Incorporation of DAOs in foreign jurisdictions

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For DAOs that have – or intend to have – a global presence, with the participation of members across numerous jurisdictions, a potentially viable alternative to mitigate some of the risks related to the lack of an incorporation structure is formalizing an entity abroad.

In some jurisdictions, there are already frameworks that have been used by founders of DAOs for their legal incorporation in order to better protect the assets of their members, as well as to allow the conclusion of legal acts and transactions on behalf of the DAO outside the blockchain.

Among these jurisdictions, the rules existing in the States of Vermont, Wyoming, and Delaware, in the United States of America, as well as in the Cayman Islands, are particularly noteworthy and will be briefly addressed below. It must be stressed that the content presented below is merely informative, being fundamental that you consult a lawyer qualified to practice law in these countries if interested in structuring a DAO under such jurisdictions.

Vermont Blockchain Based LLC

In 2018, the State of Vermont added the so-called Blockchain-Based Limited Liability Companies (BBLLCs) to its legislation, defining them as organizations that use blockchain technology for their governance, totally or partially. Under the framework of Limited Liability Companies (LLCs), DAOs may have profit aims.

The law allows smart contracts to regulate a wide range of activities, from the rights of members and their interactions to the management of the DAO's funds. This creative freedom of smart contracts is precisely the fuel by which DAOs are able to perform a variety of operations.

Establishing a relationship between the code and the legal world, the law also determines the redaction of an operating agreement in which the functioning of the DAO must be explained, including the rights of members, the internal proceedings, and many other aspects. An example of BBLLC is the dOrg, a cooperative DAO of blockchain developers.

Wyoming DAO LLC

In 2021, the State of Wyoming added to its LLCs' legislation the entitled Wyoming Decentralized Autonomous Organization Supplement. In its terms, a DAO LLC is a company with special provisions that allow it to operate algorithmically – totally or partially – through smart contracts.

Nonetheless, the supplement has some provisions that may cause hindrances, such as the obligation that smart contracts are changeable, which may collide with the immutable nature of blockchain, or the dissolution of DAOs after one inertial year.

Notwithstanding this, there is always space for improvements when the specific functioning of the technology is taken into account. Originally, the supplement required a participation quorum of 50% for polls to be valid. By its decentralized nature, many DAOs do not achieve this quorum constantly, having difficulties in engaging their members to vote. Hence, a subsequent amendment withdrew this rule, allowing the free disposition of the subject through smart contracts.

Delaware LLC

Specific laws for DAOs are not always necessary, sufficing that the traditional law is flexible enough. This is the case for LLCs in Delaware, whose legislation allows the incorporation of DAOs when delegating wide powers of self-organization to the companies.

As an example, MetaCartel Ventures, an investment DAO, is legally incorporated in Delaware and has its own operating agreement similar to the BBLLCs. Thus, the activities and interactions are executed through smart contracts, whereas a legal translation of this functioning is made.

Cayman Islands

There are other models rather than LLCs. In the Cayman Islands, the Foundation Companies Act of 2017 allows the incorporation of DAOs as foundations. Although this framework does not apply to for-profit DAOs, it still confers them legal personality.

Two cases where this framework might be applied are philanthropic or single purposes DAOs. Examples of these types of DAO are the Big Green DAO, which funds ecological projects from NGOs, and the ConstitutionDAO, whose members raised funds for the auction of an original copy of the US Constitution.

Similar to Delaware, this model is not directly oriented to DAOs, but it allows its incorporation without obstacles. In practice, a DAO would be a number of assets raised by its members and whose management occurs accordingly to the internal dispositions of the organization, which may be freely stipulated as long as not distributing profits.

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