



**GFSB**

# SETTING UP A BUSINESS IN GIBRALTAR

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# 1. BUSINESS STRUCTURES

## Sole Trader

It is possible for an individual to trade in Gibraltar, using either their own name or a business name, by registering as a self-employed entity with the Income Tax Office and Employment Service (see section 4 below).

A sole trader is the most straightforward business structure and also the most economical. There are, however, significant disadvantages to operating in this way.

Sole traders are taxed on an individual basis and pay income tax at personal tax rates. Furthermore, the liability of a sole trader is unlimited, which means that the individual would therefore be personally responsible for any loss their businesses may incur.



## Partnerships

Two or more persons or entities may set up a business by way of an ordinary partnership. A partnership is created by the execution of a deed by all the partners concerned. The individual partners of an ordinary partnership are jointly and severally liable for all the debts of the partnership without limitation of liability.

A limited partnership differs from an ordinary partnership in that it consists of one or more “general partners” who are liable for all debts and obligations of the firm; and one or more persons called

“limited partners”. The limited partners must at the time of entering such partnership contribute either a sum or sums as capital or property valued at a stated amount, and their liability to creditors is limited to the capital introduced. A limited partner may not take part in the management of the partnership business and has no power to bind the firm. A limited partnership has no separate legal personality, and it is the general partner that enters into agreements on behalf of the limited partnership.

Limited liability partnerships differ from both these forms of partnership in that limited liability is granted to all of the members, all of whom may contribute to the management of the partnership.

Limited liability partnerships are therefore more suited for businesses in which all investors intend to take an active role in management. A limited liability partnership has separate legal personality, and can therefore enter into agreements.

Because they are more complex entities, the services of a professional expert should be sought when incorporating a limited partnership or a limited liability partnership. Such types of partnerships must be registered with the Registrar of Companies.

In order to trade in Gibraltar, a partnership must register with the Income Tax Office and Employment Service. A business name may also need to be registered if the partnership is an ordinary partnership, or if the name by which the business wishes to trade is different to the name of the partnership.

## Companies

**T**he use of a limited company is also popular because the legal personality of a limited company is separate from that of its members. A company may own assets, enter into contracts, borrow and lend money, as well as sue and be sued in its own name.



A company can be incorporated in any one of the following forms: (i) a private company limited by shares, (ii) a private company limited by guarantee and having a share capital, (iii) a private company limited by guarantee and not having a share capital, (iv) a private unlimited company, or (v) a public company limited by shares. By far the more common, however, is a private company limited by shares. Accordingly, the practical information contained in this advice is in respect of a private company limited by shares.

The liability of shareholders in limited companies is limited by the price agreed for the issued shares. Directors of the company must be appointed, and such directors owe duties to the company and to various persons. For example, directors owe certain duties to the shareholders of the company: they must exercise their powers for the benefit of the company as a whole, and not with regard to any one particular shareholder.



## 2. BUSINESS NAME

**A**ny individual, partnership or company wishing to carry on business in Gibraltar must register a business name if they are trading with a name other than their own. Even when individuals are trading under their own name, the Registrar recommends that such name is registered as a business name.

A business name must be approved by the Registrar, and a fee of £20 is payable on application for registration. The application must consist of the following documents:

- Proof of identity of Applicant (Certificate of Good Standing if a company);
- Proof of address of Applicant;
- Proof of right to use address where business is stated to be located or trading from (e.g. utility bill, a lease or tenancy/rental agreement); and
- Power of Attorney if person presenting application is not an officer of the company as stated in the Certificate of Good Standing.

As considered below, the Office of Fair Trading will not grant a Business Licence to any business that operates from a residential Government premises, and the Registrar will similarly not register a Business Name where it states that it operates from such an address.

Upon registration the Registrar will issue a Certificate of Registration of a Business Name.



# 3. BUSINESS LICENCE

## Business Licensing

### Authority

Following the coming into force of the Fair Trading Act 2015, the functions of the former Trade Licensing Authority have been transferred and subsumed within the remit of the Office of Fair Trading. The new body is known as the Business Licensing Authority (“BLA”).

There is now a presumption that a person who engages in or carries on any business in Gibraltar is permitted to do so. The presumption is subject to obtaining the required licence.

### Carrying on business in Gibraltar

A person wishing to engage in the following kinds of business is required to hold a licence:

(i) Trade – including, but not limited to, the buying or selling whether by wholesale or retail, of any goods by way of business and the importing of any goods into Gibraltar in commercial quantities.

(ii) Services – including, but not limited to:

- construction services road transport contracting and crafts;
- business-related services to include office maintenance, management consultancy, event organisation, debt recovery, advertising and recruitment services;
- tourism services to include travel agents;
- leisure services to include sports and amusement centres;
- installation and maintenance of equipment;
- online services provided from Gibraltar;
- information society services to include publishing – print and web, news agencies, computer programming;
- accommodation and food services to



include hotels, restaurants and caterers;

- training and education services;
- rentals and leasing services to include car rental;
- real estate services;
- beauty therapists and hairdressers;
- car repair workshops;
- builders/ carpenters/plumbers/ electricians and decorators; and
- self-employed persons who provide services.

The following are not deemed to be “carrying on business” for the purpose of the Fair Trading Act, and therefore do not require a licence:

- employment as a manager or servant by a person who carries on business;
- being a director or shareholder of a body corporate which carries on business;
- conducting a sale of any goods in execution of an order of any court;
- selling any goods solely as a necessary incident to the provision of any professional or other personal services; or
- selling goods with the consent in writing of the BLA, in connection with the raising of funds for philanthropic, charitable, cultural, sporting or educational purposes.

## Licences

The BLA issues licences to carry on business in Gibraltar and keeps a Register of Licences. The licence is valid for one year from the date it is issued. The BLA can also issue a licence subject to such terms and conditions as it considers necessary.

Where a person is in a business or profession regulated by any other legislation, they do not require a separate licence under the Fair Trading Act to carry on that business or profession. Examples include:

(i) any person carrying on investment business, a regulated activity or a controlled activity as defined in the Financial Services (Investment and Fiduciary Services) Act, a Supervisory Act or the Financial Services (Moneylending) Act,

(ii) any person who has been issued with a licence under the Firearms Act or the Petroleum Act, or

(iii) any person who has been issued with a licence for a bar, restaurant, cafeteria or other such establishment situated within a Leisure Area, or a discotheque, under the provisions of the Leisure Areas (Licensing) Act 2001.

The most important requirement is that a licence is granted only on the production of proof of premises in Gibraltar, with such premises needing to be appropriate for the intended use or business. The premises has to be approved by the BLA, and the licence will then authorise the person named therein to carry on business. This requirement can only be waived in cases where the BLA is of the opinion that the business does not need premises in which to operate.

## Application procedure

An application for a licence by a company must be made by a director and must contain an up to date profile of the company from Companies House. Where the company is incorporated outside of Gibraltar, the application should also contain a copy of their Part XII or XIV Certificate of Registration. An application for a licence by a partnership must be made in the names of all partners jointly.

## Premises

As referred to above, the applicant must produce proof of appropriate premises in Gibraltar. It is important to note that a licence cannot be granted to any premises which are residential Government premises, nor to any non-Governmental premises under which the terms of the title deeds restrict commercial activities from being carried on from such premises.

The requirements for premises may be waived, pursuant to section 90(2), in cases where the BLA is of the opinion that such business does not need premises in which to operate, such as, but not limited to, online services.

## Fees

The following fees are payable in respect of licence applications, pursuant to Fair Trading (Fees) Regulations 2015:

- new licence for a single business class £150
- provisional licence for start-ups £95
- each additional business class included on new licence £90
- extending scope of an existing licence by each additional business class £90



## Notice

A person intending to apply for a new licence, transfer an existing licence, or extend the terms of an existing licence (though not where the application is for the renewal of a licence on the same terms) must give a notice of intention which must be published in the Gazette and in a Gibraltar newspaper, not less than seven days before the application is made.

## Consideration of applications

Applications are considered by the BLA in an objective and non-arbitrary manner. The BLA can decide whether or not to call for a hearing (discussed below) for the purpose of considering an application. However, if the BLA chooses not to call a hearing and reject the application, it must give notice in writing to the applicant and give the applicant the opportunity to be heard before it.

The BLA will not issue a licence to any person who:

- (i) is an undischarged bankrupt or has entered into a composition or a scheme of arrangement with his creditors which is still binding;
- (ii) has, within a period of five years preceding, been convicted of an offence under the Insolvency Act; or
- (iii) cannot demonstrate to the BLA that he has received suitable training and/or qualification in the business he is applying for a licence in respect of.

Other than in those circumstances, the BLA can only refuse to issue a licence, if:

- (i) the applicant is under the age of eighteen;
- (ii) the issue of such licence is likely to cause nuisance or annoyance in the neighbourhood;



(iii) the premises would not conform to the requirements of any enactment;

(iv) there is already in force a licence in respect of the premises, or any part of the premises, on which the applicant intends to conduct his business and the new application for a second licence over those premises would not, in the opinion of the BLA, be compatible with the initial licence granted;

(v) the issue of such licence would conflict with any town planning scheme approved by the Development and Planning Commission; or

(vi) the issue of such licence would operate against the public interest.

In considering an application, and whether it falls within one of the circumstances listed above, the BLA must:

- (i) ease freedom of establishment for providers and the freedom of provision of services in Gibraltar;
- (ii) adhere to the principles of non-discrimination and proportionality; and
- (iii) not discriminate between persons established in Gibraltar and persons established in another Member State.

## Objections

Once the notice referred to above has been published, any person who wishes to object to the issue, extension or transfer of such licence, must give notice of his objection. The notice of objection must state the grounds of objection, and be delivered to the BLA within seven days, together with a fee of £90. The fee is not be required to be paid in respect of any objection lodged by HM Customs, the Department of Town Planning & Building Control, the Accountant General, Land Property Services Limited or any government entity.

## Hearings

Hearings of the BLA are held at least every two weeks. All decisions of the BLA are decided by a majority vote of the persons present at any meeting, and the chairman of the meeting has a second or casting vote if necessary.

Where a notice of objection has been received by the BLA, it will consider the application and objection at a hearing of which not less than five days' notice in writing has been given to both the applicant and the objector. Both the applicant and the objector and their professional legal advisers have the right to attend such hearing, give evidence and call witnesses, cross-examine witnesses for the other party and address the BLA.

## Timing

Subject to the applicant submitting all correct and relevant information to the BLA and no objections being made to the application, the BLA will grant the applicant a licence within three business days of receipt of the full documentation.



# 4. EMPLOYMENT SERVICE

Every organisation or person trading in Gibraltar has to register their own details with the Employment Service at the Ministry of Employment within three months of commencement. In order to register, an application for registration must be filled out and sent along with a fee of £50. Registration is renewable annually on the anniversary of first registration. The renewal fee is £20, which will be doubled if renewal is not effected within a month of the due date.

Persons wishing to register as self-employed, using their own name, must submit an Application for Registration of Business Trades and Profession Regulations 1991, together with:

- a personal details form;
- passport or ID card;
- information specifying a Gibraltar trading address (a recent proof of address); and
- a valid Business Licence if required (see section 3).

In order to register an unincorporated business with the Employment Service, a Certificate of Registration of a Business Name (see section 2) must also be included in the application.

A company submitting the Application for Registration of Business Trades and Profession Regulations 1991 must include the following documents:



- a Certificate of Incorporation,
- particulars of the company's directors (a profile issued by Companies House is sufficient);
- a completed Notice of Terms of Engagement for 'working' directors; and
- a valid Business Licence if required (see section 3).

Once the application is complete, the Employment Services will issue a Certificate of Registration, which must be displayed at the principal place of business or, in the case of a company, its registered office.

# 5. INCOME TAX OFFICE

**A** business must also be registered with the Income Tax Office. It is however a requirement to first be registered with the Department of Employment (see section 4 above) before the Income Tax Office can finalise the registration of a business.

To register an unincorporated business, a complete self-employed registration form (known as an S1 form), or where applicable a form for each partner in the business, must be submitted to the Income Tax Office together with:

- a copy of the relevant person's ID card or passport; and
- the Certificate of Registration of a Business Name (see section 2 above)

Companies are also required to register with the Income Tax Office as soon as they commence trading in Gibraltar. A company registration form (known as a CT3 form) must be filed, and the following additional documentation must be enclosed:

- a copy of the company's Certificate of Incorporation;
- a copy of the company's Memorandum & Articles of Association;
- a company profile from Companies House; and
- a copy of the Certificate of Registration issued by the Employment Service.

The S1 form and the CT3 form also contain sections to be filled in in respect of PAYE registration (see section 6 below). There is no fee payable on submitting these forms to the Income Tax Office.



# 6. EMPLOYEES

In order to engage an employee the employer must first register the vacancy at the Employment Service by completing and submitting a 'Notification of Vacancy' form. The commencement date for the new employee(s) cannot be earlier than 2 weeks from the date on which the vacancy is registered.

An employer must notify the engagement of a worker not later than the day on which that engagement commences. A 'Notice of Terms of Engagement' constitutes the formal notification document for this purpose. This notice must be accepted and signed by the employee before it is filed at the Employment Service. Employee details have to be registered within 14 day of commencement of the employee's engagement.

If the employee is a 'non-entitled' worker the employer must obtain a work permit from the Employment Service for that worker. This involves, amongst other things, completing a 'Request for the Issue of a Work Permit' form.

## PAYE

Employers are required to use the Pay As You Earn ("PAYE") system under which they pay employee tax to the Commissioner of Income Tax. A business or company can register for PAYE in the S1 or CT3 forms required to be submitted on initial registration with the Income Tax Office.

In the event that a business or company does not register for PAYE initially (for example where it did not have any employees at that time) a letter should be submitted to the Income Tax Office requesting that the business or company be registered for PAYE purposes.

The PAYE Regulations require each employee to obtain from the Commissioner of Income Tax a PAYE Allowances Certificate, which allocates a code to the employee. The employer is required to use tax tables issued by the Income Tax Office to calculate and deduct tax from emoluments in accordance with the employee's applicable code. The employer is then obliged to pay to the Commissioner any tax so deducted by the fifteenth day of the following month. At the end of the year of assessment the employer is obliged to make a return of the employee's emoluments and tax deducted together with the payment of any outstanding tax. Returns are due by 31 July following the year of assessment. Late filing of a return will incur a penalty of £10 per employee per day.

## Social Insurance

An employer must also account for each employee's social insurance payments, as well as their own contributions. After a business or company has been registered with the Income Tax Department (see section 5 above), the latter notifies the Department of Social Services that a business has been registered. The Employment Service will notify the Department of Social Services (by sending a copy of the approved Terms of Engagement form) of employees hired by a company or partnership so that the employees are registered for Social Insurance purposes.

Employer contributions are 20% of gross earnings subject to a minimum of £15.00/£65.00 per week/month and a maximum of £32.97/£142.87 per week/month.

Employee contributions are 10% of gross earnings subject to a minimum of £5.00/£21.67 per week/month and a maximum of £25.16/£109.03 per week/month.

# 7. FILINGS

## Accounts

All companies are required to keep proper books and records. Partnerships must also maintain proper books of accounts.

A company must prepare annual accounts which give a true and fair view of the company's state of affairs and profit or loss for the financial reporting period. A balance sheet and profit and loss account must be set before the company in general meeting not later than eighteen months after incorporation and subsequently at least once in every calendar year.

If all the partners of a partnership are corporate bodies, the partnership will need to file annual accounts with the Registrar. A limited partnership will additionally need to file accounts if its general partner is a corporate body. Limited liability partnerships must file annual accounts regardless of the composition of its partners.

There are however no statutory provisions governing the preparation and presentation of accounts for unincorporated businesses or filing thereof.

## Audit

In general, all limited companies must appoint auditors and have their accounts audited except small companies which do not have income liable to assessment for tax under the Income Tax Act or trade or transact business in Gibraltar in such a way as is likely to generate such income in the future.

Companies (other than licensed entities) which do have income assessable to tax, but whose turnover is less than £500,000, are exempt from the requirement to submit audited accounts to the Commissioner of Tax in Gibraltar. Such companies will be required to submit accounts accompanied by an independent accountant's report.



# 8. PREMISES

**B**efore carrying out any development to premises in Gibraltar, a permit from the Development and Planning Commission (“DPC”) must be obtained. The Town Planning Act defines ‘development’ as the making of any material change in the use of any land, and shall include the carrying out of demolition, building, engineering, mining or other operations in, on, over or under land.

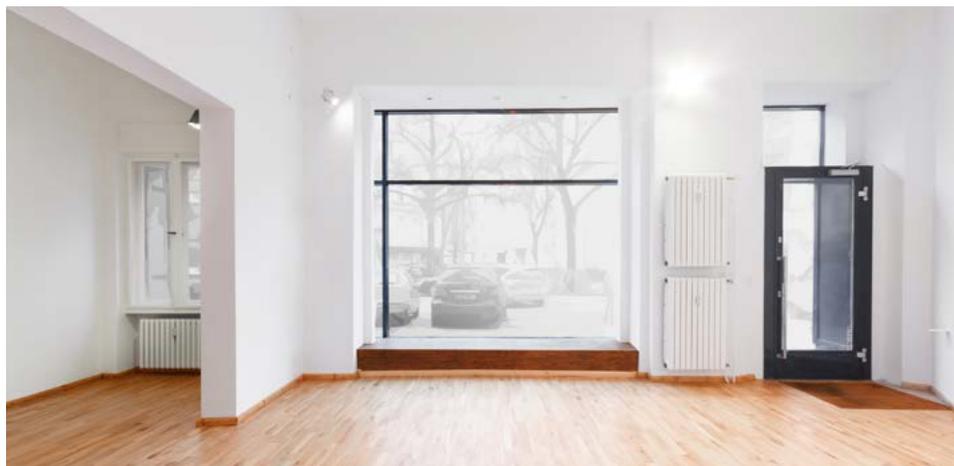
Examples of development include:

- changing the use of a building to a different use; and
- refurbishing a shop front.

Schedule 5 of the Town Planning (General Procedures) Regulations 2001 lists the different classes of use. If the premises will have the same class of use as the previous tenant, there is no need to apply for planning permission.

However, if the class of use is to change, an application for planning permission must be made to the DPC. Most applications will require professional drawings to be submitted with the application. As part of the application the applicant will need to serve a notice on anybody who has a freehold, leasehold or is a tenant of the site in question. They will need to complete a certificate confirming that this has been done (known as a Section 21 Certificate). In addition to notifying “owners”, certain applications will also require to be advertised for a specified period prior to submitting the application. Again, the applicant will be required to complete a certificate confirming that the necessary steps have been taken (known as a Section 19 Certificate).

Once the DPC has received the application, they will send an acknowledgment which will include details of the fee to be paid. The DPC normally meets monthly to consider applications.



# 9. BUSINESS SUPPORT UNIT

The Business Support Unit is run by the Office of Fair Trading and provides free guidance and support to individuals or businesses that wish to invest, start up, expand or diversify a business entity in Gibraltar.





# GFSB

## MEMBER FEATURES AND BENEFITS

**As a member of the GFSB you are entitled to the following benefits:**

- Business Start-up advice
- GFSB Training Courses
- GFSB Breakfast Club
- Member Networking
- Lobbying Government on your behalf
- Use of board room and conference facilities
- Legal advice
- EU Funding advice
- ISO Standards subsidy
- Promote your business via the GFSB

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