

## 1. NATURE

1. The DAO is a legal entity that can be used for commercial, mutualistic, social, environmental or political purposes, the nature of which will be specified in its By-Laws.

The aim of the Model Law is to allow a DAO that has not registered as a for-profit corporate entity or a non-profit entity to benefit from equivalent standing as a domestic limited liability company or limited liability cooperative. Most jurisdictions no longer require limited liability companies to have an object/purpose clause. Instead, many jurisdictions allow them to engage in any legal activity. The *ultra vires* doctrine has also fallen out of favor in several advanced corporate law jurisdictions.<sup>[8]</sup> A common exception to this trend is charitable organisations, which is regularly explained by their special tax status. The Model Law does not aim to secure any special tax status for DAOs and accordingly has not taken into account the prevailing requirement for charitable organisations to have an object/purpose clause. As such, this Article does not preclude DAOs from engaging in social, environmental or philanthropic activities alongside its economic activities. Specifically, the Model Law acknowledges that a DAO may not only be a for-profit entity but may be used for multiple non-commercial purposes. DAOs have already been used for non-commercial purposes.<sup>[9]</sup>

## 2. LEGAL PERSONALITY

1. A DAO within the scope of this Model Law will be deemed a legal entity separate and distinct from its Members. A DAO will, by its own name, be capable of:
  - (a) suing and being sued;
  - (b) acquiring, owning, holding and developing or disposing of property, both movable and immovable; and
  - (c) doing and suffering such acts and things as bodies corporate may lawfully do and suffer.
2. A DAO within the scope of this Model Law must meet its liabilities through its On-Chain and Off-Chain Assets.
3. The validity of an action by a DAO within the scope of this Model Law may not be challenged on the ground that the DAO lacks power to act.

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### 3. DEFINITIONS

1. “**Accreditation Authority**” means any public or private authority that a jurisdiction which adopts or transposes the Model Law recognizes as legitimate to ensure compliance with one or more Articles of the Model Law.
2. “**Administrator**” means a Person, irrespective of title, that is appointed in a manner specified in the By-Laws to take discretionary decisions, either individually or collectively with other Administrators, with regard to specific, predefined operations of the DAO.
3. “**Airdrop**” means a free distribution of Tokens initiated by a DAO to a Public Address, but does not include distributions of Tokens for which a person must execute a function to redeem the distributed Tokens.
4. “**Asset**” includes both On-Chain assets and Off-Chain assets.
5. “**By-Laws**” means the rules and regulations that govern the procedures followed by a DAO and the interaction of its Members and Participants, which must be set out in plain language, in text or sound, visual or audiovisual recording.
6. “**Contentious Fork**” means a Hard Fork that results in two divergent and potentially competing blockchains.
7. “**Decentralized Autonomous Organization**” (**DAO**) refers to *smart contracts* (*i.e.* blockchain-based software) deployed on a public Permissionless Blockchain,<sup>[12]</sup> which implements specific decision-making or governance rules enabling a multiplicity of actors to coordinate themselves in a decentralized fashion. These governance rules must be *technically*, although not necessarily *operationally*, decentralized.
8. “**Developer**” means a person involved in the development or maintenance of the DAO, whether through the contribution of software code, design, business, legal or ancillary support.
9. “**Dispute Resolution Mechanism**” means an On-Chain alternative dispute resolution system, such as arbitration, expert determination, or an

On-Chain alternative court system, which enables anyone to resolve their disputes, controversies or claims with, arising out of, or in connection with, a DAO. Any such award, decision or judgment will be accorded the same status and treatment as an international arbitral award.

10. **“Externally Owned Account”** means a Public Address controlled by a private key and that has no associated code.
11. **“Failure Event”** means a DAO encountering a technical bug or exploit which renders the DAO unoperational or fundamentally changes the expected operation of the DAO.
12. **“GUI”** means a graphical user interface, publicly accessible by all DAO Members and Participants, whether hosted via centralized or decentralized means, through which users interact with computer software via visual indicator representations. This can include, but is not limited to, a web interface or standalone application.
13. **“Hard Fork”** means a blockchain software upgrade that is not compatible with previous versions of the blockchain software, and therefore requires all users to upgrade.
14. **“Jurisdiction”** means a territory that is under a defined legal authority.
15. **“Legal Representative”** means a Person who is appointed in a manner specified in the By-Laws to perform procedural functions Off-Chain.
16. **“Majority Chain”** means the version of the chain accepted by more than 50% of the blockchain’s validators following a Hard Fork.
17. **“Meeting”** means a synchronous or asynchronous event for the purpose of discussing and acting upon DAO-related matters by Members or Participants.
18. **“Member”** means any person or DAO who has governance rights in a DAO.
19. **“Minority Chain”** means the version of the chain that is not the Majority Chain following a Hard Fork.
20. **“Model Law”** means this DAO Model Law.
21. **“Off-Chain”** means any action or transaction that is not On-Chain.
22. **“On-Chain”** means any action or transaction that is recorded and verified on a blockchain.
23. **“On-Chain Contribution”** refers to any Token segregated and locked in one of the DAO’s Smart Contracts for the purpose of Member buy-in to the DAO and the provision of withdrawable capital.
24. **“Open-Source Format”** means the Open Source Initiative’s definition of open source.<sup>[13]</sup>

25. “**Participants**” means any person interacting with or holding native tokens in a DAO other than Members.
26. “**Permissionless Blockchain**” means a public distributed ledger, allowing any entity to transact and produce blocks in accordance with the blockchain protocol, whereby the validity of the block is not determined by the identity of the producer.
27. “**Person**” means an individual, a company or any other body of persons.
28. “**Proposal**” means a suggestion for actions to be taken by the DAO, to be decided on in accordance with the By-Laws of the DAO.
29. “**Public Address**” means a unique, durable identifier that person(s) can transact with on a Permissionless Blockchain.
30. “**Public Forum**” means a freely accessible online environment that is commonly used for the exercise of speech and public debate.
31. “**Public Signaling**” means a declaration authorised by way of Proposal by the DAO in a Public Forum.
32. “**Quality Assurance**” means that the code of the DAO has undergone security review according to industry standards, namely: (1) the completion of professional software security audit with an audit report available to the public with no significant security risks remaining, as well as the completion of a public bug bounty; (2) a formal verification by means of a mathematical proof-based methodology in which the Smart Contract’s bytecode is directly checked as correct-by-construction to show the full functional correctness of security-critical properties of the Smart Contract; or (3) any other process recognized as meeting the same security standards.
33. “**Smart Contract**” is code deployed in a blockchain environment. It is made of a set of *predefined* and *deterministic* instructions executed in a distributed manner by the nodes of the underlying blockchain network, if and when the underlying conditions are met. Execution of a Smart Contract will produce a change in the blockchain state.
34. “**Token**” means a record on a Permissionless Blockchain, typically representing an Asset, participation right, or other entitlement.
35. “**Transaction**” means a new entry in a Permissionless Blockchain, often but not exclusively, recording a change in ownership of an Asset or participation in a DAO.

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## 4. FORMATION REQUIREMENTS

1. In order for a DAO to benefit from legal personality, it must fulfill the following requirements:
  - (a) The DAO must be deployed on a Permissionless Blockchain;
  - (b) The DAO must provide a unique Public Address through which anyone can review the DAOs' activities and monitor its operations;
  - (c) The whole software code of the DAO must be in Open-Source Format in a Public Forum to allow anyone to review it;
  - (d) The software code of the DAO must have undergone Quality Assurance;
  - (e) There must be at least one GUI that will allow a layperson to read the value of the key variables of the DAO's smart contracts and monitor all transactions originating from, or addressed to, any of the DAO's Smart Contracts. The GUI will also specify whether Members are able to redeem their Tokens without restrictions and if not, the GUI will clearly mention the restrictions that are in place;
  - (f) The DAO must have By-Laws that are comprehensible to a layperson. The By-Laws must be publicly accessible via a GUI or a Public Forum. Sensitive information may be redacted from the By-Laws before their publication, if those redactions are necessary to protect the privacy of individual Members or Participants in the DAO;
  - (g) The governance system of the DAO must be technically decentralized, although not necessarily operationally decentralized, as per Article 3(7).
  - (h) Independent of the chosen governance system, there must always be at least one Member of the DAO at any given time;
  - (i) There must be a publicly specified mechanism that allows a layperson to contact the DAO. All Members and Administrators of the DAO

must be able to access the contents of this communication mechanism;

- (j) The DAO must refer to or provide a Dispute Resolution Mechanism that the DAO, Members and Participants will be bound by;
  - (k) The DAO must refer to or provide a Dispute Resolution Mechanism to resolve any disputes with third parties that, by their nature, are capable of being settled by alternative dispute resolution.
2. The DAO will, upon meeting the formation requirements in Article 4(1), have limited liability by default, subject to the provisions of Article 5.
  3. Concurrent fulfillment of the requirements in Article 4(1), and an announcement by the DAO that it has fulfilled those requirements is deemed conclusive evidence of the DAO's recognition under this Model Law and does not require certification from, or registration by, an Accreditation Authority.
  4. A jurisdiction adopting the Model Law may authorize an Accreditation Authority to monitor whether a DAO continues to meet the requirements for legal personality under the Model Law.
  5. A DAO may request confirmation from an Accreditation Authority, if such an authority exists, to determine whether the DAO complies with the requirements for legal personality under the Model Law.

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## 5. LIMITED LIABILITY

1. Except as set forth in Articles 5(3) and Article 5(4), Members will only be responsible for providing the On-Chain Contributions that they have committed to the DAO, as required by the By-Laws. If the DAO exhausts

its Assets, the Members will not be liable for excess liability.

2. Except as set forth in Articles 5(3) and Article 5(4) of this Model Law, Members will not be held liable for any obligations incurred by the DAO, including, but not limited to, labor and tax obligations.
3. If the DAO refuses to comply with an enforceable judgment, order or award entered against it, the Members who voted against compliance will be liable for any monetary payments ordered in the judgment, order or award in proportion to their share of governance rights in the DAO.
4. Articles 5(1) to 5(4) will not affect the personal liability of a Member in tort for their own wrongful act or omission, but a Member will not be personally liable for the wrongful act or omission of any other Member of the DAO.

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## 6. ASSET SUBSCRIPTION AND PAYMENT

1. No minimum capital requirements will apply to a DAO recognised by the Model Law. If the DAO wishes to maintain a minimum amount of capital, the By-Laws of the DAO will specify the rules for subscription and payment.
2. The By-Laws must specify the rules for exiting the DAO that address the consequences of voluntary and involuntary Member and Participant exit on subscriptions and payments they have made.
3. No Member will be able to compel the dissolution of the DAO for failure to return their On-Chain Contribution.

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## 7. CLASSES OF PERSONS PARTICIPATING IN THE DAO

1. A DAO may have multiple classes of participation rights defined in, and granted in accordance with, its By-Laws.
2. Where the DAO has Tokens providing governance powers to the Token holder, the Token holder will be considered a Member of the DAO:
  - (a) From the time the ownership of the Tokens is established to be in the possession of an address, or
  - (b) From the time when ownership is first acknowledged by the Token holder through an On-Chain interaction with the DAO, through staking the Tokens, voting with the Tokens Off-chain whereby results are implemented On-Chain, submitting a Proposal or transferring the Tokens to another address, in the event that no action has been taken by a Token holder to acquire a Token, such as in an Airdrop.
3. This Article does not apply in the event of a Contentious Fork.
4. This Article does not apply to Airdrops.

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## 8. VOTING RIGHTS

The voting rights of Members will be distributed in the following manner:

1. The By-Laws must set out the distribution of voting rights of the classes of Members in a DAO. The method by which these voting rights are computed and distributed must be accurately set out in the By-Laws.

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## 9. PROXIES

With respect to proxies:

1. The Members or Participants may represent themselves or be represented by a proxy.
2. Proxies may ask questions, vote and exercise all other rights of Members or Participants.

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## 10. MINORITY PROTECTION—

In the interest of minority Members of DAOs:

1. The DAO must clearly state in its By-Laws whether it provides for any kind of minority rights protection.

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## 11. INTERNAL ORGANIZATION

1. The internal organization and procedures of the DAO must be set out in its By-Laws.

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## 12. MEETINGS

1. A DAO will not be required to convene a general Meeting, but Meetings may optionally be included in the By-Laws;
2. There will be no requirement to have physical, in-person Meetings, unless explicitly specified in the By-Laws;
3. If the By-Laws do include a requirement to have meetings, it must have an explicit, transparent mechanism of giving notice of Meetings to Administrators, Members or Participants, as well as a defined time period for deliberating upon submitted Proposals. This Notice must be communicated through a GUI.
4. The quorum and majority requirements for Meetings of DAO Administrators, Members or Participants will be specified in the By-Laws. The aim of the Model Law is to allow a DAO that has not registered as a for-profit corporate entity or a non-profit entity to benefit from equivalent standing as a domestic limited liability company or limited liability cooperative. Most jurisdictions no longer require limited liability companies to have an object/purpose clause. Instead, many jurisdictions allow them to engage in any legal activity. The *ultra vires* doctrine has also fallen out of favor in several advanced corporate law jurisdictions.<sup>[8]</sup> A common exception to this trend is charitable organisations, which is regularly explained by their special tax status. The Model Law does not aim to secure any special tax status for DAOs and accordingly has not taken into account the prevailing requirement for charitable organisations to have an object/purpose clause. As such, this Article does not preclude DAOs from engaging in social, environmental or philanthropic activities alongside its economic activities. Specifically, the Model Law acknowledges that a DAO may not only be a for-profit entity but may be used for multiple non-commercial purposes. DAOs have already been used for non-commercial purposes.<sup>[9]</sup>

## 13. ADMINISTRATORS

With respect to the delegation of powers and duties to certain persons:

1. The DAO is not required to have Administrators, including a board of directors or a trustee, unless mandated in its By-Laws. In the absence of such a provision, all the powers and tasks of Administrators will be vested in the DAO Members as a class;
2. The voting mechanism for nominating and appointing Administrator(s) will be set out in the By-Laws.

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## 14. LEGAL REPRESENTATION

With respect to the appointment of Persons to complete Off-Chain tasks:

1. A DAO may choose to have one or more Legal Representatives to undertake tasks that cannot be achieved On-Chain. Legal representation can be limited to specific tasks, or it can be generic to a broader category of tasks.
2. Legal representation of the DAO will be carried out by the Legal Representative in the manner provided in the By-Laws and as evidenced by an authorization displayed on a Public Forum, whose validity must be verifiable by cryptographic proof. The Legal Representative(s) may undertake and execute any and all acts and contracts included within the scope of such authorization.
3. There are no requirements as to the residence or seat of the Legal Representative(s).
4. A Legal Representative will not be personally liable for acts done on behalf of the DAO.

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## 15. NO IMPLICIT FIDUCIARY STATUS

With respect to Persons who make discretionary decisions in the interest of the DAO or specific stakeholders:

1. Developers, Members, Participants or Legal Representative of a DAO must not be imputed to have fiduciary duties towards each other or third parties solely on account of their role, unless:
  - (a) They explicitly hold themselves out as a fiduciary.
  - (b) Their fiduciary status is stipulated in the DAO's By-Laws.

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## 16. CONTENTIOUS FORKS IN THE UNDERLYING BLOCKCHAIN

In the event of a Hard Fork in the underlying Permissionless Blockchain:

1. By default, the legal representation of the DAO remains on the Majority Chain and any Off-Chain Assets will belong to the DAO on the Majority Chain.
2. The DAO may choose to maintain legal presence on a Minority Chain if it expresses its intent to do so by Public Signaling, and in that case any Off-Chain Assets will belong to the DAO on the selected Minority Chain.
3. The DAO may liquidate its On-Chain Assets following a Hard Fork in order to move those Assets to the chosen chain.
4. Alternatively, the DAO may choose to split into multiple legal entities, each on a separate chain, if it communicates by Public Signaling:
  - (a) its intent to do so, and
  - (b) there is a definitive distribution of Off-Chain Assets between the Majority and Minority Chain(s).

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## 17. DAO RESTRUCTURING

1. In the event that there is not a Contentious Fork and a DAO's Smart Contract is restructured through modification, upgrade or migration, it will retain its legal personality and limited liability only to the extent that:
  - (a) The new code of the DAO continues to fulfill all the formation requirements of Article 4;

- (b) In the event of migration, where the DAO has to be associated with a new unique Public Address, proper notice is provided by way of Public Signaling.

Failure to meet these requirements will result in a loss of legal personality and limited liability effective at the time of restructuring.

- 2. The DAO restructured in accordance with subsection (1) will be the universal successor of the original DAO and inherit its rights and obligations.

The aim of the Model Law is to allow a DAO that has not registered as a for-profit corporate entity or a non-profit entity to benefit from equivalent standing as a domestic limited liability company or limited liability cooperative. Most jurisdictions no longer require limited liability companies to have an object/purpose clause. Instead, many jurisdictions allow them to engage in any legal activity. The *ultra vires* doctrine has also fallen out of favor in several advanced corporate law jurisdictions.<sup>[8]</sup> A common exception to this trend is charitable organisations, which is regularly explained by their special tax status. The Model Law does not aim to secure any special tax status for DAOs and accordingly has not taken into account the prevailing requirement for charitable organisations to have an object/purpose clause. As such, this Article does not preclude DAOs from engaging in social, environmental or philanthropic activities alongside its economic activities. Specifically, the Model Law acknowledges that a DAO may not only be a for-profit entity but may be used for multiple non-commercial purposes. DAOs have already been used for non-commercial purposes.<sup>[9]</sup>

## 18. FAILURE EVENT

In the case of a Failure Event:

- 1. Legal personality and limited liability are maintained to the extent necessary to protect DAO Members and Participants from personal liability.
- 2. A Failure Event may trigger liability on the Person(s) deploying or upgrading the DAO if that Person(s):
  - (a) acted in manifest bad faith; or
  - (b) engaged in gross negligence.

The Failure Event provisions are analogous to directors' liability under corporate law. They are intended to address situations in which a person with decision-making authority in a DAO acts in bad faith or, through gross negligence, causes a technical failure that harms Members, Participants, or the general public. As with director liability, there is not an expectation that a person's decisions or actions will be perfect, but they must be taken with the best interests of the DAO in mind and fall within a reasonable range of possible decisions or actions.

After a Failure Event, legal personality and limited liability will typically be maintained in order to protect the interests of the DAO Members and Participants. For example, in the case of a hack, a person who can be said to have acted in bad faith or through gross negligence may face liability for losses incurred in the Failure Event, but DAO Members and Participants who simply took part would still be shielded by the DAO's legal personhood and limited liability.

## ***Chapter 6***

### **Miscellaneous Provisions**

## **19. APPLICATION OF GENERAL BUSINESS ORGANIZATION LAW**

The DAO will be governed by:

1. The By-Laws;
2. The Model Law, as adopted or transposed into domestic legislation; and
3. To the extent that any lacunae remain, general business organization law of the State that recognizes the DAO. Any ambiguity resulting from this application will be resolved in a manner that upholds the letter and objectives of the Model Law.

There may be a few instances in which the By-Laws of a DAO and the Model Law are not able to address all of the organizational and governance issues that arise from the operation of a DAO. In such circumstances, the general business organization law of the State that recognizes the DAO may be used to address these lacunae. However, as general business organization laws are generally drafted with centralized organizations in mind, applying these laws may present their own difficulties. As a consequence, any such application of general business organization laws must only be done if the By-Laws and Model Law cannot be applied and any resulting ambiguity must be resolved in a manner that upholds the letter and objectives of the Model Law. These objectives can be found in the Preamble of this Model Law.

## **20. TAXATION OF DAOs**

The taxation of DAOs recognized by this Model Law will be based on the following principles:

1. By default, any DAO recognized by this Model Law will be treated as a pass-through entity for tax purposes, with no entity-level tax accruing to the DAO. Any realized gains will pass through to the DAO's Members in proportion to their Token holdings.



2. Where a Member itself is not a taxable entity, such as another DAO, the realized gains allocated to such Members will pass to the first taxable person in the same manner as specified in Article 20(1).

With regards to their taxation treatment, the distinction between the internet and cyberspace, as outlined by Lawrence Lessig, provides a useful framework to characterize the unique attributes of DAOs vis-a-vis digital entities hosted in the cloud.<sup>[44]</sup> While transactions occurring over the internet typically entail a clear correspondence with those of taxable entities with a real-world existence, a DAO cannot be conventionally connected to an agent or location on Earth. This is primarily due to the fact that its processes and procedures are predefined and deterministic, carried out by code existing in cyberspace. Furthermore, the emergence of blockchain-based anonymization techniques and decentralized exchanges compromise the enforcement of a regulatory framework for taxation akin to that of cloud-based agents. In that sense, David Shakow acknowledges that "the pure blockchain form does not work well for an entity under the IRC [United States Internal Revenue Code]".<sup>[45]</sup>

Many questions regarding the taxation of DAO remain unaddressed by the tax laws of national jurisdictions. These questions, highlighted by Shakow, include the classification of DAOs as entities under tax law, the tax residence of DAOs, the level at which investments in DAOs should be taxed (entity-level or Member-level), the taxation of Members liquidating their investment, the filing of tax returns and the treatment of Hard Forks as taxable events for Token-holders who receive Tokens from the forked chain. In addition, Airdrops as defined in Article 3(4) pose additional unresolved complexity for the tax laws of national jurisdictions. Despite the difficulties in achieving regulatory equivalence, taxation is material for DAOs to recognize the social and environmental costs inherent in the operation of DAOs that, in the absence of taxation, would be imposed on other members of society.

As the tokenomics of DAOs imply that the value of a DAO is reflected in the value of the Token(s) issued by the DAO or governing the DAO, making DAOs pass-through entities for tax purposes seems to be the correct approach. As such, the responsibility of paying tax on gains should fall on Members and Participants, because in the case of unregistered DAOs, which this Model Law addresses, only Members and Participants are anchored in a jurisdiction. Accordingly, each Member or Participant is solely responsible for declaring their financial stake in a DAO, if required by the jurisdiction in which each Member or Participant is a tax resident. It should be the sole obligation of the Members or Participants to declare their capital gains on the disposition of DAO-related Tokens or similar transactions.