# DAOs and the Singapore "foundation"

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## Legal nature under Singapore law

A decentralised autonomous organisation has no legal personality under Singapore law. It is a set of smart contracts and a group of token holders who vote on proposals. Singapore law classifies such a group by the ordinary rules. If the token holders carry on a business in common with a view of profit, they are partners under the Partnership Act 1890 as applied in Singapore, with unlimited joint liability for the partnership's obligations.[1] If they associate for a purpose other than profit, they are an unincorporated association whose members are liable only to the extent of their own undertakings, with the committee or the persons who contract on its behalf personally liable. The analysis is the same as that of Swiss law, which treats a profit-seeking DAO as a simple partnership under Art. 530 ff. CO (see Part D, Chapter VII). It produces the same discomfort: the holder of a governance token in a protocol that earns fees may be a partner in an enterprise with unlimited liability.

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The Singapore courts have not yet ruled on the point.[2] The risk has been managed in practice by wrapping the DAO in a legal entity that holds the treasury, contracts with service providers and operates the front-end, with the token holders voting to instruct the entity. The wrapper of choice in Singapore has been the company limited by guarantee.

## The company limited by guarantee

A company limited by guarantee (CLG) under the Companies Act 1967 has no share capital. Its members undertake to contribute a nominal sum on winding up. It is managed by a board of directors and may be formed for any lawful purpose including a non-profit purpose. Between 2017 and 2022 dozens of protocol "foundations" were established in Singapore as CLGs, with names that suggested the Swiss or Cayman foundation but with the legal form of a company.[3] The CLG holds the protocol treasury, employs the core developers or contracts with a development company, owns the trademarks and operates the interface. Its constitution typically provides that the directors will give effect to governance votes of token holders, within the limits of the directors' duties.[4]

The CLG has advantages and defects as a DAO wrapper. Its advantages are three. It is a familiar Singapore entity with ACRA registration, a board and audited accounts. It can hold a bank account and contract. It limits the liability of its members to their guarantee. Its defects are also three. The directors owe their duties to the company and cannot bind themselves to follow token votes that would breach those duties. A CLG is not tax-exempt unless it qualifies as a charity or an institution of public character, which protocol foundations do not. A CLG serving foreign token holders with a treasury of DPTs may itself be a digital token service provider under Part 9 of the FSMA if it deals in or transfers tokens as a business.

The 2022 insolvencies tested the model. Several protocol foundations were drawn into the proceedings of Three Arrows Capital and of lending platforms as creditors or counterparties. The Vauld restructuring involved a Singapore entity with foundation-like features. The experience showed that a CLG with a large token treasury and foreign token holders is an attractive target for creditors and litigants.

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Its directors are personally exposed if they have distributed treasury assets improperly. The token holders have no standing as members unless the constitution gives it to them.

## Governance token liability

The liability of governance token holders is the unresolved question. Under the partnership analysis, holders who vote to direct a profit-earning protocol may be partners. Under the company analysis, holders who are not members of the CLG have no liability for its debts and no rights against it. The practical position in Singapore has been that token holders are treated as neither partners nor members: they are participants in a governance process that the CLG's directors take into account. That position protects holders from liability as long as the CLG is the actor, and exposes them when the CLG is absent or when they bypass it by executing on-chain votes that move treasury assets directly.

The advice that follows is that a protocol with Singapore connections should always have a legal entity between the token holders and the world. The entity's constitution should make clear that governance votes are advisory to the board. Treasury assets should be held and moved by the entity under board resolution. Protocols that have moved to "full decentralisation", with the treasury held by a multi-signature wallet whose signers are elected by token vote and no entity in the chain, have created the partnership exposure for the signers. Arguably they have created it for the voters as well.

## Cross-border perspective

The Swiss foundation and the Swiss association remain the stronger wrappers for a protocol. Swiss law gives each a legal personality designed for a purpose, without members or shareholders in the corporate sense, and the Zug foundation practice has developed templates, supervisory acceptance and tax rulings over a decade (see Part P, Chapter II). The Singapore CLG is a company dressed as a foundation. It is best used as the operating or development subsidiary of a Swiss foundation, holding the Asian team and contracts, with the treasury and the protocol's purpose anchored

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in Zug. A structure of Swiss foundation above and Singapore CLG or Pte Ltd below, with the token holders' governance expressed through the foundation's charter, answers both the Swiss and the Singapore questions. It has become the standard pattern for protocols that want Asian operations.

## Notes

1. Partnership Act 1890 (UK, applied in Singapore under the Application of English Law Act 1993), s. 1, definition of partnership as the relation between persons carrying on a business in common with a view of profit. ↩
2. For the English position on DAO members as partners see the Law Commission of England and Wales, Decentralised Autonomous Organisations (DAOs): Scoping Paper, July 2024, which Singapore courts would treat as persuasive. ↩
3. Companies Act 1967, s. 17 and Part 3 on companies limited by guarantee; ACRA records show numerous protocol-affiliated companies limited by guarantee incorporated between 2017 and 2022. ↩
4. Companies Act 1967, s. 157 (directors' statutory duty of honesty and reasonable diligence) and the general law on directors' fiduciary duties, which constrain any undertaking to follow external instructions. ↩

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