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Doing Business and Investing in Gibraltar

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Senior Partner's Welcome

Welcome to our Doing Business and Investing in Gibraltar guide

The continued success of Gibraltar as an investment location has been founded on the positive approach of the Gibraltar government to the development of business. This approach has ensured a favourable tax environment, competitive operating costs, a productive, flexible and highly trained workforce and a well-developed infrastructure with world-class support services.

For the investing company, doing business in a foreign environment requires local knowledge and expertise to guide it through the financial reporting and tax requirements in order to operate successfully.

This guide provides insight into the key aspects of undertaking business and investing in Gibraltar, from establishing an entity to dealing with employees. It provides answers to the many questions facing the community of overseas investors and is a great starting point for anyone looking to conduct business in Gibraltar.

PwC Gibraltar has over 100 people locally with expert knowledge and practical experience in the full range of business and legal issues ready to advise across all industries.

I hope that you find this book interesting and useful. If you have any questions or comments, please do not hesitate to contact me or one of my fellow partners.

Colin Vaughan

Senior Partner
PricewaterhouseCoopers, Gibraltar

About PricewaterhouseCoopers

The firms of the PricewaterhouseCoopers global network (www.pwc.com) provide industry focused assurance, tax and advisory services to build public trust and enhance value for its clients and their stakeholders

More than 180,000 people in 158 countries across our network share their thinking, experience and solutions to develop fresh perspectives and practical advice

“PricewaterhouseCoopers” refers to the network of member firms of PricewaterhouseCoopers International Limited (PwCIL).

Each member firm is a separate legal entity and does not act as agent of PwCIL or any other member firm. PwCIL does not provide any services to clients. PwCIL is not responsible or liable for the acts or omissions of any of its member firms nor can it control the exercise of their professional judgment or bind them in any way. No member firm is responsible or liable for the acts or omissions of any other member firm nor can it control the exercise of another member firm’s professional judgment or bind another member firm or PwCIL in any way.

In Gibraltar, PricewaterhouseCoopers Limited aims to be recognised as the leading professional services firm by bringing real value to our clients, investing in our people and supporting our local communities. We are able to draw on the knowledge and skills of more than 60 partners and staff.

You can discover more about PricewaterhouseCoopers Gibraltar on our website at www.pwc.gi.

About this guide

How to use this guide

This guide is designed so that you, the reader, can go directly to any section that is of interest to you. That said, we hope you will take the opportunity to read the guide in its entirety.

Whichever way you use it, we hope that you find the guide useful should you choose Gibraltar as the location for your business.

The purpose of this book

This guide does not attempt to cover every issue nor does it cover specific tax and regulatory issues relating to particular industries/sectors that might impact on you when doing business in Gibraltar. It merely seeks to answer generally the questions that most commonly arise. You should always seek independent advice as the guide has been prepared for general guidance on matters of interest only.

History

Gibraltar's strategic importance has given it a long and turbulent history and an influence on world events out of all proportion to its size and population. Its name is a legacy of the 8th century Arab invasion of mainland Spain, when the Moorish leader Tarik based his troop-ships there. The name is derived from Gibel (or Jebel) Tarik, meaning the mountain of Tarik. Although it was captured and held briefly by the Kingdom of Castile between 1309 and 1333, the Rock remained as a symbol of Moslem domination of the Western Mediterranean until finally regained by Spain in 1462. Britain captured the Rock in 1704 during the War of the Spanish Succession. Its cession to Great Britain in perpetuity was confirmed by the terms of the Treaty of Utrecht in 1713, when it became a British possession.

Wide publicity has been given over many years to Spain's claim to the Rock, the British possession of which it regards as prejudicing its territorial integrity. Despite its obligations under the Treaty of Utrecht, Spain has besieged the Rock on a number of occasions, the most notable being the Great Siege of 1779 to 1783. More recently, pressure has taken the form of a closure of the land frontier between 1969 and 1982. In response to this threat, the constitution granted in 1969 enshrines a commitment by the British Government, which has been frequently reaffirmed, never to cede the territory to Spain against the wishes of the population.



Why Gibraltar?

- *Political*
- *Legal*
- *Commerce*
- *Environment*

Over the last fifty years, Gibraltar has developed a significant degree of political autonomy and self-government whilst maintaining a stable and mature relationship with Britain which has steadily evolved since its capture by an Anglo-Dutch force in 1704. The Rock of Gibraltar was formally ceded, in perpetuity, to Britain by the Treaty of Utrecht of 1713.

Gibraltar enjoys a special relationship with the European Union. Whilst it is absolutely within the European Union under Article 227(4) of the EEC Treaty by virtue of being a European territory for whose external relations Britain is responsible, Article 28 of the 1971 UK Accession Treaty relieves Gibraltar from the common customs tariff, the common agricultural policy and the harmonisation of turnover taxes, in particular VAT.

Gibraltar is within the European Economic Area and forms part of the Single European Market for services, including financial services. Gibraltar's financial institutions are able to take full advantage of this position and are able to "passport" their services throughout the European Economic Area. And therefore have access to a market of close to 500 million people.

Its population is approximately 30,000. Most inhabitants are bilingual in English and Spanish although the official language is English.

Constitutionally, Gibraltar is an overseas territory of the United Kingdom with internal self-government except in matters of defence, internal security and foreign affairs which are the responsibility of the United Kingdom.

In 2008 Gibraltar was named (by Jane's Country Risk) as the fifth most prosperous state measured by political stability, economy and security.

Legal

Gibraltar is the only common law jurisdiction in continental Europe

The legal system is based on the common law and statute law of England and Wales and therefore embodies the advantages and security of British company and trust law. Nevertheless, local statute law has developed differently insofar as the Gibraltar Parliament has enacted and amended laws to suit Gibraltar's own particular requirements.

There is a Magistrates' Court, a Supreme and a Court of Appeal.

The Supreme Court of Gibraltar has a criminal jurisdiction similar to that of the English Crown Court, and a civil jurisdiction which is equivalent to that of the English High Court.

There is also a Court of Appeal for Gibraltar, which is not resident, but holds three sessions each year. The Justices of Appeal are in the main, drawn from the English Court of Appeal.

As well as the security of a legal system based on UK common law and statute law, Gibraltar's lawyers and accountants are qualified in the United Kingdom.

Gibraltar enjoys the benefits of a fused legal profession so that barristers and solicitors enjoy the same rights and privileges as regards appearance before the Courts and direct contact with clients. The affairs of the profession are administered by the Gibraltar Bar Council.

The legal adviser to the Crown is the Attorney General who combines this function with that of Director of Public Prosecution.

Gibraltar's economic growth rates in recent years have consistently been among the highest of the OECD countries.

Gibraltar has no significant manufacturing activity or natural resources and is therefore heavily dependent on imports.

Its economy is based on services, the drivers of which have changed dramatically as a result of the significant run-down of the Ministry of Defence establishment and the military base. Traditionally, the local labour force had, in the main, provided support services to the Ministry of Defence, augmented by the retail sector and tourism. Developments over the last 20 years in particular, have shifted the economic drivers from the public to private sector control.

The main sectors of the economy today are financial services, e-online gaming, tourism, a vibrant retail shopping district and port services including ship-repair and ship conversion. New sectors being promoted are light manufacturing, telecommunications and import/export operations.

The local tender is the Gibraltar pound which circulates freely on a par basis with the British sterling pound.

There are no restrictions on the repatriation of earnings, capital, royalties or interest and repatriation payments may be made in any currency. Similarly, there are no restrictions on the importation of capital to Gibraltar. Residents and non-residents may operate bank accounts in any currency and Gibraltar businesses are free to open bank accounts in any location outside Gibraltar. Inward investors must, of course, have regard to exchange control regulations in their home countries.

Commerce - continued

There is a well-developed and sophisticated banking system experienced in handling the requirements of overseas companies. Banks, and indeed all other financial services providers, are licensed and regulated by the Gibraltar Financial Services Commission (FSC).

The most recent International Monetary Fund report, entitled the 'Assessment of Financial Sector Supervision and Regulation' published in May 2007, stated that "Gibraltar has a well-regulated financial sector".

The 2007 IMF report found that in all areas of banking, insurance, anti-money laundering and counter-terrorist financing, Gibraltar was judged to have met the international standards demanded of any reputable finance centre and indeed, to be ahead of many onshore, and much larger finance centres.

Environment

Gibraltar is a peninsula approximately 3 square miles/4.8 square kilometres in area, a rocky out-crop at the southern-most point of Spain, which enjoys a typically temperate Mediterranean climate. It is situated between two continents and, as one of the legendary Pillars of Hercules, was said to guard the gateway to the Mediterranean.

The success of Gibraltar as an investment location has been founded on the consistently positive approach of the Gibraltar Government to the development of businesses. This approach has ensured the availability of a well-developed commercial and physical infrastructure with world-class support services, from banking and trade finance to efficient transport logistics and sophisticated telecommunications.

Access to Spain is across a land border and traffic across it, both pedestrian and vehicular, is often intense. There is a minimum of four daily flights to and from the UK.

Malaga airport is an hour's drive away with an established and recently substantially enlarged international airport with many daily scheduled flights to the UK as well as numerous other European destinations.

The Government of Gibraltar is endeavouring to promote the Rock as an international e-Business Centre and firmly believes that it is in a position to benefit greatly from information, communication and technological related services.

Environment - continued

The ICT revolution has created new economic opportunities for many countries with a resulting profound impact on commerce, education, entertainment, banking, leisure, travel and legislation. Governments, organisations and businesses alike need to re-think and adapt their operational models in order to keep up with an ever-changing business environment that benefits from these advances.

The Government of Gibraltar has consequently developed strategies to create a setting for businesses to trade electronically. This online business environment has been supported by a faster and more reliable framework of modern telecommunications, physical infrastructure and enabling legislation.

This liberalisation of telecommunications and the transposition of relevant EU Directives into local legislation gives Gibraltar a competitive advantage over other offshore jurisdictions operating in the same market space.

Despite its small size, a wide selection of quality office space, warehouses and light industrial areas is available.

The Environmental Charter forms the basis of the Government's approach towards a sustainable and healthy environment for its residents and defines the Government's environmental policies.

The planning authorities and the Environmental Agency work closely with promoters to ensure that a reasonable balance is achieved between protection of the environment and the promoter's commercial requirements.

Environment - continued

Education

Education generally follows the English model operating within a three tier system and it is free, full-time and compulsory for Gibraltar residents up to the age of 15.

There are a number of state school as well as one private school in Gibraltar. English is the language of instruction and all curricula are governed by the National Curriculum Regulations which is based on the National Curriculum for England. All teacher-training takes place in UK universities and colleges. In addition, teachers must have be registered with the UK Department for Education.

The standard of teaching is considered to be high with average number of GSCE and A-Level passes consistently exceeding the UK national average.

There are currently no facilities in Gibraltar for full-time higher education. Degree and Higher National Diploma courses are generally followed at UK Universities. Gibraltar Government Scholarships are available to eligible students.

The Government of Gibraltar recently formally launched plans for the establishment of the University of Gibraltar which is set to open for business on 1 September 2015.

Environment - continued

Housing

Gibraltar has traditionally suffered from a shortage of housing mainly due to an expanding population and shortage of land. Many Gibraltarians and expatriates working in Gibraltar live in neighbouring Spain where property prices are significantly lower.

Considerable investment by the Gibraltar Government in recent years in large scale land reclamation projects and in the construction of affordable housing developments has eased the shortage.

Also the last decade has seen the completion of a large number of private luxury developments which have filled the much needed gap between the supply and the high demand for these type of properties.





Common Questions

● ● ● *What type of legal presence do I require?*

● ● ● *How do I establish the entity?*

● ● ● *What tax issues do I need to consider?*



How do I deal with my employees?



What regulatory matters do I need to consider?



What other factors impact my doing business in Gibraltar





1

What type of legal presence do I require?

- *Choice of entity*
- *A place of business*
- *Branch*
- *Private company*
- *Other options*

Choice of entity

There are three principal ways for a foreign investor or company to carry on business in Gibraltar.

You may:

- register a place of business
- register a branch of your company, or
- incorporate a private (or public) limited company.

Before making your choice, you should consider the following questions.

- How substantial will my business activity in Gibraltar be?
- What risks do I anticipate during the initial set-up?
- How long do I expect to do business in Gibraltar?
- What are the associated regulatory costs?
- What are the disclosure requirements?
- What are the tax implications?
- What are the commercial considerations?

A place of business

Registering a place of business is generally more appropriate for non-trading entities with no selling activity in Gibraltar.

A place of business is:

- a contact point for your company, or
- a non-trading branch of your company.

Every entity with a non-trading office in Gibraltar must establish a place of business.

To register a place of business you must submit the following documents to Companies House:

- the official name of your company
- the country of incorporation
- the address of the place of business in Gibraltar
- details of the directors and secretaries
- details for the person authorised to accept service of process on behalf of the company
- a certified copy of your company's constitutional documents
- a certified translation of those documents (if they are not in English), and
- the registration fee.

Branch

It is important to note that a company registered in the United Kingdom may not register as a branch in Gibraltar but may register a place of business

A branch is:

- a part of your company (and thus does not have a separate legal existence in Gibraltar), and
- subject to tax in Gibraltar.

It provides:

- a more substantial presence than a place of business, and
- the opportunity to engage in trading activity with customer and/or post-sales support.

To register a branch you must submit the following documents to Companies House:

- the official name of your company
- the country of incorporation
- details of the directors and secretaries
- details of a person authorised to accept service of process on behalf of your company
- a certified copy of the company's constitutional documents
- a copy of the company's latest audited accounts
- a certified translation of those accounts and the company's constitutional documents (if they are not in English), and
- the registration fee.

Branch - continued

You have the option of establishing the branch through a new subsidiary of your company.

This has two benefits:

- you would not have to register your company's accounts, merely the subsidiary's, and
- the liability of the shareholders of the subsidiary would be limited to the amount of any uncalled capital on their shares.

Private company

Limited company

A private limited company is a separate legal entity with its own limited liability. It may be limited by guarantee or by its issued share capital or both.

If you choose to set up a private limited company as a Gibraltar subsidiary, you will not be liable for the debts and other liabilities of the subsidiary beyond the unpaid amount on the shareholders' issued share capital, unless you have provided an express guarantee in respect of the subsidiary's liabilities.

On the one hand, a private limited company:

- is much more substantial than a place of business or a branch and thus offers far greater assurance for customers and others who come into contact with the business, and
- offers flexibility of ownership (it can have one or more shareholders).

On the other hand, it must comply with accounting, audit and regulatory requirements. The main compliance obligations for a private limited company are:

- filing an annual return with the Registrar of Companies. This contains information about the company as at the anniversary of incorporation, such as share capital and officers
- filing statutory accounts for the company for each financial year/period and circulating those accounts to its members
- notifying the Registrar of Companies of any event-driven changes to the company (for example, resignation and appointment of directors, a change in the share capital and a change of registered office address), and
- maintaining statutory registers for the company.

Private company - continued

Limited company - continued

To qualify as a private limited company the company must in its Memorandum and Articles of Association:

- limit the number of its members to 50
- restrict the members rights to transfer shares, and
- prohibit any invitation to the public to subscribe for shares.

Unlimited company

This is a business entity with no limit on the members liability in the event that the company's assets are insufficient to discharge the creditors. In practice, the use of unlimited companies is confined to situations where greater flexibility is required in the return of share capital.

Other options

It is also possible to form:

Public limited companies

Public limited companies have the same characteristics as private limited companies. The word “public” does not refer to the listing of the company’s shares on a stock exchange but to the fact that the shares in issue are freely transferable. A public limited company must have more than seven shareholders and paid-up capital of at least £20,500.

European company

The European company (Societas Europaea) is a form of public company which may be operated on a Europe wide basis, avoiding the legal and practical constraints arising from the existence of different legal systems in each of the member states of the EU. There is a minimum capital requirement of €120,000. Such companies are relatively rare.

Partnerships

A partnership is a relationship between two or more people carrying on a business in common with a view to profit. A partnership is required to register its business name with the Registrar of Business Names but it does not have a legal personality separate from its partners.

The partnership does not enter into contracts in its own name, but in the names of its partners. Similarly, the assets of the partnership belong jointly to all partners who are jointly and severally liable for the debts of the partnership.

Other options - continued

Limited partnerships

A limited partnership is comprised of at least one general partner (who has unlimited liability) and one or more limited partners. Limited partners are liable for partnership obligations only to the extent of the cash and property they contribute or to the extent that they have received back the whole or any part of the capital so contributed.

The general partner may be a limited company but if it is, the limited partnership is obliged to file its accounts for public record with the Registrar of Companies.

European Economic Interest Group ("EEIG")

An EEIG is a vehicle which allows companies or individuals of different EU States to combine and register in any EU country a grouping which has a legal personality which means it can conclude contracts, be sued and can operate across national frontiers. An EEIG is transparent for tax purposes.

There is no capital requirement and therefore unlimited joint and several liability of the members. An EEIG must have at least two members based in different Member States.

An EEIG is unable to:

- hold shares in any of its members
- be a member of another EEIG
- employ more than 500 persons, or
- be used to make loans to a company director or any person connected with him where that would be restricted or controlled by national law

Sole proprietorship

An individual setting up a business may do so as a sole proprietor. Because the business is undertaken directly by the owner, he or she is personally liable for the business's obligations.





2

How do I establish the entity?

- *Legal requirements*
- *Is my corporate name available?*
- *What are my duties as a director?*
- *Companies Act*
- *Insolvency*

Legal requirements

Registration requirements

A business seeking incorporation as a private limited company must file the following with Companies House:

- signed Memorandum of Association – the Company's name and business activities (its objects)
- signed Articles of Association – the internal rules under which the Company will be run
- details of the Registered Office, director(s) and secretary
- a statutory declaration confirming compliance with the various requirements, and
- the registration fee.

When satisfied that all formalities have been followed, Companies House issues a certificate of incorporation.

A private company may commence trading immediately.

A public company requires a certificate of entitlement from Companies House to commence business.

Licensing requirements

Any person wishing to buy or sell any product in the course of business, whether on a wholesale or retail basis, or wishing to engage in commercial activity generally, requires a license.

A Trade Licence is also necessary to obtain a Customs code for the importation of goods in commercial quantities.

Commercial activities that require a Trade Licence include: building contracting; catering; hairdressing and manufacturing.

Legal requirements - continued

Financial Services

Financial service companies are subject to regulation by the Financial Services Commission and require an appropriate licence, see page 75.

Additional requirements

Every company must:

- appoint auditors, unless its turnover, balance sheet total and income liable to tax in Gibraltar are below specified thresholds
- keep a register of its shareholders (known as members), including their names and addresses, the number and class of shares they hold and the date on which they became members of the company
- keep a register of charges (mortgages and other secured interests)
- keep a register of its directors and secretary
- deliver to Companies House an annual return, no later than the filing deadline, and
- deliver to Companies House statutory accounts for each financial year/period, no later than the filing deadline for delivery of the accounts

Penalties may be levied for not meeting these obligations.

Annual general meeting (AGM)

The Companies Act requires that an AGM is held each year so that the accounts can be put before the members. The first AGM of a company must be held within 18 months of the date of its incorporation and thereafter each calendar year held within 15 months of the previous AGM. However, a Gibraltar private limited company may dispense with the requirement to hold an AGM by the passing of a special resolution.

Is my corporate name available?

You may not choose a name for your company that has already been registered at Companies House. If the name incorporates the registered trade mark of a third party you may be in danger of infringing that trade mark.

If you choose a company or trading name that is identical or similar to that of another company, you may also risk becoming the target of a 'passing off' action by that other company.

Trade mark infringement and passing off is usually limited to situations where the two businesses are in a similar trade. However, it can occur even where the businesses are not in a similar trade. To avoid these problems, you should conduct a series of searches, including a search at Companies House, as well as wider searches for businesses using the relevant name. It is recommended that you employ the services of a professional firm that specialises in this area of the law.

Your company's name may not include such words as 'Gibraltar', 'International', 'British', 'Holdings' or 'Group' without the prior approval of Companies House. Certain other words such as 'Financial', 'Bank', 'Trust' or 'Insurance' require approval by the Financial Services Commission.

What are my duties as a director?

As a director, you are responsible for the day-to-day management of the company and you are subject to various statutory duties that, if breached, can result in personal liability.

The duties, which are set out in the Companies Act, include the requirements to:

- (a) act in accordance with the company's constitution and only exercise your powers for the purposes for which they were conferred, and
- (b) act in a manner that you consider, in good faith, to be the most likely to promote the success of the company for the benefit of its members as a whole. When exercising this duty, you must have regard to a number of issues, including:
 - the likely consequences of any decision in the long term
 - the interests of the company's employees
 - the impact of the company's business on the community and the environment
 - the need to foster the company's business relationships with suppliers, customers and others
 - the desirability of the company maintaining a reputation for high standards of business conduct, and
 - the need to act fairly between members.

In discharging your duties, you must also exercise:

- reasonable skill, care and diligence, and
- independent judgement.

What are my duties as a director? - continued

You also have a duty to avoid a situation in which you have a direct or indirect interest that conflicts with the interests of the company and to disclose the existence of any interest in any proposed or existing contract with the company. In addition you must not accept benefits from third parties if they could give rise to a conflict of interest.

In cases of actual or prospective insolvency, your duties are still owed to the company but you must act in the best interests of the creditors, rather than its shareholders.

Personal liability is also imposed in certain situations for permitting an insolvent company or prospectively insolvent company to continue trading unless you can demonstrate that it is beneficial for the creditors to continue to do so.

Companies Act

The formation, management and organisation of a company in Gibraltar is largely governed by the Companies Act.

The Act addresses, among other things:

- how share capital is organised, reduced and increased
- the records that must be kept of the company's ownership
- how directors must regulate their affairs
- distribution of profits and assets
- the requirement for a company to be audited, and
- how a company can be wound up and its affairs brought to an end.

The public filing of financial statements, audit requirement and directors' report are covered in the Companies (Accounts) Act.

The consolidation of group accounts and exemptions from consolidation by small groups or a company whose accounts are consolidated into the accounts of its ultimate holding company are covered in the Companies (Consolidated Accounts) Act.

It is important to note that the Registrar of Companies may strike defunct companies off the register on the premise that the company appears not to be active. Typically, this happens when a company fails to file annual returns for 3 consecutive years.

Insolvency

The administration, receivership and liquidation of companies as well as the bankruptcy of individuals is covered by the Insolvency Act.

It addresses amongst other things how creditors of a company or an individual can protect themselves and how their competing claims are dealt with in the event of insolvency or bankruptcy.

Liquidation

A company is put into liquidation by the appointment of a liquidator.

A liquidator may be appointed by:

- the members of the company, where the company is solvent, or
- the court, when the company is insolvent.

Members' Voluntary Liquidation ("MVL")

Where the company is solvent the members or shareholders of a company may resolve to place the company into liquidation and to distribute the remaining assets held in the company amongst themselves.

The directors will need to swear a Declaration of Solvency under which they confirm that the company will be able to pay its debts over the following 12 months.

Once the liquidator has settled any claims and distributed all the assets amongst the shareholders, the liquidator will call for a final meeting, notice of which is published in the Gibraltar Gazette.

Once having filed all the necessary returns with Companies House, the company will be dissolved within three months of the date of the final meeting.

Insolvency - continued

Court Order Appointment

Any creditor of a company can issue a petition to Gibraltar's Supreme Court to have a company wound up. Ordinarily, petitions are issued on the premise that a company is unable to settle its debts or that it is unwilling to do so. If a petition is to be issued on this basis, the creditor would firstly need to demonstrate that a statutory demand was served against the company and that the same failed to settle the debt within the statutory period.

A company may be wound up by the court where:

- the number of members is reduced below the minimum required by the companies act
- the court is of the opinion that it is just and equitable, or
- it is in the public interest.

Company Voluntary Arrangements

A company may take steps before being forced into liquidation by entering into a legally binding compromise with its creditors agreeing how the company's liabilities and/or debts will be repaid and the extent of such repayment. The process is generally started by the directors of the company submitting a proposal to the company's creditors when they believe the company is insolvent or close to becoming insolvent.

The directors' proposal is submitted to a "nominated insolvency practitioner" who is appointed as Interim Supervisor. The insolvency practitioner will in turn report to the company's creditors who would vote in favour or against the submitted proposal. In order for the agreement to be binding upon secured creditors, these would also have to vote in favour of the proposed agreement.

Insolvency - continued

Administration

The directors or a creditor of a company or the holder of a floating charge may apply to the court for an administration order. The objectives of the administration are to rescue the company as a going concern or to achieve a better result for the creditors than if the company were to go into liquidation.

Receivers and Administrative Receivers

A receiver may be appointed by a debenture-holder or by the court. The function of a receiver is to take possession of the assets subject to the debenture-holder's charge and sell them so that the debenture-holder can be paid off.

The receiver has a duty to obtain the best price reasonably obtainable on the time of sale.

An administrative receiver is appointed in the same way as a receiver but is a receiver of the whole of the business and all of the assets of the company.

Disqualification orders and malpractice

A company director may be disqualified from acting as such if:

- they are found guilty of fraud
- they have an order against them in connection to insolvent or fraudulent trading
- they have been convicted on indictment of an offence in connection with the activities of the company, or
- the court is convinced that the person is unfit to be a director of the company.

Insolvency - continued

Disqualification orders and malpractice – continued

Where it has been proven that a company traded whilst insolvent, or it carried out any fraudulent trading, the court may make orders against the directors to compensate the company for any losses suffered.

The court also has the power to order any individual other than a director who has been involved in the promotion or business activities of the company to repay or compensate the company if the court is satisfied that they misapplied, retained or become accountable for any of the company's money or assets.

A director of a company that has been wound up may be prohibited from being appointed director or taking part in any way in the promotion or business activities of a company that shares a similar or same name as that of the company that has gone into compulsory liquidation.

Personal bankruptcy

Individual voluntary arrangements (“IVA”) are available to an individual and the procedure is similar to that available to companies.

A creditor can, in spite of the absence of an IVA, petition for a bankruptcy order to be made against an individual (“the debtor”). The same grounds have to be satisfied as with corporate entities. An Interim Receiver may be appointed to secure the assets of the debtor and, if the petition is successful, the court will grant a bankruptcy order against the debtor and a trustee in bankruptcy is appointed.

The functions of the trustee are to realise all of the debtor's assets and use these to settle the claims received from their creditors.





3

What tax issues do I need to consider?

- *Corporation tax*
- *Repatriation of profits*
- *Personal taxation*
- *Employee taxes*
- *Trusts*
- *International tax initiatives*

Corporation tax

For many years, Gibraltar has used tax measures as a means of facilitating the establishment and expansion of indigenous and overseas companies. The main emphasis of the current tax regime for trading companies is on a single low rate of tax. The rates of corporation tax are contained in the most recent edition of our publication **Gibraltar Tax Facts**.

Taxes on corporate income

Income tax in Gibraltar is charged on income accruing in or derived from Gibraltar:

A company will be considered resident in Gibraltar for tax purposes if the management and control of its business is exercised from Gibraltar. The location of management and control is established under legal principles laid down in the United Kingdom and is the place of the highest form of control and direction over a company's affairs, as distinct from decisions on the day-to-day running of the business.

A company that is ordinarily resident in Gibraltar but earns profits outside Gibraltar may not be subject to tax in Gibraltar. The broad principle established by the Commissioner of Income Tax is that where a company has rendered a service or is engaged in an activity, the profit will have accrued in or derived from the location where the service was rendered or the activity or the preponderance of activities which gave rise to the profits took place. If this is outside Gibraltar then there is no liability to tax in Gibraltar.

If the activities which give rise to the profit relates to a business whose underlying activity requires a license the business shall be deemed to take place in Gibraltar.

Corporation tax - continued

Taxes on corporate income - continued

Taxable trading profits are calculated in accordance with generally accepted accounting principles, with certain statutory adjustments. Some of the most common adjustments include the following:

- expenditure that is incurred wholly and exclusively for business purposes may be deducted
- amortisation of capital expenditure deducted in the accounts by way of depreciation must be added back to the net profit or loss figure in the accounts and statutory 'capital allowances' are deducted instead
- certain expenses are deducted on a 'paid basis' (eg, staff bonuses and pension contributions), and
- general provisions and provisions for contingent or future losses contained in the accounts must be added back, as only specific provisions are permitted to be deducted for tax purposes.

There is no capital gains tax in Gibraltar. In addition, Gibraltar's access to EU directives results in the elimination of withholding tax on dividends received in Gibraltar and enables mergers and corporate re-organisations to be undertaken on a tax-efficient basis.

Corporation tax - continued

Dividends

An imputation system is used whereby tax paid by a company is, deducted from the personal liability of a shareholder who receives dividends paid from the company's profits.

There is no tax payable by a company on dividends paid to either another company, including another Gibraltar company, or a non-resident individual.

Royalties and licensing

Royalty income and licence fees are taxed at the standard corporate income tax rate.

Interest

Companies with a banking or money lending licence and earning interest as a trading receipt will have that interest treated as income chargeable to tax.

Interest received or receivable by a Gibraltar company, arising from an inter-company loan, will be chargeable to tax at the standard corporate income tax rate. Where the interest received or receivable is less than £100,000 per annum, the interest is exempt from any charge to taxation.

All other interest received or receivable is not taxable in Gibraltar.

Interest on borrowings used for the purposes of a trade or business is tax-deductible on an accruals basis, subject to certain anti-avoidance provisions.

Corporation tax - continued

Capital allowances

Book depreciation is not deductible in computing business profits for tax purposes. Tax depreciation allowances are available in respect of capital expenditure. This is available in the form of a first year allowance up to a maximum fixed amount with the balance deductible at a percentage per annum on a reducing balance basis. Details of the relevant percentages and allowances are contained in the most recent edition of our publication **Gibraltar Tax Facts**.

Losses

A trading loss incurred in an accounting period may be set off against trading income, if any, arising in the same period or subsequent periods. There is no provision for carrying back losses.

Group relief

There is no group relief available in Gibraltar.

Capital gains tax

There is no capital gains tax in Gibraltar.

Capital duty

Capital duty of £10 is payable on the initial authorisation of share capital or any subsequent increase thereto

Repatriation of profits

Repatriation of profits from a Gibraltar company is normally achieved through dividend payments. However, profits may also be repatriated through interest charges, royalties, central cost re-charges or through certain other methods.

Dividends

There is no withholding tax on the payment of dividends.

Interest

There is no withholding tax on the payment of interest on an arms length basis. Due to certain anti-avoidance provisions the expenses may be restricted for tax purposes.

Royalties

There is no withholding tax on the payment of royalties in respect of registered patents. Due to certain anti-avoidance provisions, the expenses may be restricted for tax purposes.

Central cost re-charges

There is no withholding tax on central cost recharges subject to the Commissioner of Income Tax being satisfied that the costs have been wholly and exclusively incurred in the production of income and that the costs reflect a true and fair allocation of the actual costs incurred.

For branches, head office expenses where the expense is incurred in common with the branch in Gibraltar and the other branches of the company and is shared on an apportionment basis, the expenses are restricted for tax purposes to 5% of the Gibraltar branch's turnover.

Personal taxation

In Gibraltar, an individual is assessed for income tax for the financial year starting on 1 July in one year and ending on 30 June in the following year.

Income tax

Income tax is charged on an individual's income accruing in, or derived from Gibraltar. It is also charged on certain income, accruing in, derived from or received in any place other than Gibraltar by any person ordinarily resident in Gibraltar.

An individual is considered resident in Gibraltar for tax purposes if the individual is present in Gibraltar for either at least 183 days in any tax year or over 300 days in aggregate over three consecutive years of assessment.

Individuals which carry out activities in Gibraltar for a period of less than 30 days in aggregate during the year of assessment will not suffer tax on the income from their activities in Gibraltar where these activities are ancillary to this employment which is performed exclusively outside of Gibraltar.

The rates of income tax and the allowances available to individuals are contained in our publication **Gibraltar Tax Facts**.

Capital gains tax

There is no capital gains tax in Gibraltar.

Inheritance tax

There is no inheritance tax in Gibraltar.

Wealth Tax

There is no wealth tax in Gibraltar.

Personal taxation - continued

Fiscal incentives

Gibraltar has introduced a number of fiscal incentives which allows certain categories of resident individuals to limit the total tax payable in any fiscal year, subject to certain criteria being met.

Individuals with substantial assets and/or income may, therefore, choose to establish their tax residence in Gibraltar and take advantage of the applicable rules in their tax and estate planning, thereby limiting their tax liability on worldwide income.

It should be noted that there is no requirement under the rules for a minimum number of days of residence in Gibraltar.

These benefits, together with the fact that no capital gains tax, wealth tax or inheritance tax is payable in Gibraltar make residence in Gibraltar an attractive proposition for individuals who are able to fulfil the criteria required.

In order to qualify for application of the fiscal incentives, the individual needs to have available for his or her exclusive use residential accommodation in Gibraltar, approved for this purpose by the Finance Centre Director, which must be of a standard commensurate with the lifestyle of such an individual.

The detailed criteria required for an individual to apply under these rules together with the amount of tax payable may be found in our publication

Gibraltar Tax Facts.

Employee taxes

Collection of employee taxes is initially effected under a Pay As You Earn (“PAYE”) system. Employers are required to operate the system without exception, to keep appropriate records and complete the necessary filings.

The PAYE Regulations require each employee to obtain from the Commissioner of Income Tax a PAYE allowances certificate which allocates a code to the employee. The employer is required to use tax tables issued by the Income Tax Office to calculate and deduct tax from emoluments in accordance with the employee’s applicable code. The employer is then obliged to pay over to the Commissioner any tax so deducted by the fifteenth day of the following month.

An employer must also account for social insurance payments in a similar manner, deducting and paying over the employee tax as well as accounting for employer’s social insurance.

The rates of employee income tax and social insurance contributions are contained in the most recent edition of our publication **Gibraltar Tax Facts**.

Trusts

Trusts have been used by wealthy individuals for centuries as a way for them to structure their estate and succession planning.

The use of trusts in international business has developed rapidly in recent years. Trusts have become an instrument of choice for many individuals, and increasingly corporations, who wish to take advantage of the many benefits offered by this creation of Anglo-Saxon law, including

- tax mitigation
- asset protection
- succession planning, and
- ease of transfer of assets.

Trusts created by a non-resident of Gibraltar for non-resident beneficiaries are exempt from all taxes in Gibraltar. They need not be registered and thus are confidential and private arrangements.

Trusts may be used for the general protection of assets in a variety of circumstances. Clients consider using a trust to deal principally with family issues but also in circumstances where there is a political, economic or social threat to their assets.

In an inter vivos trust, there is no change of ownership of assets when the settlor dies as these are already vested in the trustee and this may avoid the need for probate of a will, thereby ensuring smooth and easy succession of ownership or rights.

Trusts enable individuals to plan the succession of their assets with great flexibility and they may make ongoing changes to their plans. The individual may wish to preserve family wealth or to determine the manner in which family members will benefit from assets well beyond the time of his death.

International tax initiatives

Double taxation treaties

Gibraltar has not concluded any double tax treaties with any countries.

Double taxation relief

When a Gibraltar tax resident is in receipt of income which is liable to tax in Gibraltar and this income is derived from overseas and has already suffered tax at source, relief is allowed in respect of that income of an amount equal to the tax already deducted or the Gibraltar tax, whichever is the lower amount.

Tax information exchange agreements

Gibraltar has entered into a number of tax information exchange agreements (“TIEAs”) with other countries.

These agreements provide for the efficient exchange of information between the tax authorities in Gibraltar and those of the requesting country.

The competent authority in Gibraltar to obtain and provide information and articles of evidence, serve documents, execute searches and seizures is the Chief Secretary.

Where the information requested is not made available, the Chief Secretary has statutory powers to compel disclosure of it from any person known to be in possession of it.

International tax initiatives - continued

Global forum on transparency and exchange of information for tax purposes

Based on the latest progress report by the OECD, Gibraltar is on the list of jurisdictions that have substantially implemented the internationally agreed standards on disclosure of information for tax purposes, the so-called ‘white list’.

Transfer pricing rules in Gibraltar

Where a non-resident transacts business with a tax resident and the transaction reduces the profits of the resident by more than the ordinary profits which might be expected to arise from that business, then in the case where the non-resident is a connected party or in the case of interest the loan is secured on assets belonging to a connected party certain anti avoidance provisions apply.

By using the “anti-avoidance” provisions of the Income Tax Act the Commissioner is able to disregard a transaction if he is of the opinion that the transaction is either artificial or fictitious.

Appointment of agents

Where a non-resident is trading with a resident and the Commissioner deems that such income should be subject to tax in Gibraltar then he may declare that the non-resident shall be assessable and chargeable to tax in the name of the resident as if such person was an agent for the non-resident.

International tax initiatives - continued

Savings Directive

Where a paying agent in Gibraltar makes an interest payment to a beneficial owner, that is a natural person, resident in another EU member state (or a country with a bilateral agreement with the EU), the minimum amount of information to be reported to the competent authority shall consist of:

- the identity and residence of the beneficial owner
- the name and address of the paying agent
- the account number of the beneficial owner, and
- information concerning the interest payment.

The competent authority shall transmit the information to the competent authority of the member state of residence of the beneficial owner within six months following the end of the tax year in which the payment was made.

For residents of the United Kingdom there is an obligation on the paying agent to withhold tax from the amount of the interest payment.

A beneficial owner resident in the United Kingdom may request that no tax be withheld where:

- he authorises the paying agent to report all interest payments made to the competent authority, and
- he presents to his paying agent a certificate drawn in his name by the competent authority of the United Kingdom.



4

How do I deal with my employees?

- *Employee contracts*
- *Employee benefits*
- *Immigration*

Employee contracts

Gibraltar law grants employees a range of protections that creates obligations and potential risks for employers. Although these are generally less stringent than in other European countries, you will nonetheless need to be aware of them.

The obligations an employer owes its Gibraltar employees include:

- a general duty to provide a safe place of work, safe access and safe work systems, supported by related obligations to provide staff with certain health and safety information
- a requirement to provide a written statement of terms and conditions of employment to employees within two weeks of commencement of employment (a contract of employment can satisfy this obligation)
- an obligation to pay employees at least the national minimum wage, which is a fixed hourly rate and is reviewed annually
- an obligation not to discriminate against employees (including job applicants) on a range of grounds, including race, colour, nationality, ethnic origin, age, gender (including sexual harassment), marital status, religion or religious belief, sexual orientation, disability, or part-time or fixed-term status
- various benefits and rights which must be given to employees in connection with giving birth, adoption and other family situations
- a requirement to observe limitations on the freedom of an employer to process personal data obtained about its employees and job applicants, including transferring it to third parties (these limitations are strict in relation to personal data which is 'sensitive' and where the data may be transferred outside the EU to countries with lower levels of privacy protection)

Employee contracts - continued

- various rights for employees which protect them in the event of termination of employment, including a minimum notice entitlement and a right to a statutory payment on being made redundant
- a requirement not to allow an employee to work excessive hours beyond 48 hours per week (on average over a four month period) subject to certain exceptions, and
- a duty to give each employee a minimum amount of paid holiday each year.

It is beneficial for an employer to establish a comprehensive contract of employment to be issued to each employee. This can include all of the terms and conditions of employment, covering the rights described above, and in addition protect the employer's business interests by placing obligations on the employee.

Examples are specific requirements to keep information about the business and its customers confidential, provisions securing ownership of inventions and developments made in the course of employment, and covenants restricting certain competitive activities after employment ends, such as poaching customers or key staff.

Employers frequently supplement this contract with a formal staff handbook setting out company policies, including those that support compliance with the issues referred to above, such as discrimination/harassment and data protection.

The contract of employment is an important tool in setting out the terms of any benefits provided, most notably bonuses. Precise language in the contract can clarify the employee's rights and may save the employer unexpected costs on termination of employment.

Employee contracts - continued

Information and consultation

The right to membership of a trade union or other collective rights are less significant in Gibraltar than in many other European countries. The law in Gibraltar requires an employer to recognise a trade union or establish a national works council or committee in certain circumstances, but only where such an arrangement is specifically requested by a union or employee. As a result, many Gibraltar companies have no such arrangements in place.

Employee benefits

A contract of employment may include terms relating to:

- salary
- potential bonuses, and
- benefits provided by the employer to employees such as the provision of a car or medical support.

Providing benefits (rather than paying a higher salary) can have tax advantages for both the employer and the employee.

The employer is responsible for reporting any benefits provided to an employee in an annual return to the Income Tax Office.

There is no statutory requirement for employers to fund retirement benefits for employees although the majority of employers elect to do so. Other additional benefits such as bonus, health insurance and car allowance are a matter of choice for the employer.

Immigration

Gibraltar has its own immigration and asylum policy, administered by the Immigration Section of the Civil Status & Registration Office. It works in conjunction with the Ministry of Employment in the regulation of work permits and both departments have made changes to allow for a more streamlined process for work authorisation applications in skill shortage areas.

Work permits

In general a non-EEA (European Economic Area) national requires a work permit in order to be employed or self-employed in Gibraltar. The EEA covers the European Union as well as Switzerland, Iceland, Liechtenstein and Norway. Applications for a work permit are made by the employer.

Visas

Individuals from certain non-EEA countries, as well as stateless persons, require a visa to travel to Gibraltar. There is an official list, which changes regularly, of non-EEA countries, the nationals of which require a visa.

It should be noted that the granting of a visa is a form of pre-entry clearance only, granting permission to the individual to present himself/herself at a point of entry in Gibraltar to seek permission to enter the country.

As a general rule, those who require a visa for entry to the United Kingdom also require a separate visa for entry to Gibraltar. In general, the visa application must be made to the Government of Gibraltar's Immigration Department.

Gibraltar is outside the Schengen area. Persons who hold a Schengen visa and intend to enter Gibraltar from Spain should ensure that they will be able to return to Spain.

Immigration - continued

Residence permits

Gibraltarians and British citizens are allowed to live and work in Gibraltar without a residence permit. Nationals of other EEA states must prove that they will not become a burden on the state before they will be issued a residence permit. Non-EEA nationals must first produce a work contract, and that can only be issued if the employer can prove that no Gibraltarian or EU citizen is able or willing to do the job.



5

What regulatory matters do I need to consider?

- *The regulatory environment*
- *Accounting & audit requirements*
- *Money laundering*
- *Data protection*
- *Financial services*
- *The Port*
- *Gaming*

The regulatory environment

Gibraltar attaches great importance to free competition. As a result:

- price controls are not imposed
- there is a complete absence of exchange controls, and
- no restrictions are imposed on foreign ownership or investment.

Most businesses in Gibraltar are impacted by regulations relating to:

- health and safety (of employees, consumers and the general public), and
- technical standards (of quality and interoperability).

In addition, regulated utilities (see below), companies engaging in financial services (see page 75), port services (see page 79) and gaming (see page 80) are subject to further regulation.

EU competition law places restrictions on certain agreements, particularly those between competitors, including cartels. It also prohibits exploitation of a dominant position and anti-competitive practices, such as predatory pricing or refusal to supply.

The Gibraltar Regulatory Authority (“GRA”) has responsibility for enforcing competition law in certain sectors primarily the utilities sector, in which suppliers are mainly former Government-owned entities that were privatised in the 1980’s and 1990’s.

The GRA can place limits on price increases and impose licence conditions on other aspects of the business, such as required coverage of the market and compulsory access to its infrastructure for other operators.

Accounting & audit requirements

Books and records

The Gibraltar Companies Act requires that accounting records explain the company's transactions and enable the directors to ensure that the annual accounts comply with the requirements of the Act. These records must in particular detail the following:

- all sums of money received and expended, and the reason for the receipts or expenditure
- the assets and liabilities, and
- all goods sold and purchased.

There is no requirement as to the form in which accounting records must be kept, but they must be able to disclose with reasonable accuracy, at any time, the financial position of the company.

The accounting records must be kept at the company's registered office or at such other place as the directors think fit. The records may be kept outside Gibraltar, but, if they are, certain accounts and returns must be sent to and retained in Gibraltar. Accounting records should normally be retained for a period of six years.

Accounting reference period

The accounting reference period is generally 12 months, except the first accounting reference period, which must not be more than 18 months after the company's date of incorporation. A company may alter its accounting reference date, subject to certain limitations. A branch generally takes on the accounting reference date of its parent company.

A public company must file its accounts at Companies House within ten months of the accounting reference date, whilst a private company has 13 months in which to file its accounts.

Accounting & audit requirements - continued

Accounts and reports

A company must prepare accounts for each financial year, comprising as a minimum:

- a directors' report
- a balance sheet as at the last day of the financial year
- a profit and loss account for the period of the financial year, and
- a cash flow statement (unless, according to the statutory definitions, a company is either small or medium-sized).

Accounts signatories

A company's annual accounts must be approved by the board of directors and signed on the board's behalf by two directors, or if there is only one director, signed by that director.

The signature must be on the company's balance sheet. The date the directors approved the accounts should be stated, ideally next to the signature on the balance sheet.

Audited financial statements

As a general rule, all trading businesses incorporated under the Companies Act are required to have their annual accounts audited by a Gibraltar registered auditor. The Commissioner of Income Tax does not require small companies that have less than £1,000,000 of income subject to taxation in Gibraltar to submit accounts that have been audited.

In addition, a public company, bank, insurance company or any other company authorised or licensed by the Financial Services Commission is required to conduct a statutory audit, irrespective of its size.

Accounting & audit requirements - continued

The auditors are required to report to the members as to whether or not the financial statements have been properly prepared in accordance with the Companies Act and whether or not they show a true and fair view of the company's operations. In forming their opinion, auditors must also consider whether or not the following questions have been satisfied:

- have proper accounting records been kept?
- are the annual accounts in agreement with the accounting records?
- have they received all information, explanations and returns necessary to form their opinion?
- whether the information in the directors report is consistent with the accounts.

If they are not satisfied in any of these respects, the auditors must declare that fact in their report.

Auditors

A Gibraltar company's auditor must be registered with the Financial Services Commission.

A company's auditor is appointed by the shareholders at the annual general meeting to hold office until the end of the next annual general meeting.

Circulation of accounts

A copy of the accounts, together with the directors' and auditor's reports on those accounts, must be sent to the persons entitled to receive them.

Removal of auditors

The audited entity and statutory auditor shall notify the Financial Services Commission of the dismissal or resignation of the statutory auditor during the term of appointment.

Accounting & audit requirements - continued

Public availability of accounts

Accounts are available for public inspection, on payment of a small fee, at Companies House. Public companies must file a complete set of accounts. Private companies must also file a complete set of accounts unless they are classed either as 'medium-sized' or 'small' companies, in which case (with certain exceptions) they may file abbreviated accounts.

Banks and insurance companies are required to file a full set of accounts.

If the directors take advantage of the filing exemptions for small and medium-sized companies, the balance sheet must contain a statement declaring this fact.

A branch is not required to undertake a separate audit but is required to file its main company's accounts (as audited in its home country) at Companies House.

Money laundering

Anti money laundering legislation requires certain businesses to register with their relevant supervisory authority, have systems in place to prevent money laundering and report suspicious transactions. The categories of business within the scope of the regulations generally include any company required to be licensed by the Financial Services Commission or the Gibraltar Regulatory Authority amongst others.

You should, therefore, establish at an early stage whether your new business:

- will be subject to the regulations, and
- needs to be registered with a relevant supervisory authority.

2007 IMF Report

“Gibraltar authorities are to be commended for the resources they have devoted to international cooperation on money laundering and terrorist financing cases”.

Data protection

You must comply with the local data protection legislation in relation to your business's collection and use of details relating to individuals, such as customer or employee records.

The Gibraltar Regulatory Authority ("GRA") is the supervisory authority for the enforcement of the data protection legislation. Under powers conferred upon the data protection commissioner ("DPC"), the GRA ensures that a system is in place which monitors the application by businesses of the legislation.

The data protection legislation regulates the processing of personal data about 'data subjects' (ie, the individuals to whom the personal data relates). It imposes obligations on a 'data controller' (ie, the person, individual or corporate, who decides how the data will be used). Your business will be a data controller except to the extent that it holds personal data solely on behalf of another entity. Most businesses, organisations and public bodies which process information by computer will need to register with the DPC.

Personal data is information about people who can be identified. It includes both simple information such as a name or address and more complex information such as pay, financial, educational and/or criminal records.

There are five key responsibilities and failure to comply can result in having to pay financial compensation and imprisonment. These are:

- obtaining and processing data lawfully and fairly ie, ensuring that the people about whom you keep the information know that you keep it and the purposes for which you keep and use it and that the information is only stored and used as permitted by the law

Data protection - continued

- obtaining and using information only for a specific purpose - ie, in a manner compatible with the purpose or purposes for which you have informed them the information will be kept or used
- making sure information is accurate and up to date
- keeping information safely and securely, and
- not allowing access to the individual's personal data to anyone who asks of it.

Transfers of personal data to countries outside the European Economic Area ("EEA") are prohibited unless the recipient country ensures an 'adequate' level of data protection for individuals.

There are several exceptions to the restriction on transfers of data outside the EEA, including where:

- the data subject has consented to the transfer (however, the data subject must be made aware of the risks associated with the transfer and obtaining such informed consent is often difficult to achieve)
- the transfer is necessary for the performance of a contract with the data subject, and
- the rights of the data subject are protected by the transferor and transferee who have entered into a contract based on EU-approved terms (under which the data subjects have direct enforcement rights).

Financial services

“Gibraltar has a well Regulated Financial Centre” – IMF 2007

The Financial Services industry is regulated in Gibraltar by the Financial Services Commission (“FSC”). Any person who carries on a regulated activity in Gibraltar must be authorised by the FSC or benefit from an exemption. A business that is in breach of this requirement may be committing a criminal offence. It will also be unable to enforce its agreements and may have to return money and pay compensation to its customers. It is important, therefore, to establish at an early stage whether or not your proposed business requires you to apply for authorisation to carry on regulated activities.

If your business does need to be authorised, certain individuals within the business, including, for example, the chief executive officer, will also need to be approved by the FSC.

It is also worth bearing in mind that the type of entity you choose to carry on a financial services business in Gibraltar may be influenced by your proposed business model. For example, if you are based in a non-EEA country, and your new business is established as a limited company, it may be able to exercise rights under EU single market laws to ‘passport’ certain financial services into other EEA states. The process of obtaining passporting rights is fairly simple and straightforward, however such ‘passporting’ rights will not be available if your business is set up as a branch.

Before it provides authorisation, the FSC will need to be satisfied that your business meets certain fundamental conditions. The authorisation process involves submitting a detailed business plan, operations manual, financial forecasts and details of any outsourcing arrangements so that the FSC can be satisfied that the business will meet all aspects of the regulatory requirements.

Financial services - continued

The FSC is a friendly and approachable regulator which welcomes contact with licensees and meet the very highest standards of supervisory best practice across the world. The officials are always happy to meet potential applicants and discuss the merit of their applications before the businesses commit resources to obtaining a licence. This also helps to save time as they can provide guidance on arrangements they would be happy to accept and those that would not meet the criteria set out in the regulations.

Examples of the types of business that will require authorisation include:

- banks
- investment firms
- insurance companies and insurance intermediaries, and
- mortgage lenders and intermediaries.

The FSC also requires banks and investment firms to assess their risks and undertake an independent capital adequacy assessment process (“ICAAP”). After receiving the results of the ICAAP, the regulator will adjust the level of capital proposed in the ICAAP to one that it deems appropriate and proportionate. The regulator is the final arbiter on this issue.

The 2007 IMF Report found that Gibraltar companies derived considerable benefits which included “a more efficient application process, and accessibility of the Supervisor and Commissioner for decision making.

Financial services - continued

Deposit Guarantee Scheme

All Gibraltar licensed banks are required to be members of the scheme which guarantees compensation to a depositor in situations where a bank has failed (i.e. inability to repay its depositors or subject to some form of insolvency proceedings) up to maximum fixed account.

In the event of a failure by one of the scheme's banks, the scheme will pay limited compensation to a qualifying depositor. Joint accounts are divided equally between account holders where there is no indication of the share of each holder in the account and partnerships or similar associations will be treated as one claimant for these purposes.

When a default is declared, the remaining participants will be charged one or more levies to meet the costs of the compensation payable under the scheme.

The scheme only covers deposits denominated in Euros or currencies of EEA states. Certain deposits such as deposits from institutional investors and fiduciary deposits among others are also excluded from the scheme.

Financial services - continued

Investor Compensation Scheme

All Gibraltar firms licensed to hold or manage investments are required to be members of the scheme which provides limited protection to investors in the case of failure (i.e. inability to repay its investors or subject to some form of insolvency proceedings) of one of its members

Compensation by the scheme is limited and subject to a maximum fixed amount in respect of eligible investments held by an eligible investor. Joint accounts are divided equally between account holders and each claimant is subject to the maximum compensation.

When a default is declared, the remaining participants will be charge one or more levies to meet the costs of the compensation payable under the scheme.

Professional and institutional investors as well as counterparties are not eligible for protection.

The Port

Gibraltar is a key service point for the global shipping industry, a major cruise ship destination and important centre for ship registration and ship finance. The promotion and control of the port is the responsibility of the Port Authority.

The Captain of the port oversees all operational matters including navigational safety and the smooth running of the port.

Given its British Dependant Territory status, ships registered in Gibraltar are British ships and fly the defaced red Ensign with the Gibraltar Arms. Being in the EU a Gibraltar registered ship can take advantage of EU rules on freedom of maritime transport between member states.

Ships registered in Gibraltar are required to pay an annual tonnage tax, subject to a maximum cap. Ship maritime law is based on the English legal system.

Gaming

Gibraltar is a well recognised and established online gaming jurisdiction and is recognised by the UK as a 'white listed' jurisdiction which means that all licensed operators are allowed to advertise in the UK.

All gaming operations in Gibraltar require licensing. Remote Gaming licences, including for telephone and internet betting, are issued by the Licensing Authority. The Licensing Authority will only consider licensing blue chip companies with a proven track record in gaming, licensed in a reputable jurisdiction, of good financial standing and with a realistic business plan.

The gaming operators need to comply with strict advertising guidelines as well as anti money laundering, customer privacy and data protection legislation.

They need to ensure that at all times there is adequate funding to pay out all current and reasonably estimated prospective obligations in respect of pay outs.

The licensees are obliged to file audited accounts annually with the Licensing Authority.

An important condition of the licence is that the gaming operator must at all times be effectively controlled and managed from Gibraltar.

Gaming tax is levied at a percentage of the gaming income, subject to a minimum and maximum cap. The rate and caps can be found in the most recent edition of our publication **Gibraltar Tax Facts**.



6

What other factors impact my doing business in Gibraltar?

- *Bank account set-up*
- *Business insurance*
- *Acquiring land and premises*
- *Exchange control*
- *Customs and excise duties*
- *Grants*
- *Intellectual property*

Bank account set-up

Generally, all new businesses need a bank account. There are a number of internationally recognised banks licensed to operate in Gibraltar most of which provide a full range of banking services.

Before setting up a bank account for their new customers, Gibraltar banks undertake customer due diligence, which is part of the anti-money laundering regime and is a key requirement of the legislation in Gibraltar.

“Know your client” procedures, in other words, identification of customers and their source of funds, help to ensure that the banks know who they are dealing with, thereby protecting themselves by identifying the beneficial owners and obtaining information on the intended purpose and nature of the proposed bank account.

You should not under-estimate the time it will take to establish a business bank account and the earlier you start to communicate with the bank, the better. This is particularly important if you intend to have direct payment arrangements set up to enable your employees to be paid directly by bank transfer from the outset of business.

Business insurance

Apart from employee liability insurance, most insurances are at the discretion of the company. Ideally, a company may consider extending cover from its home country for some insurances, such as director and officer insurance, public liability and product liability. Alternatively, it may seek a broker to obtain local cover and include property and content insurances as well as various employee insurances for travel, health, etc.

Acquiring land and premises

When acquiring land or taking a lease of premises in Gibraltar you should take advice from specialist advisers such as estate agents or surveyors, to ensure that:

- the price/premium and rent service charge demanded by the seller or landlord are not too high, and
- the other terms are fair and commercial and not too advantageous to the seller or landlord.

Leases can be complex and you should seek the advice of a specialist property lawyer before making a commitment.

Stamp duty is payable on the transfer or sale of any Gibraltar real estate or shares in a company owning Gibraltar real estate on an amount based on the market value of that real estate.

The amount of stamp duty payable is a percentage of the value of the real estate and this percentage varies depending on the amount of the consideration paid. The rates of stamp duty are contained in our publication **Gibraltar Tax Facts**.

One-year leases are available on occasion. However, these tend to be granted only for premises where the landlord provides all the services. Leases usually last for at least five years. Some contain break clauses that allow the tenant to terminate the lease after, say, two or three years. However, such clauses inevitably come at a price.

Landlords usually demand that tenants pay a deposit or provide a guarantee as protection against non-payment of rent and other expenses. A landlord is almost certain to demand a deposit or guarantee when the tenant is a new company.

Before making any alterations or improvements to your premises, you should check the lease to see if the landlord's consent is required.

Acquiring land and premises - continued

Once you have selected your property or premises, you should consider such issues as:

- funding the acquisition price or lease premium and/or security deposit and rent
- fitting out the premises
- the amount of rates (annual property taxes) payable
- the amount of stamp duty payable and whether the property interest requires registration.

These all have tax consequences and you should obtain advice before taking any action.

All development requires planning permission (in addition to approval under the Building Regulations where relevant) before works may start. The decision-making authority is the Development and Planning Commission.

Where a proposed development carries a high risk of environmental pollution, an integrated pollution control licence must be obtained from the Environmental Agency. Activities that are likely to require such a licence are those involving the generation of toxic waste, emissions of toxic material into the air or water and operations likely to cause noise pollution. Once licensed, the Environmental Agency will closely monitor the development and may amend the licence to impose stricter environmental controls. The planning authorities and the Environmental Agency work closely with promoters to ensure that a reasonable balance is achieved between protection of the environment and the promoter's commercial requirements.

Exchange control

Gibraltar does not have exchange control. There is complete freedom of movement in respect of all capital and current account transactions, not only with member states of the EU, but with all countries.

Customs and excise duties

On accession to the EEC in 1973, Gibraltar was excluded from the Customs Union and therefore goods imported into Gibraltar from another country, including EU member states, are subject to local customs and excise duties. By positive contrast, there is no VAT in Gibraltar.

Customs and excise duties are collected and administered by the Collector of Customs. Duty is payable on importation of most goods into Gibraltar, with the exception of food and books.

The majority of goods imported into Gibraltar are cleared through Customs using dedicated customs clearance agents.

For most goods, customs duties are charged as a percentage of the value of the goods. For customs purposes, the appropriate value is the "customs value" or "transaction value" of the goods. This is normally the price paid for the goods, together with insurance costs and costs of freight to the point of entry into Gibraltar.

Duty on alcohol and petrol is based on volume and can vary depending on the types of alcohol and fuel being imported.

Duty on tobacco is based on weight and is charged at a fixed price per kilo plus an additional duty which is levied on the number of cigarettes imported.

Motor vehicles imported by licensed car suppliers pay duty at varying rates depending on engine size. Individuals importing cars directly pay duty at much higher rates.

Equipment imported for the exclusive use of HM Armed Forces may under certain circumstances be imported free of customs duties.

In addition, the Government periodically exempts certain classes of goods from import duties.

Customs and excise duties - continued

Bonded stores

Application for a licence for the operation of a bonded store is made directly to the Collector of Customs and is valid for a year. Bonded stores are operated by businesses in the import and export trade, where goods transit through Gibraltar without the payment of import duty.

Grants

Various financial incentives and other forms of support may be obtained by businesses wishing to establish or develop operations in Gibraltar. These are available if the proposed project meets the relevant eligibility criteria and contributes towards the economic development of the region. A range of schemes is available to assist small and medium sized enterprises to start-up or expand in business. These schemes include Development Aid and European Union Funds.

Development Aid

Licences may be granted for certain development projects that provide economic and social benefits to Gibraltar. If a licence is obtained, a portion of the total capital expenditure, as determined by the Development Aid Advisory Committee, qualifies for tax relief. The developer is exempt from income or corporation tax in respect of any gains or profits from the relevant project until aggregate gains exceed the approved portion of capital expenditure on the project.

The profits of the enterprise may also be distributed to the beneficial owners free of tax up to the amount granted under the licence. Interest received on loans made to a licensed project is also exempt from income tax, provided the terms and conditions of the loan have been approved. Finally, occupiers of property relating to a project that has been granted a Development Aid licence may be entitled to tapering relief on the municipal rates payable to the Government.

European Union Funds

Gibraltar is classed as an Objective 2 region of the EU and is entitled to financial support from the European Regional Development Fund and the European Social Fund. Funding assistance of 30% and 45% is normally available for ERDF and ESF projects respectively.

A number of programmes also exists to provide funds for cross-border and inter-regional projects.

Intellectual property

You should take steps to protect your company's (and, where necessary, the rest of the group's) intellectual property, especially as rights that require registration (for example, patents and trade marks) are territorial in nature and therefore require active steps to ensure protection in Gibraltar.

You may, for example, wish to register trade marks to protect your company's, or group's, corporate name, trading style or product/service brands. This can be done under a pan-European trade mark registration procedure.

You should also ensure that your business operations do not infringe the intellectual property rights ("IPRs") of other businesses.

In many cases – but not all – IPRs developed by an employee will be owned by his or her employer. Where IPRs are created by someone outside the organisation (through the use of outside consultants, for example), you should protect your right to own those IPRs under a contract, as the rights may not vest automatically in the company.

You should seek expert legal advice in order to:

- identify your IPRs
- avoid infringing the IPRs of others
- secure protection where active steps are required
- where necessary, approach any third parties who you think may be infringing your IPRs.

Trade or business names can be registered with Companies House.

Intellectual property - continued

A company's trading name, product/service brands, associated strap lines, logos and other aspects of get-up or brand image can be protected as registered trade marks. A trade mark must have been previously registered in the UK prior to being registered at Companies House. A wide variety of marks can be registered – a word, design, shape, colour, smell or sound – so long as it can be described graphically. Logos may also be granted copyright protection if they meet the necessary criteria.

You may still have some rights in relation to your brand, even if it is not registered as a trade mark. Nonetheless, registration is still advisable, because it confers a statutory monopoly for the use of that trade mark in relation to the goods or services for which it is registered and similar types of goods and services. As a result, an action for infringement of a registered trade mark is much simpler than a passing off action.

Patents must also have been previously registered in the UK prior to registration with Companies House.



7

How can PwC help you?

- *General overview*
- *Project appraisal*
- *Start-up phase*
- *The established business*

General overview

If you are investing in Gibraltar for the first time you will require a wide range of professional services to assist you with the smooth, efficient establishment of your operations.

We can assist first time investors in Gibraltar by managing the project and co-ordinating the delivery of a full range of our professional services to ensure that all regulatory, taxation and legal issues have been dealt with. The co-ordination is undertaken by one key contact who is appointed to look after all aspects of the company's establishment. This can also include introductions to third-party service providers such as banks, lawyers, estate agents and recruitment firms, and the provision of a wide range of information relevant to doing business in Gibraltar.

We have provided a summary of the services we offer at each stage of a company's establishment in Gibraltar under the following headings:

- project appraisal
- start-up phase, and
- the established business.

Project appraisal

This is the most important phase of the process as you need to be able to assess critically a large amount of information which you will use to make your investment decision.

We maintain a database of the information that is typically required by inward investors and have dedicated staff who are used to dealing extensively with overseas companies which are considering Gibraltar as a location for the first time.

We provide timely and informative answers to questions relating to investing in Gibraltar and can alert you to issues that you might not otherwise have considered. The key services we provide during the project appraisal stage are listed below.

Site selection and evaluation

Overseas investors will often require a feasibility study to be undertaken. We are able to examine issues such as labour, general infrastructure, capital investment, communication, the impact of grants and tax incentives, site and property availability and market reviews.

For investors that wish to compare Gibraltar as a potential location with a number of other short-listed countries, we will work closely with other PwC offices.

Tax incentives

Gibraltar offers very attractive tax incentives to overseas investors. We will review proposed operations to determine the appropriate tax rate and, where necessary, advise on any changes required to ensure the optimum tax rate is achieved. We will liaise with the tax authorities on your behalf in order to identify sources of income not subject to taxation in Gibraltar and advise on steps that can be taken to minimise the related tax costs.

Project appraisal - continued

Grant availability

There are a number of grants available for overseas investors doing business in Gibraltar that satisfy prescribed eligibility criteria. Our specialist staff can provide details of all grant schemes and advise on the likely level of grant aid, having regard to the nature and scale of the proposed project.

We will also contact Government agencies on your behalf and assist with the negotiation process to ensure that the level of grant assistance and the terms and conditions of payment are as advantageous as possible.

Start-up phase - continued

Once you have made the decision to invest in Gibraltar there are a number of key issues that require careful planning and consideration. The services which may be required by you are listed below.

Corporate structure

It is critical at the start-up stage for you to select the most effective corporate structure for your overseas operation. We provide advice and information on the choice of legal entity and the relative merits of each type and structure.

We will liaise closely with other PwC specialists in the investor's home country and work creatively to select a structure which maximises the benefits of the investment in Gibraltar and which meets your business objectives. We will select a structure for you that is as simple as possible to administer from a corporate viewpoint, that maximises the benefit of Gibraltar tax incentives and that is sufficiently flexible to meet your changing requirements.

Corporate compliance and regulatory services

We are able to advise and implement the appropriate structure for you. We can assist you with the registration of your chosen entity (company, branch, trust, partnership).

We will ensure that your chosen entity is properly registered with the tax authorities and relevant statutory and regulatory bodies.

Where your company is involved in licensable activities we will assist you with the application process.

Start-up phase - continued

Systems selection and design

We provide practical advice and assistance in relation to the development and documentation of internal control procedures. Our specialists in information technology (IT) provide a range of services to assist companies with the selection and implementation of the most appropriate system.

Human resources

Overseas investors with limited knowledge of the local market usually require specialist help to recruit local staff, particularly at executive level. Our human resource specialists provide a range of services, including:

- executive search and selection
- employment law
- reward and benefits bench-marking and design, and
- tax-favoured, share-based and other incentive schemes.

Start-up phase - continued

Services to expatriates

Overseas investors will generally appoint staff from the parent or other group companies to assist with the start-up phase in Gibraltar. There are tax implications for such personnel, as well as personal issues such as housing, schools, health care etc. Our expatriate management group, made up of HR, tax, relocation, immigration and employee benefits professionals, have many years of experience in international assignment and relocation programme management. Our services include:

- immigration advice and processing
- design of tax-efficient international assignment/relocation policies
- employee orientation meetings
- relocation guides
- assistance with tax and social security registration
- assistance with home country tax exit
- net-to-gross/gross-to-net comparisons (Gibraltar vs home country), and
- tax and social security returns.

Start-up phase - continued

Stock options

We provide a comprehensive range of services to assist in the implementation of any share option scheme including designing the scheme, drafting any necessary documentation, securing tax authorities' approval, acting as trustees (subject to any securities law restrictions) and administering the scheme generally.

Payroll

Some overseas companies in the start-up phase do not wish to take on the organisation and administration of the payroll.

We provide a turn-key service to such companies by undertaking the complete payroll function, including making salary payments to employees by bank transfer.

The established business

Once your business has been set up in Gibraltar we will continue to provide you with the high level of support and range of professional services from PwC to which you have become accustomed.

Audit

To comply with local statutory requirements, the annual financial statements of companies incorporated in Gibraltar must normally be audited. The audit is recorded on a computer-based system and uses the latest technologies to improve the audit quality, enabling us to provide you with more information, more answers and more direction. The same audit procedures, technical standards and working techniques are used in all PwC offices throughout the world. This is an important factor in ensuring a consistently high quality audit service world-wide.

Taxation

In addition to meeting your tax compliance responsibilities, you should periodically review your tax position to ensure the continued growth and development of your business.

We have the skills and experience in all areas of taxation - corporate and personal, direct and indirect, national and international - to help you with your compliance responsibilities, make maximum use of tax advantages available to you and minimise your tax exposure.

We provide on-going tax advice on both routine issues and on the tax implications of major business decisions.

Grants

Once an overseas company has secured grant assistance, it is important that it fulfils the conditions attaching to the offer, maintains proper records and makes regular claims for the grants due.

The established business - continued

We will assist you in preparing grant claims and provide you with the auditor's certificates that must accompany the claims. On an on-going basis, we provide information on new grant schemes and incentives that may be open to you and alert you to European grant programmes for which you may be eligible.

Advisory

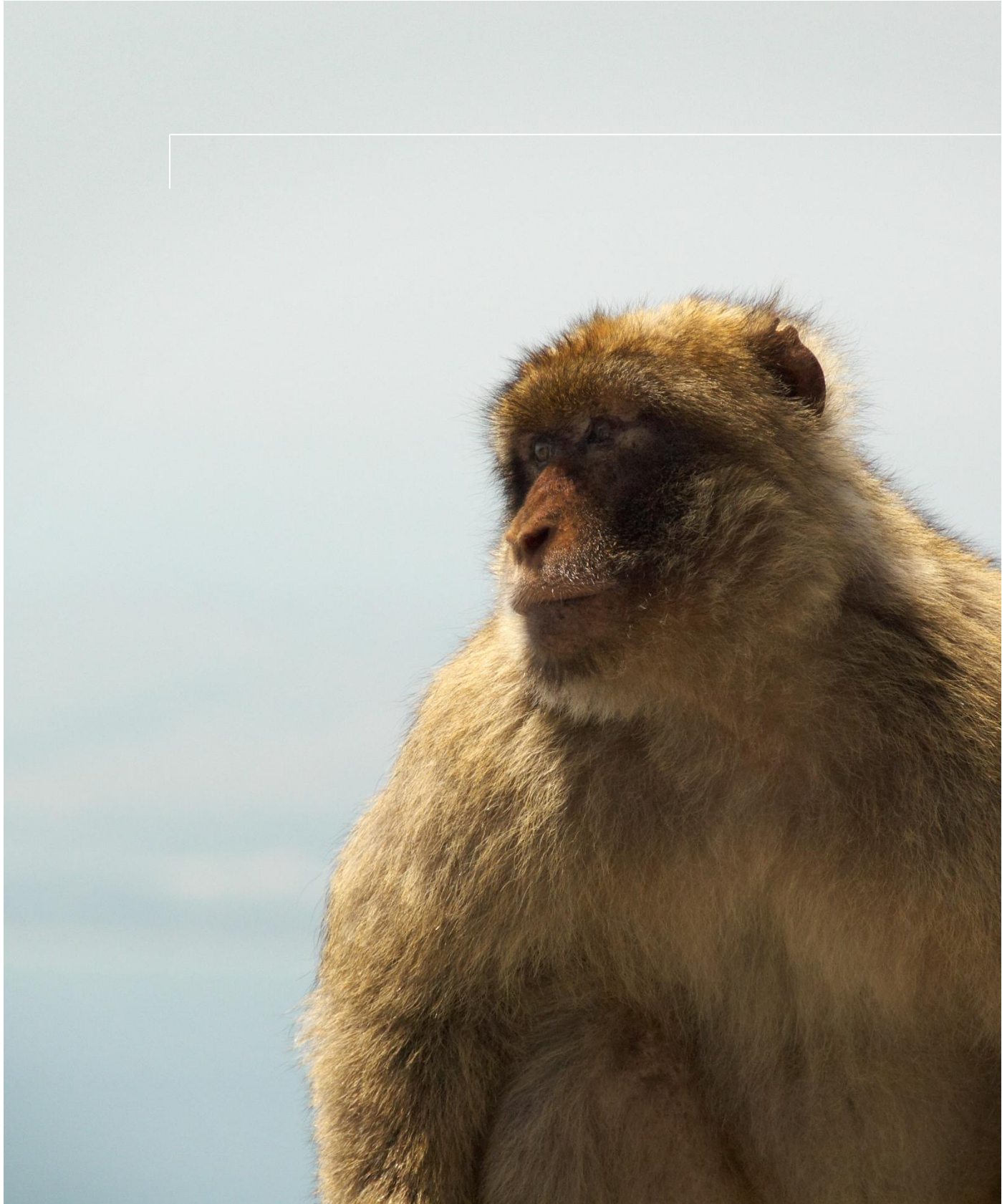
We provide a wide range of advisory services including:

- business appraisals and valuations
- acquisitions, disposals, mergers, flotations, management buy-outs
- business strategies and plans
- economic appraisals
- risk assessment, risk management and enterprise security programmes
- forensic accounting, including legal dispute analysis and investigations
- marketing strategies and plans
- out-sourcing advice
- shared services advice

The established business - continued

Advisory - continued

- executive search and recruitment
- management assessment, development and training
- strategic HR consulting
- workforce planning, remuneration and reward strategies, and
- corporate compliance.



Appendices

- *Checklist for purchase of a new Private Limited company*
- *Useful links*
- *Contacts*

Checklist for purchase of a new private limited company

To put a new company in a position to commence business, you will require the following information:

Directors and secretary

In respect of each new director and secretary of the company:

- full name
- an address (or, in the case of a corporation, its registered office or principal place of business)
- nationality, and
- business occupation (if any)

Registered office

The full postal address of the proposed registered office. The registered office determines where official correspondence will be sent and it must be in Gibraltar.

Share capital

The classes of shares to be created (for example ordinary or preference) and the rights attaching to those share classes, such as voting rights and rights to dividends, the amount to be paid up on each share including any premium and the nominal value.

Checklist for purchase of a new private limited company - continued

Shareholders

In respect of each shareholder:

- full name
- an address (or in the case of a corporation, its registered office or principal place of business)
- business occupation (if any), and
- the number of shares allotted or the amount guaranteed.

A private company need have only one shareholder.
A public company must have at least seven shareholders.

Checklist for purchase of a new private limited company - continued

Name

The proposed name of the company.

Memorandum of Association

This should include the company name and registered office together with the objects of the company, its legal form (ie limited by shares), its authorised share capital and details of who the initial subscriber shareholder will be on incorporation and the number of shares to be allotted.

Articles of Association

Whether any special provisions are required (e.g., special rights attached to different classes of shares or pre-emption rights on allotment or transfer of shares).

Auditors

The name and address of the firm that will be appointed.

Accounting Reference Date

The date to which the company's annual accounts are to be prepared. (This would generally be the same as the date to which the parent company accounts are prepared).

Bankers

The name and branch of the bank that will act as banker to the company and instructions as to the proposed signing arrangements (e.g. names of signatories and how they will sign).

Useful links

PwC Gibraltar	www.pwc.gi
Government of Gibraltar	www.gibraltar.gov.gi
Invest Gibraltar	www.investgibraltar.gov.gi
Chamber of Commerce	www.gibraltarchamberofcommerce.com
Federation of small businesses	www.gfsb.gi
Regulatory Authority	www.gra.gi
Financial Services Commission	www.fsc.gi
Maritime Administration	www.gibmaritime.com
Companies House	www.companieshouse.gi
Port Authority	www.gibraltarport.com
Gibraltar Deposit Guarantee Scheme	www.gdgb.gi
Gibraltar Investor Compensation Scheme	www.gics.gi

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