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# GIBRALTAR: THE DOMICILE OF CHOICE FOR ISRAELI CRYPTO FUNDS

Over the last few years, a number of developments in Gibraltar from disparate fields have converged to create the ultimate eco-system for crypto funds. Although this has been evident to many Gibraltar practitioners for some time, it has now become apparent on an international basis through the publication of PwC's 3rd Annual Global Crypto Hedge Fund Report for 2021 which lists Gibraltar as in the top three jurisdictions in the world for the establishment of crypto funds and for the management of digital assets. Indeed, many Israeli clients are capitalising on the strong Gibraltar Israel connection and are setting up their crypto funds in Gibraltar. Let us analyse these elements individually.

## The Regulatory Regime

The Experienced Investor Fund regime in Gibraltar has long been known as an innovative regime that replicates much of the flexibility one has come to expect from Cayman Islands funds, while existing in an OECD white listed and robust, European style regulatory framework. The EIF regime is the only such regime on this side of the 'pond' that allows a fund to be launched and widely marketed without any regulatory pre-authorization for all categories of funds. This is done on the basis of a legal opinion from a senior Gibraltar lawyer, validation from an authorised fund administrator and the presence of two authorised directors on the board of every EIF. While a comprehensive regulatory review does indeed take place, it does so after the funds launches, which means that there is no regulatory down time. Some jurisdictions have similar products, but these involve the presence (and the cost) of heavily regulated managers and therefore would generally not be suitable for the establishment of a sub-AIFM threshold crypto fund. The EIF regime places no restriction on classes of assets, which means that there is no impediment for an EIF to invest in digital assets. Indeed, the Gibraltar Financial Services Commission has issued a circular confirming that EIFs may be used for the creation of crypto funds.

## Responsible Crypto Governance

Although there are no statutory restrictions pertaining to crypto funds, there are clearly issues that do not necessarily occur in more traditional funds and that need to be addressed in crypto funds. This has been done by the Gibraltar Funds and Investments Association (GFIA) in its Code of Conduct for Crypto Funds which was issued in October 2018, the world's first crypto funds code. This, alongside with the 2014 Code of Conduct for Funds which is more general, provides guidance on topics that must be considered in the context of crypto funds such as security, custody, liquidity policies, disaster recovery procedures and hacking protection. Both codes work on a "comply or explain" basis and they are therefore not prescriptive. The 2018 Code identifies many important issues and policies that must be addressed in order to manage a crypto fund responsibly.

"If you build it, they will come..."

Gibraltar's heavy investment in digital business infrastructure is paying dividends. In 2018, Gibraltar introduced its Distributed Ledger Technology Legislation. This legislation has provided a framework and ecosystem for the digital industry in Gibraltar, even in areas it does not necessarily regulate such as crypto funds. Although this industry clearly existed before the enactment of the legislation, it has developed extensively as many digital entrepreneurs have sought a fit-for-purpose regulatory framework in which to domicile their crypto businesses.

Indeed, in an age where it is notoriously difficult to set up bank accounts or to find other service providers who both understand and are willing to deal with crypto assets, Gibraltar has developed a strong offering of such providers who are able to address the needs of crypto businesses. This holds true for banks, fund administrators, directors and even auditors who have had to develop valuation methodologies for assets that, as yet, have few, if any, recognised standards.

## Brexit and the Dual Regime

GFIA, the Government of Gibraltar and the GFSC are in the final stages of drafting legislation that would amend the Alternative Investment Fund Managers (AIFM) regulations in order to allow funds over Eur 100 million to dispense with the need for costly AIFM Managers and Depositaries. Gibraltar exited the European Union along with the United Kingdom on December 31st 2020. However, law that was in effect on the eve of Brexit remains so unless amended. This means that Gibraltar funds, must still comply with the provisions of the AIFM regulations in spite of the fact that they no longer have access to the European marketing passport for professional Investors. GFIA posited that if Gibraltar funds no longer have access to this passport, then neither should they bear the burden of AIFM regulation. Legislation will now be amended in order to allow Gibraltar funds to "opt out" of these regulations and thus be on a level playing field with other non-European fund jurisdictions. These funds will, of course, remain regulated under the EIF regime.

## The Israel Connection

Israeli entrepreneurs have often found Gibraltar to be an excellent location from which to establish their businesses. This has been true in the past in respect of the gaming industry which employs over 100 Israelis in Gibraltar and it is even more true

of Blockchain businesses such as ICOs, DLT firms such as digital wallet firms and crypto brokers, DeFi, NFTs and of course crypto funds. The Gibraltarian approach of responsible regulation of new businesses is appealing to the Israeli penchant for excelling in ground breaking businesses. The harmonious presence of Jewish communities in Gibraltar for over 300 years along with five synagogues, schools and kosher stores and restaurants are indeed convenient for many traditional Israelis who travel to Gibraltar. It is also comforting to work in one of the few jurisdictions outside of Israel that boasted a Jewish Chief Minister, Sir Joshua Hassan, for over 30 years.

## Conclusion

The increase in establishment in Gibraltar crypto funds has also had an effect on the non-crypto elements of its funds industry. Possibly as a result of the Dual Regime, or because of the positive publicity that Gibraltar has had in the last couple of years concerning its DLT legislation, the fact that it was one of the first countries in the world to vaccinate its entire population against Covid or the fact that it entered into an historic tax treaty with the Kingdom of Spain. These have all augured well for Gibraltar and indeed, incorporations are up for funds in other asset classes as well. The Gibraltar funds industry is indeed finding its day in the sun.

