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Chairman's Speech



In the Ceremonial Opening of the Legal Year on 29 September, the Chairman delivered what will be his last speech as Chairman of the Bar Council. It was also the last speech of any Chairman of the Bar Council as, once the new Legal Services Act comes into force in the early part of 2018, the Bar Council will be replaced by the Law Council:

As explained by the Chairman, the change of name “is not just nomenclature as we wanted to transmit clearly that we are a body that in a fused profession represents barristers, solicitors, in-house counsel, legal executives and law costs draftsmen”.

Delivered to a packed Court Room No.1, and with a live feed to Court Room No. 2, the Chairman, addressed issues of real and immediate concern to the profession including the recent encroachment by unregulated English solicitors:

“Recently however there have been a spate of cases where traditional lines of cooperation have been crossed and Gibraltar lawyers are being regulated to a sometimes nominal roles and being replaced by unregulated lawyers physically present in Gibraltar for Gibraltar cases on Gibraltar law. English Counsel get called to the Gibraltar Bar and submit to our Code of Conduct. English Solicitors however do not and the Supreme Court Act is clear that the provision of legal services to members of the public in or from Gibraltar by persons not called to the Gibraltar Bar or admitted as a solicitor here is an offence.”

The Chairman also did not shirk from dealing with the issue of the Government's decision to discontinue the funding for a fourth Judge, a subject which has even led to the Chief Justice making the first public statement in his ten-year tenure.

The Chairman said “On behalf of the Bar we associate ourselves and indeed support the comments made by the Chief Justice in late August. As we stated then and reiterate now it is a matter of regret that we were not consulted by the Government on the issues of whether the state of litigation is such that the proper administration of justice no longer requires the resources of a fourth Supreme Court Judge. We are of the view as the Chief Justice stated that the Government should reconsider this matter and that a fourth judge should be appointed.”

Keith will be standing down as Chairman on 8 November 2017 and David Dumas QC, currently the Vice Chairman, will be Acting Chairman until the next AGM.

Blockchain and Legal Industry Adoption

Gibraltar is one of the first few jurisdictions globally that is looking to regulate DLT and blockchain businesses. An interesting question to consider is what will be the real world examples of adoption of this technology for legal practitioners? One thing is assisting these technology businesses receive investment, get set-up and become regulated – but equally it is likely that the technology can be adopted and developed by and for the legal profession, which should also benefit the delivery of service to those clients.

Firstly recognition of where Gibraltar is as a jurisdiction in the space needs to be given to the over three years of work from the working group, the work of the regulator, those who have participated in the consultation and worked towards ensuring the best and safest development of the underlying technology and its practical application, and making its work known in the right environment and circles.

The current boom of interest (otherwise referred to in the industry as ‘hype’) in DLT and blockchain in Gibraltar is interesting for a number of reasons, which include (i) of great interest to the technology enthusiasts among us who have personally followed the industry over the last few years; (ii) the interesting problem-solving that legal practitioners (and other advisers) face in this field; (iii) for the jurisdiction. So , how will this technology affect our day-to-day practice as we advise and assist our clients who operate in this very field; indeed assisting technological pioneers and entities scale the currently unknown legal, accounting, regulatory and applicable landscape?

In this article I'll look to scratch the surface on just one of many examples to consider in the adoption of distributed ledger technology (“DLT”) and blockchain (DLT and blockchain being synonymous for the purposes of this short article) by legal practitioners in the corporate world. Clearly similar uses may be apply to the provision of corporate services, which this article simply flags.

Blockchain Stock Ledgers

Delaware, renowned in some circles as the US capital of company incorporations, this summer was highly praised as one of the first jurisdictions to pass a law making it explicitly legal for Delaware entities to use blockchain for stock trading and record-keeping.

What ills do blockchain stock ledgers and the legislative changes in Delaware deal with? To name just a few examples, (i) share issuance - blockchains if implemented correctly (with, for example, appropriate replay protection) will not issue the same shares twice; (ii) share certificates - people continually find new, weird and wonderful ways to lose share certificates and

bodies of case law have been created to be able to prove ownership, blockchain can eliminate the ability to lose a share certificate; (iii) pre-emption & other covenants – shares are sometimes held with particular protections and restrictive covenants, with the most commonly known being pre-emption or the right of first refusal. The blockchain can ensure that transfers or share issuances can only take place once such terms are complied with; (iv) due diligence – a whole company's history can be viewed end-to-end on a blockchain – say hello to reducing the time spent waiting for clients to provide their KYC packs on shareholders and ultimate beneficial owners before being able to retain them.

Clearly it is evident that there are a few benefits to having blockchain technology to support share ledgers and it is a matter of time before we start to see these uses trickle down to the legal industry (and possibly, amongst others, to companies who are able to afford proprietary blockchains). Legal industry adoption and involvement will depend on mass market adoption/demand, cost to implement these technologies and also regulatory treatment and recognition/validation of such digital functionalities.

At a glance and without deep analysis and whilst only expressing a possible view, it is arguable that the relevant provisions of [Gibraltar Companies Act 2014](#), permit or allow for recording registers of members and/or books by way of a blockchain stock ledger. There is a comparable to be found in the use of centralised database systems such as viewpoint, albeit at the Company's registered office. This of course will be subject to DLT regulation apart from meeting data protection implications and requirements.

It has to be said that as matters currently stand there may be little cost-benefit gain, in practical terms, to store company information and records on a blockchain. It would be of more use were it to be possible, legally, to be deployed for execution of share transfers and maintaining records of such transfers. It appears the Companies Act in Gibraltar may not arguably permit the use of blockchain for share transfers. In broad terms, sec 73-78 of the Companies Act do require that share transfers be duly stamped and the certificates to be executed in accordance with the provisions of the Act.

In summary therefore, just looking at one application of blockchain to the legal industry and corporate intermediaries in respect of a blockchain stock ledger, there are already reviews and changes of existing legislation that will need to occur in order to legally recognise and validate such technologies performing more than merely recording functions. Functions that require execution will require some legislative change or a very wide interpretation of existing legislation. Any legislative review would not be light hearted and would require various considerations as to who may be responsible for the execution of particular automated actions, who will be responsible for verifying or recording automated elements of the transaction and to what extent can such risks be addressed in the company's constitutional documents.

Other examples

In addition to blockchain stock ledgers as a relevant example of blockchain being used in the legal industry, other applications of blockchain to the legal industry include concepts of smart contracts which are self-executing programmable events that are dependent on hard-coded variables; protection of intellectual property as IP can be registered on the blockchain and accredited to its creator whenever used. Blockchain technology can also be used prospectively in wills and probate and the distribution of digital assets in relation thereto. Other examples include land registries as well as other registries that

track ownership of assets.

Ultimate adoption

Implementation of blockchain and DLT systems to the legal profession and other professional intermediaries will be dependent on technological capability, cost, as ultimately on a legal framework and legal recognition in case law and statute of new legal concepts in relation to execution of documents, liability and digital assets.

Whilst Gibraltar is leading on the task of regulating a part of the DLT and blockchain industry in their setup and ongoing operations, legal practitioners will want to consider prospectively how the very technologies being created will affect our business, daily work flow and how such technologies themselves will come to be recognised when we advise.



For more information, please contact:
Philip Vasquez, TSN
pv@tsnlaw.com
T: (+350) 200 79423

Legal Services Act

The 20 September 2017 represented an important milestone in the long road towards achieving a modern and comprehensive regulatory regime for the profession in that it was the day that Parliament passed the Legal Services Bill.

This has been a long time coming as work on the new regulatory system was started back in 2010.

In his speech at the Ceremonial Opening of the Legal Year, the then Chairman of the Bar Council, stated:

“The Legal Services Act is also far more reaching than the current system that it replaces. It brings within its scope legal services that were previously carried out unregulated. The Act establishes a register of nine parts that set out the different categories of individual or entity that provide legal service in Gibraltar. The potential catchment area of persons that will fall within the system of regulation will, we think, likely increase by at least 30 or 40%. That can only be good from the point of view of the consumer and the consistent, fair regulation of the legal services market.”

The Act has yet to be commenced as there are still certain key steps which need to be taken. The first is the new Code of Conduct, in respect of which the consultation process has already been completed.

The second is the resourcing and staffing of the Legal services Regulatory Authority which will assume the regulatory function over the profession. It is anticipated that the post of CEO will be advertised in the early part of next year so that the Act can be commenced in the Spring of 2018.

Legal Assistance Reform

The Legal Assistance regime has recently been subjected to intensive public scrutiny due to a case in which the current eligibility threshold had a particularly harsh effect on a mother wishing to obtain public funding for a case concerning contact with her children.

The case serves to illustrate the dire need for reform in this area and the importance of full and wide-ranging participation in the recently launched public consultation on reforms to Legal Assistance. If we are to achieve a new regime for public funding in civil cases which achieves greater access to justice for

meritorious litigants, it is imperative that practitioners with experience of the current system participate fully in this consultation. There are few stakeholders, other than lawyers who have their hand on the pulse of the day-to-day problems with which the public are faced, who can contribute more meaningfully to this process.

There are many issues to consider and the financial eligibility threshold is certainly one of those issues. However, as a profession we must ensure that the result of the balancing exercise which is inherent in this process is not one which achieves a faux increase to access to justice.



For more information on both articles above, please contact:
Andrew Cardona
Phillips
andrew.cardona@phillips.gi
: (+350) 200 73900

Court of Appeal Session

The Court of Appeal session during September featured yet another varied line-up of interesting criminal and civil cases being heard.

The Landlord and Tenant case of CRONDALE PROPERTIES LIMITED v MR A BENRAHMOUN concerned possession proceedings in which the Appellant Landlord CRONDALE sought possession of residential accommodation from Mr. Benrahmoun, the Tenant involving, inter alia, the validity of a Notice to Quit. The appeal was allowed and the case remitted to the Supreme Court for determination of the substantive issues on the footing that the Notice to Quit was duly served.

The case of SUSANNAH ISABEL BUNYAN v CHURCH LANETRUSTEES LIMITED dealt with a party's entitlement to interest on judgment debts in Gibraltar and the interpretation and meaning behind section 36 of the Supreme Court Act 1960 both before and after amendment. Held: Appeal dismissed.

In ANDREW RYAN FERRELL v REGINA the Court heard the appeal against the conviction of the Defendant for an offence of possession of 7.2 grams of cocaine with intent to supply. Held: Appeal dismissed.

The case of A v LINE TRUST CORPORATION & ORS was the progeny of matrimonial proceedings which took place in London. The Appeal concerned a Part 8 Claim commenced by the Trustee which sought directions in relation to the validity of two deeds executed in 2012 and 2015 whereby certain beneficiaries, including the husband and the wife, were excluded as potential beneficiaries. Held: Appeal dismissed.

In GERARD ASQUEZ v REGINA the Defendant sought leave to appeal against a series of sentences arising out of convictions for drug offences. Held: Leave to appeal was refused.

All judgments are available on the court website.



For more information, please contact:
Daniel Benyunes
Charles A Gomez & Co
Daniel@gomezco.gi
T: (+350) 200 74998

Anti-Money Laundering and Combatting Terrorist Financing Guidance Notes

The Council welcomes the Guidance Notes which were issued by the Registrar of the Supreme Court on 1 November 2017 and circulated to all firms.

A copy of the notes can be found on the Courts Service website at <http://www.gcs.gov.gi/index.php/aml-cft>.

Members are reminded that Guidance Notes apply to "all notaries, lawyers and other staff in a law firm who are involved in anti-money laundering and terrorist financing."

They are also reminded that the Registrar has made the Guidance Notes applicable to any new relationship entered into on or after the 1 February 2018 to allow professionals adequate time to introduce whatever amendments may be necessary to their existing compliance policies and procedures with ample time.

The Council therefore recommends that all firms and practitioners become fully conversant with the Guidance Notes and review all existing compliance policies and procedures as a matter of priority.

Contact: Kenneth Navas - ken@kennethnavas.com

General Data Protection Regulation

The Council reminds members that the implementation of the General Data Protection Regulation ("GDPR") will take place on 25 May 2018.

As an EU regulation, the GDPR will not require transposition and will automatically become law in Gibraltar by 'direct effect'.

The Council welcomes the guidance notes issued by the by the Gibraltar Regulatory Authority ("GRA") providing practical advice for all businesses in their preparations for compliance.

To date the GRA has published 4 guidance notes which can be found on their website: www.gra.gi.

The GRA's firm recommendation is that businesses start preparing immediately for the implementation of the GDPR.

Firm's should not underestimate the magnitude of the requirements of the new framework and the very significant impact upon most existing data management systems.

The Council recommends that all firms and practitioners become fully conversant with the requirements of the GDPR and avail themselves of the guidance provided by the GRA.

Contact: Kenneth Navas - ken@kennethnavas.com

Contributions

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