

# ASGARDIA

## PARLIAMENT



### **Asgardia Decentralised Autonomous Organisation (DAO) Act**

#### **Third Reading**

Edition: 06.03.2023

#### **Objective**

The objective of the Act is to bridge the gap between the multiple existing and potential activities of unregistered DAOs (those that have not been wrapped in a corporate form in Asgardia) and the regulatory frameworks in the many jurisdictions within which unregistered DAOs already operate, including Asgardia. The Act provides legal rules that can be effectively applied, while taking into account technical constraints and opportunities of these novel forms of organisation. It is essential that the legal rules are flexible enough to accompany and encourage the development of DAOs. This Act seeks to strike a balance between the need for legal certainty and the need for DAO developers, administrators, members and participants to retain the freedom necessary to enable the technology to evolve. Recognizing the importance of legal protections and a sound regulatory framework, as well as the importance of experimental freedom in technological development and innovation, the Act provides a framework for the effective regulation of DAOs without being unduly burdensome. It achieves this by, first, using a principle-based approach to identify the policy objectives and principles underlying provisions of corporate law in major jurisdictions. Second, the Act seeks to implement these objectives and principles by limiting its scope to DAOs that meet specific governance standards and by allowing for rules that recognize that these DAOs' technological features offer satisfactory protections and meet purposes in a manner that is equivalent to existing law.

## Chapter 1: General Provisions

### Article 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.

### Article 2 – Legal Personality

1. A DAO within the scope of this Act 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 Act must meet its liabilities through both its On-Chain and Off-Chain Assets.
3. The validity of an action by a DAO within the scope of this Act may not be challenged on the ground that the DAO lacks Legal power to act.

### Article 3 – Definitions

1. "**Accreditation Authority**" means any public or private authority that is a jurisdiction which recognizes this Act as legitimate to ensure compliance with one or more Articles of this Act.
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. "**Asset**" includes both On-Chain assets and Off-Chain assets.
4. "**By-Laws**" means the internal rules and regulations that govern the procedures followed by a DAO and the interaction of its Members and Participants, which must be set out by the DAO.
5. "**Bodies Corporate**" means legal structures registered for the purposes of doing business, to include sole trading and partnership arrangements, and specifically excluding members of the general public in their capacity as individual consumers.

6. "**Contentious Fork**" means a Hard Fork that results in two divergent and potentially competing blockchains.
7. "**Decentralised Autonomous Organization**" (DAO) refers to Organisations which implements specific decision-making or governance rules enabling a multiplicity of actors to coordinate themselves in a decentralised fashion. These governance rules must be technically, although not necessarily operationally, decentralised.
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 alternative dispute resolution system, such as arbitration, expert determination, or an 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 judgement will be accorded the same status and treatment as an international arbitral award.
10. "**Wallet**" 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 no longer operational or fundamentally changes the expected operation of the DAO.
12. "**GUI**" means a graphical user interface, accessible by all DAO Members and Participants 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 under and due to the legal duties of the DAO as a separate legal entity. This can be either On Chain or 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 due to holding tokens in the DAO.
19. "**Minority Chain**" means the version of the chain that is not the Majority Chain following a Hard Fork.
20. "**Off-Chain**" means an asset that is not recorded or managed on a blockchain. These assets can include traditional assets such as fiat currency, stocks, and real estate, as well as digital assets that exist outside of a blockchain. Unlike On-Chain Assets, which are governed by smart contracts and recorded on a blockchain, ownership and transfer of Off-Chain Assets are typically managed through traditional legal and financial systems. However, Off-Chain Assets can be represented on a blockchain through the use of tokens or other digital representations, which can enable them to be traded or exchanged in a decentralised manner. In this context, ownership and control of the Off-Chain Asset are still governed by traditional legal and financial systems, but the token or digital representation on the blockchain can provide additional benefits such as increased transparency and liquidity.
21. "**On-Chain**" means a digital asset that is recorded and managed on a blockchain, and can be owned and transferred by the members or participants in a Decentralised Autonomous Organization (DAO). These assets can include cryptocurrencies, tokens, or other types of digital assets that are created and traded on a blockchain. As part of a DAO, ownership and control of these assets are governed by smart contracts, which are self-executing code that automatically enforce the rules and conditions of ownership and transfer. On-chain assets enable the DAO to operate in a decentralised and transparent manner, allowing participants to verify ownership and transactions without the need for a centralised intermediary.
22. "**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.
23. "**Participants**" means any person interacting with a DAO other than Members.
24. "**Permissioned Blockchain**" means a blockchain network where access and participation are restricted to a predefined group of known and trusted entities, requiring permission from a central authority or administrator to join the network. This central authority also has control over the rules and governance of the blockchain, and can grant or revoke permissions as needed.
25. "**Person**" means an individual, a company or any other body of persons legally recognised as such under Asgardia Law.

26. **"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.
27. **"Public Address"** means a unique, durable identifier that person(s) can transact with on a Blockchain.
28. **"Public Forum"** means a freely accessible online environment that is commonly used for the exercise of speech and public debate.
29. **"Public Signalling"** means a declaration authorised by way of Proposal by the DAO in a Public Forum.
30. **"Quality Assurance"** means that the code of the DAO has undergone security review according to industry standards, which will be performed by the Asgardia Accreditation Authority (see Article 4.4).
31. **"Smart Contract"** is code deployed in a blockchain environment. It is made of a set of predefined (whereby all terms are explicitly fixed and immutable) and deterministic (where for any valid input provided, the same result is returned regardless of when the function is executed) 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 Transaction in the transaction pool that can be validated and accepted on the blockchain and produce a change in the blockchain state.
32. **"Token"** means a record in a ledger, typically representing an Asset, participation right, or other entitlement.
33. **"Transaction"** means a new entry in a ledger, often but not exclusively, recording a change in ownership of an Asset or result of a smart contract executed via participation in a DAO.

## Chapter 2: Formation and Proof of Existence

### Article 4 - Formation Requirements

1. In order for a DAO to benefit from legal personality, it must fulfil the following requirements:
  - a. The DAO must be deployed on a Permissioned Blockchain
  - b. The DAO must provide a unique Public Address through which Members and Participants can review the DAOs' activities and monitor its operations;
  - c. The software code of the DAO must have undergone Quality Assurance by the Asgardia Accreditation Authority;

- d. 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 as per the bylaws of the DAO;
  - e. 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 or the protection and privacy of the DAO as a legal entity;
  - f. The governance system of the DAO must be technically decentralised, although not necessarily operationally decentralised, as per Article 3(7).
  - g. Independent of the chosen governance system, there must always be at least Three Members of the DAO at any given time;
  - h. 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;
  - i. The DAO must refer to or provide a Dispute Resolution Mechanism that the DAO, Members and Participants will be bound by;
  - j. 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 fulfilment 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 Act.
  4. The Asgardia Accreditation Authority will monitor whether a DAO continues to meet the requirements for legal personality under the Model Law.
  5. A DAO may request confirmation from an Asgardia Accreditation Authority to determine whether the DAO complies with the requirements for legal personality under the Model Law.

6. A DAO will only be admitted to the Asgardia Business Registry if it is deemed to meet all the requirements for valid formation by the Asgardia Accreditation Authority.
7. Only DAO's that are registered in the Asgardia Business Registry are accepted as DAO's compliant to this Act.
8. In the event that a DAO is deemed by the Asgardia Accreditation Authority to no longer meet all the requirements for the DAO in this Act, it will be removed from the Asgardia Business Registry.

### Chapter 3: Limited Liability, Asset Subscription and Members' Rights

#### **Article 5 - Limited Liability**

1. Members are only responsible for providing the On-Chain Contributions they committed to the DAO as per the By-Laws, except as mentioned in Articles 5(3) and 5(4). If the DAO runs out of funds, Members won't be held responsible for any additional liability.
2. Except as set forth in Articles 5(3) and Article 5(4) of this Act, Members will not be held liable for any obligations incurred by the DAO, including, but not limited to, labour and tax obligations.
3. If the DAO refuses to comply with an enforceable judgement, order or award entered against it, the Members who voted against compliance will be liable for any monetary payments ordered in the judgement, 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.

#### **Article 6 - Asset Subscription and Payment**

1. A minimum capital requirement will apply to a DAO recognised by this Act. The rules for subscription and payment shall be specified by:
  - a. the By-laws of the DAO; or
  - b. if no minimum capital contribution is specified in the bylaws, the minimum contribution specified by the Asgardian Accreditation Authority will apply..
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.

#### **Article 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. This Article does not apply in the event of a Contentious Fork.
3. A Participant of a DAO does not own Tokens in the DAO.
4. A DAO may provide that it shall consist of only Members, and to exclude any Participants, where expressly set out in its By-Laws.

#### **Article 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.

#### **Article 9 - Proxies**

With respect to Proxies:

1. The Members or Participants of a DAO may represent themselves or may be represented by a Proxy.
2. Notwithstanding Article 9(1) above, the By-Laws of a DAO may require that the Proxy should be a Member of the DAO, to the exclusion of Participants.
3. Proxies may ask questions, vote and exercise all other rights of Members or Participants.

#### **Article 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.

#### Chapter 4: Organisational and Disclosure

##### **Article 11 - Internal Organisation**

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

##### **Article 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.

##### **Article 13 - Administrators**

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 of the DAO and in line with the framework developed by the Asgardia Accreditation Authority to ensure uniformity of purpose and function across all DAOs recognised in Asgardia.

##### **Article 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 by the Asgardia Accreditation Authority and as evidenced by an authorization displayed on a Public Forum. The Legal Representative(s) may undertake and execute any and all legal 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) but must recognise and work within the Legal Framework of Asgardia.
4. A Legal Representative will not be personally liable for Legal acts done on behalf of the DAO.

### **Article 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 be imputed to have fiduciary duties towards each other or third parties on account of their role, and when:
  - a. They explicitly hold themselves out as a fiduciary.
  - b. Their fiduciary status is stipulated in the DAO's By-Laws.

### **Chapter 5: DAO Specific Provisions**

Chapter 5 acknowledges that DAOs present new opportunities but also challenges. These opportunities and challenges must be addressed explicitly in this Act, and have a counterpart in traditional corporate law rules. Provisions on Contentious Forks in the underlying blockchain (Articles 3(6), 16), DAO restructuring (Article 17), and DAO failure events (Article 18) have been included.

Considering Article 17, the technological infrastructure of a DAO is subject to continuous change as a result of upgrades, modifications and migrations. The Act requires that DAOs maintain certain minimum standards throughout these changes to ensure that 'restructurings' do not subvert the standards and protections provided by this Act. These standards were introduced so as to allow DAOs to continue to have legal personality and their Members to retain limited liability as the DAO evolves. In contrast, there are standard provisions of business organisation law that are deliberately not addressed by this Act. There are three main reasons for this.

First, the technological infrastructure of DAOs recognized by this Act allow them to meet certain legal requirements and achieve certain policy objectives by way of functional and regulatory equivalence. Such legal requirements, which are often enshrined in provisions related to financial disclosures or share transfers, are automatically met by the technological guarantees provided by a blockchain-based system and do not need to be specified by law. For example, a corporate statute may include a provision that a share should be annotated with relevant information to trace ownership when the share is transferred to another entity (e.g., a trust), but the inscription of the transfer on a public, Blockchain makes this information transparent by way of its ordinary functioning. This is a functionally equivalent outcome, as this inscription on a Blockchain provides another means for tracing ownership other than an annotation on the face of a share or an electronic record update. As it is anticipated that Asgardia will also facilitate such functional equivalence, such an example has not been addressed in this Act. At the same time, some of the articles in this Act strive to achieve regulatory equivalence, and might therefore introduce new regulatory requirements that may either complement or supplement traditional regulatory constraints. For instance, the article related to formation requirements (Article 4) seeks to achieve regulatory equivalence with typical corporate registration requirements.

Second, this Act provides a high degree of discretion to DAOs in how they establish their organisational, governance and capital structure (Chapter 4). As such, issues such as limitations on the transferability and negotiability of tokens, criteria by which Members are excluded from DAOs, internal and external dispute resolution mechanisms and threshold requirements for By-Law amendments, among other topics, are beyond the scope of this Act and left to the individual discretion of DAOs.

Third, there are typical provisions of corporate law that concern transactions that have yet to materialise with respect to DAOs. These include Members' agreements, the substantial sale of the DAO's Off-Chain Assets, conversions into DAOs, mergers with DAOs and liquidation and dissolution.

In the short history of DAOs, we have witnessed a series of Failure Events. In Article 18, the potential technical failures of DAOs rendering DAOs non-operational or frustrating a DAO's expected operation are addressed. Providing for legal personality and limited liability to DAOs under this Act, we consider it important to clarify that DAOs subjected to Failure

Events do not lose such protections but only to the extent necessary to protect DAO Members and Participants from personal liability provisions in the context of Asgardia's own corporate laws and regulations.

### **Articles 16 - Contentious Forks in the Underlying Blockchain**

In the event of a Hard Fork in the underlying 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 liquidate its On-Chain Assets following a Hard Fork in order to move those Assets to the chosen chain.
3. Alternatively, the DAO may choose to split into multiple legal entities, each on a separate chain, if it communicates by Public Signalling:
  - a. its intent to do so, and
  - b. there is a definitive distribution of Off-Chain Assets between the Majority and Minority Chain(s).

### **Article 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 fulfil all the formation requirements of Article 4;
  - b. (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 Signalling.
2. Failure to comply with the requirements in Article 17(1) above will result in a loss of legal personality and limited liability effective at the time of restructuring.
3. The DAO restructured in accordance with subsection (1) will be the universal successor of the original DAO and inherit its rights and obligations.

### **Article 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.

## Chapter 6: Miscellaneous Provisions

### **Article 19 - Application of General Business Organisational Law**

The DAO will be governed by:

1. The By-Laws;
2. This Act;
3. The Constitution of Asgardia; and
4. To the extent that any lacunae remain, general business organisation laws and regulations of Asgardia that recognizes the DAO. Any ambiguity resulting from this application will be resolved in a manner that upholds the letter and objectives of this Act.

### **Article 20 - Taxation of DAOs**

The taxation of DAOs recognised by this Act will be based on the following principles:

1. By default, any DAO recognized by this Act will be treated as a taxable entity for tax purposes.
2. Where a DAO is deemed not to be a taxable entity the realised gains allocated to such Members will pass to the first taxable person.