

Subsidiary Legislation made under s.5, s.7, s.53 and s.56.

**FINANCIAL SERVICES (DISTRIBUTED LEDGER
TECHNOLOGY PROVIDERS) REGULATIONS 2017**

(LN. 2017/204)

Commencement **1.1.2018**

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In exercise of the powers conferred upon the Minister by sections 5, 7, 53 and 56 of the Financial Services (Investment and Fiduciary Services) Act, the Minister has made the following Regulations—

Title and commencement.

1.(1) These Regulations may be cited as the Financial Services (Distributed Ledger Technology Providers) Regulations 2017.

(2) Subject to sub-regulation (3), these Regulations come into operation on 1 January 2018.

(3) This regulation, regulation 4 and paragraph 3 of Schedule 3 come into operation on the day of publication, for the purpose of enabling the Authority to conduct, and charge the prescribed fee for, initial application assessments in advance of these Regulations coming into operation under sub-regulation (2).

Interpretation.

2. In these Regulations—

“DLT Provider’s licence” means a licence granted under section 8 of the Principal Act to carry on the controlled activity of providing distributed ledger technology services;

“the Minister” means the Minister with responsibility for financial services;

“the Principal Act” means the Financial Services (Investment and Fiduciary Services) Act; and

“the regulatory principles” means the regulatory principles in Schedule 2.

Amendment of the Principal Act.

3. Schedule 1 amends Schedule 3 to the Principal Act to make providing distributed ledger technology services a controlled activity under that Act.

Licence applications.

4.(1) A person who proposes to apply for a DLT Provider’s licence, before doing so, must submit an initial application assessment request to the Authority in the form and manner it directs, accompanied by—

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- (a) any documents and other information that the Authority may direct; and
- (b) the prescribed initial application assessment fee.

(2) The Authority, as soon as reasonably practicable after it has received a complete initial application assessment request, must—

- (a) assess the nature and complexity of the requester's proposed business model and of the products and services which the requester proposes to offer; and
- (b) provide the requester with an initial assessment notice informing the requester of—
 - (i) any steps which the requester must take before applying for a DLT Provider's licence;
 - (ii) the documents and other information which must accompany any application; and
 - (iii) the prescribed application fee which is payable.

(3) A person who has received an initial application assessment notice from the Authority may apply for a DLT Provider's licence, but only if the application conforms with the requirements of the notice.

Licensing of DLT Providers.

5.(1) The Authority must not grant a DLT Provider's licence unless it is satisfied that the applicant will at all times comply with the regulatory principles.

(2) The Authority must publish guidance on its application of the regulatory principles, including, in particular, any criteria to which it refers in determining whether a person will comply, is complying or has complied with those principles.

(3) This regulation applies without limiting the Principal Act.

Ongoing obligations of DLT Providers.

6.(1) A DLT Provider must at all times comply with the regulatory principles.

(2) A DLT Provider must promptly inform the Authority of any event which the DLT Provider knows or reasonably suspects may affect its compliance with the regulatory principles.

(3) This regulation applies without limiting a DLT Provider's obligations under its licence, the Principal Act or any other enactment.

Disapplication of other regulations.

7. The following regulations made under the Principal Act do not apply to DLT Providers—

- (a) the Financial Services (Accounting and Financial) Regulations 1991;
- (b) the Financial Services (Advertisements) Regulations 1991;
- (c) the Financial Services (Conduct of Business) Regulations 1991; and
- (d) the Financial Services (Unsolicited Calls) Regulations 1991.

Transitional arrangements.

8.(1) This regulation applies to a person who, immediately before the day on which Schedule 1 to these Regulations comes into operation was engaged in providing distributed ledger technology services.

(2) A person to whom sub-regulation (1) applies, who intends to continue to provide distributed ledger technology services, must apply for a DLT Provider's licence within three months of the day on which Schedule 1 to these Regulations comes into operation.

(3) A person who makes an application in accordance with sub-regulation (2) may continue to provide distributed ledger technology services until the application has been determined and, in so doing, is not to be regarded as carrying on that activity in contravention of the Principal Act.

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SCHEDULE 1
AMENDMENTS TO THE PRINCIPAL ACT

In schedule 3 to the Principal Act, after paragraph 9 insert–

“10. Providing distributed ledger technology services.

(1) Carrying on by way of business, in or from Gibraltar, the use of distributed ledger technology for storing or transmitting value belonging to others.

(2) For the purposes of sub-paragraph (1)–

“distributed ledger technology” or “DLT” means a database system in which–

(a) information is recorded and consensually shared and synchronised across a network of multiple nodes; and

(b) all copies of the database are regarded as equally authentic; and

“value” includes assets, holdings and other forms of ownership, rights or interests, with or without related information, such as agreements or transactions for the transfer of value or its payment, clearing or settlement.

(3) Sub-paragraph (1) does not apply to a person who is not a DLT Provider but who holds–

(a) a licence under this Act to conduct investment business or a controlled activity (other than being a DLT Provider) and only uses DLT in the course of conducting that investment business or controlled activity; or

(b) an authorisation granted under–

(i) another Supervisory Act;

(ii) the Insolvency Act 2011; or

(iii) the Gambling Act 2005;

and only uses DLT in the course of conducting the business or activity which the person is authorised to conduct.

- (4) For the purposes of sub-paragraph (3)(b), “authorisation” includes a licence, registration, approval or other permission and “authorised” is to be construed accordingly.
- (5) Sub-paragraph (1) does not apply to an EEA firm which is not a DLT Provider but which–
- (a) conducts in Gibraltar–
 - (i) investment business or a controlled activity (other than being a DLT Provider) which is regulated under the Principal Act; or
 - (ii) any other business or activity which is regulated under an enactment in sub-regulation (1)(b); and
 - (b) does so in exercise of rights arising under European Union law;

to the extent that it only uses DLT in the course of conducting that investment business, controlled activity, business or activity (as the case may be).

- (6) In this paragraph–

a “DLT Provider” means a person licensed to carry on the controlled activity of providing distributed ledger technology services;

“EEA Firm” means an undertaking that has its head office or registered office in an EEA State and is regulated under the law of that State which is equivalent to the Principal Act or an enactment in sub-paragraph (3)(b); and

“Supervisory Act” has the meaning given in section 2(1) of the Financial Services Commission Act 2007.”.

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**SCHEDULE 2
THE REGULATORY PRINCIPLES**

1. A DLT Provider must conduct its business with honesty and integrity.
2. A DLT Provider must pay due regard to the interests and needs of each and all its customers and must communicate with them in a way that is fair, clear and not misleading.
3. A DLT Provider must maintain adequate financial and non-financial resources.
4. A DLT Provider 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 Provider must have effective arrangements in place for the protection of customer assets and money when it is responsible for them.
6. A DLT Provider must have effective corporate governance arrangements.
7. A DLT Provider must ensure that all of its systems and security access protocols are maintained to appropriate high standards.
8. A DLT Provider must have systems in place to prevent, detect and disclose financial crime risks such as money laundering and terrorist financing.
9. A DLT Provider must be resilient and have contingency arrangements for the orderly and solvent wind down of its business.

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SCHEDULE 3 CONSEQUENTIAL AMENDMENTS

Financial Services (Licensing) Regulations, 1991.

1. At the end of Schedule 1 to the Financial Services (Licensing) Regulations 1991 insert–

“

<i>FINANCIAL SERVICES BUSINESS</i>	<i>CLASS</i>	<i>DESCRIPTION</i>
Providing distributed ledger technology services. (Paragraph 10, Schedule 3 of the Act)	XVIII	DLT Provider

”.

Financial Services (Penalty Fees) Regulations 1993.

2. At the end of the Schedule to the Financial Services (Penalty Fees) Regulations 1993 insert–

“Financial Services (Distributed Ledger Technology Providers) Regulations 2017

All regulations	Failure to comply with the provisions of the regulations	Level 5
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Financial Services Commission (Fees) Regulations 2016.

3.(1) The Financial Services Commission (Fees) Regulations 2016 are amended as follows.

(2) In regulation 2(1), after the definition of Collective Investment Scheme, insert ““DLT Provider” has the meaning given in paragraph 10(6) of Schedule 3 to the Financial Services (Investment and Fiduciary Services) Act;”.

(3) At the end of Schedule 1 insert–

“

Fee Block	Authorised Person	Base Fee	Method of Calculating Annual Fees

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G1	DLT Provider	£10,000	<p>Base Fee + Additional Fee</p> <p><u>Base Fee</u></p> <p>A flat fee of £10,000.</p> <p><u>Additional Fee</u></p> <p>An additional fee of not more than £20,000, depending upon the complexity of regulating the DLT Provider.”</p>
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(4) At the end of Schedule 2 insert–

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Fee Block	Authorised Person	Nature of Application	Application Fees
G1	DLT Provider	Initial application assessment request	An initial application assessment fee of £2,000
		Application to be licensed	A flat fee of £8,000 to £28,000, depending upon the complexity of the application as determined by the related initial application assessment.

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