



The
LEGAL
500

**COUNTRY
COMPARATIVE
GUIDES 2021**

The Legal 500

Country Comparative Guides

Hot Topic | Mergers & Acquisitions

Post-Pandemic And Brexit Gibraltar: A Market Ripening For M&A Activity

Contributing firm

Hassans

Hassans
www.gibraltarlaw.com

Tim Garcia

Partner, Corporate Tax Team Leader | tim.garcia@hassans.gi

Michael Castiel

Consultant | michael.castiel@hassans.gi

Matthew Torres

Senior Associate | matthew.torres@hassans.gi

James Noguera

Associate | james.noguera@hassans.gi

For a full list of jurisdictional Q&As & hot topic articles visit legal500.com/guides/

POST-PANDEMIC AND BREXIT GIBRALTAR A MARKET RIPENING FOR M&A ACTIVITY



Financial Services have for many years been a mainstay of the Gibraltar offering, in particular the online gaming industry (for which Gibraltar is a World leader), the insurance sector (with Gibraltar companies insuring 1 in 5 cars in the UK) and more recently in the burgeoning Fintech space (where Gibraltar has led the way on the provision of a regulatory framework balancing commerciality with responsible governance). It is therefore no surprise that the majority of the relatively limited Gibraltar M&A activity to date has been in this sphere, which may also explain the marked distinction between the more scant statutory provision on in particular private M&A, as opposed to the more robust offering regarding entities carrying out licensable activities regulated by the Gibraltar Financial Services Commission (noting that common law principles also apply, as do any supplementary requirements that may exist pursuant to listing on any stock exchange or equivalent). As mentioned, Gibraltar has historically not been a particularly active, primary jurisdiction for M&A. However, the confluence of the Covid-19 pandemic, Brexit (including related developments regarding Gibraltar and mainland UK's emergence from it) and other factors such as digitalisation and disruption, are creating the perfect storm for development of the Gibraltar M&A market.

Brexit

Brexit was a seminal moment for the United Kingdom, which includes its British Overseas Territory of Gibraltar. Whilst a Trade and Cooperation Agreement was reached between the UK and the EU on 24 December 2020, this does not apply to Gibraltar. Indeed, it was on the very last day of the transition period (31 December 2020) that a separate agreement in principle was reached and announced regarding an intended Schengen-style, bespoke solution governing Gibraltar's future relationship with the EU. Summarily, a form of customs union between Gibraltar and the remainder of the EU is envisaged (by way of application of relevant parts of the Schengen acquis, with substantial alignment by way of similar EU customs, excise and VAT legislation, security, data and citizen rights protections, state aid, IT, environmental, transport and other provisions) such as to allow for the removal of the control of movement of persons into the Schengen area from Gibraltar and resulting in the elimination of the physical border and customs checks between Gibraltar and neighbouring Spain (no doubt very welcome news to the circa 15,000 people whom reside in Spain and cross the land frontier daily to work, primarily in Gibraltar's financial services and hospitality sectors). Entry into Gibraltar and Schengen will be carried out successively by Gibraltar and then Frontex (The European Border and Coast Guard Agency, being the EU agents tasked with border control of the Schengen area) operatives at Gibraltar's airport and port facilities, with barrier-less travel thereafter available throughout the wider Schengen area. Subject to these being issued applying similar standards to the EU and Spain (including being based on the existence of real links with the Rock), Gibraltar residence permits (issued unilaterally by the Gibraltar authorities) shall also allow for access to short and long-term Schengen visas.

The expectation, however, is that the greater alignment between Gibraltar and the EU shall not require a

complete dovetailing on all aspects (in fact the preliminary accord affirms Gibraltar being a separate customs territory from the EU), allowing for Gibraltar's maintenance of no VAT on services, which is a key advantage to the operation of international-facing financial service businesses from Gibraltar and forms part of a number of other attractive features of this English [and Spanish] speaking, common law-based, low tax jurisdiction. The parties are targeting a further 6 months (from 1 January 2021) to hammer out the precise details (which are intended to be set out in a treaty between the UK and the EU, and the form of which shall determine the scope of the opportunities and benefits that these differentiated arrangements will allow for).

Mainland UK's own emergence from Brexit, in particular with respect to UK/EU financial services (given that the UK/EU Trade and Cooperation Agreement did not make provision for mutual market access for financial services firms upon expiry of the transition period on 31 December 2020), is a delicate affair. At present, it requires the additional financial, timing and logistical costs associated with satisfaction of individual country requirements, or reliance on general equivalence determinations (for which substantive alignment of standards and processes is required, and with just two such determinations having thus far been [strategically] issued by the EU on a time-limited basis, in relation to Irish securities settling and derivatives clearing). In addition, EU equivalence determinations can generally be withdrawn with 30 days' notice, meaning that absent a more comprehensive agreement between the UK and the EU on mutual market access on financial services, it is presently a more laboured, costly and risky affair for UK and EU financial services firms to interact with each other's markets.

UK/Gibraltar Single Market re Financial Services

Gibraltar and the UK, however, already enjoy a single market with respect to a wide range of financial services (affording greater certainty, ease, lower costs and speed-to-market than the current UK/EU offering). These presently exist under temporary provisions (renewable by HM Treasury on a twelve-monthly basis, and recently extended until 31 December, 2021), allowing for mutual market access for a whole host of financial services firms in the UK and Gibraltar, and which are to be shortly succeeded by a permanent legislative and institutional framework aligning relevant Gibraltar law and practice with that of the UK. It also remains to be seen whether Gibraltar's re-positioning vis-à-vis Europe may (on the basis of greater synergy) also in due course afford it easier access to the EU market on financial services, but the existing UK access alone has already materialised in a number of EU-based financial services businesses starting to move their UK-facing operations to Gibraltar.

Gibraltar M&A Future

With the processes of digitisation and disruption in M&A perhaps accelerated by the wider consolidating effects of the Covid-19 pandemic (with a number of industries strategically and/or having been forced to change their operating practices, including relying on technologies not previously catered for, which may lead to tactical acquisitions or joint ventures) and with an increased availability of distressed assets and investors with 'dry-powder', substantial rebound in the M&A space is considered likely.

In the Gibraltar market there are presently a number of rumoured consolidations involving Gibraltar-headquartered major international online gaming companies. Further, with larger markets either reticent or struggling to legislate in the Fintech space, Gibraltar (with its pioneering regulatory framework, business-friendly government, developed communications infrastructure and pool of highly

skilled workers across a number of relevant fields) is also attracting key players in this industry to set up physical operations on the Rock.

More generally, however, the single market on financial services with the UK (currently uniquely enjoyed by Gibraltar) against the backdrop of the UK/EU challenges on financial services described above, as well as the bespoke Schengen-style arrangements and anticipated general M&A market rebound, could well see Gibraltar's prominence in M&A rapidly and exponentially increase in early course.

Contributors

Tim Garcia
Partner, Corporate Tax Team Leader

tim.garcia@hassans.gi



Michael Castiel
Consultant

michael.castiel@hassans.gi



Matthew Torres
Senior Associate

matthew.torres@hassans.gi



James Noguera
Associate

james.noguera@hassans.gi

