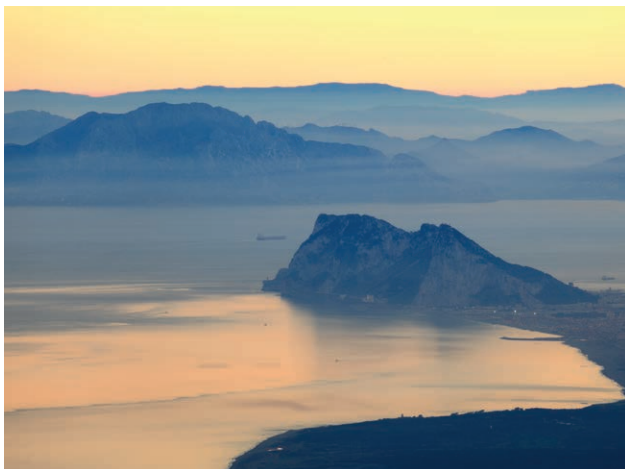




Hassans
International Law Firm Limited

The Blockchain Rock



Overview

Gibraltar offers a unique combination of regulatory, legislative and financial benefits making it one of the leading international business centres. The jurisdiction is well regulated, tax-competitive, ideally located and has a well-developed infrastructure.

Gibraltar is a self-governing Overseas Territory of the UK, with a common law system based on English law. Gibraltar's regulator, the Gibraltar Financial Services Commission (GFSC), is modelled on the same underlying regulatory principles as the UK's Financial Conduct Authority.



OECD “White List”

In line with its commitment to transparency and effective exchange of information Gibraltar has to date negotiated and signed 27 Tax Information Exchange Agreements (TIEAs) with OECD and member countries (www.eoi-tax.org/jurisdictions/GI#agreements). Gibraltar is on the G20-instigated OECD ‘white list’ and it is currently negotiating TIEA agreements with other countries.



Tax

Gibraltar has a territorial basis system of taxation. Companies are only taxed on profits accruing in or deriving from Gibraltar. “Accrued in and derived from” is defined by reference to the location of the activities that give rise to the profits. The corporate tax rate for taxable profits is just 10%. There is also no capital gains tax, withholding tax or VAT.

The maximum effective tax rate for individuals is 25%. Gibraltar offers the Category 2 (High Net Worth) Individuals (“Cat 2”) and the High Executive Possessing Specialist Skills (“HEPSS”) tax rules to eligible persons. Cat 2 individuals only pay tax on the first £80,000 of assessable income. The tax payable by a HEPSS is limited to the first £120,000 of earned income. In addition, there are no wealth, gift or inheritance taxes.

The Blockchain Rock

In 2016, the Government of Gibraltar, together with the Gibraltar Financial Services Commission undertook to make Gibraltar a premier hub for crypto and DLT businesses. The result was the creation of the Distributed Ledger Technology Providers Regulations which came into force on 1 January 2018 making Gibraltar the first jurisdiction in the world to enact specific legislation to regulate the space. As a result of the DLT Regulations, Gibraltar has seen an influx of crypto-related business and a burgeoning crypto ecosystem:





The DLT Provider Licence

The Financial Services (Distributed Ledger Technology Providers) Regulations 2020 (“DLT Regulations”) first came into force on 1 January 2018. The DLT Regulations created a new regulated activity defined as: **“Carrying on by way of business, in or from Gibraltar, the use of distributed ledger technology for storing or transmitting value belonging to others.”**

The DLT Regulations are purposefully flexible to ensure that businesses operating in the blockchain space are able to develop, and are sufficiently robust enough to ensure that Gibraltar continues to meet its regulatory and strategic objectives. The GFSC has recognised that a flexible, principles based approach is the most effective method of regulating these businesses rather than the application of rigid rules which may not adapt to the rapidly changing space. All DLT Providers need to operate to the same high standards and expectations as firms who are currently licensed under existing financial services legislation.

The DLT Regulations are based on 9 core principles:

1. Honesty and integrity
2. Pay due regard to the interest and needs of its customers
3. Maintain adequate resources
4. Forward looking risk management practices
5. Protection of client assets and money
6. Effective corporate governance
7. Maintain high security access protocols
8. Detect and disclose financial crime risks
9. Be resilient



Honesty and integrity

The GFSC will need to be satisfied that the applicant, including the persons associated with it, are fit and proper to undertake the DLT activity.

The basic elements which are relevant to such an assessment include:

- honesty, integrity and reputation;
- skill, competence, care and experience; and
- financial position.



Pay due regard to the interests and needs of its customers

DLT Providers will be required to use best endeavours to mitigate the risks associated with use of DLT and employ best practice in the operation of their business. DLT Providers must make appropriate disclosures regarding:

- the use of DLT in the business;
- the risks associated with the technology and its use; and
- the products and services supplied and associated risks.

DLT Providers will need to make initial and per-transaction disclosure of risks, terms and conditions, as well as employing ethical advertising and marketing standards. It must also have adequate complaint policies and disclosures and be able to manage and disclose any conflicts of interest. It will be expected to ensure that the information is presented in a way that is likely to be understood by the target customer and does not disguise, diminish or obscure important items, statements or warnings.



Maintain adequate resources

The DLT Provider must maintain sufficient financial resources to ensure that its operation can be run in a sound and safe manner. There will not be any strict capital requirements but its capital levels will be monitored to ensure that sufficient capital is held to support its businesses objectives. As a minimum, it will be expected to hold sufficient capital to ensure an orderly, solvent wind-down of its business. Where appropriate, DLT Providers will be required to hold professional indemnity insurance cover.

Consideration will therefore be given to the following:

- adequacy of financial resources;
- sustainability of business model;
- maintenance and retention of books and records; and
- audit and reporting standards.



Forward looking risk management practices

The DLT Provider will be expected to apply good, forward-looking risk management practices.

This encompasses effective management and control as well as conducting the business with due skill, care and diligence.

The core processes and systems must be:

- effectively controlled;
- fit for purpose; and
- risk managed in the right way in order to reduce the likelihood of significant risks emerging that have not already been identified and managed effectively.



Protection of client assets and money

The DLT Provider will be expected to take reasonable precautions to protect customer assets that are in its custody or control against unexpected eventualities and threats. Custodial assets will need to be segregated from the DLT Provider's own assets. It will also need to ensure that it maintains robust and accurate records of transactions.





Effective corporate governance

The DLT Provider will need to explain the procedures and system by which its business will be operated and who will oversee that this is being done correctly. It will have to satisfy the GFSC that its processes, culture and strategies are appropriate for and proportionate to its business. Further, it will have to satisfy the GFSC that the rules by which authority is exercised and decisions taken and implemented to manage all risk types and exposures are sufficient.

The GFSC will expect the DLT Provider to have an open, cooperative and transparent relationship with them and other regulators and it must disclose to them any matter of which the regulator would reasonably expect notice.

The team must have the necessary skills and experience to deliver the proposed service to its customers.

The DLT Provider must satisfy the 'four eyes principle' which is designed to ensure that at least two minds are applied both to the formulation and implementation of the policy of its business. Both must demonstrate the qualities and application necessary to influence strategy, day-to-day policies and their implementation, and both must actually do so in practice. Both persons' judgements must be engaged in order that major errors leading to difficulties for the business as a whole are less likely to occur.

The DLT Provider will also need to demonstrate 'mind and management' from Gibraltar. In order to be compliant with this principle, the DLT Provider must evidence that at least the following is being conducted from its Gibraltar office, by staff permanently based in this office:

- decision making pertaining to the running of business on a day to day basis;

- approval of operational policy and guidelines;
- approval of key deviations from standard company policy and guidelines;
- approval of significant expenditure items;
- approval and sign off of key contracts, including outsourcing arrangements; and
- approval of all major expenditure incurred by the company.

In addition, local staff must:

- have access to all accounting records of the firm at all times and oversee the production of management accounts and statutory returns; and
- be able to furnish the GFSC with information that it requires regarding the day-to-day running of the company in a timely manner, including information processed by other parties under any outsourcing agreement.



Maintain high security access protocols

All systems used should ensure the right level of access to authorised personnel with up to date monitoring systems. On-going and proactive security assessments should be conducted to keep up to date with new threats and potential vulnerabilities.

These include:

- risk assessment of applications, underlying technology, and cyber security;
- policies, procedures and controls to ensure the delivery of this principle;
- skilled and experienced staffing;
- continuous vulnerability and threat analysis and assessment;
- continuous monitoring and response provisions; and
- independent compliance audit and reporting.



Detect and disclose financial crime risks

The DLT Provider must adequately apply anti-money laundering and counter terrorist financing preventive measures which are commensurate with its risks, and report suspicious transactions. It must comply with the Proceeds of Crime Act 2015, which has been updated and amended to include responsibilities on crypto and DLT businesses.

DLT Providers need to be aware of the vulnerabilities of its products and services to financial crime risks and ensure that they implement measures to mitigate the risks.



Be resilient

The DLT Provider must have in place and maintain adequate business continuity, disaster recovery and crisis management plans. It needs to show that it is prepared for any potential threats or loss and that it has disaster recovery plans. Testing of the plans and its embedded processes should form part of the business model.

As part of its resilience measures, a DLT Provider should consider how to close down its regulated business in an orderly manner, including putting in place the process and controls to achieve an orderly wind down under stressed conditions and with minimum customer disruption.

Regulated Crypto Funds

Like other financial markets, as the crypto ecosystem in Gibraltar has flourished, investors have looked to capitalise from its growth. “Experienced” and institutional investors have been particularly interested in having exposure to this new asset class but have been confronted with a lack of sector infrastructure which appropriately protects their investments.

This demand has led to innovative, regulated crypto funds in Gibraltar which are being established under Gibraltar’s Experienced Investor Fund (EIF) regulations. EIFs are restricted to persons that fall within the definition of “experienced investor” which covers high net worth individuals, investment professionals and anyone who invests €100,000 (or €50,000 with professional advice). EIFs require two local authorised EIF directors, an approved fund administrator and a local auditor. The fund will also require a bank account, crypto wallets and an offering memorandum which meets the requirements of the EIF regulations. The crypto EIF will need to set out clearly the valuation methodology for its crypto assets.

EIFs do not require pre-approval from the GFSC before launching and are launched based on a Gibraltar legal opinion provided that the required documentation is submitted to the GFSC within 10 days.

Crypto EIFs can also be set up as protected cell companies (PCCs). With PCCs, fund promoters can create separate cells (i.e. sub-funds) where the assets and liabilities of which are statutorily segregated from each other. This structure is especially popular with multi-strategy managers who can implement different strategies under the same umbrella.

The positive treatment and acceptance of crypto related businesses, such as funds, in Gibraltar is a natural progression as the jurisdiction now has regulated entities operating within the space.

Directors of crypto EIFs also benefit from GFIA’s Code of Conduct for Gibraltar Crypto Funds which can be found here: www.gfia.gi/images/pdf/GFIA-Code-of-Conduct-for-Crypto-Funds.pdf



Foundations



Gibraltar Foundations are the ideal vehicles for not-for-profit entities set up as independent governing bodies of a particular protocol. Gibraltar is a crypto-friendly and well regulated jurisdiction adhering to all international anti-money laundering and combat of terrorist financing rules.

Gibraltar Foundations require that at least one councillor of the Foundation's Council is an authorised entity regulated by the Gibraltar Financial Services Commission. This requirement provides the necessary comfort to the protocol's stakeholders that the Foundation will be used only for the bona fide purposes for which it is been set up.

The key characteristics of Gibraltar Foundations are:

Foundation Charter: This is the main constituting document of the Foundation and will set out the specific purposes for which the Foundation is being set up. The Foundation Charter can be drafted to allow for amendments to be made to the purposes of the Foundation, providing flexibility in the event of future changes of circumstances.

Foundation Rules: If necessary, an additional document containing by-laws can be drafted to supplement the Foundation Charter.

The Founder: The Founder provides the initial assets to the foundation as an irrevocable endowment.

The Foundation Council: The Foundation Council manages and administers the Foundation, makes distributions to the beneficiaries and works to achieve the purposes of the Foundation. As stated above, at least one councillor must be regulated by the GFSC.

The Guardian: A Guardian can also be appointed to further safeguard the purposes, and indeed must be so appointed where there are no designated beneficiaries, or more than 50 beneficiaries, or a class which is insufficiently certain. This provides protection for the beneficiaries, whilst allowing the class of beneficiaries for a foundation to be broad and flexible.

Beneficiaries: The beneficiaries of the Foundation (e.g. developers, marketing companies, arbitrators etc.).

Industry organisations

Industry organisations are key elements in any ecosystem. The Gibraltar crypto ecosystem has two industry associations and one startup organisation working to support and develop the crypto and DLT space.



Gibraltar Association for New Technologies (GANT)

GANT was officially launched in 2018 with the primary goal of establishing in Gibraltar an association of Gibraltar entities and individuals involved in or associated with Gibraltar's blockchain, distributed ledger technologies (including the token sale industry) and other new technologies.

GANT aims to encourage cooperation between members of the association and to stimulate the participation of new technologies in Gibraltar's financial industry. Its objects also include establishing a recognised medium for communication between the association and stakeholders in the new technologies space (including professional and regulatory bodies).



Gibraltar Funds & Investments Association (GFIA)

GFIA is the association representing the interests of the funds and investments sector in Gibraltar. This includes the interests of investment managers, investment dealers, banks, brokers, fund administrators and fund directors. GFIA's objective is to develop and maintain Gibraltar as a specialised investments jurisdiction of choice within Europe, and to promote the awareness of Gibraltar as one of Europe's premier financial centres. GFIA promotes this through regular dialogue with its members and cooperation with local government and regulatory bodies.

Since 2018, GFIA has been focussing on crypto funds and tokenisation of assets in its work. In particular, in October 2018, GFIA issued its Code of Conduct for Gibraltar Crypto Funds which has received industry wide praise both in Gibraltar and internationally. The Code can be found on this link: www.gfia.gi/images/pdf/GFIA-Code-of-Conduct-for-Crypto-Funds.pdf



Startup Grind, Gibraltar Chapter

On the 1st February 2017, Gibraltar was chosen as the next City Chapter within the organisation Startup Grind, a Global Community for Entrepreneurs powered by Google for Startups. It is the largest independent Startup community, actively educating, inspiring, and connecting 1,000,000 entrepreneurs in over 400 cities nurturing Startup ecosystems in 85 countries through events, media, and partnerships. Startup Grind is there to help founders, entrepreneurs and startups succeed.



Testimonials



Yoni Assia, founder and CEO of **eToro** said:

"eToro was attracted to the Rock for various reasons. Firstly, Gibraltar is a hugely successful and business-friendly jurisdiction that enjoys a good standing globally, plus it moves swiftly and has always been way ahead of the pack. The DLT Regulations are a case in point. The licence process is thorough, but, by being able to work so closely with the Gibraltar Regulator, as well as legal experts on the ground, we found it to be a rewarding and enlightening one."

eToro, the world's leading social trading and investing platform was one of the first companies to obtain the DLT Provider licence.



Ransu Salovaara, founder of **TokenMarket**, said:

"We believe that a key to the long term success and growth of token sales will be to have the strongest possible consumer protection. An efficient, safe and risk-based regulatory framework is therefore good for the industry. TokenMarket, as a global leading advisor with 30 token sales under its belt, is pleased that our chosen home jurisdiction Gibraltar, and the Gibraltar Financial Services Commission, are taking an international lead in the development of DLT regulation. Hassans International Law Firm's comprehensive advice, combined with the well communicated guidelines and rules provided by the Gibraltar Financial Services Commission, has made for an efficient and thorough DLT license application process."



Oleksandr Lutskevych, founder of **CEX**, said:

"We had been looking for a regulation like a DLT Licence for a while as it can positively impact our business. The Gibraltar Financial Services Commission did a great job with clear requirements, responsiveness and valuable feedback. Concerning the application, having Hassans as an advisor definitely makes a huge difference due to their experience in the region and industry."

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Hassans' status as Gibraltar's largest law firm and one of the leading independent firms in the world is reflected in our impressive client list. We advise and support a variety of clients, from young entrepreneurs and private investors to local companies and FTSE 100 multinationals. In addition, our clients include the Government of Gibraltar and the Gibraltar Financial Services Commission. We work closely with all the relevant authorities and participate in the drafting of new legislation to ensure Gibraltar's continued development as a sophisticated, well-regulated financial centre.

Hassans has been quick to embrace the opportunities which have arisen as a result of the new DLT regulatory framework and has created a FinTech Team comprised of a large group of dynamic lawyers who are passionate about DLT and crypto.

At Hassans, we apply our expertise on all matters related to our client's DLT/crypto business. In addition to regulatory advice and assistance in obtaining the DLT Provider Licence, we can advise on company formation and management, tax (relating to the corporate structure, beneficial owners and/or employees), property and employment matters, litigation/arbitration and private client services, funds, and financial services among others.







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