

# Distributed Ledger Technology

## Strategy review needed

“The presumption with a small country, and several of its institutions, which has problems with governance, is ‘you can’t cope’. So, the strategy needs to change...”

The choice is stark for Malta. **Dr Max Ganado**, Consultant at Ganado Advocates, believes we need to get the focus right, balance it with the risks that exist and make sure we block the risks in areas where we can’t cope as a country. The alternative is to be disintermediated and lose opportunities for our society.

**Dr Max Ganado**  
Ganado Advocates Consultant

Malta can continue to play a role in the regulation of the emerging distributed ledger technology (DLT) space, more commonly known as blockchain, contributing to what Dr Max Ganado referred to as “the regtech area” – regulatory technology. It is here that he sees “the solution to the negativity and suspicion around DLT worldwide. Malta can continue playing a role in a neutral area but remain in the game.”

Regtech does not provide the same risks – real or perceived – that Malta faced when it took early steps on innovative technology. Neither does it have the same dynamic, he pointed out.

Malta stepped into this sector in a context where the dominant use cases, which include banking, securities trading, digital asset transfers and distributions or public offerings, were the focus of a lot of excitement due to the potential for disintermediation of major and dominant industries and players. It allowed for the massive confusion between blockchain and bitcoin.

“Yet all the efforts we put in and the resources we created to deal with relevant issues still remain relevant and important, and I have no doubt this technology is going to operate more and more. The trajectory is clearly marked out,” he said.

He pointed to the leading countries around the world where the effort and resources being put in are enormous. “So, even if we put in much less, we should still be part of the game and I believe we are still able to do so.”



Dr Ganado was a member of the team behind the Malta Project which in 2017 set out to create a regulatory infrastructure to ensure that people dealing with digital assets are able to identify whether the assets are securities, which means they can get hurt if they buy them and use them, or similar to money, which is a currency type of issue and can be used for the transfer of value. In the non-digital world, their issue and activities in them are regulated.

The legislative strategy set out to catch them with a set of rules to ensure that anyone intermediating in that area, even through blockchain and digital assets, knows which regulatory laws apply to activities and would have to carry out the money laundering compliance and even respect tax obligations. These were enacted through several laws and guidelines in June 2018.

One law sought to identify the different types of assets and any public offerings of them. The Malta Financial Services Authority (MFSA) became the regulator of any public offerings and other services offered with reference to defined digital assets. That ensured that there was a sector of this industry, which was emerging very fast, that was fully regulated and could obtain authorisation.

On the other hand, it became clear, where regulation is not involved, that digital assets were neutral. “They are like salt – you don’t regulate salt like you regulate shares in a company. And digital assets could be of both types,” Dr Ganado explained.

Another law, which is extremely forward-looking, created a technology regulator. “That was an effort to say that

‘technology is great, but it can be defective’ and if it is designed to be either defective or fraudulent, or designed in a negligent manner, it is going to hurt people because it deals with data and assets having value, which could be lost or stolen. Data also has privacy issues.”

Through the Malta Digital Innovation Authority (MDIA), Malta probably became the first country in the world to have an entity focusing on qualitative issues related to DLT and possibly even other critical technology. “Now, if you’re using the technology

in the financial services industry, it’s a double catch. You’ve got the MFSA and you’ve got the MDIA,” Dr Ganado said.

“One is dealing with the integrity of the persons and operational systems involved, and the second is regulating, from a qualitative point of view, in terms of accuracy and

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efficiencies of technology, apart from compliance with law.

A mismatch, however, quickly emerged between expectations, resulting from aggressive promotion, and reality. There are effective ways in which Malta, as a small country, can launch and promote projects – and there are wrong strategies as well on how to do this.”

Dr Ganado believes that more recently Government strategy was to draw a line and just stop anything to do with DLT, since moving forward on that front could potentially create greater misunderstandings, especially the confusion around bitcoin which, like cash, could be and has been used for criminal purposes.

This political decision, he affirms, was a mistake because the Malta project was focused on qualitative regulation of the technology backed by law. The problem was the mismatch between the projection of what Malta sought to do and what its law actually does.

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“In other words, in this area, if you don’t have enough resources to deal with regulation of an emerging technology, which even the largest countries were having problems with, no one will accept that things are being done properly – whatever you do. But if you have collateral baggage, then you should be even more careful since you lack credibility. So, any project must be on a much humbler scale.

“I think, if you had to compare this to past projects, the issue was always to make sure that the resources put in to deal with elements of risk have to be commensurate with the amount of risk involved. It’s not enough to educate, to have good accountants and lawyers and technologists.

“And that strategy must continue day by day as a project grows, and relativity – both in people and in skills and competence – has to be maintained. These projects are not a PR or numbers game, and those who think they are, are wrong and misguided.

“The presumption with a small country, and several of its institutions, which has problems with governance, is ‘you can’t cope’. So, the strategy needs to change: don’t enter or grow areas of activity where

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you’re not going to be able to cope, even if it’s on a basis of perception.”

In this context, Dr Ganado called for a review of Malta’s strategy to get the focus right, balance it with the risk that exists in terms of perception and make sure we block the risks in areas where we may appear to be unable to cope – and avoid effort and waste of money in those areas, seeking other, safer angles at the same time.

“The way i-gaming was promoted is subject to the same arguments and is seriously ill-advised since the bitcoin dynamic will play out again, where people out there look at the negative and risky, and the inability to cope, even if the intentions are all good,” he said.

His appeal was to “make sure that we don’t extract ourselves from the study, debate, analysis and constant assessment of blockchain and other innovative technologies like AI. The potential is enormous because the tools of the future are in the making at the moment. You cannot be out of it because you will not have a future.”

The foundations of the future operations emerging now are not going to be the same as those of the past. Failure to act will lead to Malta disintermediating itself, which it can ill afford.

Malta therefore needs to “find intelligent ways to convince the people who are assessing us that there is a necessity we have to meet, and that our intention is not to create



loopholes for people to abuse because that is not on the agenda in any way. The project was and is focused on regulation to fill what is evidently a global vacuum.”

Dr Ganado also considers that “while in the past, as a country, we didn’t give enough importance to strategy because we believed that we were doing things properly, now you can clearly see that the way projects have to be designed and launched in Malta is by building up resources and knowledge – and not only law – long before you launch a project internationally.

“Politicians must stop thinking they can pull rabbits out of a hat and expect the projects to successfully enhance what we do as a population in the long term. Long-term strategic planning is crucial, starting with education. We cannot have one party knowing a lot about a project and the other being unaware of its fine elements and dynamics, and dropping all the key strategic elements around it when governments change. Or one party developing strategies and the next one promoting totally inconsistent strategies which threaten, if not kill, the first.

“Secondly, Malta needs to team up with major foreign state players in different fields, where it can deal with the problem of lack of resources, and then go out onto an international market in a balanced way, with credibility, so that we ensure that we not only do a good job but that the negative perception risk is pre-empted.” Choosing the right countries

with the appropriate reputations in selected sectors is, of course, critical.

A regtech focus in the blockchain and AI areas is one that can fit these two strategic suggestions. It will not bring economic opportunities very fast but will place us on the right side of the discussion and keep us in the game so that our skills and awareness grow at a suitable rate for participation in the future.

Dr Ganado sees a global demand for regtech products in every sphere where this technology is entering, so that will support the strategy. However, now that Malta has one of the most advanced legal and regulatory regimes in place, when most other countries are only thinking about it, should a very limited number of good quality commercial projects committed to compliance to proper standards come over, then they should be dealt with efficiently, constructively and diligently without exceeding the capacity of local regulators in place today.

Malta should clearly acknowledge the handling capacity it has in this space, after suitable assessment by competent persons, and then stick to it. In today’s circumstances, advance planning to deal with issues of capacity is a must and not dealing with these issues will have serious consequences, Dr Ganado advised.