

# Gibraltar: Commentary

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## A General information

### 1 Introduction

#### (a) Geography

**[GIB.1]** Gibraltar is a British Overseas Territory occupying an area of approximately three square miles. It is connected to the southern tip of Spain, guarding the entrance to the Mediterranean Sea. Its vital importance as a strategic military site has been paramount in its history from early times. In the ancient world the “Rock of Gibraltar”, which rises to approximately 1,300 ft, was one of “the Pillars of Hercules” demarking the limits of the “known world”. It is known as the Meeting Place of continents.

**[GIB.2]** This location has given Gibraltar a history and an influence on world events out of proportion to its size and population.

**[GIB.3]** Its name is a legacy of the eighth century Moorish invasion of the Iberian Peninsula, when the Moorish leader Tariq ibn Zayed landed with his troop ships in 711 AD. Gibraltar’s name is derived from the Arabic “Jabalal Tariq”, meaning “Mountain of Tariq”.

**[GIB.4]** Gibraltar was seized by the Spanish in 1462. An Anglo Dutch force captured the Rock in 1704 during the War of the Spanish Succession. Its cessation to Britain was confirmed by Article X of the Treaty of Utrecht in 1713 in which Spain ratified the transfer of Gibraltar to the British Crown in perpetuity.

**[GIB.5]** Throughout its history Gibraltar has harboured successive waves of immigration from widely differing cultural backgrounds including British, Genoese, Jewish and Portuguese, who together formed the basis of the heterogeneous community which composes Gibraltar today.

**[GIB.6]** The present population of Gibraltar is approximately 30,000, of which the majority are Gibraltarian. All Gibraltarians are British nationals and by virtue of Gibraltar’s membership of the European Union, citizens of the European Union.

**[GIB.7]** As could be expected from such mixed influences, Gibraltar’s culture is an amalgamation of many traditions. All legal, administrative, and educational structures are based on those in the United Kingdom. The result is a unique community where a predominantly Latin temperament has been

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complemented by British systems and business culture. This makes Gibraltar a genuinely international location. These singular features are enhanced by the presence, just across the land frontier, of Spain's Costa del Sol and "Golden Mile" of Marbella.

[GIB.8] Many people who work in Gibraltar commute to and from the nearby locations in Spain each day. Major prestigious developments on the Costa del Sol provide numerous championship golf courses, marinas and other world class leisure facilities. Furthermore, Gibraltar is only a three hours' drive away from the southern-most ski resort in Europe: Sierra Nevada in Granada.

[GIB.9] Gibraltar is a harmonious, multicultural and English-speaking environment, (although the majority of people in Gibraltar are at least bilingual), as favoured by most international businesses, providing pivotal access to regional markets in Mediterranean Europe and North Africa.

[GIB.10] Gibraltar's time zone is usually on central European time and therefore only one hour ahead of the United Kingdom.

### (b) Communications

[GIB.11] The Gibraltar Telecommunications Act 2001 came into effect on 19 July 2001, and provided for the introduction of a regulatory authority. This legislation fully liberalised the telecommunications industry in Gibraltar and led to a reorganisation of the sector. The Gibtelecom Group ("Gibtelecom") is the leading telecommunications provider to Gibraltar's residents and business community. Gibtelecom is a joint venture company which used to be owned jointly by Verizon Communications of the USA and the Government of Gibraltar. In April 2007, Telekom Slovenije purchased Verizon's 50 per cent shareholding. Gibtelecom is effectively structured into three brands; Gibwireline (concentrating on fixed telephone line services), Gibraltar Telecommunications International (Gibtel – which focuses on both post-paid and pre-paid (reload) mobile services) and Gibconnect providing a variety of internet solutions.

[GIB.12] Gibtelecom provides national and international telecommunications services that are on par with those of any major city. Gibraltar's telephone network operates on a state of the art digital exchange utilising fibre optic technology. Most businesses and professionals operate on the Internet. There are other internet service providers operating from Gibraltar, most notably Sapphire Networks (the trading name of Broadband Gibraltar Limited).

[GIB.13] Gibraltar's strategic location at the southern end of the Iberian Peninsular and at the entrance to the Mediterranean means its harbour continues to be a prime port of call for many of the world's shipping lines. Bunkering and port-related facilities are therefore an important aspect of the Gibraltar economy. Access to the Spanish and European railway system is about fifteen minutes away by road from the Gibraltar frontier.

[GIB.14] Gibraltar has its own international airport with a new state of the art air terminal. At present British Airways and Easyjet operate daily flights to and from London Heathrow and London Gatwick respectively and Monarch Airlines operates daily flights to and from London Luton and twice a week to and from Manchester. In April 2014 Royal Air Maroc started operating flights to and from Marrakesh twice a week. Flights to and from the UK take

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approximately two and a half hours. The Government of Gibraltar is constantly looking at establishing new links with alternative airlines.

**[GIB.15]–[GIB.25]** In addition to the above, access to and from Gibraltar is possible through the Spanish airports at Seville, Jerez and Malaga. These are all within one to two hours' drive from Gibraltar and allow access to a wide variety of Spanish and international flights and connections. Further, the greatly developed highways in the region of Andalucía coupled with the burgeoning train networks across Spain provide ready overland access to Spain's leading cities including Madrid and Barcelona.

### (c) Currency and Exchange Controls

**[GIB.26]** Gibraltar mints its own coins and its currency is the Gibraltar pound (Gib £). The Gibraltar pound is at par with the pound sterling to which it is pegged. English sterling circulates freely in Gibraltar together with the Gibraltar-denominated notes and coinage.

**[GIB.27]** There are no exchange control restrictions, as there is complete freedom to remit funds into and out of Gibraltar and to convert funds into other currencies. Gibraltar companies and individuals may purchase real and personal property in the world without restriction.

## 2 Constitutional arrangements

### (a) History

**[GIB.28]** Gibraltar is part of the European Union, having been the only British Overseas Territory which joined the EC under the British Treaty of Accession (1973). Gibraltar's political activity takes place in a framework of a multi party western parliamentary democracy. The Chief Minister is the head of government. Gibraltar enjoys full internal self-government through its parliament. The United Kingdom, acting through the Governor of Gibraltar, retains responsibility for matters of defence and foreign affairs. Under the Gibraltar Constitution Order 2006, Her Majesty Queen Elizabeth II retains full power to make laws from time to time for the peace, order and good government of Gibraltar (including, without prejudice to the generality of the foregoing, laws amending or revoking the Constitution).

**[GIB.29]** The commencement of the new Gibraltar Constitution on 2 January 2007 increased the levels of self-government and autonomy in the territory. The new Constitution was negotiated with the British government and modernises the relationship between Gibraltar and the United Kingdom, without affecting sovereignty. The new Constitution also limits the United Kingdom's ability to increase its own powers and removes the right of United Kingdom Ministers to disallow laws passed by the Gibraltar Parliament. Laws are passed by the elected members of the Gibraltar Parliament which is competent to legislate on all matters including financial services and taxation. Under the 1969 Constitution, the United Kingdom pledged that there would never be any change in the status of Gibraltar other than with the consent of the democratically expressed wishes of the people of Gibraltar. This commitment is replicated in the 2007 Constitution.

### (b) Legislative and Executive

**[GIB.30]** The Queen's representative in Gibraltar is the Governor. The Government of Gibraltar is called the Council of Ministers and presently

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consists of the Chief Minister and not more than nine elected members who are entrusted with the charge of different defined domestic matters. Gibraltar has its own legislature called the Gibraltar Parliament, which presently consists of 17 elected members.

[GIB.31] Under the 2007 Constitution, and in particular section 33(5) read with paragraph 2 of Annex 2, all laws passed by the Gibraltar Parliament are styled as “Acts”. Pursuant to the above, the word “Ordinance” has now disappeared from the Gibraltar statute book and is replaced by “Act”.

#### (c) Relationship with the European Union

[GIB.32] The Treaty establishing the European Economic Community (EEC) applies to Gibraltar by virtue of Article 227(4) (now 299(4)) which provides that:

“the provision of this Treaty shall apply to European territories for whose external relations a Member State is responsible”.

[GIB.33] All European Union legislation applies to Gibraltar except that relating to the Common Agricultural and Fisheries policies, turnover taxes (ie Value Added Taxes) and the common regime for imports. Gibraltar is outside the Customs Union and, therefore, is a third country to which the Community rules on free movement of goods do not apply.

## 3 Legal System

### (a) Court Structure

[GIB.34] The judicial system is modelled on that of England and Wales. Gibraltar has its own courts up to the level of a Court of Appeal. Thereafter, there is a final appeal to the Privy Council in the United Kingdom. The Privy Council is made up of senior judges from England and Wales (including justices of the Supreme Court of the United Kingdom) reconstituted as the Privy Council. UK judicial precedent other than that of the Privy Council is not binding in Gibraltar but does have persuasive effect. Privy Council and European Court of Justice rulings are binding in Gibraltar.

[GIB.35] The formal structure of the courts in Gibraltar is as follows:

- (a) The Small Claims Court.
- (b) The Magistrates’ Court (comparable with Magistrates’ Courts in England and Wales constituted under the Magistrates’ Court Act 1952).
- (c) The Supreme Court (comparable in both civil and criminal matters with the High Court and Crown Courts in England and Wales).
- (d) The Court of Appeal.
- (e) The Privy Council.

[GIB.36] An important feature of the Gibraltar courts, following the commencement of the Administration of Justice Act on the 1 September 2004, is that the Civil Procedure Rules made (and as amended from time to time) under the Civil Procedure Act 1997 in England and Wales apply in Gibraltar with such modifications (for example, in nomenclature) as the circumstances in Gibraltar may require. That provides litigants in Gibraltar with the same expedited litigation proceedings that they would encounter if litigating in the United Kingdom.

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**(b) Rights of Audience**

**[GIB.37]** The legal profession in Gibraltar is fused and all barristers may act as solicitors and all solicitors have a right of audience before all the Courts of Gibraltar. Both barristers and solicitors must be admitted in the United Kingdom in order to be able to practice in Gibraltar.

**(c) Origin and Nature of the Legal System**

**[GIB.38]** Gibraltar is a common law jurisdiction based on the British legal system with no other legal influences whatsoever. It has the distinction of being the only jurisdiction on mainland Europe which is entirely common law. Unlike Great Britain, however, Gibraltar has a constitution, although this primarily deals with the rights of the people of Gibraltar vis a vis the United Kingdom.

**[GIB.39]** The origins of Gibraltar law commence with the British occupation of 1704. Specific reference is included to the rules of common law and equity in England and Wales as being applicable in Gibraltar under the English Law (Application) Act. This provides that the common law and the rules of equity from time to time in force in England and Wales are in force in Gibraltar, so far as they may be applicable to the circumstances of Gibraltar and subject to such modifications thereto as such circumstances may require. The common law or any rule of equity may from time to time be modified or excluded by:

- (a) any order of Her Majesty in Council which applies to Gibraltar; or
- (b) any Act of the Parliament at Westminster which applies to Gibraltar, whether by express provision or by necessary implication; or
- (c) any Act.

**[GIB.40]** In all causes or matters in which there is any conflict or variance between the common law and the rules of equity with reference to the same subject, the rules of equity prevail.

English and Commonwealth case law is highly persuasive in Gibraltar and will usually be followed in the absence of any Gibraltar authority on the matter. Any such English common law decisions cannot be expressed to be binding, however, as they may concern the interpretation of different statutory provisions.

**4 Immigration****(a) Entry Permit**

**[GIB.41]** Immigration control and security at all of Gibraltar's entry points is provided by security and immigration officers of the newly established Borders & Coastguard Agency. The Agency is a governmental body responsible for controlling the entry of any person into Gibraltar by either land (over the land frontier with Spain), sea (via ferries primarily from Morocco) and air (incoming flights primarily from the United Kingdom).

**[GIB.42]** Community rules on free movement of persons apply to Gibraltar. Citizens of countries that appear on the EU Common Visa List require visas to enter Gibraltar. Approximately 100 countries appear on the visa list. These countries are mainly in Africa, Asia, and Eastern Europe.

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### **(b) Section 18 Permits**

**[GIB.43]** Nationals of EU Member States have the right to enter, live and work in Gibraltar provided that they can demonstrate that they have independent means or have an offer of employment or are actively seeking employment. Persons who are not entitled to work in Gibraltar (ie non-EU nationals) need to apply or have their prospective employer apply for the issue of a work permit before commencement of employment.

**[GIB.44]** The Immigration, Asylum and Refugee Act 1962 (as amended) allows the authorities to issue residence permits to individuals wishing to acquire residence and does not relate directly to tax. Such an individual does not accordingly receive any certificate or other document under the Income Tax legislation granting him any tax concession or exemption. This permit extends simply to the right to reside in Gibraltar if he satisfies the authorities that he has the means and appropriate background to obtain such a permit. These permits are known as “section 18 permits”.

**[GIB.45]** Residence permits are also issued by the Principal Immigration Officer. Any person may apply, verbally or in writing, to the Principal Immigration Officer for the issue of a two-day, weekly, fortnightly, monthly or quarterly permit of residence. If however the individual seeks an annual permit he must apply in writing.

**[GIB.46]** The first step in obtaining a residence permit is to complete and submit an application form. There are certain requirements such as the acquisition of private medical insurance and proof of funds required for the applicant to support himself and his family. Upon all the relevant documentation being in place, proof will be submitted to the government authorities that a property has been purchased, or rented, that medical insurance is also in place and that all other requirements have been complied with. Instructions will then be issued to the Principal Immigration Officer to issue the relevant residence permit and a civil registration card.

**[GIB.47]** Non-EU nationals will have little difficulty in obtaining a residence permit if they are setting up business and can demonstrate that they are of good character. Similarly, the key employees of an incoming business should have little difficulty obtaining immigration and a residence permit.

**[GIB.48]** The tax treatment of such an individual depends entirely on the normal tax rules as apply to other residents, ie taking into account the definitions of “ordinarily resident” and “non-resident”.

**[GIB.49]** Upon obtaining a Section 18 permit, an individual may also apply for a Civilian Registration Card. These cards take the form of an identity card of the type more commonly issued by other European countries.

**[GIB.50]** A Section 18 permit has the benefit of providing an applicant with a residence permit which can always be used to obtain entry and full residence in Gibraltar if necessary. However, it has the drawback of not actually confirming through the issue of a certificate actual tax residence in Gibraltar.

**[GIB.51]** The application for a Section 18 permit requires fairly extensive details of net worth and character background. Section 18 is of particular interest to those wishing to have an option to reside in Gibraltar (and therefore

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the European Union) in the context of political volatility or instability in their country of origin which may precipitate forced departure.

**(c) Individuals with Special Status**

*(i) High Executive Possessing Specialist Skills (HEPPS)*

**[GIB.52]** The (HEPPS) Category was introduced via the High Executive Possessing Specialist Skills Rules 2008, as a basis for existing category 3 holders (which has since been abolished) who earn more than £120,000 per annum and for new entrants who possess specialist skills not available in Gibraltar.

**[GIB.53]** A company or statutory body which employs an individual may apply for a certificate designating an individual with HEPPS status. According to section 3 of the High Executive Possessing Specialist Skills Rules 2008 (HEPSSR), a certificate will only be given if the individual/company demonstrates that:

- (a) the individual possesses skills or experience essential to the operation of the company by whom the application is made;
- (b) the individual will occupy a high executive or senior management position and will earn more than £100,000 per annum;
- (c) those skills or experience are not available in Gibraltar;
- (d) those skills or experience are important for the economic regeneration of Gibraltar;
- (e) the individual has available appropriate residential accommodation for his “exclusive use” in Gibraltar; and
- (f) the individual has not been gainfully occupied in Gibraltar in any of the 36 months immediately preceding the year of assessment in which the application is made (a requirement which may be waived by the Minister for Finance).

**[GIB.54]** The certificate, which must specify the name of the individual, may be obtained on the payment of a non-refundable fee of £1,000 (HEPSSR, s 6). It should be noted, however, the Finance Centre Director may withdraw the certificate if he/she is of the opinion that any of the requirements as to the individual are no longer being met (HEPSSR, s 5).

**[GIB.55]** HEPPS category individuals in respect of whom a certificate has been issued are charged tax limited to the first £120,000 of their taxable assessable income covered by the certificate. With current tax bands, the maximum amount payable would be £29,950.

*(ii) Qualifying (Category 2) Individuals Rules of 2004*

**[GIB.56]** These rules are designed to make Gibraltar attractive to wealthy individuals with a net worth of at least £2 million, who wish to limit their tax liability on worldwide income.

**[GIB.57]–[GIB.58]** An individual with Category 2 status is not permitted to engage in any trade, business or employment in Gibraltar. However, he is allowed to carry out duties incidental to any trade, business or employment based outside Gibraltar or duties of a director of a company if the income is accrued and derived outside Gibraltar. The requirements for Category 2 status are set out in section 4 of Qualifying Category 2 Individuals Rules. They are as follows:

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- (a) the individual must have available to him for his exclusive use (see definition below at **[GIB.60]**) “Approved Residential Accommodation” in Gibraltar for the whole of the year of assessment; and
- (b) he/she is not otherwise resident in Gibraltar and has not been so resident in any of the previous five assessment years.

**[GIB.59]** The granting of a certificate does not affect the non-resident status of such an individual with regard to any trust which he may establish.

**[GIB.60]–[GIB.61]** “Exclusive use” is defined as use for the residential purpose of the applicant and his family; but does not include individual letting or leasing of the property. While property is freely available in Gibraltar for purchase, in many cases Category 2 individuals simply enter into rental agreements which are an acceptable form of satisfying the requirement for residential accommodation.

**[GIB.62]** The tax status acquired allows the individual to pay tax in Gibraltar on his worldwide income. The tax is however capped at tax payable on the first £80,000 of assessable income. There is a minimum annual tax of £22,000 payable irrespective of assessable income (the maximum at current rates is approximately £30,000). Typically this status is used when it is important to demonstrate that the individual is paying tax on income.

**[GIB.63]** The certificate is issued by the Finance Centre Director for an indefinite period, but the applicant must continue to satisfy the conditions of the certificate each year. The application fee for the certificate is £1,000 (Qualifying Category 2 Individuals Rules 2004, s 8).

## **5 Taxation**

### **(a) Direct Taxes**

**[GIB.64]** The taxation of individuals and companies in Gibraltar is governed by the Income Tax Act 2010, which came into force on 1 January 2011. This Act draws from previous income tax acts, retaining the fundamental core to the legislation, yet at the same time introducing novel concepts.

**[GIB.65]** As was highlighted in the Government of Gibraltar’s budget speech of 2011, “the new company tax system marks not only an important restructuring of public finances, but also completes the journey of our Finance Centre from offshore tax haven to onshore EU financial services centre”.

**[GIB.66]** Like the United Kingdom system, Gibraltar operates a “Pay As You Earn” tax system. This system is imposed in accordance with the Income Tax (Pay As You Earn) Regulations 1989. Income from employment is collected through PAYE, deducted by the employer at source and paid to the Income Tax Office within 15 days of the end of the month.

**[GIB.67]** The tax year in Gibraltar runs from 1 July to 30 June. Profits earned in the year of assessment from the basis of assessment for that year. The Income Tax Act has further introduced the concept of self-assessment for self employed persons. This requires individuals to assess their own tax liability and make two payments on account on the 31 January and 30 June in each year of assessment.

**[GIB.68]** Social Insurance contributions are also payable by every employee or self employed person in any week in which they work or are employed for

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more than 15 hours. Employee contributions are capped at a maximum of £25.16 per week of gross earnings. Employer contributions are set at a maximum of £32.97, whilst self-employed persons are capped at a maximum of £30.17 per week of gross earnings.

**[GIB.69]** Individuals earning less than £10,000 per annum are exempt from paying income tax. There is also a tax credit of up to £4,000 available for individuals aged 60 and over who are not in receipt of pension or annuity income in excess of £2,000.

**(b) Individuals**

**[GIB.70]** For taxation purposes, an individual is either resident or non-resident, and nationality is not a factor in determining tax status.

**[GIB.71]** An individual is “ordinarily resident” if he/she is present in Gibraltar for a period of at least 183 days in aggregate in any one tax year, or is present in Gibraltar in excess of 300 days in three consecutive years.

**[GIB.72]** Non-resident is defined as anyone other than an “ordinarily resident” person.

*(i) Basis of Taxation*

**[GIB.73]** Individuals are taxed on income accruing in and derived from Gibraltar under s 11 of the Income Tax Act. “Accrued and derived from” is defined by reference to the location of the activities which give rise to the profits.

**[GIB.74]** There are two methods of computing the amount of income tax imposed on an individual: “Allowance Based” and “Gross Income Based”. Ultimately individuals will pay whichever is most favourable (ie, whichever results in paying lower tax).

*(ii) Allowance Based System*

**[GIB.75]** Under this system all taxpayers receive a tax credit amounting to the greater of £300 or 2%. An individual on the allowance based system is taxed on his income less appropriate allowances at the applicable rates which for the tax year 2013/2014 are as follows:

- The first £4,000 of taxable income 15%
- The next £12,000 of taxable income 30%
- The remainder of taxable income 40%

**[GIB.76]** The amounts are different for non-residents, they are charged as follows:

- The first £16,000 of taxable income 30%; and
- The remainder of taxable income 40%

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**[GIB.77]** The main allowances (which are reduced by a twelfth for each complete calendar month that the individual is not resident in Gibraltar during the year of assessment) are set out in the Income Tax Act (Allowances, Deductions and Exemptions) Rules. They include minimum allowance, personal allowance, married persons relief, allowance for children, deduction for children's education abroad, age allowance, deduction for health insurance premiums, deductions in respect of loan interest, deduction for dependent relatives; and home purchaser allowances.

*(iii) Gross Income Based System*

**[GIB.78]** Under the Gross Income Based System an individual does not benefit from any allowances. However the tax rates are lower, as can be seen below:

- (i) Individuals on gross income under £10,000 are not liable to pay income tax;
- (ii) Individuals on gross income up to £25,000;

Taxable Income Band	Tax Rate
£0 – £10,000	6%
£10,001 – £17,000	20%
Balance at	28%

- (iii) Individuals on gross income greater than £25,000;

Taxable Income Band	Tax Rate
£0 – £17,000	16%
£17,001 – £25,000	19%
£25,001 – £40,000	25%
£40,001 – £105,000	28%
£105,001 – £500,000	25%
£500,001 – £700,000	18%
£700,001 – £1 million	10%
Balance at	5%

**(c) Taxation of Companies**

**[GIB.79]** The assessable profits or gains of a company are the full amount of the profits or gains of the company for any accounting period of that company. According to the Income Tax Act companies are taxed only on that income which is accrued in and derived from Gibraltar. The charge is on income profits alone. No charge is applied to tax on capital gains. See **[GIB.99]**.

**[GIB.80]** In order to comply with EU recommendations, the Government recently enacted an income tax amendment in Gibraltar, as a result of which, with effect from 1 July 2013, another class of taxable income is introduced pursuant to which a company “registered in Gibraltar” that receives or is entitled to receive over GBP100,000 per annum of interest “paid or payable” to it by another company “arising from a loan or advance” shall be chargeable to Gibraltar tax (except where the interest “constitutes a trading receipt” and is taxed accordingly as such). As an anti-avoidance measure, the aggregate

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interest “received or receivable” by a company registered in Gibraltar from different companies will be considered to be from one company for the purposes of the GBP100,000 threshold where those companies are “connected persons”, as defined elsewhere in the Income Tax Act.

**[GIB.81]** Subject to the caveats explained at **[GIB.87]**, all companies trading in Gibraltar are taxed at a rate of 10%. Building societies are also taxed at this rate (Income Tax Act 2010, s 16(1)).

**[GIB.82]** This is similar to arrangements that already exist in Ireland, Cyprus, Malta and other EU Countries.

**[GIB.83]** There is no incorporation test for ordinary residence. Ordinary residence is established by reference to management and control (ie a company which is managed and controlled in Gibraltar is deemed to be ordinarily resident in Gibraltar). Companies are taxed by reference to their accounting period. A company is required to make two payments on account (by 28 February and 30 September, respectively in the year) of its future liabilities. Any balance remaining is payable within six months of the end of the company’s accounting period.

**[GIB.84]** A company whose turnover is less than £500,000 does not need to file audited accounts with the Income Tax Office; instead it only has to file accounts signed by an independent accountant.

### **(d) Benefits in Kind**

**[GIB.85]** Benefits in kind are taxed as gains from employment. Schedule 7 of the Income Tax Act 2010 deals with the taxation of benefits and the allowances available. The legislation makes particular reference to the following emoluments; cash vouchers, non-cash vouchers, credit tokens, expense payments, living accommodation, the provision of a car or van and the fuel, loans to employees directors or connected persons, pension schemes, and removal benefits and expenses.

**[GIB.86]** When the benefits are less than £250 in total for any year of assessment no tax is payable in respect of those benefits. The employer may opt to pay the tax on the benefits on behalf of an employee. When the annual value of these benefits is between £250 and £15,000 tax is paid at the rate of 20%. When the annual value of the benefit is more than £15,000 tax is paid at the rate of 29%.

### **(e) Reform of Corporate Taxation**

**[GIB.87]** As a result of the need to comply with EU state aid rules, Gibraltar embarked on a process of corporate tax reform. The dual system of corporate taxation (in which some companies were exempt (0%) whilst others paid up to 22% as of 2010/11) was abolished. What is established now is a single corporate tax rate of 10% for all companies that trade in Gibraltar, with income accrued and derived in Gibraltar. However, this excludes those companies which deal as energy and utility providers (which have to pay a rate of 20%). Effectively the companies that are affected by this higher rate of 20% are as follows:

- (1) Telecommunications companies;
- (2) Petroleum companies;

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- (3) Water companies;
- (4) Electricity companies;
- (5) Sewage companies; and
- (6) Companies which abuse a dominant position.

### **(f) Company Deductibles**

**[GIB.88]** When ascertaining assessable income, provision is made for deductions, specifically outgoings and expenses wholly and exclusively incurred in the production of the income. A list of specific exclusions from deductions is provided in the Income Tax Act 2010, Sch 3, para 2(a)–(p).

**[GIB.89]** Capital allowances are allowed, with regards to industrial buildings, plant and machinery, and fixtures and fittings.

**[GIB.90]** Allowances are given in respect of the depreciation of the value of any premises being entertainment centres, or hotels, mills, factories or similar premises.

**[GIB.91]** A first year allowance up to a total of £30,000 is available in respect of the total expenditure on plant and machinery, including fixtures and fittings, which have been brought for the purpose of the claimant's trade, business profession or vocation.

**[GIB.92]** The Act further creates a system for the calculation of written down allowances in respect of plant and machinery purchasers (motor vehicles fall within this category). This is also extended to any hire purchase.

### **(g) Anti-avoidance Provisions**

**[GIB.93]** Anti-avoidance provisions ensure an even playing field between taxpayers. By enacting these provisions, Gibraltar has also ensured that it complies with OECD Transfer Pricing Guidelines.

**[GIB.94]** Section 40(1) applies if the Commissioner of Income Tax believes that a person has entered arrangements which reduce or eliminate the payment of tax and the arrangements are in whole or in part fictitious or artificial. In such a case he can choose to disregard those arrangements in computing the liability of the person. The legislation also provides specific anti-avoidance provisions with regards to thin capitalisation, transfer pricing, non-deductibility of interest paid on certain secured loans, dual employment contracts and transfer of assets abroad.

### **(h) Exempt income**

**[GIB.95]** The following are exempt from tax:

- (a) dividends paid by a company ordinarily resident in Gibraltar to a company;
- (b) dividends paid to a person who for the purposes of this Act is neither ordinarily resident in Gibraltar or is resident for a period of less than 30 days in aggregate;
- (c) dividends paid by a company the shares of which are quoted on a Recognised Stock Exchange;
- (d) dividends satisfying the conditions of the Parent and Subsidiary Rules 2008;
- (e) interest paid by a bank, building society or other financial services institution licensed to take deposits under the Financial Services (Banking) Act or equivalent legislation in any other jurisdiction;

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- (f) interest paid by the Gibraltar Government Savings Bank;
- (g) income derived from a friendly society, sporting club, or ecclesiastical, charitable or educational institution or trust of a public character;
- (h) the investment income of any pension, provident or other fund (including life fund) established in Gibraltar and approved by the Commissioner;
- (i) the gains or profits derived by a non-resident owner, charterer or operator of ships or aircraft for the carriage of passengers or cargo to or from Gibraltar in any ship or aircraft owned, chartered or operated by them;
- (j) Income received by a student from employment during vacation;
- (k) medical insurance premiums paid by an employer to an approved scheme on behalf of employees up to an amount of £1,120;
- (l) benefits in kind to an annual value of £250 per employee;
- (m) income from debentures issued by a company the shares of which are quoted on a Recognised Stock Exchange, including debenture stock, loan stock, bonds, certificates of deposit and any other instruments creating or acknowledging indebtedness including bills of exchange accepted by a banker other than instruments included in (n) below;
- (n) income from loan stock, bonds, and other instruments creating or acknowledging indebtedness issued by or on behalf of a government, a local or public authority;
- (o) income from units in a collective investment scheme which is marketed and available to the general public, including shares in or securities of an open-ended investment company;
- (p) income from rights to and interests in anything falling within (a) to (o) above; and
- (q) a dividend paid out of the profits or gains of a company which has profits or gains on which the company is not liable to pay tax by virtue of (a) to (p) above to the extent of the amount of the dividend represented by the proportion which the amount of the income not liable to tax by virtue of (a) to (p) above bears to the entire income of the company for the year of assessment.

**[GIB.96]** There is no withholding tax on dividends paid. The only withholding tax applicable in Gibraltar is that withheld in accordance with the EU Savings Directive 2003/48/EC on interest arising to those residents of the UK and Switzerland who do not wish to opt for disclosure to their home authority in respect of interest they are receiving from a bank or branch of a bank in Gibraltar.

**[GIB.97]** Trusts established for non-residents are only exempt from tax if the income is not accrued or derived in Gibraltar.

Tax losses can only be carried forward to set against assessable income of future years or accounting periods. There is no provision for the carrying back of losses (Income Tax Act 2010, s 20).

**(i) Capital and indirect taxes***Value Added Tax*

**[GIB.98]** Gibraltar is exempted from any form of value added tax.

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*Capital Gains Tax*

**[GIB.99]** Gibraltar has never imposed and does not impose any type of capital gains tax.

*Accumulated Profits Tax*

**[GIB.100]** There is no accumulated profits tax in Gibraltar.

*Gift Tax*

**[GIB.101]** There is no inter vivos gift tax in Gibraltar.

*Royalty Tax*

**[GIB.102]** With effect from 1 January 2014 another class of taxable income was introduced pursuant to which a company registered in Gibraltar that receives any royalties to it by another company is chargeable to Gibraltar tax.

*Wealth Tax*

**[GIB.103]** There is no wealth tax in Gibraltar,

*Estate Duty*

**[GIB.104]** As from 1 April 1997, all estate duty in Gibraltar was abolished.

*Capital Duty*

**[GIB.105]** Capital duty of £10 is payable on the initial authorisation of share capital or any subsequent increase thereto.

*Customs and Excise Duty*

**[GIB.106]** Goods imported into Gibraltar are, with some exception, subject to import duty at a rate of between 0% and 12%. The following goods have a current import duty rate of 0%; televisions, hi-fi, electrical audio or visual equipment, tableware, kitchenware, other household goods, sunglasses or spectacles, clothes and footwear, lamps, paints and varnishes, tools, toys, porcelain goods, ornaments, glassware (excluding sheet glass), laptops, tablets, newspapers, journals, educational material, biofuels and electrical cars.

**[GIB.107]** Motor vehicles imported by car suppliers are charged depending on the size of the engine. Licensed importers are charged an import duty rate between 15% to 22% whereas individual importers are charged import duty at a rate of between 25% and 35%.

**[GIB.108]** Food products are imported duty free. Petrol is charged at 25 pence per litre and tobacco at £6.80 per 200 manufactured cigarettes. Alcohol products are charged from 18 pence to 80 pence depending on the nature of the alcoholic drink and how it is packaged.

*Property Tax*

**[GIB.109]** Rates are also levied annually on the occupier or landlord of real estate. Such duties do not affect a trust in any way unless it holds any Gibraltar real estate.

**[GIB.110]** With regards to commercial property, rate incentives are in place. The early payment discount on rates increases to 20% for the wholesale and

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retail sector (including bars/restaurants). New start-ups benefit from 50% discount in their first year of trading and (as from 1 July 2013) 25% for the 2nd year.

*Stamp Duties*

**[GIB.111]** 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 the said real estate) at the following rates:

Consideration	% value of consideration
£200,000 or less	0%
£200,001 to £350,000	First £250,000 at 2%, balance at 5.5%
Over £350,000	First £350,000 at 3%, balance at 3.5%

**[GIB.112]–[GIB.113]** Stamp duty is also payable on mortgages secured on Gibraltar real estate at the following rates:

Mortgage	% value of mortgage
£200,000 or less	0.13%
Over £200,000	0.20%

*Gaming Tax*

**[GIB.114]** Gaming licence holders are subject to gaming duty at the rate of 1% of the gaming yield, for income generated through poker and casino games, and 1% of the turnover for revenue obtained through sports betting. The total amount of gaming duty payable in both cases is subject to an annual minimum amount of £85,000 and an annual maximum amount of £425,000.

**(j) Unilateral Taxation Relief**

**[GIB.115]** No agreements exist in Gibraltar with regard to Double Taxation Relief (DTR). Even though the legislation makes reference to DTR, what actually takes place is Unilateral Taxation Relief (UTR). In effect, any person who is liable to tax in Gibraltar in respect of income also taxed in another jurisdiction is able to claim relief in respect of the tax paid in the other jurisdiction. This only applies where the jurisdiction imposing the foreign tax is the same jurisdiction in which the income is generated.

**[GIB.116]** On furnishing evidence of the payment made in the other jurisdiction, the claimant is entitled to a credit equivalent to the lesser of:

- (a) The tax payable on that income in Gibraltar; and
- (b) The tax payable or paid in another jurisdiction in respect of the same income.

**[GIB.117]–[GIB.121]** A claim for unilateral taxation relief has to be made within the six years of the end of the year of assessment to which it relates. The time limit is extended where any adjustment or assessment made in Gibraltar

## [GIB.117] Gibraltar: Commentary

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or the relevant territory renders any relief previously given excessive or insufficient. In those circumstances, a claim may be made within the six years after the adjustment or assessment.

### (k) Development Aid

[GIB.122] In order to encourage private development in Gibraltar, there are provisions in place which offer certain tax incentives, such as start up relief, import duty relief and rates relief. In order to qualify for any type of incentive relief, the project needs to be a new project the aim of which is:

- (1) To create an immovable asset in Gibraltar which will remain in existence after the applicant ceases to derive benefits under the licence; and
- (2) To provide more than two units of housing accommodation in Gibraltar; or
- (3) To contribute materially to the tourist industry of Gibraltar; or
- (4) To provide any new industry in Gibraltar; or
- (5) To create new employment opportunities or career prospects in Gibraltar; or
- (6) Otherwise to improve materially the economic or financial infrastructure of Gibraltar.

[GIB.123] The applicant must further establish that the project is one which is for the economic benefit of Gibraltar.

[GIB.124] The Minister for Trade must also be satisfied that the project management is likely to be effective and competent. There is also a further specification, that projects need to be completed within a specified time (dependent on the type of project) and must not cost at least a minimum amount to develop.

## 6 Transparency

### (a) Privacy and Confidentiality Rules

[GIB.125] Gibraltar benefits from the English common law rules on the confidential nature of the relationship between a banker and his client. The leading authority in this area is the English case of *Tournier v National Provincial and Union Bank of England*. Limited and well-defined exceptions to this basic premise are only allowed as defined by the case law.

[GIB.126] As is common internationally, Gibraltar courts do not enforce other countries tax provisions or claims and therefore do not oblige banks to disclose information in pursuance thereof. The Judgments (Reciprocal Enforcement) Act provides inter alia that a judgment is not enforceable in Gibraltar if it is with respect to a sum payable for taxes or other charges of a like nature or with respect to a fine or other penalty.

### (b) Mutual Legal Assistance

[GIB.127] Six different pieces of legislation allow for Mutual Legal Assistance. These are:

- (1) Evidence Act;
- (2) Drug Trafficking Offences Act;

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- (3) Mutual Legal Assistance (European Union) Act;
- (4) Mutual Legal Assistance (International) Act;
- (5) Mutual Legal Assistance (European Union) Rules 2012; and
- (6) Mutual Legal Assistance (International) Act.

**[GIB.128]** The terms of the Mutual Legal Assistance Convention 2000 have been implemented into Gibraltar law. In terms of taxation, the major effect of this legislation is that, where criminal proceedings are in train in another state in respect of any offence, including offences involving tax, the Attorney General will respond to a letter of request for information from another EU Member State insofar as he is able. The EU Directive allows for the exchange of tax-sensitive information between the competent authorities of Member States. The UK is the same Member State as Gibraltar; therefore the provisions for exchange do not apply. However, a Tax Information Exchange Agreement is in force between the UK and Gibraltar which has a more far-reaching effect making the Mutual Assistance Directive largely redundant.

**(c) Exchange of Information Agreements**

**[GIB.128A]** The International Co-Operation (Tax Information) Act 2009 was introduced to administer and enforce certain taxes between Gibraltar and other jurisdictions. Gibraltar signed its first Tax Information Exchange Agreement with the United States on 31 March 2009. There are currently 27 agreements in place with the following countries; Australia, Austria, Belgium, Denmark, Faroe Islands, Finland, France, Germany, Greece, Greenland, Guernsey, Iceland, India, Ireland, Italy, Malta, Mexico New Zealand, Norway, Poland, Portugal, South Africa, Sweden, The Netherlands, Turkey, the UK, and the USA. As a result of Gibraltar having signed these agreements, Gibraltar features in the OECD's white list in accordance with the criteria decided by the G20 and OECD in April 2009.

**[GIB.128B]** Gibraltar has implemented the EU Savings Tax Directive. Where a paying agent in Gibraltar makes an interest payment to a beneficial owner who is a natural person resident in another EU Member State (or a country with a bilateral agreement with the EU); information must be reported to the competent authority. Such information consists 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.

**[GIB.128C]** The competent authority is required to 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 payment was made.

**(d) Confidentiality of Information Provided to Officials, Secrecy Laws and Penalties for Disclosure**

**[GIB.129]** Section 86(1) of the Financial Services (Banking) Act of 1992 imposes strict requirements as to secrecy and the passing of confidential information obtained by officials under the Act to third parties. An official cannot divulge any information obtained in the course of his duties to another person or authority not entitled under the Act to obtain such information

**[GIB.129]** Gibraltar: Commentary

directly unless and provided that the information is divulged in a summary or collective form such that the individual institutions cannot be identified. These restrictions do not apply in a limited number of exceptions dealing with matters such as criminal activities or proceedings initiated under the Act. The Financial Services (Banking) (Amendment) Act 2007, has made provision for the disclosure of information, in circumstances required by EC Directives.

**[GIB.130]** The Financial Services (Banking) Act sets out the specific exemptions in respect of which disclosure may be made. These include the following:

- (a) disclosure with regard to any specific matter authorised in the Act itself (including for the purposes of the administration of the Act or the taking of advice by the Commissioner or Financial Services (Banking) Supervisor) (s 82(10)(a)),
- (b) any information given with the consent of the person to whom it relates or which it is a matter of public record or knowledge s 82(10)(c)),
- (c) information with a view to the institution of or otherwise for the purposes of any criminal proceedings whether under the Act or otherwise (s 82(10)(f)),
- (d) information in connection with any winding-up or administration proceedings under the Companies Act with respect to an authorised institution or former authorised institution (s 82(10)(h)),
- (e) information to another supervisory or regulatory body responsible for the control, and supervision of banking institutions provided that such other banking authority is subject to restrictions on further disclosure equivalent to the relevant EU directive and the Gibraltar Financial Services (Banking) Act (s 82(10)(i)).

**[GIB.131]** As indicated earlier, information may be provided in a statistical form in such a manner as not to enable information relating to any particular person to be ascertained from it (s 82(10)(j)).

**[GIB.132]** Any person who discloses any information obtained by him under the Act, other than for the purposes of the Act, is guilty of an offence and is liable, upon conviction, to imprisonment for two years and a fine (s 82(1)).

**(e) Foreign Account Tax Compliance Act (FATCA)**

**[GIB.132A]** FATCA (Foreign Account Tax Compliance Act) was introduced by the United States of America in 2010 under the Hiring Incentives to Restore (HIRE) Act, designed primarily to combat offshore tax evasion and recoup federal tax revenues. It requires foreign financial institutions (FFIs) to report to the Internal Revenue Service (IRS) about financial accounts held by US persons or by foreign entities in which US persons hold a substantial interest. FFIs are defined very widely and include:

- Depository Institutions: an entity that accepts deposits in the ordinary course of a banking or similar business;
- Custodial Institutions: holds financial assets for the account of others as a substantial portion of its business;
- Investment Entities: engages primarily in the business of trading in financial instruments, managing portfolios or otherwise administering or managing funds or money; or
- Specified Insurance Companies: conducts certain business as an insurance company.

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## General information **[GIB.134]**

FFIs will have to register with the IRS and may report either directly to the IRS or via their local tax authority (under an Intergovernmental Agreement (or IGA)) and those FFIs who are not compliant will suffer a 30% withholding tax on payments of US source income.

**[GIB.132B]** As part of the commitment globally to combat tax evasion, the Government of Gibraltar has signed an IGA with the United States of America setting out the regulatory and reporting obligations Gibraltar financial institutions (Gibraltar FIs) will need to observe in order to be FATCA compliant.

**[GIB.132C]** Under the IGA, Gibraltar FIs will be required to register via an online portal with the IRS and obtain a global intermediary identification number (GIIN), although they will have additional time in which to do so as withholding agents will not be required to verify the GIINs of payee FFIs located in an IGA jurisdiction until 1 January 2015.

**[GIB.132D]** The key dates for due diligence remain for the time being as 1 July 2014 with exchange of information taking place in September 2015 although the IRS recently announced that calendar years 2014 and 2015 will be regarded as “transitional periods” for the purposes of the IRS enforcement and administration of the due diligence responsibilities and withholding provisions under FATCA.

**[GIB.132E]** The United Kingdom is closely following FATCA with its own UK FATCA, with agreements similar to the US IGAs already signed with the Isle of Man, Guernsey, Jersey and Gibraltar, providing for automatic exchange of information in relation to UK residents. The agreements also provide an alternative reporting arrangement for UK Resident Non Domiciled individuals (RNDs).

**[GIB.132F]** Under UK FATCA, Gibraltar FIs will be required to undertake due diligence to identify any financial accounts in existence on or after 30 June 2014 and which are maintained by the Gibraltar FI where the account holder is either a UK person or is a non-UK entity in which one or more UK persons exercise control over the entity.

**[GIB.132G]** Gibraltar FIs will have up to 30 September 2016 to exchange information with HMRC (via the relevant Gibraltar tax authority) for the calendar years 2014 and 2015 in relation to reportable accounts.

## **7 Regulation**

### **(a) General Regulation**

**[GIB.133]** The Financial Services Commission was established in 1989. The relevant statute which authorises and empowers the commission is the Financial Services Commission Act (FSCA).

**[GIB.134]** The functions of the Commission are defined in section 6 of the FSCA and are as follows:

- (a) to supervise Authorised persons in accordance with this Act and the Supervisory Acts<sup>1</sup>;
- (b) to consider and determine applications for authorisations, licences, recognitions and registrations made under the Supervisory Acts;
- (c) to monitor compliance by Authorised persons with such legislation, rules, codes and guidance made under this Act or any Supervisory Acts;

**[GIB.134]** Gibraltar: Commentary

- (d) to monitor compliance by Authorised persons with legislation, rules, codes and guidance relating to the prevention of financial crime;
- (e) to monitor financial services business carried on in or from Gibraltar and to take such appropriate action as it is empowered to do against persons carrying on such business without the necessary authorisation, licence or registration;
- (f) to carry out the duties and discharge the functions imposed on, or given to, it under this or any other Act;
- (g) to determine subject to the approval of the Minister the terms of service of the Chief Executive;
- (h) to determine the number and skill mix of employees required by the Commission to carry out its functions and to determine their terms and conditions of employment;
- (i) to monitor and oversee the performance by the Chief Executive of all functions delegated to him by the Commission;
- (j) to approve the annual estimates of income and expenditure to be furnished to the Minister under section 16; and
- (k) in respect of those areas of financial services business where Community law applies, to supervise and regulate financial services business carried on in or from Gibraltar in accordance with Community obligations and in those areas to establish and implement standards and supervisory practices which match the standards and supervisory practices governing the provision of financial services within the United Kingdom.

<sup>1</sup> Comprising the Financial Services (Insurance Companies) Act, Financial Services (Investment and Fiduciary Services) Act, Financial Services (Banking) Act, Financial Services (Collective Investment Schemes Act 2011, Financial Services (Markets in Financial Instruments) Act 2006, Financial Services (Occupational Pensions Institutions) Act 2006, Financial Services (Auditors) Act 2009, Financial Services (Investment and Fiduciary Services) (Temporary Administration of Companies) Act 2010.

**[GIB.135]** The Commission consists of the Chief Executive (acting Chairperson), and seven other persons, two of whom must have relevant experience in another jurisdiction (FSCA, s 3). The Commission with the approval of the Minister for Financial Services must appoint a person to be the Chief Executive. Appointment lasts for a term of three years.

**[GIB.136]** The Chief Executive, who is also the Commissioner of Financial Services (Banking) and the Commissioner of Insurance, is charged with the responsibility of supervising institutions carrying on finance business in or from within Gibraltar. She is required to ensure that such supervision complies with any applicable obligation Gibraltar has as a constituent of the European Union and to establish supervisory standards which match those required by legislation and supervisory practice governing the provision of financial services within the United Kingdom.

**(b) Anti-money Laundering**

**[GIB.137]** Gibraltar has transposed and given effect to the EU's 1st, 2nd and 3rd Money Laundering Directives. Gibraltar is also largely compliant with the 40+9 special recommendations of the Financial Action Task Force (FATF/GAFI) and is actively working to update those few areas where international

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standards have recently changed. The appropriate law enforcement agency in Gibraltar is the Gibraltar Financial Intelligence Unit (GFIU) which is a joint police and customs unit.

**[GIB.138]** All financial and non-financial institutions need to comply with the provisions of the Criminal Justice Act 1995 (the “CJA”), as amended through the Criminal Justice (Amendment) Act 2004 and the Crime (Money Laundering and Proceeds) Act 2007. This creates the offences of money laundering, namely:

- (i) assisting another person to retain the benefit of criminal conduct;
- (ii) acquisition, possession or use of property representing proceeds of criminal conduct;
- (iii) concealing or transferring the proceeds of criminal conduct; and
- (iv) failing to report knowledge or suspicion of money laundering.

**[GIB.139]** All financial institutions and certain non-financial businesses need to abide by specific provisions in the CJA requiring identity and source of funds to be sought and documented.

**[GIB.140]** The financial institutions caught by these requirements are banks & building societies, The Gibraltar Savings Bank, investment business and fiduciary service providers, Life insurance companies, Insurance intermediaries, Bureaux de Change and money transmission services. Compliance with the provisions of the CJA is facilitated by the Anti-Money Laundering Guidance Notes issued and updated by the Financial Services Commission.

**[GIB.141]** Certain non-financial businesses are also caught by the CJA, notably auditors, external accountants, tax advisers, estate agents, notaries and other legal professionals, dealers in high value goods and casinos.

**[GIB.142]** The legal requirement on all of these businesses is that the identity and source of funds of their clients is known and recorded before entering into any arrangement. If the business finds or suspects that money laundering has or may be about to happen, the requirements impose upon them an obligation to make a report to GFIU.

**[GIB.143]** “Knowing your client” (KYC) cannot be delegated to another person. Gibraltar, unlike most other jurisdictions, does not permit the use of introducer certificates whereby the true identity of the beneficial owner is not known to the Gibraltar institution.

**[GIB.144]** The law also requires the true beneficial owner of funds to be established before entering into a business relationship. This also extends to companies and trusts. If the beneficial ownership cannot be established then the firm cannot enter into the business relationship.

**[GIB.145]** KYC records are required to be maintained and be made available to enforcement/investigating agencies for a period of up to five years from the end of the business relationship.

**[GIB.146]** Training is also required to be provided for all staff on the detection and prevention of money laundering. Gibraltar is one of the few jurisdictions worldwide to have required a retrospective review of KYC documentation for all existing clients of financial institutions.

**[GIB.147]** In a further effort to prevent terrorist financing, Gibraltar also introduced the Counter-Terrorism Act 2010. This piece of legislation sets to

## **[GIB.147]** Gibraltar: Commentary

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regulate certain financial businesses through the imposition of counter measures in relation to terrorist financing, money laundering and the proliferation of weapons of mass destruction.

### **(c) Bribery**

**[GIB.148]–[GIB.149]** Part 24 of the Crimes Act 2011 regulates offences of bribery. Previously, the offence of corruption was governed by the Criminal Offences Act. The Crimes Act 2011 was enacted in 2012 and Part 24 is modelled on the UK Bribery Act 2010.

**[GIB.150]** Section 566 of the Crimes Act 2011 sets out the offence of bribery. A person commits an offence if he offers, promises or gives a financial or other advantage to another; and either intends that advantage to induce or reward someone for improper performance of an activity, or knows or believes that acceptance of that advantage constitutes improper performance of an activity. The Crimes Act 2011 also sets out various offences relating to being bribed.

**[GIB.151]–[GIB.152]** In addition, the Crimes Act 2011 improves on the Criminal Offences Act in that it:

- (a) also covers any acts or omissions committed outside Gibraltar;
- (b) introduces the offence by a commercial organisation for failing to prevent bribery;
- (c) increases the penalty to a maximum of ten years' imprisonment;
- (d) introduces the legitimate purpose defence; and
- (e) removes the presumption of corruption.

### **(d) Data Protection**

**[GIB.153]** In Gibraltar, the processing of personal data is regulated by the Gibraltar Data Protection Act 2004 (the DPA). Personal data is defined as any information relating to a natural person who is the subject of personal data.

**[GIB.154]** A data controller is any natural or legal person, public authority, agency or any other body which determines the purposes and means of the processing of data. A data controller must ensure that its processing of any personal data complies with the requirements set out in the DPA.

This includes:

- (a) ensuring that the local entity has applied for registration to the Data Protection Commissioner;
- (b) ensuring that the data is processed fairly and lawfully;
- (c) ensuring that the data controllers and data processors comply with requirements contained in DPA s 11(1) regarding the factors which should be considered when determining appropriate organisation and technical security measures; and
- (d) ensuring that any cross-border transfers of personal data are in compliance with DPA s 30.

**[GIB.155]–[GIB.163]** A data processor is any natural person or legal person, public authority, agency or any other body which processes personal data on behalf of the data controller. A data processor must also comply with the requirements set out in DPA ss 7 and 11. In 2012 the European Commission (“Commission”) announced its long-awaited proposals to update and moder-

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Legal entities **[GIB.168]**

nise data protection rules and principles, currently contained in Data Protection Directive 95/46/EC. The Commission's legislative proposals include a regulation to set out a general European Union ("EU") framework for data protection but as of yet nothing has been implemented.

**(f) Regulation of Trust and Company Management Services**

**[GIB.164]** The provision of trustee and company management services is a licensable activity supervised by the Financial Services Commission.

## **B Legal entities**

### **1 Companies: general**

**(a) Nature and sources of company law**

**[GIB.165]** Gibraltar company law is contained primarily in the Companies Act which is based almost exclusively on the 1929 Companies Act in England. Various modifications to the Companies Act have ensured the competitiveness of Gibraltar as a financial centre. Further amendments to the Companies Act will be necessary in light of the various European Union Directives on company law which will be implemented in all territories of the European Union.

**[GIB.166]** A reviewing committee has been set up to review and propose changes to modernise the company legislation. It is expected that a new Companies Act will be enacted in the near future.

**(b) Types of corporate entity which may be created**

**[GIB.167]** The Companies Act allows for the incorporation of both private companies and public limited companies. A private company under Gibraltar law is a company that restricts the right to transfer its shares, has no more than 50 shareholders and does not offer its shares to the public. All remaining companies are public limited companies by default.

Four types of private companies may be incorporated under Companies Act s 3(2), namely:

- (a) A company limited by shares;
- (b) A company limited by guarantee and having a share capital;
- (c) A company limited by guarantee and not having a share capital; and
- (d) An unlimited company with or without a share capital.

**(c) Incorporation**

**[GIB.168]** The incorporation of a company is a straightforward procedure and can be completed promptly. The first step to ensure that the proposed name is acceptable to the Company Registrar (as consent is required for the use of certain specific words). Once the name is approved, the following documents must be submitted:

- (a) Memorandum and Articles of Association;
- (b) Declaration of compliance;
- (c) notice of situation of registered office; and

## **[GIB.168]** Gibraltar: Commentary

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(d) a statement of nominal share capital.

**[GIB.169]** There is no minimum authorised/issued share capital. Under the Companies Act it is possible to incorporate a company with a single shareholder (Companies Act s 3(1)). It is also possible to limit the duration of the company.

**[GIB.170]** A registration fee of £50 is currently payable at the time of presentation of the documents. The time taken to incorporate is normally about three working days, though a company may be incorporated within 24 hours if necessary for a fee of £100.

### **(d) Corporate Powers**

**[GIB.171]** The constitutional documents of a Gibraltar company include a Certificate of Incorporation, Memorandum of Association and Articles of Association. The Memorandum sets out the purposes for which the company is established and normally allows the company to do anything that by law a company is able to do (Companies Act s 4(1)(b)).

**[GIB.172]** The Articles of Association of a Gibraltar company dictate how the company is to be managed and administered. Articles usually provide for procedures regarding director and shareholder meetings and resolutions, for any restrictions on the ability of shareholders to transfer shares and set out the powers of the directors of the company. The Articles are often made to measure to suit particular requirements of a company's shareholders.

### **(e) Types of share capital**

**[GIB.173]** Shares of different classes are permitted, including preference and redeemable shares, and shares with limited or no voting rights. Shares of no par value, however, are not allowed. Shares may be issued in registered or nominative form.

**[GIB.174]** The Companies Act allows a company limited by shares or limited by guarantee and having a share capital to issue preference shares which shall or are liable to be redeemed at the option of the company or the shareholder. The legislation makes provision for the basis upon which such shares can be redeemed and for the application of premiums received on the issue of shares to a share premium account.

### **(f) Governance**

**[GIB.175]** Management of Gibraltar companies is undertaken by its board of directors. The powers of the board are usually set out in the articles of association. Private companies need only one director. Public companies must have two or more directors. Directors can be either individuals or corporations. For private companies, directors need not be shareholders. Directors of public companies, however, must hold shares to qualify for appointment. The first directors are appointed by the subscribers to the Memorandum and Articles of Association. Thereafter the appointment, and dismissal, of directors is governed by the Articles of Association. Directors can always be dismissed by ordinary resolution of the members.

Legal entities **[GIB.181]****(g) Shareholder control**

**[GIB.176]** In accordance with the Gibraltar Companies Act s 39, the subscribers to the memorandum and any other person who agrees to be a member and whose name is entered in the register are considered members of the company.

**[GIB.177]** A company must keep a register of members with details, including names, addresses and occupations and dates on which each becomes or ceases to be a member. In addition, public companies must keep an index of members, unless the register itself is in the form of an index (Gibraltar Companies Act ss 144 and 146).

**[GIB.178]** If a company has different classes of shares and is authorised by its memorandum or articles to vary rights attached thereto, members constituting 15% of a particular class may object to a variation by petition to the Supreme Court within seven days, provided they had not previously agreed to the resolution. In those circumstances any attempted variation does not take effect until confirmed by the court. The court, after hearing all parties, has power to disallow or confirm the variation. The company has to provide the Registrar of Companies with a copy of the court's order within 15 days of the decision; failure to do so constitutes an offence (Gibraltar Companies Act s 111).

**(h) Auditing and filing requirements**

**[GIB.179]** All Gibraltar companies must prepare audited financial statements each year, comprising a balance sheet, profit and loss account, statement of source and application of funds, and director's report. The financial statements must be presented to the shareholders for approval at a general meeting and all companies must file abridged balance sheets (not audited for small companies) at the Companies Registry.

**(i) Re-domiciliation of companies**

**[GIB.180]** There is a difference between a foreign company doing business in Gibraltar and registered under Part X of the Companies Act and a re-domiciled company, in that the former will always remain a foreign company, but the latter, once registered in Gibraltar, becomes a Gibraltar company.

**[GIB.181]** Under the Companies Act and Companies (Re-domiciliation) Regulations 1996, companies from the following countries can re-domicile into Gibraltar:

- (a) European Economic Area states
- (b) Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, Cayman Islands, Falkland Islands, Guernsey, Isle of Man, Jersey, Montserrat, Pitcairn, St Helena, Turks & Caicos Islands, British Virgin Islands
- (c) States which are members of the British Commonwealth
- (d) Liberia
- (e) Panama
- (f) Singapore
- (g) Switzerland
- (h) Cyprus

**[GIB.181]** Gibraltar: Commentary

- (i) Hong Kong
- (j) Malta
- (k) United States of America

**[GIB.182]** A company making an application to re-domicile in Gibraltar must, once its application is approved, have a registered office in Gibraltar. The application is made to the Registrar of Companies and must be accompanied by the Memorandum and Articles of the company and various other formalities among which must be a Certificate of Good Standing and evidence that no proceedings for insolvency have been commenced against the company in the jurisdiction in which it is incorporated. The fee for the registration of a company as re-domiciled in Gibraltar is £100. All information and evidence required must be in English, and if not, it must be accompanied by a certified translation into English. The company is also required to satisfy the Registrar that it has ceased to be a company domiciled in the country of incorporation or in which it was previously domiciled. All these requirements must be satisfied within six months of the registration, and if they are not the Registrar strikes the company off the Register.

**(j) Dissolution**

**[GIB.183]** A company can be dissolved by court order, once its affairs have been wound up, or by the Registrar if no annual return has been filed in the previous three calendar years (Companies Act ss 267 and 267A). The court also has power to dissolve a company where the Registrar has reasonable cause to believe it is not carrying on business or in operation (Companies Act s 331).

**(k) Insolvency**

**[GIB.184]** The current law on insolvency is governed by Part VI of the Companies Act which primarily provides for insolvent companies to be liquidated. Liquidation is a procedure whereby a liquidator has custody and control of the company's assets. The purpose of liquidation differs depending on whether the liquidator has been appointed by the members, creditors or by the Court.

**[GIB.185]** Members may start the process of a voluntary liquidation of a company while it is still solvent after having satisfied its liabilities. In such a case, the liquidator's purpose is to solely concern himself with the distribution of available assets between the shareholders. Conversely, in a creditor's voluntary liquidation, the members inform the creditors that the company is experiencing financial difficulty and both the creditors and members agree to put the company into liquidation. If the members are unwilling to comply, the creditor(s) may apply to the Court for a court order. In both creditor's voluntary liquidation and winding up by the Court the liquidator's purpose is to recover and realise a company's assets and where possible distribute these, or their proceeds, amongst the creditors of the company.

**[GIB.186]** Fixed charge holders have the option of appointing a receiver. Receivership is a procedure whereby a receiver is appointed by the court or under a debenture or other debt instrument in respect to a particular asset with the aim of selling that asset to satisfy the debt owed to the secured creditor.

**[GIB.187]** The Companies Act penalises directors for engaging in fraudulent trading and any act resulting in a fraudulent preference of its creditors is liable to be set aside.

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## Legal entities [GIB.196]

**[GIB.188]** A new Insolvency Act was passed in September 2011 and, while it is not yet in force, it is expected that it will be coming into force shortly.

**[GIB.189]** The Insolvency Act introduces a range of new provisions including:

- (a) rescue options for financially distressed companies;
- (b) administrative receivership for floating charge holders;
- (c) the offence of insolvent trading; and
- (d) voidable transactions.

**[GIB.190]** Through the use of a Company Voluntary Arrangement (CVA), a company will be able to approach its creditors in an attempt to try to reach a compromise arrangement. The arrangement may be (for example) to repay them from future profits, to repay the creditors less interest or the directors may be prepared to sell assets to repay the creditors within a period of time.

**[GIB.191]** Administration is an insolvency process that is designed to encourage the restructuring and refinancing of a company in order to avoid liquidation. The administration procedure involves the appointment of an administrator who displaces the directors of the company.

**[GIB.192]** Administrative Receivership is a procedure whereby an administrative receiver is appointed by the holder of a debenture or other instrument of the company secured by a *floating charge*. Similar to a receiver, the administrative receiver takes control of the specific assets charged under the floating charge with the aim of selling these and paying the secured creditor.

**[GIB.193]** As well as retaining the offence of fraudulent trading, the Insolvency Act will introduce insolvent trading. A director could be found guilty of insolvent trading even if the director honestly had no idea that the company could not avoid going into insolvent liquidation, A director guilty of such an offence could face a disqualification order for up to 10 years (as well as personal liability) if he/she should have realised that the company was going to become insolvent, or if any other person in a similar position would have realised that the company was going to become insolvent.

**[GIB.194]** Finally, under the Insolvency Act, unfair preferences undervalue transactions, voidable floating charges, and extortionate credit transactions will all be void.

## 2 Partnerships

### (a) General

**[GIB.195]** Gibraltar partnership law is outlined in the Partnership Act which is based on the English Partnership Act 1890. A partnership may be created simply by execution of a deed by all the partners concerned or even by mutual verbal agreement. If the partnership has a place of business within Gibraltar it must register the name under which it carries on business with the local authorities.

**[GIB.196]** Partnerships are viewed as transparent entities for tax purposes and therefore the profits or gains from the partnership are attributed to the partners for tax purposes. A partner is not liable for the unpaid tax of another partner.

## [GIB.197] Gibraltar: Commentary

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### (b) Limited Partnerships

[GIB.197] The Limited Partnerships Act is also drawn from an English source namely the Limited Partnerships Act 1907. Section 3(2) of the Limited Partnerships Act permits the free association of partners, upon the terms that the liability of partners is limited to the amount contributed by them in cash or property at the inception of the partnership.

[GIB.198] Each limited partnership should consist of at least one general partner who is responsible for the management of the business of the partnership and whose liability is unlimited, and at least one limited partner who does have limited liability but is prevented from taking part in the management of the partnership business and has no power to bind the firm.

### (c) Limited Liability Partnerships

[GIB.199] A Limited Liability Partnership Act is likely to be enacted in the near future.

## 3 Trust Law

### (a) Equitable jurisdiction

[GIB.200] As mentioned above, Gibraltar is an entirely common law territory with common law and equitable jurisdiction. The English Law (Application) Act specifically incorporates both the common law and rules of equity from time to time in force in England into Gibraltar law.

### (b) Codified trust law

[GIB.201]–[GIB.202] Gibraltar does not have a codified trust law. The basis of trust law is the common law, principally derived from English law. As in England there have been a number of statutory additions to the law. The major piece of legislation is the Trustee Act, which is principally based on the English Trustee Act of 1893. Several amendments have been introduced to that Act to include various aspects of the English Trustee Act 1925 and the Trustee Investment Act 1961. The Variation of Trusts Act 1958 in England has also been incorporated into Gibraltar law.

[GIB.203] The other major piece of trust legislation is the Perpetuities and Accumulations Act 1986 which is based almost entirely on the English 1964 Act (see below).

### (c) Main points

[GIB.204] As previously indicated Gibraltar Trust Law is essentially English trust law subject to the various statutory differences as have been enacted in Gibraltar. Some of the main differences are set out below.

#### *Perpetuity Period*

[GIB.205] In addition to the usual common law period of a life in being plus 21 years Gibraltar has a statutory period of 100 years (Perpetuities and Accumulations Act 1986, s 4(1)).

#### *Accumulation Period*

[GIB.206] In addition to various other periods the Perpetuities and Accumulations Act allows for a 100 year accumulation period from the date of the making of the disposition.

Legal entities **[GIB.214]***Exempt from income tax*

**[GIB.207]** Under the Income Tax Act a trust established by a non-resident exclusively for the benefit of non-residents is exempt from income taxes. It is therefore common for Gibraltar trusts to specifically provide that no resident of Gibraltar can be a beneficiary, so as to ensure the tax exempt efficacy of the trust. If a previously non-resident beneficiary moves to Gibraltar, the trust is no longer exempt from income tax unless the beneficiary is a high net worth individual.

*Fraudulent transfers*

**[GIB.208]** Various provisions with regard to fraudulent transfers have been introduced to enhance creditor protection aspects of certain trusts.

**(d) The Hague Convention on the law of trusts**

**[GIB.209]** The Trusts (Recognition) Act Gibraltar incorporated the provisions of the Hague Convention of Trusts into its domestic law.

**(e) Attitude to forced heirship**

**[GIB.210]** Gibraltar does not have legislation with regard to claims brought by prospective claimants under forced heirship or other rights arising usually in civil law jurisdictions. The attitude of Gibraltar practitioners accords with that of English practitioners in that the common law will not entertain any such claim. It is therefore common for Gibraltar trusts to be set up to make provision against such prospective claims. No statutory confirmation of the common law position has been enacted in Gibraltar.

**(f) Asset Protection Trusts**

**[GIB.211]** In 1990 Gibraltar introduced legislation to facilitate the establishment of trusts to provide against claims brought by unforeseen and future creditors. In enacting such legislation, Gibraltar chose to take a conservative approach.

**[GIB.212]** The Bankruptcy (Amendment) Acts No 1 and No 2 of 1990 and the Bankruptcy (Register of Dispositions) Regulations 1990 set out the requirements for the establishment of such trusts. Section 42A of the Bankruptcy Act provides that a disposition is not voidable at the instance of a creditor if:

- (i) under or by virtue of the disposition of property the same becomes settled property; and
- (ii) the settlor is an individual;
- (iii) the settlor is not insolvent at the date of disposition;
- (iv) the settlor does not become insolvent in consequence thereof; and
- (v) the disposition is registered in accordance with the requirements of the regulations.

**[GIB.213]** The Act specifically makes inapplicable the Elizabethan Statute of Fraudulent Conveyances 1571 and the provisions of the Bankruptcy Act s 42 which is usually applicable to fraudulent transfers.

**[GIB.214]** It is important to highlight the definition of “insolvent” under this legislation. This provides that the term insolvent includes any actual, contin-

## **[GIB.214]** Gibraltar: Commentary

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gent or prospective liability of the settlor. However no claim by creditors is deemed to be a contingent or prospective liability of a settlor if, at the time of making the disposition, he does not have actual notice of the claim or of the facts or circumstances which may render him liable to such a claim.

**[GIB.215]** Registration of a trust is necessary in order to benefit from the law. This is a confidential register and there is an application fee of £50. The name of the settlor and the amount of the disposition are not registered. The trustees of such a settlement are required to undertake a due diligence exercise with regard to the settlor and to confirm at the time of registration that they have had the settlor complete the necessary affidavit of solvency and obtained all reasonable information on public record in confirmation of this.

### **(g) Non-profit Making Organisations**

**[GIB.216]** A non-profit making organisations is a legal entity which, as the name suggests, does not accrue money purely for profit or personal gain, such as; charities, associations, clubs.

A non-profit making organisation can be set up as a trust. Registering as a charitable organisation comprises that it is exempt from paying certain taxes.

## **C Miscellaneous**

### **1 Funds**

#### **(a) The Gibraltar Regulatory Regime**

**[GIB.217]** The majority of Gibraltar's fund legislation is contained in the Financial Services (Collective Investment Schemes) Act 2011 (the "CIS Act 2011"), the Financial Services (Collective Investment Schemes) Regulations 2011 (the "CIS Regs 2011"), the Financial Services (Experienced Investor Funds) Regulations 2012 (the "EIF Regs 2012") and the Financial Services (Alternative Investment Fund Managers) Regulations 2013 ("AIFM Regs 2013"), based on the Alternative Investment Fund Managers Directive ("AIFMD") which provides a marketing passport throughout the EU to fund managers.

**[GIB.218]** Gibraltar's fund legislation provides for a range of fund products to be established; products range from private unregulated schemes, to experienced investor funds, to retail funds such as UCITS funds.

#### **(b) Private Collective Investment Schemes**

**[GIB.219]** A Gibraltar private scheme is an unregulated collective investment scheme established under the CIS Regs 2011. There are no restrictions or guidance on the type of vehicle which can be used to establish a private scheme, although the most common structure for a private scheme is a Gibraltar limited company. Other structures which may be considered are a unit trust or Gibraltar limited partnership.

**[GIB.220]** A private scheme is not subject to any licensing requirements. Even though it is not regulated by any regulatory body, a private scheme must register with the Financial Services Commission (the "FSC") under AIFMD,

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and moreover its participation units are able to obtain international securities identification numbers (ISIN) and (WKN) numbers. A private scheme is therefore subject to annual reporting to the FSC.

**[GIB.221]** Private schemes do not have any investment restrictions although, like all funds independent of the regime under which they are established, private schemes must follow the investment strategy and investment objectives set out in their official offering prospectus.

**[GIB.222]** A Gibraltar private scheme may only be offered to an identifiable category of persons, such as friends, family or close business associates, whose number does not exceed 50. Other than the restriction on the limited nature of the promotion, there are no statutory restrictions on the type of investor who can invest nor are there any investment or leverage restrictions. The units of private schemes may not be listed on a stock exchange as they must only be offered to potential investors on a private placement basis. The CIS Regs 2011 state that the potential investor prior to acceptance must be in possession of sufficient information to be able to make a reasonable evaluation of the offer. It is considered good practice to provide a professionally drafted prospectus. A prospectus sets out how the fund operates, the various parties involved, the investments the fund intends to make and the risks involved investing in the fund. This will allow potential investors to make an informed decision when considering investing into the scheme. It is also considered prudent to have an annual audit and as appropriate, appoint a licensed fund administrator to value the assets of the fund.

**(c) Experienced Investor Funds**

**[GIB.223]** An Experienced Investor Fund (“EIF”) is a regulated collective investment scheme exclusively for investment by experienced investors and is established under the EIF Regs 2012, and registered with the FSC.

**[GIB.224]** An EIF can be established as a Gibraltar limited company, a Gibraltar unit trust, a Gibraltar limited partnership, a Gibraltar protected cell company (“PCC”) or any other form recognised in Gibraltar (which may include foreign structures where the management and control is in Gibraltar) and which is approved by the FSC.

**[GIB.225]** An EIF established as a PCC is essentially a limited company established with various cells, or sub-funds. PCCs enable the statutory segregation of assets and liabilities into different cells. Individual cells may be established according to investment strategy, geographical emphasis or even for certain clients such as insurance companies or pension funds that may require asset segregation under the terms of their own mandates. There is no limit to the number of cells a PCC may create.

**[GIB.226]–[GIB.227]** An EIF structured as a Gibraltar limited company or a Gibraltar PCC, must have a board of directors which includes two Gibraltar resident directors who are authorised by the FSC to provide directorships to EIFs and so ensuring substance in the fund’s board which is both important from a fiscal and regulatory perspective.

**[GIB.228]** An EIF operating as an open-ended fund is required to appoint a depository. The CIS Act 2011 defines a “depository” as any person to whom the property subject to the scheme is entrusted for safe keeping. However, there

**[GIB.228]** Gibraltar: Commentary

are exemptions in which an EIF is not required to appoint a depositary pursuant to the definition of “depositary” in the CIS Act 2011 where: (i) the fund is a closed fund; or (ii) the FSC makes a determination to that effect.

**[GIB.229]** An experienced investor is a person or partnership whose ordinary business or professional activity includes acquiring, underwriting, managing, holding or disposing of investments, whether as principal or agent, or the giving of advice concerning investments; or

A body corporate which has net assets in excess of EUR 1,000,000 or which is part of a group which has net assets in excess of EUR 1,000,000; or

An unincorporated association which has net assets in excess of EUR 1,000,000; or

The trustee of a trust where the aggregate value of the cash and investments which form part of the trusts assets is in excess of EUR 1,000,000; or

An individual whose net worth, or joint net worth with that person’s spouse, is greater than EUR 1,000,000, excluding that person’s principal place of residence; or

A participant who invests a minimum of EUR 100,000 in the fund; or

A participant who invests a minimum of €50,000 in the fund, and who has been advised by a professional adviser and the fund’s administrator has received confirmation of such advice; or

A participant who is a professional client, as defined under the Financial Services (Markets In Financial Instruments) Act 2006; or

A participant in a fund that has re-domiciled to Gibraltar where the FSC has permitted the inclusion of such participant.

**[GIB.230]** There is no statutory minimum which must be invested into an EIF, however, it is normal practice to set the minimum investment at EUR 100,000 to ensure all investors automatically qualify as experienced investors and so additional proof to confirm an investor’s status as an experienced investor is not required.

**[GIB.231]** An EIF is required to produce an offering document called a private placement memorandum (“PPM”), which must include certain information about the fund. Gibraltar EIFs have been established to invest in a range of traditional asset classes such as standard tradable securities, property, private equity and other funds, and also alternative investments such as mortgage tranches, credit loans, venture capital and aircrafts. The PPM must contain such information as required by the EIF Regs 2012, which provides participants, potential participants, and their professional advisers, with sufficient information for the purposes of making an informed judgement about the merits of participating in the EIF and the extent of the risks of participating in the fund.

**[GIB.232]** An annual audit of the EIF is required which must be produced by an auditor registered under the Gibraltar Audit Registration Board. The audit must be conducted in accordance with internationally recognised audit and accounting standards.

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**[GIB.233]** The authorisation process of an EIF is particularly attractive as a fund is allowed to begin trading on the basis of a legal opinion issued by local counsel stating that the fund is properly established in accordance with the EIF Regs 2012 provided the fund's documentation is submitted to the FSC for registration within ten business days of its launch. Alternatively, an EIF may opt for pre-launch FSC authorisation whereby the fund notifies the FSC at least ten days prior to launch. If, following ten days of receipt of the documents, the FSC does not issue a notice to the applicant, the fund is deemed authorised.

**(d) Public Funds (UCITS)**

**[GIB.234]** The CIS Act 2011 transposes EU Directive 2009/65/EC on Undertakings for Collective Investment in Transferable Securities (otherwise known as the UCITS IV Directive). These funds are generally meant for retail investors where the investments are in transferable securities listed on a recognised stock exchange.

**[GIB.235]** The combination of onshore status, EU membership, an efficient tax system and a solid infrastructure for investment funds, makes Gibraltar a strong alternative to traditional jurisdictions with regards domiciling UCITS funds and UCITS management companies. A UCITS fund in Gibraltar can be established as either a common fund, constituted by a trust deed or a binding agreement between the manager and the trustee, or an open ended investment company. A UCITS fund in Gibraltar may be structured as an umbrella scheme allowing multiple sub-funds within one structure. The choice of structure will be influenced by the need for tax transparency and whether investors can benefit from fiscal arrangements between their jurisdiction of residence and the jurisdiction of investments.

**[GIB.236]** One key feature of the UCITS IV regime is that UCITS funds benefit from a full marketing passport. This passport allows UCITS funds established in one member state to market their shares/units in other member states by following a simplified regulator-to-regulator notification procedure via standardised electronic documentation. This removes the burden of undergoing time consuming authorisation procedures in each member state where the UCITS wishes to raise investment.

**[GIB.237]** The UCITS IV regime replaces the requirements for a UCITS fund to issue a simplified prospectus with a key investor information document. The notion behind this document is that it is a concise standardised document which provides fair, clear and understandable information to investors. It must contain a risk indicator based on historical volatility – a scale which indicates risk/reward.

**[GIB.238]** In Gibraltar, no special exemptions are required to make UCITS funds tax efficient: the general provisions of Gibraltar tax law are such that a company or other entity whose income is derived outside of Gibraltar does not suffer tax in Gibraltar. In such cases, Gibraltar does not usually levy tax on investment income, such as dividends, interest, royalties from intellectual property, or on capital gains. In the case of UCITS funds, the activity will most certainly fall outside Gibraltar's tax regime on general principles because income will consist of exempt investment income, ie trading income from a trade conducted outside of Gibraltar, dividends or interest.

## **[GIB.239]** Gibraltar: Commentary

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**[GIB.239]** The fund may also apply to the Commissioner of Income Tax for a certificate of exemption from income tax under the Income Tax (Allowances, Deductions and Exemptions) Rules, 1992.

### **(e) Legal Structure**

**[GIB.240]** A private scheme or EIF in Gibraltar may be established as either open-ended or close-ended whereas UCITS funds may only operate as open ended funds. Open-ended funds are normally characterised by investment in liquid, readily valued assets such as exchange traded equities, futures, options and foreign exchange which allows an investor for the most part to redeem shares at any time. Typically, close-ended funds invest in illiquid assets such as property and as such are much more restrictive in the redemption of shares by the investor.

**[GIB.241]** There are no specific registrations or filings which need to be undertaken in order to differentiate between open-ended or close-ended funds, although the FSC does require, in the case of an EIF, prior notification to establish whether the fund intends to function as open-ended or close-ended or whether the cells within the fund are to be open-ended or closed-ended.

**[GIB.242]** A collective investment scheme established as a limited company will need to provide in its memorandum and articles for redemptions of shares and so will normally be structured with at least two share classes:

Management shares (“Ordinary Shares”), which have voting rights but negligible or no economic rights whatsoever with regards to participation in the fund. Ordinary Shares are issued at nominal value, usually to the promoter of the fund.

Redeemable preference shares (“Preference Shares” and/or “Participation Shares”), which are liable to be redeemed at the option of the company or the shareholder. Participation Shares have economic rights in accordance with the investments made by the fund but have limited voting rights and are issued at a premium to the investor.

### **(f) Alternative Investment Fund Managers**

**[GIB.242A]** The AIFM Regs 2013 transpose the AIFMD into Gibraltar law. The Directive is applicable to investment managers of EU funds, but also to those outside of the EU wishing to market their funds within the EU. Authorisation under the AIFMD allows for passporting to other member states. In Gibraltar the AIFM Regs 2013 have a wide scope, covering experienced investor funds, authorised funds, private funds, and some recognised funds.

**[GIB.242B]** For compliance with the provisions of the Directive, an AIF is required either to have a single, external AIFM or it can itself be the AIFM. Although the AIFMD is intended to regulate the management of the fund, rather than the fund itself, where an AIF is self-managed, the AIF itself is subject to the requirements of the directive.

**[GIB.242C]** In order to comply, there are certain requirements and conditions that an AIFM needs to meet. In terms of capital, a self-managed AIF will need minimum capital of €300,000; an AIFM will need minimum capital of €125,000, with that amount increasing by 0.02% of the amount by which

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funds under management exceeds €250m, up to an amount of €10m. Another important requirement is that the AIF appoint a ‘depository’, being an independent party that deals with fund administration and safekeeping of assets. That depository must be established in Gibraltar, though there is a transitional provision which permits depositaries licensed in other member states until 22 July 2017. The Directive also contains requirements as to organisation, transparency, operating conditions, investment, disclosure, conflict of interest and remuneration.

**[GIB.242D]** Given its status within the EU but not the Eurozone, its UK common law background and its low tax, Gibraltar is in an advantageous position following the AIFMD.

**(f) Taxation & Confidentiality**

**[GIB.243]** Income tax in Gibraltar is levied on a territorial basis, under the accrued and derived in Gibraltar principle. As noted, Gibraltar does not levy tax in most cases on investment income wherever derived, such as dividends or capital gains.

**[GIB.244]** The vast majority of Gibraltar funds undertake activities which fall outside the Gibraltar tax regime on general principles, either because their income consists of exempt investment income; trading income from a trade conducted outside Gibraltar or income which accrues and derives outside Gibraltar; or capital gains on the disposal of assets. Therefore no special exemptions are required in the case of most funds: the general provisions of Gibraltar tax law are such that a fully taxable company or other entity undertaking international business does not suffer tax in Gibraltar. This is significant because a fund structured as a fully taxable company should be able to benefit from the Parent Subsidiary Directive and the Interest and Royalty Directive whereas exempt vehicles in many cases are denied such benefits, and therefore for the most part there will be no withholding taxes on dividends paid by a subsidiary in another EU member state to a Gibraltar parent company.

**[GIB.245]–[GIB.250]** Funds in Gibraltar may apply to the Commissioner of Income Tax for a certificate of exemption from income tax under the Income Tax (Allowances, Deductions and Exemptions) Rules, 1992.

**2 Banking**

**[GIB.251]** The banking sector is well established in Gibraltar, with a wide range of banks providing both domestic and offshore banking facilities. The banking sector’s total assets are approximately valued at £9 billion, whilst the third party funds under management are valued at circa £9.2 billion. Most of the banks established in Gibraltar are branches of major UK, European or US banks. Much of the banking activity in Gibraltar is directed to asset management for high-net-worth individuals, such as Category 2 individuals.

**[GIB.252]** Banking in Gibraltar is regulated by the Financial Services Commission under the Financial Services (Banking) Act 1992. This Act brought Gibraltar’s legislation in line with current EC banking directives. The Act replaced the previous notion of having two banking licences, an onshore and an offshore licence. This was done by introducing a single banking licence. It allows Gibraltar licensed banks to “passport” and branch out across the EU and EEA on the strength of their Gibraltar licence.

### [GIB.253] Gibraltar: Commentary

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[GIB.253] In 2007 the International Monetary Fund (IMF) conducted a review assessment of Gibraltar's banking and financial facilities. The report showed that Gibraltar had a strong financial centre which met international standards, and was found to be ahead of many onshore – and much larger – finance centres.

[GIB.254]–[GIB.260] As from 1 January 2011, the Gibraltar Deposit Protection Scheme covers 100% of a bank's total liability, or EUR 100,000 to a depositor, whichever is less.

### 3 Gaming

[GIB.261] Gibraltar has developed into one of the leading e-gambling jurisdictions. It is a thriving financial centre which is host to many of the world's major gaming operators, including Betfair, William Hill, Ladbrokes, Bwin. Party and 888 Holdings. Gibraltar became host to the world's largest listed online gaming business when, in 2011, industry giants PartyGaming and Bwin received shareholder approval to undergo a reverse takeover under the cross-border merger directive.

[GIB.262] The Gambling Act 2005 regulates both land-based and online operators. All gaming operators in Gibraltar require a licence and all licences are issued by the Gibraltar Licensing Authority. This includes those for remote gambling which are used for telephone, internet and televised betting.

[GIB.263]–[GIB.264] The Licensing Authority is the Minister responsible for gambling (or such other individual or body as the Minister may appoint). As such the Minister bears the statutory responsibility for the grant, variation and renewal of licences amongst other responsibilities under the Gambling Act.

[GIB.265] There is a Gambling Division within the Licensing Authority, the head of which is the Gambling Commissioner, who is responsible for ensuring that holders of a licence conduct their undertakings in accordance with Gibraltar's gambling laws and regulations. The principal method through which the Gambling Commissioner exercises his responsibilities is by the issuing of approved codes of practice; guidance or other advice to the industry; regular and direct liaison with key individuals in the industry; risk based programmed visits and examination of relevant equipment and information; consideration of licence holders' reports as agreed or found necessary; the examination of complaints from the public, including any underlying or systemic issues they identify; and advising the Minister, the Licensing Authority and the industry as necessary.

Conditions and licensing requirements at present cover areas such as: advertising, pay-out or prize money, customer privacy and data protection, audit and accounts. To date it has traditionally been the government's policy to only issue licences to reputable and well established gambling businesses so that 5 out of the top 10 gambling operators in the EGR's power 50 are Gibraltar licensees.

[GIB.266] Operators are also encouraged to develop policies against addictive gambling and to train their staff on the implementation of such policies.

[GIB.267] For the purposes of the Gambling Act, a person is regarded as conducting or providing facilities for remote gambling in or from within

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Gibraltar if, and only if, at least one piece of remote gambling equipment used in the provision of the facilities is situated in Gibraltar.

**[GIB.268]–[GIB.269]** It should be noted that there is a £10,000 application fee payable to the Licensing Authority. With regards to gaming taxation, licence holders are subject to gaming duty at the rate of 1% of the gaming yield, for income generated through poker and casino games, and 1% of the turnover for revenue obtained through sports betting. The total amount of gaming duty payable in both cases is subject to an annual minimum amount of £85,000 and an annual maximum amount of £425,000. A licence fee of £2,000 is payable annually following the year in which the application fee was paid.

**[GIB.270]** A code of practice for the Gaming Industry was issued in December 2008, providing interpretive guidance to the Gambling Act, as well as a guide to what is regarded as good practice for operators in the industry.

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XPP 8.4C.1 SP #3 SC\_00MDD nlp BOSE

VER: [SC\_00MDD-Local:04 Jun 13 07:20][MX-SECNDARY: 12 May 14 17:20][TT: 19 Jan 11 08:07 loc=gbr unit=bose\_binder\_02\_b\_0079] 0