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# Proposals for a DLT Regulatory Framework in Gibraltar

May 2017

*Including*

Gibraltar: Supporting and driving  
business innovation in Blockchain,  
DLT and Digital Currency



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# Spotlight on Digital Currency Summit and Proposals for a DLT Regulatory Framework

## Gibraltar Government launches public consultation on Proposals for a DLT Regulatory Framework

On the 9th May 2017, the Government of Gibraltar released a public consultation document titled “Proposals for a Distributed Ledger Technology Regulatory Framework”, that sets out plans for the establishment and regulation of cryptocurrency and blockchain business in Gibraltar. The public consultation document was launched at Gibraltar’s first Digital Currency Summit, which brought together approximately 100 cryptocurrency and blockchain industry experts from around the world to discuss the future applications of blockchain technology within a business context, Gibraltar’s role in developing these business streams and how best to regulate businesses operating in the blockchain space.

The proposed DLT regulatory framework is the culmination of several years of research and collaboration between the Government of Gibraltar, the Gibraltar Financial Services Commission (“GFSC”), cryptocurrency and blockchain expert Sian Jones and the Cryptocurrency Working Group (which included Joey Garcia, Partner and head of the financial services team at ISOLAS).

## Main points of the Proposed DLT Regulatory Framework

The consultation document for the proposed DLT framework discusses the introduction of an outcomes-focussed and principles-based approach to regulating firms engaging in business activities not otherwise subject to regulation and that use DLT for the transmission or storage of value belonging to others.

There are nine core principles which will be applied to DLT firms to ensure that the regulatory outcomes of the GFSC are achieved:

1. A DLT firm must conduct its business with honesty and integrity.
2. A DLT firm must pay due regard to the interests and needs of each and all its customers and must communicate with its customers in a way which is fair, clear and not misleading.
3. A DLT firm must maintain adequate financial and non-financial resources.
4. A DLT firm must manage and control its business effectively, and conduct its business with due skill, care and diligence; including having proper regard to risks to its business and customers.

5. A DLT firm must have effective arrangements in place for the protection of client assets and money when it is responsible for them.
6. A DLT firm must have effective corporate governance arrangements (mind and management must be in Gibraltar and four eyes (two minds) must be applied both to the formulation and implementation of the policy of the DLT firm).
7. A DLT firm must ensure that all systems and security access protocols are maintained to appropriate high standards.
8. A DLT firm must have systems in place to prevent, detect and disclose financial crime risks such as anti-money laundering and countering terrorist financing (AML/CFT).
9. A DLT firm must be resilient and must develop contingency plans for the orderly and solvent wind down of its business.

The proposed role of the GFSC will be to authorise and supervise DLT firms and not the underlying technology. The GFSC will of course however expect firms to have appropriate processes and procedures to deal with any risk factors concerning the technology and how these can be mitigated.

Consideration will be given to granting discretionary powers to the Chief Executive of the GFSC to impose appropriate conditions and restrictions, from time to time, to ensure the DLT framework principles are properly applied to firms operating with an evolving nascent technology.

The consultation period runs up to and including 6th June 2017. With a target date for implementation of the regulatory regime of 1 January 2018, this is the date on which the enabling legislation is expected to come into force.

It is proposed that the Chief Executive of the GFSC and its Board are assisted by a specialist advisory panel appointed by the Minister for Financial Services, comprising technology and regulation experts in the field of DLT and virtual currencies.

## Government and Regulator Supporting Innovation

It is envisaged that DLT firms wishing to be regulated will need to broadly follow the same universal style application process that firms regulated under other activities for which the GFSC is responsible for must currently follow. With some jurisdictions talking about over-prescriptive and unfit regulatory landscapes for business operating in the blockchain/

DLT space, it is encouraging to see a forward-thinking regulator that is looking to facilitate innovation whilst ensuring the continued achievement of regulatory and strategic objectives. It is worth noting that the GFSC expressly acknowledges in the proposal document that:

“A more flexible, adaptive approach is required in the case of novel business activities, products, and business models. Regulatory outcomes remain central but are better achieved through the application of principles rather than rigid rules. For businesses based on rapidly-evolving technology, such hard and fast rules can quickly become outdated and unfit for purpose.”

Having the support of the Government of Gibraltar and the GFSC, who are both helping drive forward this innovative new area of financial services, is hugely important for the development of a well-regulated and trusted industry in Gibraltar, as the jurisdiction strives to become the new home for blockchain business. The Hon. Albert Isola, Gibraltar’s Minister of Commerce, commented: “This Summit marks an important milestone in Gibraltar’s commitment to becoming a leading centre for the development and provision of products and services in the ever growing Financial Technology space.”

## Concluding Remarks

The proposed DLT regulatory framework is yet another example of Gibraltar’s ability to quickly react to new market opportunities and its adaptability to changes in technology. Ultimately, every success story has its own supporting cast and it is good to think that Gibraltar, through being able to provide some of the cogs which drive the wheel, could play a part in the blockchain revolution. All that remains to be seen is how all fiscal, regulatory and legislative changes will be “joined up” in order to deliver the DLT framework and both local and international players in this space will no doubt await these with anticipation.

Gibraltar is open, it is accessible, it is ready to do business and it has big aspirations to create serious inroads in this space and grow out of the success the technology community could derive from the benefits Gibraltar can provide.



There is no doubt that any future relationship between the United Kingdom (and Gibraltar) and the European Union after the United Kingdom leaves the bloc, is uncertain. Despite this, Gibraltar is considering its exit from the European Union as an opportunity and not a threat - and Gibraltar has every reason to feel bullish about life outside of the bloc. The Gibraltar Financial Services Commission has issued 21 licences since the referendum vote and has another 22 in the pipeline. Gibraltar has also issued two new gaming licences in that time and has another three pending. This was confirmed by Chief Minister Fabian Picardo, addressing business leaders at a dinner organised by the Gibraltar Chamber of Commerce which took place on 26 April 2017, who described this as “a truly remarkable vote of confidence in Gibraltar.” This message was underscored on the same day when Gibraltar-based gaming company BetVictor made a ‘huge’ statement of intent declaring “we are here, we are not going anywhere”, as it inaugurated its new offices at Gibraltar’s World Trade Centre.

The economic model of the Gibraltar we know today, has not been without its challenges. However, it has always found ways of overcoming these and growing and diversifying despite these. Entrepreneurship has always been at the heart of the territory and this is a Gibraltarian mindset with old roots. It is the inherent entrepreneurial spirit which flags post-Brexit opportunities for Gibraltar. This was marked by the local launch of StartupGrind, an entrepreneurial community backed by Google, aiming to nurture start-ups in 85 countries. It presents a good opportunity for Gibraltar to be on the global map once again and the importance of having been selected by StartupGrind as the next city chapter cannot be understated. At its inaugural event, Mike Balfour, the founder of the world’s largest chain of health clubs, ‘Fitness First’ said he, considered Brexit an opportunity for Gibraltar to really tear up the rulebook and

make Gibraltar a really entrepreneurial society. He also said that “we [Gibraltar] could be the Singapore of Europe”.

Taking the first step to making this a reality, in what is posed to be the most significant development for Gibraltar as a jurisdiction for doing Fintech business, the Government has very recently issued a press release advising of the imminent publication of a consultation by the Gibraltar Financial Services Commission on proposals for Distributed Ledger Technology Framework. ISOLAS and its Fintech think tank, ThinkFintech.gi, have been busy working with Government as part of the working group that has helped shape the discussion on these potentially significant opportunities for the development of Gibraltar as a centre of excellence and innovation in financial services. Joey Garcia, Partner at ISOLAS commented that “the fact that much of this kind of business is Brexit insensitive augurs well for both the traction the industry is gaining in Gibraltar and for the Government’s determination to make Gibraltar a home for this very exciting area of financial services”. Gibraltar will also be hosting a Digital Currency Summit on 9th May 2017 which ISOLAS are proudly sponsoring as leaders in the Fintech space in Gibraltar.

Below are some reasons why Gibraltar should be considered a start-up hotspot in Europe:

- New business start-ups in Gibraltar can apply to the Gibraltar Business Nurturing Scheme for a maximum of £25,000 in the form of a loan, for the commencement of a new business or the expansion of an existing one. Whilst this initiative hardly stands out in the company of the panoply of start-up incentives provided to entrepreneurs in other top start-up ecosystems, the Gibraltar Government has been putting a lot of effort into attracting start-ups to the Rock.
- The Office of Fair Trading (OFT), established by the Gibraltar Government,

houses a ‘Single Point of Contact’. This office is a convenient “one-stop-shop” that provides for the various licensing and registration requirements that were previously handled by different Government departments. At the OFT offices, such processes are addressed under one roof, where businesses and individuals will also be offered the provision of guidance and support. The OFT also assists applicants by liaising with Government departments and by providing all the necessary forms in relation to, for example, employment registration, registration for business licensing and registration for tax and social insurance.

- In the Budget measures announced for 2016, the Gibraltar Government created a scheme providing tax credit to start-ups. Over the first three financial years of trading of the start-up business, a company or limited partnership is eligible for a tax credit equal to the tax due, subject to a maximum of £50,000 over each of the first three years. There are a number of conditions that need to be met in order to qualify for this tax credit, such as employing at least five employees in the first year, as well as anti-avoidance measures to ensure it only applies to genuinely new businesses in Gibraltar.
- Gibraltar can provide a good testing ground to prove a start-up model due to it being a captive market of approximately 30,000 inhabitants conveniently packed into an area of approximately 6.5 km<sup>2</sup> which means a good cross-section of the wider global market can be targeted before going global.
- As part of the Gibraltar Financial Services Commission’s commitment to supporting both existing licensees and those looking to take their first steps into the financial services sector – either as a financial services firm or offering support to financial services

# Gibraltar - make your start-up as solid as a rock



firms - it has established the Innovate and Create Team. The Innovate and Create Team is made up of a number of individuals from across the organisation and it has been set up to help encourage innovation by supporting those businesses looking to develop and introduce innovative ideas for financial products or services into the market.

- New and existing businesses in Gibraltar enjoy easy access to telecommunications, modern office space and other key infrastructure as well as markets which can be reached via land, air and sea. Current destinations from Gibraltar's airport include daily departures to the United Kingdom (various routes) and weekly departures to Morocco. Historically, highly priced office space with three- or five-year leases could be considered a show-stopper for any start-up. Companies such as Regus in Gibraltar's World Trade Centre allow any start-up to have access to serviced office spaces, virtual offices, co-working spaces and meeting rooms without needing to commit to long-

term office space costs during the most critical time for a start-up; its incubation period.

- Favourable tax packages for High Net Worth Individuals and High Executives Possessing Specialist Skills who want to establish residence in Gibraltar and can benefit from tax payable on income being restricted to a capped amount, which not only encourages talent to the Rock but also incentivises investment in start-ups.
- Gibraltar has an excellent talent pool consisting of a highly qualified workforce. High relocation rates mean there is a diversity of ideas, experience and creativity. Alongside the existing talent pools, Gibraltar has had a steady inflow of new talent particularly in fin-tech related fields.
- The rate of corporation tax is 10%. No death duties, capital gains tax, gift, value added tax (VAT), inheritance, wealth or capital transfer taxes are presently levied in Gibraltar.
- Gibraltar companies are seamless to

incorporate and the process is free of bureaucratic delays. There are no specific restrictions governing directors and shareholders. Gibraltar companies are not subject to minimum capital requirements and have low maintenance costs and streamlined filing requirements for micro-entities and small companies that start-ups would frequently categorise into by default.

To conclude, Gibraltar's success as a start-up destination will not be accidental. Its supportive and innovative stakeholders who see the big picture and maintain a 'can do' mentality, coupled with its flexible working spaces and affordability all add up and it is evident that Gibraltar is well on its way. Gibraltar's economy has often been described as one that is 'running on all cylinders' and Gibraltar is confident that this is a growing trend that will make Gibraltar an exciting destination to be in business in. Whatever the reason for establishing a business activity in Gibraltar, the Rock has something for everyone.

Jonathan Garcia, Partner, ISOLAS

## Key features of doing business in Gibraltar

- All our practitioners are UK trained - the Gibraltar Government funds the tuition fees and maintenance grants for all our students;
- There is no capital gains tax, no wealth or inheritance tax or, indeed, no tax on 'passive income,' i.e., tax on pension or investment income in Gibraltar, VAT is not charged in Gibraltar;
- The effective rate of personal income tax: 25%;
- Corporate Tax is charged at a flat rate of 10%;
- High net worth individuals worth a minimum of £2m, renting/owning qualifying property in Gibraltar can limit tax liability on all worldwide income to circa £29,000;
- A family office friendly environment for High Net Worth Individuals and their families, with the solutions clients need;
- Funds friendly: Experienced Investor Funds and Protected Cell Companies embedded as creatures of statute;
- Vessel under construction register - secure finance more easily with a registration of your vessel before it is completed;
- The world's capital for online gaming regulation - home to the best, most prestigious remote gambling operators such as Gala Coral, BwinParty and many others;
- Home to a bustling insurance industry - one in five cars on the road in Britain are insured by Gibraltar companies; and
- A growing hub for Fintech business, working to develop attractive and effective regulation in the crowdfunding and blockchain space, offering services in virtual currencies and all other aspects of this exciting disruptive development in financial services.



# ISOLAS' experience in DLT, Blockchain and Fintech



An initiative brought to you by ISOLAS ... trusted since 1892



Gibraltar is quickly emerging in the Fintech space for new businesses starting up in this fast-moving sector.

With a sound regulatory environment that welcomes innovation together with an accessible and forward-thinking regulator, Gibraltar is a jurisdiction that many Fintech businesses (including blockchain start-ups, multi-currency digital wallet providers, e-money institutions and innovative payment service providers) are either setting up operations in or keeping a close eye on.

This has been accelerated by the proposal for a Distributed Ledger Technology Framework from the Government of Gibraltar and the Financial Services Commission. This document follows on from the 'Virtual Currency: Outline Regulatory Framework' paper which was produced by the Cryptocurrency working group co-chaired by partner Joey Garcia.

ISOLAS is a market leader in the Fintech sector, having worked closely with the Government of Gibraltar and the Gibraltar Financial Services

Commission on various niche areas within this space. We have been instrumental, through our participation in Government established working groups, in shaping discussions and regulatory proposals for Crypto-Currency, Crowdfunding and Distributed Ledger Technology.

ISOLAS also founded Gibraltar's only dedicated Fintech think tank, thinkFinTech.gi, an initiative that brings together local and international financial services and technology professionals to collaborate and discuss ways in which Gibraltar can position itself as a welcoming, supportive and well-regulated environment for Fintech business.

ISOLAS is therefore at the forefront of legal developments and has unrivalled expertise when it comes to advising on these exciting new areas of financial services. We provide a tailored approach to finding legal and regulatory solutions for our client's objectives based on our in-depth understanding of the industry.

## Recent work highlights include:

- Joey Garcia co-chaired the Government established **Virtual Currency Working Group** that helped shape discussions in the sector and which recently culminated in a public consultation with Proposals for establishing a DLT Regulatory Framework.
- Advising **Xapo**, one of the largest bitcoin depositary and wallet providers on obtaining its regulatory approval with the Financial Services Regulator for a new business line in Gibraltar;
- Advising **Gnosis** on the regulatory aspects of its token launch that was carried on from Gibraltar and resulted in being one of the world's fastest selling ICOs raising in excess of \$10m.
- Working with and advising one of the world's largest **blockchain venture production companies** in relation to various projects and initiatives that they are looking to launch in Gibraltar.

## About ISOLAS

ISOLAS was established in 1892, making it the longest established firm in Gibraltar. This year, we celebrate 125 years at the top of the legal profession in Gibraltar. ISOLAS is a full service law firm and is proud to be considered one of the leading firms in Gibraltar. We are consistently ranked as one of the leaders in the market by all the major international directories, recently being ranked as a tier one law firm by Chambers & Partners in the Global and Europe directory and we are proud of our reputation for combining expert legal advice with commercial pragmatism. We are valued by our clients and partners for being practical and confident in the advice we give, a natural consequence of the close, partner-led relationship with the client that we work to achieve.

It is our focus on our interaction with the client that, we believe, forms the basis of our success in establishing long-term relationships with a significant proportion of our client base. The commerciality of the advice that we provide, close attention to cost considerations, our professional network in Gibraltar and beyond, as well as our dedication to leveraging information technology solutions for the benefit of the client, make for a compelling package of advantages over our competition in the local marketplace.

## ISOLAS trusted since 1892

Gaming	Insurance Linked Securities	Civil Litigation	Insurance	Company Listings
<b>CELEBRATING</b>				
Sports	Tax	Commercial Litigation	Legislation Drafting	Company
<b>125</b>				
Financial Services	Gibraltar Arbitration	Family Office	Probate	Domain Names (.gi)
Contract	Intellectual Property	Employment	Private Client	Entertainment
<b>YEARS</b>				
Trust Litigation	Conveyance	Corporate Finance	Commerce	Pensions
Landlord & Tenant	1892 Maritime Registration	2002 Insolvency	2017 Leisure & Hospitality	Personal Injury

ISOLAS recently celebrated its 125 year anniversary by hosting a reception at the House of Commons in London

## Focus on Joey Garcia

Joey has built up a strong Financial Services practice advising on a variety of structures and solutions to an international client base which includes, funds, investment managers, e-money institutions, banks as well as family offices and larger private clients.

He has also been at the forefront of developments in the various aspects of business in the fintech space, including digital currency, blockchain and distributed ledger technology in Gibraltar. He co-chairs the Gibraltar Government working group/think tank on digital currencies. He has been involved in advising a number of blockchain start ups and businesses crossing over from the blockchain into the financial services space and is one of the thought leaders involved with the Fintech think tank established by the firm, thinkFintech.gi.

Joey also sits on the Financial Services Commission (the Gibraltar Regulator) MiFID II working group and previously on the AIFMD working group. He was also the author of the Corporate Governance Code for Gibraltar Collective Investment Schemes and worked on a secondment within the Financial Services Commission during the latter part of 2013 in relation to AIFMD related technical issues. He is licensed by the Financial Services Commission to act as an Experienced Investor Fund Director and Company Manager.

### Joey Garcia

Partner

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## Focus on Jonathan Garcia

Jonathan is a Partner at ISOLAS and specialises in funds, investment services and corporate advisory and also advises family offices and larger private clients.

Jonathan was extensively involved with the first ever administration of a long established group of company managers and professional trustees regulated in Gibraltar pursuant to the Financial Services (Temporary Administration of Companies) Act 2010 that had been newly implemented at the time. He was subsequently involved in the winding-up of these entities pursuant to the Financial Services Commission Act 2007. Subsequently, he spent six months on a part-time secondment at the Gibraltar Financial Services Commission.

Jonathan also sat on the Company Law Reform Committee which led to a full scale review of Gibraltar's company legislation. During 2016, he advised HM Government of Gibraltar on the introduction of legislation that allows for Limited Liability Partnerships. He is ranked in Chambers Global 2015, which say: "Jonathan Garcia attracts praise for his work on structuring of investment funds". Clients highlight his ability to "clarify matters" and the fact that "he always responds very quickly to questions."

### Jonathan Garcia

Partner

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## Focus on Karan Aswani

Karan specialises in corporate and commercial matters with a particular focus on the financial services and technology sectors. He regularly advises international and domestic clients within both the public and private sectors on commercial contracts, corporate structuring & financing solutions and general regulatory issues.

Karan is presently involved in advising prospective fund managers with their FSC licence applications to become authorised to act as alternative investment fund managers. Other matters that he is currently working on include: drafting offering documents in connection with the launch of new funds and admissions to the Gibraltar Stock Exchange.

Karan is also a key individual within the firm's Fintech practice area. He is a founding member of ThinkFintech.gi, an ISOLAS initiative that brings together industry professionals to

collaborate on proposals for the development of Gibraltar as a leading domicile for Fintech business. Within the Fintech sector, Karan is currently advising various blockchain start-ups on raising finance through initial coin offerings and on obtaining regulatory authorisations for carrying out their business activities.

Since joining ISOLAS, Karan has been heavily involved in the firm's Funds and Fintech practice areas, advising funds, investment managers, banks, e-money institutions and emerging blockchain start-ups on licensing and regulatory matters, drafting offering and policy documents and dealing with corporate governance issues.

### Karan Aswani

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