



# | Fintech Practice



**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.

---

Token Sales (ICOs) are not currently regulated except that they are already required to have systems in place to prevent, detect and disclose financial crime risks such as money laundering and terrorist financing. It is expected that Token Sales will be regulated in Gibraltar by the end of Q2, 2018.

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



# Ellul & Co. Fintech Expertise

We have expertise in the Gibraltar fintech sector advising on all aspects of the set-up of:

- Regulated Cryptocurrency Exchanges.
- Any regulated business using DLT to store or transfer value belonging to others.
- Token Sale (ICOs).
- Digital Asset Investment Funds.

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 are happy to help. The **Profiles of our Law Firm and the Fintech Team** can be found at the end of this document.

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.

## The DLT Regulations

Our regulator, the Gibraltar Financial Services Commission ("GFSC"), licenses and oversees DLT businesses which:

*"Carry 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 were devised by the GFSC which has recognised that the framework must be responsive to new use cases of DLT and needs to be flexible enough to adapt to this rapidly changing technology. Gibraltar's answer to this ever-changing landscape was to devise a framework based on nine key regulatory principles.



# The Nine DLT Regulatory Principles

Gibraltar-regulated DLT businesses must:

1. Conduct their business with honesty and integrity.
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.
3. Maintain adequate financial and non-financial resources.
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.
5. Have effective arrangements in place for the protection of customer assets and money when they are responsible for them.
6. Have effective corporate governance arrangements.
7. Ensure that all of their systems and security access protocols are maintained to appropriate high standards.
8. Have systems in place to prevent, detect and disclose financial crime risks such as money laundering and terrorist financing.
9. Be resilient and have contingency arrangements for the orderly and solvent wind down of its business.

More detail on the above 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).

Gibraltar-regulated DLT firms will benefit from the certainty that they are operating within the law. Consumers can have faith in the integrity of their owners and managers and in their ability to operate the business. This increases consumer confidence in them and in the appeal of their products and services.

# Cryptocurrency Exchanges

We represent several cryptocurrency exchanges having taken them through the Gibraltar regulatory process. See our downloadable information brochure on **Setting Up a Gibraltar Cryptocurrency Exchange** for more detailed information.

The main points to consider are:

- 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. The GFSC are committed to dealing with the whole process in three months.
- 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.
- 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.
- A Gibraltar crypto exchange is legally permitted to hold customer fiat wallets and change crypto to fiat and vice versa. We have conducted the legal analysis on this

and, provided a particular structure is put in place, fiat wallets are permitted without a separate licence.

We have the experience of having assisted clients with several of these applications and are able to guide our clients through the whole regulatory process. For more information see **Setting Up a Gibraltar Cryptocurrency Exchange**.

## Other DLT Businesses

Although crypto exchanges are the ones making the most use of the Gibraltar DLT Provider licence, they are not the only type of business which can be regulated. Any businesses may be licensed which: “carry on by way of business, in or from Gibraltar, the use of distributed ledger technology for storing or transmitting value belonging to others.” This includes:

- Cryptocurrency exchanges.
- OTC trading platforms.
- Crypto custodians and escrow service providers.
- Centralised crypto scheme administrators (for example, loyalty points and in-game currencies).
- B2B payment network operators.
- Any company holding crypto or other digital assets, as a business, on behalf of others.

For more information see our downloadable information brochure on **Locating Your DLT Business in Gibraltar**. This contains an overview of the key benefits, the law, the licensing fees and process and a brief cost benefit analysis.

# Token Sales - Initial Coin Offerings (ICOs)

## Introduction

Our law firm specialises in this area of work and assists our clients in launching Gibraltar law compliant token sales. We advise them to self-regulate and adopt best practice so that they are ready for when the forthcoming token sale regulations are enacted.

## Regulation

Token sales are currently unregulated in Gibraltar. However, on 14th March 2018, the Gibraltar Government published proposals for the regulation of token sales<sup>2</sup>. It is expected these will become law by the end of Q2, 2018.

Token Sales (ICO) companies are already required to have systems in place to prevent, detect and disclose financial crime risks such as money laundering and terrorist financing. The Proceeds of Crime Act was amended on 16th March 2018 to require entities which receive proceeds (in any form) from the sale of tokenised digital assets, to conduct due diligence on its customers and on the source of such proceeds.

The exact content of the proposed laws are not yet known but certain aspects are already clear.

- There will be certain disclosures which should be contained in whitepapers. These will be akin to the investment warnings and disclosure of risks contained in the prospectuses of collective investment schemes. The law will specify some disclosures and the detail will be expanded on by means of guidance notes to be issued by the GFSC. It is expected that these provisions will take effect immediately on the new token regulations coming into force.
- There will be a system of local Gibraltar authorised sponsors or nominated advisers ("Sponsor"). For ICOs raising more than EUR 500,000 a Sponsor must be appointed. These will be firms such as ours which must be licensed by the GFSC.
- It is expected that there will be a transitional period of two months after new token regulations come into force. Any ongoing token sales completed during this time will not require a Sponsor.
- The Sponsor's obligations will be to ensure that the ICO complies with the disclosure rules and that it has proper anti-financial crime systems in place. In practice it will be much more than that and a Sponsor will be staking its reputation by backing an ICO project.

<sup>2</sup> <http://gibraltarfinance.gi/20180309-token-regulation---policy-document-v2.1-final.pdf>

## Conducting a Gibraltar Token Sale (ICO)

We advise on all of the Gibraltar aspects of conducting a token sale. Our work will include:

- A review of the whitepaper, writing the legal and regulatory parts such as the required disclosures, the risk factors and corporate governance sections.
- A legal opinion setting out the regulatory position in respect of token sales, including on whether the token is a security under Gibraltar law. Only utility tokens can raise funding via a token sale.
- High-level Gibraltar tax advice which we will be included in the legal opinion.
- A separate legal opinion for any bank where the ICO Company wishes to open an account.
- The drawing up of various policies and procedures which will be needed for the token sale to be Gibraltar-law compliant including: anti-financial crime, customer due diligence, corporate governance, risk management, business continuity and data protection.
- The drawing up of policies on the protection of digital assets and on ICT and cybersecurity. We work with a specialist consultancy firm in Gibraltar which we will engage to draw these up.
- Gibraltar-law compliant Terms and Conditions for the token sale, and Terms of Use, Privacy Policy and Cookie Policy for the token sale website. We will also draw up an agreement for any pre-sale of tokens and a template adviser/consultant agreement should these be required.
- Assistance with opening of a bank account in Gibraltar.
- Assistance with engaging accountants and auditors.



For more detailed information see our downloadable brochure on **Gibraltar Token Sales – Initial Coin Offerings (ICOs)**.



## Digital Asset Investment Funds

We advise on the set up of collective investment schemes investing in cryptocurrencies. These are mainly set up as **Experienced Investor Funds (“EIFs”)**.

EIFs are designed for sophisticated investors. To qualify, investors must contribute a minimum investment of EUR 100,000. A lesser investment of EUR 50,000 can be accepted provided that an investor has received investment advice from a regulated professional.

The Financial Services (Experienced Investor Funds) Regulations 2012 (the “EIF Regulations”) allows and regulates EIFs. The EIF Regulations are, in effect, a self-contained piece of secondary legislation dedicated to EIFs which establishes a streamlined process for

authorising and establishing open-ended or closed-ended funds where the investor is an experienced investor based on a system of self-certification by the investor, the EIF’s fund administrator and its lawyers.

EIFs may be used to invest in cryptocurrencies and in other digital assets. For more information please visit the **Experienced Investor Funds** page of our website.

# 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.
- **Oliver Gotmann** – Chartered Accountant with over 12 years' experience. Until October last year he worked with our regulator, the Gibraltar Financial Services Commission. He specialises in risk management and the financial aspects of DLT businesses.

# 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.



**Oliver Gotmann** | [oliver@ellul.gi](mailto:oliver@ellul.gi)

Oliver is a consultant to Ellul & Co who joined the team in October 2017; FCCA accountant since 2004 and holds an MBA (2009) and has completed his doctoral thesis on the Driving forces behind Strategic Decision-Making in the Online Gambling Industry.

With a passion for start-ups and innovation, Oliver brings great energy to the team. His experience in a variety of sectors including funds, online gaming, pharmaceuticals, financial services and audit, amongst other regulated industries, makes him an ideal member of the team to be able to draw upon a broad array of practical and theoretical knowledge.

Before joining Ellul & Co, Oliver worked with the Gibraltar Financial Services Commission. His experience and qualifications together with his deep interest in blockchain technology makes him an excellent addition to the team in advising on Distributed Ledger Technology licensing in Gibraltar. He is actively involved in blockchain work in Gibraltar advising cryptocurrency exchanges and token sales (ICOs), mainly, in respect of financial aspects, capital adequacy and risk management.



Ellul & Co

Law Firm Notaries Public

---

Suite 7, Hadfield House, Library Street, Gibraltar  
T: +350 200 70921 | [fintech@ellul.gi](mailto:fintech@ellul.gi)

[www.ellul.gi](http://www.ellul.gi)