

Operational Multisig Participation Agreement Design and Trust Assumptions

The same way that DAO participation has inherent risks, multisig participation has certain inherent risks based on the facts and circumstances of the participation, including the purpose of the multisig, the design and operational parameters (and tradeoffs implicated) as well as the legal issues implicated. In the case of an operational Multisig, broadly envisioned, the character of the operations, the amount of funds being deployed subject to risk of loss, the degree of control and discretion exercised by participants, as well as the source and recipients of funds can give rise to a host of potential liabilities for multisig participants.

While a multisignature participation agreement (MPA) can address some of these risks, it will have inherent limitations. Some of these risks can be further mitigated through additional structuring but cannot be completely removed. With that in mind, when looking at a base case for drafting an operational MPA that administers budgeted funding could be to: (1) define roles of the participants and scope of authority; (2) define rules and obligations of the participants; (3) contractually limit liability and downside for participants; and (4) protect funds from risk of loss, bad acts and defection.

I. MPAs and Trust Assumptions.

Operational MPAs are contracts that do not exist in a vacuum. While they can set out the understandings between the parties thereto, the terms should vary depending on the trust assumptions and context surrounding the agreement, particularly how the agreement interacts with variables outside of the agreement, including additional operational controls.

In designing an MPA, a base case for the form design would be:

- **Limited Discretion; Qualified Code Deference and Limits on Legal Remedies** - limit participant discretion and their role to that of implementing on-chain decision making; assume that multisig participants are willing to stand behind some clearly specified duties while disclaiming broader, more encompassing duties such as fiduciary duties.
- **Trust Minimization & Neutrality.** The duties of the participants are crafted to align with the open-source software, trust-minimization and neutrality goals that echo principles of the broader community and its contributors and users.
- **No Common Enterprise Among Parties.** Assume that multisig participants may prefer to be treated as separate individuals rather than a partnership, and provisions are designed to disclaim partnership status and title to multisig assets.

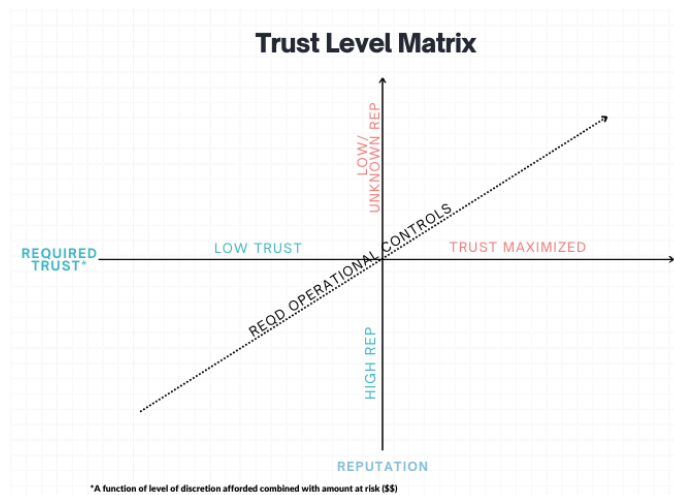
Meaning, a base case where a form MPA could be effective for operations, without more structure, is where participants lack material decision making power, and their role is simply to implement on-chain decisions made through the established governance process – an MPA incorporating the parameters of this narrow mandate is likely a good starting point. However, the more discretion the participants have over the funds, the more likely a partnership or joint venture with tax implications can be found. This scenario would also create the need for more thought around governance and trust minimization structuring outside of the MPA.

Trust minimization structuring entails the presence of operational controls outside of the agreement to minimize the downside risk of participant defections to the community.

Operational controls could include:

- Changes in the multisig configuration (m of n) to increase approval threshold and/or number of signers and/or nature of participants (no single organization controls or single commonality among signers can control)
- Signers identified publicly (if appropriate)
- Signers are up for election annually
- Governance can reduce trust level on multisig (break in funding via milestones, quarterly payments, and mandating reconfiguration on specified events for continued funding)
- Checks and balances on discretion (if ability to set goal posts in budget, stronger conflicts avoidance mechanisms and separation of approval authority)
- Limit discretion where possible (ie. merge of a commit as conclusive evidence work was accepted)
- Use of streaming payments
- Use of a reputation system
- Use of an intermediary multisig with a higher reputation or independence criteria to disperse smaller payments at a time to the multisig in question or the ability to audit actions of the multisig participants
- Clawback mechanisms (ie [optimistic grants](#))

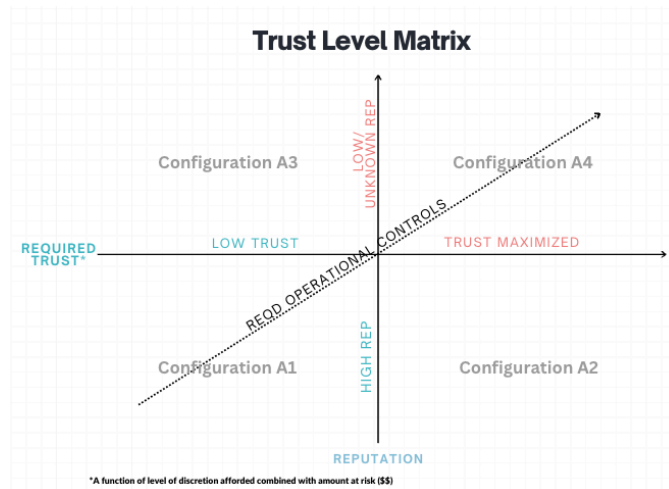
The degree of trust minimization through operational controls will vary but directionally will become more important as the funds at risk and level of discretion increase. Additionally, the form of MPA will need to vary as we change trust assumptions, which are broadly reflected below.



For instance lower-required-trust form may be specced for use by an internal team with an established reputation, or for small amounts of funds and low discretion. This would fall in the lower left quadrant in the above trust matrix but If we start to modify these variables, we should look at additional checks and balances as required trust increases. For instance, different forms and controls might be warranted between (i) an internal team with high discretion on use of funds; (ii) an internal team with control over large treasury; and (iii) an external team with an unestablished (unknown) reputation.

More discretion would entail the need for more governance process within the form among the participants, among other things, and more funds at risk might warrant a higher degree of operational controls to counter potential defection by participants.

A playbook could be useful where modular configurations are used – certain operational controls could be paired with MPA forms, each largely standardized by trust level – using the trust level matrix from before, the lowest required trust being at A1 and increasing to A4:



If desired, a more formal reputation system could supplement these efforts to override a default trust level (unknown).

II. Additional Structural Considerations.

Although a lot can be solved by modularly configuring the agreements with operational control wrappings, there are limits to solving participant liability issues without more structuring, including protecting the participants against third party claims or providing for indemnification.

One mechanism for protecting participants against liability is through a legal entity as a liability shield wrapping the multisig participants. The relative benefits and costs of creating a legal entity need to be considered carefully in the context of the multisig participation at issue. A situation where low trust is required and the participants are a group of disparate actors with a loose association and without necessarily any commonalities may not warrant an entity wrapper – or at least not one that involves overhead costs, maintenance, and doxing and participants willing to take those on.

Entities also create more optionality in operations, including the ability to enter into contracts on behalf of the entity, engage service providers, have personhood for tax and generally provide more flexibility in acting off-chain. As with any entity, the trade-offs involved in creating off-chain infrastructure involve opting in to the laws of a particular jurisdiction and potentially being willing to be doxed in connection with the entity's formation, reporting obligations and in order to develop relationships with service providers such as payment processors and other vendors.

When you look at forming a legal wrapper, you are necessarily thinking about how the legal wrapper interacts with the MPA and its participants. For instance, the MPA might be set up to have the participants be engaged by the entity and as a material inducement to serve, the legal wrapper will provide contractual liability protections for their service (which may be limited by creditworthiness) but may also shield participants from personal tax liability. Important factors here include:

- **Entity Selection / Jurisdiction Selection:** The decision of entity type and jurisdiction of incorporation or formation should ultimately be context dependent – there is no one size fits all and the persons participating (whether playbooks are created or the participants are deciding) are best positioned to evaluate the facts and circumstances around the jurisdictional nexus, governance structure and entity types and their respective tradeoffs.
- **Considerations re Entity Type:** The decision here is also a function of the facts and circumstances. For more ephemeral relationships among participants, lighter weight structures such as Swiss associations may be preferred. Though ownerless foundations are very useful to participants seeking not-for-profit models with better tax outcomes and more governance accountabilities, given the general degree of cost associated with offshore foundations not only at formation but in terms of upkeep (the appointment and payment of independent directors etc), although these vehicles have significant benefits, there may be situations where a grant making entity may choose this vehicle where a group of independent contractors working on a short-term deliverable may not.
- **Entity Structure Considerations:** It also makes sense to carefully think through the relationship of the governing body of the entity vis a vis the active signers in the MPA and build in accountabilities and checks and balances as desired.