mālama labs

powered by a carbon-negative future

MEMORANDUM

TO: Malama Labs Leadership Team
FROM: General Counsel
DATE: March 11, 2025
RE: Dual-Entity Structure Status and Implementation Plan

1. EXECUTIVE SUMMARY

This memorandum provides a status update on the implementation of Malama Labs' dual-entity organizational structure and decentralized governance plan. Key components include:

1. Current Organizational Structure and Implementation Status

1.1 Malama Labs Incorporated

- This entity is structured as a Delaware C Corporation, officially filed under File #4305886.
- The incorporation date is July 17, 2024.
- This indicates that Malama Labs is a for-profit entity, likely intended for business operations, product/service development, and revenue generation.

1.2 The Mālama Foundation

- This entity is currently undergoing a conversion process.
- It was previously established as a 501(c)(3) non-profit organization named Kina'ole Publishing.
- The conversion suggests a shift in focus or mission, aligning with the broader goals of the Mālama project.
- As a 501(c)(3), The Mālama Foundation will likely be responsible for charitable activities, educational initiatives, and community outreach.

1.3 Decentralized Autonomous Organization (DAO)

- This entity is planned for future implementation.
- DAOs are typically blockchain-based organizations governed by code and token holders.
- The DAO will likely serve as a governance mechanism for the Mālama project, enabling decentralized decision-making and community participation.

Overall Implementation Status

- The implementation of this tri-part structure is ongoing.
- Specific action items and timelines are detailed in subsequent sections of this document.
- The integration of for-profit, non-profit, and decentralized governance models presents unique challenges and opportunities.
- This structure aims to balance financial sustainability, social impact, and community empowerment.

2. CORPORATE ENTITY STATUS

2.1. Delaware C Corporation

Entity Name: Malama Labs Incorporated
File Number: 4305886
Incorporation Date: July 17, 2024
Entity Type: General Corporation
Residency: Domestic (Delaware)
Registered Agent: A Registered Agent, Inc. (8 The Green, STE A, Dover, DE 19901)

2.1.1. Selected Corporate Structure Rationale

(a) Capital Formation Flexibility: The C Corporation structure permits multiple classes of stock and diverse financing instruments.

(b) Investor Familiarity: Standard structure reduces friction in fundraising processes.

(c) Operational Scalability: Established governance framework facilitates efficient decision-making during growth phases.

(d) Mission Integration: Corporate bylaws and governance documents incorporate sustainability commitments while maintaining structural flexibility.

2.2. Hawaii Nonprofit Corporation

Current Name: Kina'ole Publishing
Proposed Name: The Mālama Foundation
Status: Conversion in process
Tax Status: 501(c)(3) (existing)
Jurisdiction: Hawaii

2.2.1. Conversion Documentation (In Progress)

Name Change Documentation:

- Form DNP-2 (Articles of Amendment) has been completed.

Updated Purpose Statement:

- The statement has been expanded. It now includes "regenerative economy initiatives dedicated to restoring and stewarding Hawaii's land through innovative technology, sustainable agriculture, food sovereignty, and community-driven collaboration."

Board Resolution:

- The draft resolution has been completed, but it is still pending board approval.

Regulatory Filings:

- Notifications for DCCA and IRS are currently being prepared.

3. DECENTRALIZATION IMPLEMENTATION PLAN

3.1. Phased Approach

3.1.1. Phase I: Foundation (Current)

a) Establishment of Conventional Legal Entities

- This step involves the creation of the necessary legal entities that will form the basis of the organization's structure. This may include incorporating a non-profit organization, establishing trusts, or forming other legal structures depending on the organization's goals and operational requirements.
- This phase will also include obtaining any necessary licenses and permits to operate legally.

b) Development of Technological Infrastructure

- This entails building the digital infrastructure that will support the organization's operations and future decentralized governance model.
- This may include developing a website, creating a secure data management system, implementing communication tools, and exploring blockchain-based solutions for future tokenization and governance.

c) Initial Stakeholder Identification and Engagement

- This involves identifying key stakeholders, including potential beneficiaries, community members, investors, and partners.
- This phase will focus on building relationships with these stakeholders, understanding their needs and expectations, and establishing open channels of communication.

3.1.2. Phase II: Transition (Months 12-24)

a) Token System Implementation (Carbon Credits, Impact Tokens, Governance

Tokens)

- This phase will introduce the use of tokens within the ecosystem.
- Carbon credits may be used to incentivize sustainable practices, impact tokens could be used to track and reward positive social or environmental outcomes, and governance tokens may be introduced to grant voting rights and enable community participation in decision-making.
- This phase will involve designing the tokenomics, developing the technological infrastructure for token issuance and management, and educating stakeholders about the use and value of tokens.

b) Limited Community Governance Implementation in Defined Domains

- This step will begin to introduce elements of community governance within specific areas of the organization's operations.
- This may involve creating community forums for discussion and feedback, establishing voting mechanisms for certain decisions, and delegating limited authority to community working groups.

c) Working Group Formation with Delegated Authority

- This involves creating specialized working groups composed of community members and stakeholders who will be granted the authority to make decisions and take action within their designated areas of responsibility.
- This step will help to distribute decision-making power and ensure that diverse perspectives are represented in the governance process.

3.1.3. Phase III: Decentralized Governance (Years 2-4)

a) DAO Implementation with Binding Governance Mechanisms

- This phase will see the full implementation of a Decentralized Autonomous Organization (DAO) with binding governance mechanisms.
- This will involve creating a blockchain-based system for voting and decision-making, establishing rules and procedures for proposal submission and execution, and ensuring that the DAO's decisions are transparent and enforceable.

b) Gradual Transfer of Operational Decision-Making

- This step will involve gradually transferring operational decision-making power from the centralized legal entity to the decentralized DAO.
- This will be done incrementally to ensure a smooth transition and maintain stability while the community gains experience with decentralized governance.

c) Legal Recognition through Emerging Regulatory Frameworks

- This final step will involve seeking legal recognition for the DAO and its governance mechanisms through emerging regulatory frameworks.
- This may involve working with legal experts and policymakers to develop new legal structures that accommodate decentralized organizations and ensure their compliance with relevant laws and regulations.

3.2. Multi-Token System Legal Framework

3.2.1. Token Classification and Regulatory Analysis

- **(a) Carbon Credit Tokens:**
    - These tokens represent ownership of carbon credits, which are tradable certificates representing the right to emit a specific amount of greenhouse gases.
    - Classification: These tokens would likely be classified as **commodities** due to their tradable nature and representation of an underlying environmental asset.
    - Regulatory Compliance: Carbon credit tokens would be subject to regulations governing **carbon markets** and **emissions trading schemes**. This may include compliance with specific reporting, verification, and trading rules.
- **(b) Impact Tokens:**
    - These tokens are issued as rewards for achieving specific environmental or social impact goals. They do not represent financial value and are primarily used for recognition and incentivization.
    - Classification: Impact tokens are generally considered **non-financial reward tokens** and may fall outside the scope of traditional financial regulations.
    - Regulatory Constraints: Due to their non-financial nature, impact tokens are subject to **minimal regulatory constraints**. However, it is important to ensure that they are not used for fraudulent or deceptive purposes.
- **(c) Governance Tokens:**
    - These tokens grant holders voting rights and participation in the governance of the blockchain-based platform or project.
    - Classification: Governance tokens may be classified as **securities** depending on their specific characteristics and the rights they confer to holders.
    - Regulatory Compliance: The implementation of governance tokens requires careful consideration of **securities laws** to avoid potential legal and regulatory issues. This may include compliance with registration requirements, disclosure obligations, and restrictions on the sale and transfer of tokens.

3.2.2. Securities Law Considerations

- **(a) Howey Test Analysis for Each Token Type:**
    - The Howey Test is a legal framework used to determine whether an asset qualifies as a security. Each token type (carbon credit, impact, and governance) must be analyzed under the Howey Test to determine its potential classification as a security.
    - Factors considered in the Howey Test include whether there is an investment of

money, an expectation of profit, and a common enterprise with profits derived primarily from the efforts of others.

- **(b) Restriction Mechanisms for Governance Token Distribution:**
    - If governance tokens are deemed securities, it may be necessary to implement restriction mechanisms to comply with securities laws.
    - These restrictions may include limitations on the number of tokens that can be sold, requirements for investor accreditation, and prohibitions on certain types of advertising and marketing.
- **(c) Safe Harbor Provisions and Regulatory Exemptions:**
    - Depending on the jurisdiction and specific circumstances, there may be safe harbor provisions or regulatory exemptions available that could allow for the issuance and distribution of certain types of tokens without full compliance with securities laws.
    - It is important to carefully evaluate these options and determine whether they are applicable to the specific token model being implemented.

4. INTER-ENTITY RELATIONSHIP STRUCTURE

4.1. Operational Independence

To guarantee the complete protection and preservation of each entity's individual legal standing and operational integrity, a framework of strict legal and operational independence will be meticulously maintained. This separation will be implemented through distinct legal entities, separate financial accounts, and independent operational structures. This approach safeguards each entity's distinct legal status and minimizes any potential for shared liability or risk exposure across the entities. Clear policies and procedures will be established to maintain this separation, including guidelines on decision-making, information sharing, and conflict resolution.

4.2. Contractual Relationships (In Development)]

The relationship between the two entities will be governed by a series of contracts that clearly define the terms of engagement and ensure fair and transparent dealings. These contracts will include:

- **(a) Service agreements for technical support:** These agreements will outline the scope of technical support services provided by one entity to the other, including details on service levels, response times, and pricing.
- **(b) Resource allocation mechanisms:** These mechanisms will establish clear guidelines for the sharing of resources between the two entities, such as personnel, equipment, and facilities. They will ensure equitable access to resources and prevent disputes over resource allocation.
- **(c) Intellectual property licensing:** These agreements will govern the use and sharing of intellectual property between the two entities, ensuring that both entities can benefit

from each other's innovations while protecting their respective intellectual property rights.

4.3. Governance Coordination

While maintaining operational independence, the two entities will establish mechanisms for coordination and collaboration at the governance level. This will ensure alignment on strategic goals and facilitate synergies between the two entities. These mechanisms will include:

- **(a) Overlapping advisory structures (where legally permissible):** This may involve having some common members on the advisory boards or boards of directors of the two entities, where legally allowed. This will enable cross-pollination of ideas and ensure that both entities benefit from a diverse range of perspectives.
- **(b) Formalized communication protocols:** Regular communication channels will be established between the leadership teams of the two entities to facilitate information sharing, discuss strategic issues, and resolve any potential conflicts.
- **(c) Shared strategic planning processes:** The two entities will engage in joint strategic planning exercises to identify areas of common interest, align their strategic goals, and explore opportunities for collaboration.

5. REGULATORY COMPLIANCE FRAMEWORK

5.1. Carbon Market Regulations

- **(a) Certification Standards:**
    - In-depth analysis and comparison of the requirements and procedures for obtaining certifications from major carbon credit standards, such as Puro Earth, Verra, and Gold Standard.
    - Evaluation of the potential benefits and drawbacks of each standard in relation to the project's goals and the specific carbon offset projects being undertaken.
    - Development of a strategy for selecting and obtaining the most appropriate certifications.
- **(b) MRV Requirements and Documentation:**
    - Detailed examination of the Monitoring, Reporting, and Verification (MRV) requirements set forth by relevant regulatory bodies and carbon market standards.
    - Implementation of robust MRV systems and processes to accurately track and document carbon sequestration and emission reductions.
    - Ensuring compliance with all reporting deadlines and data submission requirements.
- **(c) Jurisdictional Compliance:**
    - Thorough research and understanding of the carbon market regulations and requirements specific to Hawaii and California.
    - Development of strategies to ensure compliance with all applicable state-level regulations and reporting obligations.

    - Monitoring of any changes or updates to jurisdictional regulations and adapting project activities accordingly.

5.2. Blockchain and Token Compliance

- **(a) Securities Regulations:**
    - Comprehensive analysis of both federal and state securities laws and regulations as they apply to the issuance and trading of blockchain-based tokens.
    - Consultation with legal experts to determine whether the project's tokens may be considered securities and to develop strategies for compliance.
    - Implementation of measures to ensure that token issuance and trading activities comply with all applicable securities regulations.
- **(b) Money Transmission Considerations:**
    - Assessment of whether the project's activities may be considered money transmission under federal and state laws.
    - Development of strategies to comply with money transmission regulations, including obtaining necessary licenses or exemptions.
    - Implementation of anti-money laundering (AML) and know-your-customer (KYC) measures to prevent illicit financial activities.
- **(c) DAO-Specific Regulatory Developments:**
    - Close monitoring of emerging regulatory developments related to Decentralized Autonomous Organizations (DAOs).
    - Analysis of the potential legal and regulatory implications of DAO structures for the project.
    - Proactive engagement with regulatory bodies and legal experts to ensure that the project's DAO structure remains compliant with evolving regulations.

5.3. Nonprofit Compliance

- **(a) 501(c)(3) Operating Requirements:**
    - Detailed review and understanding of the operating requirements for maintaining 501(c)(3) tax-exempt status.
    - Implementation of policies and procedures to ensure that all project activities align with 501(c)(3) requirements.
    - Annual reporting and documentation to maintain tax-exempt status.
- **(b) Hawaii Nonprofit Regulations:**
    - Thorough research and understanding of the specific regulations governing nonprofit organizations in Hawaii.
    - Compliance with all state-level reporting and registration requirements.
    - Monitoring of any changes to Hawaii nonprofit regulations and adapting project operations accordingly.
- **(c) Public Charity Qualification Maintenance:**
    - Implementation of strategies to ensure that the project meets the public support test and maintains its status as a public charity.
    - Documentation and reporting to demonstrate public support and charitable

activities.
    - Consultation with legal and tax experts to address any issues related to public charity qualification.

6. RISK ANALYSIS AND MITIGATION

6.1 Identified Risks

6.1.1 Regulatory Uncertainty

a) Evolving Carbon Market Regulations: The regulatory landscape for carbon markets is constantly shifting. This includes potential changes in carbon pricing mechanisms, emission offset standards, and reporting requirements. These changes could significantly impact the profitability and operations of carbon offset projects, creating both risks and opportunities.

b) Cryptocurrency and Token Classification Developments: The classification of cryptocurrencies and tokens by regulatory bodies is still evolving. This uncertainty could impact the legal status of tokens issued by the DAO, potentially affecting their use and value. It could also lead to compliance challenges and restrictions on token trading.

c) DAO Legal Recognition Limitations: The legal recognition of DAOs is still limited in many jurisdictions. This creates uncertainty regarding the legal status and liability of DAO members, as well as the enforceability of DAO decisions. It could also lead to challenges in interacting with traditional legal and financial systems.

6.1.2 Governance Transition Challenges

a) Authority Delegation Complications: The transition from a traditional governance structure to a decentralized model may face complications in delegating authority and decision-making power. This could lead to conflicts between stakeholders, delays in decision-making, and a lack of clear accountability.

b) Stakeholder Alignment Maintenance: Maintaining alignment among stakeholders with diverse interests and perspectives can be challenging in a decentralized governance model. This could lead to disagreements, power struggles, and a loss of focus on the organization's mission.

c) Traditional/Decentralized Governance Integration: Integrating traditional governance structures with decentralized decision-making processes can be complex. This could lead to inefficiencies, conflicts, and a lack of clarity regarding roles and responsibilities.

6.1.3 Entity Boundary Enforcement

a) Mission Drift Prevention: Ensuring that the organization stays true to its original mission

and purpose can be challenging in a decentralized model. This could lead to a loss of focus, a dilution of impact, and a misallocation of resources.

b) Related Party Transaction Scrutiny: Transactions between related parties within the organization need to be carefully scrutinized to ensure fairness and prevent conflicts of interest. This can be challenging in a decentralized model where transparency and accountability may be limited.

c) Tax Status Preservation Requirements: Maintaining the tax-exempt status of the organization requires compliance with complex regulations. This can be challenging in a dual-entity structure with both traditional and decentralized elements.

6.2. Mitigation Strategies

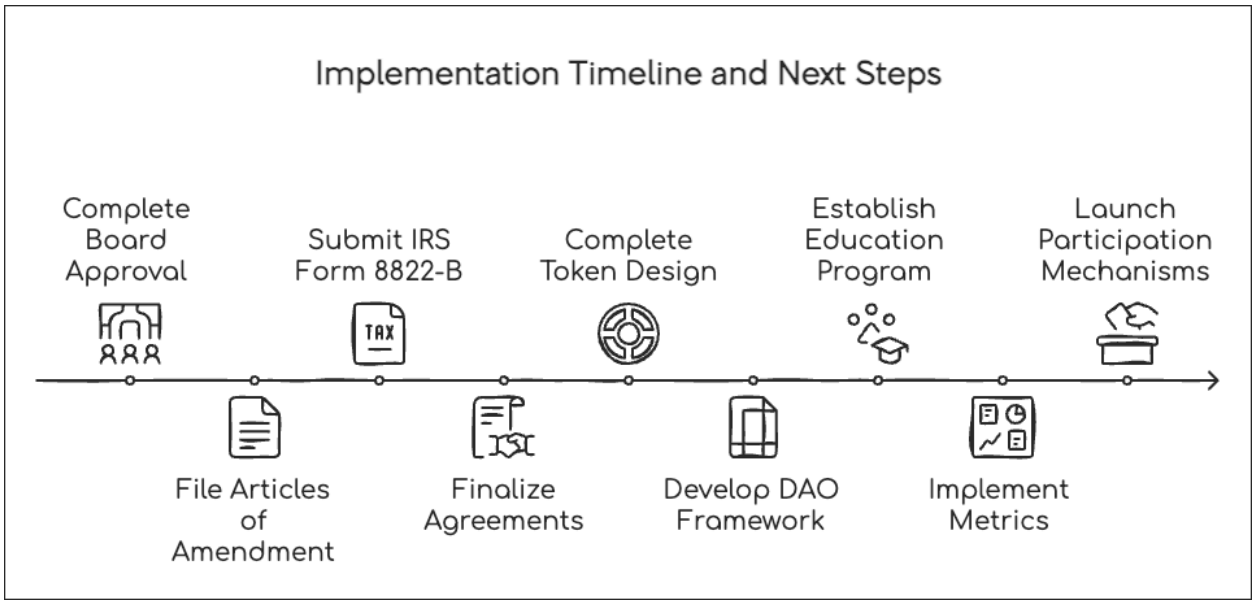
6.2.1. Regulatory Monitoring System

- **Implementation of Compliance Tracking Mechanisms:**
  This involves developing and implementing a system to track and monitor compliance with all relevant laws, regulations, and industry standards. This system should include processes for identifying applicable regulations, tracking changes to those regulations, assessing compliance status, and taking corrective action as needed.
- **Regulatory Relationship Development:**
  Establishing and maintaining positive relationships with regulatory bodies is essential. This includes proactive communication, participation in regulatory consultations, and timely response to regulatory inquiries.
- **Participation in Industry Standards Development:**
  Active involvement in industry associations and standard-setting bodies allows the organization to stay ahead of emerging trends, influence industry standards, and ensure that its practices align with best practices.

6.2.2. Governance Documentation

- **Clear Authority Matrices:**
  Well-defined authority matrices clarify roles and responsibilities within the organization, ensuring that everyone understands their authority and accountability. This helps to prevent conflicts, streamline decision-making, and promote efficient operations.
- **Phased Transition Mechanisms:**
  Transitioning to a new governance structure can be complex. Phased transition mechanisms provide a roadmap for the transition, outlining the steps involved, timelines, and responsibilities. This helps to minimize disruption and ensure a smooth transition.
- **Dispute Resolution Procedures:**
  Despite best efforts, disputes may arise. Clear and fair dispute resolution procedures provide a mechanism for resolving conflicts in a timely and constructive manner. This helps to maintain positive relationships and avoid costly legal battles.

7. IMPLEMENTATION TIMELINE AND NEXT STEPS



7.1. Immediate Actions (0-30 Days)

(a) Complete Board approval process for The Mālama Foundation conversion
(b) File Articles of Amendment with Hawaii DCCA
(c) Submit IRS Form 8822-B notification
(d) Finalize inter-entity relationship agreements

7.2. Short-Term Actions (30-90 Days)

(a) Complete governance token technical design
(b) Develop DAO legal framework documentation
(c) Establish community education program
(d) Implement decentralization progress metrics

7.3. Medium-Term Actions (90-180 Days)

(a) Launch initial governance participation mechanisms
(b) Complete full technical infrastructure deployment
(c) Implement transparent monitoring dashboard
(d) Conduct legal structure effectiveness review

This memorandum represents a current assessment of organizational structure implementation. All recommendations are subject to ongoing regulatory developments and strategic considerations.

Respectfully submitted,

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