

# **Is D&O ready for the DAO?**

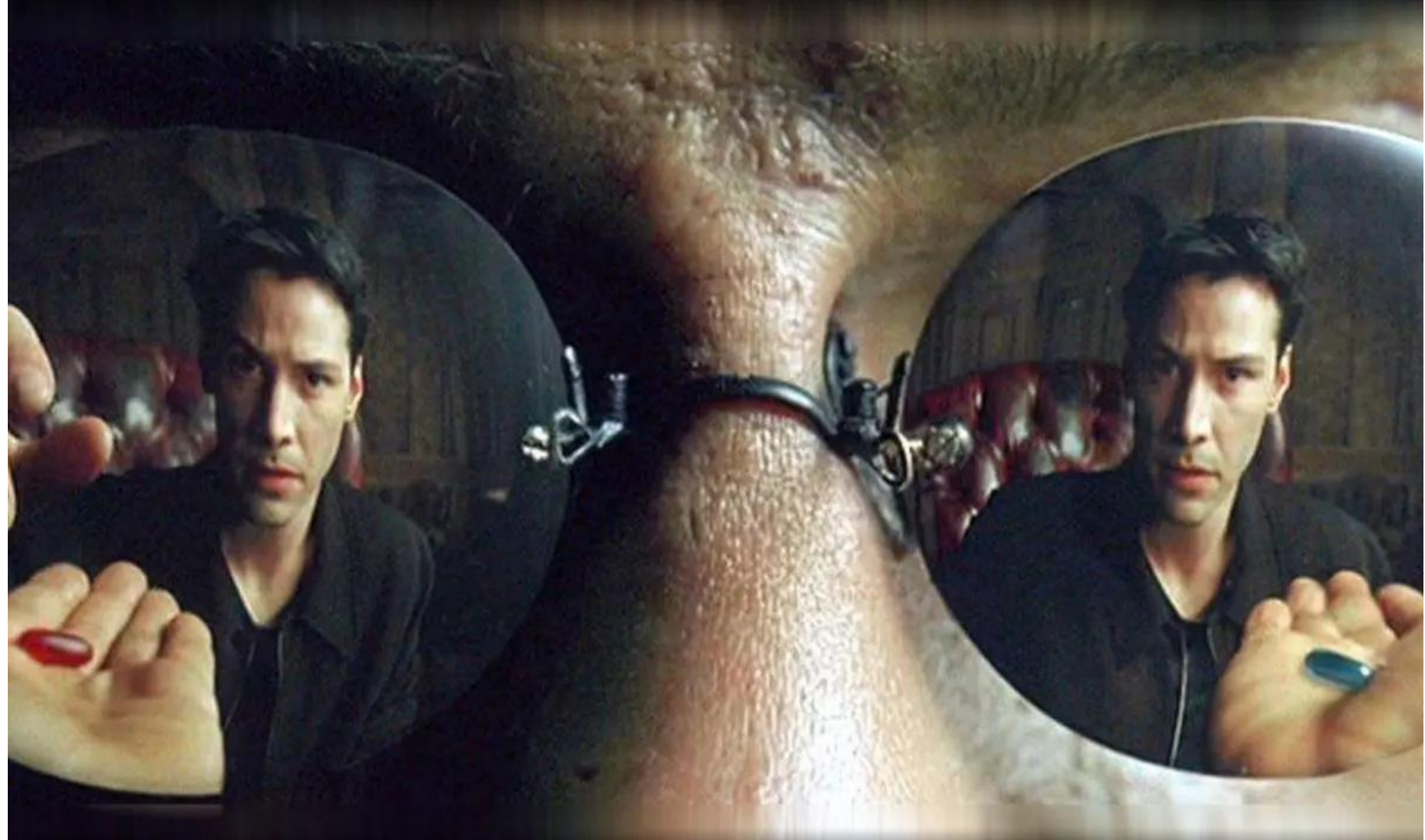
## **Rethinking corporate personality and responsibility**

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30 August 2023





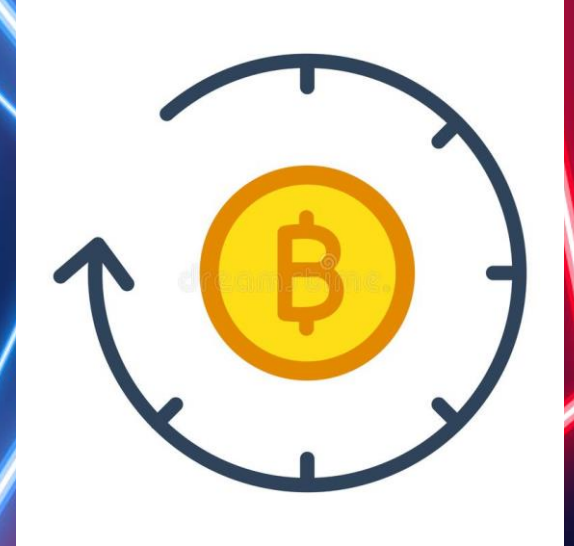
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## Agenda

- **What is blockchain?**
- **What is a DAO?**
- **Liability of token holders**
- **Regulatory framework**
- **D&O Insurance?**

# History

- Invented by 'Satoshi Nakamoto', who authored the bitcoin white paper and created the first blockchain database.
- Whitepaper was published in 2008
- Bitcoin network came into existence in 2009
- Ethereum came into existence in 2013, created by programmer Vitalik Buterin



# Cryptocurrency today...

- Trillion dollar market




## Today's Cryptocurrency Prices by Market Cap

The global crypto market cap is \$1.05T, a ▼ 0.39% decrease over the last day. [Read More](#)



### Trending

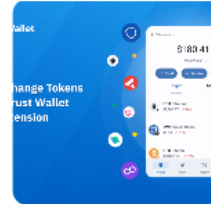
[More >](#)

- |   |  |      |         |
|---|--|------|---------|
| 1 |  Pepe                 | PEPE | ▼ 6.66% |
| 2 |  Not Financial Advice | NFAI | ▲ 5.24% |
| 3 |  Bitcoin              | BTC  | ▼ 0.45% |



### Top Community Article

[More >](#)



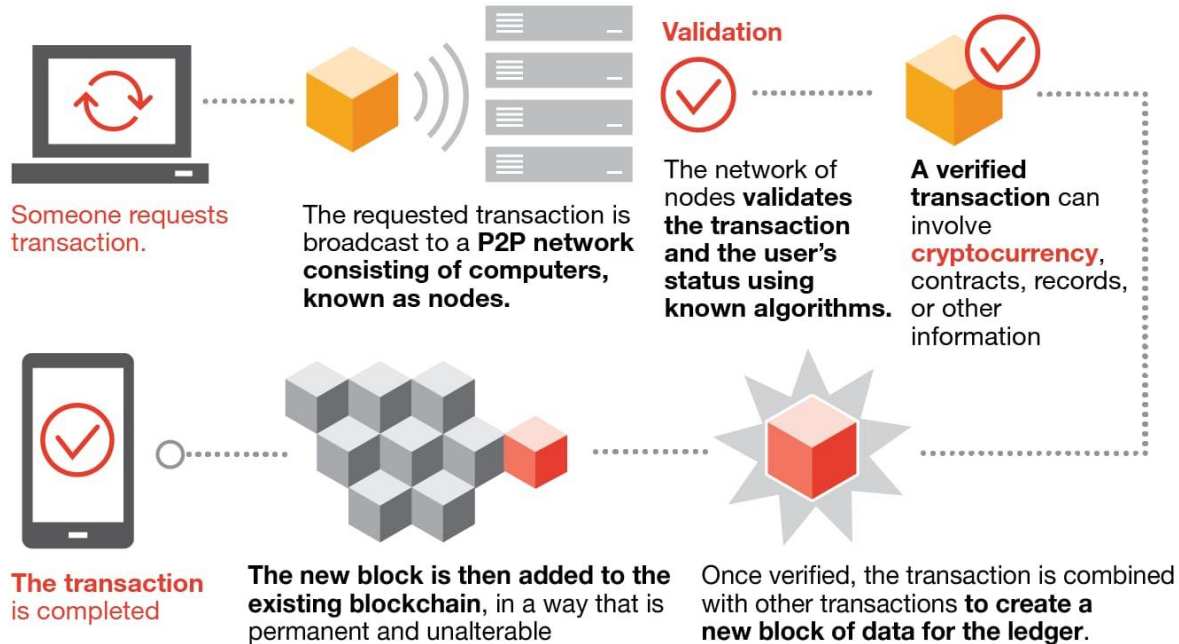
Trust Wallet

How to Exchange Tokens Using the Trust Wallet Chrome Extension

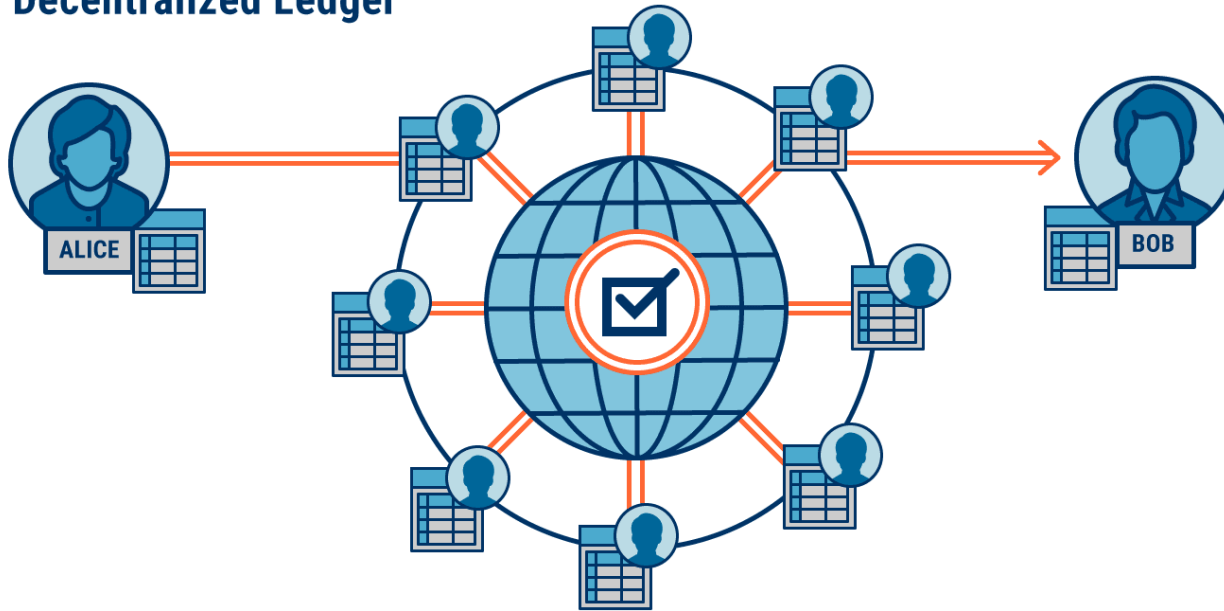
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# Blockchain technology



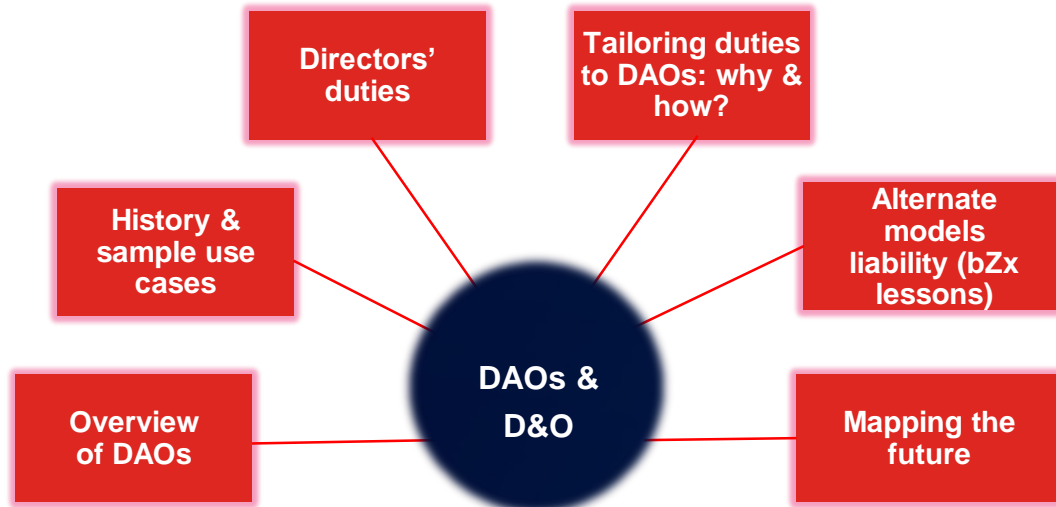
## Decentralized Ledger



CBINSIGHTS

# DAOs – Smart Contracts

- DAOs are an emerging means of capital coordination
- However most jurisdictions do not recognise DAOs as separate legal entities
- Without corporate personhood, what is the liability of the participants?



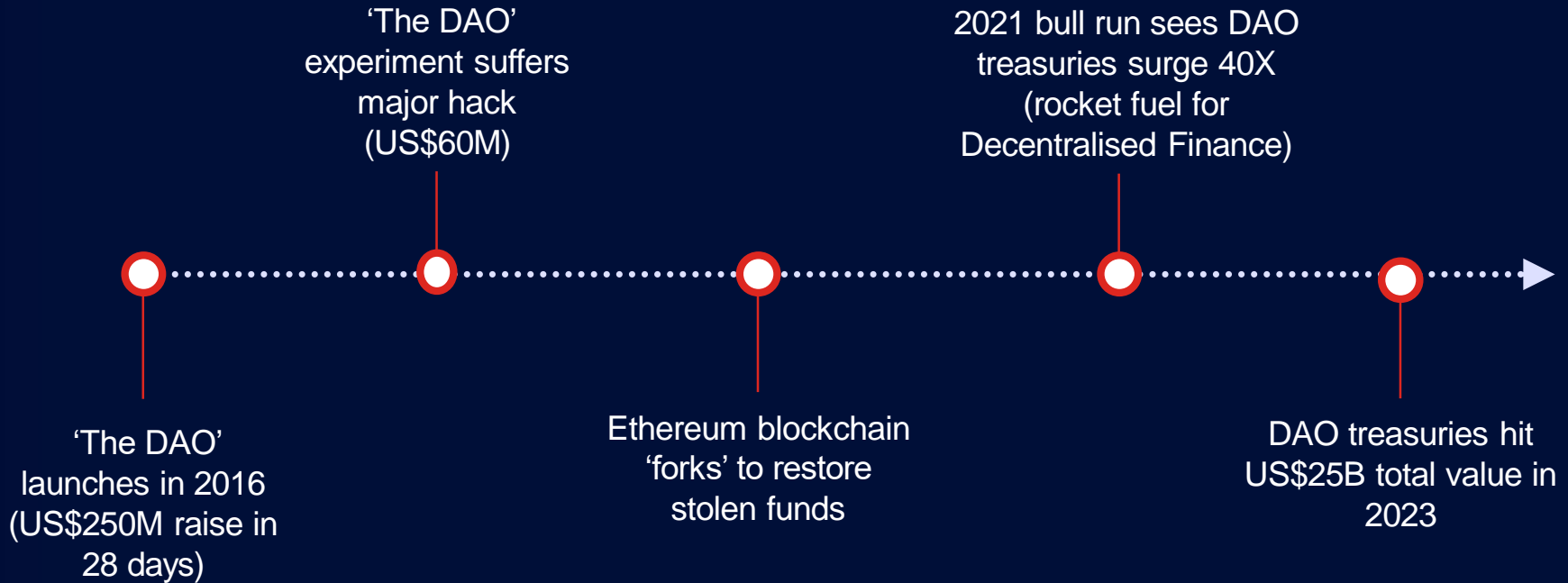


# What is a DAO?

- **'Decentralised'** = without a centralised 'management team', digital assets (namely governance tokens) represent member voting rights
- **'Autonomous'** = automatically execute in unambiguous way on blockchain
- **'Organisation'** = allow communities / groups of people to vote, organise, pool and deploy resources



# Rise of the DAO



# The “DAO” Experiment



# Illustrative Use Cases

- **Investments:** ConstitutionDAO (US\$41M raise)
- **Protocol governance:** UniSwap DAO (US\$489B+ trade volume, 13k lifetime voters)
- **Social clubs:** FWB DAO (US\$10M raise by a16z)
- **Charity:** Ukraine DAO (US\$6M raise)
- **Education:** EduDAO (\$33M initiative) partners with Harvard, Berkley, MIT
- **Metaverse:** Decentral Games DAO governs world's first decentralised metaverse
- **Accelerators:** BitDAO launches US\$500M blockchain gaming accelerator



**But DAOs operate in a legal black hole.**

**Most jurisdictions do not recognise DAOs as having a distinct legal personality.**

**This opens up Pandora's box – what liability could attach?**



**If the legal system is to recognise  
DAOs as having separate legal  
personality, where do we look?**

## **Two key features:**

- Governance**
- Legal nexus**

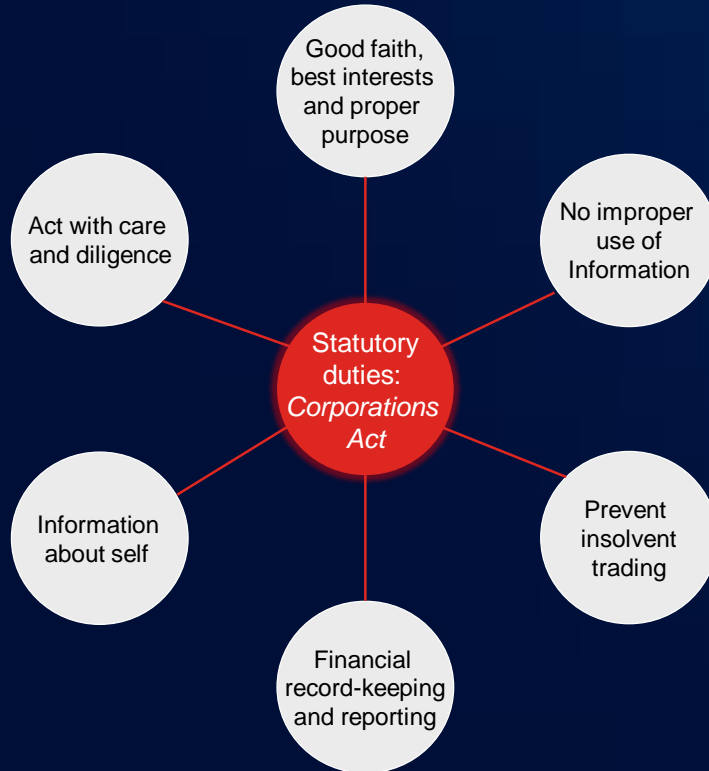
# But the current structures and corresponding duties are not fit for DAO purposes. What now?

Option	Legal structure	Appropriate duties?
1	General partnership	Unlimited liability
2	DAO-recognised limited liability company	No fiduciary duties
3	Wrapped DAO	Temporary 'bandaid' solution

**Future outlook:**  
Will policymakers meet in the middle – hybrid of options 2 and 3?



# Directors' duties



## Fiduciary duties: common law

- Act with care and diligence
- Act with good faith in best interests of company
- Exercise powers for proper purpose
- Avoid conflicts of interests with company

# Why is tailored liability necessary for DAO members?

- Agency problem
- Low token holder participation rates
- Anonymity
- Code literacy
- Imagine members of a DAO vote for an action that results in the DAO acting illegally



# Proposals for tailored DAO liability regimes

Duty	Application to DAOs
<i>Act in good faith and in the best interests of the company, exercise powers for proper purpose</i>	<ul style="list-style-type: none"><li>• Replace 'company' with 'DAO token holders'</li><li>• Apply vote by vote and/or only to active members</li></ul>
<i>Avoid conflicts of interest and corporate opportunity doctrine</i>	<ul style="list-style-type: none"><li>• Waive 'no conflict' rule and corporate opportunity doctrine in its entirety? Participation in multiple DAOs</li></ul>

# Potential role of D&O Insurance

- Liability, investigations, defence costs
- Side A, B, C – relevance of side B & C?
- Capacity as an officer / token-holder
- Outside “directorships”



# Alternate routes for liability: Lessons from bZx class action 2023

- On 5 November 2021, DAO-governed bZx protocol is hacked (US\$55M)
- Plaintiffs bring negligence claim and allege bZx protocol and ‘partners’ owe duty to maintain funds’ security
- On 27 March 2023, US District Court holds that a negligence claim can be brought against a DAO, as a general partnership, and token holders with governance rights form that partnership
- Example of “regulation through enforcement”
- Reminder that anyone involved in the DAO may be a target if things go awry



# Is the future beyond DAObt?

- Regulation is coming – is it a good thing?
- Australia’s Senate Select Committee on Australia as a Technology and Financial Centre recommended legal recognition of a DAO company structure
  - Australian Law Reform Commission findings due November 2023
- UK Law Commission’s scoping exercise of DAOs still underway
- Obstacles remain in terms of liability that could limit DAOs’ mainstream adoption



# Questions



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