



# Gibraltar's Regulatory Framework for Distributed Ledger Technology and its proposals for Token Sale Regulations

**The Government of Gibraltar's responsible approach to supporting innovation**

**Hassans**

INTERNATIONAL LAW FIRM

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The introduction of the Financial Services (Distributed Ledger Technology Providers) Regulations 2017 (the “DLT Regulations”) by Her Majesty’s Government of Gibraltar is a markedly progressive milestone for the jurisdiction and has already attracted numerous high profile operators.

The development of the regulatory framework for distributed ledger technology (“DLT”) businesses demonstrates Gibraltar’s desire to continue to lead the way in establishing a responsible but business-friendly environment. It seeks to protect consumers as well as the jurisdiction’s economy and excellent reputation, whilst concurrently providing the required flexibility to encourage established businesses and start-ups alike in progressing their DLT business ventures. The result is a principles-based and outcomes-focused set of regulations that perfectly strike this balance.

The DLT regulations set out the desire to pursue a “more flexible, adaptive approach ... in the case of novel business activities, products, and business models” to achieve regulatory outcomes which “are better achieved through the application of principles rather than rigid rules” particularly where in “rapidly-evolving technology, such hard and fast rules can quickly become outdated and unfit for purpose.”

### Who do the DLT Regulations apply to?

The DLT Regulations apply to any business (a “DLT Provider”) which uses DLT (whether this is blockchain technology or otherwise) in or from Gibraltar for storing or transmitting value belonging to others.

### The DLT Regulations require DLT Providers to adhere to the Nine Core Principles

The DLT Regulations establish nine fundamental principles for which the Gibraltar Financial Services Commission (the “GFSC”) has responsibility to ensure compliance with by adopting a discretionary approach applied on a case-by-case basis. As such, a DLT Provider must:

<p><b>1</b></p> <p>Conduct its business with honesty and integrity</p>	<p><b>2</b></p> <p>Pay due regard to the interests and needs of all its customers and communicate in a way that is fair, clear and not misleading</p>	<p><b>3</b></p> <p>Maintain adequate financial and non-financial resources</p>
<p><b>4</b></p> <p>Manage and control its business effectively, and conduct its business with due skill, care and diligence including having proper regard to risks to the business and customers</p>	<p><b>5</b></p> <p>Have effective arrangements in place for the protection of customer assets and money when it is responsible for them</p>	<p><b>6</b></p> <p>Have effective corporate governance arrangements</p>
<p><b>7</b></p> <p>Ensure that all of its systems and security access protocols are maintained to appropriate high standards</p>	<p><b>8</b></p> <p>Have systems in place to prevent, detect and disclose financial crime risks such as money laundering and terrorist financing</p>	<p><b>9</b></p> <p>Be resilient and have contingency arrangements for the orderly and solvent wind down of its business</p>



## The Application Process

The DLT Regulations became effective as of 1st January 2018. DLT Providers must be authorised by the GFSC in order to carry on by way of business the storage or transmission of value belonging to others using DLT. In order to be authorised, DLT Providers must submit an application to the GFSC for a licence (“DLT Licence”) before they can commence their operations. We are advising numerous operators, many of whom are in the process of applying for a licence. We are also advising many applicants who were already operational before December 2017 and who therefore currently benefit from the transitional arrangement that enables them to continue to operate without a licence subject to applying for a licence prior to 31st March 2018. The GFSC has published guidance notes on each of the nine aforementioned principles that DLT Providers will need to comply with and Hassans are proud to have been involved in the drafting of some of those the guidance notes. These guidance notes outline the standards that the GFSC expect and in some circumstances require from DLT Providers applying for a DLT Licence. The DLT Licence application fees range between £10,000 and £30,000, depending on the complexity of the DLT business proposal. The application process takes a minimum of three months.

## Token Sales

In addition, the GFSC has advised that whilst token sales do not currently fall within the scope of the DLT Regulations, they are monitoring the use of tokens as a means of raising finance and intend to introduce complementary regulation covering the promotion and sale of tokens, aligned with the new DLT regulatory framework.

In the meantime, the GFSC has indicated that it expects Gibraltar’s professional service providers to advise their clients that the following matters (which are not intended to comprise an exhaustive list) ought to be addressed in any token sale:

- the accuracy and completeness of the information disclosed in any white paper and website;
- the disclosure of risks to consumers;
- the governance arrangements that are in place;
- the fitness and propriety of the founders/promoters of the ICO company;
- the clear strategy that will be followed after a successful token launch;
- the financial crime risks and know-your-customer procedures being adopted; and
- any reputational risks.

## Concluding remarks

The introduction of the DLT Regulations evidences Gibraltar’s agility as a jurisdiction and its ability to anticipate and quickly adapt to accommodate global market trends. Gibraltar continues to position itself as a leading reputable jurisdiction from which FinTech and other technological businesses may operate. The online gaming industry, for which Gibraltar is recognised as the world’s premier jurisdiction, exemplifies the case in point. The local industry and professional expertise in FinTech and technological advancements provides an exceptional resource for DLT businesses to utilise. In addition, the legal, fiscal and regulatory environment are embracing and conducive to encouraging further growth in the application of blockchain technology to ever more real world use cases. Gibraltar and Hassans remain poised to continue playing their part in the advancement of this globally transformative technology and being your partners in this extraordinary journey.

**Find out more by contacting the Hassans’ FinTech team:**



# Hassans FinTech Team

## Vikram Nagrani

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Vikram is a Partner in Hassans' corporate and commercial department and co-leads the firm's FinTech team. Vikram also acts on all aspects of corporate transactional work and commercial projects, specialising in investment and finance structures and mergers and acquisitions. Vikram advises numerous multinational companies on tax and corporate matters and is very experienced in cross-border structures and transactions. In addition, Vikram advises certain high net worth individuals and families on their personal and business structures.



## Anthony Provasoli

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Anthony Provasoli is a Partner in Hassans' corporate and commercial department and co-leads the firm's FinTech team. Anthony's expertise in FinTech and his particular interests in Blockchain and Crypto-currency stand him out as a leading practitioner in this space. He also acts as an advisor to Modex.



He specialises in corporate, commercial and financial services matters and also advises on matters of sports law, intellectual property, e-commerce and telecommunications regulation.

## James Lasry

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James Lasry is head of the Funds Team at Hassans. He has drafted much of Gibraltar's funds legislation and was sighted in Chambers and Partners as having a 'Rolls Royce practice'. James is graduate of the Oxford University Said School of Business FinTech Programme. He is currently part of a group developing a code of conduct and regulations for funds investing in crypto assets.

## Aaron Payas

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Aaron is a Partner at Hassans and part of the Funds & FinTech teams. Aaron specialises in funds law and more recently in blockchain, virtual currencies and ICOs.

Aaron holds a BSc in Mathematics, a Graduate Diploma in Law, the Bar Vocational Course and is a Chartered Financial Analyst (CFA) charterholder. He is admitted to the Bar of England & Wales and the Gibraltar Bar. Aaron is authorised by the Gibraltar Financial Services Commission to provide directorships to Experienced Investor Funds.

## Daniel Rudich

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Daniel has worked at Hassans since 2004 and is part of the firm's FinTech Team. He is the only Chartered Accountant to have reached Partnership level within Hassans.

Daniel was actively involved with the establishment of the first white label debit card and the largest e-money institution operation in Gibraltar, advising on the corporate structure and liaising and negotiating with credit card companies and other banking institutions, and continues to be involved in the company's ongoing management and operations.

Daniel has played a leading role in bringing two of the largest crypto currency businesses to Gibraltar.

## Richard Bowry

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Richard is a member of both the Funds and FinTech teams, currently involved in many FinTech related projects, including initial coin offerings, blockchain license applications, establishment of crypto-currency exchanges and the establishment of crypto-currency funds.

Richard is an international lawyer with experience in many global jurisdictions with over 25 years' corporate experience and extensive collective investment scheme and capital markets experience. He is admitted as a solicitor in England and Wales, Hong Kong, Bermuda, the Cayman Islands and the British Virgin Islands.

## Andrew Montegriffo

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Andrew is an associate in the Corporate and Commercial Department and forms part of the firm's FinTech team and Gaming team. He joined Hassans in 2011 and has worked and led on a wide variety of international and local commercial transactions.

As part of the Gaming team at Hassans, Andrew also regularly advises remote gambling operators on a full range of regulatory, licensing, tax, corporate and employment matters including advising in relation to data protection and intellectual property. He also actively advises clients on token sales and DLT related matters in Gibraltar as part of the firm's FinTech Team.

## Chloe Oppenheimer

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Chloe Oppenheimer graduated from Northeastern University, Boston with Hons in International Affairs before spending a year studying law at the London School of Economics. She then went on to do the GDL and LPC at College of Law, London achieving a LLB Hons. Chloe has worked in the Commercial Department at Hassans for over 6 years and also forms part of the firm's Fintech team. During her time at the firm, Chloe has worked on a variety of multi-jurisdictional transactions as well as assisted coordinate the drafting of the Companies Act 2014.

## David Montegriffo

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David is an Associate in the corporate and commercial department and forms part of the firm's FinTech Team. After graduating from the University of Leeds with an LLB (Hons) degree, he subsequently completed the Bar Professional Training Course at the City Law School in London.

David's professional background consists primarily of local and international corporate work, including acting on multi-jurisdictional financing transactions and investment acquisitions. As part of the firm's FinTech Team, David is actively advising on token sales and DLT-related licensing matters in Gibraltar.

## Nicholas Borge

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Nicholas is an Associate in Hassans' Corporate and Commercial Department and forms part of the firm's Tax and FinTech Teams.

Nicholas has been involved with extensive corporate and personal tax matters which have often included intricate cross-border tax planning and the on-going operation of trusts across different jurisdictions. He also has experience with advising on token sale and DLT related matters.

Outside the office, Nicholas is a committee member of the Gibraltar Bar Council and a member of the Middle Temple.

## Samuel Benamor

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Sam graduated with a Business and Marketing Degree, followed by the Law Conversion and Legal Practice Course at BPP, London. Sam joined Hassans in January 2014 after completing the first 6 months of his training contract in the U.K. following a 3 month legal internship in one of the leading Israeli law firms Firon & Co.

He is an Associate in the Commercial and FinTech department and specialises in commercial and private client work. Most recently, he has advised on the structuring of ventures offering token sales and representing technology companies involved in DLT related matters in Gibraltar.

## Lee Abudarham

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Lee is the Head of Business Development at Line Group Limited, Hassans' corporate arm and forms part of the Hassans FinTech Team.

Lee is a Chartered Legal Executive specialising and has vast knowledge in dealing with high net worth clients and multinational corporations in the field of trust and company administration. In particular, Lee has broad experience with international financing restructurings, having worked on numerous complex structures involving, inter alia, US and other corporations worldwide, which required the provision of Gibraltar corporate secretarial, legal and compliance advice in order to facilitate these transactions.

# Hassans

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