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# The Legal 500 Country Comparative Guides

## Gibraltar

# LITIGATION

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This country-specific Q&A provides an overview of litigation laws and regulations applicable in Gibraltar.

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## GIBRALTAR LITIGATION



### 1. What are the main methods of resolving commercial disputes?

The main dispute resolution method used in Gibraltar to resolve commercial disputes is litigation. It is common for high-value commercial disputes to end before the Supreme Court of Gibraltar, which has equivalent judicial status to that of the High Court in London. Alternative dispute resolution, such as mediation, is often preferred for low-value commercial matters.

### 2. What are the main procedural rules governing commercial litigation?

The Civil Procedure Rules made under the Civil Procedure Act 1997 in England and Wales apply in Gibraltar by virtue of section 38A of the Gibraltar Supreme Court Act 1960 and the Gibraltar Supreme Court Rules 2000.

### 3. What is the structure and organisation of local courts dealing with commercial claims? What is the final court of appeal?

The legal system of Gibraltar is based on the adversarial system and follows the three English legal principles – statute, common law and rules of equity. As such, the Gibraltar Court system largely reflects that of England and Wales. The Magistrates' Court predominantly deals with criminal and administrative matters. The Supreme Court of Gibraltar is the equivalent of the High Court and Crown Court in England and Wales and hears civil and criminal proceedings as well as appeals from the Magistrates' Court. Appeals from the Supreme Court are usually made in the first instance to the Gibraltar Court of Appeal which typically comprises retired judges of the English Court of Appeal. The highest court of appeal for Gibraltar is the Judicial Committee of the Privy Council in London, which is able to hear appeals from the Gibraltar Court of Appeal.

The Supreme Court of Gibraltar has separate

jurisdictions to which it allocates cases of different subject matter, so that the case is properly managed and is heard by the appropriate judge. Examples of these are (i) the chancery jurisdiction, which generally hears commercial disputes, matters relating to trusts and estates, and company law matters including insolvency, (ii) the ordinary jurisdiction which has the capacity to hear a wide-range of cases, (iii) the admiralty jurisdiction which hears matters of admiralty law and shipping, (iv) the divorce and matrimonial jurisdiction which hears matters pertaining to matrimonial and family law, and (v) the criminal jurisdiction. In relation to commercial civil litigation, cases are allocated to one of three different tracks during the case management phase, with each track providing for cases of different monetary values and complexity, as per CPR Part 26:

- i. The small track is for claims with a value of not more than £10,000;
- ii. The fast track is generally for cases valued between £10,000 and £25,000;
- iii. The multi-track is generally for claims valued at over £25,000 or where the small track or fast track is not suitable.

### 4. How long does it typically take from commencing proceedings to get to trial?

Complex commercial cases typically arrive before the Court for final hearing between 12 and 18 months from the date of service of the claim form. Depending on the subject matter, a case can be expedited through a Part 8 civil procedure. The Part 8 procedure is intended to be used for the determination of claims that do not have a substantial dispute of fact and which are capable of being resolved without lengthy and complicated pleadings. Examples of when the Court may consider expediting proceedings include some of the following:

- i. Deciding on any preliminary issues: these may involve points of law or facts that a party must first overcome in order to continue and will usually not involve the cross-examination of witnesses.

- ii. Injunctions: a court may expedite a trial as an alternative to granting an interim injunction where it determines that the requirements for an injunction have not been met.
- iii. Impact on insolvency proceedings: the Court may consider how a delay in proceedings may prejudice a party in relation to separate insolvency proceedings.
- iv. Other reasons of commercial urgency: the Court would require something beyond the standard reasons financial and commercial certainty, but may consider certain extenuating circumstances as sufficient reasons to expedite any proceedings.

### **5. Are hearings held in public and are documents filed at court available to the public? Are there any exceptions?**

Yes, the general rule under CPR Part 39 is that hearings should be held in public. However, the court can decide that a hearing be held in private in certain circumstances; for example, if publicity would defeat the object of the hearing or if the hearing involves confidential information and publicity would damage that confidentiality. The issue of privacy in the context of trust litigation came before the Chancery Jurisdiction of the Supreme Court where Dudley CJ had to navigate rights under Section 8(9) of the Gibraltar Constitution as set against the open justice principle. It is clear that the question of privacy in legal proceedings is determined by an exercise of judicial discretion (see- *AB -v- Line Trust Corporation Limited & Ors* 2022/GSC/02)

Non-parties have access to court documents, subject to the conditions set out in CPR Rule 5.4C being met. So, for example, a non-party to proceedings may obtain copies of statements of case but not of those documents which have been filed with or attached to it. They may also obtain copies of judgments or orders made in public. However, such documents can only be obtained in circumstances where the defendant has filed an acknowledgement of service, the claim has been listed for a hearing, or judgment has been entered in the claim. They could also, with the Court's permission, obtain copies of any other document filed by a party or of communications between a party and the court.

### **6. What, if any, are the relevant limitation periods?**

The Gibraltar Limitation Act 1960 sets out the following limitation periods:

- i. Contract claims: Six years from the date on

which the cause of action accrued (or the breach occurred).

- ii. Tort claims (except personal injury and latent damage): Six years from the date on which the cause of action accrued (or when the damage resulting from the tort occurred).
- iii. Claims brought in respect of deeds: 12 years from the breach of the obligation contained in the deed.
- iv. Negligence (other than in respect of personal injury or death): Six years from the date on which the cause of action accrued, or three years from the date of knowledge of the damage. These claims will in any event become time-barred after 15 years from the date of the alleged act, regardless of when it was discovered.
- v. Fraud: Six years from when the fraud was discovered.

### **7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?**

The CPR sets out rules concerning pre-action conduct which are contained in the Pre-Action Conduct Practice Direction and Protocols. Generally, parties are required to exchange information and narrow down issues between them at an early stage of the litigation. Failure to comply with a Pre-action Protocol will be taken into account in any court proceedings which follow. Non-compliance could, for example, result in adverse costs orders being made against the non-complying party.

### **8. How are commercial proceedings commenced? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?**

Proceedings are commenced by filing a claim form in the Supreme Court Registry. The Court will then issue the claim form (in practice, it seals or stamps the claim form as evidence that the Court has been seized of the dispute). The claim form is a short document, specifying the parties' names and addresses and contains a brief summary of what the claim is about. The claim form is supported (in the vast majority of proceedings) by a particulars of claim, which sets out in greater detail the subject matter of the dispute and the relief being sought. Service is necessary, and the issuing party is responsible for service of the claim form and the particulars of claim on any adverse party within the applicable time limits.

## 9. How does the court determine whether it has jurisdiction over a claim?

The two principal sets of rules that determine whether the Supreme Court of Gibraltar has jurisdiction are the common law rules and the EU Recast Brussels Regulation (1215/2012). Following the Brexit transition period, Gibraltar continues to enforce judgments under the Recast Brussels Regulation, given Gibraltar's unilateral adoption of EU law as domestic law post Brexit. The basic rule under the Recast Brussels Regulation is that a defendant must be sued in the courts of their domicile, however the general domicile rule can be displaced: with contractual disputes, jurisdiction can be determined based on the country in which the contract is performed (i.e. where the services are rendered or goods delivered). Further, there are mandatory rules on jurisdiction that cannot be displaced, even by contract: for example, if the dispute involves rights in rem in immovable property, then courts of the member state in which the property is situated shall have exclusive jurisdiction to determine the proceedings.

If the Recast Brussels Regulation on jurisdiction does not apply, then English traditional rules on jurisdiction will be relied upon. If a defendant is within the jurisdiction of the Gibraltar court and is validly served with proceedings (e.g. by personally serving an individual), then irrespective of that party's nationality or domicile, the Court has jurisdiction over the defendant. The served party can then dispute the Court's jurisdiction pursuant to CPR Part 11. If that is the case, the Court will then consider whether Gibraltar is the appropriate forum in which to litigate the dispute based on forum non conveniens principles, such as whether the contract or dispute is closely connected with Gibraltar.

Under the common law regime, the Gibraltar courts will be able to grant anti-suit injunctions restraining parties from pursuing proceedings in an EU member state. This is a useful tool previously used in Gibraltar where, for instance, a party has commenced proceedings in a non-EU country in breach of a jurisdiction or arbitration clause.

However, if a party wrongfully commences proceedings in the EU (e.g. sues in France in breach of a jurisdiction clause favouring the Court) then the Court cannot issue an anti-suit injunction, as that remedy has not been upheld when EC rules on jurisdiction apply. The court second seized must stay or decline jurisdiction until the court first seized determines whether or not it has jurisdiction to determine the dispute.

## 10. How does the court determine what law will apply to the claims?

Gibraltar is a common law, self-governing jurisdiction with its own territorial sovereignty. As such Gibraltar has its own Parliament and body of local legislation. Generally speaking, events which occur in Gibraltar and give rise to a claim within the jurisdiction will be governed by Gibraltar law. However, by way of example:

- i. Contracts: the Gibraltar Courts will uphold valid and binding choice of law clauses in contracts. This means that it would also be possible for jurisdiction to be validly exercised by the Gibraltar Courts while applying foreign law to a dispute, whether in whole or in part.
- ii. Tort: the presumptive rule here is that the proper law would apply, i.e. the law that has the closest and most real connection to the facts of the case. For example, in actions for personal injuries, it would generally be the law of the place where the injury was sustained; for damage to property, it would generally be the law of the place where the property was damaged; in other cases, it would be the law of the place where the most significant elements occurred.
- iii. Property: the rule for immovable property is that the lex situs applies, i.e. the law where the property is situated will apply for the purposes of conflict of laws. For moveable property (i.e. personal property) claims would be governed by the laws of the state where the property was located when the cause of action accrued.
- iv. Trusts and succession: where a trust concerns immovable property, the lex situs would apply to all aspects of title. Similarly, title to moveable property (including choses in action) should be determined by the law of the state where each item is located when the trust was created. Once created, the law specified in the trust instrument governs its administration. Wills will generally be governed by the law of domicile, nationality or habitual residence at the time of death.

## 11. In what circumstances, if any, can claims be disposed of without a full trial?

A claim can be dismissed without a full trial if it is successfully struck out or by obtaining a summary judgment. Summary judgments can be applied for where the Defendant has entered a defence which the claimant believes has no real prospect of success. For a strike-out

application to succeed, the threshold is high and the party applying will need to show that either the statement of case discloses no reasonable grounds for defending or bringing the claim, that it is an abuse of the Court's process or that there has been a failure to comply with a CPR rule, practice direction or court order. A claimant can also seek to enter default judgment (either on application or by request, depending on the circumstances) if a defendant fails to file an acknowledgement of service or defence within the prescribed time. A defendant may then apply to have the default judgment set aside, but he or she will need to show that he or she has a real prospect of successfully defending the claim or demonstrate that there is another good reason to allow him or her to file the defence.

## 12. What, if any, are the main types of interim remedies available?

The Court can grant a number of interim relief measures, such as search orders (enabling the applicant to enter and search the respondent's premises to preserve evidence or property), Norwich Pharmacal orders (compelling the respondent to disclose information) and security for costs or payments into court. The relief measures available to parties in Gibraltar are, to a large extent, the same as those available in England. In terms of the availability of interim remedies in aid of foreign proceedings the Gibraltar Court of Appeal authority in *Secilpar v Fiduciary* [2003-2004] Gib LR 463 determined that there is jurisdiction to grant Norwich Pharmacal relief in support of foreign proceedings by applying the constraints contained in Section 17 of the Civil Jurisdiction and Judgments Act 1993 (Gibraltar's equivalent of England's section 25 of the CJA 1982). More specifically, the Court of Appeal held that it was desirable in cases of international fraud and other cases involving serious wrongs to make a Norwich Pharmacal order to support the proceedings in a foreign Court. The Gibraltar Court regularly is asked to grant domestic injunctions in support of foreign proceedings.

## 13. After a claim has been commenced, what written documents must (or can) the parties submit and what is the usual timetable?

The following documents may be submitted after a claim has been commenced in Gibraltar (i.e. after a claim form has been filed by the claimant and issued by the Court):

1. Filing and service of the defence: The defendant has 28 days to file a defence following service of the claim form provided they file an acknowledgement of service within 14 days and do not seek to contest jurisdiction. If no acknowledgment of service is filed, the defendant must file a defence within 14 days of service of the claim.
2. Directions questionnaire: If a defendant files a defence, a court officer will serve on each party a notice of proposed allocation. Each party must file, and serve on all other parties, the documents required by the notice by no later than the date specified in it (these can include, for example, proposed draft directions and costs budgets); if the notice relates to the small claims track, at least 14 days, and if the notice relates to the fast track or multi-track, at least 28 days, after the date when it is deemed to be served on the party in question.
3. Filing and service of a reply (an optional step): Small claims track, at least 14 days; or, if the notice relates to the fast track or multi-track, at least 28 days the claimant must (a) file the reply with a directions questionnaire; and (b) serve the reply on the other parties at the same time as it is filed.
4. Disclosure and applications for specific disclosure, witness statements and expert evidence: The court will usually exercise its broad case management powers to direct how the case should be conducted going forward at the first case management conference (typically only held in large or complex claims), including making the first order for directions and setting a timetable for all the steps up to trial. These directions will dictate how the case progresses and will typically provide for the following:
  - a. The method of disclosure and when each party is to provide their disclosure;
  - b. When each party is to exchange witness statements;
  - c. If applicable, when each party is to exchange their expert evidence, when they may raise additional questions in relation to the expert's reports and when the experts must agree any outstanding issues between them;
  - d. Set down a window for when a pre-trial review is to be held (typically only in large or complex cases);
  - e. Set down a window for trial.

#### **14. What, if any, are the rules for disclosure of documents? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?**

CPR Part 31 sets out the rules on disclosure and inspection of documents. Generally, a document ought to be disclosed if it (subject to any rules of privilege):

- i. adversely affects a party's case;
- ii. supports a party's case; or
- iii. is required to be disclosed by a relevant CPR practice direction.

The court is responsible for managing the disclosure process and determining the appropriate order for disclosure. This will typically be determined at the first case management conference.

A party may withhold disclosure of certain documents if this would be disproportionate to the issues in the case and the disclosing party asserts accordingly in its disclosure statement. A party is also not required to disclose a document if disclosure would damage the public interest.

A further exception to the duty of disclosure is privilege. There are two main types of legal professional privilege: legal advice privilege and litigation privilege. Legal advice privilege applies to documents and confidential communications between lawyers and their clients made for the purpose of seeking or giving legal advice whether or not litigation was pending or contemplated.

Litigation privilege applies to documents and communications between a lawyer and their client or third parties that have been produced or created for the sole or dominant purpose of (i) obtaining advice, evidence or information in relation to an existing or contemplated litigation, (ii) obtaining information or providing advice in connection with the litigation, or (iii) obtaining or collecting evidence to be used in it, or obtaining information which may lead to the obtaining of such evidence for it.

However, a document cannot be withheld from inspection simply on the basis that it is confidential, as this does not automatically render it privileged. If a document is both relevant and confidential, disclosure should be ordered if its disclosure is in accordance with the overriding objective and, in particular, if disclosure is proportionate and necessary to ensure that the case is dealt with fairly. The Court has a discretion when ordering disclosure, and among the factors it will consider are that the documents were confidential and that to order disclosure would involve a breach of

confidence. The Court can also consider taking certain steps to preserve confidentiality, such as by redacting parts of the document, providing for anonymisation, or by holding proceedings where the document is referred to in private.

Further, if a party has failed to provide a crucial document or refuses to do so it is possible to make an application to Court for "specific disclosure". If the Court considers it just, it may order the provision of documents against a respondent's will. The Court can also require a party to carry out a specific search and to provide information as to the results of the search, attested to with a witness statement with a statement of truth.

#### **15. How is witness evidence dealt with in commercial litigation (and, in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?**

Witness evidence is typically given orally at trial, although witness statements will be filed pursuant to the directions ordered during the first case management conference and will stand as the person's evidence in chief. The parties will agree (or the Court will order) the dates on which the parties will be required to exchange witness statements (see question 13 above). The Court will ultimately decide on the weight that is to be attached to the evidence, although less weight will be attached to witness evidence that has not been the subject of cross-examination. The Court can provide directions as to, for example, the issues on which it requires evidence, the nature of the evidence that it requires to determine those issues and the way in which the evidence is to be placed before the Court (e.g. oral testimony versus written evidence). The witness and documentary evidence is tested at trial by way of cross-examination and the Court will tend to place a greater weight on the documentary evidence as opposed to a witness's oral testimony. The parties' counsel has a right to cross-examine the witnesses and experts and take them through the documentary evidence to build their case.

Depositions are permitted pursuant to CPR Rule 34.8. A party has the ability to apply for an order that a person be examined before the hearing takes place. The person would be examined by a judge or examiner, and the examination is akin to a trial in itself where there is full opportunity of cross-examination. A deposition would typically be used in situations where the witness is unable to attend trial, and their deposition would subsequently be introduced as evidence at trial.

## 16. Is expert evidence permitted and how is it dealt with? Is the expert appointed by the court or the parties and what duties do they owe?

Yes, expert evidence is permitted in Gibraltar. Experts are appointed by the parties with the court's permission under CPR Part 35. The Court may also make a direction for a single joint expert to be appointed by two or more parties.

An expert's overriding duty is owed to the court regardless by whom they are instructed and they are at all times to act independently. The expert will be required to follow the instructions given to him or her by their instructing party and their expert evidence must be given in a written report, which would be filed as part of the proceedings and which must comply with the relevant requirements of the CPR.

## 17. Can final and interim decisions be appealed? If so, to which court(s) and within what timescale?

A judgment can be appealed as soon as it has been handed down by the Court. The application for leave to appeal is typically done orally in the first instance and, if refused, it can be renewed to the Court of Appeal of Gibraltar. A notice of appeal must be filed within 14 days of the date of the judgment or order appealed against (rule 48, Court of Appeal Rules 2004). The grounds of appeal must be lodged 21 days after this, or 21 days after being informed by the Supreme Court Registry that any requested transcript (in respect of the hearing that is the subject of the appeal) is ready for collection (rule 53(1), Court of Appeal Rules 2004). If the Court of Appeal refuses leave to appeal or dismisses the substantive appeal, then the case can be appealed to the Judicial Committee of the Privy Council (predominantly justices of the Supreme Court of England and Wales).

## 18. What are the rules governing enforcement of foreign judgments?

Proceedings seeking recognition and enforcement of foreign judgment require to be brought before the Supreme Court of Gibraltar. Generally speaking, a foreign judgment will have no direct operation and cannot be immediately enforced until it has been recognised. The party seeking to enforce a foreign judgment must therefore first apply to the Supreme Court to have it recognised. Once the necessary procedural steps for recognition have been completed, the foreign judgment will be capable of being enforced

as if it was a Gibraltar judgment.

Gibraltar's sources of law in respect of the recognition and enforcement of foreign judgments are the following:

- i. Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("the Brussels Regulation") (which continues to apply to Gibraltar together with a small number of independent territories of EU member states);
- ii. Regulation (EU) 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("the Brussels (Recast) Regulation");
- iii. Brussels Convention 1968 (the provisions of which continue to apply by way of the (English) Civil Jurisdiction and Judgments Act 1982);
- iv. Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters 2007 ("the Lugano Convention");
- v. (Gibraltar) Judgments (Reciprocal Enforcement) Act 1935 (which applies to judgments from certain Commonwealth countries)
- vi. Administration of Justice Act 1920 under the English Law (Application) Act 1962 (which also applies to various Commonwealth countries);
- vii. By way of a common law action issued locally, effectively suing on the judgment debt awarded under the foreign judgment.

Notably, despite Gibraltar having left the European Union as part of the wider United Kingdom at midnight on 31 January 2020; most European law continues to apply in Gibraltar. Following the end of the Brexit transition period, Gibraltar continues to enforce judgments under the Brussels (Recast) Regulation and the Brussels Jurisdiction and New Lugano Conventions, given Gibraltar's unilateral adoption of EU law as domestic law post Brexit. Therefore, the rules on jurisdiction continue to derive from EU laws and, if those do not apply, then traditional English rules on private international law will apply.

## 19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side?

The general rule is that the unsuccessful party bears the

costs of the successful party, although the court has a discretion to make a different order (CPR 44.2(2)). In deciding this, the court will take into account different factors, including:

- i. The conduct of the parties throughout the proceedings;
- ii. Whether a party has succeeded on part of its case, even if that party has not been wholly successful;
- iii. Any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply.

Costs are usually assessed on a standard basis (which essentially means costs that are proportionate and reasonably incurred), but if the opposing side has acted unreasonably, then costs can be awarded on an indemnity basis (here, there is a presumption of proportionality of costs in favour of the receiving party, which has the effect of putting the onus on the paying party to show that the costs claimed are unreasonable).

Any question relating to proportionality is very case-sensitive. Generally, the costs incurred are proportionate if they bear a reasonable relationship to:

- i. the sums in issue in the proceedings;
- ii. the value of any non-monetary relief in issue in the proceedings;
- iii. the complexity of the litigation;
- iv. any additional work generated by the conduct of the paying party; and
- v. any wider factors involved in the proceedings, such as reputation or public importance.

## 20. What, if any, are the collective redress (e.g. class action) mechanisms?

Class actions or group litigations are generally uncommon in Gibraltar, but the market has been growing on insolvency cases (e.g. liquidators bringing claims as trustees on behalf of unsecured creditors). The Gibraltar court rules provide various procedural mechanisms for these collective actions:

- i. Related multi-party actions can be managed through group litigation orders (GLOs). A GLO is made under CPR Part 19 for claims which "give rise to common or related issues of fact or law" (otherwise known as GLO issues). The effect of the GLO is that a Group Register is established; affected claimants are required to file their own separate claim which, if they qualify, will be entered on the Group Register.

The claims are brought as a group, usually with at least ten claimants and often using the same lawyers. The Court will normally require the appointment of lead solicitors to efficiently manage the litigation. If successful, only those who have made claims which are entered on the Group Register will be awarded damages.

- ii. Other collective redress mechanisms include representative actions on behalf of a class of claimants and multi-party proceedings. Representative actions may be made by (or against) one or more persons who have the "same interest" in a claim (CPR Rule 19.6). The purpose of requiring the representative to have "the same interest" in the claim as the persons they represent is to ensure that the representative can conduct the litigation in such a way that will promote and protect the interests of the represented class. This would not be possible if there was a conflict of interests among class members. Alternatively, claims which can be "conveniently" disposed of in the same proceedings can either be brought jointly or consolidated, with the court exercising overall case management using its ordinary procedural rules.

## 21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings?

Parties can be added after a case commences either on the Court's own initiative or by the parties' application.

The Court's may join a party if it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings or if there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue.

Further, if there is more than one lawsuit relating to substantively the same parties and subject matter, the Court can consolidate them on its own initiative or following an application by the parties. The court may consolidate proceedings under CPR 3.1(2)(g), as part of its general case management powers. If a consolidation order is made, the claims which have been consolidated will proceed as one claim. The application for consolidation should be made in accordance with CPR 23 and Practice Direction 23A. The application should be made as soon as it becomes apparent that it is necessary or desirable for the proceedings to be

consolidated and should be made in time for it to be considered at any other hearing for which a date has been fixed or is about to be fixed, particularly case management conferences, allocation and listing hearings and pre-trial reviews.

**22. Are third parties allowed to fund litigation? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?**

Third-party litigation funding is possible in Gibraltar, and is an area growing in momentum in the jurisdiction. Litigation funding allows claimants to pursue meritorious claims, particularly when they have limited funds to instruct lawyers. This type of financial arrangement is popular in class actions where, for instance, a number of shareholders pursue a claim against large corporations. The funders become stakeholders in the proceedings, so their views must be taken into account as the litigation continues. Having litigation funding could persuade defiant prospective defendants to settle cases promptly.

**23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction (and in particular, have the courts adopted remote hearings and have there been any procedural delays)?**

Like in most jurisdictions, the COVID 19 pandemic had a considerable impact upon litigation in Gibraltar the most significant of which was the closure of the Courts and a general stay of civil proceedings ordered by the Gibraltar Court between March and June 2020 in line with the Government's general contingency measures. Parties to litigation were however free and able to continue complying with any pre-existing directions (such as disclosure, exchange of witness statements, etc) in order to continue to progress their litigation.

In order to mitigate the effects of the pandemic, the Gibraltar Court adopted remote hearings, both by teleconference and subsequently Microsoft Teams, whilst the number of applications heard on the papers (i.e. using only the documents filed in Court) increased considerably. There were no restrictions placed on the issuing of claim forms or originating process, however the Court retained a discretion during the pandemic to stay any proceedings of its own motion.

Beyond the height of the pandemic, and as the Gibraltar Government slowly relaxed its contingency measures, in-person hearings were allowed to proceed but only

involving advocates. Attendance was also kept to a minimum and the use of face masks was made mandatory until the further relaxation of contingency measures in late 2021.

**24. What, in your opinion, is the main advantage and the main disadvantage of litigating international commercial disputes?**

One of the main advantages is that Gibraltar is a common law jurisdiction and the procedural court rules are those contained in the CPR. The conduct of litigation in Gibraltar mirrors, in large part, the process in England and Wales. However, as a smaller and arguably nimbler jurisdiction, it is sometimes possible for cases to progress through the courts more expeditiously. There are also many mechanisms under which judgments can be enforced, and Gibraltar enjoys a solid reputation as a reliable jurisdiction in this respect.

As a smaller jurisdiction with - naturally - a more limited pool of dedicated litigation specialists, the level of expertise required in particularly complex case may not be so readily available within the jurisdiction. In the event that a matter is suitable for the instruction of specialist counsel, it is not uncommon for London silks (Queens Counsel) to appear in the Gibraltar Court on an ad hoc basis. The procedure for calling English lawyers to the Gibraltar Bar is quick and inexpensive and can be expedited by the Chief Justice.

**25. What, in your opinion, is the most likely growth area for disputes for the next five years?**

Gibraltar was the first jurisdiction to produce a piece of legislation to regulate firms engaged in the provision of distributed ledger technology ("DLT") services. As a result, a considerable number of DLT firms have either moved or set up their headquarters in Gibraltar so as to benefit from the reliability and legitimacy that a DLT Provider's licence can offer their business. The sector is still growing locally and is relatively nascent with many firms having recently obtained their licence or in the process of obtaining it. It is anticipated that commercial disputes in this space will inevitably arise as the industry continues to grow.

**26. What, in your opinion, will be the impact of technology on commercial litigation in the next five years?**

As mentioned above, DLT may have an effect on commercial litigation in Gibraltar by ushering in completely new circumstances from which disputes may arise and where the necessary expertise to deal with these issues will need to be developed.

Although hearings were dealt with remotely during the pandemic, generally speaking, in-person hearings are preferred and these have continued following the pandemic and the return of normal working practices. However, it may be the case that, moving forwards, witnesses or expert witnesses in trials who are not based in Gibraltar may not be required to physically travel to Gibraltar and can instead provide their evidence through video link given its success following the reliance that was placed on it during the pandemic.

## 27. What, if any, will be the long -term impact of the COVID-19 pandemic on commercial litigation in your jurisdiction?

It is not anticipated that the COVID 19 pandemic will have a long-term impact on commercial litigation in Gibraltar. Unlike in other jurisdictions, Gibraltar's close proximity and small central business district facilitates in-person attendance at Court. Such hearings are generally preferred to remote hearings particularly in comparison to other jurisdictions.

The backlog of cases that were vacated during the height of the pandemic has since been addressed and the Court continues to list and hear cases as usual.

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