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LEGAL WRAPPERS FOR DESCENTRALIZED AUTONOMOUS ORGANIZATIONS; A CROSS-JURISDICTIONAL GLOBAL REVIEW FOR THE POLKADOT DAO.

Abstract: Decentralized autonomous organizations (DAOs) are censorship-resistant associations of sovereign individuals with a common goal, widely distributed decision-making, and collective management of shared resources. This paper analyses the unique features of DAOs and their core values, with a focus on Polkadot's DAO and its OpenGov mechanism and then conducts a comparative legal study across jurisdictions in the world, reviewing DAO-specific regulations and other legal vehicles that could be used to create a DAO legal entity. Wrapping the DAO is necessary to interact with the real world, shield members from liability and stand in court. Then we continue with a contractual analysis of Polkadot Treasury Proposals. Finally, we entered into a discussion, selecting the United States as the country with the best regulations worldwide for creating a legal entity for a DAO.

Mario Andrade Ugalde, Gabriel A. Velazquez Ruiz & Antonio Ochoa.
Softlaw S.A. de C.V.

Cyberspace.

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BACKGROUND. The Technology: Origins and Evolution.

Internet

The *Network of Networks*, may be envisioned by Licklider through three publications 1) *Man-Computer Symbiosis*[1] *of 1960*, describing how humans can associate with computers and merge capabilities and resources, or 2) *On-Line Man-Computer Communication*[2] *from 1962*, describing dynamic interactions with the use of general-purpose, compatible, and interactive computer systems, or 3) *The Computer as a Communication Device*[3], describing how humans can be able to communicate more effectively through a machine than face to face.

Another origin can be attributed to Paul Baran, a researcher of the RAND Corporation, who in August 1964, came up with a technology on Distributed Communication Networks[4], which allowed sending fragmented information from one computer to another that was able to reassemble such information[5]. Such technology later evolved into a Galactic Network[6] capable of sharing information for mostly military purposes; "ARPANET", an early version of the internet in 1969.

Cryptography

In 1976, at Stanford, Whitfield Diffie and Marty Hellman, solved a fundamental issue of cryptography[7] for the security, privacy and authentications of communications, originally in wars, showing that two parties can establish a shared secret over an open, insecure channel using mathematics alone: "the public-private key cryptography"[8]. However, during this period, the idea of public-key cryptography, secure communication required the parties to share a secret key in advance, which was impractical at scale[9].

The first practical public-private key cryptography system capable of sign and send encrypted messages on public channels without revealing the encrypted key, initially for electronic mail, was implemented in 1978, through the RSA algorithm by Ron Rivest, Adi Shamir, and Len Adleman, a team of cryptographers from MIT[10]. Cryptography provides

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[1] JCR Licklider, 'Man-Computer Symbiosis' (1960) 1 *IRE Transactions on Human Factors in Electronics* HFE-1.
[2] Licklider JCR and Clark WE, *On-Line Man-Computer Communication* (Bolt Beranek and Newman Inc, 1962).
[3] Th JCR Licklider and Robert W Taylor, 'The Computer as a Communication Device' (1968) *Science and Technology.*
[4] Baran P, *On Distributed Communications* (RAND Corporation 1964).
[5] De Filippi P and Wright A, *Blockchain and the Law: The Rule of Code* (Harvard University Press 2018), 13 – 14.
[6] 'MIT and the Galactic Network' (Gale Encyclopedia of E-Commerce, Encyclopedia.com, 3 February 2026) https://www.encyclopedia.com accessed 7 February 2026.
[7] Conventional Cryptography is the study of "mathematical" systems for solving two kinds of security problems: privacy and authentication, originally in wars. See Alfred J Menezes, Paul C van Oorschot and Scott A Vanstone, *Handbook of Applied Cryptography* (CRC Press 1996) 3–4.
[8] De Filippi and Wright, Blockchain and the Law, (n 5), 14-15.
[9] Ibid.
[10] Rivest RL, Shamir A and Adleman L, 'A Method for Obtaining Digital Signatures and Public-Key Cryptosystems' (1978) 21(2) *Communications of the ACM* 120

security guarantees such as data confidentiality, data authenticity, data integrity, non-repudiation, data availability, and data verifiability[11]. Today Cryptography mechanisms ensure that once transactions are verified and added to the blockchain, they can´t be tampered with later. Also ensure that all transactions are signed and executed with appropriate "permissions".

Blockchain

A chain of documents linked together was described in a 1991 paper titled How to *Time-Stamp a Digital Document*[12], by Stuart Haber and W. Scott Stornetta. The paper explains how to certify the content and time of creation or last modification of text, audio and video documents in digital form, using hash functions and digital functions, and distributing trust, by creating multiple certifiers.

The expansion of the *Galactic Network* was centralized. The evolution of the Internet and cryptography allowed by the end of 1990s millions of people across the world to explore the "cyberspace", by multiple private providers[13]. Two concerns arise as consequence of private providers; one the concentration of power and data by large tech companies providing internet services; Google, Microsoft, Amazon and Meta, and the surveillance and censorship of the internet, particularly in eastern governments, like the Great Firewall of China[14]. The latter severely threatened the idea of freedom that universities and researchers originally considered would reign on the Internet.

These concerns and developments echo the ideas of a resilient, private and decentralized peer-to-peer network originated by a couple of cryptographers and technologists that foresaw the risks of the internet back in 1980s and notice in the technology of encryption and peer-to-peer the power to counteract abuses of personal freedom and liberty[15]. Such groups of technologists were later named as "Cypherpunks". One of them, David Chaum founder of the International Association for Cryptologic Research stated: *"computing technology, over time, would rob individuals of their ability to monitor and control their information, which governments and corporations would collect and use "to infer individuals' life- styles, habits, whereabouts, and associations from data collected in ordinary consumer transactions"*[16].

In late 2008, in response to concentration of power and the "Ninja" Financial Crisis, a pseudonymous author or group of authors regarded as: Satoshi Nakamoto published the

[11] Some modern methods include hashing, digital signatures, multisignatures, verifiable random functions, and zk-proofs.
[12] Haber S and Stornetta WS, 'How to Time-Stamp a Digital Document' (1991) 3(2) *Journal of Cryptology* 99
[13] Ibid. See also Lawrence Lessig, Code and Other Laws of Cyberspace (Basic Books 1999), 82.
[14] Primavera De Filippi, Wessel Reijers and Morshed Mannan, 'Blockchain Governance' (2018) 5 Technology Governance 43. See also Frank Pasquale, The Black Box Society: The Secret Algorithms That Control Money and Information (Harvard University Press 2015) - Margaret E Roberts, Censored: Distraction and Diversion Inside China's Great Firewall (Princeton University Press 2018).
[15] De Filippi and Wright, Blockchain and the Law (n 5), 18-19
[16] De Filippi and Wright, Blockchain and the Law (n 5), fn 26.

Bitcoin Whitepaper, and at the beginning of the next year, the Genesis Block of Bitcoin was mined[17] with a clear message: "*The Times 03/Jan/2009 Chancellor on brink of second bailout for banks"*[18]. At first Bitcoin was a software that allowed anonymous users across the globe to perform digital payments (transactions) on a distributed database, providing unique identification keys "encrypted" to maintain a track of the transactions in "blocks", without the intervention of a central authority or server. Such technology was later called: Blockchain[19].

Blockchain is a public database that is updated and shared across many computers in a network.[20] "Block" refers to data and state stored, and "Chain" refers to the fact that each block cryptographically references its parent. In other words, blocks get chained together[21].

From a more technical perspective, Blockchains can be seen as "State Machines", where everybody can submit a transaction and the network uses the state transition function to change the state. This is deterministic, which means anyone who access to the state transition function, can verify the transaction and arrive to the same state, like the Polkadot Genesis Block[22].

A technology that uses distributed digital ledgers to record transactions across a network of computers (nodes), used by pseudo-anonymous users, ensuring data security, transparency, and immutability in data transactions[23]. Distributed ledger is a shared record of transactions that is replicated and synchronized across multiple nodes in a peer-to-peer network, rather than being maintained by a single central authority[24]. Accordingly, blockchain allows human coordination and data sharing without the need for a middleman, throughout a set of computers operating in a shared network under specific instructions (Distributed Ledgers) solving a well-known Computer Science and game theory problem referred to as the Byzantine General Problem[25], by reaching consensus without the need for an authority. To accomplish a distributed agreement between nodes, blockchains introduce consensus mechanisms like Proof of Work[26], which was popularized by Bitcoin. Later, blockchain

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[17] Satoshi Nakamoto, 'Bitcoin: A Peer-to-Peer Electronic Cash System' (2008) <https://bitcoin.org/bitcoin.pdf > accessed 14 December 2025. See also Jake Frankenfield, 'Bitcoin Mining: Definition, History, How It Works' (Investopedia, 15 May 2023) https://www.investopedia.com/terms/b/bitcoin-mining.asp accessed 14 December 2025.

[18] 'Bitcoin Block 0' (Blockchain.com Explorer) https://www.blockchain.com/explorer/blocks/btc/0 accessed 16 December 2025.

[19] Nakamoto, Bitcoin (n.17).

[20] Ethereum Foundation, 'Technical Introduction to Ethereum' (Ethereum.org, 9 September 2025) https://ethereum.org/en/developers/docs/intro-to-ethereum/ accessed 26 February 2026.

[21] Ibid 23

[22] 'Polkadot Block 0' (Subscan.io Explorer) https://polkadot.subscan.io/block/0 accessed 8 February 2026.

[23] Shabir Korotana, 'Decentralized Autonomous Organizations: Adapting Legal Structures and Proposing a New Model of DAOLLP' (2025) 20 Capital Markets Law Journal 1, 1

[24] De Filippi and Wright, Blockchain and the Law (n 5) 13–14.

[25] ChainSafe, 'Polkadot's Solution to the Byzantine Generals Problem: Grandpa Protocol' (ChainSafe Blog, 10 April 2024) < https://blog.chainsafe.io/grandpa-protocol-polkadot/> accessed 16 December 2025.

[26] Wikipedia, 'Proof of work', <https://en.wikipedia.org/wiki/Proof_of_work> accessed February 8, 2026.

technology allowed the execution of automatic transactions and operations performed by separate software when certain conditions were met; smart contracts[27].

Smart Contracts

Late 60s – 70s, the oldest form of digital contracts was developed in response to the military logistics of the Cold War: The Electronic Data Interchange (EDI) systems, which are useful for electronic and international business in communicating invoices, purchase orders, shipping notices, and other documents[28]. Nevertheless, these are real world agreements and the electronic requests are only computer-to-computer data communication formats.

In the late 1990's a solution to the previous limitation was given by Nick Szabo in a paper entitled "*Formalizing and Securing Relationships on Public Networks*"[29], with the concept of Smart Contracts, describing "*how Reliance on more robust Cryptographic protocols would make it possible to write computer software that resembled "contractual clauses" and bound parties together in a way that would narrow opportunities for either party to terminate its performance obligations.*"[30]. In a 2014 blog publication by Vitalik Buterin, defines Smart Contract as "*the simplest form of decentralized automation, and is most easily and accurately defined as follows: a smart contract is a mechanism involving digital assets and two or more parties, where some or all of the parties put assets in and assets are automatically redistributed among those parties according to a formula based on certain data that is not known at the time the contract is initiated*". Blockchains evolved with Ethereum, which is basically a blockchain with a shared computer embedded in it that executes smart contracts. Nowadays, blockchain is a multibillion-dollar industry with numerous applications and smart contracts from cryptocurrencies, finance, agriculture, to public housing records[31]. A "New Social Contract" that is shifting the balance of power away from centralized authorities in the field of banking, communications, business, and even politics or law[32].

Smart Contracts are reusable programs published on blockchains, running in a decentralized, permissionless and censorship-resistant way. Not necessarily contracts as understood in the legal sense, but rather they can be understood as digital agreements that are cryptographically bind executing and enforcing the terms and conditions without the need for intermediaries. In other words, a traditional legal contract involves relations with third

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[27] William K Pao and others, 'Decentralized Autonomous Organizations (DAOs): Overview' (Practical Law, 2022) < https://us.practicallaw.tr.com/w-036-6149> accessed 14 December 2025, 1.

[28] Ibid 19-20.

[29] Nick Szabo, 'Formalizing and Securing Relationships on Public Networks' (1997)

[30] Nevertheless, Smart Contracts implementation will come later with the rise of Ethereum Blockchain. See De Filippi and Wright, Blockchain and the Law, (n 5).

[31] Aaron Wood, 'Swedish Government Land Registry Soon to Conduct First Blockchain Property Transaction' (Cointelegraph, 3 July 2017) <https://cointelegraph.com/news/swedish-government-land-registry-soon-to-conduct-first-blockchain-property-transaction> accessed 14 December 2025

[32] Aaron Wright and Primavera De Filippi, 'Decentralized Blockchain Technology and the Rise of Lex Cryptographia' (2015) SSRN Working Paper 3 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2580664> accessed 11 December 2025.

parties, like banks, notaries or government systems, but smart contracts remove that authority and replace it with software.

Common programming languages to write smart contracts include Solidity[33] or Rust[34] languages, setting predefined and deterministic instructions to transfer value or assets between accounts, executed in a distributed manner by the nodes of the underlying blockchain network, if and when the underlying conditions are met.

Blockchain and Smart Contracts technology has developed a digital space of pseudo-anonymous, decentralized, transparent and autonomous transactions that do not require any central authority or regulator to operate. Such digital space, constitute a new age of the internet, an agree where users own its data and eliminate the need for private providers and central authorities, a space that is known as Web3.

[33] Solidity, 'Solidity: The Smart Contract Programming Language' <https://soliditylang.org/> accessed 16 December 2025
[34] Rust, 'The Rust Programming Language' <https://www.rust-lang.org/> accessed 16 December 2025.

Foundations.

DECENTRALIZED AUTONOMOUS ORGANIZATIONS: THE ENTITY.

Undefinition

A DAO is a non-hierarchical **(decentralized)**, censorship-resistant **(autonomous**) association **(organization)** [35] of pseudonymous members **(privacy)**, whose bylaws[36] are encoded in software **(algorithmic principles),** enabling distributed decision-making and coordinated management **(governance)** of shared resources **(sovereignty)** toward common objectives **(purpose)**.

As such a DAO has the following core values or features: decentralization, autonomy, privacy, algorithmic (code) governance, sovereignty and common purpose.

Values

Decentralization

A Decentralized Autonomous Organization is an organization but decentralized[37]. Decentralization could have many aspects, including core developers, geographical nodes, validators, software, and voters, but the decentralization of organizations means the distribution of power, which is that the decision-making and governance structure is distributed among its members, mostly without central bodies. This means that decisions are taken in a collaborative manner by members using the virtual assets of the DAO "tokens", without the intervention of a board, directors, or any other kind of central authority[38].

Autonomy

Autonomy does not mean automation; it means the software is censorship-resistant[39]. Open-source software deployed in distributed computation that "*once up to speed, they no longer need (or heed) their creators.*"[40]

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[35] "Refers to an unincorporated association of persons (an 'organization') utilising censorship-resistant technologies to permissionlessly ('autonomously') engage in non-hierarchical, widely distributed ('decentralized') governance of shared resources and goals". See Gabriel Shapiro, 'Defining Real and Fake DAOs' (MetaLeX, 23 June 2022) <https://metalex.substack.com/p/defining-real-and-fake-daos> accessed 25 February 2026.

[36] *"Long-term smart contracts that contain the assets and encode the bylaws of an entire organization"*. See Vitalik Buterin, Ethereum: A Next-Generation Smart Contract and Decentralized Application Platform (White Paper, 2014) < https://ethereum.org/en/whitepaper/ > accessed 14 December 2025.

[37] DAOs, DACs, DAs and More: An Incomplete Terminology Guide; Posted by Vitalik Buterin, 'DAOs, DACs, DAs and More: An Incomplete Terminology Guide' (Ethereum Blog, 6 May 2014) <https://blog.ethereum.org/2014/05/06/daos-dacs-das-and-more-an-incomplete-terminology-guide> accessed 2 February 2026.

[38] Korotana (n 23) 6.

[39] Gabriel Shapiro, 'Autonomy vs Decentralisation' (Lex Node, Medium, <https://lex-node.medium.com/autonomy-vs-decentralization-ceb2645f9cd5> accessed 26 February 2026.

[40] Stan Larimer, 'Bitcoin and the Three Laws of Robotics' (Let's Talk Bitcoin, 14 September 2013) <https://letstalkbitcoin.com/bitcoin-and-the-three-laws-of-robotics/> accessed 25 February 2026.

Privacy

Privacy through cryptography, a way to hide information in public, insecure channels. It's a way to protect personal information, similar to the real world when individuals put a fence to protect their property; in the digital world, the fence is cryptography. In most cases, DAOS will have unidentified users as members, having pseudonyms online, without revealing their name, nationality, and or physical address or any other element relevant to determining applicable laws and jurisdictions. DAOs can choose to implement Anonymous Voting which "*is a type of voting process where users can vote without revealing their identity, by proving they are accepted as valid voters..*"[41]

Features

Organization

An association of persons. A Digital-first rather than a physical-first organization. This may imply: no real-world assets, no physical address, members dispersed across the world, and purely online operations[42]. Composed of users that are normally unidentified or anonymous, with a shared or common purpose, who can interact and collaborate with each other.

Algorithm Bylaws

According to Thomson Reuters, *"A decentralized autonomous organization (DAO) is a software-enabled organization built and governed by smart contracts on a blockchain network (for example, Ethereum)*[43]. Software logic that represents the rules and operations of the organization; "*Lex Cryptographia"*[44]. Governance principles that can be implemented as Smart Contracts or a Blockchain runtime. The encoded logic can include membership interest, contributions, acceptance, rights and obligations, voting quorum, voting periods, proposal execution, treasury management, and other governance features.

Members Interest Representation.

A key function of the DAO is its unique decision-making process ruled by a decentralized, collective, anonymous and digital governance system through which users or members[45] can vote on proposals that will decide or have a significant impact in the functions and purposes of the DAO. The vote is made using "tokens", the digital currency of the blockchain at which the DAO is supported. This type of "economic vote" allows further mechanisms of

[41] DarkFi, 'Manifesto' < https://dark.fi/book/zkas/examples/voting.html > accessed 26 February 2026.
[42] Law Commission, *Decentralised Autonomous Organisations (DAOs): Summary of Scoping Paper* (Law Commission 2024) 4.
[43] William K Pao & others (n 27), 1.
[44] Aaron Wright and Primavera De Filippi, 'Decentralized Blockchain Technology and the Rise of Lex Cryptographia' (2015) SSRN Working Paper 3 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2580664> accessed 11 February 2026.
[45] Commonly known as "tokenholders", as they hold the token of the blockchain in which the DAO is supported.

representation and democratization, beyond the traditional one vote per person, such as quadratic vote and liquid votes[46].

The quadratic voting systems allows voters to multiply its vote value, according to the number of tokens owned[47]. The liquid democracy voting system, allows to delegate votes between users with the aim of improving the exercise of knowledge in the proposals. The idea is to strength representative democracy by allowing users that have more time or expertise to participate in certain proposals while the owners of the tokens (voting-rights) still participate, ensuring, efficiency, flexibility and accountability[48]. It is to be mentioned that the previous voting mechanisms are exercised using blockchain and smart contracts, making the votes and proposals publicly available, verifiable, and irrevocable ensuring transparency, accountability and security.

Members Governance

Derived from the core value of decentralization, a key characteristic of DAOs is that they will be members managed and governed. In this regards, Decentralized Autonomous Organizations are: *"…member-owned organizations without a central leadership and are governed collaboratively by members' voting rights on the blockchain. They offer transparency, democratic decision-making, and lower operational costs and have emerged as a transformative economic force"*[49]. Members are the rulers and sovereigns of the DAO.

Sovereignty

Over their digital resources. A collective treasury holding virtual or digital assets, normally in the form of cryptocurrencies or "tokens". This value enables modification of tokenomics through software logic and membership voting.

Shared or common goal and/or purpose[50]

It can be profit or Nonprofit. Some authors even distinguish between a DAO and a DAC (Decentralized Autonomous Company), the first one is non-profit, while the second one pays dividends[51]. Furthermore, DAOS can pursue several purposes or functions such as investments, decentralized finance, research (decentralized), culture, social purposes, development of technology (protocol), decentralized science, gaming, work, media, and

[46] Korotana (n 23) 6.
[47] Ibid.
[48] Ibid 7.
[49] Korotana (n 23), 2. See also: UW Chohan, Decentralized Autonomous Organizations (DAOs): Their Present and Future (March 8, 2024). SSRN < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3082055 > accessed 12 December 2024 - Law Commission, Decentralised Autonomous Organisations (DAOs): Scoping Paper < https://www.lawcom.gov.uk/project/decentralised-autonomous-organisations-daos/ > accessed 14 December 2025.
[50] Ibid 3.
[51] Buterin, 'DAOs, DACs, DAs and More' (n. 37).

communications, among others[52]. In this regard, another important feature of DAOS is that its scope or function must be flexible and broad.

Future of DAOs

Today, DAOs can experiment with Artificial Intelligence, which could be the "*dream of science fiction; such an entity would be able to adjust to arbitrary changes in circumstances, and even expand to manufacture the hardware needed for its own sustainability in theory*." The vision of a fully autonomous and automated DAO might be closer than we think. Nowadays, artificial intelligence bots that self-upgrade their software, talk to each other, create forums, and even engage in philosophy, like the bot Clawd, later named Moltbot, now OpenClaw.[53]

Recently, some authors have even discussed the concept of "Network States,"[54] a new form of the traditional political institution of the "Nation-State," powered by decentralized technology and philosophy.

[52] Tanusree Sharma and others, 'Unpacking How Decentralized Autonomous Organizations (DAOs) Work in Practice' (2023) (preprint, arXiv) https://arxiv.org/abs/2304.09822 accessed 26 February 2026.

[53] OpenClaw, 'Introducing OpenClaw' <https://openclaw.ai/blog/introducing-openclaw> accessed 26 February 2026.

[54] The Network State concept presumes that we are switching into a digital-first instead of a physical-first society. Is the maximus status that a Decentralized Digital Native Community can achieve; "a highly aligned online community with a capacity for collective action that crowdfunds territory around the world and eventually gains diplomatic recognition from pre-existing states." Balaji Srinivasan, The Network State: How to Start a New Country (Independently published 2022) 9.

Polkadot DAO.

Polkadot is a scalable multichain network (Blockchain), governed by a DAO. A technology initially described in a whitepaper[55] called: *"Polkadot: Vision For a Heterogeneous Multi-chain Framework"*, by Dr. Gavin Wood[56], co-founder of Ethereum, and inventor of Solidity Language. Nowadays, Dr. Wood is developing JAM[57], a new protocol that combines elements of Ethereum and Polkadot.

On 2020 was launched the first version[58] of Polkadot Governance, with a parliamentary governance system through "*a tri-cameral (three-chamber) structure with a technocratic committee managing upgrade timelines, an approval-voted, elected executive "government" to manage parameters, admin, and spending proposals, as well as a general voting system for everything else, which rewarded long-term stakeholders with increased influence.*[59] A model that was necessary to kickstart the Network[60]:

In July 2023, a paradigmatic shift in Polkadot's governance, replaced centralized councils and first-class citizens with public and simultaneous referenda voting model. An evolution commonly known as OpenGov.[61] A second version that searched to lower the barriers and ensure that most of the stake with sufficient strength of conviction can always command the network[62]**.** A change that empowered decentralization, becoming a real DAO, removing the administrators and leaving the management and decision-making to the community members.

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[55] Gavin Wood, Polkadot: Vision for a Heterogeneous Multi-Chain Framework (Polkadot White Paper, 2016) <https://polkadot.com/papers/Polkadot-whitepaper.pdf > accessed 16 December 2025.

[56] Gavin Wood, Gavwood < https://gavwood.com/ > accessed 16 December 2025.

[57] Gavin Wood, Join-Accumulate Machine: A Mostly-Coherent Trustless Supercomputer (Draft 0.7.2, 15 September 2025) < https://graypaper.com/ > accessed 16 December 2025.

[58] J Petrowski, 'Polkadot Governance' (Polkadot Blog, 9 June 2020) < https://polkadot.com/blog/polkadot-governance/ > accessed 16 December 2025.

[59] Gavin Wood, 'Gov2: Polkadot's Next Generation of Decentralised Governance' (Polkadot Blog, 18 July 2022) <https://medium.com/polkadot-network/gov2-polkadots-next-generation-of-decentralised-governance-4d9ef657d11b > accessed 16 December 2025.

[60] "*The initial governance model was helpful during the early stages of Polkadot's development, for fixing bugs, making improvements to the shared security of the network, and to execute the first parachain slot auctions. After three years of adjustments, Polkadot is ready to open its doors to the new governance model and allow the community to be in total control when it comes to initiating proposals and changes*." See Polkadot, 'Polkadot Hands Decision-Making Powers to Its Community with OpenGov Launch' (Press Release, 15 June 2023) < https://polkadot.com/newsroom/press-releases/polkadot-hands-decision-making-powers-to-its-community-with-opengov-launch/ > accessed 16 December 2025.

[61] Polkadot, 'OpenGov' (Polkadot) < https://polkadot.com/opengov/ > accessed 16 December 2025.

[62] Polkadot Wiki, 'Polkadot OpenGov' (Polkadot Wiki) < https://wiki.polkadot.com/learn/learn-polkadot-opengov/ > accessed 16 December 2025.

In Polkadot, the DOT token is used for governance[63]. DOT is software[64]. One DOT is one vote. Token holders can vote on network governance and propose changes to the protocol, including fees, token inflation, and code upgrades. Polkadot SDK[65] contains the algorithmic bylaws, through software modules called pallets. The software is developed and maintained by the Technical Fellowship but approved by the DAO.

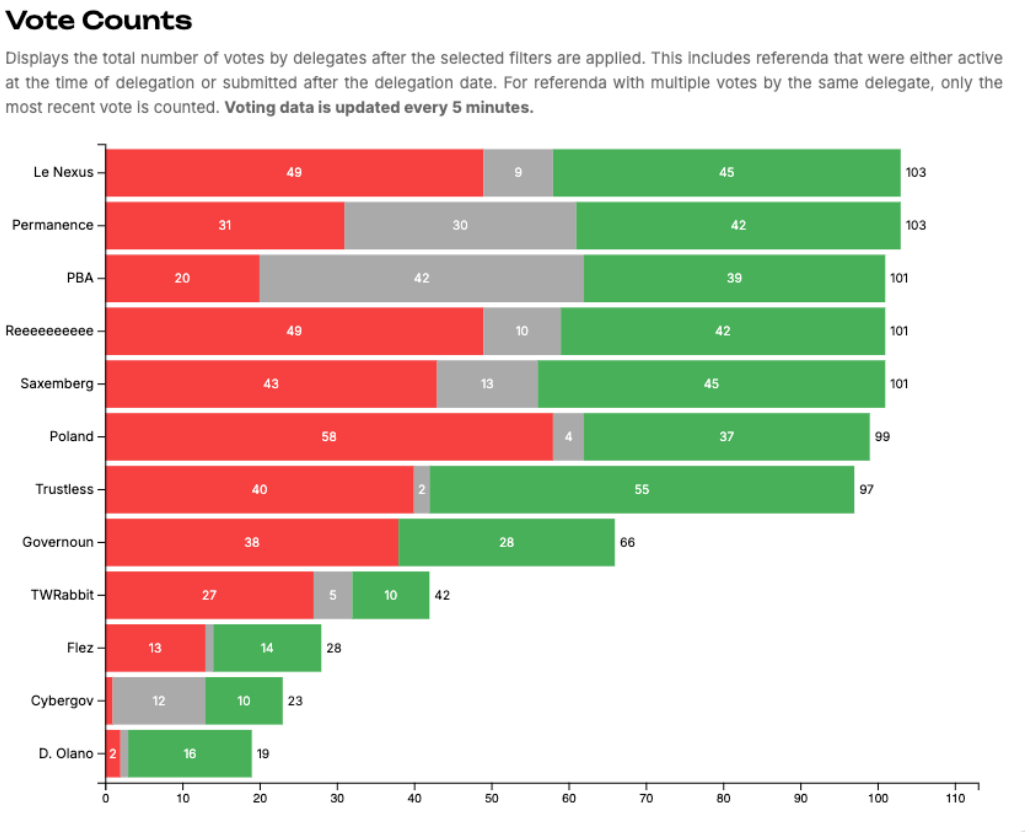
The DAO logic allows members to delegate their vote to active voters. The balance delegation can be per Track, and with conviction. Using the same mechanism as voting. When your $DOT will stay locked for the entire voting period. After the vote ends, it remains locked for an additional period, based on the conviction multiplier. A famous delegation was Decentralized Voices program by Web 3 Foundation. Its last cohort was in August 2025 with a different direction of votes as you can see in the next report (See Figure 1) below.

[63] Polkadot Wiki, The token is used for Governance, Staking and to access secure computation. <https://wiki.polkadot.com/learn/learn-dot/> accessed 16 December 2025.

[64] Web3 Foundation Team, *'Less Trust, More Truth: Polkadot's Native Token (DOT) Has Morphed and Is Not a Security. It Is Software'* (Medium, 4 November 2022) <https://medium.com/web3foundation/less-trust-more-truth-polkadots-native-token-dot-has-morphed-and-is-not-a-security-b2a8847a70cc> accessed 26 February 2026.

[65] Parity Technologies, *'polkadot-sdk'* (GitHub repository) <https://github.com/paritytech/polkadot-sdk> accessed 26 February 2026.

Figure 1. DV report 66



In practice, OpenGov is managed by subDAOs[67] and Whales[68]. One individual Polkadot Citizen could have more influence in the Network by joining a Collective[69]. Most of the subDAOs or Community collectives are operating under multisigns and off-chain voting mechanisms, with different voting principles.

A referenda is a proposal made by any community member, which will be further classified into origins[70] and tracks. An amount of submission deposit (in tokens or "DOT", Polkadot's cryptocurrency) is used to submit a referendum. After the preparation period, a decision deposit is required to progress to the decision phase where token holders vote to approve or reject the proposal, on protocol upgrades, and treasury expenses such as marketing, research, product, and business development. Referenda are further classified through different

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[66] Helikon, *'W3F Decentralized Voices Dashboard (dv.report)'* <https://dv.report/> accessed 26 February 2026.
[67] Helikon, D.V. Report < https://dv.report/ > accessed 16 December 2025.
[68] Subsquare, Polkadot Referenda Whales < https://polkadot.subsquare.io/referenda/whales > accessed 16 December 2025.
[69] Which is one of the disadvantages of the decentralized economic voting system of DAOs, the capture by large tokenholders. See Korotana (n 23) 6.
[70] Polkadot Wiki, 'Polkadot OpenGov Origins' (Polkadot Wiki) < https://wiki.polkadot.com/learn/learn-polkadot-opengov-origins/ > accessed 16 December 2025.

origins and tracks. For example; 1) Whitelister Caller, an origin commanded by the Technical Fellowship[71], commonly used for protocol upgrades, or a 2) Treasurer origin able to spend up to 10 million DOT[72] from the treasury at once, like the Inter Miami Sponsorship[73] or a 3) Wish For Change track proposal like the Tokenomics reform[74] which cap the total supply on 2.1 Billion DOT[75].

Polkadot captures the dual aspects of blockchain governance. 1) Governance of the technology, where people have the capability to govern the protocol through votes and forkless upgrades, and 2) governance by technology, where coordination, operation, and management are encoded in the runtime.

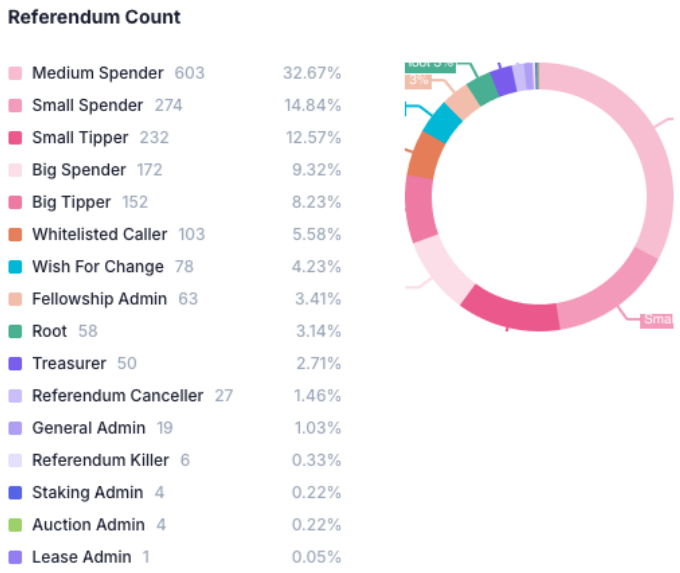
There are common practices in the Polkadot DAO that implement non-written rules, for example, identity verification for proponents. While the code does not require proponents identification to submit proposals, it is recommended to verify your identity to gain reputation and confidence from the voters (at the time of writing this paper, 2913 members have verified identities in the Polkadot Network, meaning that people can claim a username in some way). Another good practice would be starting with a conversation or a discussion in the Polkadot Forum[76] and other off-chain platforms[77] to be finally voted "on-chain"[78].

With today's market value, the Polkadot Treasury holds around USD $60 Million[79]. Treasury, which is filled by the token inflation (15% goes to the treasury and 85% to stakers). The allocation of resources is decided through the DAO Treasurer and spenders' proposals, which will be further analysed as legal contracts in Section III of the current academic paper.[80]

[71] Gavin Wood, Polkadot Fellowship Manifesto (Draft 5) < https://github.com/polkadot-fellows/manifesto/blob/main/manifesto.pdf > accessed 16 December 2025.
[72] Roughly USD $20 million at December 16th, DOT value.
[73] Polkadot, 'Polkadot Official Global Training Partner of Inter Miami CF' (Press Release, 29 August 2024) < https://polkadot.com/newsroom/press-releases/polkadot-inter-miami-global-training-partner/ > accessed 16 December 2025.
[74] Polkadot (@Polkadot), X (Twitter) (18 October 2025, 4:55 pm) <https://x.com/Polkadot/status/1979486532265218518 > accessed 16 December 2025.
[75] Jay Chrawnna, 'Hard Pressure Capped & Stepped Supply Schedule' (Wish For Change, 15 August 2025, 15:14) < https://polkadot.subsquare.io/referenda/1710 > accessed 16 December 2025.
[76] Polkadot Forum, Polkadot Forum < https://forum.polkadot.network/ > accessed 16 December 2025.
[77] 'OpenSquare' (OpenSquare) < https://voting.opensquare.io/ > accessed 16 December 2025.
[78] "On-chain" will refer to operations conducted online, and "off-chain" operations conducted "offline", or in physical world. Primavera De Filippi, Wessel Reijers and Morshed Mannan, Blockchain Governance (2018) 15
[79] OpenSquare, Dotreasury < https://polkadot.dotreasury.com/ > accessed 16 February 2026.
[80] See Section III. Enforceability of Treasury Proposals.

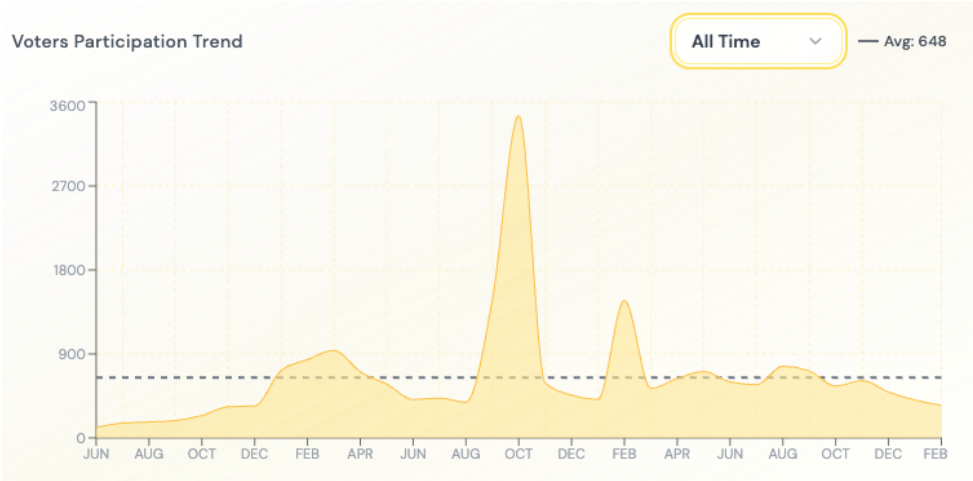
To date, February 2026, there are more than 1800 referendums[81] submitted to OpenGov[82], as visualised in the following statistics[83]

Figure 2. Polkadot Treasury Proposals.



The Polkadot Treasury currently has an average of 678 active voters, with a maximum of 3455 in October 2024, with a total spend of more than USD 244M (all time) mainly on MKT and Liquidity Initiatives.

Figure 3. Voters Participation Trend 84



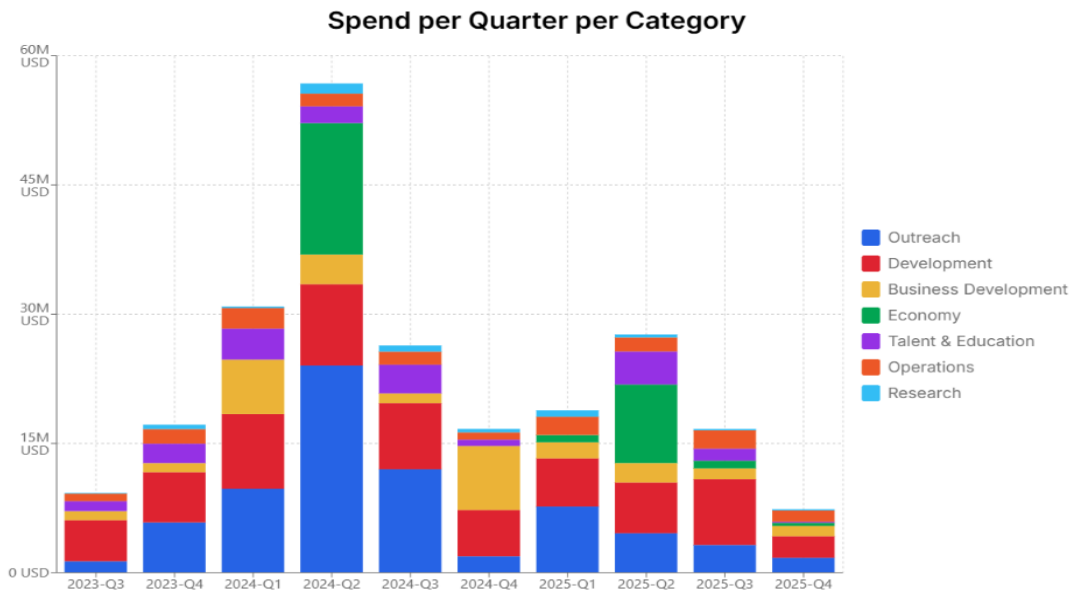
[81] Subsquare, Subsquare < https://polkadot.subsquare.io/ > accessed 16 December 2025.

[82] Polkadot Wiki, Polkadot OpenGov < https://wiki.polkadot.com/learn/learn-polkadot-opengov/> accessed 16 December 2025.

[83] Subsquare, Polkadot OpenGov Statistics (14 December 2025) <https://polkadot.subsquare.io/referenda/statistics > accessed 24 February 2026.

[84] Phala Labs, *'Openshore'* <https://openshore.io/> accessed 26 February 2026.

Figure 4. Spend per Quarter per Category Distribution 85



Polkadot DAO has experimented with Artificial Intelligence in voting automation, like Cybergov[86], an AI Bot which was designed to orchestrate three distinct, open-source Large Language Model (LLM) cores - Balthazar, Caspar, and Melchior - to cast a single collective vote.

Polkadot Community Foundation

The PCF is a real-world extension of the existing on-chain Polkadot governance process.[87] It was born through a referendum[88] to establish a Foundation in the Cayman Islands that signs contracts and holds intellectual property for the DAO.

It is governed by a Board of five Directors: three are active, not members of the Community, and two members yet to be selected, centralizing the DAO with the first. Today, the PCF has fewer than ten referendums passed, including the costs of its creation and maintenance. The most recent referendums are the Hong Kong agreement and the Politecnico di Milano Partnership.

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[85] Alice und Bob, Jeeper OpenGov.Watch 2025-Q4 Treasury Report <https://www.opengov.watch/reports/treasury-reports/09-2025-treasury-report-q4>

[86] Karim *'Cybergov V0: Automating Trust-Verifiable LLM Governance on Polkadot'* (Polkadot Forum, September 2025) <https://forum.polkadot.network/t/cybergov-v0-automating-trust-verifiable-llm-governance-on-polkadot/14796> accessed 26 February 2026.

[87] Polkadot Community Foundation. <https://www.polkadotcommunity.foundation/proposals> accessed 26 February 2026.

[88] Subsquare, *'Polkadot OpenGov Referendum 730'* (February 2026) <https://polkadot.subsquare.io/referenda/730> accessed 26 February 2026.

SECTION I: DAO WRAPPERS.

I. LEGAL FRAMEWORK; THE PROBLEM.

Cryptologic methods are fundamentally altering the nature of corporations[89]. Before the invention of the blockchain, a centralized authority was needed to organize businesses or states[90].

As illustrated already in the previous section, blockchain disrupted the need for a central internet service provider to share information, while Bitcoin eliminated the need for a central authority (bank or government) to conduct financial transactions. DAOs proposed innovative censorship-resistant systems with decision-making mechanisms of representation and democratization, ensuring transparency, accountability, and efficiency by using code, without the need for a central authority or regulator.

Modern human organizations are becoming digital first rather than physical. The coordination of transactions is through the machine, not trusting humans, a machine that has its own *"new body of law"*[91] which De Philippi and Wright have termed "*Lex Cryptographia - or rules administered through self-executing smart contracts and decentralized (autonomous) organizations*"[92]. Moreover, "trustless" consensus computational systems are strangers to the state regulation *"...even in normal times, blockchain technology is somewhat of a strange regulatory beast because it resists being regulated. As a more potent successor of the claim "unregulability" of the early internet, a blockchain network cannot be coerced or simply shut down by any agency, like a state". That is why blockchain proponents have called it "allegal" technology, beyond the grasp of the law."*[93]

Thus, it may be considered that cyberpunks have achieved their main goal: a code to protect privacy, through an encrypted peer-to-peer network able to coordinate and execute transactions across the globe in a transparent, anonymous, and somehow safe manner without the boundaries of the State which include regulations and jurisdictions. In words of

[89] "Just as the technology of printing altered and reduced the power of medieval guilds and the social power structure, so too will cryptologic methods fundamentally alter the nature of corporations and of government interference in economic transactions." See Crypto Anarchist Manifesto - Timothy C. May. <https://groups.csail.mit.edu/mac/classes/6.805/articles/crypto/cypherpunks/may-crypto-manifesto.html > accessed 16 December 2025.

[90] Aaron Wright and Primavera De Filippi, 'Decentralized Blockchain Technology and the Rise of Lex Cryptographia' (2015) SSRN 18 < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2580664 > accessed 16 December 2025.

[91] Ibid 4.

[92] Ibid.

[93] Primavera De Filippi, Wessel Reijers and Morshed Mannan, 'Blockchain Governance' in Philipp Hacker and others (eds), Regulating Blockchain: Techno-Social and Legal Challenges (Oxford University Press 2019) 91

Barlow, poet and internet philosopher, the cyberspace would be *"a different world, and a new home of the mind without restrictions and control"*[94].

Yet are DAOs truly beyond state regulation? Even though DAOs are not subject to traditional boundaries of law to exist and operate, such as physical address, nationality, and incorporation, they still cannot fully exist without the intervention of the state regulatory scope. Regardless of DAOs' operations in the cyberspace, they will still need to open bank accounts, enter into contracts, and do other "offline" (off-chain) activities that will make them subject to state regulation. In fact, sanctions have already been imposed in the USA on members of DAOs.

Accordingly, to fully operate in the real world (off-chain) and digital space (on-chain), DAOs required:

1.- To have a legal personality. Which is the entitlement of being recognized as an "entity" before the law and, as such, being capable of conducting operations with third persons[95].

2.- Being held responsible for its acts; "legal liability".

Thus, DAOs need a legal personality regardless of their digital and code nature to fully perform their activities[96]. The latter presents a regulatory challenge for both the State and DAOs. On the one hand, the State may need to update traditional legal institutions, providing suitable legislation to protect DAOs' core values and effectively embrace its unique and innovative features, and on the other hand, DAOs will need to analyse which jurisdictions and legislation are a better fit for their structure, governance, and functions, what is regarded in the Blockchain literature as a "legal wrapper"[97].

Accordingly, this section will first review the evolution of DAOs' regulation in the common law and then will conduct a comparative legal analysis between the UK, the Cayman Islands, and the USA to discuss which legislation offers the most suitable legal wrapper for DAOs following their unique features and the approach that common law has taken to DAOs. Lastly, it will provide comments on the current position of the UK regarding the regulation of DAOs.

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[94] John Perry Barlow, A Declaration of the Independence of Cyberspace (Electronic Frontier Foundation, published online 8 February 1996) < https://www.eff.org/cyberspace-independence > accessed 20 December 2025.

[95] Juan Sebastián Forciniti, Las organizaciones autónomas descentralizadas como nuevo paradigma del comercio asociativo (Trabajo Final de Máster, Universitat Rovira i Virgili 2023) 23. English: Juan Sebastián Forciniti, Decentralized Autonomous Organizations as a New Paradigm of Associative Commerce (Master's Final Thesis, Universitat Rovira i Virgili, 2023) 23.

[96] The UK Law Commission categorized DAOs into two types: Pure DAOs, which operate entirely on-chain, and hybrid DAOs, which do certain functions off-chain as well. We contend that this classification lacks precision, given most DAOs will ultimately require the execution of off-chain operations, which will be further examined. Law Commission, DAOs: Summary of Scoping Paper (n. 42).

[97] A legal wrapper is a recognized law entity used by a DAO to perform, its "off chain" operations. See: Polkadot Wiki, Polkadot Community Foundation (wiki.polkadot.com, last updated 2025) <https://wiki.polkadot.com/general/pcf/ > accessed 20 December 2025.

II. DAOS REGULATORY APPROACH EVOLUTION.

The U.S. Securities and Exchange Commission (SEC) defined a DAO as a: *"'virtual' organization embodied in computer code and executed on a distributed ledger or blockchain"*[98]. In words of the UK Law Commission DAOs; *"are a new kind of internet-based collaborative organisation that coordinate people and resources using rules expressed in computer code."*[99]

a) The DAO. Securities and Exchange Commission United States of America.

The first DAO – "The DAO" was built in 2016 on the Ethereum blockchain[100], functioning as venture capital that allowed members to vote for the distribution of funds[101]. More than 11,000 participants raised and distributed about $150 million in "Ether", the cryptocurrency (token) of the Ethereum blockchain. A hacker stole $70 million of these proceeds. In July 2017, the SEC issued "The DAO" report, one of the very first regulatory approaches to DAOs in the world.

The SEC examined important aspects of DAO regulation in the DAO report, including its concept, members' liabilities, and whether "tokens" will be regarded as securities under U.S. federal securities laws. These regulations will require compliance with KYC information and other disclosure and reporting obligations that could compromised some of the DAOs' distinctive features, like anonymity.

The report concluded that the tokens of the DAO were investment contracts according to the US securities laws[102]. The SEC came to such conclusion by stating that The DAO's success was primarily dependent on the efforts of its promoters and curators, who kept an eye on operations, protected funds, and decided which investment proposals would be put to a vote, based on the fourth Howey test element (whether the asset holders expected any profits to be generated by the "efforts of others").

The Howey Test, is a fundamental precedent under U.S. law, establishing the conditions under which an operation will be regarded as an "investment contract" and as such subject to the U.S. Federal securities laws. Under the Howey test[103], an investment contract must satisfy the following four elements to be considered a security, subject to the US securities laws:

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[98] Securities and Exchange Commission, Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO (Release No 81207, 25 July 2017) 1.
[99] Law Commission, DAOs: Summary of Scoping Paper (n. 42).
[100] Ibid. See also William K Pao and others (n 27) 2
[101] William K Pao & others (n 27) 2.
[102] Ibid 3.
[103] SEC v WJ Howey Co 328 US 293 (1946).

1. An investment of money.
2. In a common enterprise.
3. With a reasonable expectation of profits.
4. Derived from the efforts of others.

In 2019, the SEC itself noted that; *"…digital assets that qualified as securities when issued could later be re-classified as non-securities"*[104]. A fundamental issue to determine the "efforts of others" element of the Howey Test, is whether or not, a person or group is expected to carry *"the essential managerial or entrepreneurial efforts"*, in words of the 2019 SEC Chairman Jay Clayton.

Regardless of the conclusions of The DAO report, U.S. Courts have not yet addressed whether DAO tokens are securities[105]. However, "the effort-of-others" element have been further analysed by Courts in the loan-participation agreements; *"The efficient administration of loan participation agreements depends on some centralization of management, but courts have concluded that loan participation interest income typically does not depend on the managerial efforts of others, rather income depends on the debtor's success"*[106].

In general partnerships, moreover, efforts-of-others, have followed the Williamnson Framework, which follows 3 premises in determining such effort including: 1) entity structure and management, 2) owners experience and knowledge (that makes them relies on the manager – central control), and 3) knowledge of manager. Courts have concluded that organizations with more than several dozen general partners presumably have centralized management and control as it would be impractical for so many partners to each maintain some control or authority over the organization[107]. Yet the DAOs unique technology has proved that such decentralization is feasible even with hundreds of members.

b) Christian Sarcuni et al., v. bZx DAO, et al . and CFTC v. Ooki DAO.

Another relevant case for DAOs regulation, particularly regarding the liabilities of the DAO's members, was the Commodity Futures Trading Commission suit against Ooki DAO in the U.S. Northern District Court of California in 2022[108], related to precedent lawsuit in the U.S. Southern District Court, Christian Sarcuni et al., v. bZx DAO, et al[109].

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[104] SEC v WJ Howey Co 328 US 293 (1946).
[105] William K Pao & others (n 27) 2.
[106] Ibid 3.
[107] See, for example, Koch v. Hankins, 928 F.2d 1471 (9th Cir. 1991). See also Securities & Exch. Comm'n v. Professional Assocs., 731 F.2d 349 (6th Cir. 1984).
[108] Commodity Futures Trading Commission v Ooki DAO, No 3:22-cv-05416-WHO (ND Cal, filed 22 September 2022) < https://www.govinfo.gov/content/pkg/USCOURTS-cand-3_22-cv-05416/pdf/USCOURTS-cand-3_22-cv-05416-1.pdf > accessed 20 December 2025.
[109] Christian Sarcuni et al v bZx DAO et al, No 3:22-cv-00618-LAB-DEB (SD Cal, filed 2 May 2022) <https://www.govinfo.gov/content/pkg/USCOURTS-casd-3_22-cv-00618/pdf/USCOURTS-casd-3_22-cv-00618-0.pdf > accessed 20 December 2025.

The initial dispute was initially caused by a Hack, where a developer working for the bZx DAO was successfully targeted by a phishing attack, which led to the theft of $55 million in cryptocurrency. The plaintiffs were nineteen bZx Protocol users who individually lost between $800 and $450,000 in the hack and collectively lost $1.7 million.

The bZx DAO, a DAO controlled by real and legal persons holding BZRX tokens, operated the bZx Protocol, a DeFi application running in Ethereum, Polygon, and Binance Smart Chain (BSC). On November 5, 2021, an unknown hacker sent a phishing email to a bZx Protocol developer's personal computer. The email contained a Word document that, once opened, obtained the private key and was able to transfer all the cryptocurrencies held on Polygon and BSC blockchains out of the bZx Protocol.

On November 21, 2021, the bZx DAO approved a compensation plan for those impacted by the hack, providing a replacement of BZRX tokens vested over time, and also "debt tokens," but it was alleged that the solution would take thousands of years. In December 2021, the bZx Protocol encouraged users to transfer to a successor platform called the Ooki Protocol. The new Protocol is controlled by the Ooki DAO in the same way the bZx DAO controlled the bZx Protocol.

In December 2022, the Commodity Futures Trading Commission brought the case against the Ooki DAO, arguing that it was an incorporated association[110], and as such all members should be responsible with their personal assets for the DAOs' actions and other members' actions[111]. The relevant rules provided that it was unlawful for any "person" to engage in activities that did not conform to the regulatory regime. The definition of "person" included "individuals, associations, partnerships, corporations, and trusts"[112]. On the other hand, the DAO argued that it was not a legal entity or a person, but rather a technology, and as such not subject to liability. The Court rejected such argument, on the basis that it was token holders' actions that the regulator was looking to regulate not the protocol itself[113]. Other Courts in the U.S. follow this approach[114], which basically means that all DAOs operating without a legal wrapper will potentially be regarded as general partnership with the

[110] California, Corporations Code § 18035(a) (2011)

[111] Commodity Futures Trading Commission v Ooki DAO, No 3:22-cv-05416-WHO (ND Cal, 20 Dec 2022) <https://storage.courtlistener.com/recap/gov.uscourts.cand.400807/gov.uscourts.cand.400807.63.0.pdf > accessed 20 December 2025.

[112] Law Commission, Decentralised Autonomous Organisations (DAOs): Scoping Paper <https://www.lawcom.gov.uk/project/decentralised-autonomous-organisations-daos/> accessed 14 December 2025 para 3.27

[113] Law Commission, (DAOs): A Scoping Paper (n 111) para 3.27

[114] Joseph Van Loon v Department of the Treasury 1:23-CV-00312-RP (WD Tex) and Sarcuni v bZx DAO 22-CV-00618-LAB-DEB (SD Cal, Order of 27 March 2023). See also Samuels v. Lido DAO , a16z, paradigm, vcs, pending of resolution with a similar claim; Case No 3:23-cv-06492-VC, Doc 115 (ND Cal, filed 19 December 2023) < https://www.govinfo.gov/content/pkg/USCOURTS-cand-3_23-cv-06492/pdf/USCOURTS-cand-3_23-cv-06492-1.pdf > accessed 20 December 2025.

consequence of holding all members responsible for other members and DAOs wrongful acts.

c) Tulip Trading LTD v. Bitcoin Association for BSV & Ors [2023] EWCA.

Fiduciary duties of the developers.

A fiduciary duty is basically the (unilateral duty against another person) of someone exercising certain activities[115]. In *Tulip Trading*, the High Court and subsequently the Court of Appeal of England and Wales examined whether developers responsible for maintaining open-source software relied upon by participants across four Bitcoin networks could be subject to fiduciary obligations toward asset holders, including owners of bitcoin[116]. The latter would translate in the fiduciary duties of the large community of users supporting the open-source software of a DAO such as miners, validators, and other software developers for the users and external stakeholders of the DAO[117].

In that case, the claimant asserted ownership of specific bitcoin linked to two public addresses and contended that the private keys necessary to access, transfer, or otherwise operate those bitcoins within the network had become irretrievable as a result of a hacking incident[118]. The claimant further argued that the defendants, in their capacity as software developers, exercised control over the systems on which the bitcoin were recorded and, on that basis, owed fiduciary duties to the claimant[119].

The case was discontinued by the claimant in April 2024[120] , the High Court did not examine all the merits due to a procedural issue regarding the address of the defendant. Furthermore, the High Court acknowledge that current English law, does not currently recognize such a developer fiduciary obligation. Nevertheless, the Court of Appeals (in an earlier stage of this procedure) did find out that there could be potentially fiduciary duties of the code developers to introduce code to enhance security:

> *"The content of the duties includes a duty not to act in their own self interest and also involves a duty to act in positive ways in certain circumstances. It may also, realistically, include a duty to act to introduce code so that an owner's bitcoin can be transferred to safety in the circumstances alleged by Tulip[121].*

[115] Law Commission, (DAOs): A Scoping Paper (n 111) par. 3.132.
[116] Ibid par. 3.130.
[117] Ibid par. 3.126.
[118] Law Commission, (DAOs): A Scoping Paper (n 111) 3.131.
[119] Ibid.
[120] Ibid. par. 3.319.
[121] Tulip Trading v Van der Laan [2023] EWCA Civ 83, [2023] 4 WLR 16 at [83], by Birss LJ.

As mentioned, case was discontinued, yet it rise the question of the software developer's fiduciary duties[122], to build awareness for DAOS users and developers when conducting operation in the UK or with a UK national and to the UK to further regulate this matter, and provide legal certainty, to the crypto and DAOs users and developers[123].

III. COMPARATIVE LEGAL ANALYSIS: LEGAL WRAPPERS.

As it can be seen from the previously analysed cases, DAOS operating without a legal structure are not seen as a technology before the law, nor as an "allegal entities". Rather judges and regulators will further analyse the existing legislation to suit DAOs in available legal institutions which may result in highly legal risks for DAOs such as financial burdens, personal liabilities of its members, token holders and even developers.

Thus, the alternative for DAOS is to search for the most suitable legal structure to conduct its operations and protect its members, assets and developers. In other words, the most adequate legal wrapper. Accordingly, this section will conduct a comparative legal study of the applicable regulations to DAOs in the U.S., Cayman Island and the U.K., providing assessment on each of them regarding their approach and applicability to DAOs.

UNITED STATES.

A country that once was hostile to the crypto industry, through an aggressive strategy of regulation by enforcement creating a hostile environment for DAOs, Blockchain Companies, Entrepreneurs and Founders, that drove their projects and ventures overseas, today U.S. is fighting hardly to become the *Crypto Capital of the Planet*; a promise that Donald J. Trump made in Nashville, Tennessee, to the Bitcoin Community back in 2024 when he was running for President.[124] The U.S. president election was the hard fork – the end of one chain of poor policy decisions in favour of an updated, better approach. [125]

On January 17, 2025, the official launch of $TRUMP meme coin, was announced by the President,[126] this act was an open invitation to the blockchain industry to go to U.S. and develop their business there.

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[122] The UK law commission considers that the mere fact of being a developer of open-source software (DAO) could or should give rise to fiduciary duties, yet this is not an opinion or criteria with legal value at all. Law Commission, (DAOs): A Scoping Paper (n 111) par. 3.142.

[123] Ibid par. 3.141.

[124] Donald Trump, 'Live: Donald Trump speaks at Bitcoin 2024 in Tennessee', (The times, 27, Jul 2024) <https://www.youtube.com/watch?v=uRQZAOK24IQ> accessed 10, January 2025.

[125] The White House, U.S. Crypto Working Group, 'The report: Strengthening American Leadership in Digital Financial Technology', (The White House, July 30, 2025) <https://www.whitehouse.gov/wp-content/uploads/2025/07/Digital-Assets-Report-EO14178.pdf> accessed, January 11, 2025.

[126] @RealDonaldTrump, 'My NEW Official Trump Meme is Here!', (X Post, 17 Jan 2025) <https://x.com/realDonaldTrump/status/1880446012168249386> accessed 10, January 2025.

The Crypto Task Force was announced by the U.S. Securities and Exchange Commission (SEC) on January 21, 2025, dedicated to developing a comprehensive and clear regulatory framework for crypto assets[127].

On January 23, 2025 the U.S. President signed an executive order to promote United States leadership in digital assets and financial technology while protecting liberty.[128] The order has the purpose of promote the ability to individuals and companies to access and use blockchains networks without prosecution, protect the sovereignty of the US dollar, promote fair and open banking services, provide regulatory clarity, and prohibiting the use of Central Bank Digital Currencies (CBDCs), which threat individual privacy. All this orders are being executed through a *Working Group*, chaired by the Special Advisor for AI and Crypto and including officials as the Secretary of the Treasury, the Attorney General, the Secretary of Commerce, the Secretary of Homeland Security, the Director of the Office of Management and Budget, the Assistant to the President for National Security Affairs, the Assistant to the President for National Economic Policy, the Assistant to the President for Science and Technology, the Homeland Security Advisor, the Chairman of the Securities and Exchange Commission and the Chairman of the Commodity Futures Trading.

On the mission of achieving the Golden Age for Crypto, and solidify the innovation story in America, the *Working Group* have developed in collaboration with other federal agencies, private companies, and other organizations, regulatory frameworks recommendations[129] delivered to policymakers such as,

i. Develop a Market Structure framework to protect consumers and support growth and innovation, including the vote for the ***"Digital Asset Market Clarity Act of 2025" or the "Clarity Act",*** a regulatory framework *to provide a system of regulation of the offer and sale of digital commodities by the Security and Exchange Commission and the Commodity Futures Trading Commission, to amend the Federal Reserve Act to prohibit the Federal reserve banks from offering certain products or services directly to an individual, to prohibit the use of central bank digital currency for monetary policy, and for other purposes*.[130]
ii. Modernize bank regulations to clarify bank activities in custody, tokenization, stablecoins issuance and the use of blockchains; promote transparency in Bank Reserves, and ensure rules are aligned with the risks associated with digital assets and decentralized systems.

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[127] U.S. Securities and Exchange Commission, 'SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force', (Press Release, 21 Jan 2025) <https://www.sec.gov/newsroom/press-releases/2025-30> accessed 10, January 2025.

[128] The White House, 'Strengthening American Leadership in Digital Financial Technology', (The Executive Order, January 23, 2025) <https://www.whitehouse.gov/presidential-actions/2025/01/strengthening-american-leadership-in-digital-financial-technology/> accessed January 10, 2025.

[129] The White House, U.S. Crypto Working Group, 'Fact Sheets: Strengthening American Leadership in Digital Financial Technology', (The White House, July 30, 2025) <https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-the-presidents-working-group-on-digital-asset-markets-releases-recommendations-to-strengthen-american-leadership-in-digital-financial-technology/> accessed, January 11, 2025.

[130] CLARITY ACT. (H.R. 3633, 119th Congress, In the Senate of the United States) September 16, 2025. <https://www.congress.gov/119/bills/hr3633/BILLS-119hr3633rfs.pdf>

iii. Strengthening the role of the U.S. Dollar, adoption dollar-backed stablecoins, and modernize payment infrastructure, by implementing the **"*Guiding and Establishing National Innovation for U.S. Stablecoins of 2025*" or the "Genius Act".**[131] **Signed into law** on July 18, 2025 by the crypto president; a regulatory framework for stablecoins, and also recommending to Congress to pass the Anti-CBDC Surveillance State Act, which bans Central Bank Digital Currencies.

iv. Combat Illicit Finance, by modernizing anti-money laundering rules.

v. Ensure Fairness and Predictability in Digital Asset Taxation, trough modernization and elimination of compliance hurdles for both individuals and businesses engaged in activities involving digital assets.

In summary, the US Federal Government is bullish on crypto, with the upcoming *lex specialis* aimed at promoting the country as the Crypto Capital of the World, incentivizing tech companies, DAOs, and DeFi organizations to choose the US as their home State. Now, we would analyse that tech-oriented regulation is not only at the federal level; it can also be seen on the state level, where legislatures are discussing crypto and DAO specialized regulations.

1. DELAWARE.

Delaware has been historically distinguished for friendly and suitable regulation on corporations. Becoming the first state to ratify the U.S. Constitution on December 7th, 1787.

The "First State" for Business and Corporations. Delaware exports corporate law: it has registered more companies than people. A State that has attracted more than 60% of the Fortune 500 Companies, primarily due to its business-friendly laws and its Court of Chancery[132]. A location often seen as the primary- location on big Corp legal issues over mergers and acquisitions, shareholder lawsuits, or bankruptcies.

Nevertheless, nowadays some Corporations are migrating from Delaware to a more friendly State like Texas. Brian Armstrong, CEO of Coinbase[133], a web2 Cryptocurrency Exchange Company, in a recent event said[134], "*We want to run our company in a business-friendly jurisdiction. I think Delaware historically had a great monopoly on this, and they had a lot of trust in the courts and everything, but recently we have seen really unpredictable outcomes for the court; we have seen hostility toward founders*."

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[131] GENIUS ACT. (S.394, 119th Congress, In the Senate of the United States) September 16, 2025. <https://www.congress.gov/119/bills/hr3633/BILLS-119hr3633rfs.pdf>

[132] Quillen WT and Hanrahan M, A Short History of the Court of Chancery 1792–1992 <https://courts.delaware.gov/chancery/history.aspx > accessed 22 December 2025.

[133] Coinbase, Coinbase (2025) < https://www.coinbase.com/ > accessed 22 December 2025.

[134] Brian Armstrong and Larry Fink, Brian Armstrong and Larry Fink Are Not Worried About Another Crypto Winter (YouTube, New York Times Events).

Although Delaware has not recognized DAOs as legal entities, many organizations have been formed as Delaware LLCs[135]. Some examples include Flamingo[136] an NFT-focused DAO and LAO[137] a for-profit investment DAO. *"These were formed as Delaware LLCs that utilize Delaware's flexible LLC governance rules and respect for freedom of contracts to define how members of the LLC should use the accompanying smart contract as a funds escrow and voting tool"*[138]

Delaware regulation had flexibility, but free market allows jurisdiction picking, including in the DAO industry, where other States are introducing tailor-made solutions.

2. WYOMING

Wyoming was the first state to introduce LLC legislation[139]. The history dates to 1977[140] when Hamilton Brothers Oil Company lobbied for the enactment of the law, looking for a domestic regulation. The company was using *offshore* solutions, mainly a Panamanian LLC entity called *"limitada"*, because, unlike the American entities available by then, they offered limited liability and partnership taxation.

DAO LLC

Continuing with its tradition, in 2021, the State of Wyoming was also the first state to assimilate DAOs into a Limited Liability Company through the DAO Act[141]. According to the DAO Act, a DAO LLC is: *"a limited liability company whose articles of organization contain a statement that the company is a decentralized autonomous organization"*[142]. The DAO Act constitutes an extension of Wyoming Companies' law to DAOs with some exceptions.

Features

Some of its key features includes:

- DAO LLCs must keep a registered agent in Wyoming.
- A DAO's legal name must include "DAO" or "LAO" (Limited Autonomous Organization) or "DAO LLC."

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135 Gail Weinstein, Steven Lofchie, and Jason Schwartz, A Primer on DAOs (Harvard Law School Forum on Corporate Governance, Fried, Frank, Harris, Shriver & Jac,obson LLP, 17 September 2022) accessed 22 December 2025.

136 Flamingo Organization (Flamingo DAO) < https://docs.flamingodao.xyz/organization.html > accessed 22 December 2025.

137 The LAO (@TheLAOOfficial), The DAO of DAOs (Twitter/X, 2025) < https://x.com/TheLAOOfficial > accessed 22 December 2025.

138 Gabriel Shapiro and Sydney Abualy, 'Wyoming's Legal DAO-saster' (9 April 2021) https://lexnode.substack.com/p/wyomingslegal-dao-saster accessed 26 February 2026.

139 Wyoming, Wyoming Limited Liability Company Act (W.S. 17-29-101)

140 Feldman S, 'Understanding LLC Law: Its Past and Its Present' (Wolters Kluwer) <https://www.wolterskluwer.com/en/expert-insights/understanding-llc-law-its-past-and-its-present> accessed 22 December 2025.

141 Wyoming Senate Enrolled Act 73, Decentralized Autonomous Organization Supplement (66th Legislature, 2021 General Session) §§ 17-31-101 to 17-31-116

142 William K Pao & others (n 27) 8.

- A DAO LLC is presumed to be member-managed unless its articles of organization define it as algorithmically managed.
- The DAO LLCs articles of organization must include the DAO's smart contract, and the articles of organization must be amended whenever the smart contract changes. The contract prevails if there is any conflict with the articles of organization.
- If a DAO LLC does not approve any proposals or take any actions for one year, it is automatically dissolved.
- Except as specifically modified by the DAO LLC law, the laws governing regular Wyoming LLCs apply to DAO LLCs.
- Members do not owe any fiduciary duties, unless the articles state otherwise.

A first advantage noted in the DAO LLC law, is that it provides a large margin of legal definitions for tech issues that are important to the DAOs governance process, nature and operations. Such definitions include matters such as blockchain, DAO, digital asset, smart contracts, among others[143]. The latter, contributes to provide legal certainty to the DAO community. Furthermore, it was allowed for DAOs to be "algorithmic" managed even over member-managed, allowing smart contracts and code to lead the governance process, which is totally compatible with DAOs nature[144].

Moreover, it can be formed by any person who does not have to be a member of the DAO, and it needs to be registered at the secretary of state. It can have one or more members[145]. The latter allows a degree of flexibility in its membership. In addition, in can pursue any legal purpose, allowing also a large degree of flexibility in its activities as required by DAOs' operations[146].

In addition, the DAO Act, allowed to manage several processes that are not exclusively reserved to the Articles of Association (according to section 17-31-106) through operating agreements. The latter also contributes to the flexibility needed by a DAO as fundamental process can be left to the Articles of Association or the code, while other operations can be handled through an operating agreement.

Limitations

Thus, we considered that the DAO LLC Act, was a first noble approach to DAOs regulation, including for the very first time in corporate law "tech-friendly" regulations such as, the inclusion of the code as a manager feature of the organization, and a broad definition of the

[143] Wyoming DAO Supplement Act § 17-31-102.
[144] Ibid, § 17-31-115. See also; 'Wyoming DAO LLC' (Legal Nodes) <https://www.legalnodes.com/article/wyoming-dao-llc#:~:text=Articles%20of%20organization%20and%20smart,of%20organization%2C%20and%20operating%20agreement > accessed 23 December 2025.
[145] Wyoming DAO Supplement Act § 17-31-105.
[146] Ibid § 17-31-105.

fundamental features and technologies of the DAO. Nonetheless the Wyoming DAOs LLC Act, has received multiple criticism from industry and academia, as being a "flawed" and "untested" in courts, which could represent a risk for operators and developers[147]. In addition, some authors considered that the regulation is a hybrid and experimental scheme between traditional corporate law and DAOs features which are contradictory, for instance, in terms of having a registered agent or members being considered as shareholders, which will require for further identification, which contradicts the features of anonymity and decentralization of the DAOs[148]. While such criticism seems quite unfounded, we considered that the DAO Wyoming Act still constitutes a first positive step towards achieving suitable regulation for DAOs, which is, of course, not perfect.

DUNA.

On July 1, 2024, the Wyoming Decentralized Unincorporated Nonprofit Association Act[149] became effective. This has been identified as an attractive legal wrapper for DAOs seeking a presence in the United States[150]. Wyoming law incorporates many of the provisions proposed in the Model Decentralized Unincorporated Nonprofit Association Act[151].

Generally, DUNAs can't pay dividends or profits to their members[152] or collaborators, but they can pay reasonable compensation[153] for services provided, including voting, delegation, or participation in operations and activities. Wyoming courts will ultimately define what *constitutes reasonable compensation*, but the uniqueness of blockchain networks provides a solid foundation for robust member compensation[154].

Features.

Comprehensive regulation.

Comprehensive regulation and legal definitions of key terms, for instance, members, distributed ledger, digital assets, and other tech-features, as such, the DUNA act, takes a form approach and not function-based, moving away from the tech-neutrality principle[155], applied

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147 Bessie Liu, 'SushiDAO Seeks Shelter in Cayman Islands, Panama' Blockworks (26 October 2022) <https://blockworks.co/news/sushidao-seeks-shelter-in-cayman-islands-panama > accessed 23 December 2025.

148 Law Commission, (DAOs): A Scoping Paper (n 111) paras 4.108, 4.109 and 4.111.

149 Wyoming, Wyoming Decentralized Unincorporated Nonprofit Association Act, 2024

150 DAOBox, 'Top DAO Legal Wrappers Jurisdictions: A Global Guide' (DAOBox Blog, undated) https://daobox.io/blog/top-dao-legal-wrappers-jurisdictions-global-guide accessed 6 February 2026.

151 David Keer and Miles Jennings, 'A Legal Framework for Decentralized Autonomous Organizations, Part III: Model Decentralized Unincorporated Nonprofit Association Act' (SSRN, 2024) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4749245 accessed 26 February 2026.

152 Wyoming Decentralized Unincorporated Nonprofit Association § 17-32-104(b)

153 Ibid. § 17-32-104(c)

154 Miles Jennings and David Kerr, The DUNA: An Oasis For DAOs (a16z Crypto, 2025) <https://a16zcrypto.com/posts/article/duna-for-daos/ > accessed 5 January 2026.

155 Wyoming Decentralized Unincorporated Nonprofit Association Act 2024 (Wyo). S. 17-32-102. iii (A). See also European Law Institute, Principles Governing the Third Party Funding of Litigation (European Law Institute 2024) https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Principles_Governing_the_Third_Party_Funding_of_Litigation.pdf accessed 9 February 2026.

in Europe regulations. While we considered this positive, for instance, it largely regulates the liabilities issues, new tech-concept may appear hard to determine and apply at first, and it will require further application by the Courts, to review its development. Yet the DUNA Act, implemented a comprehensive regulatory framework adapted to DAOs unique features providing a great degree of legal certainty and tax clarity[156].

In addition, regulation of relevant features was founded in DUNA, such as applicable law, dissolution, reimbursement to members and indemnifications, capacity of transfer properties, assert and defend, summons and complaint, receive service through an optional agent, and even mergers. Although such provisions may exist for legal wrappers that use an existing legal vehicle and not a specific DAOs regulation, such comprehensive framework, shows, however, the efforts of the Wyoming legislator to provide legal certainty in the DAOs regulations under DUNA, with provision applicable specifically to such innovative technologies.

Clear legal provisions for applicable law and venue.

Another relevant and distinguished feature of DUNA, not found in any other DAO legislation or DAO legal wrapper for that matter, is the clarification of the venue and jurisdiction of the DUNA-nonprofit.

Sections 17-32-110 to 17-32-113, establish several legal provisions aimed at clarifying key legal issues for DAOs legal wrappers for purposes of contract enforcement and investment, under international private law, not addressed in any other DAOs legal wrappers regulations, which is: venue, service, and as such applicable law and forum.

Section 17-32-110 establishes the possibility for DUNA-nonprofit to appoint an agent registered at Wyoming Secretary of State, and able to receive service of process. Section 17-32-111 provides rules for service processing including service through the DUNA-nonprofit members in case there's no agent or person authorized to receive service. Lastly, 17-32-112, sets rules to determine the DUNA-nonprofit venue, which would be the non-profit office or the agent residency.

Such rules provide great clarification on DUNA-nonprofit applicable law, and forum, which potentially lead to good standing and reputation for investments, although it also diminishes the DAOs barriers to be suit, such as not having a physical address for instance.

Tech-features.

DUNA establishes a great degree of flexibility regarding the tech features of the nonprofit, which governance can be a whole or in part in a DLT, including smart-contracts, and such DLT can be public or private[157].

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[156] Nestor Dubnevych, The Most Popular Entities and Countries for DAO Registration (Legalnodes, 26 August 2025) https://www.legalnodes.com/article/choose-a-crypto-friendly-country-for-dao accessed 3 February 2026.
157 Wyoming Decentralized Unincorporated Nonprofit Association Act 2024 (Wyo). § 17-32-121.

Formation.

It is formed by the mutual consent of at least 100 members for a common non-profit purpose and the adoption of the governing principles[158]. Registration is not mandatory, although is possible and voluntary, and it's needed to grant official recognition and the capacity to suit and be suit in Wyoming Courts[159].

Organization and structure.

a) Administrator.

Is the person responsible for the administrative and/or operational tasks ("off-chain" activities) of the non-profit organization, at the direction of the members[160]. This is not a mandatory requirement, yet it is helpful for the purposes of protect member's duties such as being subject to service processing.

b) Members.

DUNA takes a novelty approach to members' definition, incorporation, rights and duties, extensively regulating the matter.

Key definitions for this concept include "member" and "membership interests". The first *"means a person who, under the governing principles of a decentralized unincorporated nonprofit association, may participate in the selection of the nonprofit association's administrators or the development of the policies and activities of the nonprofit association"*[161]. The latter, *"means a member's voting right in a decentralized unincorporated nonprofit association determined by the nonprofit association's governing principles, including as ascertained from decentralized ledger technology on which the nonprofit association relies to determine a member's voting right"*[162].

In this regard a member of the DUNA will be a person who has voting rights in the DUNA-nonprofit[163]. On the other hand, the membership interest is the voting right of the members according to what is stated in the non-profit statues or the DAOs governance dispositions (smart-contracts or code).

It is to be mentioned, that the legal framework does not require or establish a distinction between a voting member and a non-voting member as it does for instance the DLT

158 Ibid § 17-32-102. (a) (iii) (A).
159 Ibid § 17-32-106, 107.
160 Ibid § 17-32-102. (a) (i).
161 Ibid § 17-32-102. (a) (viii).
162 Ibid § 17-32-102. (a) (ix).
163 A person becomes a member in accordance with the governing principles of the decentralized unincorporated nonprofit association. If there are no applicable governing principles, a person shall be considered a member upon purchase or assumption of ownership of a membership interest or other property or instrument that confers a voting right with the nonprofit association and the person shall continue as a member absent the person's suspension, dismissal or expulsion pursuant to subsection. See Ibid § 17-32-115. (a).

Foundation of the UAE, nor does excludes non-voting members from the organization and governance of the entity, as it does the Foundation Companies Act of the Cayman Islands.

Members do not have fiduciary duties to the nonprofit or to any other member, unless otherwise stated in the governing principles[164].

Governing Principles: Bylaws.

A novelty feature of the DUNA is the legal definition of statues, that is not limited to written or "off-chain" regular non-profits, statues, by laws or charters. On the contrary, DUNA takes a comprehensive and tech-approach to the definition of the statues, to include also *"algorithms, smart-contracts or enacted governance proposals"*. This means that the statues of non-profits under DUNA, will also include "on-chain" government and/or treasury proposals that are binding for the members of the DAO. This provides a clear legal basis for the gap between "on-chain" and "off-chain" governance mechanisms[165].

Object.

A significant limitation of the DUNA, though, is the conduct of profit activities as a Non-Profit. Yet it can also do profit activities, but the profits shall be set aside for the nonprofit association's common nonprofit purpose[166].

As a non-profit organization, DUNA must pursue in general a non-profit purpose. Yet, they can conduct profit activities as long as they are related to their general non-profit purpose. Moreover, regarding the distribution of profits, DUNA does not allow this to members, yet it allows payment for compensation and reimbursement of reasonable expenses to members, administrators and persons outside the nonprofit association, which includes self-insurance, voting and participation in the nonprofit activities[167]. Thus, allowing a great degree of flexibility to perform profitable activities, within these boundaries. For instance, a DUNA-nonprofit could fund a building as part of a proposal as long as the beneficiary of such activity is a small group of individuals and the beneficiaries remain indefinite[168].

Privacy.

The DUNA Act offers a high level of privacy to the DAO's members and structure. As mentioned already, bylaws are allowed to be integrated by on-chain dispositions and are not required to be register in any public record, allowing a great degree of secrecy[169]. Moreover, the governing principles may decide if the decentralized ledger of the DAO is public or private, being compatible with privacy rights[170].

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164 § 17-32-117 (a).
165 Ibid § 17-32-102. (a) (vii).
166 Wyoming Decentralized Unincorporated Nonprofit Association § 17-32-104
167 Ibid § 17-32-104 (c) (i).
168 See William K Pao and others (n 27).
169 Wyoming Decentralized Unincorporated Nonprofit Association § 17-32-102 (vii)
170 Ibid § 17-32-121 (b) (i).

Anonymity.

Regarding the identity protection for members, the DUNA Act, does not require any listing of members, or disclosure obligations from members' personal information[171]. Moreover, members' definition in such Act, include innovative provisions to allow members to be defined by code or algorithms, stating that they may be ascertained regarding the DLT technology. As such ensuring members' rights and identity protection.

Nonetheless, Federal U.S. Securities and AML regulations, may compromise the member's ability to remained anonymous, particularly for those having substantial control over the organization; "beneficial owners". Yet Federal U.S. regulations on these matters, may have certain exemptions in which members of the DUNA could be included in, as it will be further discussed in Section III.

Representation.

Representation is set on the administrators, which are selected by the majority of the members unless the governing principles state otherwise[172]. Their designation is optional, and its authority will depend on what the members agree on the governing principles. Furthermore, administrators' liabilities are limited, and they may be reimbursed for expenses and indemnified. Though they remain personally liable for: improper financial benefit, intentional harm to the association or members, criminal violations, breach of loyalty (unless ratified by disinterested members) and improper distributions.

Agent for service.

A DUNA may appoint an **agent authorized to receive service of process** by filing a statement with the Secretary of State[173]. If no agent is appointed, service can be made on a person authorized to administer the association's affairs, or ultimately on a member[174].

Statement of authority for real property.

For transactions involving real property, a DUNA must record a **statement of authority** naming the person authorized to transfer property on its behalf[175].

171 Ibid, § 17-32-124 (e).
172 Ibid, § 17-32-123 and § 17-32-120.
173 Ibid, § 17-32-123 and § 17-32-110.
174 Ibid, § 17-32-123 and § 17-32-111.
175 Ibid, § 17-32-123 and § 17-32-106.

Massive Perks.

Extensive liabilities regulatory framework, providing a clear regime of protection for DAOs members.

Liabilities regulation.

The DUNA Act establishes a comprehensive regulatory framework regarding the members and administrators' liabilities. This include:

- Comprehensive regulation for contracts and torts liabilities for contracts and torts. Section 17-32-107, clearly specifies, that nor of them are liable for the DUNAs, breach of contract, torts and for other "members" or administrators' tortious acts or omission, for the "merely" fact of being a member or administrator, which strengthen the protection of members and administrators before other peoples or the DAOs itself acts.
- A regulation of judgments against the organization and its members (section 17-32-109).
- No fiduciary duties of the members. 17-32-117.
- Liabilities of the administrators may be limited, except for the following circumstances 17-32-123. (d):
  - *Liability for **breach of duty of loyalty** (acting against the association's interests).*
  - *Liability for **acts or omissions not in good faith** or involving intentional misconduct.*
  - *Liability for **knowing violations of law.***
  - *Liability for **transactions from which the administrator derived an improper personal benefit**.*

Right to inspect records.

DUNA establishes a comprehensive framework to allow members, administrator and/or agents to consult records (digital or otherwise) with information of the nonprofit[176]. The access to it, can be denied on confidentiality grounds which reasonableness will have to be proved by the nonprofit[177].

Clear regulatory framework for applicable law, suit and be suit.

Another relevant and distinguished feature of DUNA, not found in any other DAO legislation or DAO legal wrapper for that matter, is the clarification of the venue and jurisdiction of the DUNA-nonprofit.

Sections 17-32-110 to 17-32-113, establish several legal provisions aimed at clarifying key legal issues for DAOs legal wrappers for purposes of contract enforcement and investment,

[176] Wyoming Decentralized Unincorporated Nonprofit Association Act 2024 (Wyo). § 17-32-124.
[177] Ibid.

under international private law, not addressed in any other DAOs legal wrappers regulations, which is: venue, service, and as such applicable law and forum.

Section 17-32-110 establishes the possibility for DUNA-nonprofit to appoint an agent registered at Wyoming Secretary of State, and able to receive service of process. Section 17-32-111 provides rules for service processing including service through the DUNA-nonprofit members in case there's no agent or person authorized to receive service. Lastly, 17-32-112, sets rules to determine the DUNA-nonprofit venue, which would be the non-profit office or the agent residency.

Such rules provide great clarification on DUNA-nonprofit applicable law, and forum, which potentially lead to good standing and reputation for investments, although it also diminishes the DAOs barriers to be suit, such as not having a physical address for instance.

Limitations.

Quorum of 100 members is minimum for registration[178], although some exceptions may apply according to W.S. 17-32-104[179]. In addition, once registered the DUNA-nonprofit, may continue to exist if it still complies with the other requirements for its registration[180].

DUNAS have had a larger acceptance within the DAOs community, providing a modern structure that is recently being used by Big DAOs to have legal existence; One example is the Nouns Foundation[181], which switched from the Cayman Islands to set up a Wyoming DUNA. Or, Uniswap Foundation, which on August 31, 2025, posted a Governance Proposal[182] to establish "DUNI", a Wyoming DUNA.

3. TENNESSEE

On April 20, 2022, Tennessee's Governor signed into law a bill to allow DAOs to register as DO LLCs under the Limited Liability Company Act.

Features

Flexibility. The articles of organization must include a Notice of Restrictions on Duties and Transfers, which differentiates the rights of members from those of a regular LLC, and allows custom definitions of membership interests and contributions.

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[178] Some lead law firms, have identified this as a significant limitation of the DUNA. See Law Commission, (DAOs): A Scoping Paper (n 111) para 4.111.

[179] Wyoming Decentralized Unincorporated Nonprofit Association Act 2024 (Wyo). §. 17-32-102. iii (a).

[180] Ibid §. 17-32-114. (b) iii.

[181] 4156.eth, Proposal 727: Nouns DUNA Bylaws and Formation (Executed) <https://nouns.wtf/vote/727>, accessed 5 January 2026.

[182] UniswapFoundation, [Governance Proposal] – Establish Uniswap Governance as "DUNI," a Wyoming DUNA (Requests for Comment, 11 August 2025, updated 31 August 2025) <https://gov.uniswap.org/t/governance-proposal-establish-uniswap-governance-as-duni-a-wyoming-duna/25770>, accessed 5 January 2026.

Fiduciary Duties. A member of the organization does not have fiduciary duty to the organization or to other members.

Limited Liability. The act creates a new legal entity named Decentralized Organization, a member or smart contract managed, with limited liability for members in both cases.

Limitations

Members do not have the right to information or the right to inspect the records. The organization does not have the obligation to disclose information regarding the activities, financial condition or other circumstances[183]

Algorithmic voting is only allowed if the smart contracts are upgradable, which, together with the articles of organization, govern relations between members, rights and duties, etc.

Tech undefinition. We recognize the Tennessee effort of regulating DAOs at an early age, especially in clearly defining the exception of fiduciary duties, but the legislation needs to mature to more clearly define certain concepts that could be misunderstood by the courts. The legislation works for member organizations, but policymakers still need to understand values such as autonomy and decentralization.

4. VERMONT

Vermont was one of the first three states to regulate blockchain technology. The General Assembly established Blockchain-Based Limited Liability Companies under new sections in the Limited Liability Companies regulation.[184] Legislation that recognizes the creation of companies that can use blockchain and smart contracts to leverage their operations and business activities.

Features

Electing BBLLC as an entity form allows it to protect members from liability. It requires blockchain-based governance to govern the protocols[185], meaning the rules, operations, and communication between nodes on the network.

Limitations

Does not recognize digital-first organizations. It has many formal requirements and articles of organization that provide all governance and voting principles for the BBLLC, including a summary description of the mission or purpose. The BBLLC membership needs to be described in the Operating Agreement, specifying how someone can become a member with an interest[186] and the rights that accompany it. The Articles have to explain security breach protocols, voting procedures, which may include proposals for upgrades or modifications to

183 Tenn Code Ann, Tit 48, § 48-250-101 (amended 2026).
184 11 Vt Stat Ann § 4171-12 § 1913 (Vt) (Vermont Statutes Online) <https://legislature.vermont.gov/statutes/fullchapter/11/025> .
185 11 Vt Stat Ann § 4171 (3)
186 11 Vt Stat Ann § 4173 (2) (E)

the software system or protocols, or both, as well as matters of governance or activities for the common goal.

Nevertheless, the BBLLC has the option to provide for its governance, in whole or in part, encoded mechanisms through blockchain technology;[187] Some authors[188] argue that Vermont does not appear to remove fiduciary duties from BBLLCs.

5. UTAH

Utah State has regulated DAOs since 2023, through the Decentralized Autonomous Organizations Act.

The Act classifies the DAOs in a new legal entity, a Limited Liability DAO or LLD, providing legal personhood and the benefits of limited liability protection to the DAO members once the organization is registered, similar to a traditional corporation. According to the Utah Legislation, a DAO is governed by the Decentralized Autonomous Organization Act[189], the bylaws, the LLC Act, and the principles of law and equity. The Act defines a decentralized autonomous organization[190] as smart contract[191] code which implements the rules to coordinate the organization's governance, running on a permissionless blockchain, and is a registered entity. Other relevant definitions include Asset, Cryptographic proof, Decentralized, Decentralized Autonomous Organization, Developer, Dispute Resolution mechanism, including on-chain court system, hard-fork, member, off-chain, on-chain, and on-chain contribution, Organizer (relevant for the purposes of anonymity), and token. Utah DAOs Act has one of the widest chapters for legal definitions of DAOs' tech features, across the specific DAOs regulation in the world, which shows its unique, innovative, and tech-friendly approach to DAOs.

Another good indicator of Utah's goal to be the Delaware of the DAOS is the recent creation of the Utah Business & Chancery Court[192], a brand-new specialized court, which was created in 2023, opened its doors on October 1, 2024, and is regulated under Chapter 5a of the Utah

187 11 Vt Stat Ann § 4173 (1)

188 Matt Blaszcyk 'Decentralized Autonomous Organizations and Regulatory Competition: A Race without a cause.' (2024), University of Michigan Law School https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1008&context=research#:~:text=DAOs%20differ%20from%20traditional%20entities,1%2C%2016%20(2022).> accessed 26 February 2026.

189 Utah House Bill 357, Decentralized Autonomous Organizations (2023 General Session) § 48-5-102 (Utah 2023, effective date [1 January 2024]) <https://le.utah.gov/~2023/bills/static/HB0357.html> accessed 5 January 2026.

190 Ibid tit 48, ch 5, § 48-5-101(6).

191 Ibid § 48-5-101(29)

192 Business and Chancery Court (Utah State Courts) (Utah State Courts, 2025) <https://www.utcourts.gov/en/about/courts/bcc.html>, accessed 7 January 2026.

Code[193]. It has jurisdiction, concurrent with the district court, over disputes involving blockchains or decentralized autonomous organizations[194].

Features.

Some of the main features of the Utah DAOs LLD include:

1. Separate legal personality. § 48-5-104.
2. Sue and be Sued. § 48-5-104.
3. Liabilities are limited to the DAOs assets. § 48-5-104.
4. Object can be any lawful purpose. § 48-5-104.
5. Duration: perpetual. § 48-5-104.
6. Obligation to have a registered agent, with a registered address. § 48-5-106.
7. Registration can be made through electronic means. § 48-5-109.
8. Has at least one member. § 48-5-201, g.
9. Obligation to submit annual reports to the division (regulatory body). § 48-5-204.
10. Allowance and flexibility for classes of participation rights to members (§ 48-5-301) and voting rights (§ 48-5-302) to be regulated in the by-laws.

Formation.

The Division of Corporations & Commercial Code is the regulatory body that oversees the LLD formation, and administration[195]. The formation can be made online through their webpage[196], allowing users to register a DAO, renew a Registration, file a DAO amendment, and all other filing types, via the UTAH webpage

[193] Utah Code title 78A, ch 5A, Business and Chancery Court (as amended 3 May 2023) <https://le.utah.gov/xcode/Title78A/Chapter5A/C78A-5a_2023050320240701.pdf> accessed 7 January 2026.

[194] (1) The Business and Chancery Court has jurisdiction, concurrent with the district court, over an action: (a) seeking monetary damages of at least $300,000 or seeking solely equitable relief; and (b) (i) with a claim arising from (...) (Q) a dispute over a blockchain, blockchain technology, or a decentralized autonomous organization; Utah Code § 78A-5a-103 (Concurrent jurisdiction of the Business and Chancery Court—Exceptions).

[195] Utah Decentralized Autonomous Organizations § 48-5-101, par. 90. See also Utah Division of Corporations and Commercial Code, Administrative Rule R154-3 (Department of Commerce, adopted January 2024) <https://corporations.utah.gov/wp-content/uploads/2024/01/DCCC-Administrative-Rule-R154-3.pdf> accessed 7 January 2026.

[196] Utah Division of Corporations and Commercial Code, Decentralized Autonomous Organizations (DAOs) (Utah Department of Commerce) <https://corporations.utah.gov/business-entities/dao> accessed 7 January 2026.

The Act sets out the formation requirements[197] including filing[198] with the Division an application that provides information about the DAO, its Organizers, Legal Representative, Registered Agents, and evidence of compliance, including; public blockchain address, source code repository, third-party audits, explorers, community forums, a graphical interface to review transactions and key variable smart contracts and other features of the DAO, and platforms.

The Organizer will be the person responsible for the registration of the company can be one or several, but at least one shall be an individual[199].

An innovative feature founded in the formation requirements under section 48-5-201, is the inclusion of a dispute resolution method as part of the mandatory requirements for formation. This is important as it leads to the inclusion of innovative digital dispute resolution methods[200].

Organization and Structure.

Members.

Some of the noted advantages is that the Act, distinguish between someone actively involved in the governance process holding tokens of the DAO as a member, of someone who just receive tokens without sufficient participation[201];

> *(a) "Member" means a person who has governance rights in a decentralized autonomous organization.*
>
> *(b) "Member" does not include an individual that has involuntarily received a token with governance rights, unless that person has chosen to participate in governance by undertaking a governance behaviour, on-chain or off-chain, for the decentralized autonomous organization.*

Furthermore, the Act does not require to have administrators or directors[202], which favours decentralization, in contrast with other legal wrappers, like for instance, Cayman Island Foundation Companies, that requires the appointing of Directors, regardless the possibility of being "memberless" organizations. As such the Utah DAOs Act, instead of promoting a centralized management through directors or administrators, all powers and tasks of the administrator can be vested in the members as a class.

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[197] Utah Decentralized Autonomous Organizations § 48-5-201

[198] Utah Division of Corporations and Commercial Code, Decentralized Autonomous Organization Application (Utah Department of Commerce, December 2023) <https://corporations.utah.gov/wp-content/uploads/2023/12/DAOapplication.pdf> accessed 7 January 2026.

[199] Utah Decentralized Autonomous Organizations § 48-5-201.

[200] Ibid par. 346 – 351. See also Peter L Michaelson and Sandra A Jeskie, 'Arbitrating Disputes Involving Blockchains, Smart Contracts, and Smart Legal Contracts' (2020) 74 Dispute Resolution Journal 89-133 <https://www.ccarbitrators.org/wp-content/uploads/2021/05/Michaelson_Jeskie_Arbitrating-Disputes-Involving-Blockchains_AAA_DRJ_Oct2020.pdf > accessed 7 January 2026.

[201] Utah Decentralized Autonomous Organizations § 48-5-201, par. 110 - 113.

[202] Utah Decentralized Autonomous Organizations § 48-5-305.

Regarding the members anonymity, the issue is the same as with the Wyoming DAO Act, with members being able to maintain anonymous, under the state regulation, as there are no requirement to have any registered member only the "Organizer", and the registered agent, but this may be compromised by Federal Financial regulations and AML[203].

Liability.

A member is only liable for the on-chain contributions that the member has committed to the DAO, not personal assets after the DAO's formation, and not personally liable for the DAO's acts, or other members' acts[204]. The only exception is when the DAO refuses to comply with an enforceable judgment; then members who voted in such sense, will be liable in proportion to their governance share.

The Act develops a specific and clear set of rules for the liability of DAOs' members, including:

1. Liability limited to the "on-chain contributions" that members have made to the DAO.
2. Liability limited to the "assets of the DAO".
3. Avoidance of any personal liability regarding actions of the DAO.
4. Avoidance of any personal liability for "other members wrongfully actions".
5. A type of personal liability when the DAOs reject to fulfil or comply with a judgment, applicable only to the members that vote against compliance with the said obligation.
6. Applicability of personal liability for torts purposes.
7. Neither the members, legal representative developer nor participants of the DAOs owe fiduciary duties, unless is otherwise expressed in the bylaws.

Representation.

The Act acknowledges the possibility of establishing a legal representative[205], *"to undertake tasks that cannot be achieved on-chain"*[206]*:* such as open bank accounts, sign contracts, do investments and others. This solves one of the most common and important issues of DAOs; the lack of representatives to conduct operations "off chain".

Legal representative's powers are expressly included in the by-laws and evidenced by an authorization displayed in a public forum and verifiable by cryptographic proof[207]. This allows the control of the powers of the legal representative by the DAOs members, restricting his ability to conduct discretionary operations that will undermine the control of the

[203] Robert A Schwinger, 'Blockchain law: Can the autonomous remain anonymous?' (New York Law Journal, 23 May 2023) <https://www.nortonrosefulbright.com/-/media/files/nrf/nrfweb/knowledge-pdfs/blockchain-law---can-the-autonomous-remain-anonymous.pdf > accessed 7 January 2026.
[204] Utah Decentralized Autonomous Organizations § 48-5-202
[205] Utah Decentralized Autonomous Organizations § 48-5-202
[206] Ibid § 48-5-202 par. 443.
[207] Ibid § 48-5-306 (2)

members over the DAO. The legal representative may not be required to reside in Utah, and it has no personal liability for the DAOs acts, nor owes fiduciary duties to the company[208].

In this regard through the Utah LLD, addressed in a very effective manner, one of the already stated main limitations to most DAOs: to conduct traditional business operations in the real world (off-chain) through a legal representative which powers are strictly limited by the will of the token holders or members through the bylaws, and at the same time, providing limited liability to the legal representative.

TO BE REGULATED

1. TEXAS

Recently, Texas has become a tech company hub, and the administration is also implementing a digital transformation. Nowadays, Texas has diversified its portfolio outside the state treasury through a special fund, regulated by the Bitcoin Strategic Reserve and Investments Act, to fight inflation. **Texas is in the process of having DAO law**, through HB 4518, which establishes a decentralized Unincorporated Non-Profit Association, substantively similar to the Model DUNAA.[209] The last action is from the date 05/23/2025[210] is that the bill was left pending with the committee.

Features

Limited Liability. In debts or obligations from contracts or torts. An exhaustive regulation for members, administrators, and agents' liability.

Compensation. It can pay reasonable compensation to members, administrators for services like voting, participation or any other contribution.

Limitations

Lack of Comprehensive Regulation. Still have to define more sections, like detailed formation requirements, membership, inspect the records, venue, merges, and more; still, we recognize the efforts of Texas in protecting membership liability in detail.

Governing Document. The Bill requires a written constitution, articles of association, or bylaws that governs rights and obligations of the members of the unincorporated association.

Algorithmic Bylaws. limited to smart contracts without a clear definition.

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[208] Ibid § 48-5-306 (4), (5).

[209] David Kerr and Miles Jennings, 'A Legal Framework for Decentralized Autonomous Organizations – Part III: Model Decentralized Unincorporated Nonprofit Association Act' (5 March 2024) SSRN https://papers.ssrn.com accessed 24 February 2026.

[210] Texas Legislature, HB 4518 (89th Legislature, Regular Session) https://capitol.texas.gov/BillLookup/History.aspx?LegSess=89R&Bill=HB4518 accessed 26 February 2026.

2. CALIFORNIA

California is another Jurisdiction trying to implement an Unincorporated Associations DAO Act[211]. The Assembly Bill 1229 was passed and was re-referred to the Committee[212]. **It is not yet signed into law**, but it is purported to be added to Title 3 of the Corporations Code, incorporating a dissimilar presentation of the Model DUNAA in some form[213].

Features

Legal Entity. It creates the DNPA or Decentralized Nonprofit Association as *"an unincorporated association consisting of at least 100 members with a primary common purpose other than to operate a business for profit whose governance and operations are reliant, in full or in part, on a blockchain or other distributed ledger technology."* And "may carry on a business for-profit and apply the profit that results to the business activity to lawfully activities.

Decentralized. The requirement of 100 members encourages decentralization by preventing control by a single person or entity and grants administrators limited authorizations for specific tasks, allowing DAOs to continue operating as usual.

Governance. Decision-making is left to the DAO members, as administrators serve as agents for specific tasks, such as opening a Twitter account or signing a contract. Members can be authorized as Administrators "*to fulfil specific administrative or operational tasks at the direction of the membership.*"[214] and "*has no authority to act on behalf of the decentralized nonprofit association other than specific authorization granted.*"[215]

Limited Liability. A member, administrator, or agent of a decentralized nonprofit association is not liable for a debt, obligation, or liability of the association solely by reason of being a member, administrator, or agent. [216] Nevertheless, the legislation also provides a break of the protection veil under the "alter ego" common law theory.

Limitations

Membership. The DNPA Legislation does not regulate membership in a clear way, resulting in an unclear framework definition, interests, rights, duties, admission, suspension, or expulsion of members without a. This is something that can be improved in the legislative process.

Tech unfriendly. The DNPA requires a "*Governing Document*," which "*means a constitution, articles of association, bylaws, or other writing that governs the purpose or operation of an*

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[211] LegiScan, 'California AB 1229 Roll Call Vote' https://legiscan.com/CA/rollcall/AB1229/id/1310187 accessed 26 February 2026.

212 LegiScan, 'California Assembly Bill 1229 Roll Call (Vote ID 1310187)' https://legiscan.com/CA/rollcall/AB1229/id/1310187 accessed 26 February 2026.

[213] Kerr and Jenings (n 208).

[214] California Assembly Bill 1229 (2023–24 Reg Sess) 'Unincorporated associations: decentralized nonprofit associations' § 21520 (a)

[215] Ibid § 21520 (a) (2)

[216] California Assembly Bill 1229 (2023–24 Reg Sess) 'Unincorporated associations: decentralized nonprofit associations' § 21520. <https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=202320240AB1229>

unincorporated association, or the rights or obligations of its members, including information inscribed on a blockchain or other distributed ledger technology that is retrievable in a perceivable form."[217]

OFF-SHORE.

CAYMAN ISLANDS

Literature and industry identified offshore jurisdictions as another attractive legal wrapper for DAOs[218]. A particular figure is the Foundation Companies at Cayman Islands. A **Cayman Foundation Company** is a hybrid legal entity that combines features of a trust and a company[219]. Before the law, however, it is perceived as a legal entity[220], and as such it can provide a separate legal personality to its members, own assets, enter contracts, and sue or be sued unlike traditional trusts.

Introduced in the Cayman Islands in 2017, it is structured under the Companies Act but modified by the Foundation Companies Act 2017 (FCA2017).

Main Regulations:

- The Foundation Companies Act 2017 (as amended 2023). It is the specific law of foundation companies, providing specific provision for the government, scope and operations of the organization.
- The Companies Act (2023 Revision). Is the general law applicable to companies in Cayman Island, and as such regulates all the corporate matters for companies, such as governance, government, relationships between members and shareholders, obligations and rights of members and shareholders, and inter-alia. Some provisions of this Act are excluded in its application the Foundation Companies, and others are modified. In case of conflict between the two of this law, it shall prevail against the established in the Companies Act[221].

Operation and Transparency Regulations:

- Companies Management Act (2003 Revision).

[217] California Assembly Bill 1229 (2023–24 Reg Sess) 'Unincorporated associations: decentralized nonprofit associations' § 21500 (e).
[218] William n. 80, 6. See also Law Commission, (DAOs): A Scoping Paper (n 111) 130, 144 and 150 - Conyers, Guide to Cayman Foundation Companies (Conyers, Asia, April 2025) <https://www.conyers.com/publications/view/guide-to-cayman-foundation-companies/> accessed 7 January 2026.
[219] Tony Pursall, 'Cayman Islands Foundation Companies' (2019) 25(6) Trusts & Trustees 656, 657.
[220] Foundation Companies Act 2017 (Cayman Islands) s 4(1).
[221] Foundation Companies Act 2017 s 5.

- Beneficial Ownership Transparency Act 2023 (BOTA). It requires all foundation companies (following the 2023 amendment) to maintain a register of beneficial owners, kept up to date with the Registrar of Companies.

Financial and Tax Regulations:

- Virtual Asset Service Providers Act (2024 Revision).
- Tax Concessions Act (1999 Revision).

Anti-Money Laundering Regulations and Crime:

- Proceeds of Crime Act (2019 Revision).
- Anti-Money Laundering Regulations (2020 Revision).

Penalties may arise up to 15,000 USD and 5 years of imprisonment.

Features.

- **Legal Personality**: Unlike a trust, the foundation itself is a legal person.
- **No Shareholders Required (Memberless)**: It can operate without members or shareholders, making it ideal for "orphan" structures.
- **Flexible Governance**: Its constitution can be customized with private bylaws, allowing tailored rules and privacy.
- **Purpose-Driven**: Can be formed for any lawful purpose—charitable or non-charitable.
- **Optional Beneficiaries**: May have beneficiaries, but they don't automatically have legal standing[222].
- **Supervisory Role**: A "Supervisor" oversees directors when no members exist.
- **Trust-Like Features**: Founders and Supervisors can retain powers similar to settlors and protectors in trusts.

Some authors acknowledge that the previously stated features of the Foundation Companies represent a good legal vehicle for DAOs, due to the following reasons[223]:

- **Legal recognition**, which allows them to enter to contracts, hold assets and interact with regulators, being a separate legal entity and not a Trust (contract)[224].

[222] Ray Davern and Alex Way, 'Notes from a Small Island: Some Observations on the New Cayman Islands Foundation Company' (2017) 23(9) Trusts & Trustees 916, 918.
[223] Conyers, Guide to Cayman Foundation Companies (Conyers, Asia, April 2025) <https://www.conyers.com/publications/view/guide-to-cayman-foundation-companies/> accessed 7 January 2026.
[224] William K Pao & others (n 27) 7.

- Its **flexible governance process**, for instance, the scope of the foundation can be anything established in the bylaws and AOA[225], and they may choose their own governance process, with the minimum requirement of the existence of Directors and Supervisors[226]. In addition, there is complete discretion and flexibility to establish the alternative dispute resolution method to solve controversies among the stakeholders of the Foundation, with the only possible solution to invalidate an agreement on the grounds of fraud or bad faith[227].
- **Memberless integration**, allowing anonymous members and no ownership conflicts.
- **Privacy**. As bylaws can be kept private, there's no need to make them public, keeping governance process privately.
- **Assets protection and Fiduciary Clarity.** Although the company is not recognized as a Trust, **fiduciary duties** can apply to the Directors, guaranteeing safeguards to the company's assets and administration[228].

Perks and Limitations.

Memberless.

The legal provisions of the Cayman Islands applicable to the foundation companies, in regards, with the "orphan" or "memberless" feature have certain grey areas for token holders to enforce rights over the foundation.

Article 2 of the Companies Foundation Act (2017) introduce the concept of "interested person", which is any person that for a foundation company:

> *(a) any of its members or supervisors;*
>
> *(b) someone who has the right to be a member or supervisor of the foundation company; and*
>
> *(c) someone declared under its constitution to be an interested person;*

Such a concept is very important as in many scenarios, the "interested person" will be the person before the law who will hold the rights that a member of a regular corporation (under the Companies Act of the Cayman Islands) will have over the corporation. In other words, the interested person is a legal concept created at the Foundations Company Act to substitute the members or shareholders of a corporation under the Companies Act.

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[225] Yet it is normally and most often used for philanthropy purposes. Ray Davern and Alex Way, 'Notes from a Small Island: Some Observations on the New Cayman Islands Foundation Company' (2017) 23(9) Trusts & Trustees 916, 918.
[226] Foundation Companies Act 2017 (Cayman Islands) ss 7(1), 12(1) – (3).
[227] Foundation Companies Act 2017 s 11(1).
[228] Entitles an "interested person" the right to bring actions before the directors and supervisors of the Foundation Company with the legal framework of the Companies Act, which includes fiduciary duties. Ibid s 7(4)(d).

For instance, article 7.4.d of the Foundations Company Act grants the right to an interested person to bring actions before the Directors of the Foundation Companies to claim their respective liabilities with the same legal framework granted to general shareholders of a Limited Corporation or any other corporation registered under the Companies Act. Thus, under this provision, an interested person could claim, for example fiduciary duties against the Directors of a Foundation Company, as such duties are recognized by the Companies Act. As a result, token holders could apply the privileges and legal framework of the Companies Act, to bring actions before the Directors of a Foundation Company, even though they do not hold strictly the character of "members" of such foundation. In this regard the token holder or actual member of the DAO can remain anonymous, but still exercise powers over the Foundation as an interested person.

The latter are some of the proclaimed benefits provided by the already qualified as "innovative" hybrid structure of the foundation companies, combining the solid and "classical" regime of companies under the Companies Act, with a newest, and more flexible legal vehicle such as the Foundation Company.

However, the said hybrid, flexible and innovative legal structure do come with a price, in terms of the legal certainty, predictability, and efficiency for the "interested person" or in this case, the token holders or members of the DAO.

As mentioned already, article 2 of the FCA2017, establishes the definition of an interested person, this means that anyone claiming to be an interested person, will be subject to legal interpretation on whether he has such character or not. Most likely the legal interpretation will have to be conducted by an arbitrator or a Court. As such if a token holder wants to claim the rights granted to an interested person it will first have to go through a judicial review or arbitration process to establish whether he is or not an interested person. The latter undoubtfully undermines the token holder rights and legal certainty of control over the foundation, without mentioning the legal costs that will imply for the token holder to effectively be categorized as an interested person before a Court. Moreover, to go through such process the token holder will have to reveal his identity severely compromising "the anonymous" or "orphan" feature.

The latter follows the general limitation of foundation, in which beneficiaries are treated as mere objects with very limited rights[229], and in our view the Foundation Company of the Cayman Island did not effectively solve this issue regardless of the implementation of novel legal provision such as "interested persons".

[229] Vanessa Villanueva Collao, 'Decentralized (?), but Far from Disorganized: A Comparative Analysis of Legal Wrappers and the Evolving Structure of DAOs' (SSRN, 2025) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5143035 accessed 26 February 2026.

Another issue that illustrates the lack of legal certainty and efficiency for token holder's or non-formal members of a foundation company is the issuing of powers established in Article 7.1 of the FCA2017, which quotes:

> ***Duties, powers and rights***
>
> *7. (1) A foundation company's constitution may, as well as providing for its management by directors (however called) or their delegates, give rights, powers and duties of any type to members, directors, officers, supervisors, founders or* ***others concerning the foundation company****.*

The cited article is very flexible on who could hold powers given by a foundation company including members, directors, officers, supervisors, founders - to this point regular stakeholders of a corporation – and lastly it includes an extra figure: *"other concerning the foundation company"*, in order to refer to a sort of undefined, unidentified and general category of rights and powers.

As such the undefined and general extra category could include token holders, as an unidentified person having a concern regarding the foundation. Yet once again, there is no clear definition on what "concerning" will mean, in such a context. Furthermore, there is not expressed reference to token holders of a DAO community, within such category. Thus, token holders will have to face once again the problem of judicial review and interpretation previously discussed.

This represents another example of a regulation that looked to expand the regime of rights hold by an unidentified group of people (like token holders) for a company, yet it did it with a lot of shortfalls that represent a potential legal interpretation issue, which could eventually undermine the rights of the pretended beneficiaries.

Anonymity.

Another stated benefit of the Foundation Companies is the possibility to have "anonymous" members. To this regard, the article 8.1 of the FCA2017, establishes:

> ***Members and supervisors***
>
> *8. (1) A foundation company's constitution may grant, or authorise the grant, to any person or persons or description of persons,* ***whether or not ascertained or in existence****, of the right to become a member or supervisor of the foundation company and such right is enforceable by action against the foundation company, whether or not enforceable as a matter of contract.*

As it can be read, such article, does not grant the possibility to become part of the foundation to an anonymous person, but rather to a "not ascertained or in existence" person. While the

latter legal provision is the most flexible one among other regulations like DUNA or the UAE, which require that members can be "ascertained" in regard to the DAOs code[230] or in regard to another person or object[231], it is important to clarify that a not ascertained does not have the same legal treatment as anonymous or pseudo anonymous.

According to the Legal Information Institute (US) commentary: "'ascertained' means something is found out with certainty; it is used after 'ascertain' is finished. 'Ascertain' means to make certain; to establish with certainty, by the finding and judgment or decree of the court"[232]. The latter definition is relevant to the Cayman Islands law as it is part of the Common Law system.

As it can be seen, from such definition it does not specific refers to an unidentified or anonymous person, but rather to something that is not certain. Furthermore, such provision may limit the possibility of Foundation Companies, to enter into contract in other common law jurisdictions such as the U.S. or the U.K., that may have limitations on celebrating contracts with not ascertained subjects.[233]

Another point regarding the anonymity of the members of a foundation company that worths consideration is that supervisors need to be registered with an address and name (article 14) which of course undermines the "anonymity" capacity of the organization. Also, the secretary needs to be a qualified person (article 16) which would encompass to reveal his identity.

Privacy.

Regarding privacy and the no obligation to register the bylaws, it is to be noted that under Article 2 of the Foundation Companies Act, the bylaws do not form part of the constitution documents of the society; only the Articles of Association (AOA) and the Memorandum do. Also, in case of a conflict of interpretation between the Bylaws and the AOA or Memorandum, it shall prevail: first the Memorandum, then the AOA and at the very least the Bylaws. Accordingly, the said benefit of maintaining the bylaws unregistered or private is quite limited if such documents posses such a low legal value as a governance document of the foundation.

Decentralization and tech-features.

[230] Wyoming Decentralized Unincorporated Nonprofit Association Act. § 17-32-102 (viii).
[231] *Distributed Ledger Technology Foundations Regulations 2023* (Consolidated Version November 2025) (Ras Al Khaimah, United Arab Emirates) Part 10 (39) (1).
[232] Wex Definitions Team, 'ascertained' (Legal Information Institute, Cornell Law School, last reviewed June 2022) <https://www.law.cornell.edu/wex/ascertained > accessed 7 January 2026.
[233] Simmons and Simmons noted that some of the disadvantages and risks of foundation companies is the incompatibility of Cayman Islands law institutions with English law. Law Commission, (DAOs): A Scoping Paper (n 111) 152.

Another important consideration of Foundation Companies as legal wrappers for DAOs is the support for decentralization and technology-based or code-based futures. Regarding decentralization, whether is true that under the Foundation Companies Act, the governance structure can be quite flexible, allowing the possibility of for instance replicate in the bylaws, the "on-chain" rules for voting and decision-making processes of the DAO, the regulations itself does not include any provision to support decentralized governance. On the contrary, the foundation needs to be managed by a supervisor or board of Directors, who can have extensive discretionary powers over the DAO and decision of the token holders made "on-chain", which is basically the structure of a centralized corporation[234].

Regarding code, and other benefits of the "lex-cryptografica" such as automatization, transparency and accountability, there is any provision under the legal framework of the foundation companies that allows to enforce or refer to such technology. As it was previously stated, Foundations at the Cayman Islands are mostly advocated for philanthropy and other non-profit purposes, rather than tech, finance and protocol DAOs.

As such it can be argued that the Cayman Island took a disruptive approach to the regulation of DAOs by developing "memberless" and hybrid organizations with the flexibility of a trust and the perks of a corporation. Yet it did it with a law of gaps, that can very much compromised token holders' rights and control over the organization and moreover attempt with the core values of DAOs such as decentralization, automatization and "code-based". Moreover, it does not include any tech-specific provision, which in our view, makes it a non-quite suitable legal vehicle for DAOs wrappers.

As is the case with the recent DAOs legislation in the USA, further judicial review will be needed to clarify the legal issues raised, here for the Foundation Companies. It is to be noted, however, that although the Foundation Companies Act, have been active since 2017, there's not too much judicial review on Foundation Companies, this mainly to the fact that Foundation Companies have less exposure to judicial review[235], in contrast with entities in the USA, which can be a factor that prolongs the uncertainty for token holders and members of DAOs.

Representation.

As traditional foundations, representation is deposited on Directors and Supervisors, which hold large veto powers, and their authority derives from the bylaws and articles of association, at which normally the members do not take part, as they generally do not formally exist as part of the foundation.

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[234] To solve such misrepresentation some DAOs have try to include an "hybrid" board of Directors, with off-chain and on-chain Directors, it has proved to be inefficient as Directors will need to disclosure its identity. Polkadot OpenGov, Referendum #1749 (Subsquare) < https://polkadot.subsquare.io/referenda/1749 > accessed 7 January 2026. See also Polkadot OpenGov, Referendum #1737 (Subsquare) <https://polkadot.subsquare.io/referenda/1737 > accessed 7 January 2026.

[235] Davern and others, n. 224.

MARSHALL ISLANDS.

In 2022 Marshall Island passed the Decentralized Autonomous Organization Act[236], which created the DAO LLC (non-profit); a limited liability company with a non-profit purpose aimed at serving as DAO legal wrapper.

The RMI DAO (Non-profit) LLC, is also regulated by the Decentralized Autonomous Organization Regulations of 2024, the Limited Liability Company Act[237] and, if applicable, the Non-Profit Entities (Amendment) Act. Further regulations that could apply to the RMI DAO include the Securities and Investment Act; to the extent that the RMI DAO is directly or indirectly issuing, selling, exchanging or transferring any digital securities as defined in Section 102 of the Securities and Investment Act to residents of the Republic[238]. The banking Act; Applicable to virtual asset service providers; *"A person is considered a VASP if they are providing (a) an exchange between VA andfiat, (b) an exchange between one or more forms of VA, (c) transfer of VA, (c) safekeepingand/or administration of VA, (d) participation in and provision of financial servicesrelated to an issuer's offer and/or sale of a VA"*[239] and the AML Regulations, applicable to all VASPs operating in the Republic of Marshal Islands and carrying out cross-border and virtual assets transactions exceeding USD 1000[240].

Moreover, the RMI, according to the Decentralized Autonomous Organization Regulation 2024, classified as virtual or digital assets: a) virtual currencies, b) digital consumer assets, and c) digital securities. A digital asset that can be used as a store of value, a unit of account, or a means of exchange is called virtual currency. A blockchain token or any other digital asset that does not fall under the category of virtual money or digital security is considered a digital consumer asset. A digital consumer asset is one that is used or purchased primarily for consumptive, personal, or household purposes. Notes, stocks, bonds, and other digital assets that do not fall under the categories of virtual currency or digital consumer assets are examples of digital securities.

Features.

The RMI DAO LLC (non-profit) has a similar structure to the DAOs associations, on opposite to foundations, are managed by its members, and not a board, and have the following key features:

[236] Decentralized Autonomous Organization Act 2022 (Republic of the Marshall Islands) No 75ND2PL
[237] To the extent that is not inconsistent with the DAO Act 2022. Decentralized Autonomous Organization Act 2022 (RMI) s. 103 (1).
[238] Ponti & Partners, 'Marshall Islands DAO LLC' (Pontinova Law) https://www.pontinova.law/dao/marshall-islands-llc accessed 5 February 2026.
[239] Ibid.
[240] Ibid.

Easy setup.

Three funding members are needed. The process takes up to three weeks and two weeks approximately to obtain a special license[241]. Funding members can be non-members of the organization; however, they need to undergo KYC checks that include disclosure of full name and address[242]. In addition, any member holding more than 10% or more governance rights will also be required to pass KYC checks[243]. Lastly registration and incorporation costs are quite affordable, compared with for example the Swiss foundation[244].

Non-profit purpose.

It must pursue a non-profit purpose on whatever activity, and members cannot receive any distribution of the income[245].

Governance.

Managed by its members, with flexibility to design governance in the Operating Agreement, it can also be governed by smart-code, if provided in the company's charter[246].

The Operating Agreement covers:

- Creation of additional governing bodies.
- Voting rules and vote counting.
- Rules for amending the smart contract.
- Treasury creation and management.

Thus, it allows great flexibility on governance being handled by an operating agreement.

In addition, DAO LLC (non-profit) requires a registered agent, with an active address in RMI, for all the time that the company is in existence[247].

Liabilities.

No fiduciary duties for members to the DAO LLC or to other members, regardless of the general contractual principles of good faith and fair dealing[248].

Perks and Limitations.

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241 Legal Nodes, 'Marshall Islands LLC as a DAO Legal Wrapper' (Legal Nodes, undated) https://www.legalnodes.com/article/marshall-islands-llc-as-a-dao-legal-wrapper accessed 6 February 2026.
242 Decentralized Autonomous Organization Act 2022 (RMI). S. 105 (1). See also Ibid.
243 Legal Nodes, 'Marshall Islands LLC as a DAO Legal Wrapper'.
244 Ibid.
245 Decentralized Autonomous Organization Act 2022 (RMI). S. 105 (3). See also Ibid
246 Ibid s. 108.
247 Decentralized Autonomous Organization Act 2022 (RMI). S. 105 (2).
248 Ibid s. 109.

Some of the perks of the RMI DAO LLC (non-profit) have been already listed including easy set-up, flexible governance, and affordable costs. Moreover, regarding the voting and governance process we identify a clear definition of key legal terms such as "membership interest" that is the ownership right in a DAOs, determined either by the RMI DAO LLC certificate of formation or ascertainable from a blockchain or smart contract used by the DAOs to determine a member's ownership right. In other words, governance right determined either off-chain (certificate of formation) or on-chain (governance proposals). According to section 110 (1) (a) of the DAOs Act 2022 a membership interest *"…shall be calculated by dividing a member's governance tokens held divided by the total amount of the organization at the time of a vote"*.

Another noted advantage is the very low taxation applicable including No corporation tax, capital gains tax, wealth tax, or any other tax is applicable to RMI DAO (Non-Profit) LLCs. For-profit LLCs are taxed with a 3% gross revenue tax excluding dividends and capital gains.

On the other hand, limitations include a very restricted legal framework to allow pseudo or anonymity as members holding more than 10% of governance rights will have to disclose to pass KYC checks. Moreover, the RMI DAO, is subject to an annual report disclosing its beneficial owner's information such as full legal name, birth, residential or business street address among others, which severely compromises the anonymity of such entity[249].

A beneficial owner generally refers to the natural person(s) who ultimately owns or controls, directly or indirectly, a significant interest in the LLC, including individuals who[250]:

- Hold a substantial percentage of membership interests or governance rights.
- Exercise effective control over the company's decisions, even if not formally listed as members or managers.
- Are the ultimate beneficiaries of the company's activities or assets.

In the case of polkadot for instance, the so called "whales" or large tokenholders will have to disclose to comply with the Beneficial Owners Report.

Another issue noted in the RMI regulation, is the access to information of members, which in the original Act of 2022 was completely banned, not allowing members and dissociated members to separately inspect or copy records of the DAO LLC (non-profit)[251]. Amended in 2023, this provision includes only relevant government officials with reasonable grounds to investigate a violation of the laws of the RMI, with access to such information. Thus, the RMI framework has a pretty shield accountability and access to information of the DAO LLC (non-profit), regardless of the information that it is public that includes information verifiable

[249] Ibis s. 112.

[250] Ibid s. 112 (4). See also Republic of the Marshall Islands, Limited Liability Company Act, 52 Marshall Islands Revised Code ch 4, s 22(1)(c)(v).

[251] Decentralized Autonomous Organization Act 2022 (RMI). S. 111.

in the distributed ledger technology such as votes, and decisions of the DAO LLC, which have to be public for a 5-year period[252].

To this regard, RMI offers a pretty easy set-up and affordable DAO legal wrapper, but with a great degree of accountability in terms of audits, and members' information.

England and Wales.

England approach to DAOs is much more neutral and conservative taking the position *"that there's no current need to develop DAO-specific legal entity"*[253]. According to the UK Law Commission in its DAO scoping paper, there's a lack of consensus on the legal/tech definition of DAO, and the need to maintain neutral to technology[254]. Attempts to regulate such undefined, broad and dynamic technologies could potentially lead to the limitation of their features and core values (as in US legislation), as well as in ambiguous policy attempts. Commission even mentioned including DAOS just in regular corporations. Though it was also recommended to keep an eye in further developments of the technology looking for a more precise and accurate model that will suit a possible specific regulation[255].

The latter despite the large number of opinions and suggestions from leading blockchain and DAOs organizations such as COALA and Blockchain Gov[256], as well as lead law firms, such as Simmons and Simmons[257], and scholars[258], in the sense of introducing new DAOs specific regulation.

On the other hand, the UK Law commission suggest making further reviews to English Law to make sure that these are no incompatible with new technologies. Specifically suggest reviews of the English Trust law to make it more flexible, in terms of for instance beneficiaries and settlors' accountability[259]. Yet the commission did not refer or suggest a reform to trust law, following any DAOS specific needs, but a general modernization, to make it more flexible, following some features from Cayman Islands, although many of them might be incompatible with English Law[260]. Once again, the recommendations and conclusions from the commission seem insufficiently in terms of considering the unique features of DAOs.

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[252] Republic of the Marshall Islands, Decentralized Autonomous Organization (Amendment) Act 2023, Bill No 109ND1P.L.2023, amending 52 Marshall Islands Revised Code, S. 111.
[253] Law Commission, DAOs: Summary of Scoping Paper (n. 42) 24. See also Law Commission, (DAOs): A Scoping Paper (n 111) par. 5.45 – 5.50.
[254] Law Commission, (DAOs): A Scoping Paper (n 111) par. 5.50.
[255] Ibid 149.
[256] Ibid par. 5.37.
[257] Law Commission, (DAOs): A Scoping Paper (n 111) par. 5.33.
[258] Korotana, (n 23).
[259] Law Commission, (DAOs): A Scoping Paper (n 111) par. 5.55.
[260] Ibid par. 5.60.

Furthermore, the commission explores the current corporate structures on England and Wales available to DAOs[261], arguing that in general England and Wales is a strong jurisdiction for setting business for many reasons including[262];

> (1) Strong legal foundations: the flexibility of common law, supported by statute where required.
>
> (2) Strong financial and other regulation, which can promote the reliability and legitimacy of emerging industries and enhance consumer confidence.
>
> (3) Quality legal and other advisors.
>
> (4) Availability of legitimate sources of finance.
>
> (5) Reputable courts in event of dispute.

Nonetheless, the Commission further acknowledges that: *"…very few DAOs have chosen to set up or base themselves in England and Wales"*[263], while many blockchain and DAOs lead organizations informed that many DAOs that have chosen to register in the UK have move their domicile[264]. Moreover, the Commission received multiple comments by organizations on how English Law does not have the legal structures to support the unique features of DAOS; "*…several said that existing legal structures could not recognise the unique qualities of a DAO; some related this to legal forms available in England and Wales"*[265]. In addition, the commission noted that Money Laundering regulations in England and Wales will also prevent DAOs for establishing in such jurisdiction, and it further identified several consultants that establish that preference is given for U.S. and Switzerland with more *"DAO-specific entities"* and greater flexibility[266].

Nonetheless, the Commission also identified multiple criticism to the U.S. (Wyoming) specific DAO regulation, as being restrictive of the unique DAOs technology and with significant flaws as for instance, the number of members required for DUNAS, organizations in Wyoming[267]. Despite of, the Commission acknowledges and recommends the review and consideration of the introduction of a limited liability non-profit association, with a separate legal personality *"similar to the UNA structure sometimes used by DAOs in the U.S"*[268].

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[261] Ibid ch 5
[262] Ibid par. 527.
[263] Ibid par. 5.12.
[264] Ibid par. 5.13.
[265] Law Commission, (DAOs): A Scoping Paper (n 111) par. 5.15.
[266] Ibid 144.
[267] Ibid ch.4.
[268] Law Commission, (DAOs): A Scoping Paper (n 111) 24

As it can be seen the scoping paper on DAOS regulation drafted by the UK Law Commission, although is a comprehensive review from industry leaders in the DAOs sector, it has certain flaws in its analysis, by noticing on the one hand, the gaps and incompatibility of English Law with the unique DAOs features, but rejecting and concluding on the other hand that it is not needed to pass specific DAOs regulation. Moreover, the proposed amendments to English Trust and Corporate Law, do not respond to the unique feature of DAOs and it is suggested to follow the examples of other jurisdictions that are not compatible with the English Law, such as Cayman Islands, that also have multiple flaws for DAOs as they are not specific DAOs regulation.

Although this study does not pretend to be a comprehensive review of the UK approach to DAOs, it can be argued, that the position of the UK Government of not approving specific DAOs regulation as suggested by the Law Commission, is severely affecting its capacity to host and foster such industry in England and Wales, as it is acknowledged by the Law Commission itself, with very few DAOs registering in such jurisdiction, and with many leaving it after registration.

Thus we could learn from the UK approach that having specific DAOs regulation like the USA, or at the very least flexible regulation to trust and companies like Cayman Islands or Switzerland, regardless of their uncertainty due to its novelty and lack of judicial review, will be a much better approach for DAOs regulation than, keeping the "traditional" corporate and trust structures, regardless of how much legal certainty and judicial review they can provide.

SWITZERLAND.

The previously analyzed jurisdictions for DAOs legal wrappers have shown some strengths but also significant limitations. On the one hand, the U.S. has passed at a state level, innovative and tech-friendly specific DAOs norms but uncertain regarding its judicial review and yet quite incompatible with Federal regulations, in particular securities and AML; the Cayman Islands also presented innovative and flexible foundations but restricted regarding DAOs technology and unique features, especially with the decentralized government. Lastly, the U.K. considered inadequate to approve DAOs specific regulation, in the search of a more "tech-neutral" approach, yet it has not passed any legal amendment to suit DAOs or DLT technologies in its legal framework, nor the suggested amendments are specific to such technologies.

The approach of Switzerland on the other hand, combines a series of coherent legal amendments to financial and civil law regulations to effectively accommodate DLT technologies within its legal framework, known as DLT Act[269]; an internationally recognized

[269] Lenz & Staehelin, 'FINMA Issues Guidelines on ICO Financial Market Regulation' (Newsflash, March 2018) https://www.lenzstaehelin.com/fileadmin/user_upload/publications/180309_Newsflash_-_ICO_Guidelines_-_Final.pdf accessed 27 February 2026.

Rule of Law that makes its laws compatible with foreign legal systems[270]; and a clear judicial review approach following principles of economic freedom that provides a high degree of legal certainty and clarity to the stakeholders of a Swiss entity[271]. Moreover, the country has taken an approach of focusing on the functions not the form of DLT technologies[272] - including DAOs – which allows a very effective technology-neutrality regulation to this, without restricting its unique features.

In this regard, Switzerland has combined a variety of legal and institutional factors to provide a very adequate context for DAOs regulation[273]. It could be argued that the country has effectively addressed the identified shortfalls of DAOs regulation in the previously analysed jurisdictions.

DLT ACT.

On 1 February 2021, the Federal Council partially enacted the Federal Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology (DLT Act). This creates the possibility for Swiss stock companies to issue shares in the form of cryptographic tokens represented on a blockchain[274].

The DLT Act, amended several dispositions of the Swiss Code of Obligations[275] and the Federal Act on Private International Law[276], to develop the "ledger-based securities" a new category of shares that allowed Swiss companies to issue and transfer shares exclusively via a digital ledger, like blockchain[277].

According to Pestalozzi law firm: *"a ledger-based security is a right that is registered in a securities ledger in accordance with an agreement between the parties (the so-called registration agreement). It can only be asserted and transferred to others via this securities ledger (Art. 973d para. 1 CO). The assignment of ledger-based securities is possible without the requirement of a written form".*

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[270] Marcel Hostettler and Piotr Wojtowicz, 'The Swiss Association as a Legal Wrapper for a Global DAO and vis-à-vis the MiCA Regime' (2023) 25(1–2) *European Journal of Law Reform* https://doi.org/10.5553/EJLR/138723702023025001005. 169.

[271] Ibid.

[272] Ibid. See also Lenz & Staehelin (n 268).

[273] Pietrowska, J.; Züger, R.; Heaver, I.; Melnichenko, A.; Verner Steen, E. DAO Legal Wrappers in Switzerland, Liechtenstein and UAE: A Practical Guide. European DAO Workshop 2024. Available online: https://dawo24.org/wp-content/uploads/2024/06/ Abstract_18.pdf accessed on 26 August 2024. See also Hostettler and Wojtowicz (n 269). See also Villanueva Collao (n 228), and *Las organizaciones autónomas descentralizadas como nuevo paradigma del comercio asociativo* (Trabajo Final de Máster, Universitat Rovira i Virgili, Tarragona, 2023).

[274] Pestalozzi Attorneys at Law Ltd, Ledger-Based Securities: Introduction of DLT Shares in Switzerland (Legal Update, 19 March 2021).

[275] Art. 622 para. 1 and 1bis, 973c – 973i and 1153a CO), the Federal Intermediated Securities Act (Art. 4 para. 2 lit. f and g; Art. 5 lit. g and h; Art. 6 para. 1 lit. c and d as well as para. 2 and 3; Art. 7 para. 1 and 2; Art. 9 para. 1; Art. 11 para. 3 lit. b, and Art. 17 para. 1 lit. b as well as para. 4 FISA, See Ibid, 2.

[276] Art. 105 para. 2, 106, 108a and 145a PILA. See Ibid.

[277] Ibid.

All the rights applicable that can be represented by negotiable securities can be issued as ledger-based security, including; contractual claims, membership rights and rights in rem[278]. In addition, the effects of ledger-based securities are similar to those of negotiable securities including; presentational effect (Art. 973e para.1 CO), legitimation effect (Art. 973e para. 2 CO) and protection of bona fide (Art. 973e para. CO)[279]. In this regard, as it can be seen, DLT Act, shows a great degree of harmonization with existing securities regulations in Switzerland.

Pure cryptocurrencies though cannot be structured as a ledger-based-security, due to the fact that such tokens are merely payments of method, and do not confer any further rights or claims against an issuer. Therefore, they are classified as pure intangible assets[280].

The transfer of ledger-based securities is subject to the registration agreement and the intention of the parties (as any transaction)[281]. They do not require, however, any deed of assignment but purely a valid legal basis, such as a purchasing agreement[282]. Furthermore, collaterals, such as interests, liens and usufructs, may be established directly on ledger without transferring ownership, provided enforcement conditions are embedded within the ledger architecture[283].

Accordingly, the issuance of DLT shares by stock Swiss corporation is allowed under Art. 622 para. 1 CO[284]. The articles of association may stipulate the issuance of shares as uncertificated or ledger-based securities (Art. 973c CO or 973d CO) or as intermediated securities in accordance with the FISA[285]. The responsibility for the choice of ledger technology as well as for safety, quality and compliance with further conditions lies with the company. This also includes the design of the ledger technology. Ledger-based securities, shares, may also function as an electronic record of the shares' owners and transactions, as long as they comply with the legal requirements[286].

The Swiss Financial Market Supervisory Authority (FINMA) released guidelines in February 2018 that clarified the application of current Swiss financial market legislation to initial coin offerings (ICOs). The Guidelines describe FINMA's regulatory strategy and expectations rather than enacting new legislation.

[278] Ibid, 3.
[279] Ibid.
[280] Ibid.
[281] Art. 973f para. 1 CO.
[282] Art. 973c para. 4 CO.
[283] Art. 973g para. 1 CO.
[284] Ibid 5.
[285] Ibid 5.
[286] Art. 686 and 6971 CO. See Ibid, 5.

The Guidelines categorize tokens based on their intended economic and effective functionality, following the principle of substance over form, and ensuring a technological-neutral approach to ICOs regulation. FINMA identifies three categories of tokens[287]:

1. **Payment tokens**. Cryptocurrencies used as means of payment. Practically a cryptocurrency.
2. **Utility tokens**. Provide access to digital applications or services.
3. **Investment/securities tokens**. Represent financial assets such as equity, debt, or profit rights.

The regulatory approach will depend upon the category of the token, with the possibility of hybrid tokens having multiple legal effects according to each function[288].

Financial Regulation.

This will follow all the securities regulation applicable to Switzerland, including Financial Services Act (FinSA), Financial Market Infrastructure Act (FMIA) and further obligations under the Code of Obligations, like the already analyzed DLT provisions. EU standards and MiFID II may apply for cross-border operations with EU member states and other scenarios to be analyzed on a case-by-case basis.

From 2020 onwards, issuing securities in the primary market, for a Swiss company will require a prospectus reviewed and approved by the competent authority, disclosure agreements, following mostly EU standards, with some exemptions like, private placements, offerings to qualified investors[289]. Moreover, issuing securities in the primary market is not generally subject to a FINMA license, with strict exemptions for derivatives and underwriting securities[290]. Secondary market, on the other hand, will require a FINMA license, including operating trading venues, professional dealing or custody services for securities[291]. In addition, if tokens are characterized as securities insider trading and market manipulation rules will apply to them.

ICO funds managed by third parties may qualify as a collective investment scheme, subject to licensing under Collective Investment Schemes Act[292]. Tokens will be rarely treated as deposit, but if they include a repayment claim they could be classified as it and require a banking license. Bonds and capital market instruments remain excluded from banking license if prospectus rules are met[293].

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[287] Lenz & Staehelin (n 268) 2.
[288] Lenz & Staehelin (n 268) 2.
[289] Bär & Karrer AG, Initial Coin Offerings and Token Regulation in Switzerland (2021) https://www.baerkarrer.ch/userdata/files/publications/2021/xqj58abfo9y3swpqnxbt.pdf accessed 24 January 2026.
[290] Lenz & Staehelin, 2.
[291] Ibid.
[292] Ibid, 3.
[293] Ibid.

Investment tokens will be as a rule, treaty as a securities, when they are suitable for mass standardized trading, which will be typically the case of tokens on a distributed ledger. The same will be the case for future tokens and pre-sales, assuming that the rights of such tokens will be tradable[294].

Utility tokens.

Utility tokens are not securities only if they offer access to a service that is currently operational and has no investment value. FINMA did not clarify though, the legal treatment for tokens with future applications, nor did it clarify whether tokens cease to be investment tokens once the application is available. The authority only stated that if the utility token has an investment purpose it will be treated as a security[295].

Payment tokens.

Payment tokens are not securities, although in certain custody scenarios they can resemble intermediated securities, according to article 4 of the Law on Intermediated Securities[296]. Payment tokens will fall under Swiss AML/KYC requirements. This needs to be applied either directly by the ICO issuers or through the regulated financial intermediaries. Crypto-to-fiat and crypto-to-crypto exchanges are AML-regulated activities[297].

Yet in the 2018 Guidelines FINMA did not address whether operating a platform or distributing ledger that accepts cryptocurrency payments would qualify as a payment system under Article 81 FMIA[298], some steps to this gap has been taken through the DLT Act previously analysed, and in 2025 the Swiss Federal Council launched a consultation to revise the Financial Institutions Act (FINIA), proposing new categories such as Payment Institutions and Crypto Institutions. These would cover custody, trading, and payment services involving crypto assets, effectively filling the earlier regulatory gap by creating a tailored licensing regime for crypto-based infrastructures[299]. However, the classification of decentralized ledgers as "payment systems" under FMIA remains dependent on context and it should be analyzed on a case-by-case basis.

Furthermore, FINMA 2018 did not provide guidelines regarding the compliance and risk management framework for accepting cryptocurrency payments and how to comply with AML requirements. As such token purchasers may face pragmatical issues with banks, to convert them into fiat[300]. In subsequent communications, however, FINMA has made it clear

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294 Ibid.

295 Lenz & Staehelin, 3.

296 Ibid.

297 Ibid.

298 Ibid.

299 Deloitte Switzerland, Regulatory Update: New Rules on Payment Tokens (Deloitte Tax & Legal Blog) https://www.deloitte.com/ch/en/services/tax/blogs/regulatory-update-new-rules-on-payment-tokens.html accessed 24 January 2026.

300 Lenz & Staehelin, 3.

that cryptocurrency transactions must adhere to the same AML requirements as fiat, including origin of funds checks[301], issuing circulars and enforcement notes requiring strict controls such as identifying beneficial owners and limitating non-KYC crypto transfers[302]. Furthermore, Swiss banks and intermediaries now routinely use specialized blockchain forensics (e.g., Chainalysis, Elliptic) to trace crypto flows and assess whether funds come from legitimate sources[303].

Judicial System and Rule of Law.

Swiss entities mostly enjoy of what is called as "Swiss Passport", a legal and practice feature based on the principles of reciprocity and recognition of international law, upon which many jurisdictions abroad recognized the legitimacy of Swiss entities, and will pass several legal tests required on foreign legal systems due to the good standing and reputation of the Swiss judicial system. For instance, for money laundering purposes, foreign jurisdictions and Courts, might acknowledge the legitimacy of a Swiss-based entity, to be applicable in that jurisdiction due to the mentioned good legal standards and reputation of the Swiss legal system[304]. This shows a high degree of legal compatibility but also practical reputation, that could facilitate the signing of contracts of Swiss entities with foreign entities, in contrast with the legal incompatibility of for instance English Law with provisions of the Cayman Islands, or the not very good reputation of other offshore foundations, like Panama[305].

Moreover, at the domestic level Switzerland has passed many DLT friendly amendments such as the mentioned already DLT Act that declares elements of DLT on par with common and long-established legal institutions such as digital property and bankruptcy[306]. In this regard, Switzerland also offers a high degree of legal certainty and expertise from Courts and authorities regarding DLT provisions[307]. Including for instance, expertise of tax authorities dealing with digital assets and unification of tax procedures[308].

Lastly in the case of the specific legal wrappers for DAOs suggested in the literature, and analyzed below, like the Swiss Association "Verein" there is a sound legal system aimed at ensuring fundamental values that will be very important for DAOs such as freedom of association, non-government intervention and economic freedom. Such principles, constitute

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[301] Swiss Financial Market Supervisory Authority (FINMA), Supervisory Communication 02/2019: Treatment of Payment Tokens (26 August 2019) https://www.finma.ch/en/~/media/finma/dokumente/dokumentencenter/myfinma/4dokumentation/finma-aufsichtsmitteilungen/20190826-finma-aufsichtsmitteilung-02-2019.pdf accessed 24 January 2026.

[302] Ibid.

[303] Elliptic Ltd, Elliptic https://www.elliptic.co/ accessed 24 January 2026.

[304] Hostettler and Wojtowicz (n 269) 170.

[305] Ibid.

[306] Swiss Federal Council, Federal Council Brings DLT Act Fully into Force and Issues Ordinance (media release, 18 June 2021) https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-84035.html accessed 14 November 2022.

[307] Hostettler and Wojtowicz (n 269) 165.

[308] Hostettler and Wojtowicz (n 269) 171.

the spirit of Swiss Association law, and are backed up by extensive case law of Swiss Courts[309].

LEGAL WRAPPERS.

Moving forward to specific Swiss entities to wrap DAOs, the literature identify mainly two options: the Swiss Foundation (Stiftung) and the Association (Verein).

Foundation (Stifung)

Foundations generally pursue charitable purposes, like common welfare and culture[310]. They are quite limited to performing business activities, and to distribute profits to their founders, beneficiaries or managers[311].

The objectives of the foundation are determined by the founder. It does not have any members, only beneficiaries, so to this end, it represents one of the most proclaimed claims of the Cayman Island Foundations; orphan-institutions[312].

It does not require minimum capital, but in practice foundations are regularly capitalized with at least CHF 50,000[313].

Some DAOs or subDAOS has settled in Switzerland through the foundation wrapper, for instance; Ethereum Foundation, dYdX and Tezos[314]. They usually pursue a specific non-purpose project, like for instance research and development or implementing technical infrastructure.

Yet criticism to the Swiss foundation were identified related to strict and lack of flexible government controls[315], and expensive and long process for incorporation and operation[316]. Fromer limitations of the Swiss foundations are related with the general restrictions of foundations such as a centralized government structure and the lack or limited rights of its beneficiaries[317].

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309 Hostettler and Wojtowicz (n 269) 165.
310 Villanueva Collao (n 228) 30.
311 Articles 80–89bis of the Swiss Civil Code. See also Ibid, 31.
312 Adrian W Kammerer and Thomas Sprecher, Swiss Association (Publication 17, Niederer Kraft & Frey, Zurich, May 2011) https://www.nkf.ch accessed 24 January 2026, para. 66.
313 Ibid para. 68.
314 Villanueva Collao (n 228) 32.
315 Ibid.
316 DAO SPV, Swiss Associations: An Underrated DAO Solution (DAO SPV Blog) https://blog.daospv.com/swiss-associations-an-underrated-dao-solution/ accessed 24 January 2026.
317 Villanueva Collao (n 228) 32-33.

Association (Verein).

An association under Swiss law, is a group of natural persons or entities constituted and organized under a written agreement to pursuit a non-economic purpose[318]. It is regulated under articles 60 to 79 of the Swiss Civil Code[319].

It has proven to be a "highly adaptable" legal wrapper for crypto purposes due to its flexibility, and neutrality, provided by some of the following features[320]: easy setup – it requires only two or more people to adopt the articles of associations – no minimum capital requirement, highly flexible governance structure, with the bylaws being the lead governance statue[321], allowing even the possibility of being algorithmically managed and the effective categorization of token holders as members; token holders can be classified as members by the bylaws, providing great legal certainty, in contrast to the foundations or "memberless" organizations[322].

Features

Accordingly, the main features of the Swiss Association are[323]:

- Legal personality: It becomes a legal entity upon the adoption of by-laws and the appointment of a governing board.
- Limited liability: Members are not personally liable for the debts of the association, and the liability is limited to the association's assets[324].
- Membership based: The association is formed of its members, bound together by the rules of the association. As mentioned, the legal structure allows a high degree of legal certainty giving the possibility of defining the members in the articles of association as token holders[325].
- Non-profit: Swiss associations are non-profit, though they can conduct commercial activity where this is incidental to their main purpose

[318] Adrian W Kammerer and Thomas Sprecher, Swiss Association (Publication 17, Niederer Kraft & Frey Ltd, Zurich, May 2011), 7.
[319] DAO SPV, Swiss Associations: An Underrated DAO Solution (DAO SPV Blog) https://blog.daospv.com/swiss-associations-an-underrated-dao-solution/ accessed 26 January 2026.
[320] Ibid.
[321] The Swiss Civil Code functions as a kind of subsidiary statue; only mandatory provisions of law cannot be altered (Article 63, Swiss Civil Code). As such the association may have the structure that the parties wish. See Hostettler and Wojtowicz (n 269) 165.
[322] There's much more flexibility and legal certainty upon the "member" definition, allowing for anyone who holds "token" to be a member, and members have also limited liability, in contrast with the Cayman Foundation in which there's no legal certainty on who can be a member and the limited liability applies only to the foundation no to the members. See DAO SPV, Swiss Associations: An Underrated DAO Solution.
[323] Ibid.
[324] Hostettler and Wojtowicz (n 269) 164.
[325] Swiss law, however, does not expressly provide that members can be token holders as it is the case with the Wyoming DUNA. Cf. Wyoming Statutes, Unincorporated Nonprofit Association Act, § 17-32-115 (Wyoming Legislature).

As such the Swiss association is its combination of speed, flexibility, cost-efficacy, and privacy.

Formation.

Formation process is rather simple with only two members required. Members are required to draft the statutes and hold a virtual meeting, in which statues will be adopted, and the bodies will be designated[326].

Registration.

Registration for associations is voluntarily unless it conducts business or commercial "manner" or activities[327]. For the purpose of the test "business" is not limited to trading or manufacturing but includes other activities. Upon registration statues and members' information become public[328]. Yet the identified perk of registration is greater confidence from third parties and credibility[329].

If the association is not registered, each board member holds power of representation, if it is registered the signatory powers must be determined by the board and be registered at the commercial register[330].

In addition, the domicile of the association may have an impact on its reputation and perception by the authorities[331].

Object.

An association must pursue a non-profit purpose; *"that is an idealistic one – at least at its core"*[332]. Accordingly, the main objective of the association cannot be to provide financial gains to its members. Though profit activities and compensation may be possible following certain rules including[333]:

- Commercial activities help to his "idealistic" core purpose. Swiss commercial law is very flexible on "what sort of commercial activities" are related to the purposes, allowing any that do not directly contradict such purpose.
- Auxiliary activities may be allowed, with the same "broad" possibility.

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326 Hostettler and Wojtowicz (n 269) 166.

327 Swiss Federal Council, Swiss Federal Ordinance on the Commercial Register (Handelsregisterverordnung, HRegV) art 91 (17 October 2007). See also Adrian W Kammerer and Thomas Sprecher, *Swiss Association* (Publication 17, Niederer Kraft & Frey Ltd, Zurich 2011). 7.

328 Swiss Civil Code (Zivilgesetzbuch), art 61a.

329 Ibid 168.

330 Adrian W Kammerer and Thomas Sprecher, *Swiss Association* (Publication 17, Niederer Kraft & Frey Ltd, Zurich 2011) 13.

331 Kammerer and Sprecher (n 329) 8.

332 Decision of the Swiss Federal Court 88 (1962) II 209 at Ibid n.4.

333 Hostettler and Wojtowicz (n 269) 167.

- Board and functionaries can receive salaries, and members can receive retributions for the "contributions" to the purposes of the association.

In sum, they are allowed to conduct commercial activities as long as it is not their main purpose[334].

Structure and Organization.

Mandatory bodies include: the members' general meeting and a board. Mandatory provisions for these bodies include: the general meeting is the supreme governing body, and it elects the board[335]. The board must have at least one member.

The board can delegate specific functions to further committees, allowing for great operability flexibility, very useful and alike to a DAO structure[336]. Essential rights are granted to all members, including the right to vote in the general meeting[337].

1) General Meeting.

Higher governing body of the association. It has the non-delegable and inalienable right to alter the articles of association, the right to decide on the dissolution of the association, and the right of supervision over the association's other corporate bodies[338].

2) Board.

Exercise the powers of representation of the Association. These powers include, for instance, opening bank accounts on behalf of the association[339]. Members of the board are normally elected by the General Meeting, but AOA may include further election modes[340]. Non-members can be elected as Directors if the AOA allow it. The association may determine the term of office in its articles of association[341].

The General Meeting has the power to dismiss board members at any time without prejudice against contractual rights. This shows much more control of the board (directors) from the token holder (members) than in the Cayman Island Foundation Company.

Directors or board members are Personally liable for misconceptions (even against members of the associations) and violation of board member's duties. Conditions of violations set out

[334] Kammerer and Sprecher (n 329) 7.
[335] Article 65 Swiss Civil Code.
[336] Hostettler and Wojtowicz (n 269) 167.
[337] One member ensures one vote, though further voting mechanism could be implemented in the bylaws. See Ibid, 168.
[338] Kammerer and Sprecher (n 329) 8.
[339] Standard procedure is that two board members holding according to signatory powers proceed to open the bank accounts, in a brief meeting at the bank, yet other procedure may be possible (with less reputational banks) such as power of attorney or by correspondence (less likely of all). See Ibid 16
[340] Ibid 9
[341] Ibid 10.

in Swiss Law: tort, protection of personage, merger law, etc[342]. Moreover, they have joint liability[343].

Only the association is responsible for contractual obligations, D&O insurances available to cover the liability of board members[344]. They must compensate the association for damages resulting from unfaithful and careless performance caused by negligent breach. Swiss courts presumed dutiful conduct of the board, that as far as the procedure principles of the association were complied, as consequence in cases of challengeable or null and void resolutions, a breach of duty is regularly assumed[345]. Directors have the duty to act in the association's best interest and to observe the law and AOA[346].

3) Members.

Procedure of admission can be established in the articles of association[347]. The general meeting has powers to expel members with six-month notice[348]. Expulsion criteria may be set out in the AOA, with the minimum requirement that it must not be arbitrary. A special committee can be established for the purposes of expulsion and appeal may be filed at the General Meeting.

Members have the right to vote, request a convocation of the general meeting and be informed about the activities of the association, and demand annulment of GM resolutions that contradict the law or articles of association[349]. 20% of the total of the association's members may request calling a general meeting[350]. On the other hand, they have a duty of loyalty towards the association, pay memberships fees as required by AOA, and any other obligations provided on it[351].

Taxes

Another feature of associations worths mentioned is tax clarity and exemptions. Associations may be fully or partially exempted if they pursue charitable, public or cultural purposes plus, compliance with the following requirements[352]:

- The objective of the legal entity cannot be linked to profit-making purposes or other own interests of the legal entity or its members.

[342] Kammerer and Sprecher (n 329) 14.
[343] Where more than one board member is held responsible, such liable board members are liable jointly and severally. However, each board member is liable only for his/her own breach of duties. See Ibid.
[344] Ibid.
[345] Ibid 15.
[346] Ibid 15.
[347] Ibid 11.
[348] Ibid.
[349] Ibid 12.
[350] Ibid.
[351] Kammerer and Sprecher (n 329) 12.
[352] Hostettler and Wojtowicz (n 269) 169.

- The board must consist of volunteers; however, in order to fulfil the purpose of the association, the association may employ or commission people.
- The funds dedicated to tax exemption must irrevocably be used for the tax-exempt purpose.
- The purpose set out in the articles of association must be realized.

Moreover, Switzerland has over 100 treaties for double taxation, which helps to reduce or eliminating withholding taxes[353].

Anonymity.

As mentioned, Swiss associations required for registration, will have to make the list of his members including their first, surnames, business names and addresses public[354]. Associations required to register in the commercial register are those who:

1. Conducts a commercial operation in pursuit of its objects,

2. Is subject to an audit requirement; Includes the associations that exceed two of the following values in two consecutive years[355];

I. Balance sheet total of CHF 10 m,

II. Sales revenue of CHF 20 m,

III. Yearly average of 50 full employment positions.

3. Primarily collects or distributes assets abroad, directly or in-directly, that are intended for charitable, religious, cultural, educational or social purposes.

In this regard associations wanting to pursue commercial activities will have to disclose their identity to the members.

Limitations.

Further limitations founded for the Swiss Association, include that when they conduct commercial activities they may be subject to AML regulation hardly compromising the non-disclosure of members identification, the limited voting mechanism of one vote per members, that could restrict further mechanism of decision-making of DAOs such as liquid and quadratic vote and lastly, the lack of specific tech-related features in contrast with for instance the Wyoming DUNA which supports a "technology-neutral" approach but restrict some specific technology features such as allowing members to register with their on-chain address.

[353] Payline Data, Swiss Holding Company (Payline Data Blog) https://paylinedata.com/blog/swiss-holding-company accessed 26 January 2026.
[354] Swiss Civil Code (Zivilgesetzbuch), art 61a.
[355] Kammerer and Sprecher (n 329) 9.

UNITED ARAB EMIRATES (UAE).

The UAE has consolidated as a world lead hub for innovation and new technologies, due to several factors including tax benefits, investment attraction, lead infrastructure, and a culture of innovation and entrepreneurship. The blockchain industry is not an exemption, with the UAE leading blockchains applications such as one of the first jurisdictions to allow tokenization of physical assets, and regulatory frameworks like the first DLT foundation[356].

At a regulatory level, the UAE has a complex regulatory framework and environment, regarded as "layered system", integrated by multiple courts, regulators, and laws at a federal and local level, but also integrating "free financial zones" with their own courts and regulators[357].

At a federal level, also known as "on-shore" or "mainland", the Central Bank of the UAE (CBUAE) and the Securities and Commodities Authority (SCA) regulate payment tokens and investment-related virtual assets, respectively[358]. Moreover, in the Emirate of Dubai, (excluding Dubai International Financial Centre DIFC), the Virtual Assets Regulatory Authority (VARA), operates a bespoke licensing regime specifically tailored to the virtual assets industry[359].

Two financial free zones are particularly important for the development of Web 3.0 initiatives: the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM), the former is known for a cluster in digital asset regime, and the latter in the DLT frameworks including DAOs.

a) **Dubai International Financia Centre (DIFC).** It has launched multiple regulations for Virtual Assets, including a regulatory framework for Investment Tokens in October 2023, a Crypto Token regulation in November 2022 and a Digital Assets Law in March 2024. The latter, is considered "ground-breaking" as it has developed a comprehensive regulatory framework for digital assets, setting out its legal characteristics as property law, and other matters such as control and transfer[360].

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356 Research Office, Legislative Council Secretariat (Hong Kong), Legal Framework for Digital Development and Transformation in Selected Industries (Information Note IN13/2024, 28 June 2024) <https://www.legco.gov.hk/research-publications/english/in13-2024.pdf\> accessed 30 January 2026, 15.

357 Irina Heaver, Alla Melnichenko and Zainab Kamran, Blockchain 2025: UAE – Law & Practice and Trends & Developments (Chambers Global Practice Guides, Chambers and Partners 2025) <https://practiceguides.chambers.com/practice-guides/blockchain-2025/uae\> accessed 30 January 2026, 5.

358 Ibid.

359 Ibid.

360 Research Office, Legislative Council Secretariat (Hong Kong), Legal Framework for Digital Development and Transformation in Selected Industries (Information Note IN13/2024, 28 June 2024) <https://www.legco.gov.hk/research-publications/english/in13-2024.pdf\> accessed 30 January 2026, 15.

b) **Abu Dhabi Global Market (ADGM).** Focused on DLT technologies, in November 2023, issued the Distributed Ledger Technology Foundations Regulations 2023, marking the world's first legal framework for DLT foundations59, including DAOs[361].

More recently, another free zone[362], has been launched by Ras Al Khaimah Digital Assets Oasis (RAK DAO) regarded as "innovation city" aimed at building modern futuristic industries, driving innovation and technology[363]. RAK DAO issued in 2024, the DAO Association Regime (DARe) a comprehensive regulatory framework offering DAOs the possibility of giving them legal recognition, assets ownership and other features under the legal wrapper of the non-profit association[364].

Although such layered regulatory framework is aimed at providing flexibility to the Web 3.0, DLT, crypto and blockchain industries, as each entity may choose the regulatory framework that best suits their needs[365], further legal counsel is recommended to navigate it, and clarify any kind of regulatory hurdle. For instance, each authority may have its own approach to basic concepts and definitions such as tokens, digital assets, and ownership[366]. Moreover, each regulatory body may set specific requirements and licenses depending on the nature of the digital asset, activity and business model[367].

In addition, the UAE's regulatory approach is closely aligned with international standards, including AML regulations, and as such it should enjoy a good reputation when conducting operations abroad[368].

The UAE also adopts an approach of substance over form, categorizing digital assets primarily based on its function and the regulatory body exercising jurisdiction[369]. It is to be mentioned that the regulatory approach may change from Federal regulation (VARA) or Free Financial Zones Regulation[370].

In addition to cutting edge regulations and tax benefits, the UAE has one of the most beneficial business environments globally, with geopolitical neutrality, stable banking

[361] Ibid 16.
[362] Yet it does not constitute a free financial zone, with own courts, and regulators. See Ibid 15.
[363] Innovation City, Innovation City <https://innovationcity.com/\> accessed 30 January 2026. See also Aurum Law Firm, 'UAE's RAK DAO Introduces DARe' (Aurum Law Newsroom) <https://aurum.law/newsroom/UAEs-RAK-DAO-Introduces-DARe\> accessed 30 January 2026.
[364] Aurum Law Firm, 'UAE's RAK DAO Introduces DARe' (Aurum Law Newsroom) https://aurum.law/newsroom/UAEs-RAK-DAO-Introduces-DARe accessed 30 January 2026.
[365] Irina Heaver, Alla Melnichenko and Zainab Kamran, 'UAE: Law & Practice and Trends & Developments' in *Chambers Global Practice Guides, Blockchain 2025* (Chambers and Partners 2025) https://practiceguides.chambers.com/practice-guides/blockchain-2025/uae accessed 27 February 2026. 5
[366] Heaver, Melnichenko and Kamran (n 364) 6 – 12.
[367] Ibid 12.
[368] Ibid 18.
[369] Ibid 7.
[370] Ibid 7-10.

system, world-class infrastructure, a very flexible and easy business set-up, investor-friendly migration policies and venture capital ecosystem[371].

Taxation.

The UAE remains one of the most tax-friendly jurisdictions for digital assets business. Personal income and capital gains are not taxed. Corporate income is taxed at 9% if profits exceed AED 375,000. In 2024, the Tax Authority clarified that all cryptocurrency transactions are exempted from VAT, retroactively to January 1st, 2018[372].

LEGAL WRAPPERS.

Dare Association.

As mentioned, the DAO Association Regime (DARe) provides a comprehensive regulatory framework for DAOs, ensuring them legal recognition, and allowing them to conduct operations under the "association" legal wrapper form.

Features:

Minimum Capital Requirement: Guarantee.

It requires a "guarantee" which is an amount of assets provided by the founders, to which the liability of the corporation will be limited. This substitutes the minimum capital requirement. In other words, it does need minimum capital. Yet, there's not a fixed value for these purposes and it can be settled by the founding members, with the register having the authority to require a minimum amount on a case basis. This largely compromises the legal certainty of founders about how much capital they will require to grant the license.

Tech-Features.

Permissionless, open-source DLT requirements, DAOs are required to use it ensuring transparency[373].

Object.

Non-Profit Purpose.

The purpose must be non-profit. It does not allow the distribution of profits to individuals or members. The contributions to the company must be re-invested in the settled purpose (Similar to the Wyoming DUNA)[374].

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[371] The applicable regime depends on the jurisdiction of incorporation and opera tion, with the UAE employing a multi-jurisdic tional approach that includes federal regulators, an emirate-level regulator in Dubai, and the Financial Free Zones, each with its own legal and regulatory system. . See Ibid 6, 12.

[372] NeosLegal, 'UAE Dubai VASP Licensing' (NeosLegal) <https://neoslegal.co/uae-dubai-vasp-licensing/ > accessed 28 January 2026.

[373] Legal Nodes, 'RAK DAO DARe Regulation Overview' (Legal Nodes) https://www.legalnodes.com/article/rak-dao-dare-regulation-overview accessed 26 February 2026.

[374] Aurum Law Firm (n 363).

It may conduct any business activity provided that the activity is[375]:

a. *consistent with the trade license granted to the DAO Association by the Authority;*

b. *not regulated by a regulator of financial services activities established in the UAE; and*

c. *not unlawful or otherwise contrary to the public policy or morals of the UAE.*

Governance and organization.

a) Distinction between members and token holders.

With members having an active role in the governance and management of the DAO and with specific rights and obligations. On the other hand, token holders hold rights derived from the type of tokens that they have, while they could vote in proposals or access DAOs resources, their access to operational responsibilities is more restricted.

b) Council.

Governing body, integrated by at least two members, responsible for assets management, compliance and other off-chain duties, such as opening bank accounts.

Some of the specific requirements for DAOS Association under DARe include:

- A minimum of two founding members.
- A local agent registered in UAE and who must be a UAE agent.
- Public information: about council members, founding members and officers is public and available through the RAK DAO register.
- Disclosure of voting power rights. DARe requires that members holding more than 25% of a DAO's voting power to disclose it to the register, aimed at preventing centralization.
- Compliance. Transparency, AML and VASP (financial) regulation: DAOs associations must comply with Federal Anti-Money Laundering laws, data protection and beneficial ownership. The UAE is known for strict AML control, which may heavily compromise the pseudo or anonymity of DAOs' members[376]. Furthermore, DAOs issuing tokens must hold a Virtual Asset Service Provider (VASP) license and meet specific requirements such as a legal review of token's regulatory status and a cybersecurity audit.

The identified perks of the DARe are very similar to the Swiss association; separate legal personality, limited liability, flexible governance with the possibility of including several sub-DAOs with specific responsibilities and duties (similar to the committees of the Swiss

[375] Innovation City, 'DAO Association Regulations' 11. (Innovation City Policy) https://innovationcity.com/policy/dao-association-regulations.html accessed 12 February 2026,

[376] Tareq Na'el Al-Tawil, 'Anti-money laundering regulation of cryptocurrency: UAE and global approaches' (2023) 26(6) *Journal of Money Laundering Control* 1150 https://doi.org/10.1108/JMLC-07-2022-0109 accessed 26 February 2026.

Association), and issuance of multiple types of tokens including applications, investment, and payments. Furthermore, DARe prevails in good corporate practices such as requiring council members to disclose potential conflict of interest, and prevent any personal gains, restricting any kind of financial assistance to council members.

Limitations

The identified limitations include the restrictions of pursuing profit activities, and strict AML controls together with a comprehensive legal framework for cryptocurrencies and virtual assets which would hardly compromise the pseudo or anonymity of its members. For these reasons the RAK DAO might be better suitable for protocol DAOs and/or web3 native structures[377].

DLT FOUNDATION.

In November 2023, the Abu Dhabi Global Market (ADHM), part of the Abu Dhabi Free Financial Zone, introduced the Distributed Ledger Technology (DLT) Foundations Regulations 2023, providing a comprehensive legal framework for blockchain activities and business, using DLT technologies, including DAOS[378].

DLT foundations - a legal entity that can hold and manage digital assets for a specified purpose such as to operate and issue tokens. The assets belonging to a DLT foundation remain distinct from those held by its founder, council members, guardian, or beneficiaries and are not subject to foreign laws that could impact their ownership or transfer[379]. Some authors identified this as the preferred legal wrapper for DAOs in the UAE[380].

The ADGM DLT Foundations regime is expressly designed for native blockchain and decentralized activities, offering a legal form suitable for DAOs, blockchain foundations, Web3 entities, and conventional foundations seeking to integrate distributed ledger technology into their governance and operations. The regime accommodates both natural persons and legal entities as founders, provided they satisfy the eligibility and proper requirements established by the ADGM Registration Authority[381].

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[377] NeosLegal, 'UAE Dubai VASP Licensing'.

[378] ACX Compliance and M/HQ, Navigating ADGM's DLT Foundations: A Comprehensive Guide (March 2024) <https://www.acxcompliance.com/\> accessed 30 January 2026, 2. See also Legislative Council Secretariat (Hong Kong), Legal Framework for Digital Development and Transformation in Selected Industries (Information Note IN13/2024, 28 June 2024) 16.

[379] ACX Compliance and M/HQ, Navigating ADGM's DLT Foundations, 2.

[380] Pontinova Law Group, Global DAO Legal Report 2025 (Pontinova AG 2025) <https://www.pontinova.law/\> accessed 30 January 2026, 53.

[381] ACX Compliance and M/HQ, Navigating ADGM's DLT Foundations, 2.

Features:

Minimum Capital. The Charter must specify that the foundation will hold initial assets with a minimum value of USD 50,000, to be paid within six months of registration, subject to limited statutory exemptions[382].

Comprehensive compliance.

DLT Foundations are subject to robust ongoing and annual compliance obligations, reflecting ADGM's financial-free-zone standards. These include:

- Maintenance of a registered office within ADGM;
- Appointment of an approved Company Service Provider, responsible for statutory filings, record-keeping, and regulatory liaison;
- Appointment of an ADGM-registered auditor;
- Annual preparation, approval, and publication of accounts and auditor's reports;
- Periodic operational and security audits of the DLT framework;
- Compliance with Economic Substance Regulations, FATCA/CRS reporting, and data protection obligations.

These requirements underscore that DLT Foundations are not merely symbolic wrappers but fully regulated legal persons, aligning decentralized governance with institutional accountability.

The following chart illustrates part of the comprehensive regulatory framework and environment of ADGM DLT Foundations in the UAE.

[382] Ibid.

	Obligation	Due Date[2]
1	Council to approve licence and data protection renewal and submission of Confirmation Statement to the ADGM RA	*License renewal date - 1 month*
2	Licence renewal	*License renewal date*
3	Confirmation Statement filing with the ADGM RA	*License renewal date + 1 month*
4	Data protection renewal filing with the ADGM RA	*License renewal date*
5	Data protection assessment of processing activities and compliance with ADGM Data Protection Regulations 2021	*License renewal date - 1 month*
6	Operational audit including a security audit of the framework for using DLT adopted and maintained by the foundation	*At least once per calendar year*
7	Submission of operational audit reports to the ADGM RA	*14 days from completion of above*
8	Preparation of Annual Accounts and Auditor's Reports	*30/09*
9	Publishing of Annual Accounts	*30/09*
10	Council to approve Annual Accounts and submission to the ADGM RA	*30/09*
11	Economic Substance Regulations Assessment of whether the DLT foundation has undertaken any "relevant activities" Notification[3] to the Ministry of Finance Reporting[4] to the Ministry of Finance	 *30/05* *30/06* *31/12*
12	FATCA/CRS assessment and filing with the ADGM RA	*30/04*

ACX Compliance and M/HQ, *Navigating ADGM's DLT Foundations*

Registration.

Registration of a DLT Foundation with ADGM follows a particular substantive process rather than a purely formal incorporation model. Applicants must submit a comprehensive business plan, which constitutes a central evaluative element in the registration process. The plan must detail the proposed activities, governance model, target market, and the functional role of DLT within the foundation's operations[383].

In addition, the application must include[384]:

- A Foundation Charter, serving as the constitutional instrument.
- Information on founders and proposed governance bodies.
- A description of the organizational and management structure.
- A declaration of compliance with applicable regulations; and
- Evidence of payment of prescribed fees.

[383] ACX Compliance and M/HQ, Navigating ADGM's DLT Foundations. 3.
[384] Ibid.

Estimated Timelines.

The preparation and finalization of a DLT Foundation application typically requires five to seven weeks, depending on complexity and readiness of documentation. Once submitted, the regulatory review and approval phase by the ADGM Authority generally takes approximately four weeks. This results in a total approximated time of nine to eleven weeks, according to some lawyers' expertise positioning ADGM as comparatively efficient among regulated DAO-capable jurisdictions[385].

Privacy.

Upon successful registration, the foundation's particulars are entered into a public DLT Foundations Register, enhancing transparency while allowing selective non-disclosure of beneficiaries[386].

Organization and Governance Bodies

The organizational structure of an ADGM DLT Foundation shows an hybrid model between the general structure of foundations, with innovative government bodies trying to accommodate Web3 and DAOs unique and tech-features, further analyzed.

(a) Founder.

The founder is responsible for establishing the foundation and may subsequently assume additional roles, including council member or beneficiary, or retain reserved powers as specified in the Charter. His unique role is to incorporate the DLT foundation, and may enjoy additional powers, such as the veto powers[387].

(b) Foundation Council.

The foundation council constitutes the central governing body. It must comprise a minimum of two and a maximum of sixteen members, who may include founders, beneficiaries, token holders, or legal people. Council members are subject to fiduciary duties equivalent to those of company directors, including duties of care, loyalty, and compliance. The council is responsible for strategic decision-making, asset management, and ensuring adherence to the Charter and applicable law. Is the body executing the object of the foundation[388].

(c) Token Holders

Where the foundation issues tokens, token holders may be incorporated into the governance structure, particularly through voting rights embedded in the Charter or associated governance documents. This feature is central to the regime's DAO-compatibility, as it enables legally recognized programmable governance aligned with on-chain voting

[385] Ibid 4.
[386] Ibid.
[387] ACX Compliance and M/HQ, Navigating ADGM's DLT Foundations, 6.
[388] Ibid.

mechanisms[389]. A particular feature of the DLT Foundation, that is worth mentioning, is the distinction between token holders and beneficiaries, aimed at protecting the identity of DAOs' members, and the possibility of implementing categories of token holders. Such innovative features are further analyzed in the following section.

(d) Beneficiaries

Beneficiaries are optional. If appointed, they are entitled to distributions upon termination of the foundation and may be granted additional rights under the Charter. Beneficiaries are generally excluded from public disclosure unless they occupy another governance role, including voting[390].

Perks and limitations.

Beyond the general benefits and attributes that foundations across the globe offer to DAOs (such as legal personality, limited liability, etc) the Foundation DLT, has some innovative features to fit DAOs' unique features that signifies perks and limitations of such legal wrapper.

1. Distinction between beneficiaries and token holders.

Part 10, section 39 and 40 of the ADGM DLT Act, distinguishes between beneficiaries and token holders. In this regard, a beneficiary is: *"is a Person, whose identity is ascertainable by reference to a category, criteria, class or a relationship to another Person, whether or not living, at the time that the DLT Foundation is established or at the time, according to the terms of the Charter, satisfaction of criteria or members of a category, class are to be determined"*[391].

Moreover, the rights of the beneficiary include, at first, distribution rights of the foundation assets if it is terminated, and *"other rights granted to them by the Charter"*[392] that are no further specified.

On the other hand, token holder means: *"a holder of Tokens issued by a DLT Foundation…"*[393].

As can be seen, such provisions looked to establish an initial distinction between token holders and beneficiaries, aimed at addressing a fundamental feature of DAOs: token holders' pseudo or anonymity. The latter as beneficiaries will be excluded from being registered or identified. At first this could constitute an efficient and positive innovative feature of the DLT Act, however, It is to be mentioned however that if beneficiaries are

[389] Ibid.

[390] Ibid. See also Abu Dhabi Global Market, Distributed Ledger Technology Foundations Regulations 2023 (ADGM Registration Authority, adopted 2 October 2023, published 1 November 2023) <https://www.adgm.com/\> accessed 30 January 2026

[391] Abu Dhabi Global Market, Distributed Ledger Technology Foundations Regulations 2023 (ADGM Registration Authority, adopted 2 October 2023, published 1 November 2023) <https://www.adgm.com/\> accessed 30 January 2026. Part 10, s. 39(1).

[392] Ibid, part 10, s. 39 (2).

[393] Ibid, Schedule "Definitions".

granted voting rights they will be categorized as token holders and as part of the organizational and management structure of the foundation[394], as such token holders that looked to remain unidentified will have very limited rights, including no voting rights on the foundation issues.

The latter rises a fundamental question, unaddressed: if token holders vote "on-chain" will that excluded as beneficiaries? Moreover, beneficiaries are not regarded as "unidentified", "anonymous" or "pseudonymous", on the contrary they are referred as person whose identity is "ascertainable" which has a complete different legal implication than an unidentified person, as it was already discussed in the Cayman Island section.

2. Categories of token holders.

Another innovative feature of the DLT Foundation is the inclusion of the possibility to distinguish several categories of token holders, to be governed by the charter (bylaws)[395]. While this allows a great degree of flexibility to the DLT foundation decision-making process, similar to DAOs, it is highly limited by the fact that token holders with voting rights will be required to disclose their identity.

3. Veto powers and reserved activities.

Another significant limitation was found in the veto powers and reserved activities of the founders and council members, which include[396]:

> *The Charter may reserve for the Founder (until Founder Resignation only), the following powers:*
>
> *(a) the power to amend, revoke or vary the terms of the Charter; the power to change the objects of the DLT Foundation;*
>
> *(b) the power to dissolve the DLT Foundation;*
>
> *(c) the power to appoint and remove any body within the Organisational and Governance Structure or any members of a body within the Organisational and Governance Structure (other than the Voting of Tokenholders)*
>
> *(d) and the power to effect the continuation of an Overseas Person with the ADGM.*

This could represent a high risk for centralization of governance by the members occupying such positions undermining and limiting token holders decentralized governance over the foundation. In a similar way to the general limitations of foundation in Switzerland and Cayman Island, to offer authentic decentralized governance structures.

[394] Ibid, part 7, S 27(1). See also ACX Compliance and M/HQ, Navigating ADGM's DLT Foundations (n X) 6.
[395] Ibid, part 6, s. 24, part 7, s. 27 & part 10.
[396] Ibid Part 7, S. 27 (4) (b) (i-vii) & Part 7, S. 28 (1).

To summarize, the UAE represents the world's lead cluster for DLT technologies, DAOs, cryptocurrencies and DeFi, driven by significant tax benefits, entrepreneurial and innovative ecosystem and high investment flows. Yet the regulatory framework for DLT technologies, digital assets and DAOs, is highly complex regardless of its novelty, international recognition and efficiency. Legal wrappers options present hybrid schemes of common associations and foundations with innovative features to suit DAOs' unique characteristics, yet with significant limitations in terms of pseudo or anonymity and decentralized government.

Other Jurisdictions

The previously analyzed jurisdictions are between the most popular for DAOs legal wrappers, in particular United States, Switzerland, Cayman Island and United Arab Emirates. Yet there are further jurisdictions off-shore, and in Europe that had also being used for the purpose of DAOs legal wrappers and are further analyzed.

Guernsey.

The **Guernsey trust** emerged as a distinctive model, for DAOs legal wrappers due to its unique features compared to traditional trusts of other jurisdictions[397]. Some of these include:

Flexibility on settlor, purpose and beneficiaries.

Guernsey trust does not require a purpose to exist or demand a settlor as formal as the English trust. It is good enough that the trustee signs a written declaration[398]. It also does not require beneficiaries, while allows tax benefits[399]. On this regard, the Guernsey law, replace the power or control of beneficiaries to an enforcer; to oversee the trustees ensuring they act according to the trust deed, in case there are no beneficiaries[400]. Furthermore, the enforcer holds the substituted beneficiaries' right to information[401].

The purpose can include also, non-charitable ones, though in this case the enforcer will be mandatory[402].

Flexibility on Asset Management and Protection.

[397] Villanueva Collao (n 228) 27.

[398] The inexistence of the settlor allows a larger degree of flexibility, and the implementation of a decentralized governance, opposite to the traditional hierarchy structure of the Trust. See Ibid. See also for instance: dYdX Operations Trust – Trust Instrument, DYDX OPERATIONS, https://www.dydxopsdao.com/about.

[399] Villanueva Collao (n 228) 28.

[400] M Guthrie and C Moore, 'Guernsey: Who Owes What and to Whom: The Roles and Duties of Trustees, Protectors, and Enforcers Compared to Those of Councillors and Guardians in Respect of Guernsey Law Trusts and Foundations' (2015) 21 Trusts & Trustees 645, 647.

[401] Matthew Guthrie, 'Guernsey: Beneficiaries' Rights to Information: A Comparison between Trusts and Foundations in Guernsey' (2014) 20 Trusts & Trustees 573, 575.

[402] Trusts (Guernsey) Law 2007, s 12 https://www.guernseylegalresources.gg/laws/guernsey-bailiwick/t/trusts-and-foundations/trusts-guernsey-law-2007/ accessed 3 February 2026. See also Paolo Panico, 'Private Foundations and Trusts: Just the Same but Different?' (2016) 22 Trusts & Trustees 132, 136.

Trust assets are segregated, which means the trustee's personal creditors do not attach to the fund, in accordance with the basic premise of trust law. This is significant for DAOs because cryptocurrency stored in treasuries can be designated in a trust sub-DAO for various uses, allowing for community transparency and linking certain assets to reporting and tax duties[403].

Hybrid-governance: on-chain and off-chain.

Members of the DAO could vote on-chain for the purposes and assignments of funds, with trustees following such governance proposals[404].

Liability.

In contrast with traditional English trust, who posses' personal liability to trustees, the Gurnsey Trust Law, shifts the burden of proof from trustee to creditors[405]. Although this could provide further protection to trustees, it can also diminish operations with third parties as it creates a problem of clarity of the trustee's competencies and powers of third parties[406]. As such, further legal counsel is recommended in this matter.

Limitations.

Limitations include the general limitations of trust such as lack of separate or legal personality, which is the main reason to use foundations instead of trust, in particular in civil law tradition countries[407]. However, the discussed flexibility of the Guernsey trust regarding its structure (purpose, beneficiaries and settlers) may make it suitable to adapt to corporate entities treated as a legal person, under for example US law, which could efficiently address this limitation of the Guernsey trust[408].

Liechtenstein.

Following the flexible structure of the Trust in Guernsey, we got Liechtenstein foundation in Europe. An example of a classic foundation model following the tripartite scheme of the trust structure: foundation participants/founders, officers and beneficiaries[409].

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[403] Henry Hansmann and Reinier Kraakman, 'The Essential Role of Organizational Law' (2004) 110 Yale Law Journal 387, 394.

[404] Villanueva Collao (n 228) 28.

[405] Section 42 of the Trusts (Guernsey) Law 2007. Trustee's personal liability stops when the trustee discloses information about their role or when third parties interacting with the trustee are aware of the trustee's capacity. See also Villanueva Collao (n 228) 29.

[406] Villanueva Collao (n 228) 29.

[407] Ibid. See also Panico, 'Private Foundations and Trusts and Michele Graziadei, Ugo Mattei and Lionel Smith, 'Commercial Trusts in European Private Law: The Interest and Scope of the Enquiry' in Michele Graziadei, Ugo Mattei and Lionel Smith (eds), Commercial Trusts in European Private Law (CUP 2009) 3, 10.

[408] Villanueva Collao (n 228) 29. See also Panico, 'Private Foundations and Trusts, n. 125, and John H Langbein, 'The Contractarian Basis of the Law of Trusts' (1995) 105 Yale Law Journal 625.

[409] Villanueva Collao (n 228) 31.

The incorporation requires CHF/EUR 30,000 as minimum capital and it can be done by one or more Founders who can be either individuals or companies and do not need to be residents of Liechtenstein[410]. Registration will be required, if they carry out commercial activities as it is the case with the Swiss Association. In case that there are no founders in Liechtenstein, a representative will have to be named for administrative purposes such as receive declarations, communications and others[411].

Taxation includes the 12.5% of Corporate Income Tax, with higher exemptions possibilities if they pursue a non-commercial purpose and are of common public interest[412].

At the Liechtenstein only the founder decides on the assets including its allocation, purpose as well as the beneficiary's designation[413]. Furthermore, the rights of the beneficial can be denied as well as designating founders as beneficiaries[414]. As such founders concentrate a great amount of power limiting the decentralization in governance.

Nonetheless, Liechtenstein is known for offering a high degree of asset protection with a clear regulatory framework on tokens under the EEA micro-state that enacted the TVTG, a comprehensive blockchain and token law[415], in this regard the L-Foundation is more used for asset protection than Web3 purposes[416].

BRITISH VIRGIN ISLANDS.

Recommended for Investment DAOs the British Virgin Islands LLC is incorporated under the Business Companies Act of the British Virgin Islands[417]. It does not require a minimum capital, yet a government fee must be paid yearly[418].

The structure is integrated by a registered office, agent and a board of Directors, consisting of one or more persons or companies that do not need to be residents of the BVI. A register of directors must be kept yet it is not available for public inspection unless otherwise provided by the company[419].

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410 Ponti & Partners (n 237). See also DAOBox, 'Top DAO Legal Wrappers Jurisdictions: A Global Guide' (DAOBox Blog, undated) https://daobox.io/blog/top-dao-legal-wrappers-jurisdictions-global-guide accessed 6 February 2026.

411 Ponti & Partners (n 237).

412 Ibid.

413 Paolo Panico, 'Private purpose foundations: from a classic "beneficiary principle" to modern legislative creativity?' (2013) 19 *Trusts & Trustees* 542, 543 fn. 134.

414 Ibid fn. 125, fn. 133.

415 Liechtenstein, Gesetz über Token und VT-Dienstleister (Token- und VT-Dienstleister-Gesetz, TVTG) (LGBl 2019 Nr 301) https://www.gesetze.li/konso/2019301000 accessed 6 February 2026. See also Liechtenstein, Verordnung über Token und VT-Dienstleister (TVTG-Verordnung) (LGBl 2019 Nr 323) https://www.gesetze.li/konso/2019323000 accessed 6 February 2026.

416 DAOBox, 'Top DAO Legal Wrappers Jurisdictions: A Global Guide' (DAOBox Blog, undated) https://daobox.io/blog/top-dao-legal-wrappers-jurisdictions-global-guide accessed 6 February 2026.

417 British Virgin Islands Business Companies Act 2004 (BVI), Act No 16 of 2004, as revised, <https://bvi-laws.vlex.com/vid/business-companies-act-804597049> accessed 6 February 2026.

418 Ibid.

419 Ibid.

Records of the company's transaction must be kept for 5 years. No corporate tax, capital gains, wealth or any other tax apply, thus being a very tax beneficial jurisdiction.

PANAMA.

Panama ownerless foundation is recommended for Holding IP and/or treasury at a moderate cost[420]. The most attractive feature is flexible legal fees for incorporation, administration and taxation, compared to other jurisdictions[421]. Yet some regard it as less reputable than other off-shore jurisdictions, and there is no VASP regulation which severely diminishes the legal certainty.

HONG KONG

Hong Kong does not have DAO regulation per se; nevertheless, case law is not uncommon in Hong Kong Courts, as in the famous action[422] between Mantra DAO INC, RioDeFi Inc., and John, William, and four other defendants. A dispute over ownership of a DeFi DAO project: on one side, arguments that the chain was owned by the DAO; on the other, that ownership was with the companies that developed, raised investment, and built the project. The dispute began in 2022, when the companies entrusted some agents to manage the project's assets and investments, but they suddenly began acting in their own interests. In 2025, the dispute was resolved amicably[423], and all legal proceedings between the parties were discontinued.

What is important to note is that the Hong Kong court ordered the disclosure of financial spreadsheets and reports, recognizing that asset managers or administrators have fiduciary duties to token holders and must periodically report financial statements to the DAO.

Hong Kong as a Financial Centre is applying a system of market regulation through the Securities and Futures Commission of Hong Kong who is applying the "*same business, same risks, same rules*" principle, stating that they must comply with the same regulations and obtain a license to operate as any traditional finance company, through Virtual Asset Trading Platform (VATP) licensing regime, which took effect on June 1, 2023.[424] Stablecoin regulation has been in place since 2025, placing issuance under the Hong Kong Monetary Authority (HKMA) and shaping regulation within a regulated perimeter.

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[420] DAOBox, 'Top DAO Legal Wrappers Jurisdictions: A Global Guide'.
[421] Law Commission, (DAOs): A Scoping Paper (n 111) 130.
[422] *Mantra DAO Inc and another v Mullin and others* [2024] HKCFI 2099 (CFI, High Court of Hong Kong) https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=161933&currpage=T accessed 26 February 2026.
[423] RioDeFi, 'Announcement' (RioDeFi, n.d.) https://riodefi.com/#announcement accessed 26 February 2026.
[424] Ayanfe Fakunle, 'Hong Kong's Digital Rulebook: Building a Regulated Crypto Hub' (Disruption Banking, 7 January 2026) https://www.disruptionbanking.com/2026/01/07/hong-kongs-digital-rulebook-building-a-regulated-crypto-hub/ accessed 26 February 2026.

Decentralized finance in HK is on a Sandbox; the SFC is experimenting and shaping the regulatory environment through the "A-S-P-I-Re" Roadmap for a Resilient Virtual Asset Ecosystem,[425] with five key pillars: Access, Safeguards, Products, Infrastructure, and Relationships. The reality is that HK is a major investment hub, experimenting with tokenized funds, securities, and RWAs, and trying to understand DeFi products; nevertheless, regulators still need a lot to learn about decentralization, privacy, and other web3 values to fully regulate the industry.

In this regard Hong Kong takes an hybrid approach between DAOs de-regulation but strict financial regulatory complex, from which, a high degree of legal certainty can be expected but with very limiting provision to suit DAOs technologies.

[425] Securities and Futures Commission (Hong Kong), *ASPIRe Roadmap for Hong Kong's Virtual Asset Market* (SFC, 2024) https://www.sfc.hk/-/media/EN/files/ER/ASPIRe/ASPIRe-roadmap-for-Hong-Kongs-virtual-asset-market-Eng.pdf accessed 26 February 2026.

SECTION II
LEGAL ENFORCEMENT OF TREASURY PROPOSALS.

TREASURY PROPOSALS

Treasury proposals within the Polkadot ecosystem make up the largest share of outflow tokens to the community along with the Bounties.[426] These proposals are approved through tokenholder voting and follow a defined process under OpenGov, which can be basically summarized in the following milestones:[427]

- **Referenda Submission:** All the proposals are initiated by the public. The proposal will enter a Lead-in period after which it will follow a specific track which has a dedicated origin.

- **Submission Deposit:** The minimum amount to be used as a (refundable) deposit to submit a public referendum proposal.

- **Prepare Period:** The minimum time the referendum needs to wait before it can progress to the next phase after submission. Voting is enabled, but the votes do not count toward the outcome of the referendum yet.

- **Decision Deposit:** This deposit is required for a referendum to progress to the decision phase after the end of prepare period.

- **Decision Period:** Amount of time a decision may take to be approved to move to the confirming period. If the proposal is not approved by the end of the decision period, it gets rejected.

- **Confirmation Period:** The total time the referenda must meet both the min approval and support criteria during the decision period in order to pass and enter the enactment period.

- **Min Enactment Period:** Minimum time that an approved proposal must be in the dispatch queue after approval. The proposer has the option to set the enactment period to be of any value greater than the min enactment period.

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[426] Polkadot Wiki, 'Polkadot OpenGov Treasury' <https://wiki.polkadot.com/learn/learn-polkadot-opengov-treasury/> accessed 25 January 2026; Polkadot Wiki, 'Polkadot OpenGov' < https://wiki.polkadot.com/learn/learn-polkadot-opengov/> accessed 25 January 2026; According to the last Polkadot Treasury quaterly report, Polkadot has had expenses of 2.6m DOT (7.4m USD) divided into research, development. operations, outreach, business development, talent & education, and economy. See Polkadot Forum, '2025 Q4 Polkadot Treasury Report' <https://forum.polkadot.network/t/2025-q4-polkadot-treasury-report/16847> accessed 25 January 2026.

[427] Polkadot Wiki, 'Polkadot OpenGov Origins' <https://wiki.polkadot.com/learn/learn-polkadot-opengov-origins/> accessed 25 January 2026.

The difficulty of the legal characterization of treasury proposals and dispute resolution lies essentially in the inherent challenges of fitting them within traditional legal concepts. Nonetheless, treasury proposals incorporate functional elements that resemble certain legal mechanisms, such as contractual arrangements. These are smart legal contracts with a hybrid or second degree of automation in which some contractual obligations are defined in natural language, and others are defined in the code of the Polkadot protocol.[428]

In practice, this hybrid or second-degree automation is reflected in the way Polkadot treasury proposals operate. While certain contractual obligations are articulated in natural language, others are embedded in and enforced by the code of the Polkadot protocol itself. The off-chain component of a treasury proposal typically sets out the purpose of the funding, the scope of the proposed activities, and the expected deliverables, thereby defining the substantive content of the agreement. By contrast, the on-chain component governs procedural and economic effects, most notably the approval of the proposal through on-chain governance mechanisms and the automatic disbursement of funds from the Treasury upon approval.

As a result, not all obligations arising from a treasury proposal are self-executing. The protocol automates specific consequences, such as payment, but the actual performance of the underlying project remains dependent on human conduct and external conditions. The code thus functions as a mechanism for partial execution rather than as a complete substitute for the contractual arrangement expressed in natural language. In this sense, Polkadot

[428] Law Commission and Lawtech Delivery Panel, Smart Legal Contracts: Advice to Government, para. 2.51: ("The form a smart legal contract takes will depend on (amongst other things) the Smart contract platform, the parties' requirements, and the relevant use case. Although smart legal contracts can take a variety of forms with varying degrees of automation, it is helpful (for the purpose of the legal analysis) to consider three broadly-defined forms. (1) A natural language contract in which some or all of the contractual obligations are performed automatically by the code of a computer program. The code itself does not define any contractual obligations, but is merely a tool employed by one or both of the parties to perform those obligations. This type of smart legal contract can also be referred to as an "external" contract, as the code falls outside the scope of the parties' legally binding agreement. (2) A hybrid contract in which some contractual obligations are defined in natural language, and others are defined in the code of a computer program.85 Some or all of the contractual obligations are performed automatically by the code. At one end of the spectrum, the terms of a hybrid contract could be primarily written in code with a few natural language terms setting out, for example, the governing law and jurisdiction. At the other end of the spectrum, the terms of a hybrid contract could be primarily written in natural language, and include just one or two terms written in code. In addition, the same contractual term(s) can be written in both natural language and in code. The natural language terms can be incorporated in an accompanying natural language agreement, or in natural language comments included in the code. In his response to the call for evidence, Nicholas Bohm said that since source code can contain non-executable comments "consisting of human readable text", such comments "could of course be used to express contractual language". However, he said that such comments are more frequently "used to explain the workings of the 'operational' part of the code". In our view, parties can choose to include contractual terms by way of natural language comments in the code, although it may be preferable to incorporate such terms in a separate, natural language agreement. Whether or not such comments do constitute contractual terms will be a matter of contractual interpretation and construction.86 To avoid any uncertainty or ambiguity, parties would be well advised to make clear the status of any comments in code, and whether or not such comments form part of the parties' contract. (3) A contract in which all of the contractual terms are defined in, and performed automatically by, the code of a computer program. No natural language version of the agreement exists.").

treasury proposals exemplify smart legal contracts with a hybrid structure, situated between purely algorithmic transactions and traditional, fully off-chain contractual relationships.

Therefore, the question remains: can these be characterized as valid and legally enforceable contracts under traditional principles of contract law?

CONTRACT FORMATION

According to the ELI Principles on Blockchain Technology, Smart Contracts and Consumer Protection (the "ELI Principles") elaborated by the European Law Institute,[429] rules concerning the validity of contracts under the applicable law (off-chain) apply to the conclusion (formation) of contracts on a blockchain (on-chain).[430]

Under conventional contract law, a contract is substantively formed with the concurrence of the existence of an offer and an acceptance (*i.e.* agreement),[431] as reflected by some international instruments of uniform law, most notably the Principles of International Commercial Contracts ("PICC") elaborated by the International Institute for the Unification of Private Law ("UNIDROIT)".[432]

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[429] The European Law Institute (ELI) is an independent non-profit organisation established to initiate, conduct and facilitate research, make recommendations and provide practical guidance in the field of European legal development. For more information about the ELI, see European Law Institute, About the European Law Institute <https://www.europeanlawinstitute.eu/about-eli/> accessed 15 January 2026.

[430] Principle 7(a) ELI Principles: ("Rules concerning the formal and substantive validity of contracts under the applicable law apply to the conclusion of contracts on a BLOCKCHAIN"). According to the Explanatory Note, the ELI Principles derive from the need for functional equivalence and technological neutrality. European Law Institute, ELI Principles on Blockchain Technology, Smart Contracts and Consumer Protection (European Law Institute 2022) 33 <https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Principles_on_Blockchain_Technology__Smart_Contracts_and_Consumer_Protection.pdf> accessed 26 January 2026: ("Functional equivalence and technological neutrality: the Principles are based on the need for functional equivalence and technological neutrality. These aspects, although closely related, are not the same. Functional equivalence means that solutions which are legally binding under already existing (off-chain) law should also be legally binding when new technology is being used. […] A solution is technology neutral if it applies to and regulates relationships irrespective of the technology used. Blockchain technology as we know it today may (and perhaps will) develop further and a solution would then be technologically neutral if these new developments are also covered by existing law. Such law may then achieve functional equivalence, but as a result of technology neutral law."); The concepts of functional equivalence and technological neutrality are not new and emerged from e-commerce with instruments such as the UNCITRAL Model Law on Electronic Commerce (the MLEC") and the United Nations Convention on the Use of Electronic Communications in International Contracts (the "ECC").

[431] Art. 2.1.1 PICC: ("A contract may be concluded either by the acceptance of an offer or by conduct of the parties that is sufficient to show agreement."); UNIDROIT, Official Commentary on the UNIDROIT Principles of International Commercial Contracts (2016) (UNIDROIT 2016) 34: ("Basic to the Principles is the idea that the agreement of the parties is, in itself, sufficient to conclude a contract (see Article 3.1.2). The concepts of offer and acceptance have traditionally been used to determine whether, and if so when, the parties have reached agreement. As this Article and this Chapter make clear, the Principles retain these concepts as essential tools of analysis.").

[432] According to its preamble, the PICC set rules conceived for "international commercial contracts". Preamble PICC: ("These Principles set forth general rules for international commercial contracts."); The International Institute for the Unification of Private Law (UNIDROIT) is an independent intergovernmental Organisation whose purpose is to modernise, harmonise and co-ordinate commercial law and to formulate uniform law instruments, principles and rules. For more information about UNIDROIT, see UNIDROIT, About UNIDROIT <https://www.unidroit.org/about-unidroit/> accessed 26 January 2026.

Jasper Verstappen, in the context of blockchain systems, explains that:[433]

> "A contract, in the legal sense of the word, is an expression of the parties' shared intent to be bound. Only when both parties have expressed their respective intentions to be bound, can a contract be deemed to have been concluded. A contract therefore consists of two expressions: the expression of the offeror (the offer) to be bound and the expression of the offeree to be bound (the acceptance)."

From a superficial point of view, it may be perceived that a treasury proposal satisfies these two constituent elements. However, these elements usually require certain conditions to be legally effective for contract formation depending on the applicable law which may vary from jurisdiction to jurisdiction.

For instance, in common law jurisdictions a contract is essentially formed upon the existence of an offer, acceptance, consideration, definiteness of terms, and intention to create legal relations.[434]

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[433] Jasper Verstappen, Legal Agreements on Smart Contract Platforms in Europe (Eleven International Publishing 2019) 66; These essential elements are followed by the contract law of various jurisdictions from diferente systems. See United States, §2-204 UCC: ("A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract."); France, Art. 1113 French Civil Code: ("A contract is formed by the meeting of an offer and an acceptance by which the parties demonstrate their will to be bound."); Switzerland, Art. 1 Swiss Code of Obligations: ("The conclusion of a contract requires a mutual expression of intent by the parties."); United Arab Emirates, Art. 130 Civil Transactions Law: ("A contract is formed by the meeting of an offer with an acceptance, with due observance of any special conditions provided for in the law for its formation."); Netherlands, Art. 6:217(1) Dutch Civil Code: ("An agreement comes to existence by an offer and its acceptance.").

[434] United States, Restatement (Second) of Contracts, §§24 (offer), 33 (certainty), 50 (acceptance) & 17 (consideration); Lucy v. Zehmer, 196 Va. 493; 84 S.E.2d 516 (1954); United Kingdom, Law Commission, (DAOs): A Scoping Paper (n 111) para. 3.102: ("The normal rules of contract formation under the law of England and Wales apply: that is, there must be (a) agreement (offer and acceptance), (b) consideration, (c) certainty and completeness of terms, and (d) intention to create legal relations."); Blue v Ashley [2017] EWHC 1928 (Comm): ("The basic requirements of a contract are that: (i) the parties have reached an agreement, which (ii) is intended to be legally binding, (iii) is supported by consideration, and (iv) is sufficiently certain and complete to be enforceable."); See also, UK Law Commission, Smart Legal Contracts – Advice to Government (Law Com No 401, 2021) para. 3.2: ("Under the law of England and Wales, there are several requirements for the formation of a legally binding contract. These are: (1) agreement; (2) consideration; (3) certainty and completeness; (4) intention to create legal relations; and (5) formality requirements."); In Hong Kong the elements of contractual formation derive from the common law, as preserved by Article 8 of the Basic Law, and are articulated through judicial decisions that closely follow English contract law: ("The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region."); Singapore, Chwee Kin Keong and Others v Digilandmall.com Pte Ltd [2004] SGHC 71 (offer and acceptance); Ma Hong Jin v SCP Holdings Pte Ltd [2020] SGCA 106 (consideration); Kok Kuan Hwa v Yap Wing Sang [2025] SGHC(A) 16 (certainty of terms); Avra Commodities Pte Ltd v China Coal Solution (Singapore) Pte Ltd [2019] SGHC 287 (intention to create a legal relation).

On the other hand, in civil law systems, the formation of a contract rests on the existence of an offer, acceptance, defined object, lawful content, and capacity,[435] with the notable exception of consideration.[436]

Taking these requirements and elements of contractual formation into account, this analysis adopts a comprehensive approach, focusing on the following substantive elements: i) offer (where certainty, intention to be bound, identity of the parties, capacity, and legality, is discussed); ii) acceptance; and iii) consideration.[437]

OFFER

An offer as defined by the PICC is "[a] *proposal* […] [that] *it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance*."[438] This definition is essentially found in other international instruments (such as the Draft Common Frame of Reference[439] and the Principles of European Contract Law[440]) and in the contract law of various jurisdictions.

For example, in the UK an offer is considered as an expression of willingness to be bound by specified terms when it is accepted by the person to whom it is made.[441] As can be seen from the definition, these terms must be certain. In this sense, an agreement is considered uncertain where its terms are so vague as to be unenforceable, and incomplete where the

[435] France, Arts. 1114 (offer), 1118 (acceptance), 1128 (validity), 1147 (capacity), 1162 (lawfulness) & 1163 (defined object) French Civil Code; Switzerland, Arts. 1-10 (offer and acceptance), 11 (validity), 20 (defined object and lawfulness) Swiss Code of Obligations; United Arab Emirates, Art. 129 (agreement, defined object and licit cause) Civil Transactions Law; Netherlands, Arts. 6:217 (offer and acceptance), 6:227 (determinable obligation), 3:40 (legality), and 3:32 (capacity).

[436] Larry A DiMatteo, Michel Cannarsa and Cristina Poncibò (eds), The Cambridge Handbook of Smart Contracts, Blockchain Technology and Digital Platforms (Cambridge University Press 2019) 66: "([N]umerous legal systems with different elements for a formatted contract exist (e.g. the respectively importance/unimportance of 'consideration' in (English) Common Law and (German) Civil Law.").

[437] Reference will be made initially to the PICC and other international instruments with complementary reference to contract law of various jurisdictions. This analysis does not address formal requirements for contract formation.

[438] Art. 2.1.2 PICC; UNIDROIT, Official Commentary on the UNIDROIT Principles of International Commercial Contracts (2016) (UNIDROIT 2016), commentary on art 2.1.2: ("In defining an offer as distinguished from other communications which a party may make in the course of negotiations initiated with a view to concluding a contract, this Article lays down two requirements: the proposal must (i) be sufficiently definite to permit the conclusion of the contract by mere acceptance and (ii) indicate the intention of the offeror to be bound in case of acceptance.").

[439] § II-4:201, Draft Common Frame of Reference: ("(1) A proposal amounts to an offer if: (a) it is intended to result in a contract if the other party accepts it; and (b) it contains sufficiently definite terms to form a contract. (2) An offer may be made to one or more specific persons or to the public. (3) A proposal to supply goods from stock, or a service, at a stated price made by a business in a public advertisement or a catalogue, or by a display of goods, is treated, unless the circumstances indicate otherwise, as an offer to supply at that price until the stock of goods, or the business's capacity to supply the service, is exhausted.").

[440] Article 2:201, Principles of European Contract Law: ("A proposal amounts to an offer if: (a) it is intended to result in a contract if the other party accepts it, and (b) it contains sufficiently definite terms to form a contract. (2) An offer may be made to one or more specific persons or to the public. (3) A proposal to supply goods or services at stated prices made by a professional supplier in a public advertisement or a catalogue, or by a display of goods, is presumed to be an offer to sell or supply at that price until the stock of goods, or the supplier's capacity to supply the service, is exhausted.").

[441] H Beale (ed), Chitty on Contracts (34th ed 2021) para 4-003; See also Air Transworld Ltd v Bombardier Inc [2012] EWHC 243 (Comm), [2012] 1 Lloyd's Rep 349 at [75] by Cooke J.

parties have failed to reach agreement on essential matters,[442] but not in an absolute sense.[443] An agreement will only be held void for uncertainty where it is legally or practically impossible to give any sensible content.[444] A mere difficulty in identifying its precise terms, does not usually render an agreement unenforceable.[445] Also, to be legally binding, the parties must intend to create legal relations, which is presumed when the agreement is made in a commercial context rather than a social or familial environment.[446]

As to the identity of the contracting parties, there is no requirement under English law to know each other's real identities[447] but these must have capacity to enter into legally binding agreements, meaning that they must be able to make the decision for themselves to enter into the contract without any impairment or disturbance in the function of the mind or brain.[448] Nonetheless, where a person lacks capacity, the contract is voidable, provided the other party to the contract knew or ought to have known of that person's impairment.[449]

Additionally, the purpose or performance of a contract should not involve a conduct that is illegal under the illegality doctrine, or it may not be enforced by a court. In order to find the enforcement of a contract illegal under English law it must be assessed whether enforcement should be denied, having regard to the purpose of the breached rule and whether non-enforcement would advance that purpose, the impact on any other relevant public policies, and the proportionality of refusing enforcement, noting that the imposition of punishment lies with the criminal courts.[450]

Under US contract law, "[a]*n offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it*."[451] The terms of the offer must also be reasonably certain.[452] However, unlike

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[442] H Beale (ed), Chitty on Contracts (34th ed 2021) para 4-145.

[443] Hillas & Co Ltd v Arcos Ltd (1932) 1478 LT 503, 514, by Lord Wright; see also Wells v Devani [2019] UKSC 4, [2020] AC 129.

[444] Scammell v Dicker [2005] EWCA Civ 405, [2005] 3 All ER 838 at [30] by Rix LJ.

[445] Scammell & Nephew Ltd v HC and JG Ouston [1941] AC 251, 268, by Lord Wright

[446] Edwards v Skyways Ltd [1964] 1 WLR 349, 355, by Megaw J; Esso Petroleum Limited v Commissioners of Customs and Excise [1976] 1 WLR 1, 4, by Lord Simon; Balfour v Balfour [1919] 2 KB 571, 578, by Atkin LJ.

[447] H Beale (ed), Chitty on Contracts (34th ed 2021) para 5-037: ("[T]he identity of the person with whom one is contracting or proposing to contract is often immaterial"); UKJT Legal Statement at [156] (referring to sales at auctions to the highest bidder, unilateral contracts as in Thornton, and agents contracting on behalf of an undisclosed principal as examples of contracts in which the real identity of at least one of the parties is unknown); This circumstance may rise practical difficulties when seeking enforcement for establishing jurisdiction, posing an obstacle for the ability to bring a claim in court. However, in AA v Persons Unknown [2019] EWHC 3556 (Comm), [2020] 4 WLR 35 a High Court granted a proprietary injunction over bitcoin contained in a cryptoasset exchange account, even though the identity of the account holder was unknown.

[448] Mental Capacity Act 2005, ss 2 and 3; See also, Burrows, A Restatement of the English Law of Contract (2nd ed 2020), p. 223 and H Beale (ed), Chitty on Contracts (34th ed 2021) para 11-106.

[449] Imperial Loan Co Ltd [1892] 1 QB 599, 601; Dunhill v Burgin [2014] UKSC 18, [2014] 1 WLR 933, 943.

[450] Patel v Mirza [2016] UKSC 42, [2017] AC 467 at [120] by Lord Toulson.

[451] § 24 Restatement (Second) of Contracts: ("An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.").

[452] § 33 Restatement (Second) of Contracts: ("(1) Even though a manifestation of intention is intended to be understood as an offer, it cannot be accepted so as to form a contract unless the terms of the contract are reasonably certain. (2) The terms

English law, US contract law does not recognize intention to create legal relations as an autonomous requirement.[453]

Also, also to the identity of the contracting parties, US contract law does not require the parties to know each other's true identities, provided that mutual assent exists.[454] This is subject to the qualification that the offeror's intention must delimit the person or class of persons entitled to accept. Otherwise, no valid power of acceptance arises.[455] Capacity to contract is nevertheless required, and a contract entered into by a person lacking mental capacity is generally voidable if the other party knew or had reason to know of the incapacity.[456]

Moreover, a contract whose formation or performance involves illegal conduct may be unenforceable. Under US law, courts assess illegality by balancing the public policies underlying the prohibition against the interest in enforcing the agreement, considering whether denial of enforcement would further the relevant policy and whether such denial would be disproportionate in light of the circumstances.[457]

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of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy. (3) The fact that one or more terms of a proposed bargain are left open or uncertain may show that a manifestation of intention is not intended to be understood as an offer or as an acceptance.").

[453] See § 21 Restatement (Second) of Contracts: ("Neither real nor apparent intention that a promise be legally binding is essential to the formation of a contract, but a manifestation of intention that a promise shall not affect legal relations may prevent the formation of a contract.").

[454] § 19 Restatement (Second) of Contracts: ("(1) The manifestation of assent may be made wholly or partly by written or spoken words or by other acts or by failure to act.(2) The conduct of a party is not effective as a manifestation of his assent unless he intends to engage in the conduct and knows or has reason to know that the other party may infer from his conduct that he assents. (3) The conduct of a party may manifest assent even though he does not in fact assent. In such cases a resulting contract may be voidable because of fraud, duress, mistake, or other invalidating cause.").

[455] § 29 Restatement (Second) of Contracts: ("(1) The manifested intention of the offeror determines the person or persons in whom is created a power of acceptance. (1) An offer may create a power of acceptance in a specified person or in one or more of a specified group or class of persons, acting separately or together, or in anyone or everyone who makes a specified promise or renders a specified performance.").

[456] § 15 Restatement (Second) of Contracts: ("(1) A person incurs only voidable contractual duties by entering into a transaction if by reason of mental illness or defect he is unable to understand in a reasonable manner the nature and consequences of the transaction, or he is unable to act in a reasonable manner in relation to the transaction and the other party has reason to know of his condition. (2) Where the contract is made on fair terms and the other party is without knowledge of the mental illness or defect, the power of avoidance under Subsection (1) terminates to the extent that the contract has been so performed in whole or in part or the circumstances have so changed that avoidance would be unjust. In such a case a court may grant relief as justice requires.").

[457] § 178 Restatement (Second) of Contracts: (1) A promise or other term of an agreement is unenforceable on grounds of public policy if legislation provides that it is unenforceable or the interest in its enforcement is clearly outweighed in the circumstances by a public policy against the enforcement of such terms. (2) In weighing the interest in the enforcement of a term, account is taken of (a) the parties' justified expectations, (b) any forfeiture that would result if enforcement were denied, and (c) any special public interest in the enforcement of the particular term. (3) In weighing a public policy against enforcement of a term, account is taken of (a) the strength of that policy as manifested by legislation or judicial decisions, (b) the likelihood that a refusal to enforce the term will further that policy, (c) the seriousness of any misconduct involved and the extent to which it was deliberate, (d) and the directness of the connection between that misconduct and the term."); and § 179: ("A public policy against the enforcement of promises or other terms may be derived by the court from (a) legislation relevant to such a policy, or (b) the need to protect some aspect of the public welfare, as is the case for the judicial

Similarly, under French contract law, an offer, whether made to a particular person or to persons generally, is an expression that contains the essential elements of the envisaged contract and expresses the will of the offeror to be bound in case of acceptance.[458] Also, the essential elements of the contract must be sufficiently determined or determinable, in accordance with the requirement that the agreement bear on a defined object and a lawful content.[459] French law does not require the parties to know each other's real identities at the time of contract formation. However, the parties must be legally capable of contracting.[460]

In the same vein, Swiss contract law understands an offer as a manifestation of intent by which one party proposes the conclusion of a contract in a manner that allows the contract to come into existence upon acceptance. A contract is formed through the mutual expression of intent of the parties, which may be express or implied,[461] and the offer must be sufficiently definite as to its essential terms or render them determinable.[462] Swiss law does not require the contracting parties to know each other's true identities at the time of formation, rather, it is sufficient that the declarations of intent are attributed to persons capable of acting.[463]

ACCEPTANCE

An acceptance as defined by the PICC consists of a statement or other conduct by the offeree indicating assent to the offer. Such assent becomes effective when it reaches the offeror,

policies against, for example, (i) restraint of trade, (ii) impairment of family relations, (iii) interference with other protected interests.").

[458] Art. 1114 French Civil Code: ("An offer, whether made to a particular person or to persons generally, contains the essential elements of the envisaged contract, and expresses the will of the offeror to be bound in case of acceptance. Failing this, there is only an invitation to enter into negotiations.").

[459] Art. 1128 French Civil Code: ("The following are necessary for the validity of a contract: 1. the consent of the parties; 2. their capacity to contract; 3. content which is lawful and certain.")

[460] Art. 1145-1149 French Civil Code: ("Art. 1145. – Every natural person is able to conclude a contract, except in the case of lack of capacity provided for by legislation. The capacity of legal persons is limited to acts useful for realizing their purpose as defined by their statutes and acts which are incidental to them, in accordance with the rules applicable to each of those persons. Art. 1146. – The following lack the capacity to conclude a contract, to the extent to which legislation provides: 1. minors who have not been emancipated; 2. protected adults within the meaning of article 425. Art. 1147. – A lack of capacity to conclude a contract is a ground of relative nullity. Art. 1148. – Every person who lacks the capacity to contract may nonetheless effect independently day-to-day acts authorised by legislation or by usage, provided that they are concluded on normal terms. Art. 1149. – Day-to-day acts effected by a minor may be annulled on the ground of mere substantive inequality of bargain. However, nullity is not incurred where the substantive inequality results from an unforeseeable event. The mere fact that a minor has made a declaration of majority does not constitute an obstacle to annulment. A minor cannot escape from undertakings which he has entered into in the exercise of his business or profesión.").

[461] Art. 1 Swiss Code of Obligations: ("1 The conclusion of a contract requires a mutual expression of intent by the parties. 2 The expression of intent may be express or implied").

[462] Art. 2 Swiss Code of Obligations: ("1 Where the parties have agreed on all the essential terms, it is presumed that the contract will be binding notwithstanding any reservation on secondary terms. 2 In the event of failure to reach agreement on such secondary terms, the court must determine them with due regard to the nature of the transaction. 3 The foregoing is subject to the provisions governing the form of contracts.").

[463] Art. 20 Swiss Code of Obligations: ("1 A contract is void if its terms are impossible, unlawful or immoral. 2 However, where the defect pertains only to certain terms of a contract, those terms alone are void unless there is cause to assume that the contract would not have been concluded without them.").

unless the circumstances indicate otherwise.[464] Again, this approach is likewise reflected in other international instruments[465] and various jurisdictions.

In English law, acceptance is understood as a final and unqualified expression of assent to the terms of the offer, and its existence is determined objectively, based on the parties' words and conduct.[466] However, when where the parties have signed a document containing the agreed terms, there is unlikely to be any dispute about whether the parties have reached an agreement.[467]

Under US contract law, acceptance is assessed through the objective manifestation of assent by the offeree, whether by promise or by performance.[468] Acceptance becomes effective in accordance with the applicable rules governing communication or performance, depending on the nature of the offer.[469]

Similarly, French contract law conceives acceptance as the manifestation of the offeree's consent to the offer, resulting in the formation of the contract at the moment such consent is expressed. Acceptance must correspond to the offer and may be given expressly or tacitly, including by conduct or, where appropriate, by silence. Where the acceptance does not conform to the offer, it is treated as a new offer rather than giving rise to a binding

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[464] Art. 2.1.6 PICC: ("(1) A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance. (2) An acceptance of an offer becomes effective when the indication of assent reaches the offeror. (3) However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act without notice to the offeror, the acceptance is effective when the act is performed.").

[465] Draft Common Frame of Reference (DCFR), art. II–4:204: ("(1) Any form of statement or conduct by the offeree is an acceptance if it indicates assent to the offer. (2) Silence or inactivity does not in itself amount to acceptance."); Principles of European Contract Law (PECL), art. 2:204: ("(1) Any form of statement or conduct by the offeree is an acceptance if it indicates assent to the offer. (2) Silence or inactivity does not in itself amount to acceptance.").

[466] H Beale (ed), Chitty on Contracts (34th ed 2021) para 4-031; see also Air Transworld Ltd v Bombardier Inc [2012] EWHC 243 (Comm), [2012] 1 Lloyd's Rep 349 at [79] by Cooke J; RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH [2010] UKSC 14, [2010] 1 WLR 753 at [45] by Lord Clarke.

[467] New Zealand Shipping Co Ltd v AM Satterthwaite & Co Ltd [1975] AC 154, 167, by Lord Wilberforce; A Burrows, A Restatement of the English Law of Contract (2nd ed 2020) p. 53.

[468] § 50 Restatement (Second) of Contracts: ("(1) Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer. (2) Acceptance by performance requires that at least part of what the offer requests be performed or tendered and includes acceptance by a performance which operates as a return promise. (3) Acceptance by a promise requires that the offeree complete every act essential to the making of the promise."); See also § 53 Restatement (Second) of Contracts: ("(1) An offer can be accepted by the rendering of a performance only if the offer invites such an acceptance. (2) Except as stated in § 69, the rendering of a performance does not constitute an acceptance if within a reasonable time the offeree exercises reasonable diligence to notify the offeror of non-acceptance. (3) Where an offer of a promise invites acceptance by performance and does not invite a promissory acceptance, the rendering of the invited performance does not constitute an acceptance if before the offeror performs his promise the offeree manifests an intention not to accept.

[469] § 63 Restatement (Second) of Contracts: ("Unless the offer provides otherwise, an acceptance made in a manner and by a medium invited by an offer is operative and completes the manifestation of mutual assent as soon as put out of the offeree's possession, without regard to whether it ever reaches the offeror; but an acceptance under an option contract is not operative until received by the offeror.").

agreement.[470] The contract is concluded as soon as the acceptance reaches the offeror.[471] Consent may be expressed by words, conduct, or, where the law or the circumstances so allow, by silence.[472]

In the same vein, Swiss contract law regards acceptance as the declaration of intent by which the offeree assents to the offer, thereby completing the mutual expression of intent required for the formation of the contract.[473] Acceptance must be declared within the period fixed by the offeror or, failing such indication, within a reasonable time.[474] Acceptance becomes effective upon reaching the offeror, unless the circumstances or the nature of the transaction indicate otherwise, constituting an implied acceptance for those cases.[475]

CONSIDERATION

Unlike common law systems, international contract law instruments do not treat consideration as a requirement for contract formation. Under the PICC, a contract is concluded by the mere agreement of the parties, without the need for any additional element such as consideration.[476] The same approach is adopted by other harmonisation instruments, including the DCFR and the PECL, which are built upon the civil law notion of consensualism and recognise the binding force of a contract upon the mutual assent of the

[470] Art. 1118 French Civil Code: ("An acceptance is the manifestation of the will of the offeree to be bound on the terms of the offer. As long as the acceptance has not reached the offeror, it may be withdrawn freely provided that the withdrawal reaches the offeror before the acceptance. An acceptance which does not conform to the offer has no effect, apart from constituting a new offer."); See also, Art. 1113 French Civil Code: ("A contract is formed by the meeting of an offer and an acceptance by which the parties demonstrate their will to be bound. This may stem from a person's declaration or unequivocal conduct.").

[471] Art. 1121 French Civil Code: ("A contract is concluded as soon as the acceptance reaches the offeror. It is deemed to be concluded at the place where the acceptance has arrived.").

[472] Art. 1120 French Civil Code: ("Silence does not count as acceptance except where so provided by legislation, usage, business dealings or other particular circumstances.").

[473] Art. 1 Swiss Code of Obligations: ("1 The conclusion of a contract requires a mutual expression of intent by the parties. 2 The expression of intent may be express or implied.").

[474] Art. 5 Swiss Code of Obligations: ("1 Where an offer is made in the offeree's absence and no time limit for acceptance is set, it remains binding on the offeror until such time as he might expect a reply sent duly and promptly to reach him. 2 He may assume that his offer has been promptly received. 3 Where an acceptance sent duly and promptly is late in reaching the offeror and he does not wish to be bound by his offer, he must immediately inform the offeree.").

[475] Art. 3 Swiss Code of Obligations: ("A person who offers to enter into a contract with another person and sets a time limit for acceptance is bound by his offer until the time limit expires. 2 He is no longer bound if no acceptance has reached him on expiry of the time limit."); Art. 6 Swiss Code of Obligations: ("Where the particular nature of the transaction or the circumstances are such that express acceptance cannot reasonably be expected, the contract is deemed to have been concluded if the offer is not rejected within a reasonable time.

[476] The PICC follow a closer approach to civil law for contract formation. See UNIDROIT, Official Commentary on the UNIDROIT Principles of International Commercial Contracts (2016) (UNIDROIT 2016) 96, commentary on art 3.1.2: ("The purpose of this Article is to make it clear that the mere agreement of the parties is sufficient for the valid conclusion, modification or termination by agreement of a contract, without any of the further requirements which are to be found in some domestic laws. […] No need for consideration. In common law systems, "consideration" is traditionally seen as a prerequisite for the validity or enforceability of a contract, as well as for the modification or termination of a contract by the parties.").

parties alone.[477] In this sense, consideration is regarded not as a universal requirement of contract law, but as a system-specific feature of common law jurisdictions.

In English law, an agreement is not legally binding unless it is supported by consideration, understood as a promise or performance given by one party in exchange for a promise or performance by the other.[478] Consequently, gratuitous promises are generally unenforceable, except where they are made by deed.

Under US contract law, consideration likewise constitutes a general requirement for contract formation and is defined as a bargained-for exchange, whereby a performance or a return promise is sought by the promisor in exchange for the promise and given by the promisee in return.[479]

[477] For instance, the DCFR expressly provide that these are built under the principle of minimal substantive restrictions understood as "[t]he absence of any need for consideration or causa for the conclusion of an effective contract, the recognition that there can be binding unilateral undertakings and the recognition that contracts can confer rights on third parties all promote efficiency (and freedom!) by making it easier for parties to achieve the legal results they want in the way they want without the need to resort to legal devices or distortions." See Draft Common Frame of Reference (DCFR), p. 95.
[478] A Burrows, A Restatement of the English Law of Contract (2nd ed 2020) p. 8.
[479] § 17 Restatement (Second) of Contracts: ("(1) Except as stated in Subsection (2), the formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange and a consideration. (2) Whether or not there is a bargain a contract may be formed under special rules applicable to formal contracts or under the rules stated in §§ 82-94.").

SECTION III DISCUSSION.

Our analysis has identified common features and core values for Decentralized Autonomous Organizations, including the Polkadot DAO. Moreover, we detected three tendencies relevant for the analysis of legal wrappers for DAOs: types of legal entity, approach of jurisdictions to regulation of DAOs, and common practices for an effective DAO legal wrapper.

1. Type of Legal Wrapper.

Legal wrappers for Decentralized Autonomous Organization mostly take the form of three types of legal entities and a fourth legal form that does not constitute a separate legal entity:

1. LLC. – Corporation, with limited liability.
2. Associations.
3. Foundation.
4. Trusts.

Each form of legal wrap has its own pros, cons and features. On the one hand, corporations are mostly suitable to conduct business and investment activities, having the common limitation of protecting its members' identity due to its subjection to AML and securities regulations.

Associations, on the other hand, enjoy a higher degree of identity protection for members, decentralization, and enjoyment of rights by the DAO members, including legal liabilities protection. However, they are more limited in pursuing business or investment activities; thus, they are more suitable for protocol and any other non-profit DAOs. Yet some jurisdictions are more flexible with allowing profit activities to associations, as is the case of the U.S. Wyoming, DUNA and Switzerland. Also, although associations normally prohibit profit distributions to the members, reimbursement and salaries are allowed. This legal structure will have to be made on a case-by-case basis and subject to appropriate legal counsel.

Foundations are generally more limited in pursuing profit or business activities than associations and with an almost absolute prohibition from having distribution of profits. Accordingly, they are mostly suitable for DAOs or sub-DAOs pursuing any related profit activity at all.

One of the most attractive features of foundations, however, whether traditional (Liechtenstein/Panama), hybrid (Cayman Islands) or adapted to DLT technologies (Switzerland/UAE), is perhaps the possibility of being an “orphan” or memberless. The latter may constitute the highest degree of identity protection for members, among DAOs' legal wrappers. However, such advantage, comes with a very high cost of offering very limited or even null rights and liability protection to the foundations' beneficiaries, which

generally would be the members of the DAO. Foundations, moreover, have serious limitations to offering real decentralised governance structures, having traditional centralised governance structures such as director or founder members that concentrate very high decision powers on the foundation.

Lastly, non-traditional trusts, such as the Guernsey one, offer a very high degree of flexibility in decision-making processes and funding management that make them a suitable legal wrapper not for a DAO or sub-DAO but for specific purposes and affected funding, for instance, specific treasury proposals.

In this regard, we considered that the legal wrapper more suitable for blockchain DAOs like Polkadot DAO is the association, which allows a high degree of identity and liabilities protection to its members, extended rights and control over the organisation, a decentralised and flexible governance, and a certain degree of remuneration and pursuit of business or economic activities related to its object.

2. Regulatory approach.

The regulatory approach to DAOs' legal wrappers varied from one jurisdiction to another, yet we could identify three groups that include most of the regulatory approaches sharing similar features. These are:

1. Tech-responsive, defined by comprehensive legal frameworks, and extensive legal reforms with innovative provisions aimed at trying to suit DAOs' unique and novel features, and mostly passing specific DAOs regulations. The United States of America, the United Arab Emirates, and the Republic of the Marshall Islands are jurisdictions using this approach with new and comprehensive specific DAOs' regulatory frameworks[480]. Some of the criticism of this approach are the limitations of technology generated by extensive and comprehensive regulatory frameworks trying to define it and regulatory gaps derived from new and/or hybrid regulations combining classical corporate structures with DAO features, for instance, the Wyoming DAO LLC[481].

2. Tech-neutrality: Following the ELI PRINCIPLES of technological neutrality, this approach distances itself from comprehensive legal reforms with new legal terms for DAOs' unique and novelty features by trying to fit DAOs into existent legal frameworks and structures with minimal legal reform, following a principle of "substance over form" aimed at not limiting the new technology with comprehensive legal terms. Europe, led by Switzerland, follows this approach with non-specific DAO regulations but rather minimal legal amendments to suit DLT technologies and virtual assets into the existing securities, corporate and civil law

[480] Most of these novelty provisions have followed the COALA model law for DAOs. A regulatory guideline drafted by the Coalition of Automated Legal Applications (COALA), a lead legal and academic institution for DAOs' regulation. See COALA, *DAO Model Law* (COALA, March 2022) https://coala.global/wp-content/uploads/2022/03/DAO-Model-Law.pdf accessed 26 February 2026.

[481] Law Commission, (DAOs): A Scoping Paper (n 111) para. 4.111.

frameworks. Some DAOs have used this jurisdiction to wrap a sub-DAO, like the Ethereum Foundation. Moreover, some provisions of the UAE also try to apply this principle of substance over form, but they are combined with extensive regulatory reform, like the approach to members' rights under the DLT Association. Criticisms of this approach include higher costs for incorporation and maintenance as well as rigid and strict regulatory control[482].

3. Tech-irresponsive, which include jurisdictions that have not passed any DAOs' specific regulations nor have adopted substantive blockchain, digital asset, or DLT legal reforms, yet they have attracted DAOs into their existing legal structures, mainly due to regulatory flexibility and tax benefits. This approach is mostly found in offshore jurisdictions led by the Cayman Islands, Panama, and the British Virgin Islands, which have been regarded as attractive jurisdictions for DAOs' legal wrappers, while other jurisdictions following such an approach, like England and Wales, have seen a significant reduction of DAOs' registration and many moving away[483].

Therefore, it may be argued that this approach's appeal is not because of a strong legal system or regulatory framework, as the UK Law Commission claims[484], but rather because of regulatory flexibility and, most crucially, the tax havens common to offshore jurisdictions.

Nonetheless, as analysed in section II of this report, offshore structures have significant limitations in terms of suiting DAOs' unique features such as decentralization, precisely due to its "tech-irresponsiveness", and other considerable gaps, such as members' rights and liabilities, that have caused some DAOs to change their registration to other more comprehensive but predictable jurisdictions such as the United States[485].

In this regard there is not a perfect regulatory approach; each has advantages and limitations and will require making important trade-offs between comprehensive regulation and predictability or regulatory flexibility but significant legal gaps. In our view, however, we considered "tech-responsiveness" as a more proper, suitable and attractive jurisdictional approach to DAOs' legal wrappers.

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[482] Karin Väyrynen and Essi Puhakainen, *The Benefits and Challenges of Technology Neutral Regulation – A Scoping Review* (Research Paper, 2021) https://www.researchgate.net/publication/353143124_The_Benefits_and_Challenges_of_Technology_Neutral_Regulation_-A_Scoping_Review accessed 26 February 2026. See also Sven Riva, 'Decentralized Autonomous Organizations (DAOs) in the Swiss Legal Order' (Research Paper, 2020) https://www.academia.edu/62760446/Decentralized_Autonomous_Organizations_DAOs_as_Subjects_of_Law_the_Recognition_of_DAOs_in_the_Swiss_Legal_Order accessed 26 February 2026.

[483] Law Commission, (DAOs): A Scoping Paper (n 111) ch.5.

[484] Law Commission, (DAOs): A Scoping Paper (n 111).

[485] See for instance, dYdX Foundation, ENS (Ethereum Name Service) and Sushi DAO. dYdX Foundation, 'dYdX Foundation Announces Changes to Corporate Structure' (dYdX Blog, 2023) https://dydx.foundation/blog accessed 26 February 2026. ENS Foundation, 'Establishing the ENS Foundation' (ENS Governance Forum, 2021) https://discuss.ens.domains/ accessed 26 February 2026. See also Sushi DAO, 'Legal Structure Proposal' (Sushi Governance Forum, 2022) https://forum.sushi.com/ accessed 26 February 2026.

This approach offers the largest and most comprehensive regulatory framework for DAOs' common features and values such as decentralization, code governance, members' liabilities and rights. Moreover, many of these regulations followed the guidelines provided by lead institutions in blockchain and DAO regulation, such as the COALA model law. Furthermore, in shaping and drafting these novel regulatory frameworks, considerable policy work and agenda have been taken with blockchain industry leaders and experts[486].

In consequence, we could expect a more suitable policy and regulatory context and agenda in such jurisdictions than in other jurisdictions that have not yet made the duty of legislating DAOs, DLT or any other specific legal frameworks. In this regard, we do not share the criticism made to this approach in the sense of restricting the technology or posing significant regulatory gaps. In our view, it is better to have a clear law that will guide the interpretation and application by courts than leaving all this to a sound, progressive or liberal judicial system, as in the case of Switzerland or England, or even worse, not approving any kind of legislation but having flexible regulatory approaches, as in the case of offshore jurisdictions. We do acknowledge, though, that more monitoring of case law from this novel regulation will be needed to track its development as well as proper legal counsel to navigate such complex regulatory frameworks.

3. Common practices for effective DAOs Legal Wrappers.

Identified common practices **to effectively wrapped** a Decentralized Autonomous Organization include:

a) The consideration that the type of DAO to select the legal wrapper. Defined by its activities (protocol, educational, social, culture, investment, profit, non-profit) is important to define the type of legal wrapper.

b) Wrapping of a part or sub-DAO instead of the whole DAO. Generally, the wrapper will be of a section or sub-DAO of the DAO instead of all the organization, for instance: the treasury.

[486] See Section II, USA Chapter, of this paper.

JURISDICTIONS ANALYSIS.

In our view, the United States of America represents the most technologically responsive and innovative jurisdiction in respect to DAOs. Through state-level initiatives, most saliently, in Wyoming and Utah, the U.S. has introduced DAO-specific legal regimes that expressly recognise DAOs' unique features, including on-chain governance, algorithmic decision-making, and token-based participation. These regimes seek to translate decentralised governance into legally recognisable forms, thereby decreasing the risk of attempting against DAOs' common features and core values while ensuring liability protection for their members.

A remarkable feature of USA regulation, particularly the Wyoming DUNA, is the extensive regulatory framework to elaborate on members' liabilities, ensuring the protection of DAOs' members. A considerable limitation of the USA, common to all regulations for DAOs, is identity protection due to securities and AML regulations. Although there may be some space for exemptions, it will still be a legal issue that will require further legal clarification and case law development, particularly regarding the AML federal regulations.

Following this extensive and comprehensive regulatory approach to DLT technologies, virtual assets, and decentralised finance is the UAE, which integrates a layered regulatory framework, developing a magnificent cluster for DLT technologies. Two legal wrappers are available in this jurisdiction: the DARe Association and the DLT Foundation. Both have a sound and comprehensive legal framework regulating novel and tech features, like the United States. Yet the DARe Association has serious limitations to privacy and identity protection due to extensive AML regulations, with very few exceptions found. On the other hand, the DLT Foundation has considerable developments on governance addressing general foundations' limitations to DAOs, such as categories of token holders and distinction between token holders and beneficiaries, yet founders and council members retain extensive veto powers, diminishing the decentralization government of the DAOs. Moreover, token holders that want to keep privacy and anonymity will have very limited rights, including voting. In this regard, the DLT foundation is still subject to the general limitations of foundations with centralised governance, regardless of the novel tech features included in the regulation.

Switzerland, in the middle point between extensive regulation and de-regulation (tech neutrality), has unique and considerable advantages, like an international good-standing reputation, that make Swiss entities compatible and accepted mostly worldwide. Moreover, it has implemented some considerable good reforms to suit DLT technologies in its legal framework, like the DLT shares. The Swiss Association, in fact, has greater advantage in terms of flexibility, reputation and legal certainty, though it is also very restricted in privacy and member's identity protection when it conducts business activities, as all their members' records will have to go public. The Swiss Foundation also enjoys the same degree of international reputation, regardless of the high administrative and incorporation costs, yet is

unable to overcome the general limitations to classical foundations, which have null or very restricted rights of beneficiaries. Moreover, it has strict regulatory control from the overseeing authority. The Swiss Association (Verein), on the other hand, shows a suitable flexibility and governance, yet it is very restricted in terms of protection identity, as members will be required to disclose their information if there is any business activity conducted by the organization.

The Cayman Islands, on the other hand, presents a model with extreme flexibility and more inclination towards anonymity, privacy and tax benefits but with null provisions for DAOs' tech features and members' rights. This represents an advantage to some DAOs and a limitation to others. Nonetheless, the model has made the Cayman Islands a very popular jurisdiction for DAO legal wrappers, at least from an industry perspective. In our view, though, a more in-depth analysis of the Cayman Islands Foundation Companies Act reveals considerable weaknesses. For the most part, Cayman foundation companies are still very centralised in practice, with ultimate authority residing in directors and supervisors who may wield veto rights over on-chain decisions and with serious issues of accountability and transparency. Moreover, token holders' control over the foundation and enforceability of their rights thereunder are very limited. In addition, the regulation of members' liability is very vague or null, hidden through the concept of a "memberless" or "orphan" foundation.

In this regard, foundation companies of the Cayman Islands have not been able to overcome the typical limitations of foundations regarding the very limited rights of the beneficiaries.

As mentioned, the law of the Caymans is not DAO-specific, nor does it incorporate or acknowledge any normative value of lex cryptographia, on-chain governance, or automated execution. The latter significantly limits DAOs' common features and core values already discussed. It is to be noted that the Foundation Company is mostly used for philanthropy, estate planning and family wealth purposes, in which cases its flexibility, hybrid structure of corporation-trust and limited rights of beneficiaries are quite useful. Though when applied to DAOs, it pretty much seems like a patch than a suitable legal wrapper that will hardly accommodate DAOs' features and core values.

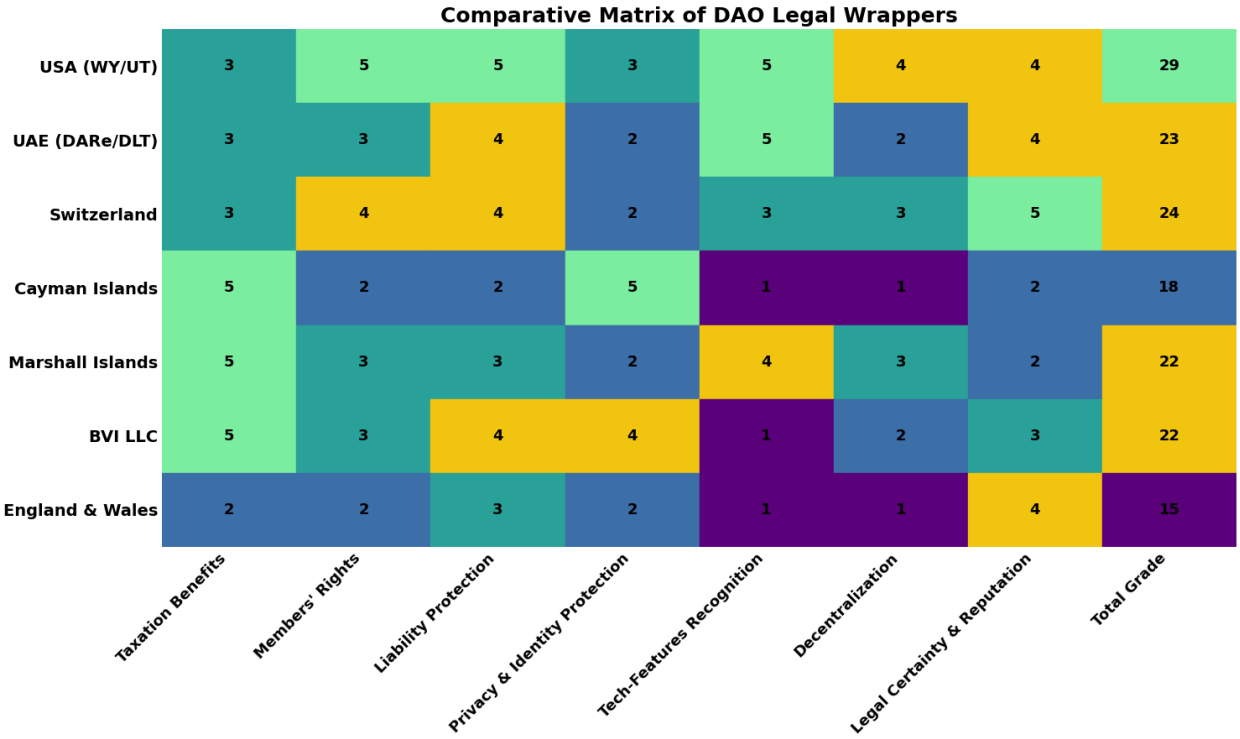
It goes without saying that the privacy and identity protection of the Cayman Islands will be hardly compromised by AML regulations, under the BOTA Act, that require the disclosure of all organisations' members exercising effective control over the organization: "beneficial owners", regardless of whether they are formally identified as members or beneficiaries.

Following flexible structures, the Marshall Islands presents an interesting development with the DAO LLC (non-profit), which follows the tech-responsive approach of the USA and the UAE but with a pretty easy setup, flexibility and tax benefits typical of offshore jurisdictions. Yet, as in the case of the DLT Foundation in the UAE, rights of members that want to remain undisclosed are very limited (owners of only 10% of the governance rights) with extensive disclosure obligations annually under the beneficial owners' report.

British Virgin Islands LLC is an attractive legal wrapper for profit activities such as investment, with zero taxes applicable and non-public records of its members, yet they have to be disclosed before the registering authority.

Another flexible legal wrapper, ideal for specific projects, such as specific treasury proposals, is the Guernsey trust and the Liechtenstein foundation that can exist without a specific or determined purpose or beneficiaries.

England and Wales represent the most conservative and uncompetitive approach. The Law Commission's decision to not recommend a DAO-specific legal form is premised on assumptions of technological neutrality and the adaptability of existing corporate and trust law. However, this position appears misaligned with empirical reality. Existing English legal structures present significant challenges and limitations for DAOs, given constraints arising from partnership liability doctrines, the inflexibility of trust law, strict financial regulation, null tech features and decentralised governance. Moreover, the recommended minor legal amendments do not follow a DAO or DLT technologies approach but rather general flexible provisions. The Commission itself noted that very few DAOs remain in the UK, with many relocating to jurisdictions offering clearer legal recognition and greater operational flexibility.



The figure above illustrates our discussion, in which it can be seen some of the trade-offs between perks and limitations that will have to be made for choosing a DAO legal wrapper, with the United States ranking higher in the sum of all categories, as well as in members' rights and liabilities protection and other important features of DAOs such as decentralization and recognition of tech features, with some limitations in members' privacy

and identity protection. Offshore entities championing tax benefits but with significant limitations in decentralization, tech features and members' rights and protection. Switzerland maintains the middle point between these two edges, offering an average ranking of all the categories, leading in legal reputation and certainty, but with serious limitations in privacy.

Polkadot legal wrapper: a case for WYOMING DUNA.

It can be seen from the above discussion that no perfect jurisdiction nor legal wrapper exists for a Decentralised Autonomous Organization. Trade-offs will have to be made between members' rights, liabilities, identity protection and privacy, objects, taxation, flexibility, suitability of DAOs technology, and other judicial issues, including legal certainty (predictability) and recognition. Moreover, the selection of an adequate legal wrapper will have to significantly consider the DAO activity and target a specific section of the DAO or a sub-DAO.

Following the above matrix which established the United States as the most convenient jurisdiction for DAOs' legal wrappers, in this section we present arguments in favour of the DUNA non-profit, which we consider the best possible option to wrap a protocol DAO, such as Polkadot.

Organisational structure.

The DUNA non-profit has two main government bodies: members and administrators. The members mean any person that "**may participate"** in the selection of the non-profit administrators and/or the development of its policies according to the governing principles of the non-profit[487]. Members have voting rights ("membership interest"), that can be defined or "ascertained" in the distributed ledger technology (on-chain) and will rule the fundamental decisions of the organisation, such as members' admission, naming of administrators, and modification of governance principles.

In this regard, the DUNA Act has a great degree of compatibility to suit token holders as members of the non-profit, requiring in principle that token holders have the possibility of voting in the governance of the DAO and/or the non-profit. Furthermore, the possibility to vote of the said members shall be defined in the organisation's "governing principles" that include off-chain and/or on-chain dispositions, like, for instance, written statutes or digital smart contracts. In other words, Polkadot's open-gov principles and algorithmic dispositions of open-gov should be good enough to define the members of the non-profit and its voting rights, without further documents needed such as bylaws or statutes.

[487] Governing principles include off-chain (statues) and on-chain dispositions (open-governance) See Wyoming Decentralized Unincorporated Nonprofit Association Act 2024 (Wyo) § 17-32-102. (a) (vii). See also § 17-32-102. (a) (viii), 17-32-102. (a) (ix).

The latter translates to much more legal certainty regarding who is a member of the non-profit and its rights. In contrast with other legal wrappers such as the orphan offshore foundations, in which, as we discussed, there's not much clarity or certainty on who has the member entitlement. The inclusion of governing principles as "on-chain" and "off-chain" dispositions also strengthens the legal certainty and rights of the Polkadot community token holders in comparison with other "tech-neutral" associations such as the Swiss Association, which do not expressly recognise algorithmic or smart-contract dispositions to defined members[488].

Administrators are basically representatives of the organisation responsible for the administrative and operational duties, such as receiving citations, presenting tax declarations, signing contracts and others. A remarkable feature of this figure in comparison with other associations is that, first, they are optional, in contrast with, for instance, the Swiss Association (Verein) board and the council of the UAE association. Another remarkable feature is that administrators' powers are given and decided by the non-profit members, severely limiting the veto powers and thus centralisation governance risks enjoyed, for instance, by the founding members or council of the DLT Foundation in the UAE or the directors in the Cayman Islands Foundation Company.

Regarding the liability of the administrators and/or legal representatives in all the analysed organisations, they enjoy limited liabilities, with exemptions in case of undue benefit, intentional harm, criminal violation or breach of duty of loyalty (in DUNA); fraud or serious misconduct (in Islas Marhsall DAO LLC); and fraud/misrepresentation, criminal acts, breach of fiduciary duties, failure to comply with regulatory requirements and unauthorised acts in DARe (UAE).

ADMINISTRATORS LIABILITIES AND POWERS

Regime	Responsibility of Administrators/Legal Representatives	Duties toward Members/Organization	Mandatory Designation	Veto powers	Faculties Depend on Members?
DUNA Nonprofit (Wyoming)	Limited liability, except in cases of undue benefit, intentional harm, criminal violation, or breach of duty of loyalty.	Must act according to governance principles (bylaws, smart contracts, agreements).	No	No	Yes
DARe Association (UAE)	Limited liability, except in cases of fraud/misrepresentation, criminal acts, breach of fiduciary duties, failure to comply with regulatory requirements and unauthorized acts	Must comply with the Operating Agreement and smart contracts; represent the DAO off-chain.	No	No	Yes
DAO LLC Non-Profit (Marshall Islands)	Fiduciary responsibility under LLC structure; limited liability except in cases of fraud or serious misconduct.	Must act in the best interest of the DAO and in line with the Operating Agreement.	No	No	Yes

Source: Own elaboration.

[488] Yet it leaves the possibility of that to be defined or included in the charter of the association, however, it does not have the same legal force, as being recognized in law.

Council/Board or Directors.

As mentioned above, a noted advantage of the DUNA non-profit is that it only requires administrators (optional) and members as governing bodies of the association; it does not require any board, council or directors like the UAE or Swiss Association or the offshore foundations, allowing them a greater degree of decentralization as decisions may be implemented directly by the members (or the administrators in case they are named), reproducing in this manner the governing process of the DAO.

A similar structure is found in the Marshall Islands DAO LLC (non-profit), which does not require administrators, a council or a board to execute the governing decision but can be executed directly by the members, algorithmically or by the operating agreement. Yet the DUNA is not subject to strict regulatory compliance and disclosure obligations like the DAO LLC (non-profit) of the Marshall Islands, as it will be further analysed.

Tech-features.

As analysed already in Section I of this study, the DUNA Act includes a comprehensive and innovative legal framework to define important tech features of DAOs, which we consider an advantage over other more "tech-neutral" jurisdictions such as Switzerland or Liechtenstein or tech-irresponsive legislations such as offshore.

One of the most important innovative legal features included in the DUNA Act is the definition of "governing principles" as the ruling document of the organisation. Probably the most remarkable feature of such a definition is that it is not limited to a written document such as the foundation's bylaws, the association's charter, or operating agreements in Switzerland, the UAE, the Cayman Islands, or the DAO LLC (non-profit) of the Marshall Islands.

Rather, DUNA takes a broader, more flexible, innovative and tech-based approach to the definition of the statutes, to include also *"algorithms, smart contracts or enacted governance proposals"*. As it can be seen, such a definition is much more compatible with DAOs' on-chain governance mechanisms, such as treasury proposals and other governance mechanisms of OpenGov of the Polkadot DAO. This provides a clear legal basis for the gap between "on-chain" and "off-chain" governance mechanisms[489], presented in other jurisdictions.

[489] Ibid § 17-32-102. (a) (vii).

Governing Documents of Associations DAOS wrappers

Jurisdiction	Governing Document(s)	Form (Written / Smart Contract)
Wyoming DUNA Non-Profit	*Principles of Governance* (bylaws, agreements, smart contracts)	Can be written or on-chain
UAE DARe Association (RAK DAO)	*Operating Agreement* + optional smart contracts	Written agreement required; smart contracts can supplement
Marshall Islands DAO LLC (DAO Act 2022)	*Certificate of Formation* + *Limited Liability Company Agreement (Operating Agreement)*	Written agreement required; may be embodied in smart contracts
Swiss Verein (Association)	*Statutes/Bylaws* (Statuten)	Written document required

Source: Own elaboration.

Object and distributions.

Regarding the object of the organisation, the associations here analysed – DARe (UAE), DAO LLC non-profit (Marshall Islands), Verein (Swiss), and DUNA (Wyoming) – have very similar dispositions. Requiring a non-profit central object, with ancillary economic, business or profitable activities allowed, as long as they are related to such a non-profit object[490].

In none of the jurisdictions can members receive distributions or utilities from the organisation's activities, yet they may receive salaries or compensations for their contributions to the organisation.

In this regard, the matter of objects and distributions is very uniform across the different associations for DAOs' legal wrappers. The differentiation criteria, though, would be relating to voting rights and privacy of the members, as, for instance, in Switzerland, members will be required to disclose their identity when the association is making any kind of business or profitable activity. In the UAE and Marshall Islands, members that wish to remain undisclosed will have very limited rights, as it will be further analysed.

Rights of the members.

Regarding members' rights and control over the legal wrapper, it must be first stated that all associations offer a higher degree of control than the foundation that gives very limited or

[490] Swiss case law offers a higher degree of legal certainty and predictability stating that the profit activity is related to the non-profit purpose if it does not directly contradict it.

even null control over the organisation to the members, mostly as such foundations are orphan or memberless.

Regarding voting rights, all the legal frameworks for associations recognised these for the members, yet with important implications for privacy and control issues. Accordingly, the Marshall Islands' DAO LLC requires the disclosure of all members that have more than 10% of governance rights, and the DARe Association, those who own more than 25% of voting power, for a consecutive period of 30 days or more[491]. Under the Wyoming DUNA Act, there is not disclosure obligation linked to voting power. Switzerland, as mentioned, does not prevail in any requirement for this, yet in case the Verein does profit activities, all the members will be required to disclose.

Regarding the access to the association's records and information, the Marshall Islands has a very restricted regime, allowing only access to competent authorities with a reasonable ground to believe that a violation of laws of the RMI has been committed and not to members' requests [1]. This implies a high degree of privacy but also a lack of transparency and accountability from the organisation's operations, as members will not have the authority to request information about it unless otherwise provided in the operating agreement[492].

Switzerland prevails with very transparent access to information and audits that may result even in excessive transparency for the DAO's wrapper, and the RAK DAO DARe of the UAE has an optional right of providing information of the association or a token issued to the governance token holders, apart from the incorporation information that must be available to token holders[493].

In the DUNA non-profit, members are granted access to information, provided that it is not covered by confidentiality concerns. The non-profit bears the responsibility of demonstrating that secrecy is reasonable. By allowing members access to the non-profit's information while maintaining adequate checks and balances, such as limitations for confidentiality reasons that the non-profit must demonstrate, the latter constitutes an ideal regulatory framework for non-profit information access.

Privacy and identity protection.

In determining the possibility of remaining anonymous or pseudonymous for DAO members in the legal wrapper, there are two relevant legal issues to analyse: 1) the legal concept of members in DAOs' regulations and 2) The obligations to disclose personal information and data (including identity) established in AML, securities, transparency and

[491] Innovation City, 'DAO Association Regulations'. 38(6). See also Aurum Law, (n. xx).
[492] It is to be mentioned that votes, transactions and decisions that are taken on a DLT Technology must remain public, and accessible for a five-year period. Yet, these requirements are established for DAO LLC, without mentioning particularly non-profit DAO LLC. See Ibid.
[493] Innovation City, 'DAO Association Regulations'. 38(3)(h), 20, 49.

other regulatory frameworks applicable to DAOs' legal wrappers, including the specific DAOs' laws.

1) Legal concept of members.

Regarding the legal concept of members, the DAO's legal wrappers' laws establish three legal concepts to regulate membership or participation in a Decentralized Autonomous Organization and its legal wrapper:

a) Members. Generally, refers to a person that has the capacity to be involved in the decision-making process and policies of the DAO, including administrators, or other government bodies.

b) Membership interest. Generally, refers to the conditions that give to a person the capacity to become "member", which in most cases is the right to vote in the governance process of the DAO and the legal wrapper. In the UAE these are referred as tokens[494].

c) Persons, sometimes regarded as beneficiaries. Generally, refers to a person or individual that is involved in certain activity with the DAO and its legal wrapper but does not have the capacity to get involved in the decision-making process or governance. In other words, token holders that do not have voting rights.

Now while these definitions keep certain uniformity among different regulations, slight differences emerged among them that are relevant to the capacity of the members to remain anonymous or pseudonymous as part of the legal wrapper.

The Cayman Islands article 8.1 of the FCA2017, establishes:

> ***Members and supervisors***
>
> *8. (1) A foundation company's constitution may grant, or authorise the grant, to any person or persons or description of persons,* ***whether or not ascertained or in existence****, of the right to become a member or supervisor of the foundation company and such right is enforceable by action against the foundation company, whether or not enforceable as a matter of contract.*

From the definition above, it can be noted, that the FCA2017, grants the possibility to become a member of the foundation company to a not ascertained person or in existence.

On the other hand, the 2022 DAOS Act from the Republic of Marshall Islands establishes:

> *(i) "Membership interest" means a member's ownership right in a decentralized autonomous organization, which may be determined by the organization's certificate of formation or limited liability company agreement or ascertainable*

[494] Governance token holders in the RAK DAO DARe, and token holders in the

from a blockchain or smart contracts on which the organization relies to determine a member's ownership right;

In this regard, the RMI recognises as members those who have voting rights according to 1) the legal wrapper governing documents (certificate of formation), 2) the operating agreement of the LLC or 3) ascertainable from a blockchain or smart contract, which are on-chain dispositions or code features. The latter is a more restricted criterion to define a member, as it requires that the voting right is ascertained in the DLT technology or the governing documents of the association, yet it brings more legal certainty in comparison with the Cayman Islands Foundation, which allows the possibility to grant membership to "non-existing persons".

Most of the Dao's legislations will follow this approach of the Marshall Islands, for instance, the Wyoming DUNA establishes:

(ix) "Membership interest" means a member's voting right in a decentralized unincorporated nonprofit association determined by the nonprofit association's governing principles, including as ascertained from decentralized ledger technology on which the nonprofit association relies to determine a member's voting right;

The latter definition follows the same concept of ascertaining without limiting it to the legal wrappers written governing documents but rather expand it to the governing principles of the organization[495].

The UAE DARe takes a slightly different approach to the concept of members and membership, interest being more functional over form. The DARe regulations establish three types of members: guarantee members, which are the founding members giving the guarantee for the incorporation of the association; token holders (governance members), which hold voting rights central to the association functions; and miscellaneous tokens, which have functional tokens but not necessarily voting rights or tokens for governance[496]. The DLT foundation, takes a similar approach distinguishing between beneficiaries and token holders, establishing different categories of token holders. The DLT foundation takes a similar approach, distinguishing between beneficiaries and token holders, establishing different categories of token holders. Nonetheless, it follows the same functional definition as DUNA and RMI; in this regard, a beneficiary of a DLT foundation is:

[495] That may include as we already mentioned: "all agreements and any amendment or restatement of those agreements, including any decentralized unincorporated nonprofit association agreements, consensus formation algorithms, smart contracts or enacted governance proposals, that govern the purpose or operation of a decentralized unincorporated nonprofit association and the rights and obligations of the nonprofit association's members and administrators, whether contained in a record, implied from the nonprofit association's established practices or both;".

[496] Distributed Ledger Technology Foundations Regulations 2023 (RAK Digital Assets Oasis) (consolidated version November 2025). Part 4.

> *"A beneficiary of a DLT Foundation is a Person, whose identity is ascertainable by reference to a category, criteria, class or a relationship to another Person, whether or not living, at the time that the DLT Foundation is established or at the time, according to the terms of the Charter, satisfaction of criteria or members of a category, class are to be determined (a "Beneficiary")"*[497].

Once again, such an act requires that the beneficiary be "ascertainable", which represents a more restricted regime than in the Cayman Islands. Regarding token holders, as we already established, they are any other person of the organisation holding voting rights, and they must be listed and incorporated in the charter or associated governance documents of the foundation.[498].

In this regard it can be argued that the Cayman Islands Foundation Companies Act has the most flexible regime for members' determination, allowing granting such rights to anyone, ascertained or not, in existence or not, compared with the U.S. and Marshall Islands approaches requiring that such persons are ascertained with the DLT technologies or any other governing document of the organisation and the UAE, which also requires that the beneficiary is ascertained, adopting a functional definition for other members depending on whether they exercise tokens for voting or not. Accordingly, the Cayman Islands offer probably the higher degree of privacy and identity protection for members of a Decentralized Autonomous Organization by not requiring that they be ascertained or in existence.

2) Disclosure obligations.

Regarding the disclosure obligations, basically all jurisdictions have a certain degree of disclosure requirements for members or token holders (with voting rights) except for the Wyoming DUNA (at least at a state level).

A fundamental concept here is the "beneficial owners", which identifies members of organisations with substantial control of it for AML purposes. In this regard all jurisdictions have controls for this purpose, requiring members of legal organisations to disclose the identity and personal information of beneficial owners.

At the RMI DAO LLC, members with more than 10% of voting rights must disclose their identity and personal information, and an annual report of beneficial owners must be submitted which includes those persons who ultimately own or control, directly or

[497] Ras Al Khaimah Digital Assets Oasis, *DLT Foundations Act 2023* (RAK DAO 2023) (39) (1).
[498] See Abu Dhabi Global Market, Distributed Ledger Technology Foundations Regulations 2023.

indirectly, a significant interest in the LLC[499]. According to the RMI DAO LLC, such beneficial owners can include even persons that are not formal members of the organisation[500].

In the UAE regime, all members holding more than 25% of the organisation's governance rights must also disclose. Without mentioning that in the DLT foundation, any token holder with a voting right must also disclose for the purpose of the foundation's incorporation.

The Cayman Islands also follows strict regulatory controls for AML under the Beneficial Ownership Transparency Act 2023 (BOTA) including obligations for foundation companies to[501]:

- Identify and record all beneficial owners meeting the statutory definition.
- Maintain an internal register with prescribed details (name, nationality, residential address, nature of ownership/control).
- File and update this information with the competent authority (Registrar).
- Report changes within 30 days of occurrence.
- Implement AML/CTF controls consistent with Cayman's broader regulatory framework

Moreover, the BOTA Act adopts a broader definition of beneficial owners, including also non-formal members of organisations that have an effective control on it, in order to avoid indirect ownership structures avoiding the scope of regulation. Accordingly, a beneficial owner includes[502]:

- Any natural person who ultimately owns or controls, directly or indirectly, 25% or more of the ownership interests or voting rights in the entity.
- Any natural person who otherwise exercises control over the entity, even without holding a formal ownership interest (for example, through contractual rights or other arrangements).
- Senior managing officials may be considered beneficial owners if no individual meets the ownership/control thresholds.

In this regard, token holders that exercise effective control over the foundation, regardless of whether they are formal members or not, may be subject to disclosure obligations. The latter severely limits the benefits of "orphan or memberless foundations", as the formal membership to the foundation is irrelevant to anonymous purposes with the focus being on

[499] These include individuals who: Hold a substantial percentage of membership interests or governance rights; Exercise effective control over the company's decisions, even if not formally listed as members or managers; Are the ultimate beneficiaries of the company's activities or assets. See Republic of the Marshall Islands, Limited Liability Company Act, 52 Marshall Islands Revised Code ch 4, s 22(1)(c)(v).

[500] Ibid.

[501] Harneys, Guidance on the New Cayman Islands Beneficial Ownership Regime (Client Memorandum, Harneys, 2018) https://www.harneys.com/media/blkpwc3d/cayc18-guidance-on-the-new-cayman-islands-beneficial-ownership-regime.pdf accessed 12 February 2026.

[502] Beneficial Ownership Transparency Act (2026 Revision) (Cayman Islands).

the control of the organisation, which in DAOs will probably translate to ownership of voting rights or tokens. It is to be mentioned that records of beneficial owners are kept private with the registrar authority. Accordingly, records of beneficial owners enjoy a high degree of privacy, including confidentiality, restricted access, and protection from searches[503].

Under the U.S., though, state DAOs' regulations, such as Wyoming's DUNA and UTAH's DAO LLC, do not require the disclosure of members' identities nor any obligation to file beneficial owners' reports. Yet, these may change with requirements under federal AML regulations, including the Corporate Transparency Act, which requires the so-called beneficial owners to report to the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN) following a broad definition of beneficial owners that includes "any individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise (i) exercises substantial control over the entity; or (ii) owns or controls not less than 25% of the ownership interests of the entity" (subject to certain exceptions)[504].

The FinCEN however, has proposed a "escape hatch" for the beneficial owner's report that would allow organisations to select an option of "unable to identify beneficial owners" or "unknown"[505]. Some authors considered this a suitable window for DAOs' legal wrappers to avoid such reports, and as such, the disclosure of members' information, as their membership rights and affiliation are determined mostly by code and tech features (as we analysed already), might be unable to identify the members[506]. Moreover, certain optimism is related to the disclosure obligations from other DeFi blockchain and finance organisations that have been able to circumvent AML control for disclosure of information, effectively protecting members' identities[507]. Yet currently there are not clear exemptions nor requirements for DAOs, LLCs or non-profit organisations to be subject to such beneficiaries' reports, disclosing their members' identity and information.

In conclusion, it can be argued that the U.S. has the most protective regulations for members' identity, personal information and privacy by not requiring any disclosure obligations at the state level and with a sound spirit of the law to protect members' anonymity. At the federal level a different exemption to AML disclosure obligations are in existence, yet its application to the DAO DUNA is still pending of being confirmed.

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[503] Beneficial Ownership Transparency Act (2026 Revision) (Cayman Islands). §23, 22A.

[504] Corporate Transparency Act, 31 USC § 5336(a)(3) (2021) https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title31-section5336 accessed 12 February 2026, § 1010.380(d)(1).

[505] Agency Information Collection Activities; Proposed Collection; Comment Request; Beneficial Ownership Information Reports, 88 Fed Reg 2760 (17 January 2023).

[506] Robert A Schwinger, 'Blockchain Law: Can the Autonomous Remain Anonymous?' New York Law Journal (23 May 2023) 4.

[507] Ibid 5.

Members' liabilities.

The members' liabilities are, in our opinion, the **lead criteria to suggest the DUNA non-profit as** the most suitable legal wrapper for the Polkadot community and other protocol DAOs. As analysed already in the previous section, the DUNA Act has by far the most comprehensive members' liabilities regulatory framework across the DAOs' specific regulations, including the Marshall Islands DAO LLC, DARe Association, DLT Foundation and offshore jurisdictions that have almost null provisions on this matter. Most likely Switzerland may present a broader regulatory framework to members' liabilities through case law, yet as we mentioned earlier, such a legal wrapper has significant limitations in terms of members' privacy when conducting profitable activities and suiting DAOs' unique and innovative features.

Limitation: Formation.

A significant limitation found in the DUNA Act, is the requirement of having at least one hundred members to register the association. Yet in the case of medium-size or large DAOs such as polkadot this should not represent a significant challenge, in particular due to the fact that members are not required to disclose its identity to be regarded as. Moreover, this requirement responds to the target of maintaining an authentic decentralization in governance, avoiding centralization through the figures of founded members, council or organisations incorporated with two or more members, that can concentrate large amount of decision power.[508]

[508] Frankfurt Kurnit Klein & Selz PC, 'The Wyoming DUNA and the Future of DAO Legal Frameworks' (FRB Law, 2024) https://frblaw.com/the-wyoming-duna-and-the-future-of-dao-legal-frameworks/ accessed 12 February 2026.

IV. CONCLUSIONS AND RECOMMENDATIONS.

DAOs are generally wrapped into LLC, Associations and Foundations, with some uses of flexible Trusts in off-shore jurisdictions. Approaches are varied with the US and the UAE implementing comprehensive legal frameworks to exhaustively address the innovative and unique tech-features of DAOs providing a high degree of legal certainty but very limited case-law on the applicability of such new regulations. Europe on the other hand, has taken a more lightly regulatory approach focusing on substance over form, following the tech-neutrality, Eli principle, with Switzerland leading the DAOs legal wrappers landscape. Off-shore jurisdictions are distinguished for very flexible and tax-friendly approaches though very limited in terms of technology suitability. The adequate legal wrapper severely depends on the functions and type of DAO.

Taken together, these findings support one basic conclusion: classic corporate and trust forms are structurally incompatible with core features of DAOs; decentralization, algorithmic governance, and pseudonymous participation. These include traditional foundations in offshore jurisdictions. A minimum legal amendment to DLT technologies and virtual assets is needed to represent an attractive jurisdiction for DAOs legal wrappers, as it is the case of Switzerland. Without a corresponding adaptation of their respective regulations, jurisdictions threaten to lead to regulatory arbitrage, capital flight, and technological irrelevance. No jurisdiction yet strikes an optimal balance between decentralization, anonymity, and accountability, but the current closest approximation is the U.S. model because it directly confronts the technology of DAOs. In contrast, Cayman offers privacy without decentralization, and the UK offers legal sophistication without functional viability.

Further legal analysis and development is required in accommodate Anti-Money Laundering Transparency, and Financial regulation to suit DAOs pseudonyms operations, without damaging the effectiveness of such regulations that are so important to prevent grave and international crimes and felonies.

Finally, a Wyoming DUNA (Decentralized Autonomous Non profit Association) is the ideal legal structure for the Polkadot DAO. This choice is primarily due to its comprehensive tech-oriented regulation, which better protects web3 values. A legal framework that includes the creation of a separate legal entity to facilitate real-world representation of the DAO, allowing it to enter into contracts, own property, tax clarity stand in court under its own name, and to protect members, admins, and agents from liability in tort or contracts. Additionally, it mandates decentralized governance with a minimum requirement of one hundred members.

Other benefits found are the flexible governance principles, which may include algorithmic law, enactment proposals, and established practices. The non-profit cannot pay dividends, but it can pay reasonable compensation and provide benefits to members, administrators, or other contributors.

Lastly, treasury proposals do not meet the necessary requirements to be enforced as contracts, in States jurisdictions. However, clear, applicable international law can provide a more flexible framework. The former reinforces the need for having an effective legal wrapper for the Polkadot DAO. We conclude that the Wyoming DUNA is currently the framework that provides the strongest legal entity for DAOs.

Disclaimer

This paper is provided for academic and informational purposes only and does not constitute legal advice regarding decentralized autonomous organizations (DAOs), legal entities, associations, organizations, contracts, digital assets, treasury proposals, or related governance structures. The views expressed are solely those of the authors. Readers should consult their own qualified legal counsel before taking any action based on the matters discussed herein.