



Sharia law. Profits derived from gambling, for example, would be considered gains attributed to chance rather than productive effort.

Transactions which involve the unfair gains of one party are not permissible by Sharia law. In a (Mudaraba), an arrangement is agreed between an entrepreneur and the bank whereby the entrepreneur provides labour whilst the bank delivers financing so that profit and risk are both shared. Profits are then divided by both parties on agreed proportions. This arrangement, in essence, reflects upon the Islamic laws that the borrower must not bear all the possible risks of failure and provides a balanced distribution of income precluding the lenders from monopolizing the economy.

Lastly transactions which contain uncertainties as to the fundamental terms of the contract, such as time and subject matter are considered void by Sharia law. Conventional insurance products would be void as there exists no certainty that the insured event will take place. Nevertheless Islamic insurance (Takaful) is already in place. This concept is based on mutual co-operation, responsibility, assurance, protection and assistance between groups of participants. In other words, Takaful may be interpreted as the profit-sharing business venture between a Takaful operator and a group of participants who want to reciprocally guarantee each other against a potential loss or damage that may be inflicted upon any one of them.

### Implementation in Gibraltar

Gibraltar like many other countries has constructed, and is in the process of implementing, legislation which complies with Islamic law and prac-

tice requirements in financial services where desirable.

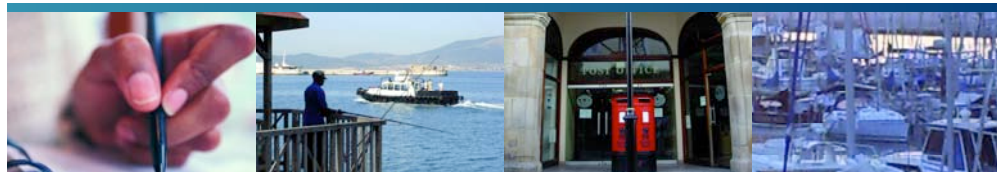
The proposed law requires that a company, partnership or individual licensed or authorized under the Financial Services Act, which carries on or proposes to carry on any financial services business in accordance to Islamic law, shall apply to the Financial Services Commission for a notice of conformity. In doing so it is necessary to provide a list of categories of products and services offered; a certificate from a Supervisory Council that all the products and services offered are in accordance with Islamic law; such other information as the Financial Services Commission may require; and an application fee.

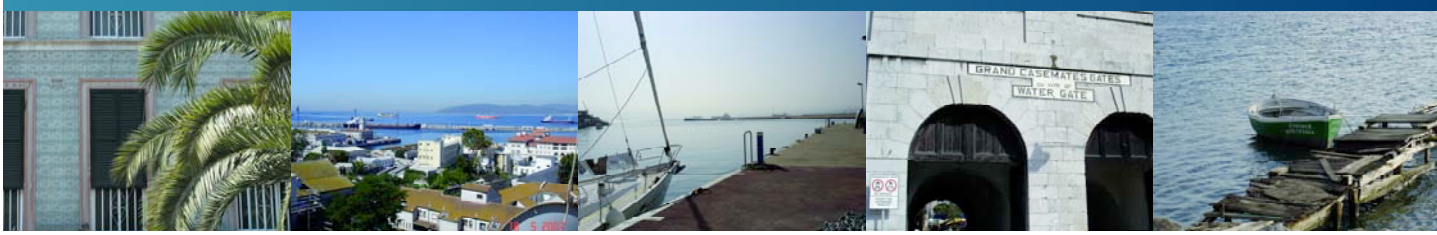
It is interesting to note that much like Islamic banks operate under the strict supervision of a Sharia committee,

ensuring that all the bank's financing methods adhere to Islamic underlying principles, the proposed legislation seems to correlate this medium of committee supervised paradigm by appointing a Supervisory Council. The Council will, as defined by the legislation, consist of not less than three persons, all of which have knowledge and experience of Islamic law and practice in relation to the categories of financial services offered or proposed.

Once this legislation is passed by Parliament, Gibraltar will be able to accommodate modern financial institutions and financing, within the limitations of Islamic law, for a market sector that according to the Auditing and Accounting Organization for Islamic Financial Institutions, has grown at a rate of 15% for each of the last three years and is currently estimated to be worth US\$200 billion.

The Banking and Finance services team organised MIFID Seminars with one of the leading London law firms, Norton Rose.





## Ship Finance in Gibraltar

### Introduction

Gibraltar, by virtue of its excellent geographical location, is one of the most historically renowned and important ports in Europe. Its maritime sector has developed significantly throughout the years creating a successful legal sector specialising in various maritime aspects including registration, seizures and arrests.

### Loan Financing

Most often than not, when a vessel/ship is purchased, the purchaser will seek financial support from

financial institutions either for part, or the majority, of the purchase price.

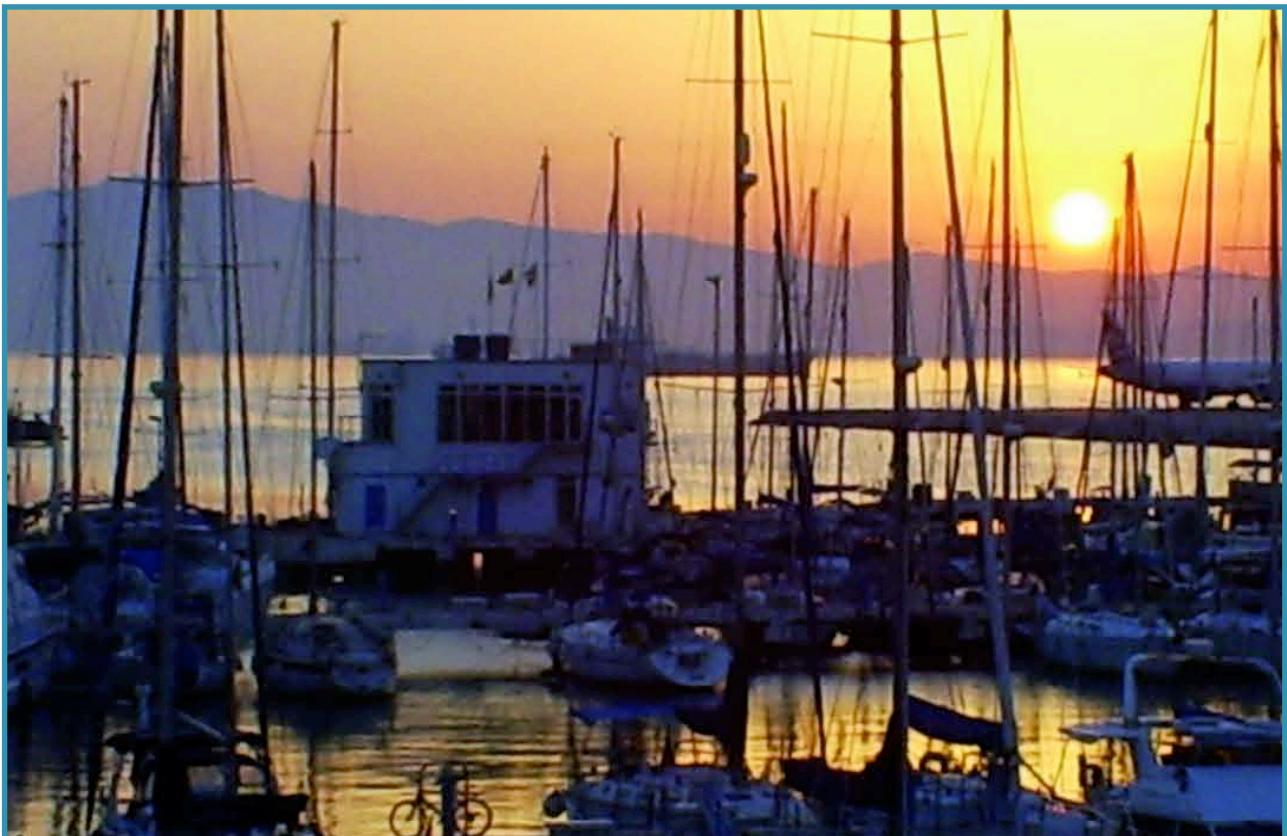
Prior to issuing the loan, the bank will have to consider carefully, amongst other factors, the vessels time and voyage charters or its residual value, given that this will generate the borrowers source of income.

If the loan is granted, it will have to be repaid by the purchaser over a certain period of time in accordance with its terms (pursuant to the Loan Agreement and Deed of Covenants)

and inclusive of interest. Most banks will finance either on a floating rate or fixed rate basis until full repayment of the loan. Interest will range anywhere between 0.5% to 2.5% over LIBOR or EURIBOR, although this will generally depend on the credit worthiness of the borrower.

It is interesting to note that many banks have adapted their loan packages to become flexible in order to suit the needs of what, may some-

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times transpire as, a volatile industry.

**Security**

The loan will usually require some form of collateral in return, and most often than not, the collateral required would be that of a mortgage over the vessel. Sometimes, a corporate or personal guarantee may be required in addition.

In Gibraltar, as in the UK, the mortgage over the vessel is required to be registered at the Gibraltar Maritime Registry. A statutory mortgage form will be required to be completed by the parties or their legal advisors.

If the Borrower is a Gibraltar body corporate, then the mortgage will also be required to satisfy the registration requirements pursuant to section 128 of the Companies Act 1930. There is a statutory time period of 21 days from the date of creation of the mortgage to effect the said registration. If the vessel is a Pleasure Yacht, then the statutory mortgage over the Pleasure Yacht will have to be registered in the Gibraltar Yacht Registry.

The Deed of Covenants, being the charging instrument that governs the terms of the mortgage in detail, including appointment of receiver and/or manager in the event of default, will also be required to fulfil the registration requirements under Gibraltar Law and this document will be registered together with the statutory mortgage on completion of the loan transaction.

The Deed of Covenants is a very important document and therefore care should be taken when drafting such a document. It is therefore strongly recommended that appropriate legal advice be sought.

**Default of the loan**

In the event of default of the repayments of the loan, the lender would be able to seek to enforce the mortgage over the vessel. This can either be done by appointing a receiver or manager, or by executing an arrest pursuant to the terms of the Deed of Covenants. This provides the lender with a right to take possession of the ship/vessel, and sell the same in order to recover the monies lent from the proceeds of the sale of the vessel.

Gibraltar's status as an arrest port has proved itself throughout the years, demonstrating its ability to arrest a ship/vessel efficiently upon default of any payments. Claimants seeking the disposition of a ship/vessel will normally apply for a court approved private sale. Gibraltar, being a small jurisdiction, is able to deal with admiralty matters promptly and therefore claimants will receive hearings within weeks. The ship/vessel will be sold through a London broker and clean title will be given to the purchaser by the Admiralty Marshal.

Our legislation in place also helps Gibraltar become more and more attractive as an arrest port given that a fee of 1% is charged for the first £15,000,000.00 and thereafter dropping to 0.75%. In the case of fleets, where more than one ship is sold, the legislation is more favourable with a sliding scale ranging from 0.8% to 0.6%. This, in essence, provides the Bank a further security

to obtain the repayment of the mortgage according to its terms.

**Conclusion**

Gibraltar, given its excellent location in the Mediterranean Sea, its fantastic bunkering services, its efficient admiralty marshal, its proven legal system and its effective structure to supply any needs required by a ship under arrest have made it a port of choice. By way of example, in August 2001 seven of the well known Abu Dhabi tankers were arrested in Gibraltar and similarly in October 2001 seven Renaissance Cruise Line ships were arrested.

**Nigel Feetham First Book on Protected Cell Companies**

In March the first book ever to be published worldwide on Protected Cell Companies (PCCs), was published – co-authored by Nigel Feetham and Grant Jones of global law firm Squire, Sanders & Dempsey. The book, is entitled *Protected Cell Companies: A Guide to Their Implementation and Use* (published by Spiramus Press Ltd).





## E-Money

### What is E-Money?

Though it's unlikely that we ever will reach the stage where hard cash disappears completely and is replaced by the ubiquitous plastic, the revolution in the way we pay our bills, or for our purchases, and the methods by which funds are transferred has been dramatic. E-Money (Electronic-Money) can be defined as an electronic store of monetary value on a technical device, which is accepted as a means of payment by persons other than the issuer.

While credit cards and the mounting private sector debts may have given 'plastic' a bad name, the 'safer' cards which limit their use to funds available in the users' account are, in theory at least, an early form of 'E-money'. This relative newcomer to the IT revolution, through technical devices such as smart cards or through the internet via 'digital wallets', allows its users to pay directly for their purchases. The amount on the device is typically prepaid into it, which means that an E-money transaction does not necessarily involve a bank account.

Gibraltar's adoption of the EU Directive on E-Money (2000/46/EC) has broken new ground. The directive provides for the authorization and supervision of E-Money institutions and seeks to regulate its use to protect consumers and prevent its use for money laundering.

E-Money can offer consumers a modern payments system that is flexible, fast and convenient - and can even be used to make low value transactions such as paying for public transport and car parks. The concept is comparable to a mobile phone pre-paid top-up card where cash is exchanged for credit to be used on the mobile phone. However, E-Money can be redeemed for cash and it can be used to purchase other goods from other entities.

Companies around the world are now selling Visa and Mastercard cards, which can be recharged via electronic money systems. These types of cards provide greater privacy and security in that customers will not be debited more than the value on their prepaid card. Such cards are also useful for people who do not have a bank account.

### E-Money Institutions

An E-Money institution is one that issues E-Money and provides for customers to store value in an electronic form. They include banks and other registered and regulated E-Money institutions and in Gibraltar the Financial Services (Banking) Act 1992 (the "FSBA 92") is the primary legislation that deals with the conditions for licensing, regulatory requirements and the provisions for mutual recognition of E-Money institutions across the EU.

In accordance with the FSBA 92, the following three conditions must be satisfied in order to constitute E-Money; it must be:

- Stored on an electronic device;
- Issued on receipt of funds for an amount not less in value than the monetary value issued; and
- Accepted as a means of payment by persons other than the issuer.

In order to satisfy the third criteria, a holder of E-money should be able to purchase goods from someone other than the entity that issues the E-Money. Therefore, this condition would not be satisfied if a particular shop that issues E-Money only allows you to use that E-Money card in that entity and nowhere else.

### Procedure for licensing

E-Money institutions in Gibraltar are subject to the Financial Services Commission supervision (the "FSC")



and its full regulatory regime including risk assessment processes and regular reporting requirements.

Initially, applicants should arrange a meeting with the Head of Banking and Investment Services Supervision, after which a written application comprising of several forms should be submitted to the FSC.

The statutory criteria that must be fulfilled in order to set up an E-Money institution and include the request for minimum capitalisation and reserves of 1 million Euros or its equivalent, anyone who is to be a director, controller or manager of the institution must be 'a fit and proper person to hold that position.'

This new payment mechanism will create new opportunities for payment companies, especially throughout the EU. The advantage of structuring such institutions in Gibraltar is that they can benefit from the freedom to provide services in the EU and the freedom to establish a place of business in any EU Member State, all on the strength of their Gibraltar authorisation.

Hassans have a wealth of knowledge and experience on the best way to set up E-money institution.

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