

STEADFAST CORPORATE SERVICES

Brief Introduction to Gibraltar Companies and Trusts

Introduction

Gibraltar is a British Overseas Territory situated at the southern tip of the Iberian peninsula. It has for centuries been a natural commercial crossroads and trading entrepot. The official language is English but Spanish is widely spoken. The currency is the pound sterling and there are no exchange controls. There are excellent communication facilities and frequent daily flights to London and other destinations.

Gibraltar is a stable parliamentary democracy whose Government actively encourages the ongoing development of an offshore Finance Centre with significant tax concessions available and the added advantages of membership of the European Union, a well developed infrastructure and proximity to two of Europe's fastest growing economies. Following the full opening of its border with Spain in 1985 and the implementation of the European Single Market, Gibraltar has further increased its prominence as a European financial centre.

This memorandum explains the basic elements of incorporation of companies in Gibraltar, which in most circumstances may be managed and controlled from Gibraltar without liability to local tax. It also briefly mentions Gibraltar trusts and describes the ongoing administration and secretarial services available from the Steadfast Group.

Gibraltar Companies

The Gibraltar Companies Act is based on the English Companies Act of 1892 with a number of subsequent amendments. Recent amendments to the Act ensure that all relevant EU Directives are implemented.

The following types of company are available:-

- Limited by shares (public or private)
- Limited by guarantee with or without share capital
- Unlimited, with or without share capital

This memorandum deals with private companies only.

Time Taken

A Gibraltar company can be incorporated within 3 to 4 working days. Upon payment of an additional fee, same day incorporation can be arranged. Alternatively, shelf companies are available.

Name

A company may be incorporated with any name provided that it is not considered undesirable, does not contain certain prohibited words, ends with the word "Limited" (except in certain limited cases) and does not conflict with any name already registered. The company's name may be changed after incorporation, if required.

Shares

The minimum number of shareholders is one. Corporate and nominee shareholders are permitted. Shareholder confidentiality may be achieved by issuing shares to nominees, who hold the shares on behalf of the owner or owners of the company. Capital Duty is fixed at £10 payable on the initial share capital and any increases thereafter.

Directors

A sole director is permitted although a minimum of two directors is advisable in the case of individuals. Directors are not required to hold qualifying shares and corporate directors are permitted. The directors manage the business of the company. Where appropriate the directors may issue powers of attorney on behalf of the company. All documents (including deeds) may be signed on behalf of the company by a director or authorised person.

Registered Office

A registered office must be maintained in Gibraltar where the Statutory Books are kept.

Meetings

Meetings of shareholders and directors may be held anywhere in the world. Only the annual general meeting of shareholders is required to be held in Gibraltar. If shareholders are not in Gibraltar proxies can be appointed for the purpose of the meeting. Private companies may dispense with the requirement to hold annual general meetings. Meetings may also be held by telephone or by way of written memorandum.

The Registry

The Gibraltar Companies Registry (Companies House (Gibraltar) Limited) is highly computerised and efficient. A company is required to file returns as to registered office, directors, allotments and transfers of shares and, once in every calendar year, an annual return. Company searches and name clearances can be carried out online.

Accounts

If a company is categorised as a "small" (with an annual net turnover of less than £4.8million and less than 50 employees) it is required to

file, annually, an abridged, unaudited balance sheet. Different requirements apply to companies which are "medium-sized" (with an annual net turnover of less than £19.2million and less than 250 employees) and large companies. Annual accounts (or an abbreviated balance sheet in the case of a small company) must be filed within thirteen months following the financial year end. All companies incorporated after 1 April 2000 must file first accounts by not later than 13 months from the end of the company's first financial year or 18 months following the first anniversary of the incorporation of the company, whichever is the longest period.

Foreign Companies

Foreign companies may establish a branch office/place of business in Gibraltar by registration under Part X of the Companies Act. Branch offices may be granted exempt status.

Tax Rulings

In a move designed to protect the attractiveness of Gibraltar companies for international clients – the Commissioner of Income Tax in Gibraltar has provided guidance to clarify the scope of the Gibraltar tax legislation applicable to Gibraltar companies. In summary if one can show that the profit making activity and the service delivered was delivered outside Gibraltar then those sources of income will not be deemed to accrue or derive from Gibraltar and should be outside the scope of Gibraltar tax.

If requested, Steadfast Corporate Services can assist and apply for an advance tax ruling to this effect.

Similarly in respect of income tax or withholding tax on lending to Gibraltar companies – the situs (location) of the loan is important. The Commissioner has clarified that if a Gibraltar resident company purchases real estate outside Gibraltar with the assistance of a loan from a bank outside Gibraltar and the primary security is the property then there is no source of income which would give rise to a liability to tax in Gibraltar.

Gibraltar continues to impose no Capital Gains Tax, VAT, Estate Duty or Stamp Duty (other than for Gibraltar sited property).

Tax Reform

The Gibraltar Government, with the support of the UK, has instituted proceedings in the European Court seeking a ruling that Gibraltar has the constitutional right to set its own domestic taxes, thereby enabling the implementation of the new company tax regime proposed by the Gibraltar Government (and supported by the UK). The introduction of the intended new company tax regime in Gibraltar will depend upon the final result of the proceedings in the European Court, which are currently underway. This is likely to be available before the end of 2008. At that time, subject to the result of the court case, Gibraltar will be able, finally, to implement its long-awaited company tax reforms. The intention is to reduce corporation tax in Gibraltar to low rate and to abolish tax exempt status. A payroll tax and business premises tax would instead be charged to all companies with employees and premises in Gibraltar.

The Gibraltar Government with the support of the UK has reconfirmed its intention to ensure that Gibraltar continues to be a fiscally attractive finance centre within the European Union.

Redomiciliation

Companies incorporated in any country within the European Economic Area as well as most British Commonwealth countries and some others may redomicile into Gibraltar and thereupon become a Gibraltar company. Equally, a Gibraltar company may redomicile to any of those countries which has the appropriate legislation.

Confidentiality

Confidentiality is strictly safeguarded in Gibraltar.

Statutory restrictions prevent the disclosure of details concerning the beneficial ownership of exempt companies, breach of which constitutes a criminal offence.

The placing of shares in the names of nominees ensures that the beneficial ownership of the shares is not revealed in the annual return.

Gibraltar is not a party to any double taxation treaties which means there is no disclosure between the local tax authorities and any other revenue authority in the world.

Trusts

As Gibraltar law is based on English common law it gives full legal effect to the concept of trusts. There is no requirement in Gibraltar for the disclosure of any information whatsoever relating to the establishment of a settlement or as to the identity of the settlors or beneficiaries although certain particulars of a Gibraltar Trust may be registered, voluntarily, if desired. The assets of a Gibraltar trust need not be held in Gibraltar.

The income and gains of a trust created by a non-resident of Gibraltar for non-Gibraltarian beneficiaries is exempt from local tax even if the trustees are resident in Gibraltar.

The concepts of a discretionary trust and other commonly used forms of settlement are fully recognised in Gibraltar. Trust deeds are virtually indistinguishable from their English equivalents.

Offshore trusts created in Gibraltar can provide significant tax planning advantages and Steadfast Trust Company Limited can advise as to the uses and benefits of trusts and their creation in circumstances appropriate to clients' requirements. Steadfast Trust Company Limited is fully licensed by the Financial Services Commission of Gibraltar and is able to provide trustee services and to administer trust assets.

The assets of Gibraltar offshore trusts can be uniquely protected by amendments to the Bankruptcy Act which provide that the assets of registered dispositions are protected against claims by creditors of the Settlor at any time following the creation of the trust. Such trusts are often referred to as *asset protection trusts*.

Why Gibraltar?

Gibraltar is economically, socially and politically stable and, in matters of company formation and administration, highly efficient and price competitive. It is within the European Union, a member of the OECD, not blacklisted or deemed non co-operative by any international organisation, well regulated and fully compliant in anti-money laundering measures and offers confidentiality, excellent legislation, a legal system based on English common law and a Government which is committed to sustaining its growth as an international financial and business centre.

As described above, most companies and trusts are wholly exempted from income tax and withholding tax. Gibraltar does not levy any taxes on capital, nor capital gains. Value added tax (VAT) does not apply in Gibraltar and there are no inheritance, estate, gift or death taxes of any kind.

Steadfast Corporate Services

The Steadfast Group is able to provide a full range of offshore services to its clients, including advising upon and implementing the incorporation and administration of Gibraltar companies, provision of nominee and secretarial services and the establishment of offshore trusts. All companies within the Steadfast Group are licensed under Gibraltar's Financial Services Act.

Further Information

This memorandum seeks only to give an overall view of corporate and trust services available from the Steadfast Group and is not a substitute for specific advice. Further information about Gibraltar and the services offered by the Steadfast Group may be obtained from Brendan Murphy or Susie Clayton in Gibraltar.

*Steadfast Group
Suite 1, Second Floor
International House
16 Bell Lane
PO Box 872
Gibraltar*

*Telephone: +(350) 200 77750 Fax: +(350) 200 77800
Email: admin@steadfast.gi*