

Fintech 2022

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Fintech

2022

Contributing editors**Angus McLean and Penny Miller****Simmons & Simmons LLP**

Lexology Getting The Deal Through is delighted to publish the sixth edition of *Fintech*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Mexico and the United States.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Angus McLean and Penny Miller of Simmons & Simmons LLP, for their continued assistance with this volume.



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Gibraltar

Peter Howitt, David Borge and Jason Corbett

Ince

FINTECH LANDSCAPE AND INITIATIVES

General innovation climate

1 | What is the general state of fintech innovation in your jurisdiction?

Gibraltar has taken a lead in the area of e-commerce and fintech innovation and is a world leader in the blockchain and distributed ledger technology (DLT) economy, having been one of the first jurisdictions to regulate the use of such technology.

Gibraltar's strong track record in regulated e-commerce (particularly e-gaming, e-money and payments and other electronically supplied financial services) and its reputation for attracting quality operators mean that it is well positioned to be a leading global hub. Local financial institutions have chosen to get involved in the sector and are providing support to operators.

The jurisdiction, through the Gibraltar government's Finance Centre Department (the Finance Centre), actively encourages local and external entities to establish financial services businesses and provide offerings in or from Gibraltar.

Gibraltar's financial regulator, the Gibraltar Financial Services Commission (GFSC) encourages fintech innovation via its Innovate and Create Team.

Government and regulatory support

2 | Do government bodies or regulators provide any support specific to financial innovation? If so, what are the key benefits of such support?

While the Finance Centre and the GFSC encourage financial innovation, there is no support or benefits offered exclusively in relation to financial innovation by the government. Those in this sector are able to seek the support and benefits available to other industries in the jurisdiction.

The Gibraltar Association of New Technologies (GANT), of which the Gibraltar government is a member and which receives government funding, encourages interest and participation of new technologies in the finance industry and provides a forum for discussion between its members and the government.

FINANCIAL REGULATION

Regulatory bodies

3 | Which bodies regulate the provision of fintech products and services?

The Gibraltar Financial Services Commission (GFSC).

Regulated activities

4 | Which activities trigger a licensing requirement in your jurisdiction?

The following activities are licensable, regulated activities in Gibraltar:

- accepting deposits;
- issuing electronic money;
- providing payment services;
- effecting and carrying out contracts of insurance;
- insurance management;
- insurance distribution;
- reinsurance distribution;
- reception and transmission of orders;
- executing orders on behalf of clients;
- dealing on own account;
- portfolio management;
- providing investment advice;
- underwriting or placing on a firm commitment basis;
- placing without a firm commitment basis;
- operating a multilateral trading facility;
- operating an organised trading facility;
- sending, etc, dematerialised instructions;
- selling or advising in relation to structured deposits;
- administering a benchmark;
- operating a regulated market;
- operating an approved publication arrangement;
- operating a certified treasury professional;
- operating an adjustable-rate mortgage;
- managing an undertaking or collective investment in transferable securities (UCITS);
- acting as depository of a UCITS;
- acting as trustees of a UCITS;
- acting as sole director of a UCITS;
- managing an alternative investment fund (AIF) (in-scope alternative investment fund manager (AIFM));
- acting as depository of an AIF with an in-scope AIFM;
- managing an AIF (small scheme manager);
- acting as depository of an AIF with a small scheme manager;
- establishing a collective investment scheme;
- acting as bank or broker, or both, of an experienced investor fund;
- acting as depository of a private scheme;
- acting as administrator of a collective investment scheme;
- establishing a personal pension scheme;
- advising on personal or occupational pension schemes;
- granting credit by means of a mortgage credit agreement;
- acting as a mortgage credit intermediary;
- providing advisory services in connection with mortgage credit;
- company management;
- acting as a professional trustee or foundation councillor;

- acting as a bureau de change; and
- providing DLT services.

Consumer lending

5 | Is consumer lending regulated in your jurisdiction?

Consumer lending is a regulated activity in Gibraltar.

The Financial Services (Mortgage Credit) Regulations 2020:

- set out the requirement to provide precontractual information through the European Standardised Information Sheet – a standardised format – and the calculation of the Annual Percentage Rate of Charge;
- set out principles for marketing and advertising;
- encourage the concept of responsible lending practices;
- include provisions requiring the lender to assess the creditworthiness of the consumer, and impose disclosure obligations on the part of the consumer;
- require the application of appropriate standards to valuations, where these are carried out;
- provide standards for the provision of advisory services;
- provide minimum knowledge and competence requirements for staff as well as remuneration requirements;
- establish a regulatory regime for creditors and credit intermediaries, as well as containing provisions that allow for the regulation and supervision of non-credit institutions; and
- permit tied credit intermediaries and appointed representatives.

The lending of amounts between €200 and €75,000 (which are not secured by way of mortgage) is governed by two distinct regimes: the Financial Services (Consumer Credit) Act 2011 and the Financial Services (Moneylending) Act 1917.

Licences granted under the Financial Services (Consumer Credit) Act 2011 are issued and regulated by the GFSC, while licences granted under the Financial Services (Moneylending) Act 1917 are issued by the Gibraltar Finance Minister.

Secondary market loan trading

6 | Are there restrictions on trading loans in the secondary market in your jurisdiction?

There are no restrictions on trading loans in the secondary market in Gibraltar.

Collective investment schemes

7 | Describe the regulatory regime for collective investment schemes and whether fintech companies providing alternative finance products or services would fall within its scope.

The Financial Services Act 2019 is the main legislation governing retail collective investment schemes in Gibraltar.

In relation to undertakings in collective investment schemes in transferable securities, the following regulations are applicable:

- Financial Services (Alternative Investment Fund Managers) Regulations 2020;
- Financial Services (Investment Services) Regulations 2020;
- Financial Services (UCITS) Regulations 2020;
- Financial Services (Distance Marketing) Regulations 2006; and
- Financial Services (Experienced Investor Funds) Regulations 2020.

Fintech companies providing alternative finance products would fall within the scope of the regulatory regime of collective investment schemes if the product or service being offered falls within the definition of a collective investment scheme.

Alternative investment funds

8 | Are managers of alternative investment funds regulated?

Managers of alternative investment funds are regulated in Gibraltar. Prior to Brexit, Gibraltar implemented the EU regime applicable under the Alternative Investment Fund Managers Directive (2011/61/EU) (AIFMD) in respect of the regulation of investment advisers, arrangers and managers, as well as managers of collective investment schemes. Further legislation was passed covering a number of other areas outside the scope of EU law (largely found in the Financial Services Act 2019).

Regulations applicable to alternative investment fund managers include the following:

- Financial Services (Alternative Investment Fund Managers) Regulations 2020;
- Financial Services (Alternative Investment Fund Managers: European Long-Term Investment Funds) Regulations 2020;
- Financial Services (Alternative Investment Fund Managers: European Venture Capital Funds) Regulations 2020;
- Financial Services (Alternative Investment Fund Managers: European Social Entrepreneurship Funds) Regulations 2020; and
- Financial Services (Experienced Investor Funds) Regulations 2020.

Most funds in Gibraltar are either experienced investor funds (EIFs) (not available to retail investors) or private funds (limited to 50 investors and not capable of being publicly promoted).

The private funds regime in Gibraltar is intended to enable friends, family and close associates of a person to invest using a pooling structure without the need for full authorisation of the fund. Unlike EIFs, private funds do not require licensed fund administrators.

Peer-to-peer and marketplace lending

9 | Describe any specific regulation of peer-to-peer or marketplace lending in your jurisdiction.

There is no specific regulation governing peer-to-peer lending in Gibraltar. However, any person or entity wishing to offer lending platform services must ensure that they comply with the financial services and securities legislation (including the retained EU law as in force on 31 December 2020), such as the Financial Services (Investment Services) Regulations 2020, which regulate the offering of securities and investment services.

Crowdfunding

10 | Describe any specific regulation of crowdfunding in your jurisdiction.

Gibraltar does not have a specific crowdfunding regime. Operators in Gibraltar need to consider the applicability of local regulatory regimes of the jurisdiction of the investor when seeking to raise finance by way of crowdfunding.

Invoice trading

11 | Describe any specific regulation of invoice trading in your jurisdiction.

There is no specific regulation relating to invoice trading in Gibraltar.

Payment services

12 | Are payment services regulated in your jurisdiction?

Payment services are regulated in Gibraltar by virtue of the Financial Services Act 2019 and the Financial Services (Payment Services) Regulations 2020.

Open banking

- 13 | Are there any laws or regulations introduced to promote competition that require financial institutions to make customer or product data available to third parties?

The Financial Services (Payment Services) Regulations 2020 provide for the authorisation of account information service providers (AISPs) and payment initiation service providers (PISPs). AISPs are authorised to retrieve account data provided by banks and financial institutions. PISPs are authorised to initiate payments into or out of a user's account. Both these services require the explicit consent of the customer.

Robo-advice

- 14 | Describe any specific regulation of robo-advisers or other companies that provide retail customers with automated access to investment products in your jurisdiction.

There is no specific regulation of robo-advisers or other companies that provide retail customers with automated access to investment products in Gibraltar.

Insurance products

- 15 | Do fintech companies that sell or market insurance products in your jurisdiction need to be regulated?

Fintech companies that sell or market insurance products are regulated by the same national legislation that regulates traditional insurance products. This includes but is not limited to the following:

- Financial Services Act 2019;
- Financial Services (Insurance Distribution) Regulations 2020;
- Financial Services (Insurance Management) Regulations 2020;
- Financial Services (Insurance Companies) Regulations 2020;
- Financial Services (Insurance Companies) (Accounts) Regulations 2020;
- Financial Services (Insurance Business Transfers) (Saving) Regulations 2020; and
- Insurance (Marine) Act 1960.

Credit references

- 16 | Are there any restrictions on providing credit references or credit information services in your jurisdiction?

No, but following Brexit the principles of the EU General Data Protection Regulation largely apply in Gibraltar law by way of the provisions of its data protection regime.

CROSS-BORDER REGULATION

Passporting

- 17 | Can regulated activities be passported into your jurisdiction?

Following Brexit and the end of the transition period, Gibraltar-based financial services companies no longer benefit from the EU passporting regime. Such operators may now need to establish an entity and seek authorisation from an EEA state to offer financial services to clients in the EEA.

For EEA companies wishing to offer financial services into Gibraltar, a Temporary Permissions Regime is in effect that will allow them to do so without establishment in Gibraltar for a limited period of time. The Temporary Permissions Regime can only be utilised by EEA firms that were passporting or were entitled to passport into Gibraltar prior to 31 December 2020.

Gibraltar-authorized financial services firms are currently able to passport into the UK market under a separate transitional regime.

Requirement for a local presence

- 18 | Can fintech companies obtain a licence to provide financial services in your jurisdiction without establishing a local presence?

It depends on the type of regulated financial service.

Regulated payment services that were passported into Gibraltar from EEA states by way of a 'freedom to provide services passport' may continue to do so in reliance on their home state licence under a Temporary Permissions Regime. The Temporary Permissions Regime is only utilisable for a limited period, however, and will only apply to firms that were passporting or were entitled to passport services into Gibraltar prior to 31 December 2020.

To obtain any Gibraltar financial services licence, the licensed entity must establish a local presence, which includes the 'four eyes' (ie, two individuals) principle, to be met on a continued basis. The principle is designed to ensure that at least two minds are applied to the formulation and implementation of the firm's policies and can be carried out by its senior management.

SALES AND MARKETING

Restrictions

- 19 | What restrictions apply to the sales and marketing of financial services and products in your jurisdiction?

The financial promotion of regulated activities is governed by the Financial Services Act 2019. Subject to certain exemptions, the Act provides that a person, in the course of business, cannot communicate an inducement or invitation to enter into or offer to enter into an agreement, the making or performance of which would constitute a regulated activity.

Distance sales are also covered by the Financial Services (Distance Marketing) Act 2006.

CHANGE OF CONTROL

Notification and consent

- 20 | Describe any rules relating to notification or consent requirements if a regulated business changes control.

Changes in the control of a regulated business requires the Gibraltar Financial Services Commission consent and approval.

FINANCIAL CRIME

Anti-bribery and anti-money laundering procedures

- 21 | Are fintech companies required by law or regulation to have procedures to combat bribery or money laundering?

Fintech companies are subject to the same laws relating to money laundering and bribery as any other financial services providers in the EU. These derive from the 4th and 5th Anti-Money Laundering Directives, which were transposed into Gibraltar law prior to Brexit by way of the Proceeds of Crime Act 2015 (POCA).

POCA requires fintech companies to have measures in place to prevent the financial system from being used for money laundering or terrorist financing purposes.

The Crimes Act 2011 includes provisions in relation to bribery offences.

Guidance

22 | Is there regulatory or industry anti-financial crime guidance for fintech companies?

The Gibraltar Financial Services Commission has issued anti-money laundering guidance notes that are available on its website.

The Gibraltar Association of Compliance Officers has issued anti-financial crime guidance for fintech companies.

PEER-TO-PEER AND MARKETPLACE LENDING

Execution and enforceability of loan agreements

23 | What are the requirements for executing loan agreements or security agreements? Is there a risk that loan agreements or security agreements entered into on a peer-to-peer or marketplace lending platform will not be enforceable?

Loan agreements must be executed in writing in accordance with the same formalities that govern regular contracts.

Security agreements must also be in writing. Mortgages and charges that contain a power of attorney should be executed as deeds. Executed documents and their corresponding charges should be registered at Companies House within 30 days.

Where mortgage or security relates to real estate, there is a further requirement to register it at the Gibraltar Land Titles Registry (Land Property Services Limited).

Peer-to-peer and marketplace lending is not a regulated activity in Gibraltar.

Assignment of loans

24 | What steps are required to perfect an assignment of loans originated on a peer-to-peer or marketplace lending platform? What are the implications for the purchaser if the assignment is not perfected? Is it possible to assign these loans without informing the borrower?

Ordinarily, rights or rights and obligations under a loan can be assigned or novated by way of assignment or novation.

Under an assignment, a lender assigns its rights under a loan to a new lender. The original lender only transfers its rights, for example, to receive loan repayment and interest payments. The original lender is still liable for any obligations under the loan. Unless the original loan provides otherwise, the borrower may need to be notified of the assignment or consent to it. An assignment is usually executed by deed.

In a novation, the lender (transferor) transfers both rights and obligations to a new lender (transferee) third party: this is usually executed by way of deed, which requires execution by all the parties involved.

Without a perfected deed of assignment or deed of novation, rights will not be assigned or rights and obligations novated as the case may be. This would prevent the new lender from enforcing its rights against the borrower and the borrower enforcing its rights against the new lender.

Securitisation risk retention requirements

25 | Are securitisation transactions subject to risk retention requirements?

Yes, securitisation transactions are subject to risk retention requirements.

Further to the European Union (Withdrawal) Act 2019, EU Regulation 2017/2402/EU (the Securitisation Regulation) which, at the time of exit applied directly in EU member states, continues to apply in principle in Gibraltar (see the Financial Services (Investment Services)

Regulations 2020, as amended by the Financial Services (Investment Services) (Amendment) (EU Exit) Regulations 2020, made to address the failures of retained EU law to operate effectively).

The Securitisation Regulation applies to relevant securitisation transactions, the securities of which are issued on or after 1 January 2019 and to any securitisation in which a new securitisation position is created on or after 1 January 2019, subject to certain transitional arrangements.

Under the Securitisation Regulation, originators, sponsors and original lenders (including corporates) are under a positive obligation to retain a 5 per cent net economic interest in securitisation transactions.

Securitisation confidentiality and data protection requirements

26 | Is a special purpose company used to purchase and securitise peer-to-peer or marketplace loans subject to a duty of confidentiality or data protection laws regarding information relating to the borrowers?

Peer-to-peer and marketplace lending is not a specific regulated activity in Gibraltar.

ARTIFICIAL INTELLIGENCE, DISTRIBUTED LEDGER TECHNOLOGY AND CRYPTO-ASSETS

Artificial intelligence

27 | Are there rules or regulations governing the use of artificial intelligence, including in relation to robo-advice?

No.

Distributed ledger technology

28 | Are there rules or regulations governing the use of distributed ledger technology or blockchains?

Yes, the Financial Services (Distributed Ledger Technology Providers) Regulations 2020 (the DLT Regulations).

Crypto-assets

29 | Are there rules or regulations governing the use of crypto-assets, including digital currencies, digital wallets and e-money?

E-money and payment services are governed by the Financial Services Act 2019, the Financial Services (Electronic Money) Regulations 2020 and the Financial Services (Payment Services) Regulations 2020 respectively.

Subject to the below, the use of crypto-assets is regulated by the DLT Regulations in relation to DLT. Entities that handle or store crypto-assets (such as collective investment schemes that are investing in crypto-assets) but are not licensed under the DLT Regulations are still expected to adhere to the GFSC guidance to DLT providers in relation to safekeeping of customer assets, cybersecurity and resilience.

Where an alternative financial services licence regime is applicable, that alternative legislation would take precedence over the DLT Regulations. By way of example, under Gibraltar law, an EIF can contain crypto-assets and so would fall within the EIF regulations. Equally, a crypto-asset that represents a security may fall within the ambit of legislation governing securities.

Digital currency exchanges

30 | Are there rules or regulations governing the operation of digital currency exchanges or brokerages?

The operation of digital currency exchanges or brokerages is governed by the DLT Regulations. The exception to this is when the exchange

or brokerage offers a service that requires an alternative financial services licence.

Initial coin offerings

31 | Are there rules or regulations governing initial coin offerings (ICOs) or token generation events?

Recent changes to Gibraltar legislation have been implemented that may require certain businesses to register with the Gibraltar Financial Services Commission (GFSC) in order to continue being able to carry out certain activities, such as ICOs.

The registration requirements apply to 'relevant financial businesses' that:

- receive, whether on their own account or on behalf of another person, proceeds in any form from the sale of tokenised digital assets involving the use of DLT or a similar means of recording a digital representation of an asset; or
- exchange, or arrange or make arrangements with a view to the exchange of:
 - virtual assets for money;
 - money for virtual assets; or
 - one virtual asset for another.

Registration is required for AML/CTF supervision purposes only, and along with the relevant GFSC registration forms, relevant financial businesses shall be required to submit copies of their relevant AML/CTF policies, procedures and MLRO report.

DATA PROTECTION AND CYBERSECURITY

Data protection

32 | What rules and regulations govern the processing and transfer (domestic and cross-border) of data relating to fintech products and services?

The Data Protection Act 2004, the Communications (Personal Data and Privacy) Regulations 2006 and where applicable, the EU General Data Protection Regulation (GDPR) all govern the processing (including the transfer) of personal data held by fintech companies. Although the EU GDPR no longer has direct effect in Gibraltar, the provisions of the European Union (Withdrawal) Act 2019 set out the basis under which GDPR principles will continue to apply post-Brexit. As it forms part of the law of Gibraltar, the Gibraltar GDPR is the retained version of the EU GDPR.

Cybersecurity

33 | What cybersecurity regulations or standards apply to fintech businesses?

Fintech businesses that are data controllers or data processors may be subject to both the Gibraltar GDPR and the EU GDPR.

Fintech businesses are also expected to adhere to Gibraltar Financial Services Commission guidance issued in relation to safe-keeping of customer assets, cybersecurity and resilience that apply to DLT providers.

OUTSOURCING AND CLOUD COMPUTING

Outsourcing

34 | Are there legal requirements or regulatory guidance with respect to the outsourcing by a financial services company of a material aspect of its business?

There is both legal and regulatory guidance with respect to the outsourcing of certain material aspects of a financial services company's business. In terms of legal guidance, this includes:

- data processing;
- cloud computing; and
- carrying-out operational functions relating to the issuance, distribution or redemption of electronic money or the provision of payment services under both the Financial Services (Electronic Money) Regulations 2020 and Financial Services (Payment Services) Regulations 2020.

When an electronic money institution or a payments services provider intends to outsource operational functions relating to the issuance, distribution or redemption of electronic money or the provision of payment services, the company's senior management will not be discharged of its legal responsibilities – responsibility remains with the senior management of the company.

The regulatory guidance makes it clear that the outsourcing of functions does not discharge senior management of its ultimate responsibility over the company.

Cloud computing

35 | Are there legal requirements or regulatory guidance with respect to the use of cloud computing in the financial services industry?

In addition to its guidance on outsourcing, which is taken to include outsourcing data storage requirements, in its guidance notes to DLT providers on corporate governance the Gibraltar Financial Services Commission (GFSC) specifically states:

- there is no specific requirement for a DLT provider to have their technology or servers physically located in Gibraltar; and similarly, a DLT provider will not ordinarily be required to have their intellectual property held in Gibraltar as this may be held by an affiliate company outside Gibraltar;
- a DLT provider will be able to use cloud services to host their business platforms and this can be outsourced to reputable and secure cloud service providers locally or outside Gibraltar so long as the DLT provider can demonstrate it has access to and adequate oversight over cloud storage and processing; and
- a DLT provider should ensure that it has access to all relevant records, and can provide access to the GFSC on demand, at all times and have arrangements in place in the event of failure of primary record storage systems.

While the guidance is specific to DLT providers, it is deemed to apply to all financial services companies in Gibraltar.

INTELLECTUAL PROPERTY RIGHTS

IP protection for software

36 | Which intellectual property rights are available to protect software, and how do you obtain those rights?

Gibraltar follows English law in relation to the registration of IP rights and the protection of registered and unregistered IP rights.

The UK Patents Act 1977 operates in Gibraltar by virtue of the Gibraltar Patents Act 1924. It is not possible to make an original application to register a patent in Gibraltar. The application must be made to the UK Intellectual Property Office and extended to Gibraltar within three years of the UK patent's date of issue, and protection will run for as long as the UK patent is valid.

It is not possible to make an originating application for a trademark in Gibraltar. On application for registration in Gibraltar, a registered UK trademark can be extended to Gibraltar.

Designs registered in the UK are automatically protected in Gibraltar by virtue of the Gibraltar Designs Act 1928. There is no Gibraltar design registry and no need for an application to be made in Gibraltar. International protection is available under the World Intellectual Property Office Hague Agreement Concerning the International Deposit of Industrial Designs 1925.

With regard to unregistered designs, protection arises automatically when the design is recorded in a design document or an article is made to the design. Designs made in Gibraltar qualify for reciprocal protection in UK (Design Right (Reciprocal Protection) Order 1989 (No. 2) 1989 (SI 1989/1294)).

In Gibraltar, copyright protects the authors of works by preventing others from copying or reproducing the work, with protection arising automatically on creation of the qualifying work: registration is not required.

IP developed by employees and contractors

37 | What intellectual property rights are available to protect branding and how do you obtain those rights? How can fintech businesses ensure they do not infringe existing brands?

This is governed by the employment or service contract between the company and its employee or the contractor or consultant. Where there is no such contractual provision, generally the IP rights will belong to the employer if:

- it was made in the course of the employee's normal or specifically assigned duties; or
- it was made in the course of the employee's duties and the employee has, because of the nature of the duties and the particular responsibilities arising from them, a special obligation to further the employer's interests.

Joint ownership

38 | Are there any restrictions on a joint owner of intellectual property's right to use, license, charge or assign its right in intellectual property?

In the absence of an agreement between them, co-owners will be able to exploit the jointly held rights themselves but will not be able to assign or license them to third parties without the consent of the other co-owner.

Trade secrets

39 | How are trade secrets protected? Are trade secrets kept confidential during court proceedings?

As with the ownership of IP rights, the confidentiality of trade secrets is usually governed by confidentiality clauses in the employment contract or service contract.

In respect of court proceedings, a party may request that any proceedings are kept confidential. For instance, a party could request that the proceedings be held in private and for the court file to be sealed to prevent non-parties from obtaining access. There is no guarantee that such requests would be granted by the court.

Branding

40 | What intellectual property rights are available to protect branding and how do you obtain those rights? How can fintech businesses ensure they do not infringe existing brands?

As with other IP, branding can be protected by way of trademark or design registration. Further, there are instances in which even without formal registration, the trademark may have developed sufficient goodwill to enable the brand owner to take action against another for infringement or passing-off.

To avoid infringement, fintech companies should carry out the appropriate online and physical searches of IP registers when developing a brand or product to ensure that it does not infringe pre-existing intellectual property rights of third parties.

Remedies for infringement of IP

41 | What remedies are available to individuals or companies whose intellectual property rights have been infringed?

Remedies that can be sought for IP infringement include the following:

- interlocutory relief;
- an order for delivery up;
- seizure of infringing copies and other articles;
- forfeiture;
- injunctions;
- damages; or
- an account of profits.

COMPETITION

Sector-specific issues

42 | Are there any specific competition issues that exist with respect to fintech companies in your jurisdiction?

The fintech industry is generally pro-competitive in the financial services market. Prior to Brexit, the EU competition regime applied to Gibraltar as enshrined in articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU). Following Brexit, TFEU no longer applies. To fill any consequent gap in competition law, Gibraltar has implemented the Competition Act 2020. The Competition Act 2020 sets out the rules relating to anticompetitive agreements and abuse of dominance.

TAX

Incentives

43 | Are there any tax incentives available for fintech companies and investors to encourage innovation and investment in the fintech sector in your jurisdiction?

There are no incentives specific to fintech companies. Having said that, Gibraltar has an attractive tax regime both for individuals and businesses, with most companies enjoying a 10 per cent corporate tax rate.

Increased tax burden

44 | Are there any new or proposed tax laws or guidance that could significantly increase tax or administrative costs for fintech companies in your jurisdiction?

No.

IMMIGRATION

Sector-specific schemes

45 | What immigration schemes are available for fintech businesses to recruit skilled staff from abroad? Are there any special regimes specific to the technology or financial sectors?

A fintech business can apply to the Gibraltar Government's Finance Centre Department (the Finance Centre) director to have an employee designated as a higher executive possessing specialist skills (an HEPSS individual). HEPSS individuals must:

- possess specialist skills of exceptional economic value to Gibraltar;
- have skills that are not available in Gibraltar; and
- earn more than £120,000 a year.

Income tax liability is capped at the first £120,000 of taxable earnings. The cap primarily applies to income from the designated employment. An HEPSS individual will be required to have residential accommodation in Gibraltar that is suitable for HEPSS requirements. The accommodation must be approved by the Finance Centre director.

UPDATE AND TRENDS

Current developments

46 | Are there any other current developments or emerging trends to note?

Following Brexit, as from 1 January 2021, Gibraltar is no longer subject to the laws of the European Union. European Union treaties had previously been extended to Gibraltar by virtue of the EU membership of the United Kingdom. Notwithstanding this, regulations governing the Gibraltar financial services sector continue to be closely aligned with those of the European Union. Gibraltar has continued to transpose European directives into its own domestic law right and, for this reason, this report continues to reference European law extensively given its continued influence on the laws of Gibraltar. In the immediate future, it is not envisaged that Gibraltar law on financial services and the fintech sector will substantially diverge from the European Union's laws and regulations, more so as Gibraltar aspires to continue to attract financial services business from around the globe and hopes to benefit from any trade deal the United Kingdom is able to negotiate with the European Union. In the interim, via the Gibraltar Financial Services Commission (GFSC), Gibraltar is currently hoping to agree memorandums of understanding and mutual recognition with financial services jurisdictions with the EU, such as Luxembourg.

There is continued interest in the regulation or facilitation of cannabis-related industries in Gibraltar. In addition to the general appetite within the jurisdiction for traditional 'cannabusinesses' (eg, cultivation for medical exportation), those in financial services and the legal profession have noted the difficulty cannabusinesses have in obtaining financial services, specifically banking, at a large, global level. Even if the product itself is legal in the jurisdiction, business proceeds may be treated by the authorities as proceeds of crime given its illegal status in many other jurisdictions. For this reason, cannabusinesses have difficulty banking their income or raising finance.

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Coronavirus

47 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The Gibraltar government was quick to implement measures to alleviate the general financial strain on employers and business tenants and has been extremely proactive in monitoring and modifying these measures regularly.

At present, the GFSC is allowing financial services licensees to pay their fees over a 12-month period as opposed to their normal practice of requiring fees in advance.

Gibraltar's vaccination drive, codenamed 'Operation Freedom', has been a great success with the vast majority of citizens and cross-frontier workers in Spain now inoculated. Gibraltar has consequently been able for the most part to 'return to normal' with some of the least restrictive pandemic-led rules in place globally.

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