



Walkers' Guide to Token Issuances, DAOs and Foundation Companies in the Cayman Islands

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Introduction

Since the inception of Walkers' Global Fintech Group in 2017, the virtual assets and blockchain sectors have grown materially and become increasingly sophisticated. In response to the demand from our clients we have worked on a wide range of mandates in this space. We have continually been at the forefront of innovation in this area and have advised our clients on how to navigate through the complex legal and regulatory issues that frequently arise. As a result we have obtained significant experience in advising clients on their journey from a small team looking for seed capital through to a fully decentralised operation.

In this guide we will consider the most common roadmap which we see used in connection with blockchain based projects. We will then look at some of the key questions which we regularly advise our clients on. These relate to why the Cayman Islands is the best choice for these types of projects, why foundation companies are increasingly used as legal wrappers for decentralised autonomous organisations ("DAOs") and how to undertake a token issuance in the context of the Virtual Assets (Service Providers) Act (the "VASP Act"). We will also consider the key service providers which need to be engaged to facilitate the structures discussed below.

Roadmap

As a starting point it is helpful to outline a roadmap of how a new blockchain based project might develop. It is important to stress that no two projects will ever have the same objectives. As such, there is no 'cookie cutter' approach that can be applied. Each project will be unique and a bespoke approach must be determined. Accordingly, the roadmap set out below is intended to provide a general overview for informational and discussion purposes.

Stage 1: Prior to Token Creation Event ("TCE")

- » Small development team looking for seed capital from investors.
- » Usually already an onshore operational company housing the developers and Intellectual Property (the "DevCo") that engages in fund raising.
- » End point of this stage is immediately prior to TCE.

Stage 2: TCE, Establishment of Foundation Company and initial transfers of the token

- » A Cayman Islands foundation company is established to act as the legal wrapper for the DAO and the holder of governance tokens (the "Foundation Company").
- » A token issuer entity will mint the governance tokens and transfers tokens to Foundation Company as a gift or alternatively the Foundation Company mints the governance tokens.



- » Foundation Company distributes the governance tokens to DevCo as payment for services pursuant to a services agreement, distributes the governance tokens to investors from Stage 1 as well as some further additional professional investors (i.e. by way of private sales / transfers via airdrops).

Stage 3: Public Distributions / Move towards decentralisation

- » Tokens may be distributed to the community by the Foundation Company by way of:
 - airdrop subject to certain criteria, for example the airdrop may be to the most active users of the underlying protocol or in the case of NFT projects, the holders of the relevant NFTs;
 - » airdrop subject to certain criteria, for example the airdrop may be to the most active users of the underlying protocol or in the case of NFT projects, the holders of the relevant NFTs;
 - » private sales;
 - » public sales;
 - » secondary sales by token holders via decentralised or centralised exchanges; or
 - » grant programs or bug bounty programs.
- » Foundation Company adopts bylaws which sets out the governance mechanics of the governance tokens. Tokenholders submit proposals via the relevant community channel and if approved via Snapshot voting, this is a decision of the DAO which is then implemented by the Foundation Company to the extent that the decision is an off-chain real-world transaction.

VASP Act

It is important to consider the impact that the VASP Act will have on any project which has a Cayman Islands nexus. We have prepared an overview of the VASP Act which can be accessed [here](#).

The VASP Act regulates certain virtual asset services including the issuance of virtual assets to the public. Many projects will undertake the three stages outlined above without conducting a public issuance of virtual assets. There is no explicit definition of "to the public" in the VASP Act. However, CIMA has released guidance which distinguishes a "private sale" from a "public sale". A "private sale" means "a sale, or offer for sale, which is not advertised and is made available to a limited number of persons or entities who are selected prior to the sale by way of a private agreement". Whether or not a public sale takes place should be considered having regard to the target market for the virtual asset and the circumstances in which it is distributed.

Foundation Companies

Since the commencement of the Foundation Companies Act in 2017 we have seen foundation companies increasingly used in respect of blockchain projects. We have prepared a detailed client advisory on foundation companies which can be accessed [here](#).

One of the most important uses of foundation companies to date has been to serve as a legal wrapper for DAOs. DAOs, by their very nature, are decentralised organisations that are governed by a community. There is no centralised ownership or governance. This is in stark contrast to traditional legal structures, such as companies, where ownership, governance rights and obligations are conferred (or otherwise imposed) on shareholders and directors. This is where foundation companies step in. They offer legal personality but can be structured to be ownerless. They have no shareholders and instead have a supervisor. A supervisor has no ownership or economic interests in the foundation company. Depending on the powers conferred on the supervisor, they may have a passive role by merely having standing to take the directors of the foundation company to court for breach of fiduciary duties and the ability to pass certain resolutions statutorily mandated by Cayman Islands law.

Walkers has been at the forefront of the use of foundation companies for DAOs and has a deep understanding of how they work. One of the first foundation companies established in the Cayman Islands was used by Walkers to act as a legal wrapper for the DAO of one of the oldest decentralised-finance protocols. Walkers advised throughout the life of this project and helped it achieve full decentralisation earlier this year. Full details of this transaction are detailed [here](#).



Other Considerations

Cayman Islands laws and regulations. In addition to ensuring compliance with the VASP Act, it is important that any project complies with other applicable Cayman Islands laws and regulations. This would include, but is not limited to (i) any applicable sanctions legislation, the Proceeds of Crime Act and the Anti-Money Laundering Regulations, (ii) the Securities Investment Business Act, (iii) The International Tax Co-operation (Economic Substance) Act, and (iv) the Data Protection Act.

Onshore Counsel. DevCo or the token issuer will usually be situated (in terms of its operations and key personnel) in an onshore jurisdiction. It is very important that counsel from the relevant onshore jurisdiction is engaged at an early stage. Your onshore lawyers would be engaged to provide all legal and regulatory advice on any aspect of the project which is not governed by Cayman Islands law. This advice would be broad in scope but the key items it would cover would include advice relating to the operations of the DevCo or token issuer, applicable onshore regulatory and tax advice, and relevant marketing and distribution advice in relation to sales of the tokens.

Service Providers. Cayman Islands foundation companies require a number of service providers. These usually include a supervisor, a secretary and a registered office. Walkers is able to assist in this regard, including by introducing Walkers Professional Services which is able to provide a variety of relevant services.

About Walkers

Walkers' Global Fintech Group consists of experts familiar with all types of virtual assets and blockchain structures at all levels of complexity. Together with our professional services team, we can offer everything from legal advice to regulatory, compliance, registered office and corporate services, making Walkers your one-stop-shop for all your Fintech needs. We also work closely with a number of other service providers (including leading onshore law firms operating in this space) on a regular basis and can assist you in determining which service providers would be most appropriate for your project.

For more information or to speak to an expert simply contact fintech@walkersglobal.com or contact one of the below:

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