The Mergers & Acquisitions Review

Eleventh Edition

Editor
Mark Zerdin

The Law Reviews

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GIBRALTAR

Alan Buchanan and Christopher Davis[1]

I OVERVIEW OF M&A ACTIVITY

M&A activity in Gibraltar is intrinsically connected to the types of businesses and corporations that are based in Gibraltar. Over recent years, Gibraltar has positioned itself as one of Europe's developing finance centres and has become the jurisdiction of choice for a variety of international businesses, ranging from financial services firms such as insurance companies and investment funds, to e-commerce entities such as remote gambling companies and online payment service providers. Gibraltar's attractive but robust tax regime (corporation tax is generally chargeable at a flat rate of 10 per cent), logistical operational advantages and English-speaking business community, along with the security of its high regulatory standards and its common law legal system (largely derived from that of England and Wales) have each contributed to this success.

Gibraltar's M&A activity has always maintained a relatively steady presence at both an international and national level. This results, in particular, from its attractive underlying rates of taxation and the general principle that taxation is only levied on profits 'accrued in or derived from' Gibraltar. Gibraltar is an important and popular holding company jurisdiction for international corporate groups in a wide range of industry sectors, and the global reach of those businesses often means that the main drivers for the businesses to restructure, to acquire or to be sold are often factors 'external' to Gibraltar itself. Recent wider trends, such as the increase in M&A between companies in the online gaming sector (largely in search of greater synergies and cost base savings) have, for example, therefore been a prominent source of recent M&A activity in Gibraltar. The competition in this sector is ever increasing, and this is a trend we would expect to continue in the short term.

In addition to the aforementioned larger international business and fund structures, Gibraltar maintains a more modest flow of M&A activity at national level, where the marketplace largely comprises small-scale enterprises in a number of sectors.

II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

The body of laws governing M&A transactions in Gibraltar generally comprises a combination of national legislation, the common law of England and Wales (together with certain statutes of England and Wales, which continue to apply in Gibraltar) and the laws of the European

1 Alan Buchanan is a partner and Christopher Davis is an associate at Triay & Triay.

Union. However, M&A transactions can be effected via a number of different mechanisms and structures and, in any particular case, industry specific or certain foreign law may also require consideration.

The most common form of M&A transaction in Gibraltar is that of a purchase of a company's share capital through a share purchase agreement (SPA). The SPA will, ordinarily, be freely negotiated between the respective parties to reflect the particular circumstances of the transaction, the parties to it and the form and methodology of calculating the relevant purchase consideration. Generally speaking, a large part of the substantive negotiation will focus on the precise nature and extent of the relevant warranty or indemnity cover and, as one may expect, this will be impacted on a case-by-case basis by the risk appetite of the parties and by the prior due diligence undertaken by the purchaser's professional team. The Companies Act 2014 (CA14), which came into force in November 2014, is the primary source of legislation for M&A involving share acquisitions in Gibraltar and provides the principal statutory framework for, *inter alia*, the incorporation and governance of a Gibraltar company, its shareholdings, members and officers and its external relations including, for example, the entry into and execution of contracts, all of which play a crucial part in the acquisition process. Any actual transfer, issue or reorganisation of shares in a Gibraltar company will be governed by CA14 and a Gibraltar target can only lawfully register a transfer of shares upon receipt of a proper instrument of transfer[2] (typically, but not exclusively, in the form of a stock transfer form). Following the transfer, the name of the purchaser will need to be entered into the target company's register of members (such register maintained by the company being conclusive and prevailing over any public record at Companies House), at which point the purchaser becomes a member of the target company.[3]

A stamp duty charge on a share transfer will generally only arise where the Gibraltar target owns an interest in real estate in Gibraltar with a value above relevant thresholds. There is also a nominal stamp duty charge on any increase in authorised or nominal capital. Transactions involving the acquisition of a target's shares may additionally trigger certain provisions of the Landlord and Tenant Act (LTA) where the target is a leaseholder (often of the offices from which it operates) in Gibraltar. It is something of an anomaly of Gibraltar law that the transfer of the legal or beneficial ownership of a company holding a leasehold interest in Gibraltar is also deemed to be an assignment of that target company's lease or tenancy agreement for the purposes of the LTA and, as a result, the acquisition of the target will require the consent of its landlord (which, although it may not be unreasonably withheld, entitles the landlord to charge 'up to' two years' rent or such sum as is reasonable for provision of the same).[4] Gibraltar is a small jurisdiction and, as a result, commercial rents can be high. As such, this provision can occasionally come as something of an unwelcome surprise to unsuspecting parties who have not factored the same into the initial purchase price negotiations. It should be noted that, in the majority of cases, the figure negotiated with the landlord is usually less than the full two years' rent but can still represent a significant sum.

In addition to the above examples of statutory provisions that impact upon share purchases in Gibraltar, the common law of England and Wales (as applied in Gibraltar from time to time)[5] also provides the basis for certain legal principles applicable to Gibraltar

2 Section 152(1) Companies Act 2014.

3 Section 17(2) Companies Act 2014.

4 Section 69 Landlord and Tenant Act.

5 Section 2(1) English Law Application Act.

companies and Gibraltar contractual relations that are central to, and should be noted in the context of, M&A transactions involving the acquisition of a Gibraltar company. Most notable in this context are:

a the legal concept of *caveat emptor* (the common law principle of 'buyer beware');

b the fiduciary duties that directors owe to the company (now actually being in contrast to the current position in England and Wales, where the general duties of directors have now been codified under the statutory framework of the Companies Act 2006); and

c the common law rules concerning calculations of loss, remoteness of damage and available remedies, which impact particularly on the basis of loss arising for claims pursuant to any warranty or indemnity protections.

A Gibraltar company's constitution, being its memorandum and articles of association, will often provide for further requirements additional to those prescribed by legislation. A Gibraltar company's articles of association can therefore play an important role in defining the internal procedures to be followed and authorisations required to be obtained in (or as preconditions to) the acquisition of its shares. A common example of this is the possibility of there being restrictions on the transfer of shares, such as pre-emption rights, drag-along or tag-along rights, in the target's articles of association. Although CA14 does not have any specific restrictions on the transfer of shares *per se* (other than on a company acquiring its own shares), it does provide that a Gibraltar company's shares are transferable in the manner provided by the company's articles of association.[6] Therefore, if the target company's articles contain any such restrictions, these will need to be complied with.

M&A transactions can also take the form of asset purchases, where the purchaser can acquire the specific assets it requires from the target (e.g., particular plant and machinery or a specific book of clients). This is ordinarily also effected via a bilateral contract between the parties, often referred to as an asset sale agreement (ASA), which is the terminology used in this chapter, but the nomenclature can vary and the terms 'asset purchase agreement' and 'business sale agreement' are also commonly used in practice. In these transactions, the ASA will need to specifically set out the assets being acquired, and the main focus of the warranties or indemnities contained in the ASA will be in respect of those assets, again being informed by the purchaser's prior due diligence. While the ASA will typically contain certain warranties around vendor capacity and solvency, the scope of the warranties on the vendor itself will be significantly more limited than those generally seen in a SPA, where the potential to inherit the target's existing or ongoing liabilities is obviously a much starker reality. Where, however, the vendor has employees and the transfer effected by the ASA constitutes a 'relevant transfer' for the provisions of the Employment Act in Gibraltar implementing the EU's Acquired Rights Directive (77/187/EC, as amended), a number of legislative procedures are required to be followed and the potential is triggered for the purchaser to inherit certain new and existing liabilities in respect of any affected employees. As such, where such a 'relevant transfer' will occur, a number of warranties and other protections are typically included in respect of these issues (see Section VII, *infra*).

Gibraltar law also recognises the legal merger of two or more undertakings by way of a scheme of arrangement. This is a completely different procedure to that of a straightforward purchase of another company's shares or assets. A scheme of arrangement is a legislative procedure pursuant to Part VIII of CA14, whereby a Gibraltar company

6 Section 151(1) Companies Act 2014.

may make a compromise or arrangement with its members or creditors (or any class of them). This procedure must always be conducted under the supervision of the Supreme Court of Gibraltar.[7] Under a scheme of arrangement, a company can, *inter alia*, agree with its shareholders that the shares in that company be cancelled in consideration for shares being issued to the purchaser. A scheme of arrangement must be approved by a majority representing 75 per cent[8] in value of the creditors or class of creditors (or members or class of members, as the case may be), present and voting in the relevant meeting. Given the requisite involvement of the Supreme Court, schemes of arrangement are generally complex, thereby rendering resultant costs disproportionate to alternative mechanisms in most cases. However, the nature of Gibraltar as a small and progressive jurisdiction with an accessible court system means that, where this approach is taken, schemes of arrangement can be processed in Gibraltar with relative ease and expediency.

The Companies (Cross-Border Mergers) Regulations 2010 (the Regulations) transposed Directive 2005/56/EC of the European Union on cross-border mergers and regulate cross-border mergers, either by absorption (where the transferor company is dissolved and, on its dissolution, transfers all of its assets and liabilities to the transferee company) or by formation of a new company (where two or more companies are dissolved and, on such dissolutions, each transfers their assets and liabilities to the newly formed company).[9] Under the Regulations, both of the merging companies must obtain pre-merger certificates from the relevant courts[10] in their respective jurisdictions of incorporation. Once these certificates have been obtained, the transferor company applies to the Supreme Court of Gibraltar for sanction of the merger. The merger will also require the approval of a majority representing 75 per cent[11] in value of each class of members of the Gibraltar merging company, making it largely consistent with the procedures for schemes of arrangement.

There are additional legislative requirements in respect of M&A transactions (be it the purchase of shares, assets, merger or otherwise) where the Gibraltar target company is regulated or licensed by the Gibraltar Financial Services Commission (GFSC). Insurance companies licensed under the Financial Services (Insurance Companies) Act will, generally speaking, need the prior consent of the GFSC to any significant proposed transaction.[12] This is also the case with other companies in the financial services sector, including investment funds regulated under the Financial Services (Collective Investment Schemes) Act 2011, trust companies licensed under the Financial Services (Investment and Fiduciary Services) Act and banks licensed under the Financial Services (Banking) Act, all of whom will also require the consent of the GFSC to any material M&A transaction. In addition to approval of the transaction itself, incoming directors, shareholders or auditors may also require personal GFSC authorisation and approval. Similarly, companies regulated and licensed under the Gambling Act 2005 will need the prior approval of the Licensing Authority.[13]

Companies that are listed on the Gibraltar Stock Exchange (or also on a regulated market in another EEA state) must additionally comply with the Financial Services (Takeover

7 Section 300(1) Companies Act 2014.

8 Section 299 (1) Companies Act 2014.

9 Section 2(1) Companies (Cross-Border Mergers) Regulations 2010.

10 Section 6(1) Companies (Cross-Border Mergers) Regulations 2010.

11 Section 13(1) Companies (Cross-Border Mergers) Regulations 2010.

12 Section 42 Financial Services (Insurance Companies) Act.

13 Section 4(1) Gambling Act 2005.

Bids) Act 2006. It should be noted, however, that the Gibraltar Stock Exchange currently only lists open and closed-ended funds (as well as debt securities) and, consequently, these rules will only apply in acquisitions concerning these funds. Moreover, public companies incorporated and registered in Gibraltar will (to the extent they are listed) likely be listed on a foreign exchange. In these scenarios, it is important to take note of the specific takeover codes applicable to the public company in the jurisdiction in which it is listed; for example, the acquisition of a Gibraltar target company that is listed on the London Stock Exchange will have to comply with the City Takeover Code.

III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT

Under the provisions of the previous regime of the (now repealed) Companies Act 1930, Gibraltar companies were absolutely prohibited from providing financial assistance (whether directly or indirectly) for the purposes of acquiring their own shares. However, the enactment of CA14 in November 2014 provided an exception to this strict prohibition, and private companies now have the ability to give financial assistance for the purchase of their own shares, provided they first satisfy the conditions and follow the procedures of what is colloquially known as the 'whitewash procedure' under CA14. Broadly speaking, under this procedure a Gibraltar private company may give financial assistance if the company has net assets that are not thereby reduced or, to the extent that net assets are reduced, the assistance is made from distributable profits. Each director of the company providing financial assistance must make a statutory declaration of solvency and the provision of such assistance must also be approved by 75 per cent of the members of the company. The directors of the company should also be satisfied that giving financial assistance is in the best interests of the company in order to comply with their fiduciary duties. The need for 'whitewashing' ordinarily only has a minor impact on transactional costs and timings.

In addition to the above, CA14 has also introduced more pragmatic requirements as to the execution of deeds by a Gibraltar company. Under the previous Act, two directors or a director and a secretary of a Gibraltar company were required to execute deeds on behalf of a company, but there was no express provision permitting execution by a single director in the presence of a witness. Under CA14, a single director of a Gibraltar company is permitted to sign deeds on behalf of the company in the presence of a witness.

IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS

The vast amount of M&A activity concerning Gibraltar companies involves cross-border elements. As mentioned above, it is often the case that the relevant acquisitions of shares are in respect of a Gibraltar holding company forming part of a wider group structure, where the substantive assets of the businesses are located elsewhere. It is also the case that the EU 'passporting' regime permits regulated financial services industry companies in Gibraltar to carry out business in other EU jurisdictions.

In consequence of these cross-border aspects, it is not uncommon for foreign counsel to be involved in certain aspects of the transaction; in particular, due diligence and warranties relating to jurisdictions where subsidiaries or assets are located or where business is undertaken.

A number of recent surveys in anticipation of Brexit have indicated that the majority of Gibraltar's business is UK-centric and, at this stage, freedom of trade between Gibraltar and the United Kingdom is fully expected to be preserved post-Brexit. In the M&A sphere, Gibraltar's United Kingdom connections occasionally result in the laws of England and Wales (rather than those of Gibraltar) being chosen as the principal governing law of the contractual documentation in relation to the transaction. This is a perfectly permissible choice of law and is no doubt facilitated by the inherent similarities in both the laws and legal systems of the two jurisdictions. There are also a number of lawyers with dual UK/Gibraltar practices. Subject to the usual legal reservations, contracts governed by English law will be recognised and enforced in accordance with their respective terms in Gibraltar, but in the M&A context they will still usually require some tailoring to incorporate certain Gibraltar-specific aspects that continue to impact (particularly concerning tax, real estate, corporate administration and insolvency).

V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

In accordance with the general marketplace overview above, M&A transactions in Gibraltar involving international business have proven fairly prominent in the past year. In this section, we have set out some of the more noteworthy reported transactions concluded over the past year.

After months of speculation and a lengthy and fiercely contested bidding war, GVC Holdings (GVC), a company listed on the AIM, finally overcame rival bidders 888 Holdings in the takeover of Bwin.party (an online gaming company incorporated and registered in Gibraltar) in a deal estimated to be worth over £1.1 billion.[14] The transaction took place via a scheme of arrangement approved by the Supreme Court of Gibraltar under the relevant provisions of CA14. GVC's move in the market has, thus far, apparently proven profitable, with profits exceeding the company's own forecasts leading to the issue of an increased dividend in December 2016.[15] Moreover, the recent merger of Ladbrokes and Gala Coral (in the United Kingdom) and various attempts towards merger/takeover of William Hill further demonstrate that the gaming industry is going through a period of consolidation and we would expect this to continue to produce more M&A activity.

Another major talking point over the past year was the acquisition of Credit Suisse (Gibraltar) Limited by the Swiss bank J. Safra Sarasin. This appears to have been prompted by Credit Suisse's wider decision to reduce its global operations, which coincided with J. Safra Sarasin's plans for expansion. J. Safra Sarasin purchased the Credit Suisse Gibraltar and Monaco branches in late 2016.[16]

In May 2016, Artex Risk Solutions Inc (Artex), a Bermuda-based company and a wholly owned subsidiary of Arthur J Gallagher & Co (one of the world's largest insurance brokerage and risk management serves firms listed on the NYSE) specialising in captive management and alternative risk programmes, completed the acquisition of Quest Holdings (Gibraltar) Limited (Quest), one of the largest insurance managers based on the Rock. Quest provided certain managerial services to various insurance companies based in Gibraltar. The deal provided Artex with a European base to its global operations.[17]

14 www.ft.com/content/68806e7a-52db-11e5-b029-b9d50a74fd14.

15 www.ft.com/content/32d24f6c-f0bc-3371-9c54-9afc9fb36327.

16 www.reuters.com/article/us-credit-suisse-gp-ceo-idUSKBN0OU0MC20150614.

17 www.insurancejournal.com/news/international/2016/05/05/407614.htm.

In addition to the above, the past year has also seen:

a the acquisition of the entire issued share capital and subsequent restructure of a Gibraltar based group of companies providing online payment services; and

b the acquisition of a protected cell company, licensed under the Financial Services (Collective Investment Schemes) Act and listed on the Gibraltar Stock Exchange.

VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS

Purchasers in M&A transactions in Gibraltar will normally use the traditional sources of finance; namely equity and debt finance. Debt finance can be provided by institutional or private lenders and this will ordinarily add an extra layer to the transaction, with the lender effectively becoming a party (or quasi-party) to the same. In supplying the requisite funds for the purchase price, the lender will almost invariably seek to take security from the purchaser or the target in order to guarantee the payment of the amount borrowed. The provision of any security by a Gibraltar target or subsidiary will, however, trigger the financial assistance regime and the need for whitewashing discussed above. The most common forms of security taken include mortgages, debentures and fixed and floating charges. Gibraltar does not, however, presently recognise the concept of a 'legal charge' over land, and security over real estate is generally taken via legal mortgage. All forms of security entered into by a Gibraltar company will need to be perfected by registering the documents with Companies House in Gibraltar within 30 days of creation; and further registrations are also required where security is taken over certain specific assets (e.g., ships or land).

VII EMPLOYMENT LAW

As briefly mentioned above, the EU Acquired Rights Directive was transposed into Gibraltar law via Sections 78A–78P of the Employment Act[18] (the Transfer Protections) and applies to a 'transfer of undertaking, business or part of an undertaking or business situated immediately before the transfer in Gibraltar to another person where there is a transfer of an economic entity which retains its identity' (a 'relevant transfer').

The substantive effect of the Transfer Protections is the automatic transfer of the contractual rights and obligations of the Gibraltar target company's relevant employees by operation of law. In other words, where a transaction constitutes a relevant transfer, an affected employee's contract of employment is not brought to an end by reason of that transaction. The Transfer Protections apply to all relevant employees employed by the transferee entity immediately before the transfer or transaction, and also to those who would have been employed had they not been unfairly dismissed for a reason connected to the transfer.[19] The automatic transfer of an employee's rights and obligations under his or her contract of employment will not occur if, prior to the transfer, the employee informs the transferor or the transferee that they object to becoming an employee of the transferee. In that event, the relevant employee's contract of employment is treated as terminated with effect as of the transfer date.[20]

18 Part VIB Employment Act.

19 Section 78F Employment Act.

20 Section 78C Employment Act.

Any dismissal by the transferor or the transferee will be automatically deemed unfair where the sole or principal reason for the dismissal relates to the transfer, unless it is for an economic, technical or organisational (ETO) reason and, subject to limited exceptions, any changes to the terms and conditions of employment are void if the sole or principal reason for the change is the transfer. There is a large body of relevant case law that provides guidance on what will constitute an ETO reason.

Both the transferor and the transferee entities will owe certain obligations to employees and to one another. The transferor must, for example, provide the transferee with information in respect of the employees at least 14 days before the transfer, and failure to do so could result in a compensation award against the transferor. Moreover, both the transferor and the transferee entities must, where necessary, hold a full consultation with the appropriate representatives[21] of their own employees who will be affected by the transaction. If there are no such representatives already in place, the employer will need to facilitate the holding of an election. This must all be undertaken at the 'earliest possible time'. Failure to comply with this obligation may result in an order from the Employment Tribunal for the payment of 'appropriate compensation' to the affected employees, and the transferor and transferee will be jointly and severally liable for payment of the same.[22]

VIII TAX LAW

Gibraltar companies are, generally speaking, taxed only upon their profits 'accrued in or derived from' Gibraltar at a flat rate of 10 per cent. There is no capital gains tax, wealth tax, inheritance tax, VAT or estate duty in Gibraltar. The lack of capital gains tax proves a particularly attractive prospect for vendors, who will not need to pay tax on capital gains made on the sale of the target company.

There is also no charge to tax on the receipt by a Gibraltar company of dividends from any other company, regardless of its place of incorporation. It is also important to note that Gibraltar companies can benefit from the Parent-Subsidiary Directive (PSD). The PSD provides for no withholding tax on dividends payable by a subsidiary in an EU Member State to a Gibraltar parent company. This is particularly advantageous when used in the context of EU investments or when an EU special purpose vehicle is utilised.

All of the above is based on the Income Tax Act 2010 (the IT Act), which came into force on 1 January 2011. The IT Act ended the distinction between offshore and onshore business. On 24 June 2013, it was announced that the European Council of Economic and Finance Ministers of the 27 EU Members States (ECOFIN) endorsed the IT Act as being compliant with the EU Code of Conduct for business taxation. This is the first time that Gibraltar's tax system has been fully endorsed by both ECOFIN and the Code of Conduct Group (which is a group formed of the tax authorities of the EU Member States and chaired by the EU commission).

IX COMPETITION LAW

There is no national Gibraltar merger control legislation that could trigger the need to obtain consent to an acquisition. However, Gibraltar is a territory to which the Regulations

21 Section 78K Employment Act.

22 Section 78M Employment Act.

and Directives of the EU apply and, accordingly, some transactions (where the relevant Community requirement and turnover tests are met) may trigger the need for approval of the European Commission under the EU Merger Regulation 139/2004.

It is common for a purchaser to seek to prevent unfair competition and the disclosure of confidential information belonging to the target by entering into 'non-compete' or 'non-disclosure' agreements with any outgoing shareholders, directors or key employees who will not be remaining with the target following completion of a transaction. Even where there are already any such post-termination restrictions in the outgoing individual's existing terms of engagement with the target, it is usual to seek to have these reinforced. The extent of protections that can be negotiated in any particular case will depend largely on the parties' bargaining positions and the commercial reality of the transaction. Such agreements will effectively seek to restrain any outgoing shareholders, directors, key employees, etc., from engaging in certain named businesses or practices for a fixed period of time in order to preserve the goodwill and other connections of the acquired business. The law on restrictive covenants in Gibraltar is derived from the common law of England and Wales, and requires that the ambit of any such restrictions is limited in terms of scope, time and geographical extent to only that which is necessary to protect a legitimate business interest.

The enactment of the Fair Trading Act 2015 (FTA) on 7 October 2015 established a new set of regulations that one may need to have regard to in the context of certain M&A transactions. The FTA has given rise to the imposition of a plethora of licensing requirements for the majority of businesses registered in Gibraltar, many of whom would not previously have required a licence for their activities. Accordingly, purchasers should be cognisant of the FTA requirements in their due diligence exercises and seek to ensure that Gibraltar target companies have complied with the same.

X OUTLOOK

It is impossible to look at the future of M&A in this context without considering the potential implications that Brexit might have on Gibraltar. On 23 June 2016, the United Kingdom voted to leave the European Union and Gibraltar will, as part of the United Kingdom Member State, also simultaneously leave the European Union. Although the scheduled EU departure is still (at least) two years away and the situation remains rather unclear, a number of potential alternatives have been mooted, ranging from membership of the European Economic Area to, in the event that no deal is actually reached, having to use the default rules of the World Trade Organisation. The chosen model, whichever it may, will carry with it a different set of implications on M&A activity in Gibraltar.

From a legal perspective, we have referred throughout this chapter to the significant impact that the laws of the European Union have had on Gibraltar's M&A marketplace, ranging from the EU legislative framework providing for cross-border mergers to the full-scale protection of the rights of workers employed by target companies via the Acquired Rights Directive. It is likely that, in much the same way as the United Kingdom presently proposes, Gibraltar will need to consider the status of all European Union legislation within Gibraltar law with a view to effectively creating a pathway to repeal, retain or revise the same as appropriate. However, insofar as it is presently possible to express any informed view on this rapidly changing landscape, it seems likely that the majority of the above-cited emanations of European law will be retained in order to facilitate M&A (and indeed business generally) between Gibraltar and its European neighbours.

In a slightly wider context, it is also unclear what Brexit will mean for Gibraltar's access to the European single market and whether the terms of any future trade deal negotiated between the United Kingdom and the EU will apply to Gibraltar (and if it does, to what extent). In that light, and noting the effects of international M&A trends in Gibraltar, the uncertainty of Brexit and its impact on international businesses is likely to result in a variety of risks and opportunities for both potential purchasers and vendors. From a commercial perspective, Brexit may impact the pricing of companies and the value of GBP (GBP is the official currency of Gibraltar).

Given that the formal withdrawal of Gibraltar from the EU will not actually occur until (at earliest) March 2019, the lack of certainty during the interim period has resulted in the introduction of bespoke 'Brexit' clauses (largely equivalent to material adverse change clauses in various commercial contracts, affording the parties more flexibility depending on the outcome of the Brexit negotiations. At present, and apart from being an issue to be on the lookout for when reviewing commercial contracts as part of a due diligence exercise, Brexit (or related) clauses are unlikely to appear with any regularity in structural M&A documentation. However, this position may change if the existing uncertainty prevails, particularly as the scheduled withdrawal date draws nearer.

Brexit aside, Gibraltar will also be looking towards new trends in financial services and considering new avenues that could provide a hub for further businesses to establish within the jurisdiction. These new areas may include Fintech, and HM Government of Gibraltar recently published a consultation paper on proposals for a regulatory framework for distributed financial technologies. These companies could, in the future, provide a new flow of M&A activity into, and from within, Gibraltar.

Appendix 1

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