

Introduction

Our law firm specialises in this area of work and we are able to advise our clients on conducting a Gibraltar-law compliant token sale. We advise our clients to adopt best practice, comply with the highest standards and to, in effect, self-regulate. See the next paragraph for more information on the forthcoming regulation of Gibraltar token sales.

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.



Regulation

Token sales are currently unregulated in Gibraltar. However, on 14th March 2018, the Gibraltar Government published proposals for the regulation of token sales¹. It is expected that 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.

¹ <http://gibraltarfinaance.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 which will include:

Whitepaper Review

We will review the whitepaper, make amendments and suggestions for improvement. We will also review any information and documentation provided in relation to the token sale project to understand the proposed business model, consider and advise on any matter we consider relevant.

We will write certain of the legal and regulatory parts. For example, the required disclosures, risk factors and corporate governance sections. We will help with the financial projections part as well. Our work would not include significant re-writing due to style, poor language, ineffective product description or in respect of any of the technical or the technology-related aspects.

Legal Opinion on the Token Sale

We will provide 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 Tax Advice

We will also provide some high-level Gibraltar tax advice and include this in the legal opinion.

This will include:

- A summary of the main applicable elements of Gibraltar tax law and practice including comments on management and control.
- Whether the company conducting the token sale (the “ICO Company”) will be subject to Gibraltar corporation tax and, if so, what the implications of this will be. On the basis that management and control is not in Gibraltar, we shall confirm that the proceeds of the token sale shall not be subject to Gibraltar corporation tax.

- As regards the shareholder(s) or beneficial owner(s) of the ICO Company conducting the token sale, confirming that in Gibraltar non-residents would not personally suffer any withholding, capital gain or other tax on the following: the proceeds of the tokens sold by the ICO Company; on any tokens received personally; on the gains from the sale of any tokens held; or any dividends received from the ICO Company.
- Corporate Governance – This is a crucial document which will set out how internal controls are implemented to manage the business in accordance with high corporate governance standards. This will set out the board operating procedures to be followed. This will include a reporting methodology (to the Board of Directors), conflicts of interest policy and a fitness and propriety policy.

Legal Opinion for the Bank

We will provide a separate legal opinion for any bank where the ICO Company wishes to open an account. It will be similar to that described in paragraph 2 above but will also deal with any other Gibraltar-law matter the bank may request.

Policies

We will draw up various policies and procedures which will be needed for the token sale to be Gibraltar-law compliant. These are:

- Anti-Financial Crime – This includes a methodology, in full compliance with Gibraltar law (EU standard) to prevent money laundering, terrorist financing, bribery and corruption and to report suspicious transaction to the Gibraltar authorities.
- Customer Due Diligence Measures – This includes a methodology to risk assess clients including an approach for individuals and all types of legal entities. It also includes a risk assessment (excel-based) tool to risk assess clients. This is also in full compliance with EU law.
- Risk Management – This sets out a methodology to identify and assess the risks of the business. This will include our assistance in drawing up a risk register which will be the main tool for identifying, assessing, mitigating and monitoring risk.
- Business Continuity – This is important as it sets out what needs to be done in the event of a disaster which hampers the ability of the business to operate (such as the loss of data base) and how to mitigate these risks.
- GDPR-compliant Data Protection – This is crucial. As from May this year, the EU General Data Protection Regulation will come into force and this sets out very strict standards as to how companies handling data must operate. There are strict rules with potentially heavy penalties for not handling data correctly.
- 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.



Contracts

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.

Banking

We will assist with the opening of a bank account in Gibraltar. There are currently two Gibraltar banks which open accounts for ICO companies.

Accountants

We will assist with choosing accountants and auditors. ICO companies are required to keep proper financial records and draw up financial statements. If certain thresholds are reached, audited accounts will be required.

Excluded Work

The scope does not include the work in connection with a secondary listing on any exchange. Neither does it include us acting as a Sponsor under the new token regulations (when these come into force).

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

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

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

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

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