur in the intermediated insurance market. Insurance companies in Gibraltar often operate on an outsourced business model whereby most of their operations in Gibraltar are outsourced to reputable insurance managers (the likes of Aon, Artex and Robus). These managers have not previously been able to manage intermediaries. This will now be able to occur. The appointed representative (AR) regime will also be introduced to allow insurance intermediaries to be AR's of “hub” intermediaries like in the UK – but this is likely to be restricted to those whose primary business is insurance (to stop e.g. 2nd hand car dealers being AR's).

On licensing, the MGAs and brokers are currently licensed and regulated under the same Financial Services (Investment and Fiduciary Services) Act 1989. The writer would like to see that they are regulated separately.

Firstly, there is a need to look at what should be defined as an MGA. It is suggested



that this should be an agent whose sole contractual responsibility is to the insurer (although this will inevitably cut out “retail” MGAs dealing directly with consumers). An MGA's clients are its producing brokers which are already licensed and regulated. As such, why do such MGAs need to be licensed

provide this distinction – and the FCA will not regulate them separately (despite other countries such as Belgium doing so). If Gibraltar were to provide this distinction it could attract a large amount of interest from UK MGAs, since the MGA market in the UK has grown enormously. This is reflected by the fact that the UK Managing General Agents' Association had 30 members writing £1.2bn when it set up in 2012. It now has some 140 members writing £6.3bn, of which only c12% is “retail” (i.e. directly sold) to the consumer. The model is now well-established.

Many MGAs are operating

under an incubator model (where they are AR's of a hub regulated intermediary). They would clearly all like to be autonomous. However, the cost and complexity of UK regulation is prohibitive. Gibraltar needs to offer better – not soft, not easy... just better and easier access to regulation and services.

## As Brexit occurs, the EU door closes – but opportunities in the UK increase

under the same licensing regime when they are in fact dealing with professional regulated entities? It is an unnecessary duplication, doubles regulatory burden and cost, and ultimately delivers little or no benefit.

On the other hand, brokers are consumer/end user facing and surely, their regulation should be different from that of MGAs since they owe a higher duty of care than an MGA. The same applies to “retail” MGAs too. A more prescriptive regulatory regime, perhaps with a higher compensation levy for those dealing with consumers is surely correct?

MGAs that have no direct contact with consumers/insureds should not be regulated on the same basis, nor carry the same duty of care to consumers with whom they are often allowed no direct contact with through distributing brokers. UK regulation does not

Hold your horses is the message to all. It will be a short while in coming through, whilst the new financial services legislation beds down.

The Gibraltar Government has backed this initiative. The laws can be changed. The tax environment is stable. The skill set is there. The question is: When will this all come to fruition? Who in Gibraltar is ready for the challenge?

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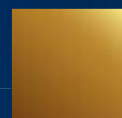
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# Mobile Apps are changing business



By **Ezekiel Diaz MSc**, Project Manager,  
Piranha Designs Gibraltar

**L**il Maquela is Brazilian and lives in Los Angeles. She is 19 years old and an 'influencer'. Lil is considered one of the 25 most influential people on the internet.

On Instagram she has 1.6 million followers and has participated in advertising campaigns for big brands like Calvin Klein. Apart from being a model, Lil is also a businesswoman. None of this appears to be out of the ordinary in the 21st Century, except that she is not real - Lil only exists digitally and is a Computer Generated Influencer (CGI).

FaZe Clan, an American eSport team, has managed to increase its value by millions of dollars thanks to the exponential increase in followers, mainly adolescents, who consume their content and simply see the team play video-games.

These are just some examples of how radical changes caused by digitalisation and the overwhelming increase of online content have impacted the way that clientele and companies behave. This has led to the creation of continual content by new industries and different forms of consumption and leisure.

## Think globally, act locally

There are still businesses whose growth forecasts are based exclusively on personal

friendships and the connections with their current clients. However, the majority of CEOs and middle managers consider the continuous improvement of their brand's online presence and the development of their channels of interaction to be an essential aspect of their growth. The quality and closeness of face-to-face relationships are valued for their direct impact on the results of businesses in their local markets. Despite this, it is dangerous to disregard the presence and positioning of the brand towards potential clients within online markets. Digital mediums like corporate websites or mobile applications are tools that help to increase the trust and closeness of the business with its clients and vice-versa.

The exponential growth of the number of online consumers has created new business opportunities in more incumbent markets which have been traditionally limited to offline entry-points. The consumer tends to more often look for online examples that offer them information and solutions. In some industries, the online market has largely trumped the traditional and offline market.

## Current tendencies

The use of the smartphone to search for and even buy products has been highlighted as

the general tendency in the last few years.

This was already becoming clear when in 2016, a study by Google revealed that 80% of website usage was being done via mobile, with four in ten people searching via a mobile device on an average day.

For a number of years the term 'mobile first' has been part of the strategy used in the digitalisation and online marketing of companies. The difference with the past is that consumers are currently interacting with companies on a 24/7 basis from home, at work or even in the hospital waiting room. The increase in usage times of mobile phones has led to an increase of resources and efforts to improve the experience of consumers in accessing content through these devices. The business owners know the importance of being the first to offer their services and products to their clients. This is why they make sure they use a format, presentation and content that is optimised for mobile devices. According to a Google report in 2016, 'Best' and 'right now' mobile queries have grown by 125% in the previous two years (e.g. best online sales right now, the best phone out right now, best stocks to invest in right now, best SUV lease deals right now).

## Website vs App

This present reality has pushed companies to create mobile applications orientated to providing practical solutions with which they can cover the needs of their clients. It is now common for people to use an application even before their first cup of coffee of the day as a way of waking up. They can then recall the day's scheduled meetings, the weather, look up alerts for newly available properties or the results of the football match the night before. The mobile apps are therefore considered important in the patterns of consumption, being useful tools with which to interact with clients and add value to the process and experience. This was evident as far back as 2015, when Google reported: "Of the 50% of worldwide internet usage that takes place on mobile devices, 90% is spent in apps. This is great from a brand loyalty and engagement

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perspective. We are no longer living in a mobile first world, we are now a mobile only world."

## Mobile app

There are two main challenges for the success of a mobile app:

**1. Build an online presence worth downloading.** How and when will my clients get to know about my app? The decision about which app to download does not occur the moment a mobile user visits the app store. It is recommended that the company promotes itself via the different online and offline channels. In Gibraltar, the use of videos and animations on social platforms like Youtube are effective and efficient, especially in the B2C market.

Mobile apps are exceptional tools with which to increase growth, although users are mindful to keep apps on their devices which are of high quality and provide good value for money. Mobile app development generally requires a larger budget than the design and

development of a website.

**2. Build an online presence worth using.** One out of every four downloadable apps are not used mainly because of the lack of incentives or interest. Despite this, offering discounts on future purchases and exclusive content are ways of maintaining the interest and usage of these apps by clients.

## So what app should I build now?

There are a number of points that should be kept in mind when it comes to putting together a mobile app. It is recommendable to contact a web/app design agency with experience, which is based locally, if possible. This will ensure fluent communication throughout the project, help out in the technical aspects and provide guidance about the latest practices when it comes to planning the app's structure and content. For the purpose of simplifying the equation, time and value are relevant terms when it comes to developing any mobile strategy.

**1. Time.** Optimising time is the priority for the consumer. The increase in use of smartphones and mobile apps demonstrates this fact. The consumers want the best search results, the best offers, the best service, all in the moment. One of the clear advantages of apps over websites is the speed of connection. Speeding up the paying procedure or simplifying the exchange of information when providing a service are highly-regarded by clients.

**2. Value.** The apps that work are those that simplify the consumers' lives.

Generally, users do not want to just see content related to the company and its history but instead are looking for real solutions to their needs.

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