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## **Report of Working Group I (MSMEs) on the work of its twenty-ninth session (Vienna, 16–20 October 2017)**

### Contents

	<i>Page</i>
I. Introduction . . . . .	2
II. Organization of the session . . . . .	4
III. Deliberations and decisions . . . . .	5
IV. Preparation of legal standards in respect of micro, small and medium-sized enterprises: draft legislative guide on key principles of a business registry . . . . .	6
A. Presentation of A/CN/WG.1/WP.106 and preliminary observations . . . . .	6
B. Objectives of a business registry . . . . .	6
C. Establishment and functions of the business registry . . . . .	8
D. Operation of the business registry . . . . .	10
E. Registration of a business . . . . .	12
F. Post-registration . . . . .	15
G. Accessibility and information-sharing . . . . .	15
H. Fees . . . . .	17
I. Liability and sanctions . . . . .	18
J. Deregistration . . . . .	19
K. Preservation of records . . . . .	19
L. Annex: The underlying legislative framework . . . . .	20
V. Other matters . . . . .	20



## I. Introduction

1. At its forty-sixth session, in 2013, the Commission requested that a working group should commence work aimed at reducing the legal obstacles encountered by micro, small and medium-sized enterprises (MSMEs) throughout their life cycle.<sup>1</sup> At that same session, the Commission agreed that consideration of the issues pertaining to the creation of an enabling legal environment for MSMEs should begin with a focus on the legal questions surrounding the simplification of incorporation.<sup>2</sup>
2. At its twenty-second session (New York, 10 to 14 February 2014), Working Group I (MSMEs) commenced its work according to the mandate received from the Commission. The Working Group engaged in preliminary discussion in respect of a number of broad issues relating to the development of a legal text on simplified incorporation<sup>3</sup> as well as on what form that text might take,<sup>4</sup> and business registration was said to be of particular relevance in the future deliberations of the Working Group.<sup>5</sup>
3. At its forty-seventh session, in 2014, the Commission reaffirmed the mandate of Working Group I, as set out above in paragraph 1.<sup>6</sup>
4. At its twenty-third session (Vienna, 17 to 21 November 2014), Working Group I continued its work in accordance with the mandate received from the Commission. Following a discussion of the issues raised in working paper [A/CN.9/WG.I/WP.85](#) in respect of best practices in business registration, the Working Group requested the Secretariat to prepare further materials based on parts IV and V of that working paper for discussion at a future session. In its discussion of the legal questions surrounding the simplification of incorporation, the Working Group considered the issues outlined in the framework set out in working paper [A/CN.9/WG.I/WP.86](#), and agreed that it would resume its deliberations at its twenty-fourth session beginning with paragraph 34 of that document.
5. At its twenty-fourth session (New York, 13 to 17 April 2015), the Working Group continued its discussion of the legal questions surrounding the simplification of incorporation. After initial consideration of the issues as set out in Working Paper [A/CN.9/WG.I/WP.86](#), the Working Group decided that it should continue its work by considering the first six articles of the draft model law and commentary thereon contained in Working Paper [A/CN.9/WG.I/WP.89](#), without prejudice to the final form of the legislative text, which had not yet been decided. Further to a proposal from several delegations, the Working Group agreed to continue its discussion of the issues included in [A/CN.9/WG.I/WP.89](#), bearing in mind the general principles outlined in the proposal, including the “think small first” approach, and to prioritize those aspects of the draft text in [A/CN.9/WG.I/WP.89](#) that were the most relevant for simplified business entities. The Working Group also agreed that it would discuss the alternative models introduced in [A/CN.9/WG.I/WP.87](#) at a later stage.
6. At its forty-eighth session, in 2015, the Commission noted the progress made by the Working Group in the analysis of the legal issues surrounding the simplification of incorporation and to good practices in business registration, both of which aimed at reducing the legal obstacles encountered by MSMEs throughout their life cycle. After discussion, the Commission reaffirmed the mandate of the Working Group under the terms of reference established by the Commission at its forty-sixth session in 2013 and confirmed at its forty-seventh

<sup>1</sup> *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17 (A/68/17)*, para. 321.

<sup>2</sup> For a history of the evolution of this topic on the UNCITRAL agenda, see [A/CN.9/WG.I/WP.97](#), paras. 5–20.

<sup>3</sup> [A/CN.9/800](#), paras. 22–31, 39–46 and 51–64.

<sup>4</sup> *Ibid.*, paras. 32–38.

<sup>5</sup> *Ibid.*, paras. 47–50.

<sup>6</sup> *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17 (A/69/17)*, para. 134.

session in 2014.<sup>7</sup> In its discussion in respect of the future legislative activity, the Commission also agreed that document [A/CN.9/WG.I/WP.83](#) should be included among the documents under consideration by Working Group I for the simplification of incorporation.<sup>8</sup>

7. At its twenty-fifth session (Vienna, 19 to 23 October 2015), the Working Group continued its preparation of legal standards aimed at the creation of an enabling legal environment for MSMEs, exploring the legal issues surrounding the simplification of incorporation and on good practices in business registration. In terms of the later, following presentation by the Secretariat of documents [A/CN.9/WG.I/WP.93](#), Add.1 and Add.2 on key principles of business registration and subsequent consideration by the Working Group of [A/CN.9/WG.I/WP.93](#), it was decided that a document along the lines of a concise legislative guide on key principles in business registration should be prepared, without prejudice to the final form that the materials might take. To that end, the Secretariat was requested to prepare a set of draft recommendations to be considered by the Working Group when it resumed its consideration of Working Papers [A/CN.9/WG.I/WP.93](#), Add.1 and Add.2 at its next session.<sup>9</sup> In respect of the legal issues surrounding the simplification of incorporation, the Working Group resumed its consideration of the draft model law on a simplified business entity as contained in working paper [A/CN.9/WG.I/WP.89](#), starting with Chapter VI on organization of the simplified business entity, and continuing on with Chapter VIII on dissolution and winding up, Chapter VII on restructuring, and draft article 35 on financial statements (contained in Chapter IX on miscellaneous matters).<sup>10</sup> The Working Group agreed to continue discussion of the draft text in Working Paper [A/CN.9/WG.I/WP.89](#) at its twenty-sixth session, commencing with Chapter III on shares and capital, and continuing with Chapter V on shareholders' meetings.

8. At its twenty-sixth session (New York, 4 to 8 April 2016), Working Group I continued its consideration of the legal issues surrounding the simplification of incorporation and on key principles in business registration. In respect of the former, the Working Group resumed its deliberations on the basis of working paper [A/CN.9/WG.I/WP.89](#). Following its discussion of the issues in Chapters III and V,<sup>11</sup> the Working Group decided that the text being prepared on a simplified business entity should be in the form of a legislative guide, and requested the Secretariat to prepare for discussion at a future session a draft legislative guide that reflected its policy discussions to date (see [A/CN.9/WG.I/WP.99](#) and Add.1).<sup>12</sup> In respect of key principles in business registration, the Working Group considered recommendations 1 to 10 of the draft commentary ([A/CN.9/WG.I/WP.93](#), Add.1 and Add.2) and recommendations ([A/CN.9/WG.I/WP.96](#) and Add.1) for a legislative guide, and requested the Secretariat to combine those two sets of documents into a single draft legislative guide for discussion at a future session.<sup>13</sup> In addition, the Working Group also considered the general architecture of its work on MSMEs, and agreed that its MSME work should be accompanied by an introductory document along the lines of [A/CN.9/WG.I/WP.92](#), which would form a part of the final text and would provide an overarching framework for current and future work on MSMEs.<sup>14</sup> The Working Group also decided at its twenty-sixth session<sup>15</sup> that it would devote the deliberations at its

<sup>7</sup> *Official Records of the General Assembly, Seventieth Session, Supplement No. 17 (A/70/17)*, paras. 220 and 225; *Sixty-ninth Session, Supplement No. 17 (A/69/17)*, para. 134 and *Sixty-eighth Session, Supplement No. 17 (A/68/17)*, para. 321.

<sup>8</sup> *Ibid.*, *Seventieth Session, Supplement No. 17 (A/70/17)*, para. 340.

<sup>9</sup> See Report of Working Group I (MSMEs) on the work of its twenty-fifth session, [A/CN.9/860](#), para. 73.

<sup>10</sup> *Ibid.*, paras. 76 to 96.

<sup>11</sup> Report of Working Group I (MSMEs) on the work of its twenty-sixth session, [A/CN.9/866](#), paras. 22 to 47.

<sup>12</sup> *Ibid.*, paras. 48 to 50.

<sup>13</sup> *Ibid.*, paras. 51 to 85 and 90.

<sup>14</sup> *Ibid.*, paras. 86 to 87.

<sup>15</sup> Report of Working Group I (MSMEs) on the work of its twenty-sixth session, [A/CN.9/866](#), para. 90.

twenty-seventh session to deliberations on a draft legislative guide on a simplified business entity, and its deliberations at its twenty-eighth session to a consideration of a draft legislative guide reflecting key principles and good practices in business registration.

9. At its forty-ninth session (New York, 27 June to 15 July 2016), the Commission commended the Working Group for its progress in the preparation of legal standards in respect of the legal issues surrounding the simplification of incorporation and to key principles in business registration, both of which aimed at reducing the legal obstacles faced by MSMEs throughout their life cycle. The Commission also noted the decision of the Working Group to prepare a legislative guide on each of those topics and States were encouraged to ensure that their delegations included experts on business registration so as to facilitate its work.<sup>16</sup>

10. At its twenty-seventh session, the Working Group continued its deliberations. As decided at its twenty-sixth session,<sup>17</sup> the Working Group spent the entire twenty-seventh session considering a draft legislative guide on a simplified business entity, leaving consideration of the draft legislative guide on key principles of a business registry for the first week of its twenty-eighth session. The Working Group considered the issues outlined in working papers A/CN.9/WG.I/WP.99 and Add.1 on an UNCITRAL limited liability organization (UNLLO), beginning with section A on general provisions (draft recommendations 1 to 6), section B on the formation of an UNLLO (draft recommendations 7 to 10), and section C on the organization of an UNLLO (draft recommendations 11 to 13). The Working Group also heard a short presentation of working paper A/CN.9/WG.I/WP.94 of the French legislative approach known as an “Entrepreneur with Limited Liability” (or EIRL), which represented a possible alternative legislative model applicable to micro and small businesses.

11. At its twenty-eighth session (New York, 1 to 9 May 2017), the Working Group considered both topics currently on its agenda. Those deliberations commenced with a review of the entire draft legislative guide on key principles of a business registry (A/CN.9/WG.I/WP.101), save for the introductory section and draft recommendation 9 (Core functions of a business registry) and its attendant commentary, to which the Working Group agreed to revert at a future session. With respect to its deliberations regarding the creation of a simplified business entity (A/CN.9/WG.I/WP.99 and Add.1), the Working Group continued the work begun at its twenty-seventh session, and considered the recommendations (and related commentary) of the draft legislative guide on an UNLLO in sections D, E and F.

12. At its fiftieth session (Vienna, 3 to 21 July 2017), the Commission commended the Working Group for the progress it had made in its two areas of work on the preparation of a draft legislative guide on an UNLLO and a draft legislative guide on key principles of a business registry. In particular, the Commission welcomed the potential completion of the latter guide on business registration for possible adoption at the fifty-first session of the Commission (scheduled for 25 June to 13 July 2018).<sup>18</sup>

## II. Organization of the session

13. Working Group I, which was composed of all States Members of the Commission, held its twenty-ninth session in Vienna from 16 to 20 October 2017. The session was attended by representatives of the following States Members of the Working Group: Argentina, Belarus, Brazil, Canada, China, Colombia, Côte d’Ivoire, Czechia, Ecuador, El Salvador, France, Germany, Indonesia, Israel, Italy, Japan, Kenya, Kuwait, Mauritania, Mexico, Pakistan, Panama, Philippines, Poland, Republic

<sup>16</sup> *Official Records of the General Assembly, Seventy-first Session, Supplement No. 17 (A/71/17)*, para. 224.

<sup>17</sup> A/CN.9/866, para. 90.

<sup>18</sup> *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17 (A/72/17)*, paras. 230–235.

of Korea, Romania, Russian Federation, Singapore, Spain, Sri Lanka, Switzerland, Thailand, Turkey and United States of America.

14. The session was attended by observers from the following States: Bolivia (Plurinational State of), Croatia, Cyprus, Dominican Republic, Finland, Luxembourg, Malta, Netherlands, Qatar, Saudi Arabia and Syrian Arab Republic.

15. The session was also attended by observers from the following international organizations:

(a) *Organizations of the United Nations system*: World Bank (WB);

(b) *Intergovernmental organizations*: Gulf Cooperation Council (GCC);

(c) *Invited international non-governmental organizations*: Centro de Estudios de Derecho, Economía y Política (CEDEP); Conseil des Notariats de l'Union Européenne (CNUE); International Bar Association (IBA); the National Law Center for Inter-American Free Trade (NLCIFT); and the Law Association for Asia and the Pacific (LAWASIA).

16. The Working Group elected the following officers:

*Chair*: Ms. Maria Chiara Malaguti (Italy)

*Rapporteur*: Mr. Thomas Koshy (Singapore)

17. In addition to documents presented at its previous sessions, the Working Group had before it the following documents:

(a) Annotated provisional agenda ([A/CN.9/WG.I/WP.105](#));

(b) Note by the Secretariat on a draft legislative guide on key principles of a business registry ([A/CN.9/WG.I/WP.106](#)); and

(c) Note by the Secretariat on reducing the legal obstacles faced by micro, small and medium-sized enterprises (MSMEs) ([A/CN.9/WG.I/WP.107](#)).

18. The Working Group adopted the following agenda:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Preparation of legal standards in respect of micro, small and medium-sized enterprises.
5. Other business.
6. Adoption of the report.

### III. Deliberations and decisions

19. The Working Group engaged in discussions in respect of the preparation of legal standards aimed at the creation of an enabling legal environment for MSMEs, in particular, on a draft legislative guide on key principles of a business registry on the basis of Secretariat document [A/CN.9/WG.I/WP.106](#). The deliberations and decisions of the Working Group are reflected below.

## **IV. Preparation of legal standards in respect of micro, small and medium-sized enterprises: draft legislative guide on key principles of a business registry**

### **A. Presentation of [A/CN.9/WG.I/WP.106](#) and preliminary observations**

20. The Working Group was reminded that the draft legislative guide on key principles of a business registry in [A/CN.9/WG.I/WP.106](#) was the revised version of [A/CN.9/WG.I/WP.101](#), which the Working Group had reviewed at its twenty-eighth session (1 to 9 May 2017). The Secretariat highlighted certain aspects of the draft text, noting that it included changes that the Working Group had agreed should be made to the legislative guide at its previous session, as reflected in the report for that session ([A/CN.9/900](#)), and that those changes had all been extensively referenced in footnotes to the text.

21. The Working Group agreed that it would commence its review of the legislative guide from Part I entitled “Objectives of a business registry” (from para. 26 on). It further agreed that the introductory section of the text, from paragraphs 1 to 25, would be considered once the entire text had been considered, but that the definitions in paragraph 13 should be considered as they arose in conjunction with the review of the related portions of the guide.

22. There was some concern expressed in respect of whether the phrases “legally regulated economy” and “extra legal economy” should be used to denote what may elsewhere be referred to as the “formal” and “informal economy”, but it was observed that consideration of that issue should be left to the discussion of paragraphs 21 to 26 of [A/CN.9/WG.I/WP.107](#) at a later stage. However, it was observed that the adoption of that terminology in the texts appeared to suggest that unregistered businesses were necessarily operating in the extra legal economy, which might not be the case. It was noted that the concepts of business registration and of operation of an enterprise in the legally regulated economy were not entirely synonymous, and that a review of the terminology should be conducted with that in mind. The Secretariat was requested to review the text to ensure that it appropriately reflected instances in which a business operated in the legally regulated economy even though it was not registered.

### **B. Objectives of a Business Registry**

#### **1. Paragraph 26**

23. It was noted that paragraph 26 had been inserted into the draft legislative guide to highlight the importance of one-stop shops to facilitate business registration and assist MSMEs, and that, to that end, several additional references to one-stop shops had also been included in the text.

24. After discussion, the Working Group agreed that an additional recommendation should be inserted after paragraph 26 that would read along the following lines: “The system of business registration should facilitate the movement of businesses from the informal sector to the legally regulated economy as part of the system of all registrations that may be required at start-up, which may include registration with, among others, business registry, taxation and social security authorities.”

#### **2. Purposes of the business registry: paragraphs 27 to 29 and recommendation 1**

25. It was noted that paragraph 28 recognized that not all businesses in every State were required to register, and that paragraph 28 included a reference to paragraph 130, which expanded upon that theme. After discussion, the Working Group determined that any necessary clarification should be made to paragraph 28 to indicate that it was left to each State to determine which business were required to register and to include reference in the commentary to recommendation 19 in addition



to paragraph 130. A suggestion to combine recommendation 19 with recommendation 1 received some support but was not taken up by the Working Group, nor was a suggestion to move recommendation 19 closer to the beginning of the text.

26. The Working Group agreed to end recommendation 1(a) after the term “enacting State” and delete the remainder of it so that the provision read “Providing to a business an identity that is recognized by the enacting State; and”. The Working Group also supported a proposal to include reference to “receiving, storing and making accessible” to recommendation 1(b) to make the language compatible with the definition of “business registry or business registration system” in paragraph 13.

### **3. Simple and predictable legislative framework permitting registration for all businesses: paragraphs 30 to 33 and recommendation 2**

27. A suggestion was made to eliminate paragraph 31 and merge its content into paragraph 28, to the extent that it was not already reflected there, and that recommendation 19 already addressed the issue that the law should specify which businesses were permitted or required to register. However, the view was also expressed that the issue outlined in paragraph 31 was an important aspect of establishing a “simple and predictable legislative framework”, and that the paragraph should thus be retained.

28. The Working Group reconsidered a proposal to move recommendation 19 to the beginning of the draft legislative guide, but there was agreement that leaving recommendation 19 in the context of “Part IV: Registration of a business” would provide greater guidance to enacting States when creating or updating their business registration systems. Instead, it was agreed that paragraph 31 should be retained and that a reference to recommendation 19 should be added to paragraph 31.

29. There was agreement in the Working Group to delete recommendation 2(b), and a suggestion was noted to make necessary changes to the title of recommendation 2 after the elimination of 2(b).

30. Some delegations were of the view that the text in recommendation 2(c) might imply that business registration was mandatory for MSMEs. The Secretariat was requested to clarify the text and to consider changes along the lines of making recommendation 2(c) “subject to the minimum procedures as required by law.”

### **4. Key features of a business registration system: paragraphs 34 to 39 and recommendation 3**

31. The Working Group recalled its earlier decision (see paras. 31-37 [A/CN.9/900](#)) that the text of recommendation 3(d) should be retained since reliability was said to be a key feature of a business registration system, regardless of the method that a State used to ensure that reliability. The Working Group, however, requested the Secretariat to adjust recommendation 3(d) in order to clarify that the registry system and the registered information were of good quality and reliable when they were secure and kept current with periodic updates. It was further observed that in redrafting recommendation 3(d) the Secretariat might have to adjust the terminology, since certain terms (e.g. secure, current) might not be used interchangeably in relation to systems and information.

32. The Working Group agreed that the phrase “is not a legal standard” could be deleted from the current definition of “reliable” in paragraph 13. Further, and in keeping with its previous decision that the phrase “good quality and reliable” should be retained in order to ensure adequate reference to the concept of reliability (see para. 33, [A/CN.9/900](#)), the Working Group also supported a suggestion that the definition of the term “reliable” in paragraph 13 should be replaced with a definition of the phrase “good quality and reliable” in order to make it more consistent with the revision agreed to the text of recommendation 3(d) (see para. 31 above). The Secretariat was also requested to ensure consistency with respect to the terms: “system”, “process” and “information”, for example, in paragraph 34, which referred to both “system” and “process”, and in the recommendation, which referred only to

“system”. Additional lack of clarity was observed in respect of: the penultimate sentence of paragraph 36, in terms of whether “certain requirements in the way it is submitted” was intended to refer to paragraphs 37 and 38; and regarding which aspects of the commentary were intended to refer to MSMEs (as noted in recommendation 2(b)), or whether the entire legislative guide was intended as being suited to the needs of MSMEs.

33. A suggestion was made that reference to sex-disaggregated data could be included in paragraph 36 as well as in other appropriate sections of the legislative guide in order to be consistent with most recent best practice. There was support in the Working Group for that suggestion, although its specific implementation was left to the Secretariat.

34. In response to the observation that subparagraph 39(c) did not appear to be consistent with the rest of paragraph 39, which dealt with the security and integrity of the registry record, the Working Group requested the Secretariat to replace the phrase “to deny access to registry services” with text along the lines of “to modify information that has been submitted to the registry”.

## **C. Establishment and functions of the business registry**

### **1. Responsible authority: paragraphs 40 to 43 and recommendation 4**

35. After consideration of a possible replacement for the term “competence” in paragraph 43 and recommendation 4, the Working Group approved of paragraphs 40 to 43 and recommendation 4 as drafted.

### **2. Appointment and accountability of the registrar: paragraphs 44 to 46 and recommendation 5**

36. It was observed that in some States, a delegation of power by the registrar to persons appointed to assist in the performance of the registrar’s duties was only possible in a limited sense and that, in other States, registrars were elected. In light of those clarifications, the Working Group agreed that the term “should” in the final sentence of paragraph 45 should be changed to “may”, and that the commentary should be adjusted to note that the “appointment” of a registrar was intended to include all methods by which a registrar was selected, including by way of election. With those changes, the Working Group approved of paragraphs 44 to 46 and recommendation 5 as drafted.

### **3. Transparency in the operation of the business registration system: paragraphs 47 and 48 and recommendation 6**

37. The Secretariat was requested to include the concept of simplification into paragraph 47. The suggestion to add “simplified” or “simplified process” somewhere around the phrase “limited number of steps” in the second sentence was noted.

38. The proposal to change “rules or criteria” to “rules, procedures and service standards” was supported by the Working Group, as was a suggestion to include “developed for the operation of the business registration system”. The revised recommendation would thus read: “The registrar should ensure that the rules, procedures and service standards that are developed for the operation of the business registration system are made public to ensure transparency of the registration procedures.”

### **4. Use of standard registration forms: paragraph 49 and recommendation 7**

39. Although it was noted that the text in footnote 58 was intended to address the request of the Working Group at its twenty-eighth session (para. 43, [A/CN.9/900](#)) that the submission of additional materials by businesses registering should be permitted, there was agreement in the Working Group to incorporate the text of footnote 58 into the commentary. A request to include a reference to the fees part of the legislative



guide (paras. 199 to 201 and recommendation 39) was also supported by the Working Group, as was a request to insert the word “simple” before “standard registration form.”

**5. Capacity-building for registry staff: paragraphs 50 to 53 and recommendation 8**

40. The Working Group agreed with the substance of paragraphs 50 to 53 and recommendation 8 of the legislative guide as drafted.

**6. Core functions of business registries: paragraphs 54 to 62 and recommendation 9**

41. After discussion, the Working Group agreed to retain recommendation 9 and the relevant commentary. In that regard, the Secretariat was requested to consider the following suggestions for amendment of the commentary:

(a) The text of paragraph 55 could be improved so as to avoid possible inconsistency and overlap between the different subparagraphs (for instance, it was noted that the phrase “facilitate trade and interactions” in subparagraph (a) could overlap with the phrase “disclose the existence of the business” in subparagraph (b));

(b) The current text of subparagraph 55 (c) could be replaced with text along the lines of “conferring legal existence on legal persons and recording their legal existence in the cases provided by law”;

(c) Information on the email address and the name of the business could be added to paragraph 59, which might also clarify that: (i) information on the business contacts could only be made publicly available if the business agreed; and (ii) making information on the business available to the public was not a mandatory requirement for a State. Moreover, the order in which information was presented in paragraph 59 could be reorganized so that information on who was authorized to sign on behalf of the business or served as the business’s legal representative was mentioned before information on its telephone number and address of the business, since that information was of greater importance for third parties;

(d) The function of a business registry to publicize the legal effects of the information maintained in the registry could be included; and

(e) The commentary could include reference to the authority of the State to entrust additional functions to the business registry in addition to those listed in the recommendation, without providing any list of such additional functions.

42. The Working Group also raised a number of concerns in respect of the list of subparagraphs to recommendation 9, including the length of the list and the fact that not all business registries performed all of the functions listed. There was support for a suggestion to amend the chapeau of the recommendation along the following lines: “The law should establish the functions of the business registry, which may include:”.

43. The Working Group agreed that the list of functions in recommendation 9 should be reduced to the core functions of a business registry, keeping in mind the general principles enunciated in paragraph 55, and that all other functions currently listed in recommendation 9 should be deleted.

44. After further discussion, a proposal was made to revise the text of recommendation 9 as follows:

“The law should establish the core functions of the business registry, including:

“(a) Providing access to the public of relevant information collected by the business registry;

“(b) Registering the business when the business fulfils the necessary conditions established by the law;

“(c) Assigning a unique business identifier to the registered business;

“(d) Sharing information among the requisite public agencies;

“(e) Ensuring that the information in the registry is kept as current as possible<sup>19</sup>; and

“(f) Protecting the integrity of the information in the registry record”.

45. The Working Group supported that proposal, with the following amendments: (a) the inversion of subparagraphs (a) and (b); (b) the modification of subparagraph (e) to read “Keeping the information in the business registry as current as possible”; (c) to include a recommendation instructing the registrar to publicize relevant information concerning the establishment of a business, including associated obligations and responsibilities, and the legal effects of information in the business registry; and (d) to include a recommendation along the lines of “Where applicable, assisting businesses in searching and reserving a business name”. With those amendments, the text of recommendation 9 was adopted and the Secretariat was requested to modify the commentary, including paragraph 55, to be in line with the amended version of recommendation 9.

## **7. Storage of and access to information contained in the registry: paragraphs 63 to 65 and recommendation 10**

46. A suggestion was made to change the phrase “process and store all information” in recommendation 10 to “process, store and provide access to all information” so as to accord with its title. However, it was observed that such an inclusion might not be necessary in light of Section VI. B. on “Public availability of information” (paras. 172 to 179) and recommendation 32 of the draft legislative guide. It was observed that the intention of paragraphs 63 to 65 and recommendation 10 was not to focus on providing public access to the information, but rather to ensure that information was stored and shared throughout the registry system through full interconnectivity and multiple access points. The Secretariat was requested to amend the commentary to reflect more clearly that focus, including possibly adjusting the recommendation along the lines of changing “process and store all information” to “process, store and provide access to information”.

## **D. Operation of the business registry**

### **1. Operation of the business registry: paragraph 66; Electronic, paper-based or mixed registry: paragraphs 67 to 70; Features of an electronic registry: paragraphs 71 to 75; Phased approach to the implementation of an electronic registry: paragraphs 76 to 84; Other registration-related services supported by ICT solutions: paragraphs 85 to 88 and recommendation 11**

47. In respect of footnote 69, the Working Group agreed that the draft legislative guide should be careful to accommodate emerging technology that might further improve the operation of a business registry. To that end, there was agreement that the commentary should include reference to “distributed ledger technology” and other technologies that States might consider when reforming their business registry systems.

48. After discussion, the Working Group agreed to keep intact the structure of the draft legislative guide and to request the Secretariat to review the draft legislative guide generally for references to “developing” States and make appropriate adjustments, including, for example, deleting the phrase “in developing countries” in the third sentence of paragraph 67 and replacing it with text along the lines of “in many jurisdictions”. There was also agreement in the Working Group to delete the phrase “to inform their risk analysis of” in subparagraph 69(g) and to make editorial adjustments to the remaining text as necessary. The Secretariat was also requested to

<sup>19</sup> The new suggested text of recommendation 9(e) is intended to encompass the preservation of historical information on the business such as that indicated in recommendation 9 (e) of [A/CN.9/WG.I/WP.106](#).

ensure that all references in the text of the legislative guide to “paper-based” and “electronic” registry systems listed electronic systems first.

## **2. Electronic documents and electronic authentication methods: paragraph 89 and recommendation 12**

49. A view was expressed that online payments should be included in the commentary to recommendation 12, as they, along with the recognition of electronic signatures, and functional equivalence between document types, would form a legal framework for an electronic business registration system. The Working Group determined that the discussion of electronic payments in recommendation 42 did not need to be relocated within the draft legislative guide, but that a cross reference to recommendation 42 could be included in paragraph 89. It was further suggested that the “three pillars” of an electronic registry system, that is: (a) electronic payments; (b) electronic signatures; and (c) electronic documents, should be included in the commentary.

50. A concern was raised by several delegations that legal standards for electronic documents should not be tailored to business registries, but instead should be compatible with the domestic law of the enacting State. It was recalled that “law” as defined by paragraph 13 was not limited to specific rules adopted to establish the business registry, but included the broader body of domestic law that may be relevant to issues relating to the business registry.

51. It was noted that paragraph 89 and footnote 85 provided references to existing UNCITRAL documents on electronic commerce that were meant to provide further guidance to enacting States and many delegations were of the view that recommendation 12 was therefore too detailed. After discussion, the Secretariat was requested to redraft recommendation 12 by retaining 12(a) and combining elements of 12(b)(i) and 12(b)(iv). The Working Group agreed to delete the rest of the recommendation.

## **3. A one-stop shop for business registration and registration with other authorities: paragraphs 90 to 100 and recommendation 13**

52. It was proposed that the definition of “one-stop shop” in paragraph 13 could be broadened to ensure that it included the concept of establishing a single “gateway” for interaction between a business and the State. There was support for that suggestion, which included requesting the Secretariat to ensure that that concept was sufficiently included in the commentary so as to also satisfy a suggestion that additional reference to “interoperability” might be required in the commentary. A general proposal was also made to include reference to a “single payment form” in the text, to the extent it had not already been reflected in the draft legislative guide.

53. The Working Group agreed to modify paragraph 92 as follows: (a) in the third sentence, the phrase “The most common of these other functions” should be replaced with text along the lines of “A common additional function”; (b) in the final sentence, the phrase “In rare cases,” should be replaced with text along the lines of “Other”; (c) additional examples should be added to the final sentence, such as official diaries and journals, intellectual property registries, and import-export registries. It was observed that not all of the examples of other authorities in the commentary in paragraphs 90 to 100 were confined to public authorities, and that care might be taken to note when such potential participants were instead private sector actors.

54. Various proposals were made to adjust the text of recommendation 13, including possibly changing the reference to “a web platform” in paragraph (a) to “an electronic platform”. A suggestion to delete the phrase “but at a minimum should include taxation and social services agencies” in paragraph (b) was made. The Working Group agreed to delete the phrase “at a minimum”, possibly replacing “but at a minimum should include” with “including, but not limited to”. There was also agreement to ensure that the phrase describing the main relevant public authorities should be standardized, possibly as “business registry, taxation and social security authorities” or by using a defined term, and that “business registry” should be added to paragraph (b).

**4. Use of unique business identifiers: paragraphs 101 to 109; Allocation of unique business identifiers: paragraphs 110 and 111; Implementation of a unique business identifier: paragraphs 112 to 116; Exchange of information among business registries: paragraphs 117 and 118; Recommendations 14, 15 and 16**

55. In keeping with its earlier decisions (see paras. 48 and 54 above), the Working Group reiterated that the word “developed” should be deleted from the opening phrase of paragraph 104, and that the phrase describing the main relevant public authorities with which a business might have to register should be standardized in the text.

56. The Working Group recalled its decision that the definition of “one-stop shop” in paragraph 13 should include a reference to an integrated application form for registration with business registry, taxation and social security authorities that included all of the information required by those agencies (see para. 52 above). The Secretariat was requested to ensure that appropriate references were also included in paragraph 102 of the draft legislative guide.

57. With those suggested amendments, the Working Group agreed with the substance of paragraphs 101 to 118 and recommendations 14 to 16 of the legislative guide.

**5. Sharing of protected data between public agencies: paragraph 119 and recommendation 17**

58. The Working Group requested the Secretariat to add the phrase “between public agencies” in the first sentence of paragraph 119, after the term “information-sharing”, and to consider whether the use of the term “unique business identifier” in recommendation 17 (and possibly elsewhere in the text) and “unique identifier” as defined in paragraph 13 should be made consistent throughout the draft legislative guide.

59. It was further noted that the terms “information” and “data” appeared to be used interchangeably in the draft legislative guide, although the two terms were not completely synonymous, since data usually referred to information collected electronically or used for decision-making. The Secretariat was requested to review the use of those terms and make appropriate changes throughout the text.

60. With those amendments, the Working Group agreed with the substance of paragraph 119 and recommendation 17 of the legislative guide.

**E. Registration of a business**

**1. Scope of examination by the registry: paragraphs 120 to 122; Accessibility of information on how to register: paragraphs 123 to 127 and recommendation 18**

61. It was noted that the term “legal framework” in paragraph 120 and elsewhere in the draft legislative guide might not be consistent with the broader definition of “law” in paragraph 13, and there was support for the suggestion that the text should be standardized to use the defined term “law”. An additional suggestion was that the phrase “only records facts” in the final sentence of paragraph 120 should be replaced with “only records information submitted to the registry by the registrant”. The Working Group also supported the suggestion that the opening phrase “The law should provide that” should be used at the beginning of recommendation 18.

62. The Working Group also agreed to replace the phrase “court-based registration systems” in the first sentence of paragraph 121 (and throughout the text) with an appropriate term along the lines of “verification-based systems” or “systems under the oversight of the judiciary”, as it was noted that in many States the court only performed a supervisory role of the business registry, but was not directly involved in the actual management of the registry.

63. In paragraph 122, the Working Group agreed to delete the phrase “and disadvantages” in the first sentence so as to focus only on the advantages of the different registration systems. It was further agreed that: (a) the paragraph could highlight additional advantages of the approval system (such as the protection of third parties); (b) the phrase “and better-suited to deterring corruption by avoiding an opportunity for official decisions to be made with a view towards personal gain” could be replaced with a phrase along the lines of “to avoid the improper use of discretion by registry officials”; (c) the word “usually” in the second sentence should be deleted; and (d) the phrase “Systems in which business registration procedures are entrusted to an administrative body under the oversight of the judiciary have been said to merge” in the final sentence should be replaced with the phrase “Some systems have merged the”.

64. After additional discussion, the Working Group agreed to a proposal that paragraph 122 should be replaced with the following text:

“Both the approval and the declaratory systems have their advantages. Approval systems intend to protect third parties by preventing errors or omissions prior to registration. Courts and/or intermediaries exercise a formal review and, when appropriate, also a substantive review of the prerequisites for the registration of a business. On the other hand, declaratory systems are said to reduce the inappropriate exercise of discretion; furthermore, they may reduce costs for registrants by negating the need to hire an intermediary and appear to have lower operational costs. Some systems have been said to merge advantages of both the declaratory and approval systems by combining ex ante verification of the requirements for establishing a business with a reduced role for the courts and other intermediaries, thus simplifying procedures and shortening processing times.”

65. With those amendments, the Working Group agreed with the substance of paragraphs 120 to 127 and recommendation 18.

## **2. Businesses permitted or required to register: paragraphs 128 to 131 and recommendation 19**

66. It was suggested that, in some instances, business registration for MSMEs might not result in an advantage for them and could instead prove burdensome. A proposal was supported by the Working Group to modify the text of paragraph 131 to emphasize the point that as long as a benefit could be gained, a business should not be discouraged from registering due to high transaction costs and administrative obstacles.

67. The Working Group agreed to modify 19(a) to read: “that businesses of all sizes and legal forms are permitted to register; and”. It was also agreed that the concept of “permitted to register” should include registration with all required registries including business, taxation and social security registries (see recommendation 1).

## **3. Minimum information required for registration: paragraphs 132 to 136 and recommendation 20**

68. The Working Group requested the Secretariat to review the text in light of the following drafting proposals:

(a) In paragraph 132, to add the word “information” between the words “certain” and “requirements” in the first sentence and to delete the word “registered” before the word “information” in the second sentence;

(b) To split the reference to “name and address” in paragraph 133 and recommendation 20 into two separate requirements so as to reflect the importance of providing the name of the business;

(c) To consider whether the term “founders” was the correct term in paragraph 133 and possibly elsewhere in the text;

(d) To review paragraphs 134 to 136 to remove any redundancies, since they seemed to consider similar issues, for example, in the discussion of beneficial ownership;

(e) To standardise the terminology used in paragraph 133(c) and recommendation 20(c) with that of paragraph 59; and

(f) To add the unique business identifier, if one had already been obtained, to the information that might be required.

69. There was agreement in the Working Group that gathering information in respect of the sex of the registrant or persons associated with the business could be statistically important, particularly in light of programmes to support women and improve gender balance. However, it was further agreed that such gender information raised privacy issues, should be requested only on a voluntary basis as well as in a non-binary fashion, should be treated as non-public information as to individuals and should be made available only on a statistical basis. Other statistical information that could be requested on a non-compulsory basis could include information on visible minorities or different language groups, again, so as to promote their wider participation in the business world. The Working Group agreed to refer to those issues in paragraph 134.

**4. Language in which information is to be submitted: paragraphs 137 to 139 and recommendation 21**

70. The Working Group agreed with the substance of paragraphs 137 to 139 and recommendation 21 of the legislative guide as drafted.

**5. Notice of registration: paragraph 140 and recommendation 22**

71. The Working Group agreed with the substance of paragraph 140 and recommendation 22 of the legislative guide as drafted.

**6. Content of notice of registration: paragraph 141 and recommendation 23**

72. The Working Group agreed with the substance of paragraph 141 and recommendation 23 of the legislative guide as drafted.

**7. Period of effectiveness of registration: paragraphs 142 to 145 and recommendation 24**

73. The Working Group agreed with the substance of paragraphs 142 to 145 and recommendation 24 of the legislative guide as drafted.

**8. Time and effectiveness of registration: paragraphs 146 to 148 and recommendation 25**

74. A request to move the substance of footnote 162 into the commentary was supported by the Working Group. It was suggested that “in that order” could be deleted from recommendation 25(a) as it did not account for instances of States that permitted the processing of expedited registrations subject to an additional fee or when the application was made electronically or when standard forms or documents were used. After discussion, the Working Group agreed to retain recommendation 25 as drafted so as to avoid any unnecessary exercise of discretion on the part of registry staff, but to clarify the commentary to account for such an exception.

**9. Rejection of an application for registration: paragraphs 149 to 152 and recommendation 26**

75. The Working Group supported a proposal that paragraphs 149 and 150 be moved after paragraph 136, before recommendation 20, in section D (“Minimum information required for registration”), as it was said that such paragraphs dealt with instances in which the registrar would refuse registration because of errors in the entry of information in the application form. Support was also expressed for adjusting the text



in paragraph 152 in accordance with that change and to move any reference in that paragraph to the processing of registration forms under section D.

76. In response to concerns expressed in regard to possible ambiguity arising from the use of the concepts of objective and subjective requirements (both in recommendation 26(a) and in paragraph 151), the Working Group agreed to delete the term “objective” in recommendation 26(a) and to add a new subparagraph in the recommendation along the lines of “the registrar should not have the authority to reject an application based on substantive grounds.” The Working Group further agreed that the final sentence of paragraph 151 should be adjusted to mirror the new wording of the recommendation and that reference to “substantive legal requirements”, if necessary, should be replaced with “substantive grounds”.

#### **10. Registration of branches: paragraphs 153 to 155 and recommendation 27**

77. The Secretariat was requested to consider whether additional text was required in the commentary to clarify that, in some jurisdictions, branches were not required to register. Subject to that possible amendment, the Working Group agreed with the substance of paragraphs 149 to 152 and recommendation 26 as drafted.

### **F. Post-registration**

#### **1. Paragraphs 156 and 157**

78. The Working Group agreed with the substance of paragraphs 156 and 157 of the legislative guide as drafted.

#### **2. Information required after registration: paragraphs 158 and 159 and recommendation 28**

79. A proposal to delete the portion of recommendation 28(a) after the phrase “recommendation 20” was supported by the Working Group, and the Secretariat was requested to make any necessary changes to the commentary to reflect the concept deleted, i.e. that, when required by the State, any changes or amendments to information initially or subsequently required must be filed with the business registry. With those adjustments, the Working Group agreed with the substance of paragraphs 158 and 159 and recommendation 28.

#### **3. Maintaining a current registry: paragraphs 160 to 164 and recommendation 29**

80. There was agreement in the Working Group that recommendation 29(a) should be adjusted to reflect that “sending an automated request” was only one way the law could require the registrar to ensure that the information in the business registry was kept current, and to reflect other best practices in the recommendation. It was further suggested that the onus be placed on the registrar to proactively identify sources of information to keep the register up to date. With those changes, the Working Group agreed with the substance of paragraphs 160 to 164 and recommendation 29.

#### **4. Making amendments to registered information: paragraphs 165 and 166 and recommendation 30**

81. The Working Group agreed with the substance of paragraphs 165 and 166 and recommendation 30 of the legislative guide as drafted.

### **G. Accessibility and information-sharing**

#### **1. Public access to business registry services: paragraphs 167 to 171 and recommendation 31**

82. It was noted that paragraphs 167 to 171 and recommendation 31 pertained to the access of a registrant to registry services. The Working Group supported a proposal

to eliminate the word “public” from the titles of the section and of recommendation 31. With that change, the Working Group agreed with the substance of paragraphs 167 to 171 and recommendation 31.

**2. Public availability of information: paragraphs 172 to 179 and recommendation 32**

83. There was broad support within the Working Group to include the phrase “fully and readily” before the word “available” in recommendation 32, as well as to change “will” to “may” at the beginning of the second sentence of paragraph 172. With those adjustments, the Working Group agreed with the substance of paragraphs 172 to 179 and recommendation 32.

**3. Where information is not made public: paragraphs 180 and 181 and recommendation 33**

84. A possible ambiguity in respect of the phrase “list the types of information” was noted in the text of recommendation 33(a) and the Secretariat was requested to clarify that the registrar may not decide, but should only publicize, the types of information that cannot publicly be disclosed according to applicable law. With that change, the Working Group agreed with the substance of paragraphs 180 and 181 and recommendation 33.

**4. Hours of operation: paragraphs 182 to 184 and recommendation 34**

85. The Working Group agreed that “these recommendations” in the final sentence of paragraph 182 should provide greater specificity and be changed to text along the lines of “the requirements above”. With that change, the Working Group agreed with the substance of paragraphs 182 to 184 and recommendation 34.

**5. Direct electronic access to submit registration, to request amendments and to search the registry: paragraphs 185 to 188 and recommendations 35 and 36**

86. It was agreed that the phrase “and to search the registry” should be deleted from the title of recommendation 35 and that the phrase “private computer” in the first sentence of paragraph 185 should be changed to text along the lines of “electronic device”. The Working Group also agreed to delete “or the assistance of registry staff” from recommendation 35, and to make any necessary clarification to paragraph 186 to ensure that the focus was on the electronic submission of information and not on the entry of data into the business registry. With those changes, the Working Group agreed with the substance of paragraphs 185 to 188 and recommendations 35 and 36.

**6. Facilitating access to information: paragraphs 189 to 194 and recommendation 37**

87. As a matter of drafting, the Secretariat was requested to review the use of the defined term “registered information” in recommendation 37 and elsewhere in the text (including in the commentary to recommendation 38), since the definition included protected information, which might not be appropriate in every instance. The Secretariat was requested to redraft paragraph 189 to eliminate information on how to register a business that might also be found in relation to recommendation 18 and to refer in paragraph 192 to “Part VII: Fees”. A suggestion to group similar types of information listed in paragraph 189 together in order to make it more reader-friendly was supported by the Working Group.

88. There was support within the Working Group to delete the word “prohibitively” from recommendation 37 and to replace the phrase “to business registration” with text along the lines of “to information on businesses that are registered”.

## **7. Cross-border access to registered information: paragraphs 195 and 196 and recommendation 38**

89. The Working Group supported the following drafting proposals: (a) duplication of commentary in the previous section and in paragraph 196 regarding access of information generally should be eliminated; (b) as agreed previously (see para. 61 above), the Secretariat should review the entire text to ensure that all recommendations stated “The law should”; and (c) references in paragraph 196 should distinguish between information contained in the business registry and information about the business registry. With those adjustments, the Working Group agreed with the substance of paragraphs 195 and 196 and recommendation 38.

## **H. Fees**

### **1. Paragraphs 197 and 198**

90. It was observed that the phrases “information products” and “information services” used throughout the part on fees were not defined in paragraph 13, and it was suggested that they might either be defined or referred to consistently throughout the text.

91. Several drafting suggestions were made for paragraph 198, including: (a) to replace the fourth sentence with text along the lines of “Governments seeking to increase MSME registration and to support MSMEs throughout their lifecycle should consider offering registration and post-registration services free of charge.”; (b) to delete the fifth sentence and the phrase “For instance,” at the beginning of the sixth sentence; and (c) to substitute “encourages businesses to register” with text along the lines of “is not prohibitive for MSMEs” in the third to last sentence. With those adjustments, the Working Group agreed with the substance of paragraphs 197 and 198.

### **2. Fees charged for registry services: paragraphs 199 to 201 and recommendation 39**

92. The Secretariat was requested to review the text to determine whether “registry services” in the title and the text of recommendation 39 might be changed to “business registry services” to render it consistent with the terminology used elsewhere in the draft legislative guide (for example, in paras. 167 and 171) and to distinguish them from other types of governmental registry services; the Working Group otherwise agreed with the substance of paragraphs 199 to 201 and recommendation 39.

### **3. Fees charged for information: paragraph 202 and recommendation 40**

93. There was broad support within the Working Group to split recommendation 40 into two parts, with the first part ending after the phrase “free of charge”, and the second part referring to fees that could be charged for “value-added information” (although a better term might be found, which should be rendered consistent with the term “more sophisticated information services” in paragraph 202) and that such fees could be linked to the notion of cost-recovery.

94. The Secretariat was requested to redraft the commentary and recommendation 40 to reflect the discussion in the Working Group. Suggestions that the commentary might account for different users or include a cross-reference to or reiteration of some of the commentary in paragraph 194 (on bulk information) were noted.

### **4. Publication of fee amounts and methods of payment: paragraph 203 and recommendation 41**

95. The Working Group agreed that text along the lines of “if any” should be inserted after the phrase “fees payable”, and with that change, agreed with the substance of paragraph 203 and recommendation 41.

## **5. Electronic payments: paragraph 204 and recommendation 42**

96. The Working Group reiterated its earlier decision (see para. 49 above) that recommendation 42 should not be relocated to Part III of the legislative guide (“Operation of the business registry”), but that paragraph 89 and recommendation 12 should cross-refer to paragraph 204 and recommendation 42.

97. A suggestion to delete the phrase “Once States have reached a certain level of technological maturity” from the first sentence of paragraph 204 was accepted by the Working Group on the understanding that text reflecting a sensitivity to States subject to the “digital divide” could be reflected elsewhere in the draft legislative guide. In order to accommodate ongoing developments in technology, the Working Group also agreed to replace the reference to “use of mobile payments” in the first sentence of paragraph 204 with a phrase along the lines of “use of mobile payments and other modern forms of technology”. With those amendments, the Working Group agreed with the substance of paragraph 204 and recommendations 42.

## **I. Liability and sanctions**

### **1. Liability and sanctions: paragraph 205; Liability for misleading, false or deceptive information: paragraph 206 and recommendation 43**

98. It was noted that paragraph 209 provided ways in which a business could be informed of its obligation to provide timely and accurate information to the business registry so as to avoid the need for sanctions. A proposal to relocate that paragraph to immediately follow paragraph 205, so that the discussion appeared before the part on sanctions, was noted.

99. It was recalled that the concept of the publication of the legal effects of information maintained in the registry had been suggested for inclusion into the commentary that preceded recommendation 9 and possibly recommendation 1. It was agreed by the Working Group that the concept of opposability of that information to third parties could be incorporated in paragraph 206 as well, since it was related to potential liability to third parties for both supplying misleading, false or deceptive information and failing to supply information. As a matter of drafting, the Secretariat was requested to standardize references to “liability” or “responsibility” and to elaborate on the phrase “such information” in paragraph 206.

100. Several delegations were of the view that recommendation 43 should separate inadvertent failure to submit information from the intentional submission of false and misleading information or intentional withholding of required information, since inadvertent failure to submit ought not be punished to the same extent as wilful actions. After discussion, the Working Group agreed to leave recommendation 43 as drafted but requested the Secretariat to incorporate the discussion of the Working Group into the commentary, particularly noting that the failure to submit necessary information could amount in some cases to contributing to the existence of misleading, false or deceptive information on the business register. It was further agreed that recommendation 43 left maximum flexibility for the establishment of liability up to the State through the use of the term “appropriate liability”.

### **2. Sanctions: paragraphs 207 to 209 and recommendation 44**

101. The Working Group agreed that the last sentence of paragraph 208 should be deleted, since disqualification of directors was said to be a topic pertaining to corporate law rather than business registration.

102. In keeping with its consideration of issues relating to liability, the Working Group agreed to the following adjustments to subparagraph (a) of recommendation 44: (a) to delete the phrase in brackets; (b) to include the term “appropriate” between “establish” and “sanctions”; and (c) to replace the phrase “under the law, including the provision of accurate and timely information to the

business registry” with a phrase along the lines of “regarding information to be submitted to the registry in an accurate and timely fashion”.

### **3. Liability of the business registry: paragraphs 210 to 215 and recommendation 45**

103. It was suggested that paragraph 211 (in particular the last sentence) could be clarified in order to take into consideration the practice of some States with electronic registration systems where registry staff must nonetheless enter the information submitted by the registrant into the registry. Support for that suggestion was expressed by the Working Group. It was also agreed that the commentary should reflect the fact that in many States the question of business registry liability was a question for other laws of the State and not a question for the law on business registration.

104. After discussion, the Working Group agreed to modify the text of recommendation 45 along the following lines: “The law should establish whether and to what extent the State is liable for loss or damage caused by error or negligence of the business registry...”.

## **J. Deregistration**

### **1. Paragraphs 216 to 219 and recommendations 46 and 47**

105. Support was expressed in the Working Group for a proposal to add a new subparagraph (c) to recommendation 46 that encouraged States to adopt simplified procedures for the deregistration of MSMEs. The Working Group also requested the Secretariat to include any necessary changes to reflect that addition in the commentary for recommendation 46. Moreover, the Working Group agreed to specify in paragraph 219 that deregistration should, in principle, be free of charge.

106. In order to widen the scope of recommendation 47 to include those cases in which deregistration was carried out by the registrar upon court order, the Working Group agreed to delete the phrase “at its own initiative”. The Working Group further agreed to change the title of recommendation 47 to “Involuntary deregistration”.

### **2. Process of deregistration: paragraphs 220 and 221 and recommendation 48; Time of effectiveness of business deregistration: paragraph 222 and recommendation 49**

107. The Working Group agreed to revise the third sentence in paragraph 220 to phrasing along the lines of “without providing third parties the opportunity to protect their rights” and to strike the introductory clause “If there is no objection to the procedure” from the fourth sentence.

108. In terms of structure, the Working Group supported a proposal to eliminate recommendation 49(b) and to combine recommendations 48 and 49, as well as the commentary in sections B (“Process of deregistration”) and C (“Time of effectiveness of business deregistration”). The Secretariat was also requested to move the last three sentences of paragraph 218, which addressed written notice, to the commentary for recommendation 48, and to review and eliminate any portions of paragraph 221 on preservation of records if they were repeated in “Part X: Preservation of records”.

### **3. Reinstatement of registration: paragraph 223 and recommendation 50**

109. The Working Group agreed with the substance of paragraph 223 and recommendation 50 of the legislative guide as drafted.

## **K. Preservation of records**

### **1. Paragraphs 224 to 227 and recommendation 51**

110. A suggestion to move “Part X: Preservation of records” to a position earlier in the text was not taken up and the Working Group agreed with the substance of paragraphs 224 to 227 and recommendation 51 of the legislative guide as drafted.

**2. Amendment or deletion of information: paragraphs 228 and 229 and recommendation 52**

111. It was observed that reference to “registry staff” in paragraph 228 and elsewhere in the text might be changed to “registrar”, and with that change, the Working Group agreed with the substance of paragraphs 228 and 229 and recommendation 52.

**3. Protection against loss of or damage to the business registry record: paragraphs 230 and 231 and recommendation 53**

112. It was observed that recommendation 53 should refer to the “registrar” rather than the “business registry”, and with that amendment, the Working Group agreed with the substance of paragraphs 230 and 231 and recommendation 53.

**4. Safeguard from accidental destruction: paragraph 232 and recommendation 54**

113. The Working Group agreed with the substance of paragraph 232 and recommendation 54 of the legislative guide as drafted.

**L. Annex: The underlying legislative framework**

**Flexible legal forms: paragraphs 7 to 10 and recommendation 2/Annex**

114. After a discussion in which strongly held divergent views were expressed, the Working Group agreed as follows: (a) the following text should be added to recommendation 2/Annex: “States should consider providing for the optional use of intermediaries for MSMEs.”; (b) to add to the end of the second sentence of paragraph 7 the phrase “and less costly” after “much simpler”; and (c) in the final sentence of paragraph 7, to insert a full stop instead of a semicolon after the phrase “through the business registry”, to delete “and” and to insert the phrase “There are many States in which” before the phrase “the involvement of a lawyer”. The Working Group further agreed that the remainder of the Annex would be the subject of discussion at a future session, but that the drafting of paragraph 7 of the Annex and recommendation 2/Annex should not be revisited by the Working Group.

**V. Other matters**

115. The Working Group recalled that its thirtieth session would be held in New York from 12 to 16 March 2018. It was confirmed that the Working Group would return at that session to its consideration of a revised text of the draft legislative guide on key principles of a business registry, particularly of the introductory section (paras. 1 to 25 [A/CN.9/WG.I/WP.106](#)) and the Annex, but only of those aspects of the text that the Secretariat had been requested by the Working Group to extensively revise. The Working Group also agreed that it would take up the overarching document [A/CN.9/WG.I/WP.107](#) on “Reducing the legal obstacles faced by MSMEs” which set out more generally the context for its work on MSMEs. There was further agreement that once those tasks had been completed, the Working Group would resume its consideration of the draft legislative guide on an UNLLO found in documents [A/CN.9/WG.I/WP.99](#) and [A/CN.9/WG.I/WP.99/Add.1](#).

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