Guidance Notes for Consultation

Decentralised Autonomous Organisations

1. Background

1.1 Decentralised Autonomous Organisations (DAOs) are blockchain-based organisations whose activities and decision-making are co-ordinated by self-executing codes, also known as smart contracts[1].

1.2 Whilst there is currently no settled market view concerning the specific attributes of a DAO, DAOs can generally be divided into two groups, namely, a DAO linked to a legal entity and a DAO that is not linked to a legal entity. If a DAO is linked to certain

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[1] The term "smart contract" is defined in section 2 of the Virtual Asset and Initial Token Offerings Services Act 2021 as "*a form of technology arrangement consisting of a computer protocol or an agreement concluded wholly or partly in an electronic form, which is automatable and enforceable by computer code, though some parts may require human input and control and which may be enforceable by ordinary legal methods or by a mixture of both*."

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type of legal structure, the said legal structure will have an official legal status distinct from its members and the capacity to:

(a)   sue and be sued;

(b)   acquire, own, hold and develop or dispose of property, both movable and immovable;

(c)   do and be liable for such acts and things as bodies corporate may lawfully do and be liable; and

(d)   benefit from limited liability protection.

1.3   The purpose of these Guidance Notes is to:

(i)   provide guidance as to the legal structures available to DAOs in Mauritius; and

(ii)   establish minimum standards expected of DAOs wishing to obtain legal personality and limited liability status in Mauritius.

1.4   These Guidance Notes neither derogate nor restrict the powers vested upon the FSC by statute, and should be read together with the Relevant Acts[2] as well as other legislation in force in Mauritius.

1.5   Any non-observance of these Guidance Notes may entail regulatory actions.

1.6   Where the FSC has directed any person to comply with the Guidance Notes, non-compliance with such direction may constitute an offence.

2. Legal Structures that may be used by DAOs in Mauritius

2.1   Members of DAOs wishing to link their organisation to a legal entity in Mauritius may adopt any one of the following legal structures:

(a)   a limited partnership under the Limited Partnerships Act;

(b)   a foundation under the Foundations Act; or

(c)   a limited liability partnership under the Limited Liability Partnerships Act.

2.2   The above legal structures are perfectly suited for DAOs. Indeed, all three (3) structures are hybrid models that give their owners or members the flexibility of

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[2] As defined under section 2 of the Financial Services Act.

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adopting whatever form of internal organisation preferred, while simultaneously offering features of a company's legal personality and limited liability status.

2.3 Notwithstanding the above, members of a DAO may choose any other legal structures available in Mauritius that they deem appropriate.

3. General requirements applicable to DAOs

3.1 A DAO shall specify in its constitutive documents that it has elected to be a decentralised autonomous organisation and its registered name shall include wording or abbreviation to denote its status as a decentralised autonomous organisation, specifically "DAO".

3.2 The constitutive documents shall also state or describe the DAO as either –

(a) a member managed decentralised autonomous organisation[3]; or

(b) an algorithmically managed decentralised autonomous organisation[4].

3.3 In the case of algorithmically managed DAO, the constitutive documents shall include a publicly available identifier of any smart contract directly used to manage,

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[3] Where a number of persons listed in the constitutive documents of the DAO are responsible for its management.
[4] Where the DAO is governed by computer protocols residing on a blockchain.

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facilitate or operate the DAO. If there is a material update or change to the smart contract, the constitutive documents will need to be updated.

3.4 A DAO shall, at all times, have a representative agent in Mauritius who shall be responsible for –

(a) filing with the Authorities such document as may be required under any enactment in force in Mauritius;

(b) receiving or forwarding, as the case may be, any communication, notice or summons from, or to, the Authorities in Mauritius; and

(c) maintaining records of the DAO, where applicable.

3.5 The representative agent shall be a Management Company licensed by the FSC or such other person resident in Mauritius as may be authorised by the FSC.

3.6 Service of process by or on a DAO shall be sufficient where it is made by or on his representative agent.

4. Operation of DAOs

4.1 A DAO may provide for its governance, in whole or in part, through blockchain technology.

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4.2   The operational contract, policies and procedures of a DAO shall -

(i)   provide a summary description of the mission or purpose of the DAO;

(ii)   specify whether the decentralised ledger or database utilised or enabled by the DAO will be fully decentralised or partially decentralised and whether such ledger or database will be fully or partially public or private, including the extent of members' access to information and read and write permissions with respect to protocols;

(iii)   include voting procedures to address:

(a)   proposals from members in the DAO for upgrades or modifications to software systems or protocols, or both;

(b)   other proposed changes to the operational contract, policies and procedures of the DAO; and

(c)   any other matter of governance or activities within the purpose of the DAO;

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(iv)   include protocols to respond to system security breaches or other unauthorised actions that may affect the integrity of the blockchain technology utilised by the DAO;

(v)   provide how a person becomes a member of the DAO with an interest, which may be denominated in the form of units, shares of capital, or other forms of ownership or profit sharing, or such other rights as may be facilitated by the smart contract; and

(vi)   specify the rights and obligations of each group of members within the DAO, including which member shall be entitled to specific rights and obligations.

5. Management and Membership

5.1   Management of a DAO shall be vested in its members, if it is member managed, or the smart contract, if it is algorithmically managed, unless otherwise provided in its constitutive documents.

5.2   Unless otherwise provided for in the constitutive documents, no member of a DAO shall have any fiduciary duty to the organisation or other members. However, the member shall be subject to the implied contractual covenant of good faith and fair dealing.

5.3   A member of a DAO may interact with the DAO in multiple roles, including –

(a)   as a member, manager, developer, node or miner in the DAO; or

(b)   as a trader and holder of a virtual asset or any other class of financial asset, including securities, in its own account and for the account of others,

provided such member complies with any applicable fiduciary duties.

6. Governance processes

6.1   In its governance, a DAO shall:

(a)   adopt, on the blockchain, any reasonable algorithmic means for accomplishing the consensus process for validating records, as well as requirements, processes, and procedures for conducting operations, or making organisational decisions through the adoption of governance tokens; and

(b)   in accordance with any procedures specified in paragraph 4, modify the consensus process, requirements, processes, and procedures, or substitute a new consensus process, requirements, processes, or procedures that comply with the requirements of law and the governance provisions of the DAO.

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7. Licensing and Registration

7.1   Where a DAO proposes to conduct any business for which a licence, an authorisation, a registration or an approval, as the case may be, is required under any Relevant Acts or other enactment, it shall apply for such licence, authorisation, registration or approval before commencing business.

7.2   Where a DAO is providing financial services[5], the DAO shall ensure compliance with AML/CFT obligations under the Financial Intelligence and Anti-Money Laundering Act ('FIAMLA'), similar to any other 'financial institutions' as defined thereunder.

7.3   Where a DAO digitally issues tokens as a method of raising funds from its members, in exchange for ownership or economic rights in the DAO, such tokens shall be considered as "security tokens" and the offering of such tokens shall be subject to the Securities Act and any Regulations or FSC Rules issued thereunder, including the requirement for a prospectus, as may be applicable[6].

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[5] As defined under section 2 of the Financial Services Act.
[6] Refer to FSC Guidance Notes on Security Token Offerings (Updated 23 August 2022) -
https://www.fscmauritius.org/media/70865/updated-guidance-notes-on-security-token-offerings.pdf

7.4 Where a DAO offer virtual token for sale to the public in exchange for fiat currency or another virtual asset, the DAO shall be considered as an issuer of initial token offerings and shall be required to register as such under section 25(5) of the Virtual Asset and Initial Token Offerings Services Act.

8. Dissolution

8.1 A DAO shall be dissolved upon the occurrence of any of the following:

(a) The period fixed for the duration of the DAO expires;

(b) By vote of the majority of members of a member managed DAO;

(c) Upon such events or conditions, as specified in the smart contracts or constitutive documents;

(d) By order of the Registrar of Companies if the DAO is deemed to no longer perform a lawful purpose.

8.2 As soon as possible following the occurrence of any of the events causing the dissolution of a DAO as specified at paragraph 8.1 above, the members shall take the necessary measures to execute the dissolution in a timely and orderly manner and in accordance with the prescribed laws of the Republic of Mauritius.

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9. Note of Caution

9.1 These Guidance Notes should not be construed as legal, financial or other professional advice. Investors and members of DAOs are encouraged to seek their own advice.

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