

MASSACHUSETTS, IT’S TIME TO GET “DAON”

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Abstract

Blockchain has changed the way the world thinks about payments, ownership and property rights, and contracts. The decentralized nature of blockchains make them attractive for many different uses, but one increasingly popular use is for organizing. Blockchains connect individuals from all over the world with other individuals who share a common goal. These individuals then create an organization within the blockchain, called a decentralized autonomous organization (DAO). The innovation and quickly increasing popularity of DAOs has left many states playing regulatory catch-up. Because of their unique structure, DAOs face legal uncertainties, and members of DAOs are not always afforded the same protections as members of traditional organizations. To protect DAO members and offer regulatory guidance, many states within the U.S. and foreign countries have begun to pass statutes recognizing DAOs as legal entities. By doing so, these states and countries encourage DAOs to register there, potentially increasing revenue and innovation. Some countries and states have amended their existing statutes to encompass DAOs, while others have passed legislation establishing a new entity for DAO registration. Massachusetts has yet to pass a statute giving DAOs legal entity status, but the General Court—the legislative body of the Commonwealth—has created a committee charged with recommending blockchain-related legislation. This note argues that Massachusetts should follow the regulatory framework of the small country, Malta, and should pass legislation similar to the proposed COALA Model Law and Utah’s statute to attract DAOs to register there and increase innovation.

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I. Introduction

Technology is advancing at a rapid pace. In the past decade alone, blockchain and cryptocurrencies have become two of the most talked about technological innovations.¹ But the world of blockchain is more than just cryptocurrency. Blockchains also include record information for non-fungible token ownership and smart contracts for decentralized finance transactions.² Somewhat more recently, a new type of organization called a “decentralized autonomous organization” (DAO) (pronounced “dow”) has emerged in blockchains as a novel way to organize many different people for a common goal while maintaining transparency and avoiding a centralized governance structure.³

As technology advances, several U.S. cities are establishing themselves as innovation hubs, including Boston. According to Business Insider, the Boston-Cambridge-Newton area was the ninth-best city in the country for start-ups in 2019.⁴ In a recent global research

¹ Bernard Marr, *The Six Biggest Blockchain Trends Everyone Should Know About in 2021*, FORBES (Mar. 12, 2021, 12:29 AM), <https://www.forbes.com/sites/bernardmarr/2021/03/12/the-six-biggest-blockchain-trends-everyone-should-know-about-in-2021/?sh=83c8b7f66315>.

² David Rodeck, *Understanding Blockchain Technology*, FORBES ADVISOR (May 23, 2023, 4:46 PM), <https://www.forbes.com/advisor/investing/cryptocurrency/what-is-blockchain/> [https://perma.cc/X4WM-BJ89].

³ Geoffrey See et al., *Are 'Decentralized Autonomous Organizations' the Business Structure of the Future?*, WORLD ECON. F. (June 23, 2022), <https://www.weforum.org/agenda/2022/06/are-dao-the-business-structures-of-the-future/> [https://perma.cc/Q763-P4BE].

⁴ Ivan De Luce, *From San Diego to Austin and Seattle, These Are the 15 Best US Cities to Launch a Startup*, BUS. INSIDER (July 9, 2019, 11:23 AM), <https://www.businessinsider.com/the-best-cities-for-startups-2019-7>.

study conducted by Jones Lang LaSalle, Boston was ranked fourth for innovation and second for talent concentration.⁵ In February 2022, the World Economic Forum named Boston fourth in its list of the Global Top 25 Innovation Geographies of 2022.⁶ As these surveys demonstrate, Boston has steadily progressed into becoming a startup destination and innovation leader not only in the United States but globally as well.⁷

However, many innovation hubs are realizing their legislation and regulations have struggled to keep up with the rapid changes and advances in technology, specifically blockchain.⁸ As such, it is critical for Boston's continued growth and maintenance as a hub for both startups and technological innovation that the Massachusetts legislature and state regulatory agencies enact legislation and regulations that encourage entrepreneurs to start their businesses there. The goal of this note is to provide the Massachusetts legislature with guidance and suggestions for creating a legislative framework that gives DAOs status as a legal entity, thus encouraging DAOs to choose Massachusetts as their place of organization. Part II will discuss the background and history of DAOs from inception to the current landscape including a background of what DAOs are, how they are formed, and the basics of the blockchain components necessary for their formation. Part III will discuss the current state of affairs in DAO legislation, both domestically and internationally. Finally, Part IV will provide legislative guidance to the Massachusetts General Court for granting DAOs legal entity status. This section will also reflect on how Massachusetts can use DAO legislation to become a DAO-friendly state and attract these organizations to do business in the Commonwealth while continuing to foster innovation and technology growth in Boston.

⁵ JONES LANG LASALLE, <https://www.us.jll.com/en/trends-and-insights/research/innovation-geographies> (last visited Oct. 16, 2023) [<https://perma.cc/C3SM-BVVS>].

⁶ Kaleigh Bateman, *Which Are the World's Most Innovative Cities in 2022?*, WORLD ECONOMIC F. (Feb. 2, 2022), <https://www.weforum.org/agenda/2022/02/innovative-global-cities-talent-property/> [<https://perma.cc/ZV72-Q7UV>].

⁷ See *id.*

⁸ See et al., *supra* note 3.

II. *What is a DAO?*

To best understand why a state would want to incentivize DAOs to do business there, it is necessary to first discuss the underlying blockchain technology and formation process for such an organization. Blockchains are decentralized databases that function through rules written in computer code.⁹ Each blockchain is coded differently and, therefore, functions differently.¹⁰ DAOs, which were first coded in the Ethereum blockchain, are essentially a new form of business organization.¹¹ While Ethereum still remains the most popular blockchain for DAOs, they have also been coded in BNB, Solana, Fantom, Elron, Polygon, Neo, and other unique chains.¹² Within these blockchains, DAOs have been utilized in various ways including as non-profits and as a vehicle to accomplish a specific goal like acquiring one of the thirteen remaining original printed copies of the Constitution of the United States.¹³

Some experts have divided DAO history into three eras—DAO 1.0, DAO 2.0, and DAO 3.0.¹⁴ DAO 1.0 began sometime in the 1960s or 1970s when the concept of decentralization applied to business began appearing in academic journals.¹⁵ Another significant milestone in DAO 1.0 came in 1997, when Werner Dilger coined the term “decentralized autonomous organization” in a paper he wrote on smart homes.¹⁶ However, the technology to support such a thing—blockchain—did not yet exist.¹⁷ DAO 1.0 continued through the “Blockchain

⁹ Mark Cianci et al., *Legal Implications of Decentralized Autonomous Organizations*, BLOOMBERG L. (Apr. 2022), https://bloomberglaw.com/Legal_Implications_Of_Decentralized_Autonomous_Organizations.

¹⁰ *Id.*

¹¹ David Gogel et al., *Decentralized Autonomous Organizations: Beyond the Hype* WORLD ECON. F. 7 (June 2022), https://www3.weforum.org/docs/WEF_Decentralized_Autonomous_Organizations_Beyond_the_Hype_2022.pdf.

¹² Michael Tabone et al., *DAO: The Evolution of Organization*, COINTELEGRAPH RSCH. 1, 16 (2022) <https://research.cointelegraph.com/reports/dao-the-evolution-of-organization>.

¹³ Gogel et al., *supra* note 11, at 7 (highlighting a case study in which ConstitutionDAO raised \$47 million from 17,437 members to bid for the copy of the Constitution up for auction at Sotheby’s).

¹⁴ Tabone, *supra* note 14, at 3.

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 6.

¹⁷ *Id.*

Revolution” that began with Bitcoin’s first mining, until around 2015.¹⁸ DAO 2.0 began when Dash, a cryptocurrency that branched off from Bitcoin, established itself as one of the first DAO cryptocurrencies to have a fully self-funded and self-governing structure.¹⁹ During DAO 2.0, blockchains evolved to support smart contract functioning.²⁰ In 2016, the first official DAO was established on Ethereum and was appropriately named “The DAO.”²¹ The DAO raised \$150 million worth of Ether (the cryptocurrency of the Ethereum blockchain); however, The DAO was hacked about three months after launch resulting in the theft of \$60 million of Ether.²² Following The DAO’s hack, the blockchain community developed better tools and infrastructure to avoid another massive hack.²³

Finally, DAO 3.0 began sometime between 2019 and 2020; during that period, the number of active DAOs increased 660% across blockchains.²⁴ As of the publication of this note, we are still in DAO 3.0—an era that has seen DAOs expand from a focus on decentralized finance to a myriad of other use cases like art and culture, media and communications, and social good.²⁵ Participation in DAOs grew from 13,000 to 1.7 million participants worldwide from 2021 to 2022.²⁶ Each year the number of DAOs continues to grow and there is no evidence of this trend slowing.²⁷

The popularity of DAOs can be attributed in part to the novelty of their make-up, which promotes anonymity, decentralization, and

¹⁸ *Id.* at 7–8.

¹⁹ *Id.* at 8.

²⁰ *Id.* at 9 (“Decentralized applications, or DApps, utilize smart contract functionality to allow users to log into different interfaces and authenticate their cryptographic identity. identity. Whoever signs the transaction has access to the private keys, making them the owner of all the assets in that wallet.”).

²¹ *Id.* at 11.

²² *Id.*

²³ *Id.* at 12.

²⁴ *Id.*

²⁵ *Id.* (charting percentages of different foci recently formed DAOs have).

²⁶ See et al., *supra* note 3.

²⁷ Tabone, *supra* note 14, at 12 (showing that number of active DAOs grew “from 700 in May 2021 to over 4,000 . . . in mid-2022”).

extensive reach.²⁸ These characteristics increase transparency and collaboration among members.²⁹ Further, DAOs allow members to focus on more socially conscious efforts rather than just on profit.³⁰ Currently, traditional business organizations are grappling with whether Environmental, Social, and Governance (ESG) initiatives breach fiduciary duty.³¹ Because this topic is still hotly debated, many investors and shareholders feel that they cannot pursue the socially conscious initiatives they otherwise would out of concern for their imposed fiduciary duties.³²

Generally, decentralization in blockchain has advantages such as independent control and decision-making, increased data reliability, distributed vulnerabilities, and financial independence.³³ These advantages allow for individual members to have more control and eliminate the need for trust in other individuals or connections to verify a transaction.³⁴ In reference to a DAO, “decentralized” specifically refers to “the relationship of participants in the organization [as] ‘no longer [being] determined by administrative affiliation’”³⁵ Instead, the participants “‘follow principles of equality, voluntariness, reciprocity and mutual benefit’”³⁶ Members of the DAO have the exclusive power to make all governance decisions collectively to benefit

²⁸ Brynly Llyr, *Re-envisioning Corporations: How DAOs and Blockchain Can Improve the Way We Organize*, WORLD ECON. FORUM (Feb. 8, 2022), <https://www.weforum.org/agenda/2022/02/re-envisioning-corporations-how-daos-and-blockchain-can-improve-the-way-we-organize> [https://perma.cc/4XPY-WVPH].

²⁹ Gogel et al., *supra* note 11, at 8.

³⁰ Llyr, *supra* note 28.

³¹ Jed Rubenfeld & William P. Barr, *ESG Can't Square with Fiduciary Duty*, WALL ST. J. (Sept. 6, 2022, 6:31 PM ET), <https://www.wsj.com/articles/esg-cant-square-with-fiduciary-duty-blackrock-vanguard-state-stree-the-big-three-violations-china-conflict-of-interest-investors-11662496552>.

³² *See id.*

³³ Peter Daisyme for Due.com, *Why Decentralization is Crypto's Greatest Strength and Greatest Threat*, NASDAQ (Apr. 4, 2022, 10:00 AM), <https://www.nasdaq.com/articles/why-decentralization-is-cryptos-greatest-strength-and-greatest-threat>.

³⁴ *Id.*

³⁵ Tabone et al., *supra* note 14, at 6.

³⁶ *Id.*

themselves.³⁷ As a result, each member feels involved in setting the DAO's mission.³⁸

Smart contracts are software codes that govern the agreement between members of the DAO³⁹ and execute the DAO's governance actions by taking into account the members' preferences via voting.⁴⁰ Basically, the software is coded into "if/then" statements so that when the "if" condition is met, the "then" obligation occurs.⁴¹ A popular illustration used to explain how smart contracts work is the vending machine analogy.⁴² To make a vending machine work, you put coins into the machine and enter the code of the item you want. The machine then releases your item. Smart contracts are analogous with regard to automation: once the contract is written and the trigger is entered, as with the "coins" and "codes," the rest of the contract is executed automatically.⁴³ However, as useful as smart contracts are, they have some limitations.⁴⁴ Because the original smart contract is enshrined in software code and is unchangeable, termination after a party has breached can be difficult to navigate.⁴⁵

DAO members have three membership model options when creating their DAO: token-based membership, share-based membership, or reputation-based membership.⁴⁶ In a token-based membership, members or investors can buy tokens using

³⁷ Zach Bronstein, *Philanthropic DAOs: Creating Social Responsibility in Web3*, NASDAQ (Aug. 10, 2021, 8:43 AM), <https://www.nasdaq.com/articles/philanthropic-daos%3A-creating-social-responsibility-in-web3-2021-08-10> (discussing how DAOs may be utilized for philanthropic purposes).

³⁸ Llyr, *supra* note 28 (contrasting shareholders in a traditional organization who are often at the whim of a controlling voting block or board of directors to determine the mission of the organization).

³⁹ *E.g.*, Gogel et al., *supra* note 11, at 3, 9.

⁴⁰ A.J. Zottola et al., *Smart Contracts*, LEXISNEXIS (Oct. 3, 2022), www.plus.lexis.com/Zottola_SmartContracts.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* ("Modification, rescission, and termination of smart contracts are significantly more complicated than undertaking the same action with respect to a traditional contract, because changing code—generally tied to a blockchain—is harder than amending a written agreement.").

⁴⁶ Rahul A R, *Different Models of DAO Membership*, ACCUBITS BLOG (July 27, 2022), <https://blog.accubits.com/different-models-of-dao-membership/> [<https://perma.cc/J5BD-7XDX>].

cryptocurrency.⁴⁷ Each token represents an interest in the DAO and is equated to a share in a traditional organization.⁴⁸ In fact, the Securities and Exchange Commission has recently deemed some tokens to be a type of security and thus subject to federal securities laws.⁴⁹ Like a share in a traditional organization, tokens also represent voting rights and ownership rights.⁵⁰ However, because DAOs do not have central governance—no board, no C-suite—the token holders vote on how the DAO is governed and how any money invested in or fundraised by the DAO is used.⁵¹ The share-based membership DAOs are smaller and more exclusive.⁵² Not just anyone can join a share-based DAO—all members must be approved.⁵³ If one wishes to join, they must submit a proposal and will usually offer work tokens as consideration.⁵⁴ Once admitted, the member's shares represent their voting and ownership rights.⁵⁵ Because these DAOs are much more exclusive, the share-based model is used more frequently for charity DAOs, investment club DAOs, and worker collective DAOs.⁵⁶ Lastly, in a reputation-based DAO, members must also submit a proposal for admittance.⁵⁷ However, in contrast to the share-based DAO, reputation-based DAO members must earn their voting power through participation in the DAO.⁵⁸ Therefore, every time a member contributes something to the DAO,

⁴⁷ Statement by the Divisions of Corporation Finance and Enforcement on the Report of Investigation on The DAO, U.S. Sec. & Exch. Comm'n (July 25, 2017), <https://www.sec.gov/news/public-statement/corpfen-enforcement-statement-report-investigation-dao> [<https://perma.cc/JLJ3-G3S4>] (describing The DAO, a token-based DAO, and how members acquired and used tokens).

⁴⁸ *See id.*

⁴⁹ *See id.*

⁵⁰ *See id.*

⁵¹ Gogel et al., *supra* note 11, at 6, 8.

⁵² *eGov-DAO: A Step Towards Better Government Using a Blockchain-Based Decentralized Autonomous Organization*, COINTELEGRAPH, <https://cointelegraph.com/learn/egov-dao#:~:text=Share%2Dbased%20membership,represent%20voting%20power%20and%20ownership> [<https://perma.cc/F9SW-ZE5T>] (last visited Oct. 16, 2023).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ A R, *supra* note 46.

⁵⁸ *Id.*

they earn reputation and tokens in exchange for their work, which in turn gives them voting rights.⁵⁹

When a DAO is first formed, the original founders usually exercise significant control over the coding and functions of the DAO until it can grow and members join.⁶⁰ Once the DAO has grown to have significant membership and the functionality is sufficiently coded, the founders step back from coding and release the DAO onto a public smart contract blockchain where they can no longer solely influence the smart contract code.⁶¹ Autonomy differs among DAOs in that some called algorithmic DAOs operate entirely based on software; on the other hand, participatory DAOs, which are member-managed, use voting processes to update the smart contracts.⁶² Once the DAO is released, token holders vote collectively on all matters.⁶³

The voting process for DAOs begins when a member makes a governance proposal.⁶⁴ Usually, the DAO's by-laws will set forth a threshold amount of governance tokens a member must hold before they can make proposals.⁶⁵ Once a proposal is made, the members of the DAO vote to approve or deny it.⁶⁶ As in traditional organizations, DAO token holders can delegate their voting power to other members via proxy. While voting in DAOs can be relatively easy, some DAOs have experienced decreased interest from voting members after a certain period of time or number of proposals, just as in traditional organizations.⁶⁷ Mainly, concerns of low voter turnout and "whale" voting plague voting systems in blockchain.⁶⁸ Whale voting is when one large token holder has control and can decide the vote, similar to controlling shares.⁶⁹ Whale voting happens especially when tokens are highly liquid thus allowing one person or entity to buy large amounts of

⁵⁹ *Id.*

⁶⁰ Cianci et al., *supra* note 9.

⁶¹ *Id.*

⁶² Gogel et al., *supra* note 11, at 15.

⁶³ Cianci et al., *supra* note 9.

⁶⁴ Tabone et al., *supra* note 14, at 18.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* (referencing a study by Snapshot showing that almost half of voting members in a DAO only voted once).

⁶⁸ Christine Kim, *How Blockchain Voting is Supposed to Work (But In Practice Rarely Does)*, COINDESK (Sept. 13, 2021, 5:17 AM), <https://www.coindesk.com/markets/2019/06/08/how-blockchain-voting-is-supposed-to-work-but-in-practice-rarely-does/> [<https://perma.cc/E66Z-6Y23>].

⁶⁹ *Id.*

the token.⁷⁰ One solution allows members to “lock” their tokens in for a certain number of years and, in return, they get increased voting power.⁷¹ Voting on governance presents an additional dilemma related to the anonymity of members in a blockchain—if democratic governance voting is to succeed, users’ identities will need to be verified.⁷²

The concept of a DAO and its components becomes clearer when examined in the context of someone trying to start a DAO. The first steps in starting a DAO include: (1) building a strong foundation; (2) determining ownership; (3) establishing a governance structure; and (4) setting up rewards and incentives.⁷³ Building a strong foundation focuses on answering some fundamental questions. Why is the DAO required? What role will the DAO play? How will it work?⁷⁴ Starting with these questions and answering them in a detailed way with any co-organizers helps to reduce the risk of disagreement later in the process.⁷⁵ Answering these questions at the beginning of the formation process also ensures better smart contract writing and governance decisions.⁷⁶ One last major consideration in this foundational stage is determining how the DAO will make money.⁷⁷ This will depend on the overall goal of the DAO and whether it will operate as a for-profit or non-profit entity.⁷⁸

The next steps involve determining ownership and establishing a governance structure. Both of these steps involve token distribution and the benefits that come with certain tokens.⁷⁹ Tokens may have

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Types of DAOs and How to Create a Decentralized Autonomous Organization*, COINTELEGRAPH, <https://cointelegraph.com/learn/types-of-daos> [<https://perma.cc/WLD5-ELCD>] (last visited Oct. 16, 2023) [hereinafter *Creating DAOs*].

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* (“Dividends are the primary source of income for DAOs. DAOs make investments that help them earn dividends. DAO creators can also make money by persuading peers to invest in the DAO based on its business concept.”).

⁷⁸ Gene Takagi, *DAO: What is It? What Does It Mean for Nonprofits?*, NONPROFIT L. BLOG BY NEO L. GRP. (Nov. 21, 2021), <https://nonprofitlawblog.com/dao-what-is-it-what-does-it-mean-for-nonprofits/> [<https://perma.cc/3AVL-JM5A>].

⁷⁹ *Creating DAOs*, *supra* note 73.

certain voting rights or incentives and, as with different share classes in traditional organizations, DAOs may offer different levels of tokens.⁸⁰ Finally, organizers of the DAO must set up rewards and incentives for members of the DAO to build trust between the members and contributors.⁸¹ Rewards include ownership rights through tokens or monetary rewards in the form of cryptocurrencies.⁸² When establishing a DAO, organizers must keep in mind the "tension triangle" between decentralization, the individual members, and governance.⁸³ The tension between these three aspects of the DAO is a balancing act that must remain in equilibrium for optimal function.⁸⁴

Because DAOs are decentralized, an important question arises about who incurs liability if something were to go wrong.⁸⁵ Currently, DAOs are not widely recognized as a specific legal entity.⁸⁶ Instead, the default treatment in any U.S. jurisdiction would likely be that of a general partnership because two or more persons are involved in a business transaction.⁸⁷ General partnership liability is not limited as it would be with other entity structures; any person deemed a general partner can be held jointly and severally liable for the other general partner(s) and can legally bind any other partner(s) in contracts with third parties.⁸⁸ However, operationally, the DAO structure does have some protection against liability.⁸⁹ Smart contracts can help prevent many of the typical organizational liability risks because they are transparent and secure.⁹⁰ This protects DAO members from unknown

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* ("[T]he tension triangle in a DAO can be seen as a delicate balancing act between three unique but equally crucial components: voice, exit, and loyalty.").

⁸⁴ *Id.*

⁸⁵ Gogel et al., *supra* note 11, at 9, 11.

⁸⁶ *Id.*

⁸⁷ Miles Jennings & David Kerr, *A Legal Framework for Decentralized Autonomous Organizations*, ANDREESSEN HOROWITZ: LEGAL FRAMEWORKS FOR DAOs SERIES, 1, 12–13 (2022), <https://a16zcrypto.com/wp-content/uploads/2022/06/dao-legal-framework-part-1.pdf> [<https://perma.cc/U6BU-UDJR>].

⁸⁸ Ali Dhanani & Brian J. Hausman, *Decentralized Autonomous Organizations*, 34 No. 5 INTELL. PROP. & TECH. L., 2022, 3, 5 (discussing legal entity status of DAOs); *see also* Cianci et al., *supra* note 9.

⁸⁹ *See e.g.*, Zottola et al., *supra* note 40.

⁹⁰ *Id.*

third-party contract liability because smart contracts are coded in blockchain and visible to all.⁹¹ However, smart contracts can also be difficult to amend or terminate due to nonperformance, so liability related to amendments or terminations and joint and several liability must be protected against in other ways.⁹² Some DAOs create a “wrapped” DAO model to shield the members from liability.⁹³ In a wrapped DAO, the members can choose which parts of the DAO to collect together and register as a business organization that limits liability, such as an LLC, LP, or corporation.⁹⁴ This subset of the DAO often includes the members who hold governance tokens.⁹⁵ However, as discussed in the next section, some states get creative with the way they approach DAO liability by creating new statutory legal entities specifically for DAOs.

III. The Current Status of Legislation and Regulations on DAOs

Several states have begun to recognize that DAO formation is increasing at a rapid rate and have started passing laws recognizing DAOs as formal legal entities. By passing such statutes, state governments are hoping to attract DAOs to form in their respective states.⁹⁶ Many states have opted to allow DAOs to register as LLCs.⁹⁷ Some states have opted for more specialized approaches.⁹⁸ Many foreign countries have also begun to pass laws to give DAOs legal status as business organizations.⁹⁹ Given the increase in DAO statutes, some experts have taken a deeper look into these laws to determine if they really suit the unique structure of DAOs, or if they are merely “band-aids” meant to be quick-fixes in the meantime.¹⁰⁰

⁹¹ *Id.*

⁹² *Id.*

⁹³ Cianci et al., *supra* note 9.

⁹⁴ See Jennings & Kerr, *supra* note 87, at 13; see also Cianci et al., *supra* note 9.

⁹⁵ Cianci et al., *supra* note 9.

⁹⁶ Peter Cramer & Jason Finger, *Part II: With New DAO Law on the Books, Utah Joins Race with Wyoming and Tennessee to Become U.S. “Crypto Capital,”* JD SUPRA (June 1, 2023), <https://www.jdsupra.com/legalnews/s/part-ii-with-new-dao-law-on-the-books-8052353/>.

⁹⁷ See *infra* Section III.A.

⁹⁸ See *infra* Section III.B.

⁹⁹ See *infra* Section III.C.

¹⁰⁰ Cramer & Finger, *supra* note 96.

A. Majority Approach to Date in U.S. States

Wyoming was the first state to pass any legislation regarding the classification of a DAO.¹⁰¹ The statute classifies a DAO as an LLC and affords participants in the DAO the same protections as a traditional LLC, such as limited liability for all members and the ability to choose whether to be taxed as a corporation or as individual partners.¹⁰² Wyoming's statute also differentiates between member-managed and algorithm-managed DAOs.¹⁰³ In a member-managed DAO, management is vested solely in the DAO members, but in an algorithm-managed DAO, management is vested in both the members and any applicable smart contracts.¹⁰⁴ However, Wyoming's statute provides a caveat: algorithm-managed DAOs are permissible under the statute only if the smart contracts can be amended or updated as needed.¹⁰⁵ One of the more interesting and perhaps controversial provisions provides that where the smart contract of the DAO is in conflict with the articles of organization, the smart contract governs.¹⁰⁶ Allowing for smart contracts to take precedence when conflict arises shows an innovative and unique approach to conflict resolution.

While Wyoming's legislation specifically addresses DAOs, Vermont has taken a broader approach. A 2018 law provides that any organization or company that uses blockchain for a significant and material portion of its business or governance is considered a blockchain-based LLC (BLLC).¹⁰⁷ Vermont's legislation is a bit more

¹⁰¹ See et al., *supra* note 3.

¹⁰² WYO. STAT. ANN. § 17-31-103 (2022) ("The Wyoming Limited Liability Company Act applies to decentralized autonomous organizations . . ."). See also James R. Burke, et al., *Organizing a Massachusetts Business*, in MASS. BASIC PRAC. MANUAL Ch. 7 (Mass. Continuing Legal Educ. 2022) (comparing types of entities including sole proprietorship, corporation, general partnership, limited partnership, and limited liability company).

¹⁰³ WYO. STAT. ANN. § 17-31-109 (2022) ("Management of a decentralized autonomous organization shall be vested in its members or the members and any applicable smart contracts.").

¹⁰⁴ *Id.*

¹⁰⁵ WYO. STAT. ANN. at § 17-31-105(d) (2022).

¹⁰⁶ WYO. STAT. ANN. § 17-31-115 (2022).

¹⁰⁷ V.T. STAT. ANN. tit. 11, § 4172 (2018) ("A limited liability company organized pursuant to this title for the purpose of operating a business that utilizes blockchain technology for a material portion of its business activities may elect to be a blockchain-based limited liability company . . ."). See Gail

flexible than Wyoming's in that it does not limit legal entity status only to blockchain organizations that call themselves DAOs.¹⁰⁸ The Vermont statute provides legal entity status for any current or future company or organization that has either full or partial governance provided through blockchain.¹⁰⁹ This allows Vermont's legislation to account for any future developments in blockchain that may arise as a result of DAOs and other innovations.¹¹⁰ On the other hand, Wyoming's specificity in naming DAOs could potentially limit the applicability of its statute in the future if blockchain technology evolves again and DAOs merely become one type of blockchain organization in need of legal status.¹¹¹

Tennessee's approach mirrors Wyoming's, though its genesis differs. In April 2022, the state amended their existing Limited Liability Company Act to specifically recognize DAOs as legal entities and classify them as LLCs¹¹², unlike Wyoming which enacted their statute as new and separate legislation.¹¹³ However, both statutes reference the states' Limited Liability Company Acts and deems these acts applicable to the extent "not inconsistent with" the provisions of the new statutes.¹¹⁴

Ohio's currently pending bill looks similar to those in Wyoming and Tennessee in that it allows for DAOs to register as LLCs and allows existing LLCs to convert to DAOs.¹¹⁵ Like Wyoming and Tennessee, the Ohio bill also proposes that smart contracts govern when the smart contracts and articles of organization conflict.¹¹⁶ Regarding

Weinstein et al., *A Primer on DAOs*, HARV. L. SCH. F. ON CORPORATE GOVERNANCE (Sept. 30, 2022), <https://corpgov.law.harvard.edu/2022/09/17/a-primer-on-daos/> [<https://perma.cc/J3M6-CRA9>] (examining, inter alia, Vermont legislation and BBLLCs).

¹⁰⁸ VT. STAT. tit. 11, § 4172.

¹⁰⁹ VT. STAT. tit. 11, §§ 4172-4173.

¹¹⁰ *See id.*

¹¹¹ *See* WYO. STAT. ANN. § 17-31-103.

¹¹² TENN. CODE ANN. § 48-250-102(a) (2022).

¹¹³ WYO. STAT. ANN. § 17-31-101 (2021).

¹¹⁴ WYO. STAT. ANN. § 17-31-103; TENN. CODE ANN. § 48-250-102(a).

¹¹⁵ H.B. 585, 134th Gen. Assemb., Reg. Session, at § 1706.901 (Ohio 2021-2022). *See* WYO. STAT. ANN. § 17-31-104(b) (2022); TENN. CODE ANN. § 48-250-103(b) (2022).

¹¹⁶ Ohio H.B. 585 at § 1706.9012. *See* TENN. CODE ANN. § 48-250-114; WYO. STAT. ANN. § 17-31-115; *see also* Ivan De Hoon, *Legal Aspects of Decentralized Autonomous Organisations (DAOs)*, DE HOON & PARTNERS, <https://nomoretax.eu/legal-aspects-of-decentralized-autonomous->

fiduciary duties of members, all three of the aforementioned states have a default rule imposing no fiduciary duties upon members of the DAO vis-a-vis each other unless the articles of organization or operating agreement say otherwise.¹¹⁷

Notably, none of the existing DAO legislation explicitly accounts for the treatment of foreign DAO LLCs. For example, Wyoming's Limited Liability Company Act (LLCA) specifically addresses the treatment of foreign LLCs and the provisions they must necessarily comply with.¹¹⁸ However, Wyoming's DAO statute is silent on the matter, perhaps because it was the first state to approve such legislation and has not yet amended it to reflect developments in DAO legislation in other states. No matter the reason, any future enacted legislation will need to address the treatment of and requirements for foreign DAO LLCs, whether by creating new rules for them or incorporating the applicable LLCA provisions.

B. Utah and New Hampshire As Likely Frontrunners

In 2021, The Coalition of Automated Legal Applications (COALA), taking DAOs' unique characteristics into consideration, endeavored to create a model law for countries and states to follow that addresses the legal concerns surrounding DAOs while also leaving room for innovation.¹¹⁹ Because DAO membership can be, and usually is, international, the goal is that the model law can be adopted internationally so that members of the DAO face the same legal certainty regardless of their location.¹²⁰ The writers constructed the model law as a very basic framework so that states or countries could adopt it and transpose it over their existing corporate entity laws.¹²¹ By allowing for this flexibility, COALA has created a model law that addresses some of the major issues facing DAOs—limited liability,

organisations-daos/ [https://perma.cc/4MR8-788Z] (last visited Oct. 18, 2023) (listing Wyoming as a DAO-friendly jurisdiction and discussing disputes between smart contracts and articles of organization).

¹¹⁷ Ohio H.B. 585 § at 1706.907; TENN. CODE ANN. § 48-250-109 (2022); WYO. STAT. ANN. § 17-31-110 (2021).

¹¹⁸ WYO. STAT. ANN. § 17-29-114 (2016).

¹¹⁹ Constance Choi, et al., *Model Law for Decentralized Autonomous Organizations*, COALA GLOBAL 1, 2 (2021), <https://coala.global/wp-content/uploads/2022/03/DAO-Model-Law.pdf> [https://perma.cc/2ACC-VWR8] [hereinafter COALA Model Law].

¹²⁰ *Id.* at 2.

¹²¹ *Id.*

members' rights, minority member protections, and taxation—and also allows for states to implement it without a major overhaul of their existing regime.¹²² The structure of the Model Law begins with Chapters 1–4 which resemble most existing corporate law statutes; however, Chapter 5 is where the Model Law diverges and focuses on provisions that correlate to the specific, technical issues facing DAOs.¹²³

The popularity and success of the COALA Model Law is still undetermined, but the hope of broader adoption seems possible, especially since both Utah, which recently enacted a DAO statute, and New Hampshire, which has a bill pending, used the Model Law as inspiration.¹²⁴ Utah's bill was passed in 2023 and will go into effect in January 2024.¹²⁵ Utah's DAO Act gives DAOs legal entity status and protections similar to those of an LLC or corporation but does not wrap the DAO into either of those categories.¹²⁶ Instead, it creates a new entity, called an "LLD" or "Limited Liability DAO."¹²⁷ Another key difference between Utah's law and that of Wyoming and other LLC-DAO enactors is that Utah does not allow for smart contracts to govern when in conflict with other organizational instruments.¹²⁸ Instead, Utah's law dictates that the "governing hierarchy" is as follows: (1) the Utah DAO Act; (2) the DAO's by-laws; (3) Utah Revised Uniform Limited Liability Company Act Chapter 3a; and (4) the principles of law and equity.¹²⁹ This governing hierarchy takes into account the fact that smart contracts are very difficult—sometimes impossible—to

¹²² *Id.*

¹²³ *Id.* at 4.

¹²⁴ Fatemeh Fannizadeh, *Lawmakers in New Hampshire and Utah Recognize DAOs as Legal Persons*, FORBES DIGITAL ASSETS (Mar. 7, 2023, 8:47 PM EST), <https://www.forbes.com/sites/digital-assets/2023/03/07/-new-hampshire-utah-recognize-daos-as-legal-persons/?sh=71791025586b> (highlighting that New Hampshire's law is still in the very early stages and could go through several formulations before it is passed, so the end result could end up being more similar to Utah's).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ UTAH CODE ANN. § 48-5-105 (2023) (effective Jan. 1, 2024).

¹²⁸ Cramer & Finger, *supra* note 96.

¹²⁹ UTAH CODE ANN. § 48-5-102 (2023) (effective Jan. 1, 2024); see Cramer & Finger, *supra* note 97).

amend, so DAOs need more flexible options for management schemes.¹³⁰

As discussed above, the COALA Model Law provides for some flexibility for DAO innovation and evolution.¹³¹ By passing a statute that recognizes and considers the unique features of a DAO, Utah is hoping to attract DAO formation away from other states like Wyoming or Vermont that were early leaders in DAO legislation.¹³² New Hampshire introduced their bill in 2023 and its House passed it with amendments in early 2024.¹³³ The New Hampshire statute, although also inspired by the COALA Model Law, differs from Utah's statute.¹³⁴ Once enacted, New Hampshire's statute will create a separate legal entity for DAOs that comes with LLC-like protections.¹³⁵ Proponents of DAO legislation have praised the approach Utah and New Hampshire are taking because their laws do not try to fit DAOs into a standard legal entity box that does not account for their unique characteristics.¹³⁶

C. Current Landscape in Foreign Countries' DAO Laws With a Focus on Malta

While the LLC and Utah's LLD are legal entities specific to the United States¹³⁷, an examination of DAO-friendly international legislation in foreign countries may help guide considerations in specific areas

¹³⁰ Cramer & Finger, *supra* note 96 ("Given there is no provision for smart contracts, which are generally immutable, the Utah legislature likely recognized that DAOs need to be able to create flexible management structures outside the strict confines of smart contracts.").

¹³¹ Fannizadeh, *supra* note 125.

¹³² *Id.* ("These laws aim to make Utah and New Hampshire more advantageous for crypto projects than Wyoming. . . . Although Wyoming's law was breaking new grounds, it did not meet mass adoption among DAOs, as it created administrative overhead without much benefit in practice.").

¹³³ H.B. 645, 2024 Reg. Sess. (N.H. 2024).

¹³⁴ Fannizadeh, *supra* note 125.

¹³⁵ *Id.* (New Hampshire has opted to "create a brand new corporate entity type, one that respects the natural qualities of a DAO and focuses on transparency to the public as the driving regulatory principle."); H.B. 645, 2023 Reg. Sess. (N.H. 2023) ("An act relative to the establishment of decentralized autonomous organizations as legal entities within the state.").

¹³⁶ Fannizadeh, *supra* note 125.

¹³⁷ Peter Harper, *LLC Series: LLCs - US and Australian Classification and Tax Considerations*, ASENSA FAMILY OFFICE (Dec. 7, 2022), <https://asena>

for DAO-friendly legislation in Massachusetts. The first country to pass DAO legislation was the small island country of Malta.¹³⁸ Prior to establishing DAO legislation, Malta had already established itself as an attractive state for blockchain businesses—specifically crypto exchanges like Binance—with its progressive regulation.¹³⁹ In early 2018, Malta established a legal framework for DAOs in which they are classified as innovative technology arrangements that are essentially similar to a limited company.¹⁴⁰ Interestingly, in its Innovative Technology Arrangements and Services Act, Malta adds a consumer protection provision that says when auditors scrutinize such arrangements and the auditor implementation conflicts with the English description displayed to users, then the user-displayed description prevails.¹⁴¹ One of the more progressive regulatory advances Malta made was establishing a new agency called Malta’s Digital Innovation Authority (“MDIA”) to regulate blockchain businesses specifically.¹⁴² Rather than forcing an existing agency, like its securities regulator, to pivot and divert resources from its current oversight, Malta tasked the MDIA with focusing entirely on regulating blockchain businesses and smart contracts.¹⁴³

The mission statement of the MDIA states the agency’s purpose is to “promote Malta as the centre for excellence for technological innovation, while setting and enforcing standards that ensure compliance with any other international obligations.”¹⁴⁴ The MDIA also “seeks to protect and support users” while “encourag[ing] all types of innovations”¹⁴⁵ Although Malta’s approach to regulating blockchain and smart

advisors.com/blog/llc-series-lles-us-and-australian-classification-and-tax-considerations/ [https://perma.cc/J66V-ED2W].

¹³⁸ Marlene Ronstedt & Andre Eggert, *Among Blockchain-Friendly Jurisdictions, Malta Stands Out*, COINDESK (July 4, 2018, 4:00 AM, updated Sept. 13, 2021, 4:08 AM), <https://www.coindesk.com/markets/2018/07/04/among-blockchain-friendly-jurisdictions-malta-stands-out/> [https://perma.cc/J23B-7LKS?type=standard].

¹³⁹ *See id.*

¹⁴⁰ *Id.*

¹⁴¹ Joshua Ellul et al., *Regulating Blockchain, DLT and Smart Contracts: A Technology Regulator’s Perspective*, 21 ACADEMY OF EUROPEAN LAW 209, 219 (2020).

¹⁴² *See* Ronstedt & Eggert, *supra* note 139.

¹⁴³ *See id.*

¹⁴⁴ *About*, MALTA DIGITAL INNOVATION AUTHORITY, <https://www.mdia.gov.mt/about/> [https://perma.cc/YJ9N-CWLE] (last visited Oct. 6, 2023) [hereinafter “MDIA”].

¹⁴⁵ *Id.*

contracts is unique, the issues its approach solves are not unique to Malta. For example, when a DAO is organized or a new blockchain is deployed, the technology can inadvertently breach any number of laws.¹⁴⁶ These laws could range from those governing anti-money laundering to consumer protection to data privacy to taxation.¹⁴⁷ Additionally, given Malta's small size, having the MDIA solves a limited resource problem the country faces.¹⁴⁸ Existing agencies would have had to gain new expertise and expend limited resources determining how to regulate new technologies without too much overlap.¹⁴⁹ Instead, Malta created an agency that had the requisite expertise and precise objectives from the start to avoid unnecessary resource depletion.¹⁵⁰

Specifically, the MDIA employs two groups of experts that act as auditors for the technology arrangement—systems auditors and technical administrators.¹⁵¹ System auditors can apply to become certified by MDIA to “audit the technology developed in order to determine whether the innovative technology arrangement meets the standards required [by MDIA's guidelines].”¹⁵² These independent system auditors act as a first line of defense ensuring that the technology meets certain requirements before it is deployed.¹⁵³ However, once a technology arrangement has been certified and deployed, it must engage a technical administrator who acts as the point of last recourse “in case of emergency.”¹⁵⁴ If the technical arrangement suffers a loss or breaches a law and the governance structure does not take action, the technical administrator is required to step in.¹⁵⁵ Once they step in, the technical administrator can remedy the situation in one of two ways: (1) modify

¹⁴⁶ Ellul, et al. *supra* note 142 at 217.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 218.

¹⁵² *Id.*; *see also id.* at 219 (“The systems auditors, in undertaking their quality and assurance checks, will use a technology blueprint to determine whether an arrangement is technically sound.”).

¹⁵³ *Id.* at 218.

¹⁵⁴ *Id.* (“The systems auditor has been conceived as being pre-deployment assurance, leading to certification, while the technical administrator has been conceived as playing a potential role post-deployment and certification.”).

¹⁵⁵ *Id.*

the software or smart contracts to stop the losses or breaches or (2) “kill [the] switch” entirely if modification is impractical.¹⁵⁶

Other countries that have enacted DAO-friendly legislation are Switzerland, the Cayman Islands, Hong Kong, and Bulgaria.¹⁵⁷ Although none of these countries have a specific legal entity dedicated to regulating DAOs, they have all either created new legal entities which suit the needs of DAOs or have amended the legislation surrounding existing legal entities to make them more suitable for DAOs and other blockchain-centric organizations.¹⁵⁸ These legal entities are suitable for DAOs in that they all limit liability for members in their own ways and have flexible structures and registration procedures.¹⁵⁹

IV. Massachusetts’s Approach to DAOs

In March 2022, the Massachusetts General Court passed a bill establishing a special committee tasked with investigating blockchain technology and cryptocurrency and recommending legislative next steps for “fostering the appropriate expansion” of these areas in the Commonwealth.¹⁶⁰ As the Massachusetts General Court is preparing itself to propose and pass DAO legislation, this note will offer guidance and provide considerations for the committee so as to attract DAOs to the Commonwealth and further establish the Boston area as a hub for technological innovation. Massachusetts’s special committee has a few options for how it could approach DAO legislation. Option one is the approach Wyoming and Vermont took in fitting DAOs into their existing LLC statutes. Option two is the approach Utah and New Hampshire are taking in modeling their laws after the COALA Model Law. Finally, option three is to follow a similar path to that of Malta’s in creating not only a new legal framework for DAOs but also a new regulatory framework. In considering which route to take, the special committee should be focused on creating a law that attracts DAOs and incentivizes them to organize in Massachusetts. If more DAOs organize in the Commonwealth, that could mean an increase in revenue and improvements to the local economy, as well as an increase in innovators coming to

¹⁵⁶ *Id.*

¹⁵⁷ De Hoon, *supra* note 117.

¹⁵⁸ *See id.*

¹⁵⁹ *See id.*

¹⁶⁰ H.B. 4513, 192nd Gen. Ct., Reg. Sess. (Mass. 2022); S.B. 29, 193rd Gen. Ct., Reg. Sess. (Mass. 2023).

Massachusetts. With more innovators in the Commonwealth, it can continue to grow as a hub for innovation and technology. Subsection A explores and rejects option one—classifying DAOs as LLCs. Subsection B proposes a better direction for the special committee to take—combining options two and three with a DAO statute based on the COALA Model Law and a regulatory regime like that of Malta.

A. A. Option One: Massachusetts Passes a DAO-LLC Law

To form an LLC in Massachusetts, one must complete a certificate of organization that lists the ten items provided by the Secretary of the Commonwealth’s website—basic business information like the name, street address of the office in the Commonwealth, and general character of the business, and the name and business address of the agent for service—and pay a \$500 filing fee.¹⁶¹ Certificates can be filed online.¹⁶² As with most if not all other states, Massachusetts has a Limited Liability Company Act which enumerates the regulations involving LLCs in the Commonwealth.¹⁶³ While theoretically a DAO could “wrap” itself in an LLC and register, the current LLC statutes in Massachusetts are meant to apply to the traditional form of the organization. For example, the Massachusetts LLC statute makes no mention of smart contracts, and the law would not be applicable to the decentralized and pseudo-anonymous characteristics of the DAO.¹⁶⁴

Foreign LLCs, which are LLCs registered under the laws of another U.S. state or a foreign country, must register to do business in Massachusetts in order to avoid an annual fine as well as maintain any suit in Massachusetts court.¹⁶⁵ Additionally, a member, manager, or agent of a foreign LLC will not be held liable for the LLC’s failure to register.¹⁶⁶ Therefore, while Massachusetts does not have its own DAO

¹⁶¹ *Limited Liability Company Information*, SEC’Y OF THE COMMONWEALTH OF MASS., <https://www.sec.state.ma.us/divisions/corporations/filing-by-subject/limited-liability/corporations-limited-liability-company.htm> (last visited Dec. 13, 2023).

¹⁶² *Id.*

¹⁶³ St.1995, c. 281, § 18, MASS. GEN. LAWS Title XXII, ch. 156C (1995) (amended 2003).

¹⁶⁴ 15 MASS. PRAC. LEGAL FORMS § 13:12, *Requirements of the Secretary of the Commonwealth—Certificate of organization* (J. Marlin Hawthorne et al. eds., 5th ed. 2023).

¹⁶⁵ *Id.* at § 13:30, *Foreign Limited Liability Companies—Requirements*.

¹⁶⁶ *Id.*

LLC statute, it may recognize a DAO organized as an LLC in another state as a foreign LLC.¹⁶⁷ However, this could lead to a host of other problems stemming from the unique structure of the DAO; for example, one of the requirements for registering as a foreign LLC is that the registrant will need to include the business address of the principal office and the name and business address of each manager, if the LLC has managers.¹⁶⁸

If the special committee were to choose the DAO LLC route, one of the first issues to consider is whether to pass new legislation for the formation of a DAO LLC—like Wyoming or Ohio—or simply amend Massachusetts’s existing LLC Act to include a section pertaining to DAOs, like Tennessee.¹⁶⁹ Alternatively, the special committee may decide to recommend Vermont’s statutory regime as it is more flexible in accommodating any future developments in organizations governed and operating within the blockchain.¹⁷⁰ However, because statutes like those in Wyoming and Vermont do not fully account for the unique features of DAOs and instead attempt to fit them in an ill-equipped existing legal regime, Massachusetts could find itself unsuccessful in attracting DAOs to the Commonwealth over states like Utah and New Hampshire, where those unique features are explicitly recognized.¹⁷¹

**B. Proposed Blend of Options Two and Three:
Massachusetts Passes a COALA Model Law-like
Statute and Implements a Regulatory Regime Like
Malta’s**

While the success of Utah’s DAO law modeled after the COALA Model Law has yet to be tested¹⁷², supporters of the law are hopeful that it will incentivize DAOs to register in Utah.¹⁷³ While Massachusetts is still very much in the early stages of creating a DAO statute, it would be wise for the Commonwealth to see how successful

¹⁶⁷ This has yet to be done in any state so this is merely speculation as to how a court might handle an issue arising in Massachusetts involving a DAO registered as an LLC in another state.

¹⁶⁸ See 15 MASS. PRAC. § 13:30, *supra* note 166.

¹⁶⁹ See *infra* Section III.A.

¹⁷⁰ See *id.*

¹⁷¹ Fannizadeh, *supra* note 125.

¹⁷² The law will not be in effect until January 2024. See UTAH CODE ANN. § 48-5-105 (2023).

¹⁷³ Fannizadeh, *supra* note 125.

Utah's law becomes and also whether New Hampshire's pending DAO bill—which also follows the COALA Model Law—is passed. Either way, while waiting to see the success of these other bills, Massachusetts can prepare for its own proposed bill by becoming familiar with the COALA Model Law, the Utah law, and the New Hampshire law, and deciding what parts of each work within the Commonwealth's existing laws, what parts can be easily implemented, and what parts might be more difficult to implement but perhaps are the most DAO-friendly.

Massachusetts will want to make sure its DAO law addresses liability, especially as it relates to the anonymity of members and taxation. As discussed above, COALA Model Law addresses general liability as well as the liability that arises out of some DAO members remaining anonymous to create a legal regime that attempts to assuage the fears of both the DAO hoping to maintain the status quo and the fears of lawmakers and regulators worried that anonymous members will prevent adequate regulation of the DAO.¹⁷⁴ One of the solutions the Model Law presents is to offer the DAO limited liability but require that each member contribute to a liability fund that can be used to pay for any liability obligations that may arise.¹⁷⁵ Utah dealt with the issue of anonymity by requiring the name of an organizer and legal representative when registering the DAO.¹⁷⁶ The organizer and legal representative must be an individual and must provide a street and mailing address; however, the DAO can opt to have this information redacted for public records so that the individual can maintain public anonymity.¹⁷⁷ In terms of liability, Massachusetts may want to take a similar approach to that of Utah's new statute so that the Commonwealth has at least one member's contact information—the organizer—as well as that of a legal representative in cases where the DAO has incurred some liability.

With respect to taxation, both the COALA Model Law and the Utah Act offer guidance for how Massachusetts might tax a DAO. The COALA Model Law suggests subjecting DAOs to pass-through taxation like a partnership.¹⁷⁸ The individual members of the DAO would be responsible for paying taxes in proportion to their share on any realized gains.¹⁷⁹ In contrast, Utah's law allows a DAO to elect taxation

¹⁷⁴ COALA Model Law, *supra* note 119 at 25–26.

¹⁷⁵ *Id.* at 27.

¹⁷⁶ UTAH CODE ANN. § 48-5-201 (2023) (effective Jan. 1, 2024).

¹⁷⁷ *Id.*

¹⁷⁸ COALA Model Law, *supra* note 120, at 50.

¹⁷⁹ *Id.*

as a corporation and thus be subject to corporate tax laws.¹⁸⁰ If the DAO does not expressly make such an election, then the DAO will be taxed like a partnership and subject to pass-through taxation like the COALA Model Law suggests.¹⁸¹ Further, Utah's law mandates any of the DAO's distributions to its members must be on a pro rata basis to the member's shares.¹⁸² Utah's option gives DAOs even more flexibility in how they would like to be taxed and allows members to have a say in the taxation of the organization¹⁸³, which is something Massachusetts will want to consider in its own statute. Given the flexibility of the COALA Model Law and how Utah has utilized it to create a DAO statute that has received much praise¹⁸⁴, Massachusetts should follow in Utah's footsteps and use the Model Law to create its own DAO statute without necessarily copying Utah's law exactly.

Once the Commonwealth has passed statutory requirements for establishing and registering a DAO there, the committee and General Court should turn their attention to a regulatory framework. By not only creating DAO-friendly legislation but also a DAO-friendly regulatory framework, Massachusetts can set itself apart from other states. In Massachusetts, the Secretary of the Commonwealth is responsible for record-keeping, public information, securities regulation, and elections.¹⁸⁵ The Commonwealth also has its own state securities regulatory agency, the Massachusetts Securities Division, which the

¹⁸⁰ UTAH CODE ANN. § 48-5-406(1) (2023) (effective Jan. 1, 2024).

¹⁸¹ *Id.* at (2)(a) ("Unless the decentralized autonomous organization makes the election [to be classified as a corporation], a decentralized autonomous organization recognized by this act shall be classified as a partnership for tax purposes . . .").

¹⁸² *Id.* at (2)(b) ("For purposes of taxation, a decentralized autonomous organization shall allocate the distributive share of income, gain, loss, deduction, and credit derived from the decentralized autonomous organization's activities, to each member of the decentralized autonomous organization in proportion to the member's membership interest in the entity.").

¹⁸³ Fannizadeh, *supra* note 125.

¹⁸⁴ *Id.* ("Utah's approach will offer a more nuanced tax treatment more consistent with DAO function. . . . [T]he bill received popular support . . .").

¹⁸⁵ *Secretary of the Commonwealth*, MASS.GOV, <https://www.mass.gov/orgs/secretary-of-the-commonwealth#:~:text=The%20Secretary%20of%20the%20Commonwealth,elections%20officer%20of%20the%20Commonwealth> [<https://perma.cc/M75D-XCAJ>] (last visited Dec. 13, 2023).

Secretary of the Commonwealth oversees.¹⁸⁶ Within the schematic of the state government and state agencies are many different departments, offices, and smaller agencies that may govern or oversee various parts and operations of a business.¹⁸⁷ To attract DAOs to register their businesses in Massachusetts, the General Court will need to be innovative in how it enumerates a regulatory scheme for DAOs. One suggestion is to follow Malta's regulatory scheme, which established a new agency specifically tasked with regulation of the blockchain and its related entities.¹⁸⁸ This new agency could then be the "go-to" for DAOs, and for concerned citizens. This agency should act as a sort of middleman that compiles all the relevant regulations for DAOs and coordinates compliance between the DAOs and the respective established agencies. For example, if a DAO were to register in Massachusetts and its primary business was to raise capital for investment, the DAO could rely on this newly established agency for guidance on compliance with Massachusetts laws regarding investment. The new agency would then facilitate any required registrations or submission with the appropriate department, such as the Office of International Trade and Investment or Office of Consumer Affairs and Business Regulation.

By creating a statute that uses the COALA Model Law as its framework, Massachusetts could put itself in the same category as Utah and New Hampshire. But with the addition of a regulatory scheme similar to Malta's, Massachusetts can set itself apart from these other two states and establish itself as the prime location for DAO formation.

V. Conclusion

In some ways, the LLC is the ideal business organization form for DAOs because it allows them to customize their charter and maintain some of the autonomy and decentralization that are key components of a DAO. Further, following Wyoming and Tennessee's approach is an

¹⁸⁶ *Id.*; *About the Massachusetts Securities Division*, SEC'Y OF THE COMMONWEALTH OF MASS., <https://www.sec.state.ma.us/divisions/securities/securities-overview.htm> [<https://perma.cc/5X8S-AS2G>].

¹⁸⁷ *Schematic of State Government and Agencies*, SEC'Y OF THE COMMONWEALTH OF MASS (on file with author); see State Government Organizational Chart, Mass.gov (Aug. 10, 2018), https://budget.digital.mass.gov/bb/gaa/fy2019/app_19/ga_19/hcdefault.htm [<https://perma.cc/9Z74-BKWF>].

¹⁸⁸ See *infra* Section III.

easy way for Massachusetts to create a DAO statute by amending its traditional LLC law. However, Massachusetts would be doing itself a disservice by following these states' approaches. Like LLCs in the late 1970s and 1980s, DAOs have the potential to revolutionize the way people form business organizations and work toward a common purpose, but before that can happen, legislation and regulation need to account for DAOs' unique characteristics. Massachusetts will want to set its own course and should consider mirroring the COALA Model Law to create its legislation and then following Malta in the way it creates its regulatory scheme. This way, Massachusetts can create DAO-friendly legislation that incentivizes DAOs to register and develop in Massachusetts, which can only further contribute to Boston becoming a destination for tech start-ups and innovation centers.

As Boston grows as a hub for biotech companies and other innovative start-ups, it's important for Massachusetts to offer guidance to its citizens and those who wish to form DAOs. DAO legislation needs to be amenable to economic development. The role of the government is to provide certainty through legislation for its constituents. Massachusetts, and Boston specifically, could become a major destination for innovation and DAOs if the legislature passes laws that allow for easy formation and growth of DAOs while also protecting its members from liability and complicated taxation procedures. Because venture capital firms are increasingly investing in DAOs, Boston, as a hub for such firms, would do well to have friendly DAO statutes to continue to foster the Boston VC community.