Registration Authority  
Abu Dhabi Global Market  

10 May 2023  

CONSULTATION PAPER NO. 3 OF 2023: PROPOSAL FOR A LEGISLATIVE FRAMEWORK FOR DISTRIBUTED LEDGER TECHNOLOGY FOUNDATIONS

Dear Sir/Madam,

Executive Summary:

Binance welcomes the Registration Authority (RA) of Abu Dhabi Global Markets (ADGM) consultation paper to seek views on its proposed new framework for foundations.

All frameworks should provide certainty and a safe space for innovation, and drive consumer trust, market order, clarity and impact. The framework needs to provide the necessary confidence for market participants to innovate together. Disproportionate regulation may inadvertently stifle innovation and growth, remove choice and competition, and potentially drive consumers to unregulated markets or operators. Achieving this balance is not easy.

The Registration Authority’s desire to keep innovating and consulting in this space is welcome. Our detailed response is below. However, we would like to highlight the following key points:

- Currently there are few, if any, Decentralised Autonomous Organisations (DAO) in the public domain which are fully autonomous. Pending the continuous development of technology such as smart contracts, as well as relevant regulatory regimes, we consider that the proposed Distributed Ledger Technology (DLT) Foundations Regime is a pragmatic and logical next step.
- We agree that council members must exercise their duties with skill, care and due diligence. This aligns with the ideal of responsible innovation in decentralisation and other countries’ approaches to DLT Foundation Frameworks.
- It will be important to ensure that there are adequate rules and regulations in place to address risks to supervision and enforcement.
- Regulatory oversight, as well as technology that enables on-chain activities to be fully monitored, are also tools to support governance, transparency and ultimately accountability.
- We assume the consultation encompasses a broader spectrum of DLT beyond blockchain (which is a type of DLT).

Yours faithfully,  
Binance.
Responses as submitted via e-mail:

QUESTION 1: Do you have any concerns with, or feedback on, the proposed structure of the DLT Foundations?

We note that the DLT Foundations Regime has envisaged the legal form of the DAO to take that of a separate legal personality.

We agree that a DAO in its strictest and purest form is fully autonomous. We also agree that a DAO which has a separate legal personality and certain centralised functions, as proposed in the DLT Foundations, undermines the true ethos of a DAO.

Currently there are few, if any, DAOs in the public domain which are fully autonomous. Pending the continuous development of technology such as smart contracts, as well as relevant regulatory regimes, we consider that the proposed DLT Foundations Regime is a pragmatic and logical next step.

In particular, we appreciate the flexibility under the Regime for the rights of the token holders to be amended easily.

QUESTION 2: Do you have any concerns with, or feedback on, the proposed governance and control of the DLT Foundations?

We agree with the proposal that the DLT Foundations Regime does not have a specific fit and proper test that goes above and beyond those included in the Existing Foundations Regulations. We also agree that council members must exercise their duties with skill, care and due diligence. This aligns with the ideal of responsible innovation in decentralisation and other countries’ approaches to DLT Foundation Frameworks.

QUESTION 3: In particular, do you have any concerns with token holders, who has voting rights, being granted the right to vote on certain ‘qualified matters’ unless otherwise expressly stated in the Charter?

We are supportive of this proposal. Assuming the DAO has a large and varied tokenholder base, then allowing all tokenholders with voting rights to vote on certain qualified matters is helpful in guaranteeing the independence of the DAO. Conversely, keeping voting rights to a small group of tokenholders, who may hold a majority stake of tokens, means the views of all tokenholders may not be properly represented. It may also be worth considering how voting on matters requiring a decision will be resolved if a consensus cannot be reached, or conflicts of interest are identified.

QUESTION 4: Should we make it mandatory to require the founder to step down and appoint a guardian, rather than including an ability for the DLT Foundation to add a requirement to its Charter that the founder(s) will step down from the foundation council and that an independent guardian will be appointed within a certain timeframe or following completion of certain milestones to oversee the council?

We are supportive of the desire to achieve independence and full decentralisation of the DAO. However, we propose not making it mandatory to require the founder to step down, as the mandatory nature of such a requirement would give less flexibility to the DAO; further, such a requirement is not necessary where there is a proper functioning foundation council and an active voting base. The foundation can also be structured so that the founder is not part of the Foundation Council, which may also help to support the ethos of a decentralised DAO.
QUESTION 5: Do you have any concerns with, or feedback on, the proposals concerning tokens?

We agree with both proposals on the assumption that this Foundation consultation relates to the issuance of non-regulated utility tokens, consistent with the ADGM definition of “Crypto Asset” in part 258 of the Financial Services and Markets Regulation 2015, and the ADGM “Guidance – Regulation of Virtual Asset Activities in ADGM” issued February 2020.

QUESTION 6: Do you have any concerns with, or feedback on, the proposals concerning reporting, disclosures, and publication?

As a general principle, we propose that the filing of annual audited accounts and annual returns should maintain a level of confidentiality and only be shared where necessary for the foundation to meet its obligations. The default position would be to share this information with the foundation council, its senior staff and the authorising regulator. This position could be changed by agreement within the foundation based on certain objects or purposes set out in its constitution.

If the concern is that a DAO should be transparent and democratic, which we overwhelmingly support, we would note that other information proposed to be reported, disclosed and published should provide adequate transparency about the DAO, its owners and operations. Additionally, regulatory oversight, as well as technology that enables on-chain activities to be fully monitored, are also tools to support governance, transparency and ultimately accountability.

It may also be worth considering setting criteria to determine the thresholds and scope of audit requirements such as full, limited, statutory, supervisory and third-party, in line with international practice for foundations.

QUESTION 7: Do you have any concerns with, or feedback on, the proposals concerning the definition of beneficial owners in a DLT Foundation?

Although the identity of beneficial owners owning more than 25% of voting rights should be disclosed to regulators, our view is that wider reporting requirements on beneficial ownership should be discretionary as some tokenholders with large concentrations might want to be discreet about their positions; in some cases, such discretion might be inherently necessary for the token in question. In such circumstances, where a beneficial owner has 25% or more voting rights we agree that, unless they self-declare, their votes above 25% will not be counted towards quorum/voting threshold.

QUESTION 8: Do you have any concerns with, or feedback on, the proposals concerning supervision?

Although the scope of the Foundation requirements will apply to non-regulated utility tokens, as defined by the FRSA, it is important to recognise that similar risks may exist in the AML, Sanctions, Data Protection, Cyber Security and Marketing of non-regulated utility tokens. This is both in the context of how these risks are supervised and enforced by the RA as an entity itself, relative to the powers of a supervisor such as e.g. ADGM FSRA, and how these risks are also managed in the broader context of how non-regulated utility tokens are defined or treated in other markets globally. As such, it will be important to ensure that there are adequate rules and regulations in place to address these risks to supervision and enforcement.
QUESTION 9: Do you have any concerns with, or feedback on, the proposals concerning the
tokenholders rights in connection with an insolvency?

We agree that it is logical for the tokenholders to be treated and ranked as ‘members’ for the purposes of
section 225 (Distribution of Company’s property) of the ADGM Insolvency Regulations 2022, and that a
separate or bespoke regime is not required.

QUESTION 10: Do you agree with our proposals not to introduce segregated cells in the New
Regime?

We understand the intent but question whether this would be practically achievable and clearly
understood by all ecosystem participants at this stage. We would encourage the RA to incentivise
Foundations to ensure adequate segregation of client and firm assets in the event of insolvency. The RA
should also incentivise Foundations to leverage the underlying technology to provide an appropriate
degree of protection and transparency helpful to confirming proof of reserves and liabilities. Importantly,
we believe that with adequate governance and oversight, products, services and activities can be
appropriately segregated within the same group structure, rather than limiting corporate groups to
providing only specific ring-fenced services.

QUESTION 11: Do you have any concerns with, or feedback on, the proposals concerning
liquidation and voluntary strike off of the DLT Foundation?

We agree it is logical for like provisions from the ADGM Companies Regulations to be enacted in relation
to the New Regime; there are no specific crypto-relevant considerations in this regard.