

[DRC] Transition: dYdX Operations Trust to a Cayman Islands Foundation Company

Summary

The dYdX Operations SubDAO operates through three legal entities: a Guernsey non-charitable purpose Trust ('DOT'), a Cayman Islands Exempted Company ('DOS') and a Panama corporation ('DAS'). This proposal relates to a partial legal restructuring by transitioning the mandate, assets and liabilities of DOT to a newly-to-be-formed Cayman Islands Foundation Company (a 'Cayman Foundation').

The changes discussed hereunder are intended to optimise the operational infrastructure of the dYdX Operations SubDAO whilst also leading to a decrease in potential legal risk undertaken by members thereof due to the separate legal personality endowed in a Cayman Foundation, among other things.

Below is a detailed description of what the transition from the DOT to the dYdX Operations Foundation ('DOF') would look like and what the expected key benefits of this transition are.

Most importantly: the DOF Memorandum, which in this case is equivalent to the Trust Deed, would accurately reflect the terms of the current Trust Deed (and corresponding mandate inherent in the Trust Deed) of the DOT. More specifically, the dYdX Community's oversight and on-chain governance control over the dYdX Operations subDAO will not be altered as a result of this transition. This is due to the fact that the DOF Memorandum will provide for the same legal enforceability of on-chain governance mechanics that are currently in force as per the [Trust Deed](#) of the DOT.

Context and Motivation

[Issues posed by the Guernsey Purpose Trust Structure]

The current predominant issue with the DOT is that, due to the Trust structure and the mechanics thereof as per the Trusts (Guernsey) Law of 2007, the Trust structure does not provide for separate legal personality of the Trust, which rather has to operate through its Trustees. When a Trustee performs an action on behalf of the Trust they are acting as a representative of the Trust, and not in an individual capacity. This arrangement inherently ties the Trust's operational effectiveness and legal standing to the actions of independent Trustees which introduce a layer of complexity in operations.

[Solutions posed by the Cayman Islands Foundation Company]

The proposed transition to a Cayman Foundation aims to resolve operational & legal hurdles currently posed by the Trust Structure that is currently in use by the dYdX Operations SubDAO. The following is highlighting the most important solution areas:

1. Current issue:

The current legal structure means the subDAO falls under both with Guernsey and Cayman laws, creating additional complexity as well as the need for legal advice in both jurisdictions for the subDAO's projects

Solution:

The transition to a Cayman Foundation will significantly reduce the operational and cost overhead associated with navigating the legal complexities in two separate jurisdictions (in this case, the Cayman Islands for DOS, and Guernsey for DOT). The main overhead associated with a cross-jurisdictional legal structure relates to the legal advice that is needed on a semi-continuous basis so as to assess the possible interdependencies between two separate structures (from each jurisdiction's perspective) coupled with assessing the compatibility (or incompatibility) of the legal regimes applicable.

1. Current issue:

The DOT is not a separate legal entity, which means that contracts and any legal relationship need to be entered into by all the trustees on behalf of the trust. This brings operational inefficiencies and adds to the legal risk that is taken on by the trustees.

An example of this is the DOS equity currently held within the DOT Structure. As it stands, DOT's Trustee Christoph Sonn is currently the sole member of the DOS. Hence, and to further clarify, Christoph Sonn is holding DOS' equity in his capacity as a Trustee of the DOT, on the bare of the Trust (in this regard, legally, the equity is held by the Trust, through Christoph as a Trustee).

Albeit this transaction being legally valid and in line with the provisions of the Trust Deed and Guernsey Trust Law, we are fully aware that this could pose potential legal and/or regulatory risk to Christoph in his jurisdiction of residence and/or domicile, as well as to the DOT and broader dYdX Operations subDAO themselves. It also creates a point of centralization (also discussed further below) for the legal structure of the dYdX Operations subDAO.

Solution:

The Cayman Foundation is a legal entity and can, as such, be counterparty for legal agreements as well as hold equity. Regarding the DOS' membership this would reduce the legal risk for the trustee, as well as the 'key man' risk from the subDAO, ensuring it does not rely on just one individual. From an operational perspective, this would in turn significantly decrease the coordination burden for entering into legal relationships and signing contracts.

1. Current issue:

Centralization points currently exist within the legal structure of the dYdX Operations subDAO, which concentrates risk and reduces its overall resilience. As described above, the fact that Christoph Sonn is the sole shareholder of the DOS not only poses a risk to him but also to the subDAO, where his actions could in theory have an outsized influence on the subDAO.

Solution:

By incorporating a Cayman Foundation that will be memberless - not having a shareholder - and transferring the DOS share to the Cayman Foundation we can remove this particular centralization point. The fact that the DOF will be memberless allows us to eliminate the centralization of the legal structure as much as possible, thus bringing the dYdX Operations subDAO legal structure in line with industry standards and values regarding the importance of decentralization.

Specifications

What would the DOF look like?

The proposed dYdX Operations Foundation (hereinafter referred to as "DOF") would be incorporated in the Cayman Islands as a Cayman Islands Foundation Company. The DOF Memorandum & Articles of Association will maintain the current status quo present within the DOT Trust Deed, relating, among other things, to the ability of DYDX Tokenholders to have governance oversight and control over the DOF via dYdX Consent through the dYdX Governance Framework, allowing tokenholders to (among other things) appoint & remove directors and supervisors (which are the equivalent figures in a Cayman Foundation to the Trustees and Enforcer in a Guernsey non-charitable Purpose Trust, respectively).

Trustees → Directors

DOT Trustees will be transitioned to acting Directors of DOF. This transition ensures continuity in the current status quo relating to the interplay between the dYdX governance framework and the legal mechanisms that underpin DOF. As with Trustees of DOT, Directors of DOF will be bound by dYdX Community Consent and maintain their current subservience to the dYdX Community that is currently inherent in the Trustee role within the Guernsey Trust Structure. As is the case with Trustees, Directors will maintain their role in furtherance of the purposes outlined in DOF's constituting documentation, i.e. DOF's memorandum & articles of association together with ancillary bylaws issued therein. Summarily, the purposes delineated in the DOT Trust Deed together with the on-chain governance control maintained by the dYdX Community over DOT, will be holistically transitioned to DOF's constituting documentation.

Directors to be appointed:

- Christoph Sonn;
- Joanna Pope [Joanna Pope Consulting Pty Ltd.];
- Bernard [[Areta.io](https://areta.io)]
- Shaun Musuka [Hillstone]
- Valentin Prossliner

Enforcer → Supervisor

Due to the memberless nature of DOF, DOF is required to appoint a 'supervisor'. The Supervisor will be in charge of (as the name rightly implies) supervising the management and administration of DOF and DOF's assets. In addition, and most importantly, it is good to take note of the fact that the Supervisor has no ownership rights or financial entitlement within DOF, but rather supervises the management and administration thereof which is to be effected by the Directors. Hence, the Supervisor will not be on the DOF Multi-sig, but rather oversee DOF's operations and ensure that they are in conformity with DOF's memorandum & articles of association, very much in line with the role that the Enforcer plays in a Guernsey non-charitable Purpose Trust. The importance of this role emanates from the fact that, due to the memberless nature of DOF, the Supervisor has to ensure that DOF has the necessary checks and balances in place to hold the Directors accountable so as to ensure that DOF is being properly managed and conducting its affairs in accordance with the objects in its Constitutional Documents, the requirements of any by-laws and applicable law.

As can be rightly assessed from the above explanation, the role of a Supervisor is equivalent to the role of an Enforcer or Protector in a Trust Structure.

Supervisor to be appointed:

- Joseph Axisa [Axis Advisory]

Members

Cayman Islands Foundation Companies are not required to have 'members' (shareholders) as part of their structure; in other words, they can be 'memberless'. Due to the lack of presence for a use case to attribute to a membership structure within DOF, DOF will not be having members as part of its structure. As per the Foundation Companies Law of 2017, due to the memberless nature of DOF, a Supervisor will necessarily need to be appointed. In this regard and as previously stated, this role would be undertaken by the current DOT Enforcer, Joseph.

Beneficiaries

Cayman Islands Foundation Companies can have a separate class of functionaries referred to as 'beneficiaries'. DOF will not have any beneficiaries as part of its structure due to the unnecessary legal and/or regulatory risk that would be attributed to such a role should it be granted to 'All DYDX Tokenholders'.

Secretary

A Cayman Islands Foundation Company shall at all times have a qualified person as its secretary. The Secretary needs to necessarily be a person that is licensed or permitted to provide company management services in the Cayman Islands as per the Companies Management Act (Revised). DOF's registered office will be at the Secretary's business address where the statutory records regarding the Cayman Foundation must be kept.

As secretary we have selected [Travers Thorp Alberga](#) a Cayman based law firm we have worked with in the past. They also consulted us in preparation for this possible transition and are also the law firm who will handle the incorporation of the Cayman Foundation. The secretary service is part of the incorporation and legal advice package we negotiated and comes at no extra cost. We have worked with multiple Cayman based and International Law firms and TTA has proven to be a reliable partner and we are confident that they can support us most effectively in this transition.

Steps to Implement

Dependant on proposal approval by the dYdX Community

1. (a) Establish the dYdX Operations Foundation ('DOF') as a Cayman Islands Foundation Company and appoint the following key functionaries in place:

Secretary:

- TTA

Supervisor:

- Joseph Axisa/Immutablelawyer [Axis Advisory]

Directors:

- Christoph Sonn;
- Joanna Pope [Joanna Pope Consulting Pty Ltd.];
- Bernard [[Areta.io](#)]
- Shaun Musuka [Hillstone]
- Valentin Prossliner
- (b) Draft the Memorandum & Articles of Association of the dYdX Operations Foundation in line with Part 2 of the Foundation Companies Law, 2017 and grant effective control to the dYdX Community (via dYdX Consent) in relation to the following:
 - Appointment & Termination of Directors;
 - Appointment & Termination of Supervisor;

- Amendments, Supplements or Alterations to the DOF's Memorandum & Articles of Association together with ancillary bylaws issued therein;
- Termination & subsequent dissolution of DOF.
- Bring the Trust Period to an end thereby terminating DOT as per (b) of the 'Trust Period' definition in Clause 1.1 of the DOT Trust Deed [https://assets-global.website-files.com/65252f62a0eabe701df43d7f/652972b79b1c2f87b5a16aed_dYdX%20Operations%20Trust%20-%20Trust%20Instrument.pdf] which states the following:

“Trust Period” means the period from and including the date of this Settlement until whichever of the following dates shall first occur, namely:

1. The day on which shall expire the maximum period for the duration of the Settlement permitted by the Proper Law of this Settlement from time to time; or
2. such day (if any) as the Trustees as directed by the dYdX Community by dYdX Consent shall appoint by instrument.”
3. Transfer and assign the entirety of the assets and liabilities of DOT (less an amount representing all of the expenses and liabilities properly incurred in connection with the Trust and its termination) to DOF upon the termination of the Trust (pursuant to clause 4.4 of the Trust Instrument) wherein it is stated that:

“Subject to clauses 4.1 and 4.2 above, upon the expiration of the Trust Period or, if sooner, upon the date on which all of the Purposes have ceased to subsist or are no longer applicable or are impossible or in the written opinion of the Trustees are impractical or have been found to be unlawful, the Trustees shall hold the Trust Fund and the income thereof upon trust for such persons and in such shares as the Trustees shall, at the direction of the dYdX Community by dYdX Consent appoint PROVIDED ALWAYS THAT the Trustees shall not be permitted at the expiration of the Trust Period to hold the Trust Fund or the income thereof upon trust for the dYdX Community or any person that is part of the dYdX Community and shall not be required to comply with any direction of the dYdX Community by dYdX Consent to this effect.”

1. In carrying out [4], the Trustees would need to carry out the following transfers:
2. Transfer all assets within the DOT Multisig to the DOF Multisig with the Directors of DOF being signers thereof [USDC & DYDX Tokens];
3. Transfer ownership of current domains currently held by DOT [dydxopsdao.com and dydx.forum];
4. Transfer and/or convert or replace ownership and/or administration of current online accounts registered with Google, Notion, Slack & Discourse from DOT to DOF.
5. Direct Christoph Sonn via letter of direction, who holds (as a bare trustee for the Trustees of DOT in their capacity as Trustees) 1 share of par value USD1.00 in dYdX Operations Services Ltd. ('DOS'), to transfer the DOS share to DOF.
6. Assign all contracts of the DOT to the DOF, if an assignment of the contract is not possible they will be terminated and newly entered into by the DOF with the respective counterparty.

DYDX Token incentive for Directors and Supervisor: addition of up to 3000 USD worth of DYDX Performance based Bonus

The past 8 months of the current mandate have been quite demanding to the trusteeship with respects to workload and coordination that was necessary. This has shown in the necessity for retroactive rewards for overtime and the attrition of the trustees. The sought retroactive payments were band aid solutions, additionally three out of five have left within a short timeframe, both things added to the workload of the subDAO team and distracted from core mandate projects.

This addition of a performance based DYDX Bonus for directors and the supervisor will provide a strong incentive to bring best in class performance, go beyond the director duties at times, and reduce the turnover of trustees. Furthermore the DYDX based compensation and a partial locking of the Bonus provides long term alignment of contributors to the protocol goals.

The performance based bonus will be dependent on meeting attendance, multisig signing activity, and/or extraordinary engagement. Half of the awarded bonus will be paid out at the end of each month and the other half will be transferred at the end of the mandate if the director/supervisor is still part of the subDAO. The Bonus will be denominated in USD and the amount of DYDX will be determined with a trailing 14-day TWAP at the end of each month.

Budget

This transition was not included in the original mandate and budget as new information emerged after the mandate and the corresponding budget was approved. The effective work of the core contributors as well as the generous buffer and legal budget do provide the necessary resources to support the implementation cost as well as the increased monthly expenses

within the current budget.

Cost breakdown:

Item

Cost

Legal advice and incorporation

Around 15.000,00 USDC

Compensation

Up to 5.000,00 USD (2000,00 USDC + up to \$3000,00 worth of DYDX) per director / supervisor per month

Proposal

We propose the transition of the head legal entity of the dYdX Operations subDAO from the current Guernsey Purpose Trust to a Cayman Foundation Company. We look forward to everyone's thoughts and comments on this proposal.

Naming

We would like to name the new Cayman Foundation Company "dYdX Operations Foundation", but we welcome any suggestions by the community on the proposed name.

Timeline

Forum Post: 15.03.2024

AMA: 22.03.2024

Vote: 25.03.2024