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Report of Working Group I (MSMEs) on the work of its thirty-eighth session (Vienna, 19–23 September 2022)

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I. Introduction

Consideration of issues on access to credit for micro, small and medium-sized enterprises

1. At its forty-sixth session, in 2013, the Commission agreed that work on reducing the legal obstacles faced by micro, small and medium-sized enterprises (MSMEs) throughout their life cycle, in particular, in developing economies, should be added to the work programme of the Commission, and that such work should begin with a focus on the legal questions surrounding the simplification of incorporation. This resulted in two texts adopted by the Commission in 2018 and 2021 respectively: the *UNCITRAL Legislative Guide on Key Principles of a Business Registry* and the *UNCITRAL Legislative Guide on Limited Liability Enterprises*.
2. At its fifty-second session, in 2019, the Commission agreed to strengthen and complete the work on reducing the legal obstacles faced by MSMEs throughout their life cycles by requesting the secretariat to start preparing draft materials on MSMEs' access to credit, drawing, as appropriate, on the relevant recommendations and guidance contained in the *UNCITRAL Model Law on Secured Transactions*, with a view to their consideration by Working Group I.¹ The Working Group considered the topic for the first time at its thirty-sixth session and continued that work at its thirty-seventh and thirty-eighth sessions on the basis of revised documentation reflecting its previous deliberations prepared by the secretariat.²
3. At its fifty-fifth session, in 2022, the Commission expressed its satisfaction with the progress made by the Working Group and the support provided by the secretariat and reaffirmed the mandate of the Working Group in accordance with its decisions at the fifty-second session in 2019.³

II. Organization of the session

4. Working Group I, which was composed of all States members of the Commission, held its thirty-eighth session in Vienna from 19 to 23 September 2022.
5. The session was attended by representatives of the following States members of the Working Group: Algeria, Argentina, Armenia, Australia, Austria, Belarus, Belgium, Brazil, Canada, Chile, China, Colombia, Côte d'Ivoire, Croatia, Czechia, Democratic Republic of the Congo, Dominican Republic, Ecuador, France, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Japan, Kenya, Kuwait, Malaysia, Mali, Mexico, Panama, Peru, Poland, Republic of Korea, Russian Federation, Saudi Arabia, Singapore, Spain, Thailand, Ukraine, United States of America, Viet Nam and Zimbabwe.
6. The session was attended by observers from the following States: Bangladesh, Burundi, Egypt, Gabon, Jordan, Lebanon, Libya, Lithuania, Malta, Myanmar, Philippines, Qatar, Senegal, Sierra Leone, Slovakia, Sri Lanka, Sudan, Togo and Uruguay.
7. The session was attended by observers from the following non-member States and entities: Palestine (State of).
8. The session was also attended by observers from the European Union: European Investment Bank (EIB).

¹ *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 192(a).

² Additional information on the work of the Working Group on the topic of MSME access to credit may be found in document [A/CN.9/WG.I/WP.127](#) paras. 5–9.

³ *Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 17 (A/77/17)*, para. 172.

9. The session was further attended by observers from the following international organizations:

(a) *Organizations of the United Nations system*: Economic Commission for Latin America and the Caribbean (ECLAC), International Finance Corporation (IFC), United Nations Industrial Development Organization (UNIDO) and World Bank;

(b) *Intergovernmental organizations*: Arab Planning Institute (API), Asian Clearing Union (ACU), Cooperation Council for the Arab States of the Gulf (GCC), Inter-Parliamentary Assembly of the Member Nations of the Commonwealth of Independent States (IPA CIS), Organisation for Economic Cooperation and Development (OECD); and

(c) *Invited international non-governmental organizations*: American Society of International Law (ASIL), China Council for the Promotion of International Trade (CCPIT), European Law Students Association (ELSA), Fondation Pour Le Droit Continental (FDC), Forum for International Conciliation and Arbitration (FICA), Grupo Latinoamericano de Abogados para el Derecho del Comercio Internacional (GRULACI), International Union of Notaries (UINL), Islamic Chamber of Commerce, Industry and Agriculture (ICCIA), Kozolchyk National Law Center (NATLAW), Law Association for Asia and the Pacific (LAWASIA), Shanghai Arbitration Commission (SHAC) and World Union of Small and Medium Enterprises (WUSME).

10. The Working Group elected the following officers:

Chair: Mr. Siniša Petrović (Croatia)

Rapporteur: Ms. Florentine Maho Ndubuisi (Côte d'Ivoire)

11. The Working Group had before it the following documents:

(a) Annotated provisional agenda ([A/CN.9/WG.I/WP.127](#)); and

(b) Note by the Secretariat on access to credit for micro, small and medium-sized enterprises (MSMEs) ([A/CN.9/WG.I/WP.128](#)).

12. The Working Group adopted the following agenda:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Consideration of issues on access to credit for micro, small and medium-sized enterprises.

III. Deliberations and decisions

13. The Working Group engaged in discussions on access to credit for MSMEs based on a Note by the Secretariat ([A/CN.9/WG.I/WP.128](#)). The deliberations of the Working Group on this topic are reflected below.

IV. Access to credit for micro, small and medium-sized enterprises (MSMEs)

A. Presentation of [A/CN.9/WG.I/WP.128](#)

14. The secretariat introduced document [A/CN.9/WG.I/WP.128](#) to the Working Group highlighting the revisions made which reflected the deliberations of the Working Group at its thirty-seventh session. In particular, the secretariat drew the attention of the Working Group to chapters III and IV which had been extensively reorganized. Chapter III included all sources of financing available to MSMEs (family

and friends support, debt and equity, FinTech) and chapter IV discussed all legislative and non-legislative measures supporting MSMEs' access to credit. The secretariat also noted that, compared with its previous iteration [A/CN.9/WG.I/WP.126](#), the new document was clearer on the issues and measures relevant for micro and small enterprises (MSEs) and medium-sized enterprises respectively although additional work was still required. Lastly, the secretariat informed the Working Group that it had replaced the interim term "Future text" with "draft Guide", which better expressed the purpose of the Working Group to provide guidance on the topic of access to credit for MSMEs.

15. The Working Group took note of the explanation by the secretariat for the late release of the documents for the session and expressed its appreciation for the willingness of the delegations present to consider the draft Guide contained in [A/CN.9/WG.I/WP.128](#) despite the short time available for its reading by their experts. The Working Group also noted a comment that the establishment of an international financial mechanism to support MSMEs in UNCITRAL member States would be an important step forward.

B. General remarks

16. Proposals to reorganize chapter III were heard to make it more reader friendly and consistent. It was noted that the chapter not only described various sources of financing available to MSMEs but also highlighted relevant legal issues in connection with the use of those sources and in some cases referred to possible legislative solutions to address those issues. It was thus suggested that the discussion on legal issues and legislative solutions could be moved to chapter IV (Measures to facilitate MSME access to credit), so that chapter III would only provide a description of the sources of finance while chapter IV would consolidate all legal matters (i.e. issues in the use of those financing sources and available legislative solutions) relevant to access to credit for MSMEs. Another view was to maintain the discussion on legal issues associated with the use of financing sources in chapter III, and repeat it or cross-refer to it in chapter IV as needed when discussing legislative solutions. Doubts were expressed as to whether all issues identified in chapter III could be addressed by legislative solutions, noting that some issues were matters of commercial considerations.

17. The Working Group continued its discussion on the topic and a view was reiterated that the reader-friendliness and the internal consistency of the draft Guide would be improved if descriptive parts (preferably concise and to the point), relevant legal issues and possible solutions were clearly identified and separated. It was also noted that it would be helpful to clarify in the introduction the structure of the Guide for the benefit of the readers. In this regard, the Working Group heard comments that the nature of the Guide (whether general and illustrative or legislative or even a combination of both) would determine its structure and that it would be advisable to discuss the aim of this work on access to credit for MSMEs first. Other delegations expressed the view that deliberations on the substance of the draft Guide could continue regardless of its ultimate structure. It was again noted that in the case that the draft Guide should take the form of a legislative guide, it would be necessary to limit the number of topics discussed and focus only on those issues for which a legislative solution could be envisaged.

18. After discussion, the Working Group agreed to simplify and clarify the topics in chapter III and identify, as appropriate, those legal issues and relevant solutions that could be addressed (i.e. relocated, cross-referenced or reiterated) in chapter IV.

19. There was general agreement in the Working Group to include additional recommendations in chapter IV even if they did not have a strong legal focus and only provided generic guidance to States.

C. Chapter I – Introduction

20. Suggestions were made to highlight the economic importance of MSMEs in paragraph 3 and also to make reference to a project at the Bank for International Settlements concerning digitalization of financial systems which might be particularly important for MSMEs. It was noted that bibliographical citations should not be included in the final version of the draft Guide and consistent terminology should be used throughout the text.

D. Chapter II – MSMEs and their financing needs at various stages

21. The Working Group agreed to the following revisions in relation to chapter II:

- Paragraph 17: revising the second sentence to reflect that some characteristics would only apply to microenterprises while some others would only be relevant for medium-sized enterprises; and including MSMEs' vulnerability to natural disasters in item (j);
- Paragraph 20: revising it to clarify that secured transaction measures should not be tailored to the legal form of the enterprise, noting that the UNCITRAL texts on secured transactions were intended to benefit all kinds of legal forms without making any distinction; and
- Paragraph 22: revising it to clarify that there could be loans for factoring in certain instances (e.g. security transfers of receivables that support loans).

22. In the context of alternative financing mechanisms in paragraph 19, it was mentioned that a reference should be made to informal credit providers. A suggestion was made to add a reference to leasing in paragraph 22. A doubt was expressed regarding the term "Islamic legal tradition" in paragraph 24 on the basis that UNCITRAL texts usually would avoid referring to any particular legal tradition.

23. Regarding the structure, support was expressed for moving the discussion on Islamic finance contained in paragraphs 24 and 25 to chapter III (Sources of financing available to MSMEs) as chapter II currently focused on the MSME life cycle approach. The relevance of Islamic finance to all financiers around the world was emphasized. In light of such change, support was also expressed for relocating the discussion about MSMEs and their financing needs to chapter I (Introduction). The secretariat was requested to find appropriate places for Islamic finance within chapter III.

E. Chapter III – Sources of financing available to MSMEs

24. A suggestion was made to shorten paragraphs 26 and 27 so that they would simply serve as an introduction, noting that paragraph 26 seemed out of place and also that the digital platforms were widely used for accessing certain financing tools and were generally known. It was added that the work of Working Group I did not focus on personal wealth as elaborated extensively in paragraph 27. The Working Group agreed to streamline paragraphs 26 and 27 accordingly.

1. Section A: Family and friends support

25. There was support to shorten and restructure section A to focus on two key issues, namely the nature of family and friends support and the reason why such support would be needed. It was noted that the discussion on the nature of family and friends support should emphasize the personal relationship between MSME owners and their family and friends. It was further noted that the discussion on why such support would be needed should point out the challenges (including low creditworthiness and other formal obstacles) faced by women and other vulnerable groups and explain the motivations for family and friends support. A suggestion to

move the content of footnote 60 to the main text and to include a reference to youth did not receive sufficient support, considering that challenges faced by women when accessing credit might differ from those faced by youth. It was also noted that while information on women's challenges on access to credit was based on extensive research, it was uncertain whether the same wealth of supporting documentation was available with regard to young MSME owners. The importance of access to credit for women was further highlighted (and a suggestion to cross refer to paragraph 18 of the draft Guide was supported) as well as the formal challenges (e.g. property laws) they faced in certain countries. An alternative suggestion to include an explicit reference to young entrepreneurs in the second sentence of paragraph 21 (e.g. in relation to lack of a reliable credit record of the MSME) was taken up by the Working Group, acknowledging difficulties faced by young entrepreneurs in accessing credit.

26. A view was expressed that the draft Guide should include a protection mechanism under which the MSMEs receiving family and friends support would be protected in the event of subsequent disagreement between MSMEs and those family and friends who provided support.

2. Section B: Debt tools

27. There was agreement in the Working Group to reorganize section B to ensure improved consistency in the order of discussion of the various financing tools and to avoid any confusion that the subheading "working capital finance" (paras. 56 to 63 of the section) may create. It was said that that subheading was too generic and could apply to most of section B and not be limited to those sources of finance listed under that subheading. In this respect, it was suggested that the sources of finance included under "working capital finance" (e.g. factoring, warehouse receipts and letters of credit) would be better presented as stand-alone subsections.

28. Having recalled the decision at its thirty-seventh session (New York, 9–13 May 2022)⁴ not to categorize debt tools by referring to the "providers of credit" and "tools of accessing credit", the Working Group agreed to the following:

- Including an introductory paragraph addressing the issues of conditions of payment (para. 57 of [A/CN.9/WG.I/WP.128](#)); and
- Discussing the various sources of debt tools in this order: commercial credit (the most traditional tool); credit cards; financial lease; factoring (including the use of factoring in the context of supply chain finance); warehouse receipts (including warrantage); letters of credit; credit cooperatives; microcredit and public financial institutions.

29. With regard to the subsection on commercial credit, it was suggested that it may be helpful to explain that commercial credit can be in the form of secured or unsecured loans and to highlight the importance of secured loans.

Credit cards

30. The Working Group agreed to revise the first sentence of paragraph 35 which provided that credit cards were generally available for MSMEs, considering that other parts of the draft Guide mentioned that some MSMEs did not even have a bank account. A view was expressed that the draft Guide should recommend to States to require banks to issue special business credit cards for MSMEs.

Microcredit

31. It was suggested that the first sentence in paragraph 37 should emphasize that microcredit should be used not only for starting businesses but also operating businesses. A query was raised as to how States would deal with issues arising from informal microcredit.

⁴ See [A/CN.9/1090](#), para. 26.

Credit cooperatives

32. While there was general agreement for shortening this section (particularly the examples mentioned in paras. 43 and 44) to only a general description, different views were expressed as to the nature of rotating savings and credit associations and other types of associations. A view was expressed that the draft Guide should make a clear distinction between credit cooperatives and other associations, given that the latter were not owned by members. In response, it was said that in some jurisdictions rotating savings and credit associations, whether formal or informal, would share the same goal as credit cooperatives and function in a similar manner (including taking deposits). The need for the draft Guide to emphasize that the objective of credit cooperatives was not to make profit (see the last sentence in para. 41) and it often offered more favourable interest rates (see the last sentence in para. 42) was highlighted. After discussion, the Working Group agreed that this section should simply mention that credit cooperatives and other collective savings arrangements may be used by MSMEs to access credit, and then explain the key features of all kinds of these arrangements.

33. The Working Group also agreed to the following revisions:

- Changing the title of this section to “*credit cooperative and other collective credit and savings arrangements*”;
- Replacing references to “informal” with “non-registered” in paragraph 42; and
- Revising the last sentence of paragraph 44 to clarify that membership may not be restricted to a particular group of people in some jurisdictions.

34. In respect of paragraph 44, a suggestion was made to delete the phrase “to the extent that the relationship between the MSME borrower and credit associations can be proved” in the first sentence.

Commercial credit

35. In respect of moving legal issues and solutions discussed in chapter III to chapter IV (see para. 18 above), a suggestion was heard that issues concerning lack of collateral (as described in para. 46), information asymmetry (as described in para. 45), lack of competition and digital challenger banks (as described in para. 47) could be moved to chapter IV.

36. A suggestion was made to revise the first sentence in paragraph 45 to focus on the essential features of commercial credit at the outset without referring to the term “regulated” financial institutions. It was explained that the possible solutions in chapter IV could also apply to professional lenders in the business of extending credit in general, whether regulated or not. It was added that the part in chapter IV relevant to commercial credit discussed legal frameworks, not regulatory frameworks. In this context, it was however pointed out that commercial lending constituted a regulated activity in some countries. Another suggestion was made to clarify that the term “financial institutions” should include investment funds.

37. A suggestion was also made to include reference to the sale of collateral in the third sentence in paragraph 46. It was explained that financiers would often be reluctant to accept movable assets as collateral if it was difficult to sell such collateral.

38. A view was expressed that the draft Guide should recommend to States to provide incentives for access to credit for MSMEs. The importance of paragraph 48 describing examples of lending policies to support MSMEs was noted in this context. Another view was expressed that paragraph 48 could be revised to state that competition among credit providers may help commercial banks modify their lending policies. It was, however, noted that competition would not necessarily mean cheaper costs for obtaining credit.

39. The Working Group was cautioned against using the term “commercial contract(s)” in this section and elsewhere in the draft Guide in light of the special

meaning relating to merchants given to such term in some jurisdictions. It was suggested that the draft Guide should simply refer to “contract(s)” instead.

Financial lease

40. The Working Group agreed to the following revisions:

- Paragraph 49: replacing the phrase “eventually purchase” with “possible ultimate purchase” in the first sentence so as to ensure consistency with the penultimate sentence, which provided that the lessee had the option (not the obligation) to purchase the asset at the end of the lease;
- Paragraph 50: replacing the term “long-lived assets” with “durable assets” in the first sentence; and
- Paragraph 51: deleting the first sentence as it was unclear, and revising the second sentence to clarify that grantor-based registries (instead of asset registries) could also support the use of financial lease. It was explained that the UNCITRAL Model Law on Secured Transaction was in favour of grantor-based registries while the UNIDROIT Cape Town Convention used asset registries.

41. A view was expressed that favourable tax rules should be mentioned as an additional reason for the parties to use financial leasing as a means to obtain credit.

42. A suggestion to replace the term “financial lease” with “conditional sale of durable assets” did not receive support, noting the need to use terminology consistent with the UNCITRAL texts on secured transactions.

Public financial institutions

43. Suggestions were made to include references to other examples of State intervention in this section (e.g. tax incentives for supporting MSMEs, direct financial support from States). It was, however, noted that matters concerning public funds and tax would fall outside the mandate of the Working Group and should be left to States to decide. It was added that the draft Guide should not include any recommendations concerning these issues but only factual descriptions. After discussion, the Working Group agreed to include a paragraph in the beginning of the Guide to clarify that many instruments had been used by States to provide support to MSMEs (including direct State support and tax incentives), however, the Guide would not deal with those issues.

44. The Working Group also agreed to avoid generalizations in the draft Guide, such as the first and last sentences in paragraph 54. In respect of the first sentence in paragraph 54, it was also pointed out that public development banks might have different goals compared with commercial banks.

Working capital finance

45. In addition to removing the subheading “working capital finance” and discussing the various tools described under that subheading in stand-alone subsections (see paras. 27 and 28 above), the Working Group agreed to the following revisions:

- Paragraph 58: placing the discussion on factoring and supply chain finance under the subheading “receivable financing” which would encompass both topics as well as the reference to “sale of non-performing receivables” (the penultimate sentence of the paragraph). It was pointed out that the sale of non-performance receivables was not an example of factoring. A suggestion was also heard that the paragraph could mention government factoring, which permitted MSME suppliers to State entities to transfer their invoices to a bank and receive immediate payment. Another proposal was to include under this subheading relevant Islamic factoring models;

- Paragraphs 61 and 62: combining the two paragraphs and (subject to final research on warehouse receipts/warrantage) focusing on warehouse receipt financing since warrantage seemed to be a different term used to describe warehouse receipt financing in certain countries (it was said that warrantage could be mentioned as an example in the text). The Working Group also heard a suggestion that reference to the Islamic *Murabaha* could be included; and
- Paragraph 62: deleting reference to (i) factoring as an example of inter-company loan and (ii) letters of credit being cheaper than other tools for access to credit (e.g. factoring).

3. Section C: Equity tools

46. The Working Group discussed the relevance of this section and whether it should be retained in the draft Guide. Doubts were reiterated (see also [A/CN.9/1090](#), para. 66) on whether equity tools could be considered as a means to access credit in the narrow sense as they were designed to obtain financing instead. In this respect, previous deliberations of the Working Group that the term “access to credit” differed from “access to finance” were recalled. It was also noted that the equity tools included in this section were mainly used by medium-sized enterprises and not MSEs.

47. Views were however expressed that there was merit in retaining a shortened discussion on this topic, though not in a stand-alone section, and that it was not necessary to delete the reference to equity tools in some other parts of the Guide (e.g. family and friends support).

48. After discussion, the Working Group agreed to delete this section and to explain in the introduction that MSMEs’ financing needs could be accommodated by equity tools (such as business angel investment and venture capital) although the Guide only focused on credit tools. The Working Group also agreed to maintain certain references to equity tools (e.g. in the section on family and friends support) and to briefly mention in the introduction to the Guide potential challenges that could discourage the use of equity tools (last sentence of para. 67) and how they could be addressed so that such tools could be more easily available to MSMEs.

4. Section D: FinTech tools

49. The Working Group was invited to consider integrating this section into other sections in the draft Guide where relevant, on the basis that those FinTech tools were not new products but old products supported by new technology tools. While there was general support for this approach, it was pointed out that some topics under this section, such as platform-based lending and investment-based/debt crowdfunding, should be retained in the form of a stand-alone section. The wide use of investment-based crowdfunding, especially by young entrepreneurs, was emphasized.

50. After discussion, the Working Group agreed to the following revisions:

- Shortening the introduction part, including deletion of the subsection on the use of distributed ledger technology;
- Retaining the general discussion on platform-based lending and the description of lending crowdfunding (peer-to-peer lending);
- Revising the subsection on investment-based crowdfunding so that the distinction between lending crowdfunding and investment-based crowdfunding should be retained and all references to equity crowdfunding would be removed; and
- Deleting the subsection on digital mobile credit and including a short description of digital mobile credit in the introduction part.

51. A suggestion was made to delete the last sentence in paragraph 73, on the ground that the description of how digital financial services could help women who were not allowed to leave home to gain access to credit seemed problematic. In response, it

was noted that the other part of this sentence describing time constraints faced by women was accurate and should not be removed. The Working Group agreed to revise the last sentence in paragraph 73 accordingly.

F. Chapter IV – Measures to facilitate MSME access to credit

1. Section A: A legislative framework supportive of debt tools to enhance MSME access to credit

General comments

52. For improved consistency of the chapter, the Working Group agreed to a proposal that the discussion on business formation and operation and business registration (paras. 163 to 171) could be put at the beginning of the chapter with the necessary editorial revisions that such relocation may require.

53. The Working Group also heard a proposal that since many sections of the draft Guide referred to the legislative, social and regulatory barriers precluding access to credit for women-run MSMEs, the Guide could include a general recommendation addressing discrimination against women and promoting their equal access to credit. Such recommendation would be in line with the Sustainable Development Goals (SDG) (especially SDG 5) adopted by all United Nations Member States in 2015. Another view was expressed that since MSMEs could be discriminated on many different grounds, such as race, colour, language, or political opinion, it would be desirable to address also those grounds in the recommendation.

54. After discussion, the Working Group agreed to include two recommendations in the draft Guide, one referring to discrimination on a more general basis and the other specifically addressing women, along the lines of recommendations 33 and 34 in the *UNCITRAL Legislative Guide on Key Principles of a Business Registry*. A suggestion was made to include a reference to MSMEs run by people with special needs in the general recommendation on discrimination.

55. A suggestion was made to include in the commentary to those recommendations references to specific international instruments concerning women which promoted their equal access to bank loans, financial credit, economic resources and so on. Views were expressed against including references to those instruments not related to trade law and the mandate of UNCITRAL (e.g. United Nations human rights conventions). In response, it was pointed out that similar references were included in the commentary to recommendations 33 and 34 in the *UNCITRAL Legislative Guide on Key Principles of a Business Registry*. After discussion, the prevailing view was that the secretariat could make general reference to relevant international instruments in the commentary to the recommendations as appropriate. A member State objected to that conclusion.

56. Lastly, it was also suggested that specific recommendations addressing challenges faced by women in the context of those legislative and non-legislative measures facilitating access to credit listed in chapter IV (e.g. access to security rights registry) could be added in the draft Guide.

1.1 Existing international standards

(a) Movable assets as collateral

(i) Criteria for a secured transaction regime that facilitates credit for MSMEs

57. A suggestion was made to merge draft recommendations 1 and 2 into one single recommendation which would include an explicit reference to the *UNCITRAL Model Law on Secured Transactions* (MLST) and its functional approach to ensure comprehensive coverage. It was explained that under the functional approach rules for a secured transaction regime would apply not only to transactions in which the grantor granted a security right in an asset that it already owned, but also to transactions that took the form of the creditor retaining title to an asset to secure

performance of an obligation. Another suggestion was made to list the key features of a secured transaction regime that facilitated credit for MSMEs (as described in paragraph 103) in the recommendation itself. The Working Group agreed to revise recommendations 1 and 2 in accordance with those suggestions.

58. A question was raised as to why draft recommendation 1 (a) referred to all types of movable assets, considering that certain types of movable assets were excluded from the scope of the MLST. In response, it was explained that those assets excluded under the MLST were not so relevant for MSMEs.

59. The Working Group further agreed to the following amendments:

- Revising paragraph 99 to emphasize the economic nature of the issue concerning access to credit for MSMEs, avoiding using the word “comfort” and removing the reference to “low creditworthiness”;

Avoiding using the word “guarantee” in paragraph 100 given that that such word was also used in the context of personal guarantee;

- Revising paragraph 102 to reflect that movable assets, in particular future assets, may be the only type of assets that some MSMEs could offer as collateral;
- Including in paragraph 103 the reference to third-party effectiveness achieved through registry systems as an additional key feature for an effective secured transactions regime;
- Expanding the types of movable assets mentioned in paragraph 105 to include negotiable instruments and documents;
- Elaborating on the issue of digital assets used by MSMEs and clarifying that the MLST did not address digital assets; and
- Ensuring consistent terminology throughout the Guide (see also para. 20 above) and also in line with existing UNCITRAL texts on secured transactions.

(ii) *Key features of an efficient registry system*

60. It was suggested that a clear distinction should be made in paragraph 108 between third-party effectiveness achieved through registry systems and the operation of such registry systems as these were two separate issues.

61. In respect of paragraph 109, a suggestion was made to discuss the issue concerning the notice registration system at the beginning of this paragraph. It was noted that this paragraph should clarify that registration should be a requirement for the third-party effectiveness and priority of a security right, not its creation. It was added that the paragraph could also clarify the features of the registry under the MLST, including that the information entered in the registry should be indexed and became searchable mainly by debtor name, not asset description.

62. As a general comment, a concern was expressed that this subsection may impede the creation of a second security right over the same asset. In response, it was explained that the MLST allowed the registration of successive security over the same collateral in the same registry and the order of priority would be determined by the order of registration.

63. The Working Group agreed to revise paragraphs 108 and 109 accordingly and to clarify in this subsection that the MLST allowed the registration of successive security over the same collateral in the same registry.

(b) Immovable assets as collateral

64. A view was expressed that this subsection should clarify the key difference between registry systems used for movable assets and those in the context of immovable assets. It was explained that in immovable registries the registration of security rights was generally limited to existing immovable assets, not future assets.

It was added that the information in movable registries could be searchable by debtor name whereas the information in immovable registries needed to be located by reference to the specific assets.

1.2 Possible areas for future improvement

(a) Use of collateral

Obstacles faced by MSEs and financiers in the use of collateral

65. As a general matter, the Working Group agreed that this subsection should clearly distinguish issues that were addressed in the UNCITRAL texts on secured transactions but did not fit under subsection 1 (a) and those that were not addressed at all in such texts. It was explained that examples of the former included issues concerning the duty of good faith and enforcement.

66. The Working Group agreed to the following revisions:

- Avoiding the reference to high risk of default by MSMEs in paragraph 121, given that many MSMEs did pay back loans on time;
- Deleting paragraph 123 as a whole, on the basis that the first sentence was addressed in the MLST and the remaining sentences touched upon regulatory issues (e.g. prudential capital requirements) which were not within the mandate of the Working Group;
- Clarifying that valuation discussed in paragraph 125 was an economic rather than legal issue, and that that issue focused on how much could be realized from the collateral in the event of default, not the value of the asset itself;
- Elaborating in paragraph 126 the option under which the State would require including the maximum amount for which the security right can be enforced in the security agreement, with reference to the MLST; and
- Revising the description of overcollateralization to distinguish two situations, namely, overcollateralization caused by the uncertainty of how much may be obtained from disposition of the collateral and overcollateralization due to creditors with greater bargaining power insisting on collateral with greater value than the amount of the secured debt.

67. In the context of paragraph 125, the importance of developing a robust public auction ecosystem was also highlighted, noting that such an ecosystem would provide a mechanism for establishing valuations in a real market context and also provide lenders with an efficient process by which to liquidate recovered collateral. It was noted that issues concerning the ranking of claims under insolvency laws and secured transaction laws had been addressed by previous work of UNCITRAL.

68. A view was also expressed that paragraph 129 could be expanded to include some examples of efficient and timely enforcement mechanisms across the world. It was added that this paragraph could also mention the need to balance the efficiency of a creditor's enforcement action with the equal need for availability of debtor protections against negligent or malicious creditor activity.

69. While different views were expressed about whether or not a recommendation should be developed in this subsection, there was general agreement that any recommendation should not go beyond the existing UNCITRAL texts on secured transactions, particularly the MLST and the Practice Guide to the MLST. A suggestion to extend the protection to MSMEs in a similar manner as consumers did not receive support. Another suggestion to transpose the key principles of an efficient secured transaction regime for movable assets to immovables also did not receive sufficient support, on the basis that such an ambiguous recommendation may mislead readers.

(b) Personal guarantees

70. Several delegations highlighted the importance of simplifying and streamlining this subsection so that the most relevant legal issues and related solutions would be easily identifiable by the users of the draft Guide.

71. The Working Group heard the following suggested revisions to various paragraphs in this subsection:

- Paragraph 133: (i) the discussion on the nature of the guarantee (dependent and independent guarantees) could be moved to this paragraph, which should also state that personal guarantees issued by the MSME owner or entrepreneur could supplement the security rights granted by the MSME; (ii) it could be clarified that the concept of the MSME owner in the second sentence would only make sense when the MSME was a separate legal entity; (iii) the second sentence could be revised to reflect that personal guarantees created an additional obligation by the guarantor that was distinguishable from the main obligation of the debtor; (iv) the penultimate sentence could be deleted, since personal guarantee being unsecured did not mean that financiers can seize any private asset of the guarantor. It was explained that the financiers may obtain a court decision and enforce it by trying to seize any of its private assets; and (v) the last sentence should be revised to clarify that financiers might request to obtain a security right in specific assets of the guarantor, and, in the event of default, they can enforce their security interest by seizing those assets;
- Paragraph 134: noting in the last sentence that personal guarantees from the MSME owner (if the MSME is a separate legal entity) could ensure that the owner would remain involved in the business;
- Paragraph 138: including reference to the ICC Uniform Rules on Demand Guarantees and the Uniform Customs and Practice for Documentary Credits (texts that UNCITRAL had endorsed) in the last sentence;
- Paragraph 142: removing reference to “social stigma” since social stigma did not concern personal guarantees only; and
- Paragraph 143: clarifying in the second sentence that in some countries legislation on personal guarantees for business loans had been enacted.

72. In addition it was suggested that the introductory part of this subsection could note that personal guarantees were an effective tool to access credit only to the extent that the guarantor had valuable personal assets.

73. After discussion the Working Group agreed to the suggested changes.

a. Form of the personal guarantee

74. A view was expressed in favour of a recommendation stipulating that personal guarantees must be in writing and properly signed by the guarantor and must include an intention to be legally bound. Another view was that the draft Guide should only include a general recommendation stating that the intent of the guarantor to be bound by the guarantee should be expressed (not implied). It was emphasized that the recommendation should not touch upon formality requirements (e.g. paper or electronic, in writing, signed or notarized) which were matters for States to decide.

75. After discussion, the Working Group agreed to include a recommendation to stipulate that (i) the validity of personal guarantees would require an explicit expression of intent of the guarantor to be legally bound by the guarantee, and (ii) legislators may wish to consider specifying the formality requirement(s) for personal guarantees if they deem appropriate in order to raise the awareness of the guarantors of their rights and obligations.

b. Pre-contractual and contractual disclosure of information

76. Different views were expressed as to whether a recommendation should be developed to address pre-contractual and contractual disclosure of information. While some delegations advocated in favour of stressing the necessity to disclose information in a recommendation without specifying the scope of disclosure, other delegations were of the view that no specific recommendation should be developed given that disclosure of information was a general issue relevant for all types of banking contracts, not specific to personal guarantees. It was noted that the obligation to disclose information could be treated in the context of transparency. It was also noted that the reference to rights and obligations of the parties in draft recommendation 3 already included the disclosure obligation. Yet, another view was that the draft Guide could simply outline the challenges and benefits of different options and recommend to States that issues concerning disclosure of information should be addressed. After discussion, the Working Group agreed not to develop a separate recommendation given that draft recommendation 3 (a) covered the obligation to disclose information, but to elaborate the matter in the explanatory part of the text.

77. A suggestion was made for this subsection to indicate that information concerning (i) the situation of the asset of the debtor, (ii) debts owed by the debtor, and (iii) any security interest on the main obligation of the debtor would often be considered relevant for disclosure. Another suggestion was made that the commentary in this subsection (such as the last sentence in paragraph 148 and the second sentence in paragraph 149) and elsewhere in the draft Guide should avoid any embedded recommendations and should present examples of good practices in a neutral manner. The Working Group took up those suggestions.

78. In respect of paragraph 148, it was mentioned that the last sentence should be revised to allow the guarantor to request reports to be prepared more frequently provided that the guarantor would cover the additional costs. It was also noted that paragraph 149 should be revised to clarify that, in case of any change of terms that would be prejudicial to the guarantor, the guarantor should not be bound by those changes unless it expressly consented.

c. Rights and obligations of guarantors and financers

79. The Working Group agreed to delete letter (b) in draft recommendation 3 and to revise letter (a) to state that the law should ensure that the rights and obligations of the financer and guarantors (including the obligation to disclose information) be clearly stated in a personal guarantee agreement. A suggestion to revise letter (b) to refer to a presumption of subsidiarity or solidarity of the liability did not receive sufficient support.

80. The Working Group took up the suggestion to rephrase the term “joint and several liability” in paragraph 152 as it presented issues different from subsidiarity or solidarity of the liability.

d. Personal guarantees of MSE’s owners or family members

81. There was agreement in the Working Group to delete this subsection since the topic was already discussed in the preceding paragraphs. It was noted that the secretariat might relocate certain aspects of the subsection to the section on family and friends support as appropriate.

e. Enforcement of the guarantee

82. The Working Group agreed to delete paragraph 159 in light of the limited relevance of debt discharge under personal insolvency laws and the enforcement of personal guarantees. It was noted that the introductory paragraph to this subsection should simply state that in case of default the guarantor would be obliged to repay the debt, otherwise enforcement actions might be initiated against the guarantor.

83. The Working Group also agreed to include a general recommendation at the end of this subsection in order to encourage the enactment by States of legislative provisions based on the recommendations of the *UNCITRAL Legislative Guide on Insolvency Law for Micro- and Small Enterprises* (2021).

2. Section B: A legislative framework supportive of equity tools to enhance MSME access to credit

84. After recalling its previous deliberation (see para. 52 above) to move this section at the beginning of chapter IV, the Working Group agreed to add two recommendations to encourage the enactment by States of legislative provisions based on the *UNCITRAL Legislative Guide on Key Principles of a Business Registry* (2018) and the *UNCITRAL Legislative Guide on Limited Liability Enterprises* (2021).

85. The Working Group also agreed to the following revisions:

- Reorganizing this section to merge the discussion on business formation and business registration (para. 163 and paras. 167 to 171) and to address business operation separately (paras. 164 to 166);
- Deleting references to attracting equity investors in light of the Working Group's decision to delete the section on equity tools (chapter III);
- Highlighting those aspects of limited liability enterprises that would facilitate access to credit (e.g. corporate structure, participation in the management etc.);
- Removing the reference to microcredit in paragraph 163 as it seemed to suggest that microcredit was a form of access to credit for MSMEs operating in the informal sector;
- Clarifying in paragraph 165 the phrase "to grant legal personality to MSMEs"; and
- Streamlining this section to avoid repetition.

3. Section C: Other measures to enhance MSME access to credit

Credit guarantee schemes

86. With regard to the introductory paragraphs of this subsection, there was support for paragraph 173 to address both the benefits and drawbacks of credit guarantee schemes. A concern was expressed that the phrase "overcome the problem of information asymmetry" in paragraph 174 seemed to suggest that financial institutions participating in credit guarantee schemes did not have to carry out due diligence, which contradicted the statement in the second sentence of paragraph 177 that public credit guarantee schemes may disincentivize financial institutions to carry out due diligence.

87. A comment was heard that in order to support MSMEs, participation in credit guarantee schemes should not be conditioned upon the provision of collateral. The Working Group was cautioned against addressing this issue in the draft Guide without mentioning associated risks given that it involved policy considerations with fiscal implications for States.

88. The importance of public credit guarantee schemes in low income economies was highlighted. It was said that in those economies public credit guarantee schemes did not create any market distortion since market-based lending was not fully developed yet.

89. Lastly, one delegation provided the example of a financing mechanism for MSMEs different from credit guarantee schemes, which would pool financial resources and allocate them to small businesses (mainly in agriculture).

Measures to facilitate the assessment of MSMEs' creditworthiness

90. The Working Group agreed to include a recommendation inviting States to consider addressing commercial credit reporting in their laws without prescribing how such issue could be addressed.

91. Support was expressed for expanding paragraph 212 concerning access to credit reporting services given its importance. It was noted that MSMEs should be allowed to access information about themselves and to request correction of errors.

92. Concerns were expressed that subsection (b) on public agencies' records as a complementary source of relevant information was not drafted in a balanced way and did not adequately consider issues of sensitive information, privacy and breach of confidentiality. The secretariat was thus requested to revise the subsection taking into consideration the nature of the information maintained by public agencies and deleting embedded recommendations (for example the last sentence in para. 218).

93. The Working Group also agreed to the following revisions:

- Clarifying in the third sentence of paragraph 204 that assessing the creditworthiness of large enterprises is less difficult than for MSMEs; and
- Revising the last sentence of paragraph 217 on security rights registries, since those registries do not provide evidence of the existence of a security right.

Restructuring support for MSMEs in financial distress

94. The Working Group agreed to shorten and streamline the section in order to avoid duplication with other parts of the draft Guide and to add a general recommendation encouraging the enactment of legislative provisions based on the recommendations of the *UNCITRAL Legislative Guide on Insolvency Law for Micro- and Small Enterprises*.

Procedures and mechanisms for resolving disputes on access to credit

95. There was general support for a soft recommendation to facilitate the use of alternative dispute resolution to resolve disputes concerning credit arrangements. Reference was made to recommendation 32 of the *UNCITRAL Legislative Guide on Limited Liability Enterprises*, which provided that the law should facilitate the submission to alternative dispute resolution mechanisms of any dispute concerning the governance and operation of the limited liability enterprises. Views were expressed against including any specific recommendation to promote the use of a particular type of dispute resolution mechanism, noting the risks of mandatory arbitration clauses and the potential high cost of arbitration in certain circumstances. The importance of the parties' freedom to choose their preferred dispute resolution mechanism was highlighted. It was also emphasized that the use of alternative dispute resolution should not be mandatory and should not interfere with the parties' right to access the judiciary. There was some support for making reference in the commentary to national examples where recourse to alternative dispute mechanisms is a precondition to access the judiciary. Views were expressed against recommending the establishment of a public body to offer dispute resolution services to MSMEs at low cost, noting the fiscal implication of such policy issues.

96. After discussion, the Working Group agreed to include a soft recommendation along the lines of recommendation 32 of the *UNCITRAL Legislative Guide on Limited Liability Enterprises*, and to reflect the examples of relevant national redress mechanisms in the related commentary.

97. The Working Group also heard the following suggested revisions:

- Changing the title of this subsection to "dispute resolution mechanisms" on the ground that the scope of disputes would be broader than access to credit;
- Revising paragraph 228 to ensure a balanced description of judicial and extrajudicial enforcement (see the Guide to Enactment of the MLST);

Deleting the reference to “control borrower risk” in paragraph 228;

- Clarifying in paragraph 231 that for low value disputes arbitration may be more time- or cost-efficient than a court procedure but should not be mandatory;
- Emphasizing in paragraph 232 that mediation was a consensual process that did not necessarily lead to a binding decision;
- Revising paragraphs 237 and 238 to indicate that in some countries restrictions on the right to appeal against decisions of external redress mechanisms may be unconstitutional;
- Clarifying that redress mechanisms (including internal redress mechanisms) should be regulated by the government to ensure their legitimacy; and
- Suggesting that the parties may consider conciliation as a first step before resorting to arbitration.

Transparency

98. The Working Group agreed to the following revisions:

- Streamlining the language in the overall subsection;
- Moving the discussion on “contract formation” (para. 257) before “unfair contract terms” (para. 252 ff); and
- Deleting the first sentence of paragraph 259.

99. There was also agreement to add a general recommendation in the subsection along the lines of the penultimate sentence of paragraph 248.

Measures to tackle low financial literacy of MSEs

100. The Working Group agreed to add a general recommendation stating that the legal measures discussed in the draft Guide could be further enhanced by relevant initiatives that States could adopt in order to improve financial literacy.

101. The Working Group also agreed to the following revisions in this section:

- Revising the main heading along the lines of “*Enhancing financial literacy*” since the section not only referred to building the capacity of MSMEs;
- Including additional examples of government programmes or public-private partnerships to build MSMEs’ financial and operational capacities as they were key to improving MSMEs’ ability to obtain affordable credit; and
- Revising the 4th sentence of para. 262 to highlight that financiers would benefit from training on how legal reforms could facilitate the efficiency of credit transitions, such as secured transaction law reforms.

G. Enforcement

102. Support was expressed for the draft Guide to address the issue of enforcement in general and not limit the discussion to enforcement of security rights over movable assets. Support was also expressed for placing the discussion on enforcement in a new standalone section before the section on dispute resolution. It was, however, noted that the new section should emphasize the importance of efficient and fair enforcement processes but should not suggest that enforcement proceedings could be replaced by the use of alternative dispute resolution mechanisms.

103. A suggestion was made that the final text on this issue could take into consideration relevant work being carried out by UNIDROIT.

H. Structure of the draft Guide

104. The Working Group considered the structure of the next iteration of the draft Guide on the basis of a revised table of contents (see Annex) and agreed on the following:

- With regard to chapter II:
 - (a) Retaining the order in which the sources of financing were listed in the revised table of contents and clarifying at the beginning of the chapter that such order did not imply any ranking; and
 - (b) Organizing the discussion on FinTech tools under the heading of “Platform based lending” and placing it after “credit cards”. A view was expressed that a separate heading was not appropriate for FinTech tools and that the discussion of these tools could be listed under relevant headings in chapter II.
- With regard to chapter III, in addition to revising the heading of section B on low financial literacy of MSMEs (see para 101 above):
 - (a) Replacing the heading “*Collateral*” with “*Secured transactions*”; and
 - (b) Removing the sub-heading “possible areas for future improvement” and placing the discussion on the use of collateral (paras. 120 to 131) under the prior sections as appropriate.

105. Suggestions that the secretariat could revise existing subheadings (including shortening them) were also supported. It was noted that new headings may be added in accordance with the decision of the Working Group to move the discussion concerning legal solutions in chapter II to chapter III.

I. Title of the draft Guide and use of the term MSME(s)

106. The Working Group reiterated that the main focus of the draft Guide was on micro and small enterprises but agreed to continue using the term “micro, small and medium-sized enterprises” (or MSMEs) also for consistency with the two Legislative Guides it had previously prepared. The Working Group further agreed that the final title of the draft text would be: *Guide on access to credit for micro, small and medium-sized enterprises (MSMEs)*.

Annex¹

Revised table of contents²

- I. Introduction³
- II. Sources of financing available to MSMEs⁴
 - A. Family and friends support
 - B. Commercial credit
 - C. Credit cards
 - D. Financial lease
 - E. Receivable financing
 - F. Warehouse receipt financing
 - G. Letters of credit
 - H. Credit cooperatives
 - I. Microcredit
 - J. Public financial institutions
 - K. Islamic finance
- III. Measures to facilitate MSME access to credit
 - A. Legal framework to enhance MSME access to credit
 - 1. Business formation and registration
 - 2. Business operation
 - 3. Collateral
 - i. Movable assets
 - ii. Immovable assets
 - iii. Possible areas for future improvement
 - 4. Personal guarantees for MSE's loans
 - 5. Credit guarantee schemes
 - i. Public credit guarantee schemes
 - ii. Private guarantee schemes
 - iii. International schemes
 - 6. Measures to facilitate the assessment of MSMEs' creditworthiness
 - i. Credit reporting
 - ii. Public agencies records

¹ The table of contents is reproduced in the Annex in the same format (including footnotes) in which it was presented to the Working Group at its thirty-eighth session. It includes revisions arising from the deliberations of the Working Group at its thirty-eighth session and a proposal by Italy's delegation.

² Reorganization of chapters I–III is based on the deliberations of the Working Group at its thirty-eighth session. The revised structure of chapter IV is a proposal submitted by Italy's delegation.

³ Includes a description of MSMEs and their financing needs as contained in Chapter II of [A/CN.9/WG.I/WP.128](#).

⁴ The description of FinTech tools as contained in Chapter III, section D of [A/CN.9/WG.I/WP.128](#) will be moved to the discussion of tools listed under this chapter where relevant.

- iii. Alternative data
 - 7. Restructuring support for MSMEs in financial distress
 - 8. Procedures and mechanisms for resolving disputes on access to credit
 - i. Internal complaint handling procedures
 - ii. External redress mechanisms
 - iii. Accessibility, effectiveness, fairness, transparency and accountability
 - 9. Transparency
 - B. Other measures to enhance MSME access to credit
 - 1. Financial literacy (current paras. 261 and 262)
 - 2. Capacity-building for MSEs
 - 3. Capacity-building for financers
 - 4. Capacity-building for regulators
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