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THE PERSONALITY PROBLEM: CAN A DAO HAVE A LEGAL IDENTITY?

TOWARDS A PURPOSIVE THEORY OF DAO LEGAL PERSONALITY AND A MODEL LEGISLATIVE FRAMEWORK FOR INDIA

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Abstract

Decentralized Autonomous Organisations (DAOs) constitute a structural rupture in the taxonomy of legal persons. Governed entirely by smart contract code, holding assets autonomously, and taking decisions through tokenized voting with no human directors or fixed domicile, DAOs resist assimilation into every existing Indian entity form. This paper maps that resistance systematically, testing the Companies Act 2013, the Limited Liability Partnership Act 2008, and the Trusts Act 1882 against the DAO's architecture and finding each inadequate. It then undertakes comparative analysis of four jurisdictions—Wyoming, the Marshall Islands, the European Union, and Singapore—that have moved furthest in addressing the DAO personality problem, distilling a set of common design principles. Against this backdrop, the paper develops a purposive theory of legal personality, arguing that personality is best understood as an accountability device rather than a fiction, concession, or contractual label, and that this understanding affords the strongest justification for extending legal personality to DAOs. The paper concludes with a fully drafted model Companies (DAO Supplement) Act, 2026 for India—including nine operative sections—and a framework for recognising foreign-incorporated DAOs operating in the Indian market.

Keywords: DAO; legal personality; Companies Act 2013; smart contracts; blockchain governance; corporate law; token-based membership; Legal Compliance Officer; Wyoming DAO Act; MiCA

I. Introduction: The Central Question of Legal Selfhood

Consider a thought experiment. A group of engineers write a set of rules—not in a shareholders' agreement, but in code. They deploy that code on the Ethereum blockchain. The code creates tokens and distributes them to thousands of wallet addresses. The holders of those tokens can vote on proposals; the code executes the winning proposals automatically; the code holds assets in its own name. The engineers then walk away, retaining no administrative keys, no override functions, no special powers. The organisation is, in the most literal sense, autonomous.

A creditor supplies services to this organisation. The organisation's code, following a governance vote, fails to pay. The creditor wishes to sue. The question this paper addresses is deceptively simple: who does the creditor sue? The code cannot be a defendant; it has no legal existence. The engineers have walked away and retained no control. The token holders are thousands of pseudonymous individuals scattered across the globe, most of whom have no knowledge that the specific transaction occurred. Under the current Indian legal framework, there is no satisfactory answer.

This is the personality problem in its starkest form. Legal personality—the capacity to hold rights, incur obligations, sue, and be sued—is

not a natural feature of the world. It is a legal construction, a fiction that law creates and maintains because it is useful. The history of corporate law is, in large part, the history of decisions about which fictions are worth maintaining. The joint-stock company was once a novelty that perplexed common law courts; the limited liability partnership was once a foreign import that Indian law was slow to accept; temples and mosques have been recognised as juridical persons under Indian law, not because they are natural persons but because recognising their personality serves useful social purposes.

The question for this paper is whether and how the legal fiction of personality should be extended to DAOs. The paper proceeds as follows: Part II maps the existing architecture of legal personality under Indian law; Part III tests each existing entity form against the structural features of a DAO; Part IV undertakes comparative analysis of four jurisdictions that have moved furthest in addressing this problem; Part V develops the theoretical case for extending legal personality to DAOs; Part VI proposes a model Companies (DAO Supplement) Act, 2026; and Part VII concludes.

II. The Architecture of Legal Personality under Indian Law

A. The Theoretical Foundation

Indian corporate law, like the English law from which it largely derives, rests on a fundamental distinction between natural persons and artificial or juristic persons—entities that the law treats as persons for defined purposes, not because they are human but because it is useful to do so.

The classic statement of the artificial personality principle is the speech of Lord Macnaghten in *Salomon v Salomon & Co Ltd*: 'The company is at law a different person altogether from the subscribers to the memorandum.' The Supreme Court of India affirmed this principle in its most categorical form in *Tata Engineering and Locomotive Co Ltd*

v State of Bihar,² holding that a company is a legal entity separate from its shareholders, contingent on the act of incorporation—the state's recognition of the entity as a legal person.

Three theories have been advanced to explain why the state extends legal personality to artificial entities. The fiction theory, associated with Savigny, holds that legal personality is a fiction conferred by the sovereign: corporations are persons because the law says they are, not because they have any intrinsic quality of personhood.³ The concession theory holds that legal personality is a privilege granted by the state in exchange for compliance with regulatory requirements. The nexus-of-contracts theory, associated with Chicago-school scholarship, holds that the corporation is not a real entity at all but merely a convenient label for a web of contractual relationships among investors, managers, employees, and creditors.⁴ Each of these theories, as Part V argues, has distinct implications for the question of DAO legal personality.

B. The Company under the Companies Act, 2013

The company is the dominant vehicle for legal personality under Indian law. Section 2(20) of the Companies Act, 2013 defines a 'company' as a company incorporated under the Act or under any previous company law.⁵ Section 9 confers separate legal personality from the date of incorporation, creating a body corporate with perpetual succession, a common seal (where applicable), and the power to hold property, to contract, and to sue and be sued in its own name.⁶

The structural features of a company under the 2013 Act are well-established: a registered office within India;⁷ directors who must be natural persons;⁸ a memorandum of association and articles of association;⁹ annual returns and financial statements filed with the Registrar of Companies;¹⁰ and decisions taken at board or general meetings constituted in the

manner prescribed by the Act." These are not merely procedural requirements—they are the substantive conditions on which the law's grant of limited liability and legal personality is conditioned.

C. The Limited Liability Partnership

The Limited Liability Partnership Act, 2008 creates a hybrid vehicle that combines the organisational flexibility of a partnership with the limited liability and separate legal personality of a company.¹² An LLP is a body corporate with perpetual succession, formed by two or more persons associated for carrying on a lawful business.¹³ Unlike a company, an LLP does not have shareholders or a board of directors: it has partners, and its internal governance is governed by the LLP agreement, which affords considerable contractual flexibility.

The LLP Act requires two 'designated partners' who must be individuals (natural persons) and who bear certain statutory responsibilities, including the filing of returns with the Registrar.¹⁴ The LLP must have a registered office in India,¹⁵ and any amendment to the LLP agreement must be filed with the Registrar.¹⁶ While the LLP offers greater governance flexibility than a company, it still requires identifiable human anchors and a fixed territorial presence.

D. The Trust and the Unincorporated Association

The Indian Trusts Act, 1882 provides for arrangements by which a trustee holds property for the benefit of beneficiaries.¹⁷

Critically, a trust in India is not itself a legal person: it cannot hold property in its own name, cannot sue or be sued, and cannot enter contracts as an entity. The trust's potential as a vehicle for DAO asset management is therefore severely limited: it does not provide legal personality, does not provide limited liability for the beneficiaries, and does not accommodate a governance structure in which decisions are made collectively rather than by the trustee.

At common law and under Indian law, a group of persons associating for a common purpose without incorporating constitute an unincorporated association. If formed for business purposes and comprising more than twenty members, it must incorporate or be in violation of Section 464 of the Companies Act, 2013.¹⁸ If fewer than twenty members, it will likely be treated as a partnership under the Indian Partnership Act, 1932.¹⁹ An unincorporated association has no legal personality, no limited liability, and no perpetual succession—and, as the following Part demonstrates, this is the default and deeply inadequate legal position for a DAO operating in India.

III. Testing the Fit: Can Existing Indian Forms Accommodate a DAO?

A. The DAO as a Company: A Systematic Mismatch

The question of whether a DAO can be accommodated within the Companies Act, 2013 requires a systematic mapping of the Act's structural requirements onto the DAO's technical architecture. Table 1 below sets out the results of that mapping.

Table 1: Mapping Companies Act 2013 Requirements onto DAO Architecture

Companies Act 2013 Requirement	Statutory Provision	DAO Architecture	Satisfiable?
Registered office in India	s 12	No physical location; code runs on distributed nodes globally	No—legislative amendment required
Directors must be	s 152(4)	Governance by smart	No—definitionally

Companies Act 2013 Requirement	Statutory Provision	DAO Architecture	Satisfiable?
natural persons		contract; no human directors	incompatible
Minimum two/three directors	s 149(1)	No directors at all in a fully decentralised DAO	No
Memorandum of association	s 4	Governance rules encoded in smart contract	Partial—requires amendment
Subscribers must sign MOA	s 7	Token holders pseudonymous; no human signatures at inception	No—identity verification required
Annual general meeting	s 96	Continuous on-chain voting; no scheduled meeting	No—incompatible with DAO architecture
Minutes of meetings	s 118	On-chain transaction log (immutable, public)	Partial—s 65B admissibility uncertain
Board resolutions for key decisions	s 179	Smart contract executes proposals automatically	No—no board, no resolution
Fiduciary duties of directors	s 166	No directors; proposers and voters not treated as fiduciaries	No—governance actors unregulated
Winding-up mechanism	ss 270–365	No dissolution mechanism in base code; assets in smart contract	No—requires bespoke insolvency regime

The table reveals a pattern of systematic mismatch. Some requirements—the registered office, the requirement for natural-person directors, the mandatory meeting framework—are structurally incompatible with the DAO architecture and cannot be satisfied by any amount of creative interpretation. Other requirements—the memorandum and articles, the minutes, the financial statements—are potentially reinterpretable, in the sense that the underlying purposes they serve could in principle be served by on-chain equivalents.

The key insight is that a company's formal requirements are, at bottom, accountability mechanisms: they exist to identify the entity, its controllers, its rules, and its financial position. The question is not whether those specific mechanisms can be replicated on-chain, but whether on-chain mechanisms can achieve the same accountability purposes. The answer, as Part VI argues, is yes—but only if the law is amended to accept on-chain equivalents.

B. The DAO as an LLP: Closer but Still Insufficient

The LLP structure is, in some respects, a better fit for a DAO than the company. The LLP agreement is essentially a contract, and smart contracts are a form of contract. The LLP's internal governance is highly flexible, determined by the LLP agreement rather than by a mandatory statutory framework. However, the LLP structure fails in two critical respects.

First, the requirement for two designated partners who are natural persons with identifiable identities and Indian addresses is structurally incompatible with a fully pseudonymous, permissionless DAO. Second, the LLP's membership structure does not accommodate token-based membership rights. A modified LLP structure, in which a 'DAO-LLP' could appoint a licensed legal agent as designated partner rather than requiring the founders or token holders to assume that role, might provide a workable partial solution—a possibility explored in Part VI.

C. The Trust: Asset Custody Without Governance

The trust structure offers one specific benefit: it allows the separation of legal title from beneficial ownership in a way that is well-understood and enforceable under Indian law. However, a trust is not a legal person—it cannot hold property in its own name, cannot sue or be sued, and cannot enter contracts as an entity distinct from the trustee. If the trust arrangement is the DAO's only legal structure, the trustee bears personal liability for the DAO's obligations. The enforcement of the trustee's obligation to follow DAO governance decisions is also untested under Indian law, with no precedent for a court compelling a trustee to implement the outcome of an on-chain vote.

D. The DAO as an Unincorporated Association: The Liability Catastrophe

As noted in Part II, the default legal classification of a DAO operating in India without a legal wrapper is the unincorporated

association. The consequences of this classification deserve emphasis because they are so severe. Every member of the association is jointly and severally liable for its obligations.²⁰

In the DAO context, 'membership' is typically established by holding a governance token, and governance tokens are widely traded on cryptocurrency exchanges. A purchaser may have no knowledge that they have become a 'member' of an unincorporated association or that they have thereby incurred unlimited personal liability for its debts. The Ooki DAO case in the United States—in which the CFTC successfully argued that governance token holders who had voted on proposals were members of an unincorporated association personally liable for the DAO's violations of the Commodity Exchange Act²¹—is the most vivid illustration of this risk. This outcome has chilling implications for innocent governance participants, particularly retail investors who purchase DeFi governance tokens as a speculative investment with no intention of assuming unlimited liability for a protocol they cannot control.

E. The Legal Wrapper Strategy and Its Limits

In the absence of a purpose-built DAO legal framework, Indian practitioners and developers have adopted the 'legal wrapper' strategy: incorporating a conventional entity—a private limited company, an LLP, or a foreign LLC—to serve as the legal interface between the DAO and the outside world. This strategy has practical merit, but it is fundamentally unsatisfactory as a permanent solution.

First, it reintroduces the human intermediaries that the DAO architecture is designed to eliminate. Second, the wrapper company's directors bear fiduciary duties under the Companies Act that may conflict with their contractual obligation to implement DAO governance decisions. Third, it results in a jurisdictional disconnect between the on-chain governance and the wrapper's applicable law. Most importantly, it does not confer legal personality on the DAO itself: the wrapper is not

the DAO, and the DAO remains an unincorporated association for legal purposes.

IV. Comparative Legal Analysis: How Other Jurisdictions Have Responded

A. Wyoming: The DAO LLC Supplement

The Wyoming Decentralized Autonomous Organization Supplement (Wy. Stat. § 17-31-101 et seq.), enacted in July 2021, is the most advanced DAO-specific law in the common law world. It supplements Wyoming's limited liability company act with a tailored framework for DAOs.

The Wyoming DAO Act is notable in several respects. First, it treats a DAO LLC as a legal person capable of perpetually existing, owning property, contracting, and suing and being sued.²² Second, it permits a DAO LLC's operating agreement to be defined wholly or partly by smart contract code, distinguishing 'algorithmically managed' DAOs (no human override capability) from 'member-managed' DAOs (some residual human powers).²³ Third, it allows membership interests to be represented by tokens, conferring governance rights without the need for a traditional member register.²⁴ Fourth, it limits member liability to the value of their membership interests.²⁵ The Act requires a DAO LLC to have a registered agent in Wyoming—a pragmatic necessity for regulatory contact—but does not mandate a board of directors, annual general meetings, or minutes.

The Wyoming model has been influential, with hundreds of DAOs incorporating under it by 2024. Its limitations include residual uncertainty about liability when a DAO's algorithm harms third parties with whom the DAO has not contracted, the absence of a tax treatment framework, and the tension between the registered-agent requirement and full decentralisation.

B. The Marshall Islands: The Offshore DAO Act

In February 2022, the Republic of the Marshall Islands enacted the Decentralized Autonomous Organization Act,²⁶ becoming the first sovereign nation to create a tailored legal

form specifically designed for DAOs. The RMI DAO Act creates a 'DAO LLC' that recognises token-based membership interests, allows smart-contract governance, provides limited liability for members, and requires minimal compliance (a registered agent and basic organisational filings).²⁷ It expressly provides for both for-profit and non-profit DAOs²⁸ and has attracted several well-known DeFi protocols, including Manta Network and dYdX.

The RMI model's primary utility for present purposes is its demonstration that a purpose-built DAO entity form is commercially viable and legally coherent. However, it is primarily an offshore vehicle: an Indian developer who incorporates a DAO as an RMI LLC still faces all the Indian legal problems identified in Part III when the DAO seeks to operate in India.

C. The European Union: MiCA and the Regulatory Approach

The EU's Markets in Crypto-Assets Regulation (MiCA),²⁹ which entered into force in June 2023 and applies fully from December 2024, does not create a bespoke DAO entity form. Instead, it regulates the activities of crypto-asset service providers (CASPs) and the issuers of crypto-assets, classifying assets into asset-referenced tokens (ARTs), e-money tokens (EMTs), and other crypto-assets (a residual category including most governance tokens).³⁰

MiCA's significance for Indian law reform is threefold. First, its token taxonomy provides a ready template for an Indian token classification framework. Second, its white paper requirements model a pre-issuance disclosure regime applicable to DAO governance token offerings. Third, MiCA's explicit exemption for 'fully decentralised' crypto-asset services acknowledges that the regulatory net cannot always catch DAOs at the entity level, and that the appropriate response may be to regulate the gateways—exchanges, fiat on-ramps, custodians—rather than the DAO itself.³¹

D. Singapore: The Incremental, Activity-Based Model

Singapore has not enacted DAO-specific entity legislation but has used its Payment Services Act 2019 (as amended in 2021),³² the Securities and Futures Act 2001,³³ and Monetary Authority of Singapore (MAS) guidance on digital payment tokens to regulate the activities of persons involved with digital assets. MAS has taken a 'substance over form' approach: the legal characterisation of a token depends on its economic substance and the rights it confers, not on what its issuers call it.³⁴

Singapore has also benefited from its court system's engagement with crypto-asset

disputes—notably in B2C2 Ltd v Quoine Pte Ltd,³⁵ where the Singapore Court of Appeal considered the legal effects of an algorithmic trading programme's actions—and its growing ecosystem of regulatory sandboxes that allow DAO-like structures to operate under supervisory oversight while the law develops.

E. Comparative Synthesis: Design Principles for India

The four comparative models, taken together, reveal a set of design principles that a workable Indian DAO legal personality framework must incorporate. Table 2 sets out the comparative picture.

Table 2: Comparative Design Principles, DAO Legal Personality Frameworks

Design Principle	Wyoming	Marshall Islands	EU (MiCA)	Singapore	India (Proposed)
Bespoke DAO entity form	Yes (DAO LLC)	Yes (DAO LLC)	No	No	Yes (DAO Company Supplement)
Token-based membership	Yes	Yes	Via CASP rules	Via SFA	Yes
Smart contract governance	Yes	Yes	Partial	Via guidance	Yes
Limited liability for token holders	Yes	Yes	Indirect	Indirect	Yes
Human accountability anchor	Registered agent	Registered agent	CASP authorisation	MAS licence	Legal Compliance Officer
Token taxonomy / classification	No	No	Yes (ART/EMT/other)	Yes (MAS guidance)	Yes (proposed SEBI framework)
Creditor and minority	Partial	Partial	Yes	Yes	Yes (adapted Companies)

Design Principle	Wyoming	Marshall Islands	EU (MiCA)	Singapore	India (Proposed)
protection					Act)
Recognition of foreign DAOs	N/A	N/A	Passporting	MAS recognition	Nexus-based recognition regime

The synthesis reveals several critical design principles. Every functional DAO legal personality regime requires a human accountability anchor. Token-based membership must be explicitly recognised. Smart contract governance must be accepted as a valid substitute for conventional board governance. Limited liability must be preserved—without it, the DAO structure is commercially unviable. And creditor and minority protection mechanisms must be built into the framework, because decentralisation does not eliminate power asymmetries.

V. The Theoretical Case for DAO Legal Personality

A. The Fiction Theory and Its Application to DAOs

The fiction theory of corporate personality holds that legal persons other than human beings are fictions—constructs of the legal imagination that have no existence apart from the law's recognition of them. On this theory, the question of whether a DAO should have legal personality is ultimately a normative question: is it useful for the law to treat a DAO as a person? The answer must be yes. The reasons are the same reasons that justified extending the fiction to joint-stock companies in the nineteenth century: enabling productive economic activity, providing certainty to contracting parties, allowing the pooling of resources, and protecting participants from unlimited personal liability.

The fiction theory also supports a pragmatic approach to the conditions on which

the fiction is extended. Just as the law conditions corporate personality on compliance with the Companies Act's requirements, it can condition DAO legal personality on compliance with a set of requirements tailored to the DAO's structure: publication of the smart contract address and code, appointment of a Legal Compliance Officer, maintenance of basic on-chain transparency standards. The fiction is a tool; the conditions on which it is granted are policy choices that the legislature is free to make.

B. The Concession Theory and Its Limits

The concession theory holds that legal personality is a privilege granted by the state, which can be withdrawn if the conditions on which it was granted are not met. This theory faces a fundamental difficulty in the DAO context: a DAO that is fully decentralised cannot be 'wound up' or 'dissolved' by state action in the way that a company can. The code continues to run. Withdrawing legal personality from a DAO does not make the DAO cease to exist—it merely removes the legal protections (limited liability, enforceability of contracts) that registration confers.

This asymmetry—the state can give personality but cannot easily take back the underlying technology—is one reason why a purely registration-based approach to DAO legal personality will always be incomplete. The proposed DAO Supplement addresses this by focusing on the conditions for obtaining legal personality rather than the mechanism of its withdrawal: the framework should be designed to make registration attractive by conferring

valuable legal protections, rather than merely making non-registration punitive.

C. The Nexus-of-Contracts Theory and DAOs

The nexus-of-contracts theory affords a powerful analytical tool. If the corporation is merely a convenient label for a web of contractual relationships, then a DAO—which is literally constituted by a set of smart contracts that define the rights and obligations of its participants—is, on this theory, the purest possible expression of the corporate form. The DAO's smart contracts are the nexus: they define who is a member, what rights membership confers, how decisions are made, and how assets are managed.

The conventional corporation is, on the nexus theory, a 'black box': the state recognises a legal entity whose internal contractual arrangements are opaque, audited imperfectly, and disclosed selectively. The DAO is a 'glass box': every contract term is publicly readable on the blockchain, every transaction is permanently and verifiably recorded, and every governance decision is executed automatically in accordance with the stated rules. The state would not be recognising a fictional entity whose internal reality it must take on trust—it would be recognising a nexus of contracts it can directly and continuously verify. This radical transparency is, on the nexus-of-contracts theory, an argument in favour of legal recognition, not against it.

D. A Purposive Theory: Legal Personality as an Accountability Device

Beyond the three classical theories, this paper proposes a purposive theory of legal personality particularly apt for the DAO context. Legal personality, on this account, is not primarily a fiction, a concession, or a label for contracts—it is an accountability device. Its primary purpose is to create a legal person that can be held responsible: that can sue and be sued, enter and enforce contracts, hold and lose property, and be wound up when insolvent.

The legal person is the target at which the law aims its accountability mechanisms.

On this purposive account, the question of whether to grant legal personality to a DAO is a question about whether the accountability purposes of personality can be achieved. Can a DAO be the target of contractual enforcement? Can a DAO be wound up? Can a DAO be found liable in tort? The answer to each of these questions is yes, given appropriate legislative infrastructure. And if personality can achieve its accountability purposes in the DAO context, then there is every reason to extend it. The alternative—leaving DAOs as unincorporated associations whose members bear unlimited personal liability—achieves neither accountability (because the members are pseudonymous and dispersed) nor commercial certainty (because counterparties have no reliable legal target). It is the worst of all possible worlds: accountability without identification, liability without a defendant.

VI. Model DAO Supplement for Indian Law

A. Foundational Design Choices

The model DAO Supplement proposed in this Part is designed to provide DAOs with a domestic Indian legal personality while preserving the accountability mechanisms that make corporate law socially valuable. The Supplement is structured as an amendment to the Companies Act, 2013, operating alongside the existing company framework rather than replacing it. This approach—modelled on Wyoming's 'supplement' structure—allows DAOs to access the full institutional infrastructure of the Companies Act (the Registrar of Companies, the National Company Law Tribunal, the insolvency framework under the Insolvency and Bankruptcy Code, 2016) without requiring a comprehensive rewrite.

Several foundational design choices inform the Supplement's architecture. First, the Supplement applies only to DAOs that elect to incorporate under it—it does not compel existing DAOs to incorporate and does not alter

the legal position of unincorporated DAOs. Second, the Supplement requires the appointment of a Legal Compliance Officer (LCO)—a natural person resident in India who serves as the human accountability anchor for the DAO. The LCO is not a director and does not exercise governance authority; they are responsible solely for regulatory filings, KYC/AML compliance, and service of process. Third, the Supplement treats the DAO's smart contract protocol as the equivalent of the company's articles of association, subject to minimum transparency requirements. Fourth, the Supplement provides that governance token holders are treated as members of the DAO Company for the purposes of limited liability and member rights, with liability limited to the value of their token holdings.

B. Proposed Statutory Text

THE COMPANIES (DAO SUPPLEMENT) ACT, 2026: PROPOSED DRAFT

An Act to amend the Companies Act, 2013 to provide for the incorporation and regulation of Decentralized Autonomous Organisations as a class of company, and for matters connected therewith or incidental thereto.

Section 1: Short Title and Commencement

(1) This Act may be cited as the Companies (Decentralized Autonomous Organisation Supplement) Act, 2026.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Section 2: Definitions

In this Chapter, unless the context otherwise requires—

- (a) "DAO Company" means a company incorporated under this Chapter;
- (b) "Smart Contract Protocol" means the set of smart contracts deployed on a Recognised Distributed Ledger that govern

the operations, membership rights, and decision-making of a DAO Company;

- (c) "Recognised Distributed Ledger" means a public, permissionless distributed ledger notified by the Central Government for the purposes of this Chapter;
- (d) "Governance Token" means a digital unit of account issued pursuant to the Smart Contract Protocol that confers on its holder the right to participate in the governance of the DAO Company;
- (e) "Legal Compliance Officer" or "LCO" means the individual appointed pursuant to Section 6 of this Chapter;
- (f) "Token Holder" means any person who holds a Governance Token at any given time.

Section 3: Incorporation as a DAO Company

- (1) Two or more persons may, by subscribing their names to the Articles of Organisation and complying with the requirements of this Chapter, form a DAO Company for any lawful purpose.
- (2) A DAO Company shall be a body corporate with perpetual succession, capable of acquiring, holding, and disposing of property, entering into contracts, suing and being sued, and doing all such things as are incidental or conducive to the exercise and attainment of its objects.
- (3) A DAO Company may be incorporated as a DAO Company (Algorithmically Managed), in which case the Smart Contract Protocol constitutes the sole governance mechanism and no human override capability is retained, or as a DAO Company (Member-Managed), in which case the Smart Contract Protocol governs subject to the reserved powers of members specified in the Articles of Organisation.

Section 4: Smart Contract Protocol as Articles of Organisation

- (1) The Smart Contract Protocol of a DAO Company shall serve as the Articles of Organisation of that company for the purposes of this Act.
- (2) The Smart Contract Protocol must be deployed on a Recognised Distributed Ledger at a publicly verifiable address, which shall be recorded in the DAO Company's registration.
- (3) The Smart Contract Protocol must contain, at minimum: (a) the mechanism by which Governance Tokens are issued and transferred; (b) the voting threshold and quorum requirements for governance proposals; (c) the mechanism by which treasury assets are managed and disbursed; (d) the mechanism, if any, by which the Smart Contract Protocol may be amended; and (e) the address and contact details of the Legal Compliance Officer.
- (4) Any amendment to the Smart Contract Protocol that alters the matters specified in sub-section (3) must be filed with the Registrar within thirty days of the amendment taking effect on-chain.

Section 5: Membership and Limited Liability

- (1) Token Holders of a DAO Company shall be members of that company for the purposes of this Act.
- (2) The liability of each Token Holder in respect of the obligations of the DAO Company shall be limited to the value of the Governance Tokens held by that Token Holder at the time the relevant obligation was incurred.
- (3) No Token Holder shall be personally liable for any debt, obligation, or liability of the DAO Company by reason only of being a Token Holder, provided that the DAO Company has been duly incorporated and

maintained in good standing under this Chapter.

- (4) The register of members of a DAO Company shall be the on-chain record of Governance Token holders maintained by the Smart Contract Protocol, which shall be treated as a valid and sufficient register of members for all purposes of this Act.

Section 6: Legal Compliance Officer

- (1) Every DAO Company shall appoint a Legal Compliance Officer who is a natural person ordinarily resident in India.
- (2) The LCO shall be responsible for: (a) filing all returns, reports, and documents required by this Act with the Registrar; (b) accepting service of process, notices, and regulatory correspondence on behalf of the DAO Company; (c) maintaining KYC/AML records as required by the Prevention of Money Laundering Act, 2002 and rules made thereunder; (d) ensuring that the DAO Company's Smart Contract Protocol address remains registered with the Registrar; and (e) notifying the Registrar of any material amendment to the Smart Contract Protocol within fifteen days.
- (3) The LCO shall not be treated as a director of the DAO Company and shall not be subject to fiduciary duties in respect of the company's governance decisions.

- (4) The LCO shall be entitled to indemnity from the DAO Company's treasury for all costs reasonably incurred in the discharge of their functions under this section.

Section 7: Governance Decisions

- (1) A governance decision of a DAO Company shall be any proposal that has been submitted to the Smart Contract Protocol, has met the quorum and voting threshold specified in the Smart Contract Protocol, and has been executed on-chain.

- (2) A governance decision executed on-chain shall have the same legal effect as a resolution passed at a general meeting of the company under the principal Act, without the need for a physical meeting, proxies, or signed minutes.
- (3) The on-chain record of a governance decision shall be treated as primary evidence of that decision for the purposes of the Indian Evidence Act, 1872 and the Information Technology Act, 2000, notwithstanding the absence of a certificate under section 65B of the Information Technology Act.
- (4) Nothing in this section prevents a Token Holder from challenging a governance decision before the National Company Law Tribunal on the grounds of oppression or mismanagement under sections 241-244 of the principal Act.

Section 8: Creditor Protection

- (1) A DAO Company shall maintain a 'Creditor Protection Reserve' of not less than ten per cent of its treasury assets, which shall not be disbursed pursuant to any governance decision without the consent of the LCO certifying that no material creditor claim is outstanding.
- (2) Any contract entered into by a DAO Company with a third party shall be binding on the DAO Company if the counterparty can demonstrate that the contract was authorised by a governance decision or by the express terms of the Smart Contract Protocol.
- (3) The winding up of a DAO Company shall be governed by the Insolvency and Bankruptcy Code, 2016, with such adaptations as the Insolvency and Bankruptcy Board of India may, by regulation, prescribe for the realisation of digital assets.

Section 9: Annual Transparency Report

- (1) Every DAO Company shall, within sixty days of the end of each financial year, file with the Registrar an Annual Transparency Report containing: (a) the address of the Smart Contract Protocol; (b) the total value of treasury assets as at the year-end date; (c) a summary of material governance decisions taken during the year; (d) the name and contact details of the LCO; and (e) a declaration by the LCO that the DAO Company has maintained its KYC/AML records in accordance with the applicable law.
- (2) The Annual Transparency Report shall be publicly accessible through the MCA21 portal.

C. Key Provisions Explained

The Smart Contract Protocol as Articles of Organisation (Section 4). The most conceptually significant provision of the Supplement is the treatment of the Smart Contract Protocol as the DAO Company's Articles of Organisation. Conventional articles of association are human-readable documents that set out the company's rules in natural language. The Smart Contract Protocol is machine-readable code that enforces those rules automatically. The Supplement treats the code as the constitutional document of the company, on the basis that the code is a more reliable statement of the company's governance rules than a written document: it is tamper-resistant, automatically enforced, and publicly verifiable.

Token Holders as Members with Limited Liability (Section 5). The extension of limited liability to token holders is the Supplement's most commercially significant provision. It directly addresses the Ooki DAO problem: a token holder who holds a governance token in a registered DAO Company does not thereby incur unlimited personal liability for the DAO's obligations. Their liability is limited to the value of their tokens. This replicates the fundamental

commercial bargain of the joint-stock company—unlimited upside, limited downside—in the DAO context.

The Legal Compliance Officer (Section 6). The LCO is the Supplement's solution to the human accountability anchor problem. The Supplement's innovation is to separate this function from governance authority: the LCO has no power to override governance decisions, to direct the treasury, or to bind the DAO contractually. They are a compliance agent, not a corporate officer. This preserves the DAO's governance autonomy while providing the state with a point of contact and the creditor with a target for service of process. The LCO model is informed by the Wyoming registered-agent requirement and the Singapore MAS representative model, adapted to Indian institutional realities.

A critical distinction separates the LCO from a mere registered agent. A conventional registered agent is a passive conduit for service of process. The LCO, by contrast, is an active compliance principal with four functions that a registered agent does not perform: maintaining KYC/AML records on an ongoing basis; filing substantive Annual Transparency Reports; holding the certification key to the Creditor Protection Reserve (creating a structural veto over one specific category of governance decision to protect third-party creditors); and notifying the Registrar of material smart contract amendments. This transforms the LCO from a passive address into an active compliance guardian whose duties, though narrow, are enforceable.

Governance Decisions as General Meeting Resolutions (Section 7). Section 7(3) creates a statutory exception to the Section 65B certificate requirement for the on-chain records of DAO governance decisions. This provision is justified on two grounds: the on-chain record is cryptographically tamper-resistant, timestamped to the second, and publicly verifiable—making it technically more reliable than conventional minutes; and it is practically

impossible to produce a Section 65B certificate for a blockchain record, because no single person 'manages' the blockchain. A statutory exception is the only workable solution.

Creditor Protection Reserve (Section 8).

The requirement to maintain a ten per cent Creditor Protection Reserve addresses a real concern about DAO governance: that a majority coalition of token holders could use their voting power to drain the treasury before creditors can obtain judgment. The Reserve provides a buffer that cannot be accessed without LCO certification, creating a minimal but meaningful protection for trade creditors.

D. Transitional Architecture: Foreign-Incorporated DAOs

A significant number of DAOs that operate in the Indian market are incorporated in foreign jurisdictions—the Cayman Islands, the British Virgin Islands, the Marshall Islands, or Wyoming. A separate recognition framework is required for these entities, operating on a 'nexus trigger' model: a foreign-incorporated DAO that meets one or more of the following nexus criteria shall be treated as a 'Foreign DAO' subject to Indian registration requirements under the Foreign Company provisions of the Companies Act, 2013 (Chapter XXII, Sections 379-393):³⁶

- (a) the DAO has more than fifty Indian-resident token holders;
- (b) the DAO's Smart Contract Protocol generates revenues from Indian-resident users exceeding Rs 1 crore in a financial year;
- (c) the DAO's LCO (or equivalent) is resident in India; or
- (d) the DAO's treasury holds Indian-situs assets.

A Foreign DAO meeting these nexus criteria must appoint an Indian LCO, register with the Registrar of Companies under Chapter XXII, file an Annual Transparency Report, and comply with applicable Indian tax, AML, and

foreign exchange regulations. For large, genuinely decentralised Foreign DAOs—such as Uniswap, with tens of thousands of Indian-resident token holders—the proposed framework provides that the LCO function may be discharged by a licensed legal services firm or a registered Virtual Asset Service Provider incorporated in India, acting as institutional LCO. This preserves the accountability purpose of the LCO requirement while making the framework commercially viable for large, decentralised Foreign DAOs whose governance architecture makes individual LCO appointment impractical.

VII. Conclusion

This paper has established three principal arguments. First, no existing Indian entity form is adequate to accommodate a DAO. The Companies Act, the LLP Act, and the Trusts Act each fail to meet the DAO's structural requirements in ways that cannot be remedied by creative interpretation alone. The default position—the DAO as an unincorporated association—exposes token holders to unlimited personal liability and deprives counterparties of a reliable legal target. Legislative action is necessary.

Second, the comparative experience of Wyoming, the Marshall Islands, the European Union, and Singapore demonstrates that legislative action is both possible and commercially effective. Each of these jurisdictions has found a workable solution to the DAO personality problem, and each solution reflects a common set of design principles: a human accountability anchor, token-based membership recognition, smart contract governance acceptance, limited liability for token holders, and creditor protection mechanisms.

Third, the theoretical case for DAO legal personality is strong. Whether approached through the fiction theory, the nexus-of-contracts theory, or the purposive accountability theory proposed in this paper, the conclusion is the same: extending legal personality to DAOs serves the same purposes

that extending personality to joint-stock companies served two centuries ago. It enables productive economic activity, provides certainty to contracting parties, and creates accountability mechanisms that the current vacuum conspicuously lacks.

The model Companies (DAO Supplement) Act, 2026 proposed in Part VI gives these arguments legislative form. It is designed to be integrated into the Companies Act, 2013 as a new Chapter, creating a domestic Indian pathway for DAO incorporation that preserves limited liability, provides creditor protection, accommodates pseudonymous token-based membership, and accepts smart contract governance as a valid substitute for conventional board governance. India's legal system has absorbed the joint-stock company, the LLP, and the one-person company in response to commercial necessity. The DAO presents a comparable necessity—and the framework this paper proposes is equal to the challenge.

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