

Regulation and supervision of trust companies in Gibraltar

By Raquel Moss BA (Hons), Hassans, Gibraltar

Gibraltar has a significant financial services centre, both in terms of its importance to the local economy, and in the fact that it is the only one out of its main European competitors (Isle of Man, Guernsey, Jersey) to be part of the EU. It was also the pioneer in regulating the provision of financial services, which has, paradoxically, some may think, given it an advantage over the rest. This article describes one particular aspect of the regulation of financial services – the regulation of trust companies.

Legislation

Gibraltar is a common law jurisdiction, its legal principles derived exclusively from those of English law. English common law and the rules of equity apply to Gibraltar unless these have been varied by local statute (known as Ordinances) or precedent.

The main Gibraltar trusts legislation is the Trustee Ordinance. This is largely based on The Trustee Act 1893, but amended in order to introduce certain provisions of The Trustee Act 1925 and The Trustee Investment Act 1961.

Other important legislation includes The Variation of Trusts Act 1958 which has been wholly incorporated in Gibraltar by virtue of The English Law (Application) Ordinance and The Perpetuity and Accumulations Ordinance 1968, based on the English Statute, but introducing various differences, such as an election of a 100 year statutory period applicable to trusts.

Amendments introduced to The Bankruptcy Ordinance in 1990 allow for the establishment of asset protection trusts (as described in an accompanying article in this issue) through suitably licensed trust companies. Whilst the introduction of asset protection legislation in certain jurisdictions has generated some negative publicity, Gibraltar has introduced appropriate checks. For instance, the registration of a disposition under the legislation can only be carried out by a sole corporate trustee, and in any case, only by one judged by the authorities to have adequate financial and administrative resources to act as trustees, who has obtained prior written approval of the forms of enquiry administered to the settlor, and whose professional indemnity insurance is of an adequate level for the business it undertakes, and in any event, no less than £1m. These trusts can be useful vehicles in the wealth management arena.

Locally drafted Deeds of Settlement and other supplemental deeds are easily followed by outside practitioners, being based on English principles, with Gibraltar

practitioners being largely UK trained. This also allows for a more straightforward migration of trusts into and out of the jurisdiction.

Regulation and supervision

Professional trustee services have been regulated in Gibraltar since 1989, making it one of the first jurisdictions to provide for such regulation and supervision. The Financial Services Ordinance (“the Ordinance”), enacted in 1989, gave supervisory and regulatory powers and duties to the Financial Services Commission (“the FSC”), an independent body set up for this purpose.

As a result of nearly 15 years of supervision and regulation, the industry is fully conversant with all relevant Know Your Client and due diligence requirements, whereas other jurisdictions only recently have started to address these issues.

Recognition of Gibraltar’s compliance with international standards has come from two quarters:

- the report of the International Monetary Fund (“the IMF report”);
- the report of the Financial Action Task Force (“the FATF report”).

Both these reports were issued in late 2001 and can be found in full on the Gibraltar Financial Services Commission’s website (www.fsc.gi).

The IMF report

The report, titled “Gibraltar - Assessment of the Regulation and Supervision of Financial Services” was issued following an evaluation by the IMF after Gibraltar volunteered to be examined by international independent experts.

The report noted that Gibraltar “is at the forefront of the development of good practices.” It also noted that “Gibraltar was one of the first jurisdictions to have introduced regulation and supervision of the company and trust services business.”

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The team also focused on the Regulator, the FSC, and noted that “(it) carries out its duties diligently ... The results of our assessments indicated that supervision is generally effective and thorough and that Gibraltar ranks as a well-developed supervisor.”

The FATF report

The “Mutual Evaluation Report on Gibraltar” was issued following an inspection carried out under the aegis of the Offshore Group of Banking Supervisors.

The report endorses the anti-money laundering regime in place in Gibraltar, and comments on the “robust arsenal of legislation, regulations and administrative practices to counter money laundering”. It also states that the jurisdiction “is close to complete adherence with the FATF 40 Recommendations ...”

Licensed professional trustees can expect regular visits conducted by the supervisory team of the FSC, the body which issues licences for controlled activities. The FSC is also empowered to cancel, suspend or alter licences if it is found that the licensee is not fully compliant with the requirements set down under the Ordinance and regulations made under the Ordinance.

The FSC is also empowered by the Ordinance to issue rules on the level of solvency within licensed bodies, such as professional trust corporations. This is aimed at the protection of the user of licensed services. Cases are looked at individually, but a minimum level of a £50,000 share capital and professional indemnity insurance of £500,000 - £1,000,000 are the starting points.

As in the United Kingdom, Gibraltar has no registration requirements for trusts, although there is a voluntary public trust register, which was created by The Registered Trust Ordinance 1999, which came into effect on 1st January 2000. It was thought that the official registration of a trust might prove useful when dealing with settlors, or other parties, from a civil law jurisdiction, where the concept of a trust and its lack of legal personality, is all too often difficult to accept and understand.

Since there is no requirement for the registration of trusts, there are therefore no figures available as to their numbers. Nevertheless the FSC compiles and publishes statistics on licensable controlled activities, which include the provision of trustee services from or within Gibraltar.

The number of groups conducting licensed Company Management or Professional Trustee Services has remained relatively stable, in fact, decreasing slightly according to the latest FSC statistics: down from 82 in 1999 to 78 in 2002. This would seem to suggest that the number of players in the industry is not likely to be subject to significant changes. The number of trusts for which licensed professional trustees provide trustee services has risen steadily: from 1,815 in 1999 to 2,887 in 2002. This area of financial services is recognised as an important sector within the jurisdiction.

Although the international finance centre is small when compared to those in other jurisdictions, (Gibraltar’s finance centre provides 25-30 per cent of its GDP, as opposed to Jersey’s 60 per cent, for instance, as per the FATF report), nevertheless, the local government and indeed the workforce, places great importance upon it. The international finance centre is second only to Gibraltar’s main tourism industry. This explains why international examiners comment upon the emphasis placed by local Government and the industry players themselves, upon issues of compliance, ever mindful of the harmful repercussions in such a small centre of negative practices.

Conclusion

Gibraltar has a solid regulatory, supervisory and legislative framework providing a good base from which to carefully market its services within the areas of wealth management, family and estate planning, tax mitigation, asset protection and multi-jurisdiction individuals and families.

Local legal practitioners and members of other professional bodies are aware of the need to maintain Gibraltar’s good name, and to promote itself as a mature financial services centre, adhering to international standards, whilst providing competitively-priced products and services. Trust companies operating in Gibraltar can look forward with confidence.

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Raquel Moss BA (Hons)

Hassans
57/63 Line Wall Road
Gibraltar

Tel: +350 79000
Fax: +350 77343

E-mail: raquel.moss@hassans.gi
www.gibraltarlaw.com