

THE COUNCIL THE QUARTERLY

Issue 4: SUMMER 2017

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AGM

The Bar Council annual general meeting, held on the 26th April at the Royal Gibraltar Yacht Club, saw a busy year in review for the Council and the re-election of Keith Azopardi Q.C. as Chairman of the Council for his third and final term.

The AGM began with a year in review of the Council which has proved to be a busy and productive year for the members. Members of the council have made particular progress on a number of matters for the profession including the release and consultation of the upcoming legal services regulations and code of conduct which will bring all professionals providing legal services in Gibraltar under a single regime of regulation.

Members have also been closely involved with producing and drafting Anti-Money Laundering guidance notes ahead of upcoming money-laundering audit of the jurisdiction in 2018 due to be issued. This follows discussions between the Government and the Bar Council's ad-hoc sub-committee. As a result, firms are urged to review their AML protocols prior to the formal introduction of such requirements.

The Council has also seen a number of discussions and progress in relation to legal assistance where discussions have been ongoing to seek to increase the income thresholds for those looking to apply for legal aid and assistance.

The Council's past 12 months also saw progress and particular investment of time in support of the Council's public online facet in regularly updating its website at www.barcouncil.gi and modernising its presence by launching its Facebook and Twitter profiles.

Subscriber members of the Bar council raised questions in respect of the existing backlog of cases at the Employment Tribunal following recent Employment Tribunal reform and asked if there was anything further the Bar Council could do to facilitate any movement in this regard.

Following the year in review and the Chairman's address, the Bar Council proceeded to elect Keith Azopardi QC as Chairman of the Council for his final term with David Dumas QC and Kenneth Navas as Vice-Chairman and Treasurer respectively. The following members were then elected: Andrew Haynes, John Restano QC, James Lennane, Justin Phillips, Andrew Cardona, Anthony Provasoli, Daniel Benyunes, Andrew Montegriffo, Joelle Wahnon, Darren Martinez, Nick Gomez, Nick Borge and Philip Vasquez being co-opted.

CODE OF CONDUCT

As the regulation of the legal profession gathers pace towards the target commencement date of the 1st January 2018, an integral part of the proposed system, the Code of Conduct, has recently been published for consultation.

The draft Code of Conduct has been modelled on the one in force in New Zealand, which also operates a fused legal profession.

It is a comprehensive document and is intended to set out the rules by which all providers of legal services in Gibraltar must abide.

This is an extremely important document which will put an end to the longstanding uncertainty concerning the ethical and professional rules that apply to all persons providing legal services in Gibraltar including lawyers working in private practice, in-house counsel, foreign lawyers and counsel called to the Bar for specific cases only in Gibraltar.

If the Code is to work successfully in such a unique jurisdiction like Gibraltar, it is imperative that its draft be considered by all members so that representations are as diversified as possible.

Representations should be addressed to the Chairman of the Bar Council by post or email to the General Council of the Bar, 2/7 Casemates Square, PO Box 919, Gibraltar or by email to barcouncil@gibtelecom.net, copied to ka@tsnlaw.com.

The deadline for receipt of submissions, comments or representations is 5:00 p.m. on Thursday 7th September 2017.

AMENDMENT TO LEGAL ASSISTANCE ACT

The Bar Council is working with the Ministry of Justice with a view to the publishing of a Consultation Paper on Legal Assistance Reform.

The Legal Assistance system is in dire need of reform and modernization, in particular as regards the financial eligibility thresholds, which, at current levels, result in the legal disenfranchisement of a large part of our community.

The Bar Council will work with Government to improve access to justice and will also look at reviewing the practice areas for which Legal Assistance is currently available.

CONFERENCES

The first quarter of 2017 has seen Gibraltar host two international legal and regulatory conferences at the University of Gibraltar for the first time. The conferences, respectively being the International Sports Law Conference and Digital Currency Summit, show the increasing interest and demand in practice areas.

International Sports Law Conference

The Gibraltar International Sports Law Conference, held in late March, follows on from the increasing successes of local sporting associations in being recognised on and off the pitch internationally. In particular, there have been numerous successes of local football associations, Hockey, Basketball and renewed attempts with Rugby.

The two day conference saw a host of speakers offering insights on various specialist developments within law and sports

including intellectual property, risks and corruption, representation in the Court of Arbitration for Sport, Financial Fair Play and discussions on the extent to which there is a *lex sportiva*.

The Conference received the attention of various practitioners and board members of various sporting bodies with delegates attending from the United Kingdom, Spain and Gibraltar.



Distributed Ledger Technology Conference

The Digital Currency Regulatory Summit was held on 9th May also at the University of Gibraltar. Given the recent rise in the value of Bitcoin in the months leading up to the summit and the impending regulation of cryptocurrency and blockchain related firms in Gibraltar, it was not surprising to see that it was well attended and interests were peaked.

The conference was a platform to launch HMGoG and the Gibraltar Financial Services Commission's announcement of a regulatory framework focused on supporting businesses and entities using Distributed Ledger Technology ("DLT"). As a result of the regulatory nature of the conference, discussions of the conference included whether the regulatory framework envisaged for Gibraltar should be principles based as set out in the consultation paper or whether the regulations should be rules based. Discussions also took place on the use of digital currencies and digital currency exchanges as well as the growth in Initial Coin Offerings and the regulatory interpretation of such tokens.

Given the lack and difficulty of regulation of DLT and digital currencies in other jurisdictions at present, Gibraltar's prospective principles based approach has been dubbed as industry leading.

DLT Article

Gibraltar is on the brink of becoming the first jurisdiction in Europe (and one of the only in the world) to regulate cryptocurrency related businesses. As from 1 January 2018, the Financial Services Commission (FSC) of Gibraltar will be regulating individuals and firms that engage in activities not subject to regulation under another framework and that, for business purposes, use distributed ledger technology for the transmission or storage of value belonging to others.

Regulatory framework – current position

The exact licensing requirements are yet to be established although the FSC, together with Sian Jones whose expertise has been consulted throughout this process, have listed a number of principles which should provide guidance to would be applicants who are considering Gibraltar as a jurisdiction from where to launch their crypto or DLT related business. It is intended that the drafting of the legislation and guidelines will take place in October 2017. Once we have had sight of the draft legislation, we will have a clearer picture as to what the FSC's exact requirements will be. It is, however, not expected that the regulator will have a rigid set of requirements which it will impose on all applicants. Instead, the indication is that the approach will be flexible and that the requirements imposed on an applicant will depend on the applicants business model.

It has been encouraging to see how keen the FSC's new 'innovate and create' team have been to engage with potential applicants even though licences will not be available until January 2018.

The Government of Gibraltar has recently introduced a Start-up incentive scheme affording Start-ups tax credits of up to £50,000 over each of their first three years of operation. This incentive, together with Gibraltar's favourable corporate tax regime and the special 'HEPSS Status' (High Executive Possessing Specialist Skills) which effectively caps the maximum tax payable by certain executives with specialist skills at approximately £30,000, complements the impending DLT regulation perfectly.

The crypto-currency industry in Gibraltar is at an embryonic stage but growing at an astonishing rate. Importantly, Gibraltar is already infrastructurally sound and it will need to be if the current wave of demand we are experiencing is an indication of what is to come.





For more information, please contact:

Anthony Provasoli, Partner

Hassans

anthony.provasoli@hassans.gi

T: (+350) 20079000

Government plans Law Commission for Legal Reform

Article from Gibraltar Chronicle dated 20th March 2017

The Gibraltar Government plans to create a Law Commission in Gibraltar to advise on legal reform and the modernisation of outdated laws.

The government will today publish draft legislation to establish a Law Commission made up of professionals and experts who will be able to give their opinion on a number specific issues relating to legal reform.

One of its first tasks will be to draw up sentencing laws specific to Gibraltar rather than rely on UK guidelines.

"It is intended that one of the first, if not the first project that the Commission will be requested to undertake, will be to review local sentencing laws to ensure that they cater for the needs of Gibraltar, rather than being tied to sentencing guidelines, which have evolved for another jurisdiction with its own particular issues that do not necessarily apply to Gibraltar," said Justice Minister Neil Costa.

The Law Commission created under this legislation will be a statutory body comprised of at least six persons who will be tasked to:

- receive and consider proposals for the reform of the law;
- undertake the examination of particular branches of the law and formulate proposals for reform, codify the law and eliminate anomalies;
- propose the repeal of obsolete and unnecessary enactments;
- and generally provide advice and information to the Government of Gibraltar on the reform or amendment of any branch of the law.

The Law Commission will also be the mechanism used to meet a GSLP/Liberal manifesto commitment to further review legislation on Gibraltar's statute book which has not been revised for some time.

"This Bill is intended to create a statutory body made up of myself, HM Attorney General and experts in different fields," Mr Costa said.

"The Commission will be tasked with examining various areas of laws, which may either be obsolete due to the passage of time since they appeared on the statute books, or require amendment due to particular local circumstances."

Snippets

• Damages Bill

The Council is being consulted by Government on a proposed Bill to legislate for the establishment of a discount rate for personal injury cases as well as the adoption of guidelines for the calculation of damages. This follows from recent rulings in Gibraltar on the issue as well as a change in the English discount rate.

• Court of Appeal session – March 2017

There was a busy Court of Appeal session during late March and early April. There were a number of sentencing and criminal appeals, an interesting care appeal on the effect of the Parental Responsibility Convention (*IB v Care Agency*), a commercial case on contractual construction and conflicts of laws (*Emerald Bay v BWIN*) and the consideration of Ministerial powers of withdrawal of applications (*Minister of Justice v Marrache & Parole Board*). All judgments are now available on the court website.

• Court Circulars

Practitioners will be interested to know that the court service website has recently been updated to see the inclusion of all court circulars on practice and procedure.

• Opening of the Legal Year 2017

Members are reminded that this will take place on 29 September 2017. As usual we will circulate more up to date information on lunch arrangements closer to the date.

Contributions

If you are interested in contributing an article, please contact us at barcouncil@gibtelecom.net. Suggestions for posts are always encouraged.

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