

# Cayman's laws well equipped for maturing digital asset market

Interview with Ian Gobin

The cryptocurrency market is predicted to reach USD1 trillion according to *Smartereum* as the market capitalisation continues to grow. Currently, the estimated size of the crypto market is approximately USD417 billion, a very modest number and one that remains dwarfed by other traditional and alternative asset classes. To put things into context, global private equity alone raised more than USD453 billion in 2017.

So despite all the hype and hyperbole surrounding cryptocurrencies, the fact remains that this is still a nascent asset class. That is not to say, however, that the wider 'digital asset' marketplace is not set for significant growth. In many respects, over the last couple of years, it has matured and the size and nature of digital asset projects has continued to evolve.

Cayman is well positioned as it already has laws in place to navigate digital asset projects. As a jurisdiction, it hasn't needed to substantially adapt to the evolution of this asset class, and there is a genuine mood of real optimism among industry practitioners, including Harneys, one of the Cayman Islands' leading law firms.

"The global dominance of the Cayman Islands and BVI in the investment funds world has really helped these jurisdictions when it comes to attracting global, smaller public and private digital asset projects," says Ian Gobin, who heads-up the Cayman Islands investment funds team at Harneys.

Where other jurisdictions have jumped-in and adopted often unworkable new laws and failed to understand the space, albeit with good intentions, Gobin believes 2019 will see the Cayman Islands amend a number of its existing laws "to further align itself with this



Ian Gobin, Partner at Harneys Cayman

new industry in a favourable way to further encourage global promoters of digital asset projects to the Cayman Islands".

"I think because of these laws that are going to be in place it will push Cayman even further apart from other offshore jurisdictions and become even more widely used globally. I'm feeling very optimistic. Institutional investors have, to a large extent, remained on the side lines in the digital asset space however there will interest from that sector in regulated products," he says.

Harneys committed to being the market leader in the digital asset space several years ago and regards itself as the 'go-to' offshore firm for ICOs, STOs and crypto-asset funds.

"The revolution that started in January 2017 continued into 2018 and we positioned ourselves front and centre of that revolution because at Harneys we believe in the technology," asserts Gobin. "Cayman was well placed to deal with the deluge of deals in 2017 as the existing AML laws in place were appropriate in the digital asset context. Unlike Switzerland, Bermuda and Gibraltar, for instance, Cayman did not need to introduce new legislation.

"Going forward, Cayman will need to tweak various laws now that the digital asset space has continued to evolve. Some ICOs do need to be regulated in my opinion. So 2019 will see some regulatory changes but it will not involve a whole new raft of regulation."

Between 2017 and 2018, the nature of digital asset projects changed. They are now much bigger and better thought out and the promoters are better quality. They know they have to adhere to global security laws and

understand the need for robust KYC/AML procedures on all of their investors.

The nature of these projects varies widely, but in general, they tend to involve software coders teaming up with investment management teams to develop new ideas. “We’ve been working with clients that span everything from video game development through to stable coins for gold and silver, to US real estate. Instead of raising a fund issuing shares, the fund promoter issues a token, which is then linked to the particular piece of US real estate,” notes Gobin.

Part of the growing maturity of this space is the recognition by entrepreneurs that they might, in certain instances, have to register their Initial Coin Offering tokens as securities with the local regulator (i.e. the SEC). Two recent examples of the failure to register include Airfox and Paragon Coin Inc, two cryptocurrency start-ups who were fined by the SEC.

“Some people believed that all they needed to do was raise money and had absolutely no idea about global securities laws. As the industry has matured, many of them are now beginning to understand how these digital asset projects need to be treated. They follow developments in the digital asset industry and they see what the SEC and other global regulators are doing. Those launching projects in 2017 were pioneers. Today’s newcomers are standing on the shoulders of those early pioneers and launching faster to get ahead of the game,” says Gobin.

As global investment managers have adopted cultures of compliance, so too are promoters of digital asset projects – many now know what it means to be a fiduciary of third party monies/crypto.

Service providers have equally upped their game and evolved in terms of what they can provide, which is making it easier to set up structures.

“We’re seeing more service providers offering a wider and deeper variety of services to digital asset projects, ranging from coin provenance and distribution services to insurance and AML/KYC services at initial launch as well as secondary trading reporting solutions on tokenholders,” continues Gobin.

Not every ICO token will be treated as a



security. Every digital asset project has to be looked at individually and assessed as to whether or not its business constitutes “relevant financial business” in Cayman. If so, then enhanced AML and KYC will be required on token holders. “If it’s a payment system project there will be some form of regulation, if it’s a token to be used on a platform to buy services, there might not be. It’s too simplistic to say that all ICOs will need to be regulated and all tokens will be treated as securities.

“There is a lot more colour now in terms of what this industry looks like regarding the issuance and the characteristics of tokens. It remains an incredibly interesting space and I’m sure 2019 will see even more evolutionary strides and innovation, as well as more interest from institutional investors as they explore the investment opportunities of digital asset projects,” concludes Gobin. ■