

Feb/March/April 2021

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## Gibraltar to join Schengen Area

As part of the eleventh hour Brexit deal between the UK, Gibraltar and the EU, Spain on the 31st December 2020 it was agreed that Gibraltar's border with Spain will be part of the free-travel Schengen Area, following the end of the Brexit transition period.

Chief Minister, Fabian Picardo said in his New Year message that he was very happy that the deal we have negotiated covers all the key



issues for Gibraltar. He assured Gibraltarians that: "Spain's sovereignty claim in respect of Gibraltar has been specifically off the table in all discussions relating to the deal announced on New Year's Eve".

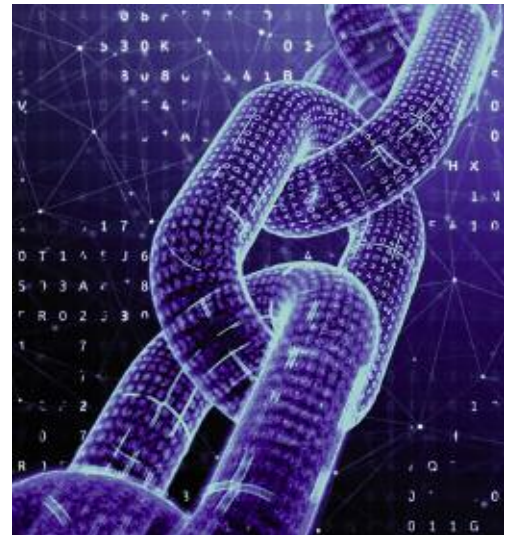
The Schengen Agreement is a treaty which led to the creation of Europe's Schengen Area, in which internal border checks have largely been abolished. It was signed on the 14th June 1985 at Schengen, Luxembourg.

## Industry leaders develop bespoke DLT legislation

In January industry leaders in the blockchain and emerging tech space assembled to develop Gibraltar's bespoke DLT legislation.

The working group established to deliver the 10th Core Principle of the jurisdiction's bespoke Distributed Ledger Technology (DLT) regulatory framework, convened in late 2020 and is on track for a prompt delivery.

This group behind the Gibraltar Market Integrity Study will be primarily responsible for defining the appropriate market standards for exchanges operating in the digital asset space. The DLT framework currently includes nine principles that apply to DLT businesses operating in Gibraltar. This follows a number of important updates to the jurisdiction's bespoke regulatory framework <https://www.fsc.gi/dlt> in 2020



## GFCC welcomes in-principle agreement with the EU

The Gibraltar Finance Centre Council (GFCC) welcomed the announcement in early January that an agreement of principles has been reached between the UK, Gibraltar and Spain on the future relationship Gibraltar will have with the EU.

The GFCC was concerned at the prospects of the impact of a hard Brexit, particularly for the mobility of people across the land frontier with Spain and restrictions on providing financial services to the UK. The organization will wait until the Treaty containing the agreed principle is negotiated and circulated to form its

definitive views. However the agreed principles shared by the government are ones which the GFCC wholeheartedly supports.

A stable relationship with the EU which guarantees frontier fluidity and unhindered travel throughout the Schengen zone is to be welcomed. Coupled with bilateral access in financial services to the UK market (which Her Majesty's Government of Gibraltar achieved), sensible regulation, competitive tax rates and a developing double tax treaty network, the outlook for the financial services industry and its prosperity are very positive.

## Covid-19 Vaccine arrives in Gibraltar

On the 9th January, with the magnificent support by UK and Gibraltar-based military personnel, Gibraltar received six cold cases of the Pfizer-BioNTech vaccine to RAF Gibraltar.

5,800 doses of the vaccine were kept in the -70c temperature controlled containers with 10kg of dry ice on board the RAF aircraft.

Having been flown from RAF Brize Norton in Oxfordshire, the consignment was then handed over to the Royal Gibraltar Regiment whose members rapidly transported them to St Bernard's Hospital.

Gibraltar's front line workers and the most at risk received the first injections.

When the world seems upside down,  
you may just need a different perspective

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# Gibraltar's plans to become a leading underwriting hub for Insurtech



**By Albert Isola MP,  
Gibraltar's Minister for  
Digital and Financial  
Services**

**G**ibraltar is a microcosm of 21st Century life, an international trading centre for over 300 years that has had to repeatedly adapt but always with ingenuity and a willingness to innovate and change. The last 40 years marked by the enormous shift from an economy that in the early 1980's was dominated by Gibraltar's military past to a service led economy with a vibrant, expanding and professional financial services sector.

This change is clearly demonstrated by Gibraltar's insurance industry that today numbers around 50 insurance companies with a particular focus on motor insurance. Gibraltar has unique access to the UK to market and sell its insurance products. One of the big four accounting firms estimates that Gibraltar's share of the UK motor insurance market is around 25% with Gibraltar motor insurers providing choice and competition for UK consumers.

Post-Brexit Gibraltar's unique access to the UK is to be enshrined in new legislation, the Gibraltar Authorisation Regime, which forms part of the UK's Financial Services Bill 2020. The core of this new legislation is Gibraltar's commitment to regulatory alignment and co-operation with the UK.

Over the last five years, Gibraltar has developed into a leading FinTech hub and we hope 2021 will cement our credentials as a centre for leading insurtechs to locate their insurance underwriting activity. Insurtech has become the term used to describe companies using technology innovations, often data analysis and artificial intelligence, to disrupt the current insurance business model.

In December 2020, the UK's second insurtech to establish its own insurance company received authorisation from Gibraltar's Financial Services Commission (GFSC). Marshmallow Insurance Company became Gibraltar's newest insurer. It follows

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# Gibraltar Finance Report

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in the footsteps of Zego, the first UK insurtech to start its own insurer, Extracover Insurance Company Limited, another Gibraltar insurance company that commenced trading in 2019.

For Gibraltar to have attracted the first two UK insurtechs to operate their own insurance companies reflects the success and development in recent years of Gibraltar's £5 billion insurance industry with a host of technology led insurers.

In November 2020, we announced

are a key reason for Gibraltar's continued appeal to new insurance business. Large international insurance groups own all five of Gibraltar's insurance managers.

Many insurtechs use the MGA model to begin testing their technology in a live underwriting environment. We expect the recent changes to widen our appeal to the insurtech sector because the compelling factors that have been so important to insurance companies are equally relevant to insurtechs.

**Over the last five years, Gibraltar has developed into a leading FinTech hub and we hope 2021 will cement our credentials as a centre for leading insurtechs**

some changes to our insurance intermediaries legislation with the aim of bringing more Managing General Agents (MGAs) to Gibraltar. A key change is the ability for MGAs to appoint insurance managers in a similar way to the 1989 legislation that has permitted insurance companies to do so for many years <https://bit.ly/340jsV5>. This new legislation formalises and regulates the outsourcing arrangements between insurance intermediaries and insurance managers.

Insurance managers provide an essential role for many new applicants and

We hope to attract more MGAs like Hedgehog Insurance, a Gibraltar MGA that launched in 2018 using intelligent, automated underwriting and data analysis to drive advanced risk pricing and fraud prevention powered by its own cloud-based software platform.

A fundamental component of Gibraltar's appeal is access to the regulator. Meetings can be arranged in a matter of days enabling a business to be nimble and opportunistic, of great importance to fast moving insurtechs. As a smaller jurisdiction, Gibraltar can facilitate close working relationships with the

GFSC because all businesses are located within a short walk of the regulator.

Whilst access is hugely attractive, the robust regulatory oversight is clearly illustrated in a recent comment from Sten Saar the CEO and Co-Founder of Zego about the authorisation process "the Gibraltar regulator was incredibly thorough, asked a lot of tough questions to check that everything was in place and above board".

The Government of Gibraltar is committed to creating a similar business environment for insurtech to the ones that have supported the insurance, fintech and online gambling sectors to become leading centres of excellence. We are confident that Gibraltar offers a platform for insurtech to develop, diversify and grow over the next 10 years.

## Innovative jurisdiction

This strategy would appear to be striking a chord as illustrated by Oliver Kent-Braham the CEO and Co-Founder of Marshmallow who commented, "We are delighted to be welcomed to Gibraltar to operate our new insurance company. We had a clear requirement to find a location that would support our strategy of future expansion within the insurance market and as an established fintech hub; Gibraltar was of significant interest. Our experience with Gibraltar to date has been positive and efficient, we look forward to further benefiting from being in an innovative jurisdiction that encourages and enables us to develop close working relationships in the region."

Gibraltar's current pipeline of insurance applications is greater than it has been for many years and the quality of the applicants and their backers is very encouraging. We believe there are numerous reasons for insurtechs to benefit from becoming part of our wider insurance community.

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# Insurance reciprocity for Gibraltar and the UK



**By David Coupe,  
Partner, Insurance and  
Corporate, at City based  
Birketts LLP  
EC3 Legal**

**T**he Spanish and the French have many things in common: great wine; good food; and fabulous holiday destinations. However, they share something more: the views from their borders. The Spanish have gazed longingly at the imperious white towering limestone monolith of Gibraltar, and the French have equally gazed over the imperious white cliffs of Dover. However, with BREXIT now completed, their respective holds over Gibraltar and the UK have been significantly diminished, if not totally dashed on the rocks. Gibraltar and the UK have gone their own way.

BREXIT has already created many difficulties – and will no doubt create many more going forwards. It will also create many opportunities and recognising and seizing these opportunities will define the success or

failure of BREXIT. The EU door shut on 31st December 2020 to many financial services provided by Gibraltar and the UK, with passporting and other rights effectively terminated except for relatively limited purposes. However, as between the UK and Gibraltar, the future to grow wider links has considerably expanded. The UK has guaranteed the Gibraltar based entities will have entry to the UK financial services market, with Gibraltar reciprocating.

### **Reciprocal market access between the UK and Gibraltar**

Work has been going on both in the UK and Gibraltar to ensure that regulated financial services entities will have full reciprocal passporting rights, just as previously under the EU Directives. The UK Government put in place transitional provisions for Gibraltar regulated entities under the Financial Services (Gibraltar)(EU Exit) Regulations 2020 which now have an extended effect until 31st December 2021.

The UK Government also published the draft Financial Services Bill on 21st October 2020 with the intention of replacing these

regulations and augmenting the arrangements between the UK and Gibraltar. The following references are to such Bill as first published and may be subject to change as it progresses through Parliament.

The Gibraltar Government has confirmed the retention of the reciprocal market access through the draft Financial Services (Passport Rights and Transitional Provisions)(EU Exit) Regulations 2019 which came into effect on 1st January 2021 to preserve the Single Market Access for financial services post 31st December 2020 between the UK and Gibraltar. Under the previous regime, and subject to fulfilling the relevant requirements, insurers and intermediaries had full rights, either on a services basis or on an establishment basis, to operate freely between the UK and Gibraltar, and vice versa.

Further on 20th November 2020, the Gibraltar Government announced the publication of new regulations to allow EEA insurers to continue to provide specified policies to the Gibraltar market on a services basis at least for 2021. However, there is a need for such insurer to work with a Gibraltar insurance intermediary.

### **The proposed UK changes in the Financial Services Bill**

These are dealt with in Schedules 6, 7 and 8. Schedule 6 sets out at length the requirements placed upon Gibraltar based persons carrying on activities in the UK, and Schedule 7 deals with UK persons carrying on activities in Gibraltar. Both are primarily concerned to ensure that persons trading in the other jurisdiction are properly monitored. Schedule 8 sets out limited rules that the FCA and PRA must not make any provision prohibiting Gibraltar based persons from carrying on their authorised regulated activities in the UK.

### **The UK expectations**

The UK Government has created a regime in Schedule 6 which allows it to make regulations to manage Gibraltar insurers and intermediaries so as to ensure that they cannot disturb the soundness, stability and resilience of the UK insurance markets. Inevitably, they expressly intend to protect consumers, and the operation of the FSCS. The intention is to ensure that there is complete alignment in law and practice between the two jurisdictions.

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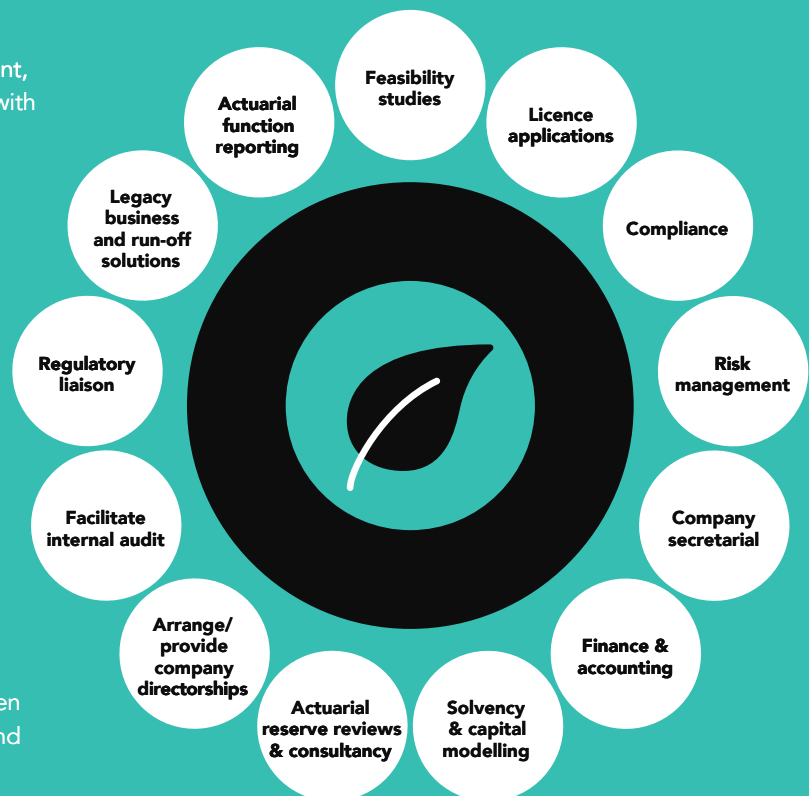


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## The Gibraltar changes to the Insurance Intermediary Laws

In Gibraltar, the Financial Services Act 2019 (FSA 2019) came into force on 15th January 2020: all 667 pages of consolidating legislation and initially 41 supporting regulations! It now gives a clear, navigable path as regards the regulation of financial services, including in relation to insurance, and the regulation of insurers and intermediaries. Any entity that wish to undertake regulated activities by way of business in Gibraltar will need to apply for permission under Part 7 of the FSA 2019. It will also need to comply with its sector specific set of regulations and in the case of insurance intermediaries and insurance distribution activities, it is the Financial Services (Insurance Distribution) Regulations 2020. These regulations were primarily derived from the EU Insurance Distribution Directive (IDD).

Historically, insurance intermediaries in Gibraltar were authorised and regulated under the Financial Services (Investment and Fiduciary Services) Act 1989. Although the laws of Gibraltar provided for the licensing of Managing General Agents (MGAs) and insurance brokers who wish to undertake insurance distribution activities in Gibraltar, there were certain practical obstacles to the setting up of these MGAs and brokers and to their conduct of business in Gibraltar.

The Government of Gibraltar recognises that the regulation of MGAs, in particular wholesale MGAs should be dealt with differently from insurance brokers and as a result on 26th November 2020, and the introduction of the Financial Services (Insurance)(Miscellaneous Amendments) Regulations 2020, subtle changes were made in particular, to the Financial Services (Insurance Distributions) Regulations 2020 and the Financial Services (Insurance Management) Regulations 2020 to allow a smoother setting up process and make Gibraltar a more attractive jurisdiction for MGAs and brokers to operate in Gibraltar and potentially the UK.

Outsourcing – Gibraltar laws were surprisingly silent on the outsourcing by intermediaries to third parties of functions and services. Whilst Gibraltar has a number of experienced authorised insurance managers to whom outsourcing could occur,

such managers have only been able to manage insurers. The changes to existing laws will now permit these authorised insurance managers to manage insurance intermediaries. This will allow them to offer the turnkey back office structures that we see in the UK, ensuring that each Gibraltar authorised intermediary is properly established and can fulfil its regulatory duties both in Gibraltar, but where necessary in the UK too. This added flexibility removes the need for the large start-up costs that intermediaries usually incur. It also ensures that those already versed in local compliance requirements can provide those services, and allow the business producers to focus on what they do best.

Client Monies and Risk Transfer – UK client money rules (CASS 5) make the distinction between client monies and “risk transfer” monies. Gibraltar law has now been changed to clarify this distinction and to bring it into line with the UK CASS 5 rules. The laws now state that “customer monies” are excluded from the customer money rules (i.e. need to be held on trust for the customer) where there is a clear provision in the agency agreement with the insurer that this is the case. This is now parallel to the UK CASS 5 rules that there must be clear agreement with the insurer for effective risk transfer to occur, and that it is receiving such monies as agent for the insurer. The only slight difference to the UK regime will be that intermediaries dealing with retail consumers will need to notify such consumers that “risk transfer” applies, and the effect that that has upon them.

## Gibraltar regulatory expectations

Gibraltar laws and regulations should not be thought of as an easy regime. As expressed by the Chief Minister Fabian Picardo, it is the “right touch not a light touch” regime. One, however, must always bear in mind the powers reserved to the FCA and the PRA under Schedule 6 to intervene if necessary. Observing UK conduct rules and preventing consumer harm will remain of considerable importance to a Gibraltar entity operating in the UK.

Gibraltar regulation does offer many advantages. The Gibraltar Financial Services Commission (GFSC), the financial services

regulatory body in Gibraltar, are knowledgeable about the insurance market and its dynamics, and are able to deal with enquiries and applications in a very responsive manner. It is also easier to have meetings/e-meetings with them than most other regulators in order to be able to discuss business plans and issues, and to keep them fully informed of what is happening in the business. The GFSC also encourages pre-application meetings with applicants and this helps smooth the application process when they understand the business plans and the principals behind the applicants.

Whilst Gibraltar does not have such a prescriptive regime such as the UK’s SMCR regime for directors and managers, it is expected that each intermediary must have a conduct risk framework to identify and manage its conduct risk. This needs to deal with not only its own conduct, but others in the distribution chain and authorised service providers. Gibraltar, however, does have the “Regulated Individuals” regime which is similar to the previous “Approved Persons Regime” in the UK which has now been replaced by the SMCR. As such, any individual performing a regulated function (set out in Schedule 14 of FSA 2019, such as executive director, head of claims, head of underwriting etc.) must be approved by the GFSC before undertaking the said function.

Effective conduct risk frameworks must, like in the UK, consider culture, governance, product design, sales and post-sale servicing. This may also include claims management, although this aspect will usually be dealt with by the insurer.

Each intermediary must hold the minimum capital set out in the Financial Services (Insurance Distribution) Regulations 2020 (namely, 4% of annual premium received or projected annual premium in the coming year) in addition to financial resources that are the equivalent of 3 months’ worth of operating expenses or the level required to fund an orderly winding down of the operations if ever necessary. Obviously this amount could vary considerably according to whether one is a wholesale or retail intermediary. This very much aligns to the FCA’s own recently published expectations regarding the holding of operating cash.

Intermediaries authorised in Gibraltar will be supervised by the GFSC. The intermediary

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will need to ensure that the GFSC can access its systems, records and other relevant information. This necessarily means that control of these operations needs to occur in Gibraltar, and hence the importance of local insurance managers now being permitted to assist with this. However, this will not remove the need for experienced local directors and also non-executive directors (although these need not be local) to be appointed in order to satisfy the “four-eyes principle” of corporate governance.

In terms of board members, the GFSC have expressed that it will take a pragmatic, holistic and proportionate approach to this issue, taking into account the intermediary's size, nature and complexity of its business model and structure. There is to be no minimum or maximum number of directors on the board, but there needs to be an executive director who is approved individually under the relevant Gibraltar legislation and a local non-executive director on the board.

The GFSC place equal emphasis to the FCA on making sure that the intermediary is able to ensure a good customer experience for consumers, and to have adequate business continuity plans. This requirement is one that the board of the intermediary consider carefully in planning its risk conduct framework.

Outsourcing to insurance managers will be important to the development of the market. Continual assessment of the agent's ability to provide the agreed services to the correct level will be required, and service standards with regular review meetings will be needed. Outsourcing to insurance managers of accounting, risk and regulatory requirements will be acceptable. However, dealing with complaints should not be outsourced, and the intermediary will need to determine how these will be best dealt with.

## Applications in Gibraltar

All applications by Intermediaries for Gibraltar permissions must comply with the requirements imposed under Part 7 of FSA 2019. This involves a considerable amount of preparation and prior consultation. It is expected that once a completed application is received by the GFSC, the relevant period of determination by the GFSC is c3-4 months. The applicants are expected to satisfy and demonstrate that they can comply with the

threshold conditions under Schedule 12 of the FSA 2019, such as:

- (a)** location of offices (in respect of insurance distribution, its registered office must be in Gibraltar and if no registered office, its head office must be in Gibraltar);
- (b)** appropriate resources (the business of the firm must be conducted in a sound and prudent manner);
- (c)** effective supervision (the firm must be capable of being effectively supervised having regard to all the circumstances);
- (d)** suitability (the firm concerned must be a fit and proper person), and
- (e)** a business model (the firm's strategy for doing business) which is suitable and compatible for the person carrying on the regulated activities and how the affairs are being conducted, continuing to be conducted in the interest of consumers, and the integrity of the Gibraltar financial system; and
- (f)** fees – the firm concerned must pay such periodical and other fees as the Minister for Financial Services may by regulations prescribe.

## Applying to operate in the UK under a cross border services basis and/or via a UK branch basis

Application by a Gibraltar licensed entity to operate in the UK will be under a new framework known as the Gibraltar Authorised Regime (GAR) which is created under the Financial Services Bill. The Gibraltar licensed entity will be required to notify the GFSC of its intention to operate in the UK, who, assuming that they consider the application to be in order and consent, then pass this to the FCA. The notification process is expected to be similar to the current EU Single Market notification, although the UK Government has expressed its intention to simplify the existing notification arrangements and it is proposing that new Gibraltar firms will be able to access the UK market within two months from the date on which the UK regulators receive the GFSC notification with all required information (including confirmation that the GFSC has given firm consent to access the UK market). The FCA will, inter alia require the following:

- (a)** The identification of the person responsible for managing the Gibraltar entities affairs in the UK, and describe such responsibilities;

- (b)** Details of the UK branch structure; and
- (c)** Rather obliquely, such other information as it may prescribed from time to time. This can be presumed to include all other information that a UK authorised intermediary may be required to provide (especially in relation to retail consumer business).

Undoubtedly, the outsourcing of compliance requirements (perhaps to a manager operating in both Gibraltar and the UK) will be required.

## Proposed amendments to the Protected Cell Companies Legislation

Gibraltar has a protected cell company (PCC) regime which allows for cell insurers to be set up under the control of the PCC's board of directors. It is only currently used by captive insurers. It is hoped that in 2021, the PCC legislation will be extended to include allowing cells for brokers and MGAs. This will allow managers to offer integrated insurance solutions going forwards, perhaps with further alignment into the reinsurance market.

## Conclusions

Gibraltar insurers already account for over a quarter of the premiums paid in the massive UK motor market. Gibraltar already has a number of brokers and MGAs actively participating in the UK markets. Since the announcement of the new regime in November 2019, and in anticipation of the new changes, there have been a number of applications for registration of new MGAs and insurers. Setting up a Gibraltar intermediary will not be for all. However, throughout the COVID pandemic, Gibraltar has remained open for business, has pushed through the changes, signed a beneficial tax treaty with the UK, and now has become a viable alternative from which to base an intermediary authorised to do insurance business in the UK.

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# Dare to be wise during times of change



### Kurt Looyens, **Founding Partner, Dolya Consulting**

It was the Roman poet Horatius who, way back in 20 BC, encouraged us to “Sapere aude” or “Dare to know” by telling the story of a man waiting for a stream to cease flowing, before attempting to cross it. “He who begins is half done. Thus dare to begin, dare to know, dare to be wise.” Human endeavour, effort and persistence make us overcome all obstacles.

Fast forward to the global pandemic, which has changed all of our lives indefinitely. More than 2000 years later, Horatius’ wisdom couldn’t be more topical. Just like then, we cannot wait for “the stream to cease flowing, before attempting to cross it”. A pandemic gives impetus to change.

The 2020 pandemic triggered a density

of change in all aspects of life, at a pace unseen in modern history. Change in how we deal with work life; change in how we deal with each other in our daily personal interactions and change to our society at large.

“Daring to be wise”, we are advocating what could well be a long-term silver lining of Covid-19, indefinitely, if we just “dare to begin”.

### **Remote working**

One of the most visible alterations in our daily routines has been working from home. In response to the Covid-19 crisis, nearly all businesses were abruptly forced to transition portions of, and in many cases their entire workforce, to remote work.

In the EU, home workers now make up over 40% of the workforce, up from less than 10% in 2019. A similar trend can be seen elsewhere in the world. It hasn’t just impacted work-life balance, carbon footprint

or overall productivity though. As companies hurried to get their employees up and running remotely, it is likely many were in the first place focused on connectivity, while potentially ignoring the privacy, security, compliance and document management challenges which the “new normal” brought along. Even more, as those companies are now considering shifting (partly or fully) to remote work permanently, that will require many internal processes to be refined and restructured if businesses are to stay resilient.

Technology has made fast strides in the last decade. Many businesses nevertheless continue to rely on the same old tools for business-critical functions. Take compliance. In this new remote working environment, compliance officers cannot walk the floors as before and will need easy access to company communications, systems, and documents.

The compliance workload has been growing consistently, even before the

*Continued p20*





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pandemic, and a further proverbial avalanche of regulatory changes in response to Covid-19 is likely to be hitting the corporate world soon.

The global crisis has prompted organisations all over the world to update their systems and technology. Technological advancement, such as machine learning and artificial intelligence, combined with secure remotely accessible digital storage, is quickly becoming the norm. Whether they are big or small, companies will have to make business more adaptable and future-proof during times of change.

## Digital identity

Various studies show that daily face-to-face contacts during lockdown periods in 2020 reduced by 80% on average, increasing again post-lockdown, though remaining considerably lower compared to pre-pandemic numbers. Vaccine or not, the experience of Covid-19 is likely to continue to limit societies in terms of close physical contact and restrict access to public and private services for the foreseeable future.

The digitisation of services and identities offers a way to continue providing services under the current and future threat of a pandemic. Secure, trustworthy digital identities promote safety, both from a physical perspective, by allowing people to stay apart from each other if needed, and from a digital perspective, by facilitating efficient and thorough user identification.

In its December issue, The Economist

featured an article on biometric technology developed and used by the world's biggest democracy, India, spurring governments around the globe to draft national plans to provide its citizens with digital identity in future.

Consumption has moved significantly to online channels and all research seems to point out that rates of adoption have exponentially grown compared to pre-pandemic trends. When the world does eventually get back to "normal", there is no way that businesses will be going to go back to the old way of doing things. The digital approach saves them significant time and money and reduces the likelihood of error.

Digital identity however should be implemented with care and be subject to a broad political dialogue. Aspects of data privacy, traceability and applicability must all be taken into consideration, to carefully balance the long-term benefits this can bring to society.

## Digital dividends

The ability to prove one's identity is increasingly recognised as the basis for participation in social, political, economic and cultural life. Yet at least a billion people in developing countries lack any form of officially recognised identification. This problem disproportionately impacts rural residents, poor people, women, children and other vulnerable groups in Africa and Asia. Digital identity, combined with the extensive use of

mobile devices in the developing world, offers a transformative solution to this global challenge and provides public and private sector entities with efficient ways to reach the poorest and most disadvantaged.

In *tempore non suspecto*, 2016, long before Covid-19, the World Bank published its World Development Report 2016, addressing this theme and launching the term "Digital Dividends", pointing at broader development benefits from using modern technologies.

It couldn't be more relevant today. As a matter of illustration, in September 2020, the World Bank

announced a \$143 million project to support digital transformation and identity management systems in Madagascar, making it today one of the leading funders supporting digital identification.

This is not only about developing countries though; whichever part of the world we are from, we should keep in mind that, as digital transformation develops, we risk widening the gap between those who turn to digital solutions and those who don't. We all have a shared responsibility - countries, businesses and individuals - to take advantage of this rapid technological change, now. This is not just to render business or public service more efficient; the ultimate aim should be to make the world more prosperous and inclusive.

Just like the man in Horatius' story, we should not wait for "the stream to cease flowing, before attempting to cross it". This pandemic has put us in front of new challenges. Let's use our common knowledge to dare to know and be wise, in order to make businesses and the world better. Indefinitely.

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## The evolution of assets

**By Jonathan Garcia,  
Partner and investment  
funds specialist,  
Isolas LLP**

**A** sset classes continue to dominate the majority of investment conversations – but how have these changed over time? And what will asset classes look like going forward?

An asset is 'a resource of economic value that can be controlled by a person, organisation or country'. While the paper definition hasn't changed, the 'resource' that constitutes an asset has changed greatly.

Today, there are countless categories of asset classes. The ancient, such as gold; the historic, such as currency; the modern, such as classic cars; and the disrupters that are currently being rapidly adopted, such as cryptocurrencies.

As technology and 'tastes' change, so do the assets with which people want to interact. The good news for asset holders is that there are now so many respected asset classes that their portfolios aren't just being diversified for better returns, but specifically tailored to the areas of interest of the investor.

### Established and traditional

No commentary on the evolution of assets would be complete without discussing the established 'traditional' asset classes. Equities, bonds, property, foreign currency, and commodities are still, by far, the dominant players in the industry, holding a larger store of value than other classes. This is because they are all highly regulated with defined processes of exchange, ownership, and taxation. They are, for want of a better phrase, safe as houses.

However, while they are regulated, no asset class is risk-free. They are all traded on the open market and, as with all assets, are only worth as much as a buyer is prepared to pay. The prices of equities, bonds, commodities and currencies fluctuate continually and, while the value of property does not often shift quite as quickly, it still

experiences large variation in value.

These characteristics are at the root of their appeal, and there is still the possibility for assets to appreciate. However, given the view that no asset class is risk-free, it is no wonder that new disrupters continue to appeal.

While not viewed as 'traditional', there are several other proven asset classes that fall into the category of 'exotic' assets. These include art, fine wine and spirits, antiques, as well as rare coins and stamps. These assets can be bought at both high price points and stored to further accumulate, or bought earlier in their evolution as a riskier bet as their value is anticipated to grow.

When put alongside the developing classes of assets, such as online gaming and film development, these assets can be grouped as 'passion' assets. These being places for people to invest money into areas that interest them with the hope they get a return so in many cases this class doubles as a store and accumulator of assets, but also a hobby.

### The assets of today

In recent years, the definition of an asset has evolved even further. Cryptocurrencies and digital assets stored on the blockchain are growing in popularity. They are increasingly becoming a part of established portfolios, as well as attracting a new market of retail investors into the space. While cryptocurrency was viewed as a risky bet, increased regulatory scrutiny in established jurisdictions, such as Gibraltar, has enabled it to become more trusted, and we are continuing to see institutional capital moving into the sector. Just recently we have seen Wall Street titan Goldman Sachs looking to recruit a VP to grow its digital assets unit. Crypto is the asset of the moment, and institutions are looking at ways to increase their stake in it. Organisations and jurisdictions that are embracing the trend look set to flourish in this chapter of the evolution of assets.

While it is important to understand where assets have been, and what the current shape of the market is, it is also important for all involved in the financial services industry to be mindful of what comes next. Staying ahead

of the pack is often a huge advantage. You only have to look at PwC's 2020 Cryptocurrency Industry report to see that Gibraltar is small but mighty, having the third-largest number of crypto hedge fund managers, showcasing that early and dynamic acceptance of new asset classes can be beneficial.

### The assets of tomorrow

In the decades before the advent of Cryptocurrency the idea of a line of code representing a unit of value that can be traded and exchanged for goods and fiat respectively may have sounded fanciful, but today it seems almost as natural as foreign exchange. It is always tough to predict what is on the horizon for the asset allocators of tomorrow. However, it is expected that, as in our daily lives, technology will play an ever-increasing role. Digital assets will become much broader in its meaning, encompassing more than just Cryptocurrency and a few niche tokenized assets. We will start to see huge ranges of traditional assets, from gold (already underway) to fine art and wine, tokenised, and available to trade.

However, this change may be far from the most significant. Many may think that the biggest evolution of assets in the future is their form, but in fact, it could be the access to them. Technology can democratise access to investing. Gone will be the days of needing to allocate large sums to get the best deals, we will see more people choosing to put away a slice of their earnings. This democratisation could be the biggest evolution in the history of assets, and frankly, with a bigger pool of investors, traders, and innovators, we will all be better for it.


Staying ahead in the ever-evolving landscape of assets challenges can be tricky, but managing your funds from established and respected jurisdictions with a reputation for quickly adapting to changes, such as Gibraltar can provide a head start.

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## Brexit, Limited Partnerships and the new opportunities for Gibraltar Funds

**By James G Lasry,  
Deputy Chairman,  
Gibraltar Funds and  
Investments Association**

**W**hat a whirlwind 2020 was! The United Kingdom and Gibraltar separated from the European Union (despite the fact that Gibraltar firmly voted to remain within); the world has experienced a profound health crisis the likes of which have not been seen in a century. Nevertheless, Gibraltar's ability to be innovative and nimble is helping to forge a new path for its developing funds industry.

While Gibraltar was within the European Union, it had an obligation to transpose all EU legislation. This affected the funds industry in

funds that either do not plan on marketing in the EU, or who are able to use the national private placement regimes in the various member states, can establish themselves in Gibraltar without having to comply with AIFMD. Those funds who wish to remain compliant may certainly do so; in fact, many Gibraltar funds will.

Another one of GFIA's legislative proposals has been to replace The Limited Partnerships Act 1927 with a new Limited Partnerships Bill, and to enact the Protected Cell Limited Partnership Bill. This is important for private equity, real estate and debt funds that often prefer to be established as limited partnerships because of the tax transparency that those structures afford. The new legislation is probably the most innovative and up to date partnerships legislation in the

English limited partnerships in which the general partner must act on behalf of the limited partnership. Under the new Limited Partnerships Bill, the default will be that the partnership possesses a legal personality but the general partner may elect not to have any separate legal personality. This flexibility will allow complex fund structures, that previously would have had to go to several jurisdictions in order to accommodate different types of investors, to remain within the same jurisdiction and save costs.

### Corporate funds

A classic difficulty with limited partnership funds was always that the limited partners may not be involved in the management of the fund on pain of losing their limited liability status. Limited partners have, for this reason, been hesitant to participate in investor committees or advisory boards, when commercially they would have preferred to do so (as they could in corporate funds). The new Limited Partnerships Bill creates safe harbour rules providing for limited partners to become involved without fear of losing the limitation on their liability.

The new Limited Partnerships Bill also allows partnership interests to be expressed as equity, notes, loans or any other instrument that is issued by the limited partnership.

Although 2020 was indeed difficult, there is every reason to hope that 2021 will be better. That is certainly true for Gibraltar's fund industry that has managed to capitalise on the strong relationships with the GFSC, HM Government of Gibraltar and industry.

### Gibraltar's ability to be innovative and nimble is helping to forge a new path for its developing funds industry

2013 when it transposed the Alternative Investment Fund Managers Directive (AIFMD). The AIFMD unfortunately served as a barrier to funds establishing themselves in the EU. Indeed, this drove many funds out of Europe. Now that Gibraltar and the UK have left the EU and will no longer have access to the European passport, GFIA, together with HM government of Gibraltar, in consultation with the GFSC, has proposed legislation that would make compliance with the onerous requirements of AIFMD optional.

### The Limited Partnerships Act 1927

The rules will still remain as part of Gibraltar's legislation, but funds will be able to opt out of the regime, the logic being that if funds can no longer benefit from the passport, they shall no longer be burdened with the AIFMD. What this means for Gibraltar is that large

world. The most important element of the reform is that limited partnerships can now create protected cells that are statutorily segregated from each other. Previously, it was (and remains) possible to establish a protected cell company which could create such cells, but if one wished to establish a fund structure with several different strategies or investment classes as a partnership, one would have to establish several funds. This is unlike a protected cell company, where it is possible to establish those all under the same corporate entity. The economies of scale previously available only to companies will now be available to limited partnerships.

Some partnerships, such as English limited partnerships, do not possess a legal personality; others such as Scottish partnerships do. They can hold property, sue and be sued in their own name as opposed to

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## Taxing times with remote working



exceptionally concluding contracts from an employee's home as a result of Covid-19 restrictions, should not in itself create a permanent establishment.

As with many areas of international tax, the rules relating to permanent establishment are complex and the answer may not be straightforward. Governments are likely to show some flexibility towards the strict application of permanent establishment rules as a result of the unprecedented circumstances which have arisen as a result of the pandemic. Consequently, employees working from home, meetings being held and / or contracts being concluded in a particular country on a temporary basis as a result of Government restrictions may not trigger a permanent establishment.

However, the longer that the pandemic continues, working from home arrangements become more habitual in nature increasing the risk of a permanent establishment being created.

The position is further complicated by the fact that the level of Government restrictions has changed during the course of the pandemic with working from home being compulsory during some periods and optional in others. The roles being undertaken by employees working from home also needs to be taken into account. The risk of a company creating a permanent establishment is likely to be higher if for example company directors and other senior staff members are working from home in another country.

### Tax residency for companies

The definition of residency varies across jurisdictions. In Gibraltar there is no incorporation test and a company is considered to be resident in Gibraltar for tax purposes if:

- the management and control of its business is exercised from Gibraltar; or
- the management and control are exercised outside Gibraltar by persons who are ordinarily resident in Gibraltar.

### By Paul McGonigal, Senior Manager, PwC

**T**he global pandemic has resulted in an increasing number of employees working from home either on a part-time or full-time basis. This change in working pattern has principally been the result of "lockdown" and other restrictions imposed by governments around the world in response to the pandemic. However, it is likely that a number of employers will continue to provide employees with the flexibility to work from home post Covid-19. The seismic shift to remote working may result in unintended tax consequences for employers particularly in the context of cross-border or frontier workers. Could employees working from home inadvertently create a permanent establishment for tax purposes or impact on the corporate residence position of a company? The tax residency of individual employees may also be impacted.

### Could remote working create a permanent establishment?

The increase in home working raises the question as to whether a company could be deemed to be carrying on its business in another country as a result of employees working from home and create a "permanent establishment" in the country where the employees live? A permanent establishment may result in tax liabilities and other compliance obligations for the non-resident company. This may be relevant for Gibraltar companies with employees working from home in Spain, the UK or other countries.

A company may create a permanent establishment if it wholly or partly carries out business via a fixed place of business in a country. Employees or other authorised person(s) regularly concluding contracts in another country on behalf of a non-resident company could also create a permanent establishment. OECD guidance suggests that exceptionally working from home or

*Continued p28*



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The location of central management and control is the place of the highest form of control and direction over a company's affairs, as opposed to decisions on the day-to-day running of the business.

If board or other strategic company meetings no longer take place in Gibraltar as a result of Covid-19 restrictions or directors working from home outside of Gibraltar, this may increase the risk of the company becoming resident for tax and therefore potentially taxable in another jurisdiction or vice-versa.

## What about tax residence for individuals?

Remote working arrangements may also impact on the tax residence of individuals. An individual will be considered to be ordinarily resident in Gibraltar when they are present in Gibraltar for at least 183 days in a tax year (1 July – 30 June), or over 300 days in aggregate over three consecutive years of

assessment. Similar residency tests exist in other countries.

Individuals working remotely outside of their usual country of tax residence could become tax resident in their "host" country based on the number of days spent there. For example, an individual ordinarily tax resident in Gibraltar choosing to work from a second home in Spain or the UK could become tax resident there. This may trigger additional tax filing obligations or result in additional tax to pay. Some tax authorities may show flexibility in applying the residency test and disregard days where travel was not possible as a result of Covid-19 restrictions. However, there is no "one-size fits all" approach and the facts and circumstances of each individual case would need to be considered to determine if tax residency has been triggered.

## What should employers do?

The tax rules relating to permanent establishment, corporate and individual tax

residency are complex and the Covid-19 pandemic and unprecedented increase in remote working present novel tax issues. Employers of cross-border workers should review and monitor the potential tax risks associated with staff working from home and obtain specialist tax advice if required. This applies both to arrangements put in place in response to the Covid-19 pandemic, but perhaps more importantly, to remote working policies being considered for the post pandemic world, if staff will continue to be provided with the flexibility to work from home.

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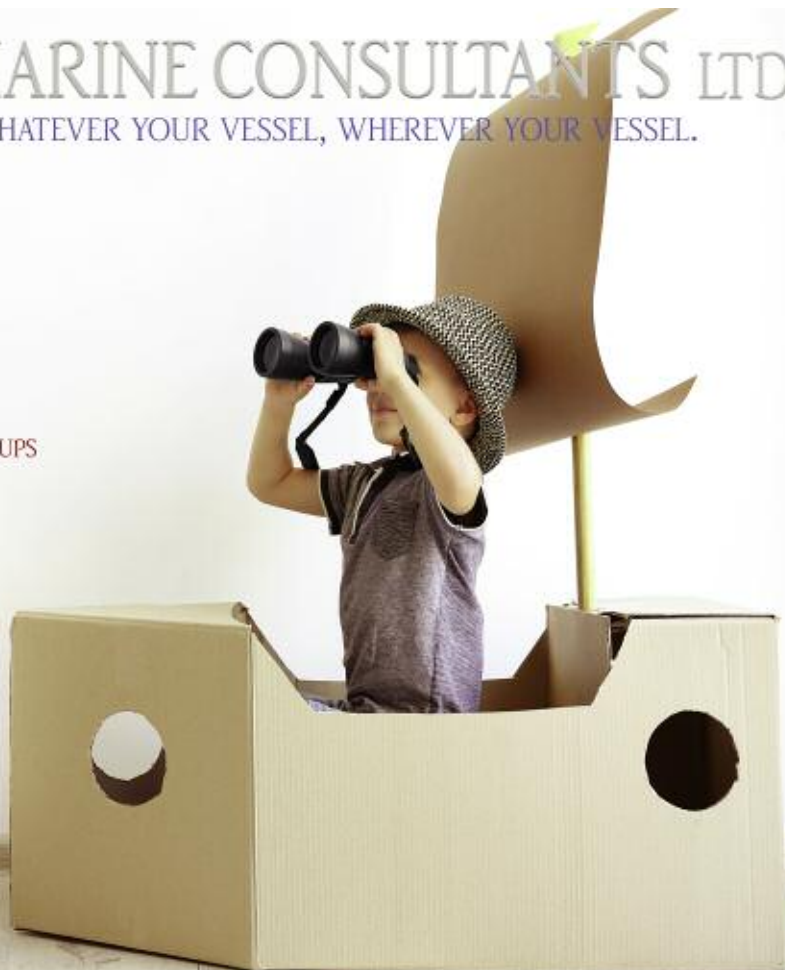


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