



No: 270/2019

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Technical Notice – No Deal Brexit – Accounting and Auditing

In November 2018, the European Union (the “EU”) and the United Kingdom (the “UK”) concluded the terms of a Withdrawal Agreement providing for the UK’s orderly departure from the EU. Gibraltar forms part of these arrangements. The Agreement includes a transition period until the end of 2020. The transition period would also apply to Gibraltar. The Agreement has been debated and voted upon at length, but it is still subject to ratification by the UK Parliament and the European Parliament.

On 5 April 2019, the UK Government asked for a further extension of the Article 50 period. It is likely that the European Council will today decide to grant a further extension, but the length of that extension is still unknown. In circumstances where it remains a possibility that the UK and Gibraltar may leave without a Withdrawal Agreement at the end of this period, HM Government of Gibraltar (“HMGoG”) continues to plan for a No-Deal Brexit.

Purpose

This Notice explains the implications for accounting, corporate reporting and audit in the event that the UK and Gibraltar leave the EU without a deal. For the purpose of this Notice, a “Gibraltar company” means a company incorporated in Gibraltar and includes a subsidiary incorporated in Gibraltar, regardless of the nationality of its parent, but does not include a Gibraltar branch of a company incorporated elsewhere. An “EU company” means a company incorporated in the EU regardless of the nationality of its parent but does not include an EU branch of a company incorporated elsewhere. This Notice covers:

- Accounting and corporate reporting; and
- Audit.

Existing Position

Gibraltar currently follows EU rules and regulations that fall under the areas of accounting, corporate reporting and audit. These rules and regulations set out how companies and other legal entities report on their financial activity, corporate governance arrangements and how those reports are audited. This is reflected in Gibraltar law mainly through the Companies Act 2014 (and regulations made under that Act) and the Financial Services (Auditors) Act 2009 (and regulations made under that Act).



If there is a Withdrawal Agreement

If the Withdrawal Agreement enters into effect, the status quo would remain up to the end of the transition period – that being 31 December 2020.

If there is no Withdrawal Agreement

HMGOG will ensure that Gibraltar continues to have a functioning regulatory framework for companies and that, as far as possible, the same laws and rules that are currently in place continue to apply. This will be done by using the powers in the Gibraltar European Union (Withdrawal) Act 2019 to correct deficiencies in our statute book arising from our exit from the EU.

- *Accounting and corporate reporting*

The corporate reporting regime will be unchanged in many respects; however, certain technical changes are necessary to reflect that Gibraltar will no longer be part of the EU.

- *Audit*

Given the retention of EU law as Gibraltar domestic legislation, Gibraltar will continue to apply EU rules. Gibraltar, like the UK, will unilaterally provide a transitional period in the field of audit until 31 December 2020. During this period, individuals will be able to continue to apply for their EEA audit registration to be recognised in Gibraltar on the same terms. Additionally, EEA audit firms will continue to count towards the majority of appropriately approved persons test for owning Gibraltar audit firms.

Therefore the rules relating to audits of Gibraltar companies operating solely within Gibraltar will be unchanged. However, there will be additional requirements relating to the audits of Gibraltar companies operating cross-border, and to the provision of audit services cross-border.

Further detail is provided in the sections below.

Implications

- *Accounting and corporate reporting*

Gibraltar incorporated subsidiaries and parents of EU businesses will continue to be subject to Gibraltar's corporate reporting regime.

However, Gibraltar businesses with a branch operating in the EU will become third country businesses and will be required to comply with specific accounting and reporting requirements for such businesses in the Member State in which they operate. Complying with accounting and reporting requirements set in Gibraltar domestic legislation may no longer be treated by those Member States as sufficient.



Gibraltar companies listed on an EU market may also be required to provide additional assurances to the relevant listing authority that their accounts comply with International Financial Reporting Standards as issued by the International Accounting Standard Board. This will need to be done in accordance with EU third country requirements. In the short term, this could lead to changes to the compliance statements which are required within the annual accounts submitted to listing authorities.

- *Audit*

In order to be able to sign audit reports on behalf of an audit firm approved in Gibraltar, the auditor must be recognised as a statutory auditor by the Gibraltar Financial Services Commission. Since Gibraltar will be retaining EU law, EEA auditors will continue to be recognised in Gibraltar provided (1) they are registered with the competent authority of their home state; and (2) they pass an aptitude test as is the position today. After 31 December 2020, EEA auditors will cease to benefit from recognition in Gibraltar on the same terms and may no longer be offered an aptitude test. However, EEA auditors recognised as a result of an aptitude test process, which is begun before 31 December 2020, will continue to be recognised.

HMGOG is in the process of adopting legislation on the transitional period for the recognition of audit registrations and the continued requirement for an aptitude test.

Separately, as is currently the case, auditors approved in EEA states will count towards the required majority of owners or board of a Gibraltar audit firm. EEA audit firms will also continue to be recognised.

Audits of EU businesses seeking to raise capital by issuing shares or debt securities on a regulated market in Gibraltar will need to be undertaken by an auditor registered with the Gibraltar Financial Services Commission.

In a No-Deal Brexit an individual's UK or Gibraltar audit registration may no longer be recognised in an EU Member State.

Audits of businesses seeking to raise capital by issuing shares or debt securities on a regulated market in the EU will need to be undertaken by an auditor registered as a "third country auditor" in the EU Member State in which the market operates. The audit will then be in scope of a cycle of inspections by the recognised authority for that market.

A Gibraltar audit firm that wishes to own part of, or be part of the management body of, an EU firm will no longer be recognised among the required majority of EU qualified owners or board.

Actions for businesses and other stakeholders

- *Accounting and corporate reporting*

Gibraltar businesses may wish to make themselves aware of the specific accounting and reporting requirements of any Member State in which they operate.



Gibraltar businesses listed on an EU market may wish to make themselves aware of EU third country requirements for listed entities.

Gibraltar legal, accounting and company secretariat service providers to Gibraltar, UK or EU businesses with operations and listings in Gibraltar, the UK and the EU will need to ensure that their clients are aware of the additional reporting requirements as well as the need to obtain additional agreements and assurances.

- *Audit*

As soon as the legislation is published, individuals registered in EEA states will want to make themselves aware of the detail of the transitional period for the recognition in Gibraltar of auditors registered in EEA states and the continued requirement for an aptitude test. Individuals who are already recognised in Gibraltar do not need to take any further action.

Statutory auditors and audit firms approved in Gibraltar, who want to provide audit services in a Member State, will need to understand how their Gibraltar registration will be recognised in that Member State. This will govern their ability to sign audit reports on behalf of an audit firm approved in that Member State, and their ability to be recognised as part of the required majority of EU qualified members of the ownership or management body of an audit firm.

Gibraltar businesses who wish to raise capital by issuing shares or debt securities on a regulated market in the EU may wish to consider securing the services of a 'third country auditor' registered in the relevant Member State.

An audit firm wanting to be an auditor of a Gibraltar business with debt or equity traded on an EU market will need to register as a third country auditor in the Member State in which the securities market is situated or operates.

Further information

This Notice is meant for guidance only.

Where appropriate, professional legal advice on the implications of these changes should be sought.

Further information can be sought from the Gibraltar Financial Services Commission:
<https://www.fsc.gi/contact>