



# General Assembly

Distr.: General  
28 April 2020  
English  
Original: English/Russian/Spanish

**United Nations Commission on  
International Trade Law**  
**Fifty-third session**  
New York, 6–17 July 2020

## **Consideration of issues in the area of micro, small and medium-sized enterprises**

**Compilation of comments on the draft legislative guide on an  
UNCITRAL limited liability organization as contained in working  
paper [A/CN.9/WG.I/WP.118](#)**

**Note by the Secretariat**

**Addendum**

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## II. Compilation of comments

### 1. Russian Federation

[Original: Russian]

[6 April 2020]

1. With respect to section A of the introduction and section J of the chapter entitled “Establishment and operation of the UNLLO” of the draft legislative guide on an UNCITRAL limited liability organization (UNLLO) ([A/CN.9/WG.I/WP.118](#)), it should be noted that excessive flexibility in determining the circumstances under which members may convert the UNLLO into a different legal form may lead to abuse by members. In this regard, consideration should be given to the inclusion in the draft guide of a provision to the effect that the legislation of a State may establish rules on the mandatory conversion of an UNLLO in specific cases.

2. With regard to recommendation 1, it should be noted that despite the explanation in paragraph 19 that the guide should be applied in the spirit of the legal tradition of the State and in accordance with the State’s domestic law, the wording of the recommendation does not reflect that approach. Recommendation 1 therefore needs to be fine-tuned so that it is more closely aligned with the Working Group’s agreed understanding of the scope of the guide’s application.

3. Paragraph 25 of the draft guide indicates that States wishing to prohibit an UNLLO from engaging in certain regulated industries, such as banking and microcredit industries, could enumerate the industries and activities in which an UNLLO may not engage.

4. However, that comment is not reflected in recommendation 2 of the draft guide, according to which the law should provide that an UNLLO may be organized for any lawful business or commercial activity. The wording of recommendation 2 therefore requires further discussion and may need to be clarified in line with the commentary on that recommendation.

5. Also with regard to recommendation 2, it should be noted that the listing of activities as referred to may mislead potential users of the guide given that the categories of “business” and “commercial” may be regarded as synonymous. Bearing that in mind, while the idea of the broad scope of the UNLLO should be preserved, it would be advisable for the Working Group to reconsider the need to retain references to both categories of activity in the text of the draft guide.

6. Paragraph 28 contains a general provision to the effect that the guide does not address domestic taxation policy in respect of UNLLOs. However, since preceding paragraphs 26 and 27 on recommendation 3 concern the distinct legal personality of the UNLLO vis-à-vis its members, it is proposed that paragraph 28 be moved to chapter I or deleted altogether.

7. With regard to paragraphs 29 to 33 and recommendation 4, which provide, inter alia, that a member of an UNLLO is not personally liable for the obligations of the UNLLO solely by reason of being a member of that UNLLO, it would be appropriate to include in those provisions and/or the recommendation a “mirror” principle establishing that the UNLLO is not financially liable for the obligations of its members and that UNLLO property may not be used to satisfy the debts of its members.

8. In paragraph 33, the words “(‘piercing the corporate veil’)” should be deleted, as the use of that term does not meet the requirement of neutrality of the terminology used in the draft guide in that the term is typically associated with the Anglo-Saxon legal system.

9. Recommendation 7 states that the law of the State should specify whether only natural persons or also legal persons are permitted to be members of an UNLLO.

However, the draft guide does not address the question of whether the UNLLO itself, having legal personality, can be a founder (member) of another legal entity.

10. With respect to paragraph 73, taking into account the legal nature of an UNLLO and common approaches to reducing the legal obstacles encountered by micro, small and medium-sized enterprises in the course of their business activities, it is necessary to consider whether it is justified or advisable for that paragraph to state authoritatively that the domestic law of States establishes legal requirements for persons in a management role that must be met by managers of an UNLLO.

11. We consider that greater autonomy in corporate relations will have a positive impact on the development of small businesses, since the shares of an UNLLO will not be publicly traded and will not be accessible to a wide range of persons. Accordingly, it is proposed that consideration be given to the possibility of the guide's providing for the establishment in domestic legislation of flexible conditions for membership of an UNLLO, which would make the UNLLO more attractive to investors.

12. The draft guide should offer a uniform solution to deadlock situations within the UNLLO. In particular, liquidation should be a measure of last resort applied only when there are no other ways to resolve a corporate conflict (such as forced buy-back of a share, expulsion of a member or forced reorganization).

## 2. Israel

[Original: English]  
[7 April 2020]

### I. General comments

The Guide is written in a very clear and understandable manner. At the same time, it is suggested to change the order, so that the text of the recommendation appears first and is followed by an explanatory text. This would make the guide much more user friendly and easier to read through.

The Guide includes recommendations for both mandatory and discretionary provisions (i.e., provisions which the UNCITRAL limited liability organization (UNLLO) cannot override in its organization rules and provisions which can be derogated from). It is suggested that once there is a decision on the classification of the provisions, this would be made clear in the rule itself and/or in the appendix containing the list of recommendations.

### II. Comments by paragraph and recommendation

*Paragraph 33.* In many cases, small UNLLOs are consistent of very few members or managers. For such instances, it might be that they use a vehicle or an apartment for both personal and UNLLO-related purposes without fraudulent intent. Accordingly, it seems like the example referred to in this paragraph might be inappropriate.

*Recommendation 5.* The content of the recommendation in itself is not problematic. However, as the recommendation is drafted in a decisive manner (explicitly calling not to impose a minimum capital requirement), the general negative impacts, beyond what is detailed in paragraph 34, should be expanded upon. It might also be a good idea to further elaborate on the reasoning of the opposite view so that States would have the full range of views at their disposal when making this legislative choice.

*Recommendation 9.* The draft explains that it would be more conducive to the registration of UNLLOs that there is no requirement to provide information on the identity of members (paras. 49 and 50). While this policy choice is explained, and could also be justified from privacy perspectives, we propose to reconsider it. In our experience this type of information might be important for other entities, such as banks, which are interested in obtaining it for the purposes of various transactions. If

such information would not be readily available, this might require investment of resources by parties wishing to conduct transactions with the UNLLO.

### 3. Japan

[Original: English]  
[14 April 2020]

[...]

#### A. Comments on the Secretariat's note to the Working Group following paragraph 17 and other major issues

##### 1. The use of term "shares"

We believe that the term "membership" should encompass both financial rights and decision-making rights, and agree to removing the use of term "shares" by referring to financial rights and to revising recommendation 11 as suggested.

##### 2. Model organization rules

In our view, the goal of having model organization rules (ORs) is to provide an off-the-rack solution(s) to unsophisticated entrepreneurs who do not have a good access to legal service. As such entrepreneurs would often become single-member UNLLOs, this delegation believes that there should be a model OR for a single member UNLLO as well to enable such an UNLLO to record its OR without much drafting effort. This is even more so if every UNLLO, including a single-member UNLLO, is to have an OR. On the other hand, a model OR for an UNLLO managed by designated managers would not be necessary, as such an UNLLO would have better access to legal service.

Also, while model ORs should not pose too much choice to entrepreneurs, it would be still beneficial to indicate points where not a small number of entrepreneurs might choose to deviate from the default rule. Without going too much into the details, the approach taken by appendix II seems quite reasonable to this delegation.

##### 3. Transfer of rights

This delegation partially disagrees with the statement that "Transferring a portion of a membership would have the effect of converting decision-making to a pro rata structure". When the UNLLO in question already adopts a pro rata decision-making structure, transfer of a portion of a membership would alter how decision-making rights are allocated, just like in the case of stock corporations. But when a member of an UNLLO that adopts a per capita decision-making structure transfers a portion of a membership to another member, it does not change the number of members and thus would not affect the allocation of decision-making rights. When a portion of a membership is transferred to a non-member, then the allocation will be affected as the number of members increases.

##### 4. The use of the term "manager" in the case of an UNLLO managed by all members exclusively

There are many references in the working paper to a "manager" of an UNLLO managed by all members exclusively (e.g., part E, section 3 (all managers regardless of the management structure); paras. 82 and 83 and recommendation 18; paras. 85, 87 and recommendation 19). In the same vein, differentiating decisions "in capacity as members" and those "in capacity as managers" in the case of an UNLLO managed by all members exclusively (paras. 66, 75 and 76). However, if we remember correctly, the Working Group has decided not to use the term "manager" in the case of an UNLLO managed by all members exclusively (A/CN.9/968, para. 35). We understand the temptation to use this term, but then the Working Group should provide a definition of "manager" that encompasses both managers of UNLLOs managed by all

members exclusively and designated managers, which may not be an easy task (see *ibid.*).

Also, recommendation 16 should be applicable only to UNLLOs with designated managers. Therefore, we propose to amend it as follows: “The law should provide that, *when the UNLLO is not managed by all of its members exclusively*, one or more designated manager(s) may be appointed and removed by a majority decision of the members, *unless otherwise agreed in the organization rules*” (changes in italics).

#### 5. Information regarding UNLLO that should be made public

In footnote 86, the secretariat notes that it did not create a separate recommendation on information of the UNLLO that is to be made public, opposing the request of the Working Group, in a view that such a recommendation is more suitable for business registration law, referring to the UNCITRAL Legislative Guide on Key Principles of a Business Registry. This delegation respectfully disagrees with this view of the secretariat. First, the business registry guide is applicable to registration of all types of business registration and should not be limited to the registration of an UNLLO or its equivalents. As information to be made public would differ among different types of business entities, it would make more sense to list such information in the legislation for each business entity. While States could decide to include such lists for all types of entities in their legislation on business registration, it would be more suitable for the UNCITRAL legislative guide to place such lists for UNLLOs in the legislative guide on an UNLLO. Second, the legislative guide on an UNLLO is a separate document from the business registry guide and some States might decide to adopt the one on an UNLLO only if they already have a sufficiently functioning business registry system. For such States, it would be beneficial to have a list of information necessary to form an UNLLO in the legislative guide on an UNLLO. Therefore, this delegation proposes to add a new recommendation along the lines of the following: “The law should specify which information of UNLLO is made public, if a list of such information is not included in its legislation on business registry”.

This new recommendation makes it possible to distinguish information necessary to form an UNLLO and information on an UNLLO that is to be made public. With such a distinction, this delegation proposes to revisit the issue of requiring information on the identity of the founding members of an UNLLO upon formation of the UNLLO (cf. para. 49). Requiring such information should not be an extra burden as it should be clear to the founding members themselves. The identity of the founding members need not be updated nor disclosed to the public, but should be kept at business registration offices so that the authorities can access such information, as appropriate.

### B. Comments on expressions and other relatively minor issues

#### 1. Definition of “majority”

Currently, the term “majority” is defined as “more than half of the UNLLO members determined by number”. As it might be unclear what it means by saying “determined by number”, we propose to add the phrase “of members” after the word “number”.

#### 2. Definition of “member”

Currently, the term “member” is defined as “the owner(s) of the UNLLO”. However, we think that it is legally imprecise to say that the members “own” an UNLLO, which is an expression that is often used as a metaphor reflecting economic functions. In a legal sense, members own share(s) or a membership of an UNLLO, not the UNLLO itself.

#### 3. Definition of “restructuring”

The last sentence of the current definition says, restructuring “does not include scaling-up the UNLLO to a larger business form”. To be more generic, it might be better to say that it “does not include conversion of the UNLLO to a different legal form”.

4. Establishment or formation?

The heading of part II now reads “establishment ... of the UNLLO”, while section B reads “formation of the UNLLO”. If they are referring to the same concept, then the terminology should be unified to avoid confusion.

5. Paragraph 29

The Working Group might wish to add the following phrase at the end of the final sentence of paragraph 29 to add clarity: “in the sense that limited liability of members cannot be denied in whole by a provision in the organization rules of the UNLLO”.

6. Paragraph 35, item (e)

Currently, item (e) of paragraph 35 states that the doctrine of piercing the corporate veil “might better be characterized in terms of mandatory provisions prohibiting a member’s abuse of the UNLLO legal form; such mandatory provisions are found in recommendations 19, 22 and 23”. However, recommendations 19, 22 and 23 do not deal with abuse of the UNLLO legal form. Therefore, we propose to amend the above phrase as follows: “might better be characterized as application of general principle of law prohibiting abuse of rights”.

7. Paragraph 37

This delegation proposes to insert the phrase “other than protection of third parties” after the word “reasons” in the first line of paragraph 37, as the mechanisms referred to in this paragraph (e.g., establishment of a maximum size) do not deal with protection of third parties and seem to aim at different goals, namely distinction of legal forms available to entrepreneurs based on the size of business.

8. Paragraph 41

Footnote 62 and the accompanying text is no longer necessary as the issue of the death of the sole member of the UNLLO is now dealt with in paragraph 108.

9. Recommendations 7 and 27

This delegation understands that recommendation 7 intends to say that the UNLLO shall be dissolved when it no longer has a member. To clarify such an idea, this delegation proposes to add the following item to recommendation 27 (a) as a cause of dissolution of the UNLLO: “When the UNLLO does not have any member”.

10. Paragraphs 63 and 64

The phrase “financial rights to partake in the profits and assets of the UNLLO during the existence” in the second sentence of paragraph 63 is imprecise and misleading, as the members should not be able to directly take the assets of the UNLLO without a declaration of distributions in accordance with recommendation 22. Therefore, we propose to amend the above phrase as follows: “financial rights to receive distribution from the UNLLO during its existence”.

Also, the phrase “partake in its losses” in the second sentence of paragraph 64 should be deleted as members of an UNLLO do not owe a legal duty to do so.

11. Recommendation 11

The word “membership” should be inserted between the words “equal” and “rights” in the second line.

12. Recommendation 12

Items (b), (c) and (d) need not to be mentioned here as these are matters that must be stipulated in the organization rules and are included in item (a). It would be desirable to describe these matters in the commentary.

13. Recommendation 13

The order of items (iii) and (iv) is not in line with that in paragraph 65.

Also, the term “by number” seems to be duplicative as it is already included in the definition of the term “majority”.

14. Paragraph 70

To clarify the meaning of the term “external manager” in the second sentence, we propose to use “a non-member manager” instead.

15. Paragraph 72

This delegation proposes to insert the phrase “someone else as” after the word “appoints” to add more clarity.

16. Recommendation 19

The articles preceding duty of care and duty of loyalty should be “the” instead of “a”.

17. Paragraph 91

In our view, although there is not a requirement of minimum legal capital, there must be some contribution, in any amount that the members deem appropriate, for the UNLLO to come into existence. This would not impede the formation of the UNLLO if the types of contribution are not restricted. If the Working Group is to maintain its current policy, then we would propose to start the paragraph simply by saying “This legislative guide does not require members to make contributions to it in order for it to exist”.

18. Recommendation 20 and footnote 138

This delegation strongly opposes the suggestion made by the secretariat in footnote 138 to delete the phrase “in the organization rules”. The reasoning of the secretariat for such suggestion is to avoid amendments of the OR when subsequent changes are made to the members’ contributions, but in our view, that is exactly what the members should do.

19. Recommendation 22

The conjunction between item (a) and (b) should be “or” instead of “and”, since a distribution should be prohibited when it violates either of the two standards.

20. Paragraph 104

It is not so clear what it precisely means “to partake in the profits and losses of the UNLLO” separately from receiving “distributions”, as noted in the first sentence of this paragraph. In this regard, reference to the right to receive distribution, including both dividends and distribution upon dissolution, would suffice. Therefore, we propose to delete the phrase “to partake in the profits and losses of the UNLLO and” from that sentence.

21. Paragraph 106

The word “percentage” in the second sentence of this paragraph should be “part”.

22. Part I

The difference between dissociation and withdrawal is not so clear to this delegation. If it means the same thing, then we propose to consistently use “withdrawal”, which sounds more familiar to this delegation.

## 4. Colombia<sup>1</sup>

[Original: Spanish]  
[19 April 2020]

### Topic L. Record-keeping, inspection and disclosure

Recommendations 29 and 30

#### Comments on recommendation 29

With regard to financial and accounting matters, Act No. 1314 of 2009 was adopted with the aim of improving the supply of information to all users of financial statements, as a result of which requirements with respect to the submission and disclosure of information, including the types of financial statements that must be submitted, depend on the type of entity concerned and are therefore determined on the basis of the categorization established in that Act, according to such criteria as size, number of employees and volume of assets.

Accordingly, Group 2 entities (small and medium-sized entities) must submit a set of financial statements consisting of a statement of financial position, a comprehensive statement of financial performance, a statement of changes in assets and a cash flow statement, together with accompanying notes that include a summary of significant accounting policies and other explanatory information. However, if certain conditions are met, the statement of financial performance and the statement of changes in assets may be merged into a single statement called a statement of performance and retained earnings.

Micro-enterprises are required to prepare only a balance sheet and a statement of financial performance. In micro-entities, accounting is transaction-based – influenced by cash transactions, which require an accounting framework for the generation of basic accounting information. The accounting requirements are therefore simple, such entities being exempt from more complex requirements such as those established by the Financial Information Standard for Small and Medium-sized Enterprises.

Given that the information contained in the financial statements does not usually give the users of those statements a clear idea of the background to the figures they are reviewing, the notes accompanying the financial statements satisfy the need for transparency and disclosure and facilitate closer familiarity with the composition of the various elements of the statements, thus enabling unrestricted access to the information.

In Colombia, the implementation of measures to align the relevant rules with international accounting standards has enabled entities to balance transparency of information and accountability with the requirements applicable to the preparation and submission of financial statements.

With regard to the manner in which an entity's accounting information should be recorded, the Commercial Code and annex 6 of Decree No. 2270 of 2019 establish guidelines on how to keep accounts and the requirements that must be met in that regard.

In addition, article 173 of Decree No. 019 of 2012 allows accounting records to be kept in electronic files provided that those files ensure, in a systematic manner, the inalterability, integrity, security and preservation of the information that they contain.

<sup>1</sup> These comments were offered by the Colombian Technical Accountants Council and transmitted by the Permanent Mission of Colombia on 19 April 2020 in addition to the comments that appear in document A/CN.9/1009.



**Comments on recommendation 30**

The right of inspection is an inherent right of a shareholder or partner that consists in the power to freely inspect, directly or through a proxy, the records and documents of the company in order to obtain information on the company's financial situation.

Partners have the right to examine the company's accounts, the partners' register books, records of minutes and in general all of the company's documents at any time, whether they do so themselves or through a representative.

The Office of the Superintendent of Companies, in opinion No. 220-123598 of 2017, determined that the right of inspection is an individual prerogative inherent to the role of associate and consists in the power of partners to examine, directly or through a person delegated for that purpose, the records and documents of the company in order to obtain information regarding its administrative, accounting and legal situation. However, that right is not absolute and is subject to the temporality established for each type of company.

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