



# Setting Up a **Gibraltar** Cryptocurrency Exchange



**Ellul & Co**

Law Firm Notaries Public

# Introduction

**Since 1st January 2018, the Financial Services (Distributed Ledger Technology Providers) Regulations 2017<sup>1</sup> (the “DLT Regulations”) enable businesses using Distributed Ledger Technology (“DLT”) to be regulated.**

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This regime allows cryptocurrency exchanges to be regulated and apply for DLT Provider Licence to the Gibraltar Financial Services Commission (“GFSC”), our regulator.

We represent several cryptocurrency exchanges and have the experience of having assisted them with their licence applications and are, therefore, well-placed to guide our clients through the whole regulatory process.

An application to the GFSC for a DLT Provider Licence must be made. This is a financial services licence where applicants must demonstrate how their business will comply with the Nine DLT Regulatory Principles.

It is expected that “mind and management” will reside in Gibraltar. Senior personnel must, therefore, be located in Gibraltar and all key strategic decisions must be made here. This is of fundamental importance. The principal role-holders will be expected to work in Gibraltar including the CEO, CFO and CTO.

We have an experienced team of approachable professionals who will be happy to assist. The **Profiles of our Law Firm and of the Fintech Team** can be found at the end of this document.

## The Nine DLT Regulatory Principles & the DLT Guidance Notes

Gibraltar-regulated DLT businesses must adhere to the Nine DLT Regulatory Principles set out in the DLT Regulations.

More detail on these principles and the expectations of the GFSC are set out in the DLT Guidance Notes issued by them which can be viewed at: [www.gfsc.gi/dlt](http://www.gfsc.gi/dlt). Upon accessing this page, scroll down the page and click on the “Guidance Notes” tab. There are nine documents which mirror the nine regulatory principles which all regulated DLT Providers must adhere to.

<sup>1</sup> <http://www.gibraltarlaws.gov.gi/articles/2017s204.pdf>

Below is a list of the Nine DLT Regulatory Principles together with the relevant GFSC guidance note(s) which relate to each one.

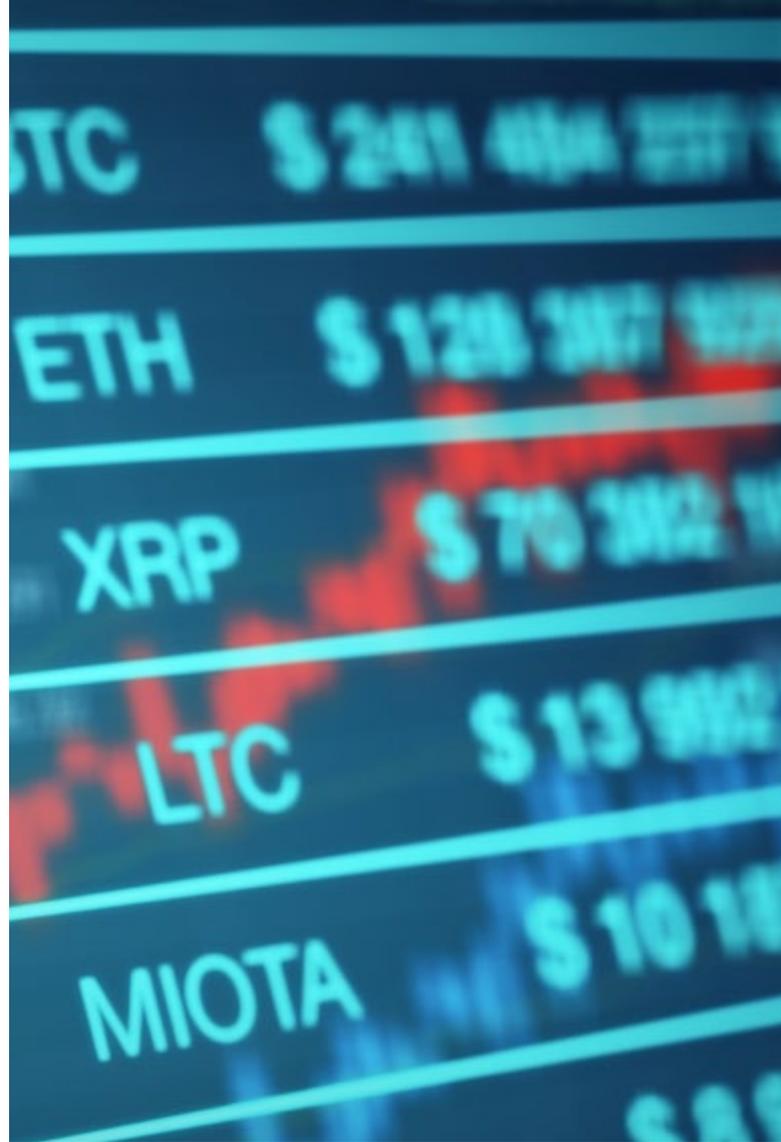
The DLT Regulations require DLT firms to:	
Regulatory Principle	Relevant GFSC Guidance Note
1. Conduct their business with honesty and integrity.	<i>Honesty and Integrity</i>
2. Pay due regard to the interests and needs of each and all its customers and communicate with them in a way that is fair, clear and not misleading.	<i>Customer Care</i>
3. Maintain adequate financial and non-financial resources.	<i>Resources</i>
4. Manage and control their business effectively, and conduct their business with due skill, care and diligence; including having proper regard to risks to its business and customers.	<i>Risk Management</i> <i>Corporate Governance</i>
5. Have effective arrangements in place for the protection of customer assets and money when they are responsible for them.	<i>Protection of Client Assets</i>
6. Have effective corporate governance arrangements.	<i>Corporate Governance</i>
7. Ensure that all of their systems and security access protocols are maintained to appropriate high standards.	<i>Systems and Securities Access</i>
8. Have systems in place to prevent, detect and disclose financial crime risks such as money laundering and terrorist financing.	<i>Financial Crime</i>
9. Be resilient and have contingency arrangements for the orderly and solvent wind down of its business.	<i>Resilience</i>

# The Scope of our Services & our Areas of Expertise

A comprehensive business plan will be required as well as a range of policy documents setting out proposed compliance with the Nine DLT Regulatory Principles.

We are able to assist with the application for a DLT Provider Licence to the GFSC. The scope of our work will include:

- Review of the business plan, suggestions for changes and improvements and writing the legal and regulatory parts.
- Advising on financial projections and capital adequacy requirements. We have developed a model in this regard as the regulations do not contain any hard and fast rules.
- Drawing up corporate governance policy together with other associated policies.
- Drawing up risk management policy and risk register.
- Drawing up anti-financial crime policy.
- Drawing up anti-bribery and anti-corruption policy.
- Drawing up customer due diligence measures policy.
- Providing a risk assessment methodology.
- Drawing up data protection policy.
- Drawing up terms of use for customers of the exchange.
- Drawing up privacy and cookie policies.
- Assistance with the completion of the GFSC application forms (initial and full application).
- Accompanying the applicant to the presentation to be given to GFSC as a part of the application process.
- Assistance with opening a Gibraltar bank account.





In order to set up as a business in Gibraltar, other work not connected to the DLT Provider Licence application will need to be done. We will assist with:

- Incorporating a Gibraltar company to operate the cryptocurrency exchange and to apply for the DLT Provider Licence.
- Registering the company with the Employment Service in Gibraltar. Opening vacancies for employees. Applying for work permits and assistance with visas (if required).
- Drawing up employment contracts and employee handbook.
- High level tax advice.
- Review of commercial leases for business premises and other property-related work.

## Key Documentation & Information to commence the DLT Provider application process

The first step of the application process is to have a preliminary meeting with the GFSC and to then complete and submit an Initial Assessment Application Form. This form asks for the following preliminary documents and information set out below. As a minimum, this information will be required by us.

## Documents

- High level business plan (this needs to be drawn up by the applicant but we will review and assist so that it includes all information that is required).
- Details of corporate governance (we will draw up a suitable policy in consultation with the applicant).
- Details of corporate structure. This includes an organisational organogram, details of the directors, other key personnel and their responsibilities and details of the shareholders/shareholding structure.
- Whitepaper (only if issuing tokens).

## Information

- Business model. Overview of activities, products and services to be provided and how it will generate income.
- Long term strategy and objectives.
- How far advanced the applicant is with the technology for the exchange. Whether the applicant is designing this for themselves or are they using the software of another company. Whether the exchange platform been stress tested.
- If the company will be issuing tokens, an overview of how they will be issued, consumed and/or redeemed.
- Estimated percentages of business to be obtained from each target jurisdiction; in terms of both revenue generation and client base numbers.

- Details of how the business will hold customer assets.
- The type of customers to be targeted: retail, experienced, institutional etc.
- List of any functions to be outsourced and details of the proposed outsourcing arrangements. For example, IT support, software development, servers and identity checking.
- Key risks and planned actions to mitigate the same.
- Details of the resources the business will have in place to mitigate IT and cyber security risks on an ongoing basis.
- Details of the experience of the founders, directors and key personnel. The best thing is to provide detailed CVs.
- Details of how the business will be funded.
- Details, if any, of negative financial information on the founders, directors and key personnel such as whether any have filed for bankruptcy or have been declared bankrupt, whether an administrator has been appointed in respect of their personal assets or they have been subject to any insolvency or similar proceedings. The GFSC will also need to know whether any of them have been the subject of a criminal (in respect of offences of dishonesty or violence) investigation or conviction or a regulatory investigation.

# Application Process Time Estimate & Fees

The GFSC are committed to completing the whole application process in three months. The total time, however, is more likely to be four months. Below is a realistic timeline:

- Submit Initial Application Assessment together with required documentation. The GFSC's three month clock starts ticking upon submission. The GFSC are committed to revert within two weeks of the Initial Application being submitted. If the GFSC determine that any key information or documentation is missing, they can ask for re-submission. In such a case the clock would go back to zero.
- After GFSC revert in respect of the Initial Application Assessment, the three month clock stops ticking. The GFSC will provide feedback on matters they expect to deal with in the final application and they will categorise the business as: Category 1 (paying annual licence fees of £10,000), Category 2 (paying annual licence fees of £20,000) or Category 3 (paying annual licence fees of £30,000).
- A Final Application form then needs to be presented together with a full business plan and copies of all of the policy documents. It will take some time to be ready to submit all of this. Upon submission, the GFSC's three month clock starts ticking again. At this point, the GFSC would normally have two and half months left to complete the application process.

# Other relevant information

## Fiat monies

We have conducted a legal analysis and, provided a particular structure is put in place, fiat wallets would be allowed without a separate licence. We understand this is very different to the U.S., for example, where client fiat wallets would require a licence in each and every State. Gibraltar has a significant advantage in this regard.

## Outsourcing

It is key to have early discussions with the companies to which functions will be outsourced. For example, it can take time to agree terms with an identity checking company (to assist in conducting due diligence on customers) and for the systems to become operational.

The General Data Protection Regulation comes into force in May 2018. Exchanges will be data controllers but any outsourcing company which handles the Exchange's customer data, will be a data processor. The Exchange will be responsible for any data breaches of their data processors. Therefore, it must be ensured that systems and contractual provisions are in place to ensure proper monitoring of outsourcers.

# Ellul & Co. – Firm Profile & Fintech Team

## Ellul & Co.

Ellul & Co. is a leading Gibraltar law firm established in 1973 offering a wide range of services including: fintech, funds, tax, corporate, commercial, company management, fiduciary services, trusts, Gibraltar residence for high net worth individuals, property and notarial work.

The firm has particular expertise in the Gibraltar fintech sector advising on all aspects of the set-up of regulated cryptocurrency exchanges, token sales (ICOs) and digital asset investment funds.

The firm is well-respected and has built a trusted reputation for providing practical and effective legal solutions. We build our service around each client. With specialist knowledge in a range of disciplines, we recognise the legal and commercial challenges faced by businesses in this sector. Our experienced team of lawyers and professionals are experts in their fields, approachable and happy to help.

We represent several cryptocurrency exchanges, which are applying for Gibraltar licences) and token sale companies. Notable clients include the ProximaX token sale conducted by a founder of the NEM Foundation that oversees the development of the NEM blockchain technology.

## Our Fintech Team

The professionals in our Fintech Team are:

- **Marc X. Ellul** – Lawyer and Managing Partner of the firm with 25 years' experience. Fintech team leader.
- **Neil Lopez** – Lawyer and Senior Associate of the Firm with over 13 years' experience. Neil specialises in whitepaper reviews, token sale contractual documents and data protection.

# Fintech Team Profiles



**Marc X. Ellul** | [marc@ellul.gi](mailto:marc@ellul.gi)

Marc is the Managing Partner of Ellul & Co and a Notary Public. Marc began practising in London in 1993 and established himself in Gibraltar in 1995. He was a general practitioner during his early career, undertaking criminal and civil litigation, property, corporate and private client work. He now mainly practises as a corporate, funds, tax and financial services lawyer and leads the firm's fintech team. He is actively involved in blockchain work in Gibraltar advising on the set-up of regulated cryptocurrency exchanges, token sale (ICOs) and on the establishment of digital asset investment funds.

Marc holds a licence, issued by Gibraltar's Financial Services Commission, to provide directorships for all nature of companies including Experienced Investor Funds. For the past 10 years, he has been a member of the Gibraltar Finance Centre Council which works together with the Government to develop Gibraltar's finance centre. In 2014 he was Chairman of the Company Law Reform Committee which brought about extensive changes to the Gibraltar Companies Act.

Marc is currently the Chairman of the Association of Trust & Company Managers which represents the Trust and Corporate Services industry in Gibraltar. This is his second term as Chairman having previously served for a three year period. He has been heavily involved in the work of this association in recent years where he has served as board member and also as Vice Chairman.

In 2013, as a member of the Technical Committee of the Gibraltar Funds and Investment Association, he formed part of the team that drew up the Code of Conduct for Directors of Gibraltar Experienced Investor Funds. In 2016, Marc formed a part of the Gibraltar Bar Council team which drew up the anti-money laundering guidance notes for legal practitioners.

He holds a Bachelor of Arts (Hons) in English Law and Spanish from Cardiff University, which included a year of Spanish law at the Universidad Complutense of Madrid. In 2010 he obtained a Post Graduate Diploma in Notarial Practice from Cambridge University. He is bilingual in English and Spanish.



**Neil A. Lopez** | [neil@ellul.gi](mailto:neil@ellul.gi)

Neil commenced practice in 2004 as a general practitioner. Throughout his career he has worked for two of Gibraltar's largest law firms and has also served as in-house counsel for Deloitte where he specialised in tax, private client and insolvency matters.

He joined Ellul & Co in 2012 and for the first few years at the firm worked predominantly on civil litigation matters with an emphasis on family, employment and commercial disputes. He later focused on corporate, commercial and corporate finance work which he has been doing for the past few years. Neil forms part of the fintech team of Ellul & Co and provides advice on a wide range of matters in this field including token sales (ICOs), data protection and applying for a financial services licence for Gibraltar DLT businesses including cryptocurrency exchanges.

Neil also retains a keen interest in shipping and heads the firm's practice in this area. Neil's shipping expertise extends to ship registration, ship financing, ship arrests and admiralty litigation. His other practice areas include property/conveyancing and probate work. Neil is particularly interested in property transactions which have an international element to them.

He also sits on the Gibraltar Football Association's Club Licensing First Instance Board to assess Gibraltar clubs' applications to participate in UEFA competitions.

In September 2016 he obtained a Post Graduate Diploma in Notarial Practice from University College London. Neil holds an LLB from Leeds Beckett University and is bilingual in English and Spanish.



# Ellul & Co

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