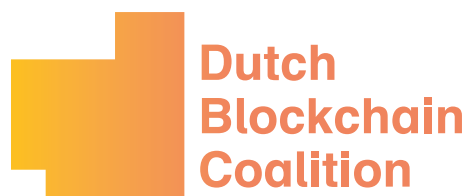




Whitepaper

Dutch corporate law aspects
of Decentralised Autonomous
Organisations



**Dutch
Blockchain
Coalition**

connect and create

www.dutchblockchaincoalition.org

Marloes Pomp

Dutch Blockchain Coalition

Clair Wermers

CMS

Simon Sanders

CMS

Arie Tervoort

Pels Rijcken

Benjamin Gideons

Pels Rijcken

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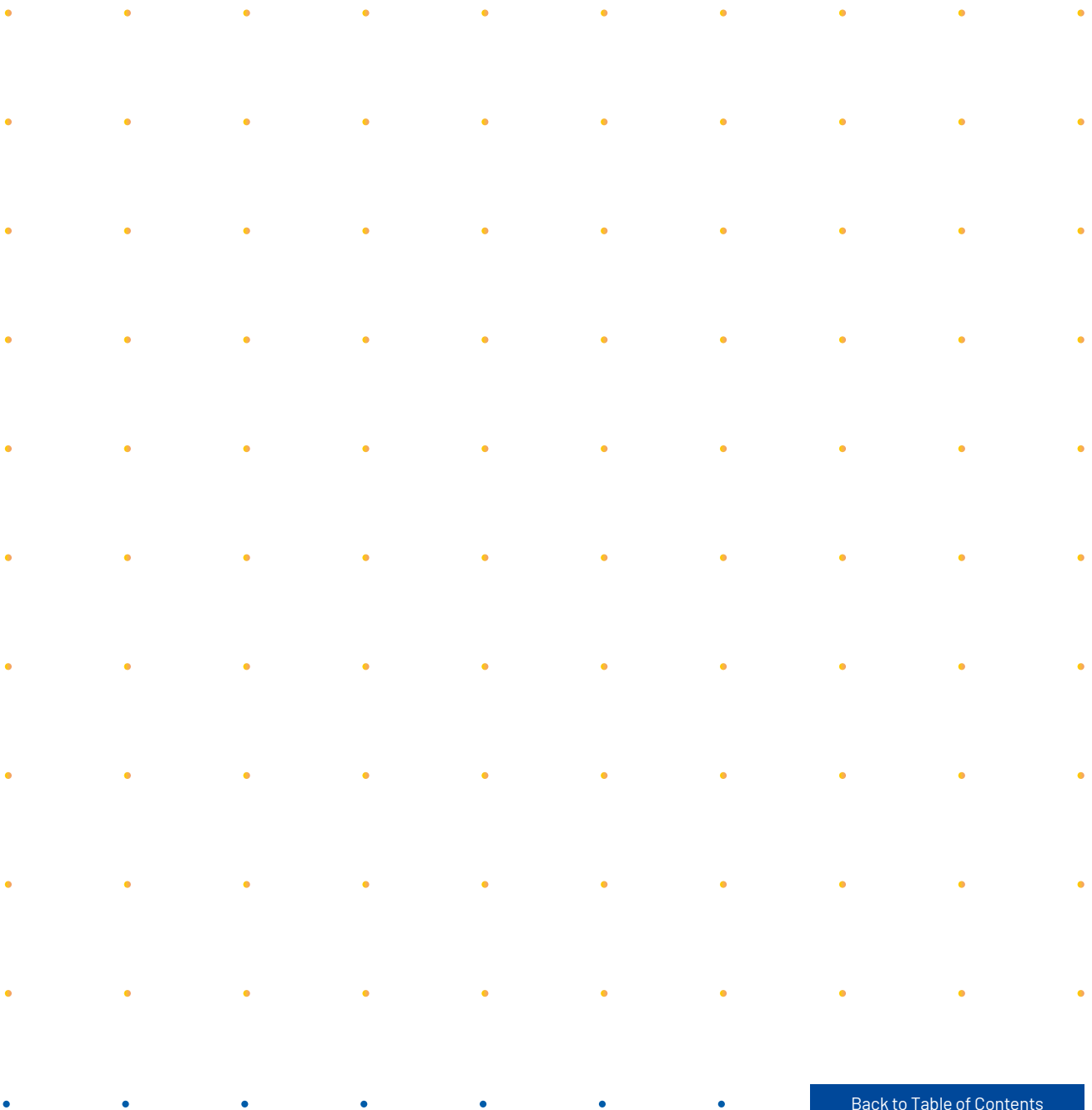


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1 DISCLAIMER

This whitepaper only provides an overview of certain general principles of Dutch corporate law. It is in no way intended to provide in advice in individual use cases. This whitepaper does not purport to inform on legal matters under any jurisdiction other than Dutch law. Moreover, Dutch tax law or (financial) regulatory law are out of scope of this whitepaper. This whitepaper uses Dutch legal concepts. Since this whitepaper is written in the English language, after the first use of Dutch legal concepts a Dutch translation will be included between brackets.



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DAOs and Dutch corporate law

Blockchain technology is here to stay and its use cases are constantly expanding. This is also reflected in the way in which communities are organised. With the help of decentralised ledger technology, such as a Blockchain, it is possible to set up a digital organisation that full or partially runs on code stored on a decentralised network. Such organisations are also referred to as Decentralised Autonomous Organisations, or briefly put DAOs. These characteristics of DAOs (and others that are to be elaborated on in this whitepaper) can be unique in comparison to traditional organisation forms. Dutch corporate law provides in a limited set of legal entities (*rechtsvormen*), which are mostly suitable for traditional organisation forms. However, sometimes the characteristics and the uniqueness of DAOs can put up a challenge for Dutch corporate law and the suitability of the currently existing legal entities in the Netherlands. Moreover, the Dutch Blockchain Coalition experiences that Dutch DAO-entrepreneurs are in search for clarity on 'DAO-proof' Dutch legal entities. Incorporating a suitable legal entity is essential for DAO-entrepreneurs, for instance in obtaining a bank account, contracting with counterparties (commercial contracts, employment contracts, IP-contracts, etc.) and protection of IP. The lack of a suitable Dutch legal entity for certain DAOs – or the lack of information on the suitability of existing Dutch legal entities – may result in Dutch DAO-entrepreneurs moving to other jurisdictions.

Moreover, setting up a DAO in the Netherlands without incorporating the DAO as a certain legal entity may have other legal risks. By Dutch law, if multiple natural persons or legal entities bring together capital or labour with the collective aim of generating profits, then this may – under circumstances – qualify as a partnership (*maatschap*). As a result, the participants of the DAO will qualify by law as partners of the partnership, and will be, by law, liable for all debts of the DAO (refer to paragraph 3.6). Also, multiple natural persons or legal entities unifying with a social purpose (not generating and distributing profits) may – under circumstances – by law qualify as an informal association (*informele vereniging*). The board members of such a DAO are liable for the debts of the DAO. This is another reason why it is recommendable for DAO-entrepreneurs to carefully consider incorporating a legal entity before setting up a DAO.

To facilitate DAO-entrepreneurs, the Dutch Blockchain Coalition prepared this whitepaper. After an inquiry under DAO-entrepreneurs, the Dutch Blockchain Coalition learned that the following matters are important to DAO-entrepreneurs when opting for a legal entity:

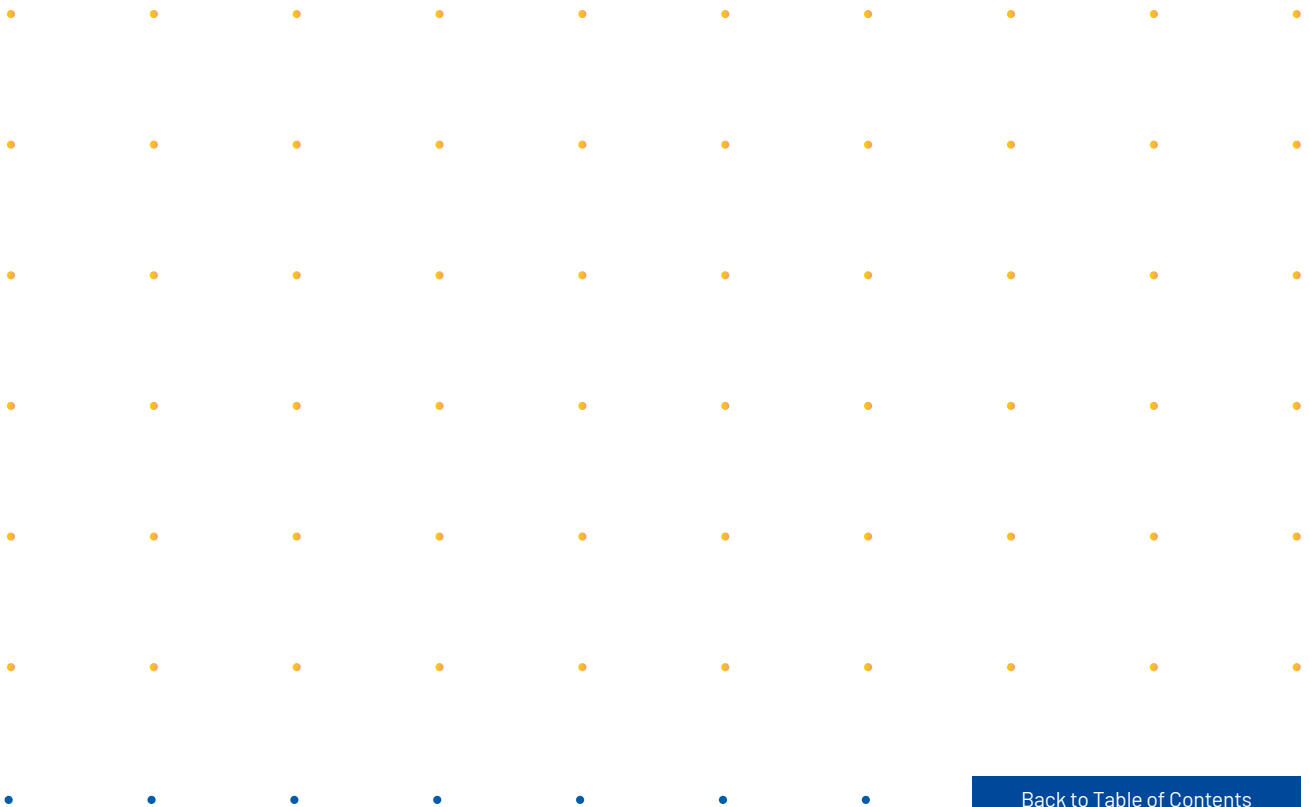
- Incorporation (*oprichting van de rechtsvorm*) process and costs.
- Flexibility in profit rights (*winstrechten*) and voting rights (*stemrechten*).
- Transferability (*overdraagbaarheid*) of its 'participation rights'; accession and exiting the DAO.¹
- Governance between management board (*statutair bestuur/directie*) and the holders of participation rights.
- Personal liability of members of the management board and the holders of participation rights.
- Transparency requirements.

1 Different terms are used for parties that have profit and/or voting rights in a DAO, such as tokenholders, shareholders or participants. We will use the neutral term of 'participant' and 'participation rights' for every party that holds profit and/or voting rights in a DAO.

In this whitepaper we will discuss the following Dutch legal entities:

- A partnership (*maatschap*), and its derivatives, the general partnership (*vennootschap onder firma*) and limited partnership (*commanditaire vennootschap*).
- A private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid* or B.V.), referred to as a BV.
- A foundation (*stichting*).
- An association (*vereniging*) and a cooperation (*coöperatie*).

Firstly, this whitepaper provides a description of DAOs. After that, this whitepaper provides in a brief summary of the most important legal and governance aspects of the legal entities above and elaborates on the applicability of each matter per legal entity (paragraph 3 to 7), except for the transparency requirements. Transparency requirements are – generally speaking – equal for all legal entities in the Netherlands. We will further detail the transparency requirements of DAO on the basis of the registration obligations of a legal entity with the Dutch Chamber of Commerce (*Kamer van Koophandel - KvK*) (paragraph 8). Transparency requirements pursuant to Dutch Financial Supervision Act (*Wet Financieel Toezicht - Wft*) are out of scope for this whitepaper. In paragraph 9 we further elaborate on a comparative overview of solutions in corporate law legislation of other jurisdictions. We conclude in paragraph 10 with a general overview which functions as a summarised comparison of the matters per legal entity.



2 What is a DAO?

First, we start off in 2014 with Buterin's terminology guide on the Ethereum Blog. Buterin is one of the co-founders of the Ethereum blockchain.² Before understanding Buterin's definition of a DAO, we must first understand Buterin's definitions of *smart contracts*, *decentralised applications* (DAs) and *decentralised organisations* (DOs). In Buterin's view 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." A DA is similar to a smart contract, with its main differences that (a) DAs have an unbound number of participants and (b) DAs do not have to be financial. DOs are similar to 'normal' organisation, however, with the main difference that it is not regulated by "a hierarchical structure managed by a set of human". Instead a DO "involves a set of humans interacting with each other according to a protocol specified in code, and enforced on the blockchain". Now, we arrive to Buterin's definition of DAOs. First Buterin describes the differences between a DAO on the one hand and DAs and DOs on the other hand. The main difference between a DAO and a DA is that a DAO has internal property, and a DAO has "the ability to use that property as a mechanism for rewarding certain activities." The main difference between a DAO and a DO is that a DAO relies on (some sort of level of) autonomous decision-making, with only limited human interaction. Therefore, we can conclude on the following definition of a DAO by Buterin: (a) it exists on the internet, (b) its decision-making process is to some degree autonomous, (c) it relies on human interaction and (d) it has internal capital.

In addition to the definitions of DAs, DOs and DAOs, Buterin also defines so called *decentralised autonomous corporations* (DACs). Briefly put, DACs are a subclass of DAOs with its main difference that DACs pay dividends to its members/tokenholders. For the purpose of this whitepaper, we will not make a difference between DAOs and DACs. When we speak of DAOs, we are also referring to DACs.

Secondly, we would like to address Jentzsch' definition of a DAO. Jentzsch is the founder and CTO of Slock.it and published in 2016 a whitepaper in which he explains how to create a DAO using smart contract code. In his paper, Jentzsch illustrates a method that "allows the creation of organizations in which (1) participants maintain direct real-time control of contributed funds and (2) governance rules are formalized, automated and enforced using software". Jentzsch then proceeds to further outline a basic structure for a DAO code based on the Ethereum blockchain.

The definitions of Buterin and Jentzsch are also underlined by Rikken et al,³ who analysed 1,635 DAOs and concluded that 96.3% of these DAOs share the two following key functionalities: (i) storage and transfer of value functionality and (ii) trusted notary functionality. We refer to Rikken et al, for an overview of the (academic) literature on the definition of a DAO.

2 Vitalik Buterin, 'DAOs, DACs, DAs and More: An Incomplete Terminology Guide', 6 May 2014, published on the Ethereum Blog (<https://blog.ethereum.org/2014/05/06/daos-dacs-das-and-more-an-incomplete-terminology-guide>).

3 Rikken, Olivier and Janssen, Marijn and Kwee, Zenlin, The Ins and Outs of Decentralized Autonomous Organizations (Daos). Available at SSRN: <https://ssrn.com/abstract=3989559> or <http://dx.doi.org/10.2139/ssrn.3989559>.

For the purpose of this whitepaper, we will define a DAO along the following characteristics:

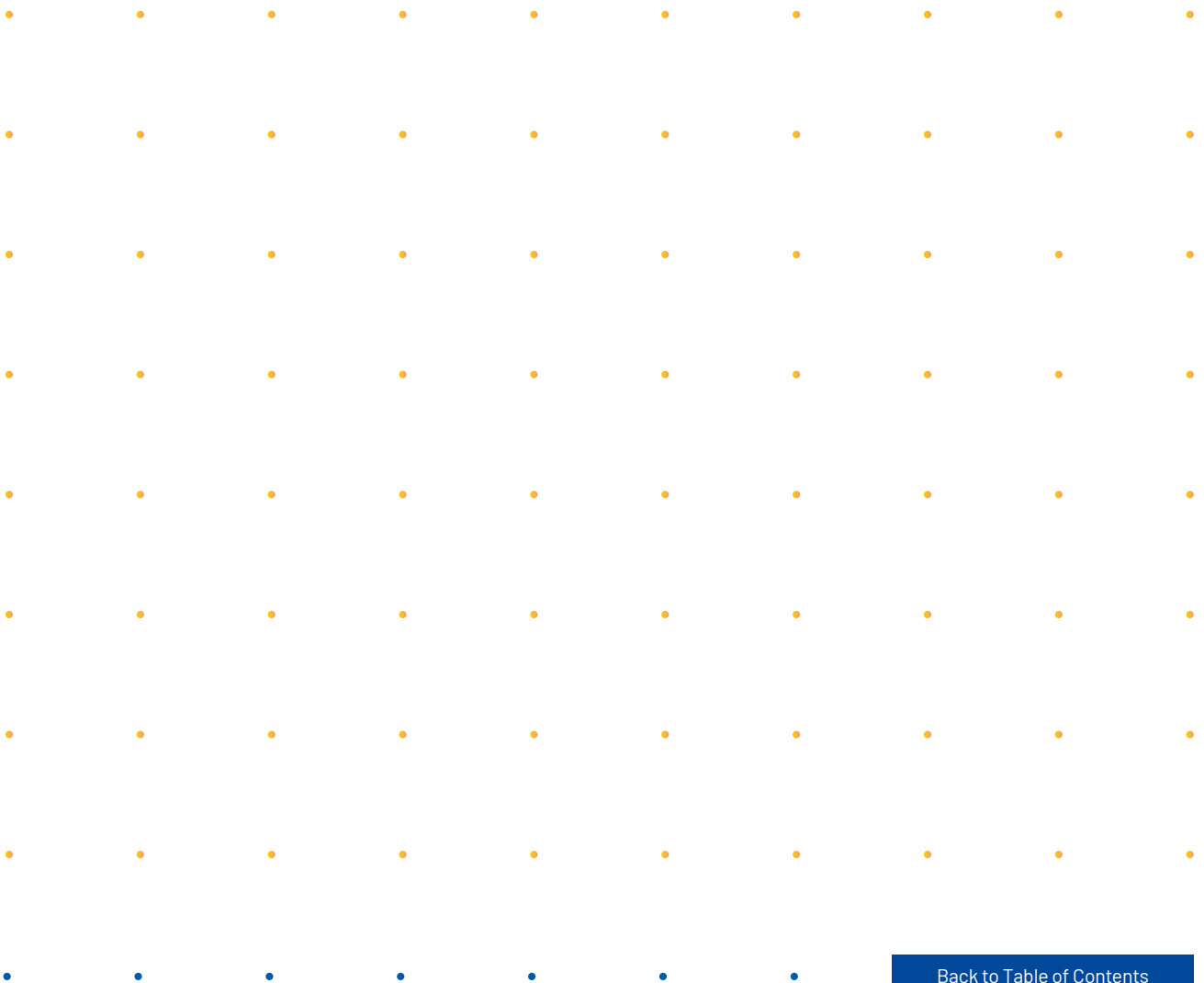
A DAO is an organisation form in which participants bring capital together (the internal capital) and the participants of a DAO maintain direct real-time (full or partial) control over the internal capital of the DAO (storage and transfer of value functionality, as identified by Rikken et al).

The internal capital of the DAO may be used for both for-profit (such as DACs) as not-for-profit activities.

The structure and the governance of the DAO is fully or partially incorporated as a smart contract which could be based on a blockchain (trusted notary functionality, as identified by Rikken et al).

The decision-making process and other governance aspects are to some degree autonomous but also relies on human interaction.

The purpose of DAOs can be multiple. Although momentarily often related to decentralized finance or art related (NFT) products, they can actually cover all types of purposes that we can see in traditional organizations. It is furthermore important to understand that there is no "standard" DAO template. DAOs can exist in many forms where incentive structures, participant setup and decision models can differ highly from DAO to DAO.



3 Partnership (maatschap)

3.1 Legal aspects and governance

Before we dive in the legal aspects and governance of partnerships, we will first need to explain that under Dutch law we have three different forms of partnerships. Firstly, Dutch corporate law makes an old-fashioned difference between a partnership that exploits a profession (a 'normal' partnership; *maatschap*) and a partnership that exploits business, not being a profession (a general partnership; *vennootschap onder firma*). Moreover, it is also possible to incorporate a limited partnership (*commanditaire vennootschap*) which equals to a general partnership with as main difference that it also has 'limited partners'. The legal framework for a 'normal' partnership, general partnership and limited partnership are for the most part alike. If we speak of a partnership in this whitepaper, we will refer to 'normal' partnerships, general partnerships and limited partnerships.

We can briefly summarize the legal and governance aspects of a partnership as follows:

- A partnership is an agreement (written or oral) between two or more parties (the partners; *vennoten*), whereby the parties bring equity together in order to divide the revenues between them.
- The parties of a partnership may either be natural persons (*natuurlijke personen*) or other legal entities.
- The equity may consist of everything that represents value, such as cash, equipment, know-how, IP or labour.
- The legal framework for a partnership provides in lots of flexibility in setting up the governance of a partnership.
- A partnership does not have legal personality (*rechtspersoonlijkheid*); not the partnership itself but the individual partners are bound to the partnership's obligations.
- In a 'normal' partnership all partners are individually liable, for equal parts, for all obligations/debts of the partnership. In a general partnership all partners are jointly and severally (*hoofdelijk*) liable for all obligations/debts of the partnership. In a limited partnership all limited partners are only liable for their respective equity obligations. The general partner(s) of a limited partnership is jointly and severally liable for all obligations/debts of the partnership. If a limited partner acts as a managing partner, then the limited partner will also be jointly and severally liable for all obligations/debts of the partnership.
- A partnership is governed by the partners jointly. In principle, the partners may only adopt resolutions by unanimous vote.
- In a 'normal' partnership a partners may only represent the partnership after obtaining a power of attorney (*volmacht*) from the other partners. In a general partnership, all partners are individually authorised to represent the partnership. The partners may agree otherwise in the partnership agreement.
- If not determined otherwise in the partnership agreement, a partnership will end by law when one of the partners leaves the partnership. A Partner that leaves the partnership remains liable for all debts as to the moment of its exit.
- In principle, profits are distributed between the partners pro rata their equity stake. To a large extent, the partnership agreement may determine otherwise (refer to par. 3.3).

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A DAO could be incorporated as a partnership. In our view, the participants of a DAO would qualify as the (managing or limited) partners of the partnership. A partnership's governance is highly flexible which will be demonstrated below. This makes that a partnership is a good fit for a DAO. However, the liability of partners may deter DAO-entrepreneurs and investors to use the partnership as a legal entity for a DAO.

3.2 Incorporation process and costs

Partnerships are incorporated by way of a partnership agreement. Such partnership agreement can be executed in writing or orally. It is therefore possible to (partially) conclude the partnership agreement in a programming language (e.g. a Solidity script). A notarial deed (*notariële akte*) is not required for incorporating a partnership. The incorporation process is therefore accessible, cost-efficient and easy-applicable to a DAO.

Moreover, it is not necessary to explicitly agree by two or more persons that they incorporate a partnership. The fact that two or more persons are collaborating in such a way that equals a partnership, makes that a partnership is incorporated. DAOs that not explicitly agree on incorporating as a certain legal entity, could qualify as a 'silent partnership'. Such qualification applies automatically, by law, whether the participants of the DAO want it or not. As a consequence its participants/partners could be each, individually, liable for equal parts for all obligations/debts of the DAO.

Given that a partnership is incorporated by way of an agreement between all the partners, the partnership agreement may only be altered after agreement by each partner. The partnership agreement may determine otherwise (e.g. by majority vote).

3.3 Flexibility of profit rights and voting rights

The legal framework of a partnership provides for a highly flexible framework for assigning profit rights between the partners. In principle, profits are distributed between the partners pro rata their equity stake. It is possible agree upon deviant profit-sharing rules, with the following exceptions:

- It is not possible to agree that only one of partners or a third party has the right to determine the stake of the other partners in the profits of the partnership. However, it is possible to make such resolution by way of a simple or unanimous decision by the partners.
- It is not possible exclude one or more partners of sharing in any of the profits of the partnership.

Contrary to profit sharing, it is possible to exclude one or more partners of sharing in the losses of the partnership. This will only have internal effect; i.e. between the partners. All partners remain individually liable, for equal parts, for all obligations/debts of the partnership even if a partner is excluded from sharing in the losses of the partnership. In the event that partners are liable, all partners are liable to third parties. Afterwards, the partners should settle among themselves in accordance with their agreements.



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Example: The participants/partners of a DAO may vote each year whether or not the profits of that year will be distributed between the participants/partners. If a normal majority (>50%) or a qualified majority (e.g. >75%) votes in favour of distributing the profits, the DAO will distribute accordingly.

Example: The partnership agreement of a service-DAO may determine that the profit in a certain year will be distributed between the participants/partners of a DAO pro rata the services a participant/partner performed (e.g. to be calculated in amount of hours or amount of revenue).

3.4 Transferability of participation rights

Dutch corporate law in regard to an exit and accession of parties to a partnership is quite strict. A partnership will be terminated in case of an accession of a new partner or exit by one of the existing partners, unless agreed otherwise in the partnership agreement. We therefore highly recommend including a framework in the partnership agreement for exiting and accession of (new) partners. The shares of a partner are in principle only transferable after approval by all other partners of the partnership. It is possible to determine otherwise in the partnership agreement. The exiting partner will remain liable for all obligation/debts of the partnership, existing at the moment of the partner's exit (remaining liability). It is therefore customary that the remaining (and new) partners will provide in an indemnity to an exiting partner for such remaining liability.

Although seemingly strict, the transferability of participation rights in a partnership are highly flexible and therefore suitable for a DAO. Partnership/DAOs are free to include (almost) any framework in regard to the exit and accession of participants. The downside is, however, that exiting participants have to deal with remaining liability.

3.5 Governance between management board and holders of participation rights

A partnership does not differentiate between a management board and holders of participation rights. In other words: the holders of the participation rights (i.e. the partners) are the management board of the partnership.

The governance structure of a (limited) partnership is highly suitable for a DAO because (a) the participants will qualify as (limited or managing) partners of the partnership, (b) the partners/participants are autonomous in governing the partnership/DAO and (c) the governance of a partnership/DAO is highly flexible so it could be tailored to the desires of the participants.

A 'normal' partnership and a general partnership do not know the difference between a management board and holders of participation rights. In other words: the holders of the participation rights (i.e. the partners) are the management board of the partnership. The partners are in principle fully autonomous, albeit in principle they can only resolve unanimously. As set out above, the partnership agreement may determine that the partners may resolve on certain matters by way of a normal majority (>50%) or a qualified majority (e.g. >75%).



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Example: the partnership agreement may determine that certain investment decisions (e.g. above an certain amount) may only be resolved upon after (a) a qualified majority of 90% of the votes voted in favour and (b) in a meeting where at least 100% of the equity is represented.

In case of a limited partnership, the above also applies correspondingly to the managing partners of that limited partnership. There must always be one managing partner in a limited partnership. The limited partners may not act as managing partners. If a limited partners acts as a managing partner, this limited partner will individually be liable for all obligations/debts of the partnership.

3.6 Liability

In a 'normal' partnership, all partners are individually liable, for equal parts, for all obligations/debts of the partnership. This means that all participants are liable for the full obligations/debts of the partnership, each for an equal part.

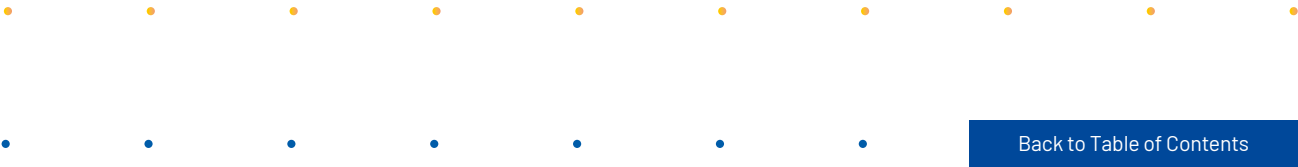
In a limited partnership, the limited partners are only liable for the amount of their equity stake. Managing partners are jointly and severally liable for all obligations/debts of the partnership.

This liability regime for (limited and managing) partners could scare of DAO-entrepreneurs and investors. There are ways to mitigate these liability risks, for instance by using a legal entity (a Dutch BV) as a (managing) partner in the partnership. The downside is that this could reduce the accessibility of the DAO incorporated as a (limited) partnership because each (managing) partner will need to incorporate a new legal entity before acceding the partnership.

As set out in paragraph 3.4, exiting partners will remain liable for all obligation/debts of the partnership, existing at the moment of the partner's exit. This makes a partnership less attractive as legal entity for a DAO with a fast-changing participants' network.

3.7 Modernization of partnerships

The system in relation with partnerships as described in the previous paragraphs, is set to be changed. The bill to modernize partnerships, which is currently being prepared, changes some major aspects of partnerships. Among other things, partnerships could become legal entities, thus could become in itself liable for the rights and obligations of the entity. Furthermore, entry and exit of partners will be simplified. It is not to be expected that these changes, if adopted al all in the forthcoming bill, will enter into force within at least a two to three years period.



4 Private limited liability company (BV)

4.1 Legal aspects and governance

We can briefly summarize the legal and governance aspects of a BV as follows:

- A BV is a legal entity that needs to be incorporated by way of a notarial deed. At incorporation, the primary governance rules are laid down in its articles of association (AoA). The articles of association may only be amended by way of a notarial deed. It is possible for shareholders to agree upon additional governance rules in a shareholder's agreement.
- A BV has legal personality meaning that the BV itself is bound by its rights and obligations, and not its shareholders or board members
- The governance of a BV consists of the general meeting of shareholders and a management board. In some cases it is also mandatory for a BV to have a supervisory board. It is also possible to voluntarily incorporate a supervisory board. Governance aspects in relation to a supervisory board are out of scope of this whitepaper.
- The shareholders provide in the equity of the BV in return for shares. Shares provide in profit and/or voting rights for the shareholder. The attribution of profit and/or voting rights to shares is relatively flexible which will be demonstrated below (paragraph 4.3).
- Shares are only transferrable by way of a notarial deed. The AoA or a SHA may contain transfer restrictions.
- The management board may consist of one or more members. The members may be natural persons or legal entities. A shareholder may also be a board member but that is not mandatory; other third parties may also be appointed as members of the management board.
- The management board is responsible for the management and daily course of business of the BV. Members of the management board are either individually or jointly authorised to represent the BV, unless agreed otherwise in the AoA or the SHA.
- The general meeting of shareholders may appoint, suspend and dismiss members of the management board. Moreover, certain decisions regarding a BV may only be taken by the general meeting of shareholders (and not the management board), such as amending the AoA, issuance of new shares, mergers, demergers or termination of the BV.

A BV could be – to some extent – a suitable legal entity for a DAO. The participants of a DAO would, in our view, qualify as the shareholders of the BV. However, the BV has a centralised body namely the management board. This does not translate well to the decentralised characteristic of a DAO (further detailed in paragraph 4.5). Moreover, the AoA must be laid down in a notarial deed. As a consequence, there is limited flexibility in laying down a DAO's governance rules in computer code (further detailed in paragraph 4.2).

4.2 Incorporation process and costs

The incorporation of a BV must be executed by way of a notarial deed. At incorporation, the AoA will be laid down



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in the notarial deed. The incorporation of a BV is, therefore, costly and more time-consuming compared to a partnership.

At incorporation, a BV must issue one or more shares to its shareholder(s). The shareholder(s) must pay up the nominal value (*nominale waarde*) of the shares. It is possible to create shares with a nominal value of EUR 0.01 (1 eurocent), and, thus, incorporate a BV with only one share with a nominal value of EUR 0.01. It is not necessary for a BV to have a minimal equity amount, besides the EUR 0.01.

The fact that the AoA are laid down in a notarial deed also has the following consequences:

- Amending the AoA also will require a notarial deed, and is therefore costly and time-consuming too.
- Certain key governance elements of a BV must be laid down in the AoA.* It is therefore not possible to primarily lay down governance rules of a DAO-BV in computer code. It is possible to set out the governance rules laid down in the AoA in a computer code; the computer code 'follows' the governance rules laid down in the AoA. The downside of this solution is that amending the governance rules requires an amendment of the AoA (by way of a notarial deed) and an amendment of the computer code. Moreover, it is possible to keep the governance rules in the AoA as light and simple as possible and lay down additional governance rules in computer code. The computer code will then function as a SHA.

*Key governance elements of a BV that must be laid down in the AoA are (non-limitative): registered capital (*maatschappelijk kapitaal*), nominal value of shares, number of shares at incorporation, purpose of the BV and the to be appointed board members.

4.3 Flexibility of profit rights and voting rights

In a BV, the voting and profit rights of shares are generally flexible and can be tailored to the needs of the shareholders. The shares of a BV provide in profit and/or voting rights to the holder of that share. It is possible to create different classes of shares with varying profit and/or voting rights or with no profit or voting rights attached to it. The AoA should detail all available classes of shares and the amount of profit and voting rights attributed to normal share or different classes of shares.

Example: A BV could have a share capital consisting of 100 'normal shares' with equal profit and voting rights, 10 'preference shares' with no voting right but preferred profit-sharing rights and 10 'founder shares' with double the voting and profit rights as normal shares.

The flexibility in creating different classes of shares makes a BV an attractive legal entity for a DAO. However, we also address the following downsides:

The AoA must set out the registered capital (*maatschappelijk kapitaal*) of a BV. The registered capital determines the maximum amount of shares a BV could issue. For instance, a BV with a registered capital of EUR 100,000



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could not issue more than 100,000 shares with a nominal value of EUR 1.00. Amending the registered capital of a BV requires an amendment of its AoA (by way of a notarial deed).

The AoA must set out all different classes of shares limitatively. If it is desired to create a new class of shares, the AoA must be amended (by way of a notarial deed).

Issuing (any class of) new shares also requires executing a notarial deed.

For each of the matters set out above, it is required to involve a notary. This impacts the autonomous functioning of a DAO-BV.

In addition to shares, it is also possible for a BV to issue 'profit certificates' (*winstbewijzen*) or 'participation shares' (*participatiebewijzen*). Both profit and participation certificates provide in a profit right for its holder. It is not possible to attribute voting rights to such certificates. The creation of profit or participation certificates requires a basis in the AoA, however, the issuance and transfer of such certificates does not require a notarial deed. A DAO-BV could issue both shares and profit/participation certificates in order to mitigate the downsides set out above in relation to shares.

Example: In addition to the example set out above, the AoA of the DAO-BV could enable the issuance of 'participation certificates'. It is therefore possible for the DAO-BV to freely issue profit rights to participants. No notarial deed is required for such issue and any subsequent transfer of the participation certificates. The issue and transfer of participation certificates could, therefore, be further detailed and automated as computer code.

4.4 Transferability of participation rights

The participation rights of a BV are its shares. Shares can only be transferred by way of a notarial deed. Consequently, a share transfer is time-consuming and costly. A BV is from a transferability point of view less suitable for a DAO. This could, to some extent, be mitigated by using profit sharing rights which are transferrable by way of a normal deed.

4.5 Governance between management board and holders of participation rights

The management board is by law obliged to manage the BV. It is not possible to attribute the management role to any other body of a BV. The management board has – by law – a responsibility to perform its duties in the interest of the BV and the enterprise(s) connected with it. This means that the management board will have to make its own consideration of interest and should not only prioritise the interest of the shareholders but take the interest of other stakeholders of the BV into account as well.

Example: If the general meeting of a BV instructs the board to make 'decision A' but the board considers 'decision B' in the best interest of the BV (i.e. better than 'decision A'), then the board is obliged to execute 'decision B'.



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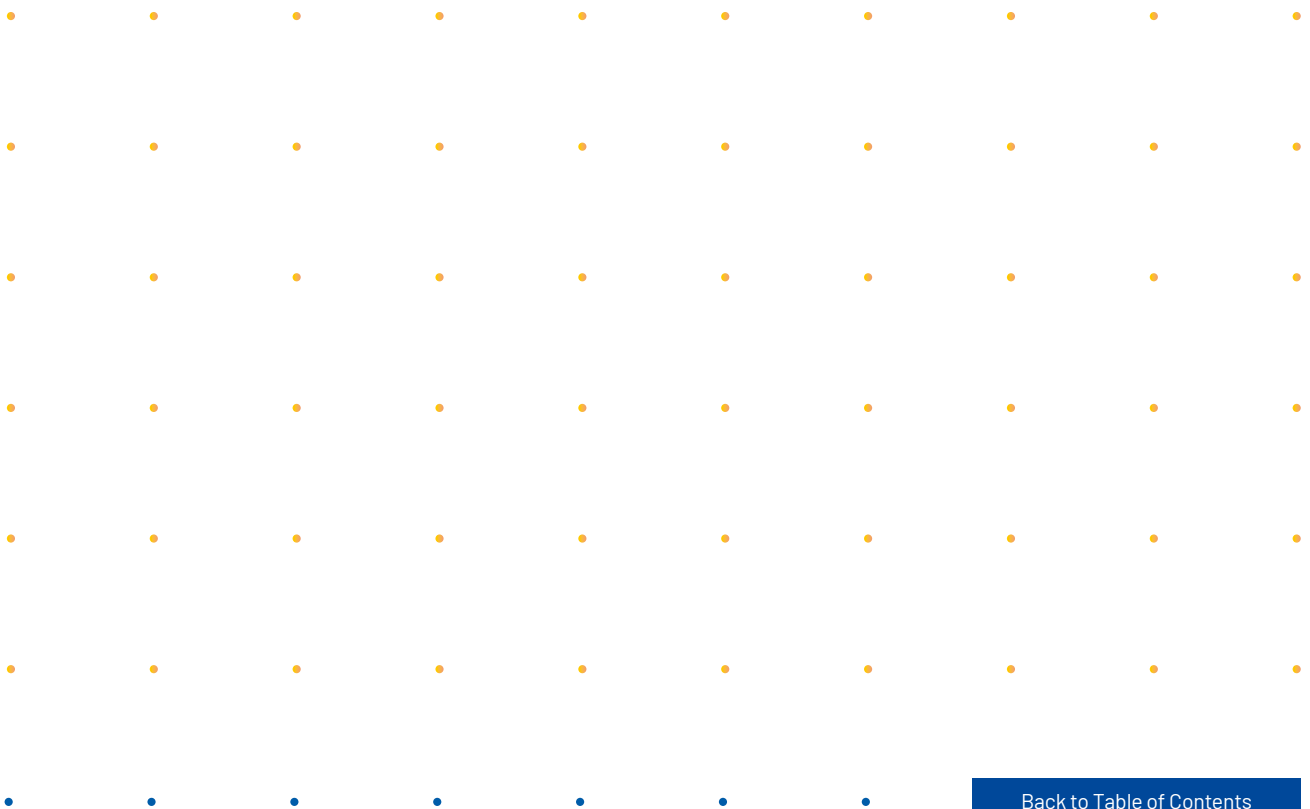
A BV has a centralised body (the board), with its own responsibilities. This does not fit with the decentralised characteristics of a DAO, where the 'power to control' lies within all participants.

The management board of a BV may consist of one or more members. Each member has one vote in the decision-making process in the management board, unless determined otherwise in the articles of association or in a SHA. Moreover, it is possible to appoint a chairperson between the members of the management board which chairperson may have a decisive vote, if the votes of the members of the board are equally divided.

It is possible to include in the articles of association or in a shareholder's agreement an additional list of resolutions of the management board that require the prior written approval by the general meeting of shareholders. Moreover, it is possible to include an instruction right for the management board in the articles association or in a shareholder's agreement.

4.6 Liability

Shareholders and profit right holders are primarily only liable for their obligation to pay up the nominal value on the shares. The articles of association could determine otherwise, although this is not very customary. The members of the management board are in principle not liable for the obligations of the BV, except for very exceptional cases such as mismanagement. The fact that a BV is a legal entity, and therefore shareholders and managers are in principle not liable for the obligations of a BV, is potentially decisive in choosing a legal structure of a DAO.



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5 Foundation (stichting)

5.1 Legal aspects and governance

We can briefly summarize the legal and governance aspects of a foundation as follows:

- A foundation is a legal entity that needs to be incorporated by way of a notarial deed. At incorporation, the primary governance rules are laid down in its articles of association (AoA). The articles of association may only be amended by way of a notarial deed.
- A foundation has legal personality meaning that the foundation itself is bound by its rights and obligations, and not its board members.
- The governance of a foundation only consists of a management board. In some cases it is also mandatory for a foundation to have a supervisory board. It is also possible to voluntarily incorporate a supervisory board. Governance aspects in relation to a supervisory board are out of scope of this whitepaper.
- A foundation may only distribute its equity in accordance with its purpose as laid down in its AoA. It is not allowed for a foundation to have a purpose that allows equity distributions to its board members, members of other bodies of the foundation or third parties. However, it is allowed for a foundation to have a purpose that allows equity distributions to third parties if such distributions have an idealistic or social nature.
- The management board may consist of one or more members. The members may be natural persons or legal entities. The board members appoint, suspend and dismiss each other, unless determined otherwise in the AoA (such as appointment, suspension and dismissal by a third party).
- The management board is responsible for the management and daily course of business of the foundation. Members of the management board are either individually or jointly authorised to represent the foundation, unless agreed otherwise in the AoA.
- It is possible to incorporate other bodies that have certain governance rights in relation to the foundation, such as a meeting of participations. This meeting of participants may not have a right of acquiring any equity or profits. Moreover this meeting of participations may not be in essence equal to the meeting of members of an association. This means that it is not possible to have a meeting of participants that (i) may appoint, suspend or dismiss board members, (ii) otherwise have influence on the tasks of the management board or (iii) are obliged to (financially) support the organisation or business of the foundation.

A foundation is not suitable for a DAO that wishes to distribute its profits to its participants. In case of a not-for-profit DAO, a foundation could be – to some extent – a suitable legal entity. The participants of a DAO could, in our view, participate as a meeting of participants. However, do note that such meeting of participants only may have limited governance rights. Also, the foundation has a centralised body namely the management board. This does not translate well to the decentralised characteristic of a DAO (further detailed in paragraph 5.5). Moreover, the AoA must be laid down in a notarial deed. As a consequence, there is limited flexibility in laying down a DAO's governance rules in computer code (further detailed in paragraph 5.2).



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5.2 Incorporation process and costs

The incorporation of a foundation must be executed by way of a notarial deed. At incorporation, the AoA will be laid down in the notarial deed. The incorporation of a foundation is, therefore, costly and more time-consuming compared to a partnership.

5.3 Flexibility of profit rights and voting rights

It is prohibited to assign profit rights to a participation in a foundation. Moreover, it is prohibited that participants have influence over the management board of a foundation. More specific, this means that it is not possible to have a meeting of participants that (i) may appoint, suspend or dismiss board members, (ii) otherwise have influence on the tasks of the management board or (iii) are obliged to (financially) support the organisation or business of the foundation.

Example: A grant-DAO that focusses on sustainable project wishes to incorporate itself as a foundation. The foundations will need to have a management board, which decides on feasible projects. The participants of the DAO can participate in the foundation by way of separate body, called a meeting of participants. The meeting of participants may vote over and send proposals to the management board. The management board may decide – at its sole discretion – to accept such a proposal.

Given this inflexibility in profit and voting rights, the foundation only provides in a limited solution as a legal entity for a DAO.

5.4 Transferability of participation rights

The AoA of a foundation determines whether and to what extent the participations are transferable. It is possible to create participation rights that are freely transferable.

5.5 Governance between management board and holders of participation rights

The management board is by law obliged to manage the foundation. It is not possible to attribute the management role to any other body of a foundation. The management board has – by law – a responsibility to perform its duties in the interest of the foundation and the enterprise(s) or organisation(s) connected with it. This means that the management board will have to make its own consideration of interest and should not prioritise the interest of participants but should take the interests of other stakeholders of the foundation into account as well.

A foundation has a centralised body (the board), with its own responsibilities. This does not fit with the decentralised characteristics of a DAO, where the 'power to control' lies within all participants. The fact that the meeting of participants may not have influence over the management board, also goes against the decentralised characteristics of a DAO.

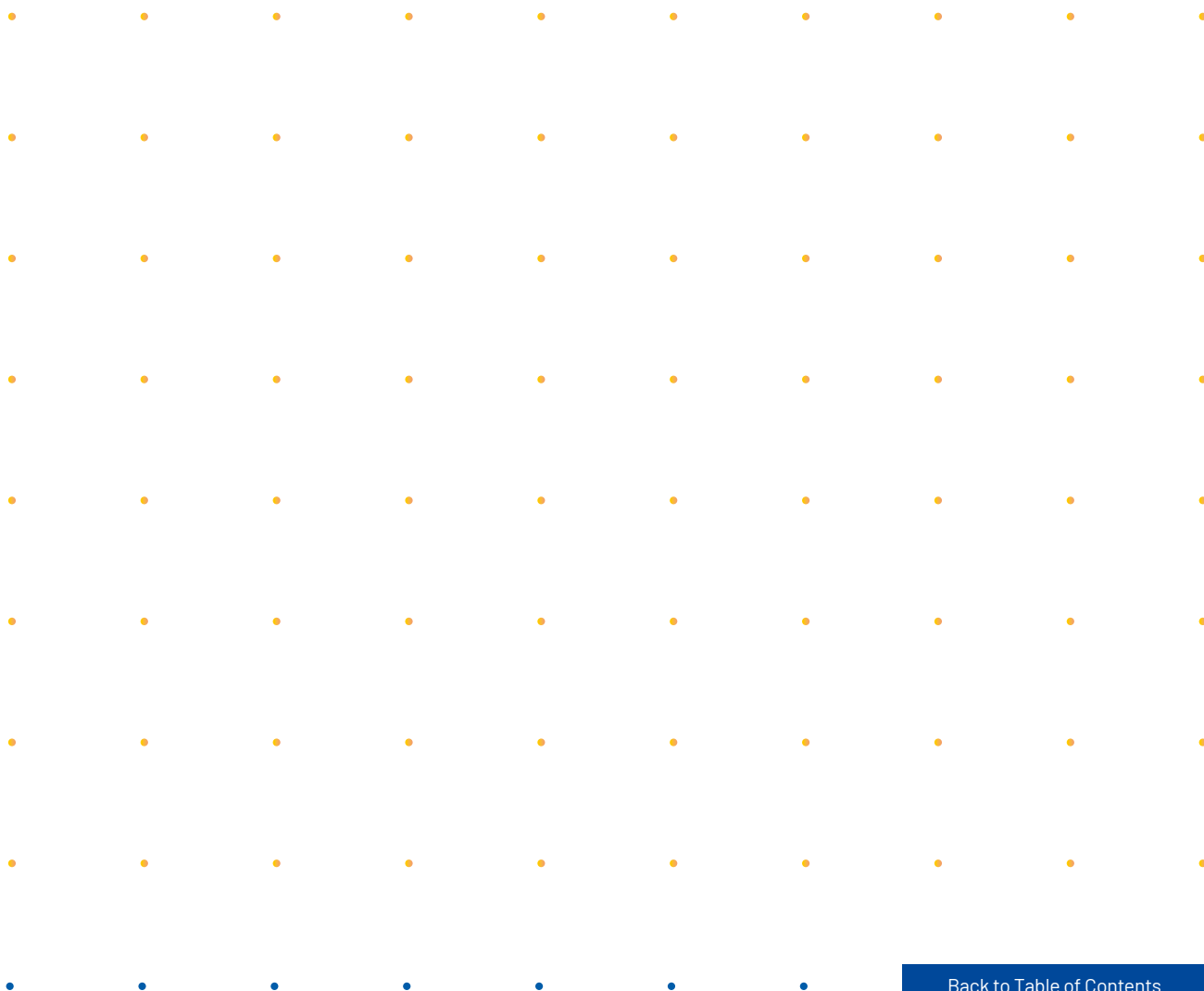


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The management board of a foundation may consist of one or more members. Each member has one vote in the decision-making process in the management board, unless determined otherwise in the articles of association. Moreover, it is possible to appoint a chairperson between the members of the management board which chairperson may have a decisive vote, if the votes are tied.

5.6 Liability

The members of the management board are in principle not liable for the obligations of the foundation, except for very exceptional cases such as mismanagement. In connection with the liability, the same advantages regarding obligations of the legal entity apply to the foundation as to the BV.



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6 Association

6.1 Legal aspects and governance

An association and a cooperation are in most ways very similar legal entities. The main exception is that associations may not distribute profits between its members; a cooperation is allowed to distribute profit between its members. The characteristics of a cooperation and the difference between an association and a cooperation are further discussed in the next sections.

Briefly put, the main legal aspects and governance of an association are as follows:

- An association is a legal entity that needs to be incorporated by way of a notarial deed. At incorporation, the primary governance rules are laid down in its articles of association (AoA). The articles of association may only be amended by way of a notarial deed. It is possible for shareholders to agree upon additional governance rules in a member's agreement.
- An association has legal personality meaning that the association itself is bound by its rights and obligations, and not its members or board members.
- The governance of an association consists of the meeting of members (*ledenvergadering*) and a management board. In some cases it is also mandatory for an association to have a supervisory board. It is also possible to voluntarily incorporate a supervisory board. Governance aspects in relation to a supervisory board are out of scope of this whitepaper.
- Membership rights may be transferred to third parties, unless determined otherwise in the articles of association.
- The management board may consist of one or more members. A member may also be a board member but that is not mandatory; other third parties may also be appointed as members of the management board.
- The management board is responsible for the management and daily course of business of the association. Members of the management board are either individually or jointly authorised to represent the association, unless agreed otherwise in the AoA or the SHA.
- The general meeting of shareholders may appoint, suspend and dismiss members of the management board. Moreover, certain decisions regarding an association may only be taken by the general meeting of shareholders (and not the management board), such as amending the AoA, mergers, demergers or termination of the association.
- An association may generate profits. However, in regards of an association it is prohibited by law to distribute profits to its members.

The association is highly flexible and therefore suitable for the use of a DAO. However, given that associations may not distribute profits to its members/participants makes the association less suitable for for-profit DAOs.

6.2 Incorporation process and costs

The incorporation of an association must be executed by way of a notarial deed. At incorporation, the AoA will be laid down in the notarial deed. The incorporation of an is, therefore, costly and more time-consuming compared to a partnership.

The fact that the AoA are laid down in a notarial deed also has the following consequences:

- Amending the AoA also will require a notarial deed, and is therefore costly and time-consuming too.
- Certain key governance elements of an association must be laid down in the AoA. It is therefore not possible to primarily lay down governance rules of a DAO-association in computer code. It is possible to set out the governance rules laid down in the AoA in a computer code; the computer code ‘follows’ the governance rules laid down in the AoA. The downside of this solution is that amending the governance rules requires an amendment of the AoA (by way of a notarial deed) and an amendment of the computer code. Moreover, it is possible to keep the governance rules in the AoA as light and simple as possible and lay down additional governance rules in computer code. The computer code will then function as a membership agreement.

6.3 Flexibility of profit rights and voting rights

Each member of an association has voting rights. It is possible to attribute to certain membership different voting rights.

Deviation in voting rights may be laid down in the articles of association or in membership agreement. This makes it possible to lay down in an agreement or in code different classes of memberships with different voting attributed to these classes.

6.4 Transferability of participation rights

Membership rights may be transferred to third parties, unless determined otherwise in the articles of association or in a membership agreement. Transfer of a membership right is form-free, meaning that it is not necessary to transfer membership rights by way of a notarial deed. Membership agreements could therefore be transferred by way of an (electronic) agreement between two parties.

6.5 Governance between management board and holders of participation rights

The management board is by law obliged to manage an association. Certain decisions are attributed by law to the general meeting of shareholders. All other decisions will primarily be the responsibility of the management board.

The management board has – by law – a responsibility to perform its duties in the interest of an association and the enterprise(s) connected with it. This means that the management board will have to make its own consideration of interest and should not only prioritise the interest of the members but should take the interests



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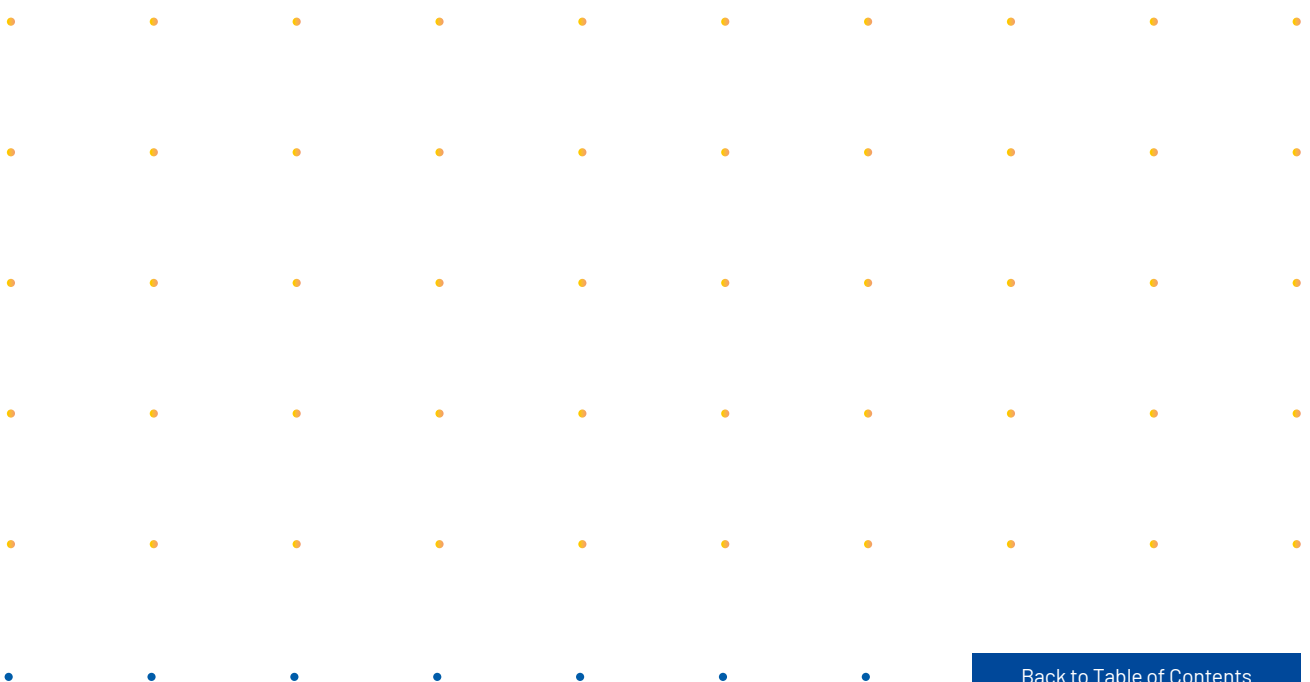
of other stakeholders of the association into account as well.

The management board of an association may consist of one or more members. Each member has one vote in the decision-making process in the management board, unless determined otherwise in the articles of association or in a membership agreement. Moreover, it is possible to appoint a chairperson between the members of the management board which chairperson may have a decisive vote.

It is possible to include in the articles of association or in a membership agreement an additional list of resolutions of the management board that require the prior written approval by the meeting of members. Moreover, it is possible to include an instruction right for the management board in the articles of association or in a membership agreement.

6.6. Liability

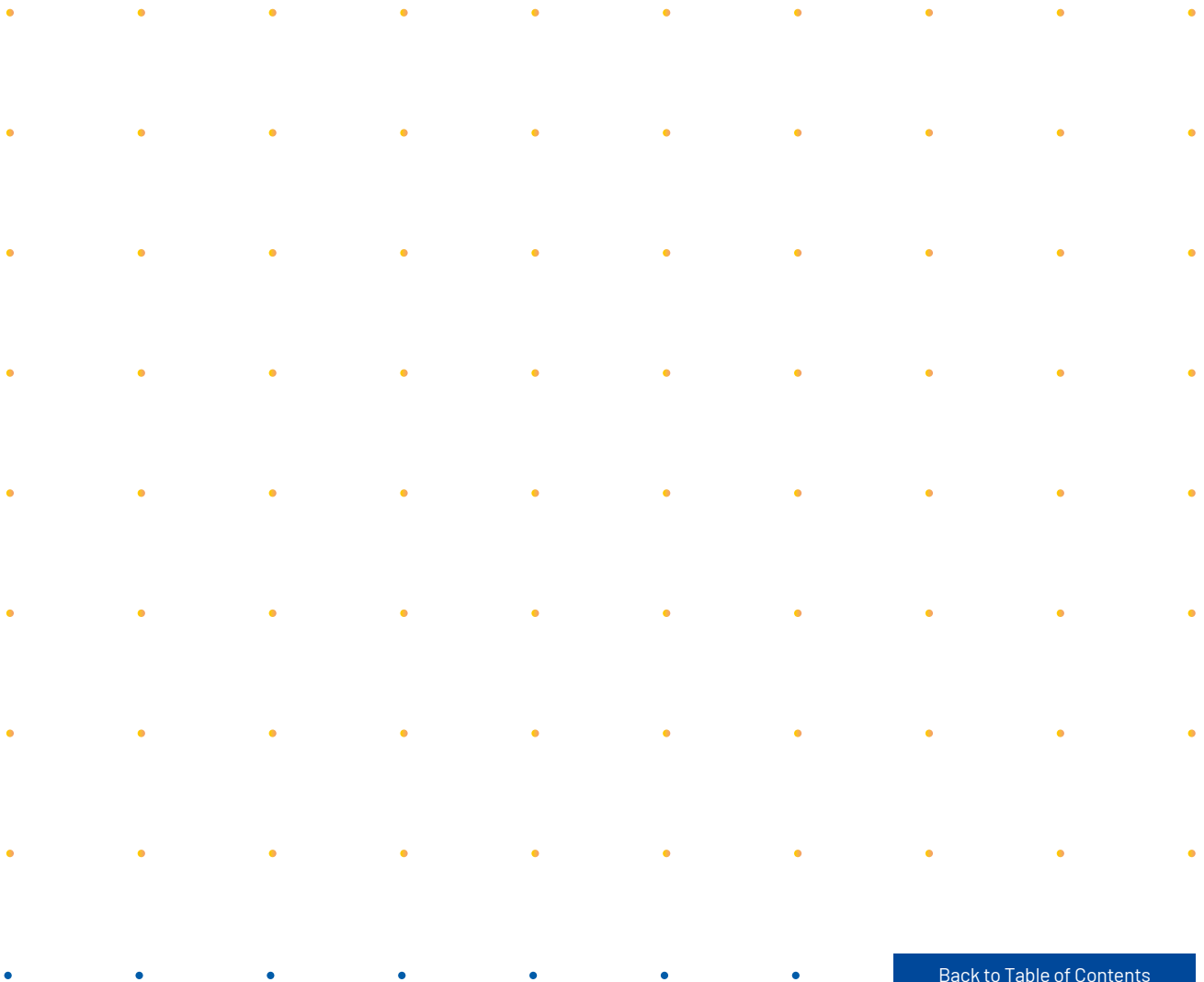
Members of an association are primarily not liable for the obligation of the association or the cooperation. The articles of association of a cooperation could determine otherwise, although this is not very customary. The members of the management board are in principle not liable for the obligations of the association, except for very exceptional cases such as mismanagement.



7 Cooperation

7.1 All that has been set out in the section about the association, correspondingly applies to the cooperation. Unlike the association, the cooperation can issue profit rights to its members. Therefore, the cooperation can distribute profit to its members. Certain memberships can get additional profit rights. The deviation in (profit) rights must be laid down in the articles of association.

7.2 As set out in the last two sections, the decision-making process of an association or cooperation is highly flexible. This would make an association or cooperation suitable for a DAO. Moreover, the fact that a cooperation can issue profit rights and therefore is able to make profit, makes it a solid possibility for DAOs. However, the fact that an association or cooperation must have a management board also does not really fit in the decentralised characteristic of a DAO. A management board is in itself a centralised body of an association. In the next paragraph we will further elaborate on the governance between the management board and the meeting of members (which consists of the participants).



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8 Transparency requirements

Pursuant to the Dutch Trade Register Act 2007 (*Handelregisterwet 2007*) every legal entity or an 'enterprise' belonging to a legal entity is obliged to register itself with the trade register (*handelsregister*) of the Dutch Chamber of Commerce. An 'enterprise' is broadly defined as:

"sufficiently independent organizational unit of one or more persons in which services or goods are provided or works are created for the benefit of third parties with the aim of obtaining material benefits through sufficient input of labour or resources."

In most cases, DAOs will qualify as a 'enterprise' under the Dutch Trade Register Act 2007. If a DAO incorporates itself via a legal entity, then it is obliged to register itself with the trade register. If a DAO is not (willingly) incorporated as a legal entity, then – in most cases – it will automatically qualify as a partnership or informal association (see paragraph 1) and, consequently, it is obliged to register itself with the trade register. Ergo, DAOs are in most cases obliged to register itself with the trade register.

As a consequence, the following key information (non-limitative) must be registered with the trade register:

- General information (such as office address, postal address, email, date of incorporation).
- Articles of association (as amended from time to time), only in case of a BV, foundation, association and cooperation. Note that partnerships are not obliged to register their partnership agreement with the trade register.
- General information on the board members and other representatives (as appointed and dismissed from time to time).
- In case a BV has a sole shareholder, general information on this sole shareholder.
- In case of a partnership, general information on its partners (as amended from time to time). No information is required on the limited partners of a limited partnership, other than their number and the total value of their contribution (*inbreng*).

Moreover, DAOs must register information on their ultimate beneficial owner(s) (UBOs) with the UBO-register of the Dutch Chamber of Commerce.⁴ Briefly put, an UBO is a natural person that ultimately owns or controls the legal entity. The following natural persons will, in any case, qualify as UBO of a legal entity (non-limitative):

- A natural person that directly or indirectly has more than 25% of the share capital, voting rights or profit rights in a BV.
- A natural person that directly or indirectly has more than 25% of the ownership in a partnership foundation, association or cooperation.

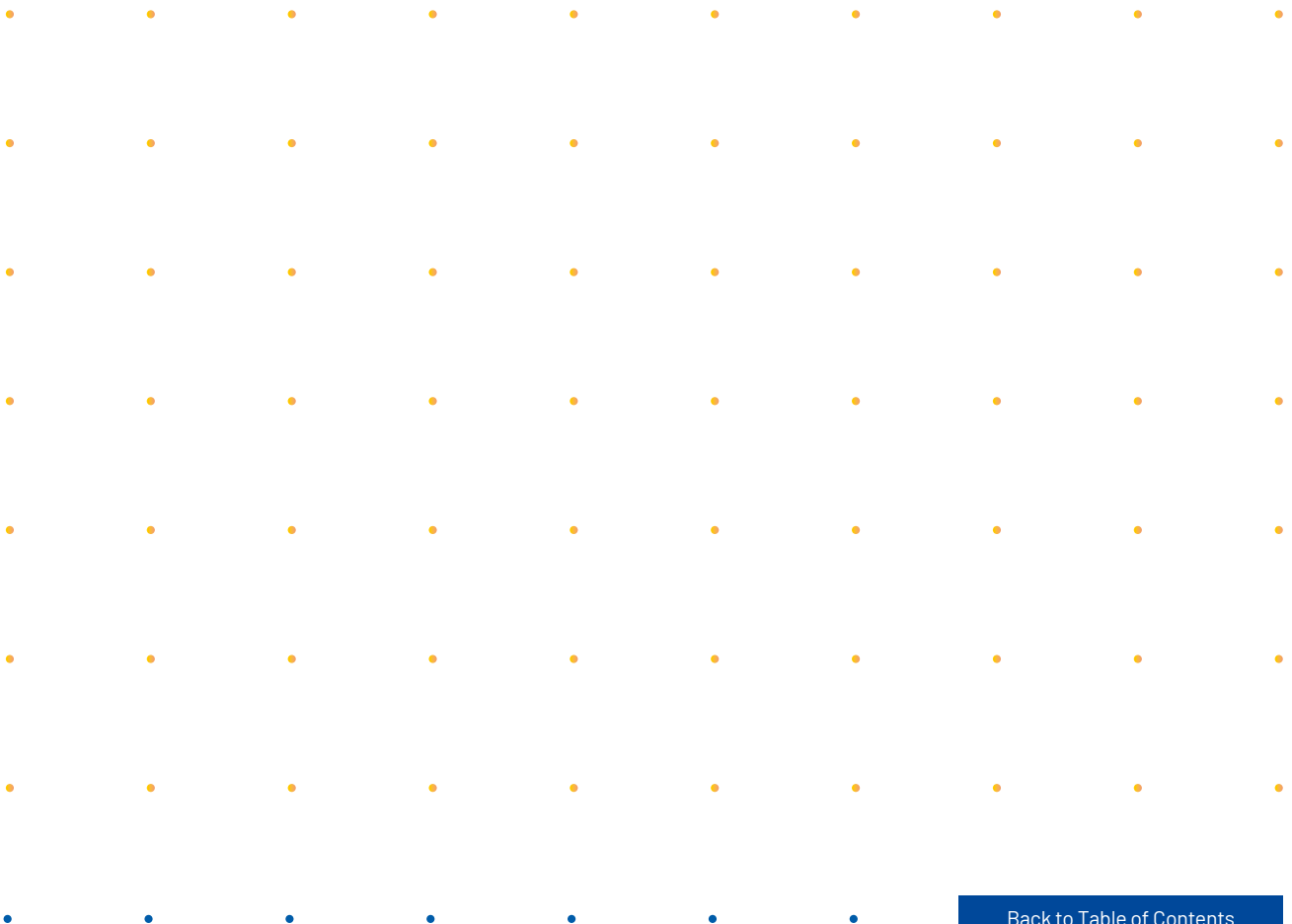
⁴ Please note that on the date of this whitepaper, the UBO-register is closed for information requests due to the ruling of the EU Court of Justice of 22 November 2022 (C-37/20 Luxembourg Business Registers en C-601/20 Sovim. HvJ EU 22 november 2022, ECLI:EU:C:2022:912). However, legal entities are **still obliged to register** their UBOs with the UBO-register.

- A natural person that directly or indirectly has more than 25% of the votes in case of a decision on the amendments of the articles of association of a foundation, association or cooperation, or the partnership agreement in case of a partnership.

In case no natural person qualifies as an UBO along the definition set out above, then all members of the management board (BV, foundation, association and cooperation) or all partners (partnership) that are not limited partners will qualify as UBO – and must be registered as such.

Broadly speaking and based on the rules set out above, DAOs are obliged to provide information on their governance and their participants. Information on the governance is only limited to the articles of association and information on the board members and representatives. Note that, currently, it is not obliged to register the smart contract (or a public address of that smart contract) that regulates the DAO.

The registration obligations on the participants of DAOs, oblige a DAO to have insight in every natural person that participates in the DAO. This may be problematic for DAOs that allow anonymous participation. Also, the registration obligations on the participants of DAOs is problematic for DAO with a high and intensive free float of participants. Please note that the limited partners of a limited partnership need not be registered in any way.



9 Comparative overview

This section provides a non-exhaustive overview of solutions that have been implemented in other jurisdictions.

9.1 State of Wyoming (US)

The State of Wyoming has been at the forefront of DAO regulation in the US. It enacted the first DAO-specific legislation in 2019, providing a legal framework for DAOs to operate in the state. The legislation recognizes DAOs as a new type of limited liability company (DAO-LLC) and sets out requirements for governance, membership, and management. Under Wyoming law, a DAO-LLC is defined as an LLC that is managed by its members or a smart contract, and its business activities are conducted through the use of blockchain technology. To form a DAO LLC in Wyoming, the following registration requirements must be met:

- **Articles of organization:** The DAO LLC must file articles of organization with the Wyoming Secretary of State. The articles of organization must include certain information, such as the name of the LLC, the purpose of the LLC, the name and address of the registered agent, and the name and address of the organizer.
- **Operating agreement:** The DAO LLC must adopt an operating agreement, which sets out the rules for the management and operation of the LLC. The operating agreement must include provisions for the use of blockchain technology, such as the method of voting on matters requiring member approval.
- **Registration as a money transmitter:** If the DAO LLC engages in money transmission, it must register as a money transmitter with the Wyoming Division of Banking.
- **Payment of fees:** The DAO LLC must pay the required filing fees to the Wyoming Secretary of State.

9.2 Switzerland

In Switzerland, the Federal Council has proposed new legislation to provide a legal framework for DAOs. The legislation aims to give DAOs legal recognition and provide a clear legal framework for their operation by way of an association (also known as decentralised autonomous association or DAA). It would allow DAAs to have legal personality and provide for the possibility of membership rights and obligations. To form a DAA the following registration requirements must be met:

- **Articles of association:** The DAA must file articles of association with the Swiss Commercial Register. The articles of association will set out the purpose, governance structure, and operating rules of the DAA.
- **Membership rights and obligations:** The legislation is expected to provide for the possibility of membership rights and obligations for DAAs. The registration requirements for a DAA may include rules for membership, such as the criteria for becoming a member and the rights and obligations of members.



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9.3 European Union

The European Commission has recently approved a new regulation on markets in crypto-assets (MiCA) that includes provisions for regulating certain types of DAOs. MiCA is expected to enter into force in 2024. The approved regulation sets out rules for the issuance and sale of crypto-assets, including those issued by DAOs, and requires DAOs to meet certain governance and disclosure requirements. The MiCA does not introduce, or require member states to introduce, a new legal entity for DAOs. DAOs are free to choose a legal entity in their state of incorporation. If they qualify as an issuer of crypto-assets as defined in the MiCA, then this DAO should comply with certain governance rules. Some of the key governance rules set out in the proposed regulation are as follows:

- **Obligation to appoint a management body:** The issuer of the crypto-asset must appoint a management body, which will be responsible for the management of the issuer. The management body must be composed of at least two individuals who meet certain fit-and-proper requirements.
- **Disclosure obligations:** The issuer of the crypto-asset must disclose certain information to the public, including information about the issuer, the crypto-asset, and the risks associated with investing in the crypto-asset. This information must be accurate, up-to-date, and easily accessible to investors.
- **Conflict of interest rules:** The issuer of the crypto-asset must have in place measures to identify, manage, and disclose conflicts of interest that may arise in the course of its business.
- **Rules on the custody of assets:** The issuer of the crypto-asset must have in place adequate measures for the safekeeping of the assets underlying the crypto-asset.
- **Voting rights:** The issuer of the crypto-asset must ensure that the holders of the crypto-asset have a say in the governance of the issuer. This may include giving token holders voting rights on certain matters, such as the election of board members.
- **Transparency rules:** The issuer of the crypto-asset must ensure that the token holders receive regular updates on the performance of the issuer, as well as any material changes to the issuer's business or operations.

9.4 Singapore

The Monetary Authority of Singapore (MAS) has proposed a new regulatory framework for DAOs, which would require them to comply with existing regulations on anti-money laundering (AML) and countering the financing of terrorism (CFT). The proposed framework would also require DAOs to have a registered office in Singapore and appoint a resident agent to act as a point of contact for regulatory authorities.

9.5 United Kingdom

In the UK, the Law Commission has proposed a new legal framework for smart contracts and digital assets, which includes provisions for DAOs. The proposed framework would provide legal recognition for DAOs and establish clear rules for their operation, including governance, decision-making, and liability.

Overall, while legislative initiatives for DAOs are still in their early stages, there is a growing recognition among regulators and lawmakers of the need to provide a clear legal framework for their operation. As DAOs become more common, we can expect to see further legislative initiatives in this area.



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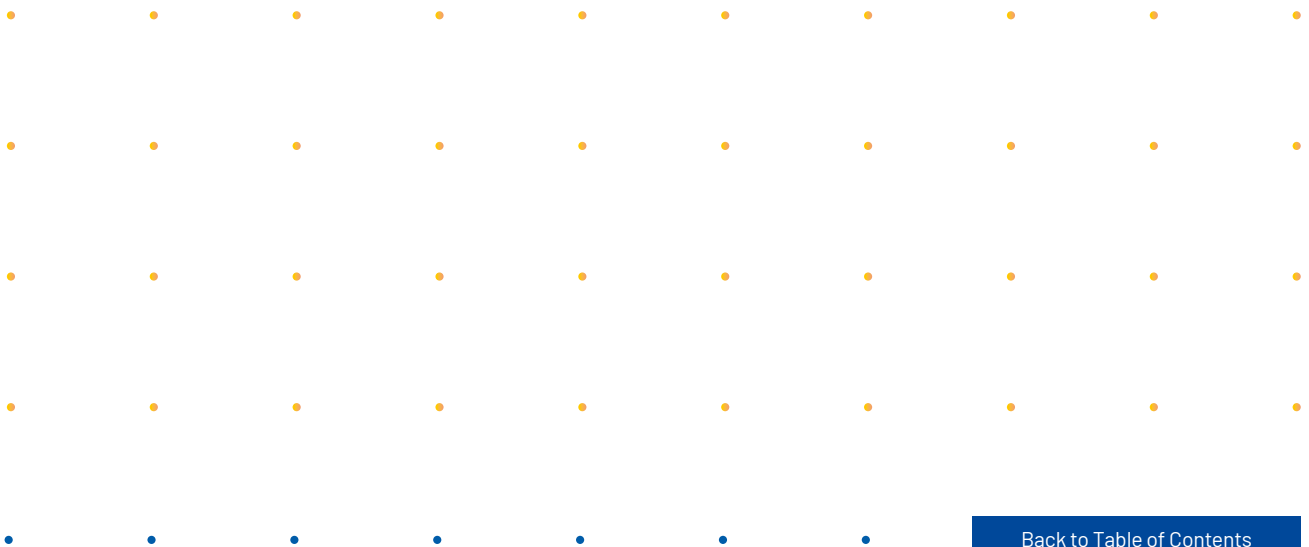


10 Conclusion and overview


























In conclusion, the legal entities in Dutch corporate law have different advantages and disadvantages in relation to their governance. In the overview on the next page, we have ranked the different legal entities on the characteristics of a DAO. The BV, foundation, association and cooperation all mandatorily have a centralised body – a management board. By law, the management board has certain discretions in determining the daily course of business. Such a centralised body does not fit well with the decentralised characteristic of a DAO. Moreover, key governance aspects of the BV, foundation, association and cooperation must be laid down in the articles of association in the form of a notarial deed. This leads to inflexibility for DAO that want to set out their governance in a smart contract and have an autonomous (to some extent) governance. A partnership provides a great solution for these problems. However, the liability aspects of a partnership may distract participants and investors.

Choosing a legal entity for a DAO, highly depends on the goal and the desired functionalities of the DAO (fully or partly decentralised or autonomous). In our view, the currently existing legal entities in the Netherlands provide in enough flexibility for most DAOs. There is no one-size-fits-all legal entity for a DAO. Certain disadvantages of a certain legal entity, could be mitigated by creative solutions. For instance, the transfer restrictions of shares in a BV (only by notarial deed) could be mitigated by using a foundation as shareholder of that BV, which foundation on its turn issue depository receipts to the participants of the DAO.

We also recognize that certain DAOs (or desired functionalities) are not compatible with the currently existing legal entities. We invite DAO-entrepreneurs to share such incompatibilities with us for inventory and discussion purposes. For these DAO-entrepreneurs, it could be necessary to amend Dutch corporate law to provide in (a) more flexibility or (b) a new legal entity (such as the DAO-BV or the DAO-partnership). We also refer to different legislative initiatives in other jurisdictions.



Overview

	Partnership	Private limited liability company	Foundation	Association	Cooperation
Incorporation	 Governance aspects to be included in an agreement which can be laid down as computer code	 Key governance aspects to be mandatorily included in a notarial deed.	 Key governance aspects to be mandatorily included in a notarial deed.	 Key governance aspects to be mandatorily included in a notarial deed.	 Key governance aspects to be mandatorily included in a notarial deed.
Flexibility of profit and voting rights	 Profit and voting rights are highly flexible and can be case-by-case tailored in computer code	 Profit and voting rights are flexible but must be set-out in the articles of association	 Very restricted voting and profit rights	 High flexibility in voting rights. Profit rights are prohibited	 Profit and voting rights are highly flexible and can be case-by-case tailored in computer code
Transferability of participation rights	 Easy transferability of participation rights but issues with liability (except for limited partners)	 Shares are only transferable by notarial deed	 Easy transferability of participation rights	 Easy transferability of participation rights	 Easy transferability of participation rights
Governance between management board and holders of participation rights	 Management board and participation board are same persons. High flexibility in governance rules	 Mandatory management board that acts a centralised body of the BV	 Mandatory management board that acts a centralised body of the foundation	 Mandatory management board that acts a centralised body of the association	 Mandatory management board that acts a centralised body of the cooperation
Liability	 Liability of general partners which can be limitedly mitigate	 Limited risk for liability of board members or participants	 Limited risk for liability of board members or participants	 Limited risk for liability of board members or participants	 Limited risk for liability of board members or participants

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