



DLT SOLUTIONS

## **LOOKING FOR A SINGLE VEHICLE, SINGLE JURISDICTION SOLUTION TO DAO GOVERNANCE, TOKEN ISSUANCES, and WEB3 SPVs?**

### **INTRODUCING THE BVI COMPANY LIMITED BY GUARANTEE**

Many successful projects in the Blockchain / Web3 space have used foundations in Switzerland, Cayman Islands, Jersey, Seychelles, and Panama to structure their projects. Ethereum, which recently celebrated its 10 year anniversary in Zug, was one of the first to utilise a Swiss foundation. A number of other foundations followed suit. Market trends and the hive minded nature of web3 communities have created a tendency to go to a foundation as the parent vehicle of choice for a DAO wrapper / governance mechanism.

The BVI, unlike prevailing foundation jurisdictions, provides regulatory certainty for token launches. Consequently, a great number of blockchain projects have used BVI companies as their foundation's subsidiary vehicles of choice for successful token launches.

This said, there are unnecessary cost and multi-jurisdictional aspects to the foundation structure. Mitigating that structuring cost and risk through a single jurisdiction solution, while improving regulatory certainty and speed to market, are key factors that we at DLT Solutions have been thinking long and hard about. We believe that the BVI company limited by guarantee offers that single jurisdiction vehicle solution to token offerings and community management.





## **BVI COMPANIES LIMITED BY GUARANTEE (CLBGs)**

### **Organisation of CLBGs**

A company limited by guarantee is a form of company that does not have to issue shares and is typically used by not-for-profit organizations, including charities, sports clubs, societies, and other ventures that require legal personality without the aim of distributing profits. This form of company is especially common in the United Kingdom, Australia, and other countries influenced by English common law, and are similar to foundation companies and incorporated trusts. In the BVI, a company limited by guarantee (CLBG) is organised under the Business Companies Act, 2004.

A CLBG, which is not authorised to issue shares, would not have shareholders that contribute capital to the CLBG. The BVI Business Companies Act, 2004, is highly flexible as to what rights guarantee members can have. Using this flexibility, it is possible to provide in the memorandum and articles of association of the CLBG (M&A) that guarantee members have no rights of equity ownership, and in particular, have no economic entitlement, and if desired, to entrench that position in the M&A such that it cannot be amended. As a result, no person would own equity in the CLBG or have any right to distribution of the CLBG's assets or profits. **The CLBG, therefore, is orphaned in the same way that a trust or a foundation company is, and the guarantee member's role can be structured to be similar to that of a supervisor of a Cayman Islands foundation company.**

Like a foundation company, the CLBG is managed by its directors who must pursue a certain corporate purpose that is provided for in the CLBG's M&A. The objects clause drafted into the M&A can be quite specific about the matters that the directors must take in consideration. Eg, it could provide that the directors must consult certain third parties and act in accordance with their advice, as long as to do so is lawful. The third party could be a DAO, or a council, or a committee of another CLBG or foundation.





## **CLBG Directors & Members**

**The CLBG's M&A can stipulate how the CLBG's directors are to be appointed and removed.** The M&A can be flexible on the board governance mechanism. For instance, the M&A may provide that directors are appointed or removed by resolution of the members. Alternatively, the M&A may provide that directors are appointed by resolution of directors, except if there is no director, in which case a director would have to be appointed by resolution of members. It may also be a combination of the two. Otherwise, provided that the right to change certain core provisions that relate to the position of the members in the M&A may not be changed without member approval, all management powers can remain in the hands of the directors, unless provided differently in the M&A.

**The directors are ultimately subject to the supervision of the "members" of the CLBG.** By law, the CLBG is required always to have at least one member. The M&A can provide explicitly that members are not beneficiaries of the CLBG and do not have any right to distribution of the CLBG's assets or profits. Membership rights are personal. A member cannot and may not transfer, assign, or otherwise dispose of all or any membership rights.

The scope of the CLBG's members' supervisory rights is defined in the CLBG's M&A. This can be flexible, ranging for example from no right to vote on the appointment or removal of directors (except if all directors have vacated office), to full voting on the appointment and removal of directors.

**The M&A can be flexible as to the admission and removal of members.** For instance, the M&A could provide that the directors must admit persons who belong to a certain class as a member of the CLBG. By way of example, holders of DAO tokens, or perhaps a sub-group selected by the DAO, could be identified as a class of persons that must automatically be admitted as members of the CLBG, if they so requested. Importantly, a member would have the power to enforce the M&A if the directors fail to adhere to the objects clause.





## Conclusion

**The CLBG as a self-governing and independent vehicle** lends itself particularly well to being charged with the carrying out of transactions and tasks in accordance with a particular purpose that is formulated in its objects clause. The carrying out of that purpose could, as desired, be guided and informed by resolutions from either the CLBG's members, or certain third parties such as a DAO or council or committee, or a (class of) persons, or another body corporate.

By way of example, the CLBG is well positioned to carry out the management of a decentralised application, including its treasury, in accordance with the purpose set out in the CLBGs objects clause. That could include an obligation on the directors to take tokenholder wishes into account. The projects could range from DeFi applications to web3 infrastructure applications, such as cross-chain bridges. Alternatively, a CLBG is very well positioned eg to manage a grants programme. In each case, the CLBG's M&A could be very specific about members that must be admitted by the directors, allowing for protection of the mission of the CLBG through direct member enforcement.

**In conclusion, the CLBG offers all the benefits that a foundation solution can offer, but as a cost efficient, one stop, single jurisdiction solution that mitigates structural risks.**

## BVI CLBGs: The Single Jurisdiction Governance Solution



*The information contained in this memo is general in nature and does not constitute legal, tax or structuring advice. Individual projects will need bespoke structuring and legal advice to ensure that the governance arrangements meet the needs of the particular project. Together with our network of trusted advisers, we will be happy to discuss your specific requirements.*







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