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Key principles of business registration

Note by the Secretariat

Addendum

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III. Implementation of a business registry

1. As already noted in several paragraphs, business registration can be implemented through many different organizational tools that vary according to jurisdiction. States embarking on a reform process to simplify registration will have to identify the most appropriate and efficient solutions to deliver the service, given the prevailing domestic conditions. Regardless of the approach chosen by the State, aspects such as the general legal and institutional framework affecting business registration, the legal foundation and accountability of the entities mandated to operate the system and the budget needed by such entities should be carefully taken into account. Evidence¹ shows that reform efforts rely to a different extent on a core set of tools, including: establishment of single interfaces for business start-up (better known as “one-stop shops”); the use of ICT; and ensuring interconnectivity between the different authorities involved in the registration process (with the possible adoption of a unique business identifier). Other important components include a domestic legal framework that is generally supportive of business registration, establishing appropriate pricing policies for the use of the registry and developing the capacity of registry operators. As outlined in paragraph 42 of A/CN.9/WG.I/WP.93, awareness-raising strategies to promote business registration will also play a key role in the implementation of an efficient registry.

A. A single interface for business registration and registration with other authorities: one-stop shops

2. As discussed above, a new business is usually required to register with several different government agencies, which often require the same information that has already been gathered by the business registry. Entrepreneurs must often personally visit each agency and fill out multiple forms. Taxation, justice, employment and social services agencies are usually involved in this process; other administrative offices and institutions, specific to each jurisdiction, may also be involved. This often results in multiple procedures governed by different applicable laws, duplication of information and lack of ownership or full control of the process by the agencies involved. Possibly worst for MSMEs wishing to register, the overall process can require weeks, if not months.²

3. Establishment of “one-stop shops” have thus become one of the most popular reforms to streamline business registration in recent years. One-stop shops are single interfaces where entrepreneurs receive all of the information and forms they need in order to complete the necessary procedures to establish their business rather than having to visit several different government agencies. Some States have several one-stop shops throughout their territory.

4. Beyond this general definition, the scope of the one-stop shops can vary according to the services offered. Some one-stop shops only provide business registration services, which may still be an improvement if the registration process

¹ See J. Olaisen, *Business Registration Reform Case Studies, Malaysia, 2009*, page 3.

² See World Bank Group, Small and Medium Enterprise Department, *Reforming Business Registration Regulatory Procedures at the National Level, A Reform Toolkit for Project Teams, 2006*, page 30.

previously involved a number of separate visits to the relevant authorities; others carry out other functions related to business start-up.³ The most common of these other functions is tax registration, although there are also examples of one-stop shops dealing with registration for social security and statistical purposes. In rare cases,⁴ one-stop shops assist entrepreneurs not only with business licences and permits but also with investment, privatization procedures, tourism-related issues and State-owned property management.

5. One-stop shops can be virtual or physical offices. Physical premises, when in rural areas, are particularly appropriate for businesses with limited access to municipal centres. Of course, online business registration can also be offered as one option available for registering, the other being visiting the one-stop shop (or the registration office). Online one-stop shops take advantage of solutions supported by ICT, which allows for rapid completion of several formalities due to the use of dedicated software. Such online portals may provide a fully integrated facility or still require separate registration in respect of some requirements, for example taxation services.⁵

1. Different approaches to establish a one-stop shop

6. When establishing one-stop shops, in particular those performing functions in addition to business registration, States can choose among different approaches. In the “one door” approach, representatives of different government agencies involved in registration are brought together in one physical place, but the applicant must deal separately with each representative (for example, the commercial registry official dealing with the approval of the business name, the clerks checking the documents, the taxation official, and the notary public), although the different agencies liaise among themselves.⁶ As may be apparent, this solution is relatively uncomplicated and would normally not require any change in legislation or ministerial responsibilities, but it would involve establishing effective cooperation between the different government ministries. One issue States should consider when opting for this approach would be how much authority the representatives of each agency should have; for example, should they have the discretion to process the registration forms on site or would they simply be acting on behalf of their agencies and be required to take the documents to their home agencies for further processing?⁷ Similarly, it is also important to consider clarifying the lines of accountability of the various representatives from the different agencies to the one-stop shop administrator.⁸

7. Another form of one-stop shop is the so-called “one window” or “one table” version, which offers a higher level of integration of the different agencies involved in the start-up of a business.⁹ In this case, the one-stop shop combines the process

³ Investment Climate (World Bank Group), *How Many Stops in a One-Stop Shop? A Review of Recent Developments in Business Registration*, 2009, pages 1 ff.

⁴ See Georgia, in World Bank and International Finance Corporation, *Doing Business 2011*, page 21; see also A/CN.9/WG.I/WP.85, para. 38.

⁵ See *supra* footnote 3, page 4.

⁶ *Ibid.*, page 3.

⁷ *Ibid.*, page 2 and see A/CN.9/WG.I/WP.85, para. 42.

⁸ See A/CN.9/WG.I/WP.85, para. 42.

⁹ See *supra* footnote 3, page 3.

for obtaining business and other registrations, such as for taxation and social services, with other arrangements, like publishing the registration in a National Gazette or newspapers, when required. All relevant documents are submitted to the one-stop shop administrator who is authorized, and properly trained, to accept them on behalf of the various government agencies involved. Documents are then dispatched, electronically or by hand or courier, to the competent agency for processing. This type of one-stop shop requires detailed coordination between the different government agencies, which must modify their procedures to ensure an effective flow of information. A memorandum of understanding between the key agencies involved may be needed in order to establish the terms in respect of the sharing of company information.¹⁰ In some cases, taking such an approach may also require a change in legislation.¹¹

8. A third approach, which is less common, is based upon the establishment of a separate entity to coordinate the business registration function and to deal with other requirements that the entrepreneurs must meet, such as making tax declarations, obtaining the requisite licences, and registering with social security authorities. Pursuant to this model, the entrepreneur would apply to the coordinating entity after having registered with the business registry in order to fulfil the various additional aspects of the procedures necessary prior to commencing business. Although this approach results in adding a step, it could be useful to some States since it avoids having to restructure the bodies with the main responsibility for business registration. On the other hand, the adoption of such a structure could involve an increase in the cost of the administrative functions and may only reduce timeframes to the extent that it allows the various functions to take place successively or enables participants in the one-stop shop to network with the other agencies to speed up their operations. From the registrant's perspective, however, the advantage of being able to deal with a single organization remains.¹²

9. Finally, in States with developed ICT infrastructures, the functions of the agencies concerned with registration could be fully integrated through the use of a common database, which is operated by one of the agencies involved and provides simultaneous registration for various purposes, i.e. business registration, taxation, social services, etc. In some jurisdictions, a public agency (such as the tax administration) is responsible for the registration of business entities, or ad hoc entities have been set up to perform such simultaneous registration.¹³

2. Authority overseeing the one-stop shop

10. One issue that States should consider when establishing a one-stop shop is its location. It is usually advisable for the one-stop shop to be directly connected to the business registry office, either because it is hosted there or because the registry is part of the one-stop shop. The organization(s) responsible for the one-stop shop could thus be the same as that/those which oversee(s) the business registration process. This approach should take into account whether such organizations are

¹⁰ See World Bank Group, Small and Medium Enterprise Department, *Reforming Business Registration Regulatory Procedures at the National Level, A Reform Toolkit for Project Teams*, 2006, page 31.

¹¹ See *supra* footnote 3, page 3.

¹² See Benin and France, *ibid.*, page 4.

¹³ See the Albania's National Registration Center, *ibid.*

equipped to administer the one-stop shop. Examples from various jurisdictions indicate that where authorities such as executive agencies are responsible for business registration, they possess the skills to perform one-stop shop functions as well. The same can be said of chambers of commerce, government commissions, and regulatory authorities.¹⁴ There are very few examples of courts that have adopted a one-stop shop approach in those States where business registration is court-based.

3. Requirements of one-stop shops

11. Although one-stop shops do not necessarily require changes in the domestic legal framework, as seen in the paragraphs above, it is important for the operation of such mechanisms to be legally valid, which may involve adapting existing laws to the new structure and method of proceeding. The extent of the changes will thus vary according to the different needs of States. In addition, one-stop shops should be given a sufficient budget, since they can be quite expensive to establish and maintain, they should be staffed with well-trained personnel, and they should have their performance regularly monitored by the supervising authority in accordance with client feedback.

B. Use of information and communications technology (ICT)

1. Introducing an ICT supported business registry

12. As seen in paragraphs 47 to 55 of A/CN.9/WG.I/WP.93, an important aspect of streamlining a business registration system is deciding upon the form in which the system will operate, i.e. whether it should be supported by paper or by modern technology. Referring to available evidence, this Working Paper has expressed the view in several paragraphs that, whenever the state of domestic technology permits, ICT solutions should be used to operate the business registration system since they present the most efficient and effective means of performing registration functions.

13. Subject to the level of development of the implementing State, introducing ICT supported business registration, can be expensive and difficult, since it may require reforming legislation to allow for electronic signature or information security laws, and/or establishing complex e-government platforms or other ICT infrastructures. For instance, in several developing States and mid-level economies, only information about registering a business is available online, while a functioning electronic registry has not yet been implemented. This could be explained by the fact that making information electronically available is less expensive and less difficult to achieve than is the establishment of an electronic registry, nor does it require any legislative reform or specialized ICT.

14. In locations where Internet penetration is not extensive, a phased in approach may be an appropriate way forward.¹⁵ Automation would start with the use of

¹⁴ Ibid., page 7.

¹⁵ The technical assistance experience of international organizations, in particular of the World Bank, has provided most of the background material upon which this section and the following one are based. See, in particular, Investment Climate (World Bank Group), *Reforming Business Registration: A Toolkit for the practitioners*, 2013, pages 12 ff.

simple databases and workflow applications for basic operations, such as name searches or the sharing of information with other government agencies, and then would progress to more sophisticated web-based systems that would enable customers to conduct business with the registry entirely online. These web-based systems could be quite convenient for smaller businesses operating at a distance from the registry, provided that those entrepreneurs were able to access the system. The final phase of the approach would be to accommodate ICT interoperability between those agencies involved in business registration.

15. The methods used to establish the online system should be consistent with the reforms required as they would determine the success or the failure of the initiative. Moving directly to a full online solution before reengineering registry business processes would be a mistake in many cases, as the solutions designed would not be able to capture the technology's full benefits.¹⁶

16. The simplest approach for States beginning their activity in this area would be to develop a content-rich website that consolidates registration information, provides downloadable forms, and enables users to submit feedback. This simple resource would allow users to obtain information and forms in one place and would make registries more efficient by enabling users to submit e-mail inquiries before going to registry offices with the completed forms.¹⁷ Since this solution does not require a stable Internet connection, it may appeal to States with limited Internet access.

17. If only limited Internet bandwidth is available, then automatizing front-counter and back-office operations prior to moving online would be a suitable approach. If the registry has branches outside its main location (for instance, in rural areas), it would be important to establish a dedicated Internet connection with them. This approach would still require entrepreneurs to visit the registry, but at least it would establish a foundation on which the registry could later develop a more sophisticated web platform. A key factor even at this basic stage, would be for the system to be able to digitize historical records and capture key information, such as the names of shareholders and directors, in the registry database.¹⁸

18. Once the government capacity in ICT and Internet penetration allows for digital commerce, then platforms that enable businesses to apply and pay for registration online as well as to file annual accounts and update registration details as operations change can be developed. With regard to online payment of a registration fee, it should be noted that ICT supported solutions would depend on a State's available modes of payment and on the regulatory framework that establishes the modes of payment a public authority can accept. When the jurisdiction has enacted laws that allow for online payment, experience shows that the most efficient option is to combine the filing of the electronic application and the fee payment into one step. ICT systems incorporating this facility should include error checks, so that applications are not submitted before payments are completed and registry officials can see payment information along with the application.¹⁹

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ See Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, page 13.

When fee payment is required before registration, this constitutes a separate procedural step and the use of ICT solutions in order to be user-friendly would require streamlining the procedures for filing the applications and for payment.

19. When a State has developed the ICT infrastructure to achieve full registry automation, integration of online registration processes with registration required for taxation, social security and other purposes could be considered. Even if no integration with other registrations is built into the system, it would nevertheless be advisable that States implement data interchange capabilities so that the relevant company information could be shared across government agencies. A final improvement would be the development of mechanisms for disseminating business information products to all interested parties. Such products could substantially contribute to the financial sustainability of the registry (see para. 76 below): in States with highly developed online registration systems, registries can derive up to 40 per cent of their operating revenues by selling such information.²⁰

20. One issue that would likely arise when the online registry is able to offer full-fledged services would be whether to abolish any paper-based submission or to maintain both paper-based and online registration. In many jurisdictions, registries choose to have mixed solutions with a combination of electronic and paper documents or electronic and manual processing during case handling (see also paras. 47 to 55 A/CN.9/WG.I/WP.93). This approach may result in considerable cost for registries, since the two systems require different tools and procedures. Moreover, if this option is chosen, it is important to establish rules to determine the time of registration as between paper-based and electronic submissions. Finally, paper applications must be processed in any case, so that the information included in a hard document can be transformed into data that can be processed electronically; this can be done by way of scanning the paper-based application. However, in order to ensure that the record made by scanning correctly represents the paper application, the registry will likely have to employ staff to check that record, thus adding a step that increases costs and reduces the benefits of using an online system.²¹

2. Other registration-related services supported by ICT solutions

21. Automation should enable the registry to perform other functions in addition to the processing of applications. Where jurisdictions require user-friendly electronic filing and repopulated forms,²² for instance, it can assist businesses in the mandatory filing of annual returns and/or annual accounts. Electronic filing and automated checks also help reduce processing time by the registry.²³

22. ICT supported registration could also assist the registry in deregistration procedures. These usually require an official announcement that a business will

²⁰ See supra footnote 15, page 13.

²¹ See supra footnote 19, page 13. See also A/CN.9/WG.I/WP.93/Add.1, para. 14.

²² Repopulated forms allow for selected fields to be automatically filled based on information previously provided by the registrant or maintained in their user account. When changes in the registrant's information occur, the registrant is not required to fill out the entire form again, but only to enter the relevant changes. Information included in the repopulated form is stored and may be made accessible to and exchangeable with other relevant agencies.

²³ See supra footnote 19, page 15.

be deregistered (see para. 22 of A/CN.9/WG.I/WP.93 and para. 20 of A/CN.9/WG.I/WP.93/Add.1). ICT can provide for automation of such announcements, from initiating the process to producing a standard notice, thus helping registries to ensure that businesses are not deregistered before the creditors' time limit has elapsed and to reduce processing time. In order to be fully effective, however, adoption of an ICT-based system needs to be supported by streamlined procedures that enable businesses to deregister in a simplified and quick way.²⁴

23. ICT solutions could also support follow-up and enforcement procedures of business registries when businesses fail to comply with registration requirements. In one jurisdiction, for instance, the back-office system of the registry monitors the records of businesses and detects whether certain circumstances suggest that the business is not in compliance with statutory requirements. An automatic notice to the business is then produced in order for it to remedy the situation. Should the business fail to do so within the statutory deadline, the ICT solution starts a new procedure to forward the case to the district court, which may make a decision on the compulsory liquidation of the business. Upon an order for compulsory liquidation, the court notifies the registry which deregisters the business.²⁵

3. The legislative framework supporting ICT-based registries

24. Establishing an ICT supported registration system requires a well-designed legal and regulatory framework that supports simplicity and flexibility and avoids, to the greatest extent possible, discretionary power and exception-making. For instance, provisions requiring the interpretation of several documents and the collection of several pieces of information are difficult to adapt to electronic processing; the same applies to the use of discretionary power and complex structures of rules and exceptions.

25. States should adopt legislation that facilitates the implementation of electronic solutions, although the obligation to use these solutions should be considered only when the various stakeholders concerned with the registration process (including the registrant, government agencies, and other relevant authorities) are prepared to comply. Furthermore, when developing such legislation, States should take into account that while certain elements of a legal framework can be checked electronically, the most complex aspects of the process will need to be addressed by a registry official. For instance, the electronic system may check plain numbers (for example, if the stated share capital meets any minimum requirement), while the registry official will have to check if the share capital recorded accords with that in the documentation.²⁶

26. Since information technology is a field marked by rapid technological evolution, it would be advisable to establish guiding legal principles in the primary legislation, leaving secondary legislation to stipulate the specific provisions regulating the detailed functioning and the requirements of the system (see para. 59 below).²⁷ Once the registration process is fully automated, States should establish provisions (preferably in the secondary legislation) or policies that discipline

²⁴ Ibid., page 16.

²⁵ See Norway, *supra* footnote 19, page 16.

²⁶ Ibid., pages 13-14.

²⁷ Ibid., page 7.

government-to-government data exchange in order to avoid any lack of cooperation among different agencies.

(a) Electronic documents and electronic signatures

27. Entering information into an ICT supported registry is a business-to-government transaction that should be subject to the same treatment, under domestic legislation, as any other electronic transaction.²⁸ Therefore, if an appropriate domestic legislative framework for electronic transactions is not in place, a preliminary step for a reform aimed at supporting electronic business registration would be to recognize and regulate the use of such electronic transactions. Among other things, States should adopt laws permitting electronic signatures and the submission of electronic documents (see also para. 32 below).²⁹ In some States, for instance, the use of an advanced electronic signature is mandatory when transmitting information to a business registry. When laws on electronic communications are enacted, they should establish, at minimum, principles of non-discrimination, technological neutrality and functional equivalence allowing for equal treatment of paper-based and electronic information. The principle of non-discrimination ensures that a document would not be denied legal effect, validity or enforceability solely on the grounds that it is in electronic form. The principle of technological neutrality mandates the adoption of provisions that are neutral with respect to the technology used. The principle of functional equivalence lays out criteria under which electronic communications and electronic signatures may be considered equivalent to paper-based communications and hand-written signatures.

28. Further, it would be advisable that the laws include provisions to mitigate the risks that the use of ICT can carry with it and that can affect the validity, and in certain jurisdictions the legal validity, of the information transmitted through the electronic means. The most common risks include: confirming the identity of the entrepreneur filing for registration (referred to as “authentication”); preventing conscious or unconscious alteration of information during transmission (referred to as “integrity”); ensuring that sending and receiving parties cannot deny having sent or received the transferred message (referred to as “non-repudiation”) and preventing disclosure of information to unauthorized individuals or systems (referred to as “confidentiality”).³⁰ In those States where the law does not require business registries to check the veracity of the information submitted during the registration process, these risks may be more problematic as it can be relatively easy to manipulate registration systems and filing processes.

29. Verifying the identity of the registrant and ensuring the integrity of the application and the attached documents are key elements to ensure trust in ICT supported registration systems and their corresponding use. Consequently, States should carefully consider the requirements that electronic signatures and electronic

²⁸ See A. Lewin, L. Klapper, B. Lanvin, D. Satola, S. Sirtaine, R. Symonds, Implementing Electronic Business Registry (e-BR) Services, Recommendations for policy makers based on the experience of EU Accession Countries, 2007, page 47.

²⁹ UNCITRAL has adopted several texts dealing with electronic commerce. Those texts and relevant information on them can be found on the UNCITRAL website at: www.uncitral.org.

³⁰ See supra footnote 19, page 12.

documents should have in order to minimize any risks of corporate identity theft³¹ and invalid information (see also para. 78 of A/CN.9/WG.I/WP.93/Add.1).

30. Whether or not the adoption of legislation on electronic signatures is premature due to the technological infrastructure of the State, various other techniques can prevent corporate identity theft and ensure security. The experience of several States has laid the groundwork for practices that may be replicated in other regions. Simple methods include the use of appropriate user names and passwords; electronic certificates; biometric verification (for example, fingerprints); monitoring systems and/or e-mail systems that notify registered users about changes or whenever documents are filed on their business record; and the implementation or increase of penalties for false and/or misleading information submitted to the commercial registries. An approach followed in some jurisdictions is to require the identity of the person registering the business to be checked by a notary public or by another designated authority. Where this is not possible, entrepreneurs may be required to visit the registry office in order for their identity to be verified. Another approach, employed in other jurisdictions, allows only those individuals expressly identified in the law to submit an application for entry into the register or to change an entry in the register. This application must then be legalized by a public notary or another designated authority (if submitted in paper form). However, recourse to a notary or other intermediary or personal visits to the registry office may present expensive and time-consuming barriers for businesses wishing to register, in particular for MSMEs. Therefore, in order to facilitate MSME registration, States may wish to opt for the adoption of simpler ways to ensure the authentication of business entrepreneurs, such as the use of appropriate user names and passwords. This could be particularly appropriate in the case of micro-businesses or in cases where MSMEs intend to register but choose a simplified business form.

(b) Dispatch and receipt of electronic messages³²

31. Another issue to consider when implementing a business registry through the use of ICT solutions is that electronic registries may make it difficult to ascertain the time and place of dispatch and receipt of information. This is an aspect that may acquire relevance due to the time sensitivity of certain submissions, such as establishing the exact time and place at which a business has been registered. For this reason, it would be key to have clear rules that define the time of “dispatch” and “receipt” of electronic messages. If such rules are not clearly defined in a State legislative framework, or if they are not defined with the specificity required for the purposes of time-sensitive registration applications, then ad hoc laws addressing the issue of dispatch and receipt may be required.

³¹ Corporate identity theft can occur through the theft or misuse of key business identifiers and credentials, manipulation or falsification of business filings and records, and other related criminal activities. Despite the use of the term “corporate”, corporations are not the only business entities that are victimized by this crime. Any type of business or organization of any size or legal structure, including sole proprietorships, partnerships and limited liability companies can be targets of business identity theft.

³² See supra footnote 28, page 48.

(c) UNCITRAL Model Laws

32. States that enact legal regimes on electronic communications and electronic signatures may wish to consider the UNCITRAL Model Law on Electronic Commerce and the UNCITRAL Model Law on Electronic Signatures.³³ These two legislative texts establish those principles of reliability, noted above, that are needed to ensure equal treatment between paper-based and electronic communications and deal extensively with provisions covering the issues of legal validity of electronic documents and signatures, authentication, and the time and place of dispatch and receipt of electronic messages. Because of the way these Model Laws, as well as all other UNCITRAL legislative texts, are negotiated and adopted, they offer solutions appropriate to different legal traditions and to States at different stages of economic development. Furthermore, domestic legislation based on the UNCITRAL Model Laws will greatly facilitate cross-border recognition of electronic documents and signatures.

(d) Operating the ICT supported registry

33. When establishing an ICT supported registry, States will have to consider issues concerning the treatment of personal data that is included in the application for registration (on this matter, see also para. 8 of A/CN.9/WG.I/WP.93/Add.1 and para. 52 below) and its protection, storage and use. Appropriate legislation should be in place to ensure that data is protected. In the European Union, for instance, several Directives apply when data concerning individuals (for instance, information on officers or directors) is included in the application.

34. Another aspect that may warrant consideration by States is that of natural hazards or other accidents that can affect the processing, collection, transfer and protection of the data housed in the electronic registry and under the responsibility of the registry office. Given the expectations of the users of the reliable functioning of the registry, the registry office will want to ensure that any interruptions in operations are brief, infrequent and minimally detrimental to users, as well as to States.³⁴ For this reason, States should devise appropriate measures to facilitate protection of the ICT-based registry.

(e) Possible threats to ICT supported registries

35. The threats that can affect an ICT supported registry are not only confined to disruptions relating to the daily operation of the registry, but also include criminal activities that may be committed through the use of ICT. Providing effective enforcement remedies would thus be an important part of a legislative framework aimed at supporting the use of electronic solutions for business registration. Typical issues that should be addressed by States would include unauthorized access or interference with the electronic registry; unauthorized interception of or interference with data; misuse of devices; fraud and forgery.³⁵

³³ See www.uncitral.org.

³⁴ See *supra* footnote 19, page 49.

³⁵ *Ibid.*

(f) E-payment legislation

36. As seen in paragraphs 51 of A/CN.9/WG.I/WP.93 and 18 above, once States have reached a certain level of technological maturity, they could consider developing electronic platforms that enable businesses to pay online when filing their application with the registry. This will require enacting appropriate legislation concerning e-payments in order to enable the registry to accept online payments. By way of example, such laws should address issues like who should be allowed to provide the service and under which conditions; access to online payment systems; liability of the institution providing the service; customer liability and error resolution. Furthermore, such laws should be consistent with the general policy of the country on financial services.

4. Cost and security considerations

37. When establishing an electronic registration system, the level of security needed and its relevant cost must also be carefully addressed. In particular, it is important to align the risk attached to a specific interaction (between the registry and the business or the registry and other public agencies) with the costs and administration required to make that interaction secure. Low security may deter parties from using electronic services (unless it is mandatory), but costly high security measures could have the same effect.³⁶

C. Interoperability between the business registry and other government authorities and use of the unique identifier

38. As noted in paragraph 2 above, businesses are usually required to register with several government agencies (for example, for taxation, social services and pension purposes) which often entails providing the same information as that collected by the business registry. In jurisdictions where these agencies operate in isolation from each other, it is not unusual for this procedure to result in duplication of systems, processes and efforts, which is not only expensive but may also cause errors. Moreover, if agencies assign registration numbers to the businesses they register, and the use and uniqueness of those numbers is restricted to the authority assigning them, information exchange among the agencies requires each authority to map the different identification numbers applied by the other agencies. Even when electronic solutions are used, they can facilitate such mapping, but they cannot exclude the possibility that different entities will have the same identifier, thus reducing the benefits (in terms of cost and usefulness) obtained from the use of such tools.³⁷

39. In recent years, several jurisdictions have thus adopted integrated registration systems in which the application submitted for business registration includes all of the information required by the different agencies. Once completed, the information in the application for business registration is transmitted by the registry to all relevant authorities. Information and any necessary approvals from the other agencies are then communicated back to the registry, which immediately forwards the information and approvals to the entrepreneur.³⁸ While this is beneficial for all

³⁶ Ibid., page 12.

³⁷ Ibid., page 22.

³⁸ See supra footnote 15, page 9.

businesses, regardless of their size, it is particularly valuable for MSMEs, which may not have the resources necessary to cope with the compliance requirements of multiple government authorities in order to establish their business.

40. States aiming at fostering such integration among different agencies may wish to consider that in recent years some international organizations have developed tools that facilitate inter-agency cooperation. For instance, one international organization has developed an online system that allows for the interoperability of the various public agencies involved in business registration with minimal or no changes at all in the internal processes of the participating agencies nor in their computer systems.³⁹

41. Some developed States have introduced a more sophisticated approach, which considerably improves information exchange throughout the life cycle of a business. This approach requires the use of a single unique business identification number or unique identifier, which ties information to a given business and allows for information in respect of it to be shared among different public and private agencies.

42. A unique identifier is structured as a set of characters (they may be numeric or alphanumeric) which distinguishes registered entities from each other; it is allocated only once (usually upon establishment) to a single business and does not change during the existence of that business. The same unique identifier is used for that business by all agencies, which permits information about that particular registered entity to be shared within or between the public and private sectors.⁴⁰

43. The experience of States that have adopted unique identifiers has demonstrated their usefulness. As noted above, they permit all government agencies to easily identify new and existing companies and cross-check information in respect of them. In addition, the use of unique identifiers improves the quality of the information contained in the business registry, since the identifiers ensure that information is linked to the correct entity even if its identifying attributes (for example name, address, and type of business) change. Moreover, unique identifiers prevent the situation where, intentionally or unintentionally, businesses are assigned the same identification; this can be especially important where financial benefits are granted to legal entities or where liability to third parties is concerned.⁴¹ Unique identifiers have been found to produce benefits for businesses as well, in that they considerably simplify business administration procedures: entrepreneurs do not have to manage different identifiers from different authorities, nor are they required to provide the same or similar information to different authorities.

44. The effective use of unique identifiers is enhanced by the adoption of full electronic solutions which do not require manual intervention. However, electronic

³⁹ The United Nations Conference on Trade and Development Business Facilitation Programme provides for an online tool designed to computerize simple or complex administrative procedures (eRegistration) and that can handle simultaneous operations involving multiple agencies (such as the business registry, tax office, and social services) thus promoting interoperability among these different agencies. See <http://businessfacilitation.org/> and A/CN.9/WG.I/WP.81, para. 40.

⁴⁰ See *supra* footnote 19, page 20.

⁴¹ *Ibid.*, page 22.

solutions are not a mandatory prerequisite to introducing unique identifiers, as they can also be effective in a paper-based environment.⁴² When unique identifiers are connected to an online registration system, it is important that the solution adopted fits the existing technology infrastructure.

1. Prerequisites

45. The use of unique identifiers requires sustained cooperation and coordination among the authorities involved, and a clear definition of their roles and responsibilities, as well as trust and collaboration between the public and business sectors. Since the introduction of a unique identifier does not of itself prevent government agencies from asking a business for information that has already been collected by other agencies, States should ensure that any reform process in this respect start with a clear and common understanding of the reform objectives among all the stakeholders involved. Moreover, States should ensure that a strong political commitment is in place. Potential partners should ideally include the business registry, the taxation authority, the statistics office, the social services agency, the pension fund, and any collateral registries. If agreement among these stakeholders is elusive, at a minimum, the business register and taxation authority should be involved. Information on the identifiers in use at the other authorities and within the business sector is also a prerequisite for reform, as is a comprehensive assessment to identify the needs of all stakeholders.

46. In order to permit the introduction of a unique identifier, the domestic legal framework should include provisions on a number of issues including:

(a) Identification of the authority charged with allocating the unique identifier;

(b) Allocation of the unique identifier before or immediately after registration with the authorities involved in business entry;

(c) Listing of the information that will be related to the identifier, including at least the name, address and type of business;

(d) The legal mandate of the public authorities to use the unique identifier and related information, as well as any restrictions on requesting information from businesses;

(e) Access to registered information by public authorities and the private sector;

(f) Communication of business registrations and amendments among the public authorities involved; and

(g) Communication of deregistration of closed businesses.⁴³

2. Introducing unique identifiers

47. Adoption of a unique business identifier normally requires a centralized database linking the businesses to all relevant government agencies whose information and communication systems must be interoperable. This requirement

⁴² Ibid.

⁴³ See supra footnote 15, page 32.

can be a major obstacle when implementing this in practice if the technological infrastructure of the State is not sufficiently advanced.

48. States can introduce the unique business identifier in one of two ways. In the first approach, business registration is the first step and includes the allocation of a unique identifier, which is made available (together with the identifying information) to the other authorities involved in the registration process (for instance taxation and social security authorities), and which is re-used by those authorities. In the second approach, the allocation of a unique business identifier represents the beginning of the process. The unique identifier and all relevant information are then made available to the government agencies involved in business registration, including the business registry, and is then re-used by all agencies.⁴⁴ Either of these two approaches can be followed by the authority entrusted with allocating unique business identifiers, regardless of whether the authority is the business register, a facility shared by public agencies or the taxation authority. It is important to note that in some States, the use of a unique identifier may be restricted: in some jurisdictions, certain government agencies still allocate their own identification number although the business carries a unique identifier.⁴⁵

49. Introducing a unique business identifier usually requires adaptation both by public authorities in processing and filing information and by businesses in communicating with public authorities or other businesses. A unique business identifier requires the conversion of existing identifiers; this can be accomplished in various ways. Taxation identifiers are often used as a starting point in designing a new identifier, since the records of the taxation authorities cover most types of businesses and are often the most current.⁴⁶ Examples also exist in which, rather than introducing a completely new number, the taxation number itself is retained as the enterprise's unique number. New identification numbers can also be created using other techniques according to a country's registration procedures. In such a situation, it is important that each business, once assigned the new number, verifies the related identifying information, such as name, address, and type of activity.⁴⁷

3. Unique identifiers and individual businesses

50. One issue a State may have to consider when introducing unique identifiers is that of individual businesses that do not possess a separate legal status from their owners. In such cases, taxation authorities may prefer to rely on the identifier for the individual, who may be a natural person, rather than on the business identifier.

51. Situations may arise in which different agencies in the same jurisdiction allocate identifiers to businesses based on the particular business form of the enterprise. In order to avoid a situation where several identifiers may be allocated to one business or where several businesses may be allocated the same identifier, a common regime should be established for the identification of all possible business forms in a particular jurisdiction.⁴⁸

⁴⁴ See *supra* footnote 19, page 20 and A/CN.9/WG.I/WP.85, paras. 34 ff.

⁴⁵ *Ibid.*

⁴⁶ See Belgium in A/CN.9/WG.I/WP.85, para. 35.

⁴⁷ See Norway, *ibid.*

⁴⁸ *Ibid.*, paras. 36 ff. and see *supra* footnote 19, page 21.

4. Information-sharing and data protection

52. While facilitating information-sharing, it is important that unique business identifiers protect sensitive data and privacy. National legislation often includes provisions on data protection and privacy and in some States, registered information related to businesses is considered private and is not publicly available. However, a major trend towards increased transparency in order to avoid misuse of corporate vehicles for illicit purposes (see also para. 75 of A/CN.9/WG.I/WP.93/Add.1) has resulted from international efforts to fight money-laundering and terrorist and other illicit activities, as well as from the adoption of policies to know your customers and business counterparts. Such an enhanced quest for transparency has an impact on the way the information retained in the registry is shared among the different authorities. When a State introduces interoperability among different authorities, it should address issues of individual privacy⁴⁹ so that no protected information about the business is made public, but that information that must be made public by the registry can legally be made public.⁵⁰

5. Interoperability

53. As discussed in paragraphs 47 to 49 above, the interoperability of the different agencies' ICT systems could be a major obstacle when implementing unique business identifiers. The ability of different information technology infrastructures to exchange and interpret data, however, is only one aspect of interoperability that States should consider. Another issue is that of semantic interoperability, which can also pose a serious threat to a successful exchange of information among the agencies involved as well as between relevant agencies and users in the private sector. For this reason, it is important to ensure that the precise meaning of the information exchanged is understood and preserved throughout the process and that semantic descriptions are available to all of the stakeholders involved. Measures to ensure interoperability would thus require State action on a dual level: i.e. agreement on common definitions and terminology on one hand, and development of appropriate technology standards and formats on the other. This approach should be based on a mutual understanding of the legal foundation, responsibilities and procedures among all those involved in the process.⁵¹

6. Integration of registration functions

54. In some jurisdictions, advanced interconnectivity among the different agencies involved in the registration process has resulted in a single form for registration with all agencies. As a result, businesses are required to submit only one form instead of several, and authorities need not ask repeatedly for the same information. Examples exist of consolidated (electronic) registration forms that can be repopulated⁵² with information from the different authorities concerned. Integration of registration functions can be facilitated by the use of one common database. In jurisdictions where this approach has been developed, agencies perform regular file transfers to update the database as well as their own records; they have direct access

⁴⁹ See A/CN.9/WG.I/WP.85, para. 37.

⁵⁰ See *supra* footnote 28, page 50.

⁵¹ See *supra* footnote 19, page 23.

⁵² See *supra* footnote 22.

to the common database and use the same back-office systems to update it; and the information registered is regularly verified by trusted staff of the agencies. Such strong coordination among the concerned agencies is often based on regulatory provisions that allocate roles and responsibilities among the various agencies involved. Appropriate funding should also be allocated from the State's budget.⁵³

7. Cross-border data exchange

55. Introducing unique business identifiers that enable different public authorities to exchange information about the business among themselves is relevant not only at the national level, but also in an international context. Unique identifiers allow interoperability among business registries located in different States as well as between business registries and public authorities in different States. Implementation of cross-border exchange of data can result in more reliable information for consumers and existing or potential business partners, including small businesses that provide cross-border services.

56. In the European Union (EU), for instance, EU-Directive 2012/17⁵⁴ requires Member States to ensure that companies have a unique identifier "to be unequivocally identified" in the new system of interconnected business registries that the Directive aims to establish.⁵⁵ This will facilitate exchanging information between the registry of a company and those of its branches in other Member States on the opening and termination of any winding-up or insolvency proceedings of the company and on the deregistration of the company from the registry. As a result, when a company has been dissolved or otherwise stricken from the registry, its foreign branches are likewise removed from the register without undue delay.

57. There are, at present, no other examples of similar initiatives in other regions of the world. However, the adoption of unique identifiers by non-EU States could lay the groundwork for future coordination in the regulatory community in order to create international standards for a global unique identifier.

58. Introducing unique identifiers does not only benefit businesses that have branches outside their State. It is also beneficial for local entrepreneurs since it enables those entrepreneurs to establish commercial relationships with multinationals or other foreign businesses that are active in the domestic markets where the local entrepreneurs operate. In a global economy, it is often difficult for a micro-entrepreneur to become a supplier or a customer of larger companies since it may not be easy for those companies to obtain information on the existence and the reliability (for instance, in terms of their financial situation) of the small businesses. A unique identifier, recognizable worldwide, would assist in creating a safe and reliable "connection" between a business and all of the information that relates to it, thus making it possible for the small business to obtain visibility in bigger markets.

⁵³ See Norway, *supra* footnote 19, page 23.

⁵⁴ See Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012.

⁵⁵ *Ibid.*, and see A/CN.9/WG.I/WP.85, para. 32.

D. Changes to underlying laws and regulations

59. Business registration reform can entail amending either primary legislation or secondary legislation or both. Primary legislation concerns texts such as laws and codes that must be passed by the legislative bodies of a State. Reforms that consider this type of legislation thus require the involvement of the legislature and, for this reason, can be quite time-consuming. Secondary legislation is that body of texts composed of regulations, directives and other similar acts made by the executive branch within the boundaries laid down by the legislature. Reform of secondary legislation does not need to be reviewed by the legislature and thus it can be carried out in a shorter time frame. Therefore, when domestic circumstances allow, it can thus be a more viable option than the reform of primary legislation.

60. In addition to legislation that is meant to govern the way business registration is carried out, States may need to update or change laws that affect the registration process in various ways, but which no longer respond to the needs of MSMEs. There is no single solution in this process that will work for all States, since the reforms will be influenced by the State's legislative framework. However, the reforms should aim at developing a domestic legal framework that supports business registration with features such as: transparency and accountability, clarity of the law and use of flexible legal entities.

61. Regardless of the approach chosen, i.e. whether to implement a reform through primary or secondary legislation, and the extent of the reform, changes in the domestic legal framework should carefully consider the potential costs and benefits of this process, as well as the capacity and the will of the government and the human resources available. An important preparatory step of a reform programme thus involves a thorough inventory of the laws that are relevant to business registration and a thorough legal analysis of them⁵⁶ with the view to evaluating the need for change, the possible solutions, and the prospects for effective reform. In some cases, this assessment could result in deferring any major legislative reform, if significant gains to the simplification process can be achieved by the introduction of operational tools⁵⁷ or, as mentioned above, by adopting or reforming secondary legislation. Once it has been decided what changes should be made and how, ensuring their implementation is equally important. In order to avoid the possible risk of unimplemented reforms, the government, the reform steering committee and the project teams should carefully monitor the application of the new legal regime. The following paragraphs offer some examples of approaches that can be taken to streamline domestic laws and regulations with a view to simplifying business registration and to making it more accessible to MSMEs.

1. Transparency and accountability

62. A legal framework that fosters a transparent and accountable registration system will have a number of advantages. It will allow registration to occur with a limited number of steps, and it will require limited interaction with authorities, permit short time limits, be inexpensive, result in registration of a long-term or

⁵⁶ See supra footnote 10, page 40.

⁵⁷ Ibid., page 74.

unlimited duration, apply countrywide and make registration very accessible for applicants.

63. Some of these objectives can be achieved by introducing short statutory time limits on business registration procedures and/or “silence is consent” rules, as seen in paragraph 39 of A/CN.9/WG.I/WP.93/Add.1. As a result of the “silence is consent” rules, when a business does not receive a decision on its registration application within a given time limit (established by law or regulation) it is considered to be duly registered.⁵⁸

64. Another approach that can be, and often is, used in association with the previous one, is the use of standard registration forms. Such forms can easily be filled out by businesses without the need to seek the assistance of an intermediary, thus reducing the cost and de facto contributing to the promotion of business registration among MSMEs. These forms also help prevent errors by the registries, thus speeding up the overall process. In some jurisdictions, the adoption of standardized documents has been instrumental in streamlining the registration requirements and disposing of unnecessary documents.⁵⁹

2. Clarity of the law

65. For jurisdictions wishing to facilitate business start-up, in particular of MSMEs, it is important to review the existing legal framework so as to identify possible impediments to the simplification of the registration process. The nature of the reform would very much depend on the status of the domestic legal framework and a variety of examples, based on States’ experiences, are available.

66. These reforms may include decisions by States to shift the focus of the law towards private companies (such as the simplified business entities being considered by the Working Group), as opposite to public limited companies, particularly if the former currently account for the majority of the firms in the State. Reforms could also include the decision to move the legal provisions pertaining to small companies to the beginning of any new company law in order to make them easier to find or to use simpler language in any updated company law.⁶⁰

67. One particularly relevant reform that would especially serve the purpose of clarity of the law would be a comprehensive review of the legal framework on business registration and a resulting unification of the various rules into a single piece of legislation. This could also allow for some flexibility to be built into the system, with the adoption of certain provisions as regulations or simply providing for the development of the necessary legal basis in order to introduce legal obligations by way of regulation at a later stage.⁶¹

⁵⁸ See A/CN.9/WG.I/WP.85, paras. 49 ff.

⁵⁹ The Working Group may wish to note in this regard its decision to prepare standard forms in respect of its work on a legislative text on simplified business entities (see A/CN.9/800, para. 63).

⁶⁰ See A/CN.9/WG.I/WP.85, para. 56.

⁶¹ See Investment Climate (World Bank Group), Business Registration Reform case study: Norway, 2011.

3. Flexible legal entities⁶²

68. As seen in paragraph 7 of A/CN.9/WG.I/WP.93/Add.1, evidence suggests that entrepreneurs tend to choose for their business the simplest legal form available when they decide to register and that States with rigid legal forms have an entry rate considerably lower than States with more flexible requirements. Jurisdictions should thus consider having simplified registration for sole proprietorships as well as introducing new types of business forms including limited liability vehicles, such as the simplified business entity, to meet MSME needs. For instance, in one State that has introduced a new legal form for business, the registration process for that new business type is much simpler. Entrepreneurs are not required to publish the articles of association (or other rules governing the operation or management of the business) in the Official Gazette; instead, these can be posted online through the Commercial Registry; and the involvement of a lawyer, notary or other intermediary is not obligatory for the preparation of documents or conducting a business name search.⁶³

69. Abolishing or reducing the minimum paid in capital requirement,⁶⁴ would also facilitate MSME registration, since micro- and small businesses may not have the funds to meet a minimum capital requirement, and if they do, they may be unwilling or unable to commit part, or all, of their capital in order to establish their business. Instead of relying on a minimum capital requirement to protect creditors and investors, States have implemented alternative approaches such as the inclusion of provisions on solvency safeguards in their legislation; conducting solvency tests; or preparing audit reports that show that the amount a company has invested is enough to cover the establishment costs.⁶⁵

70. Introducing new simplified forms of limited liability and other enterprises is often coupled with a considerable reduction or complete abolition of the minimum capital requirements that other legal forms of enterprise are required to deposit upon formation. In several States that have adopted simplified business entities, the minimum capital requirement has been abolished completely, and in other cases, initial registration or incorporation has been allowed upon deposit of a nominal amount of capital. In other States, progressive capitalization has been introduced, requiring the business to set aside a certain percentage of its annual profits until its reserves and the share capital jointly total a required amount.⁶⁶ In other cases, progressive capitalization is required only if the simplified limited liability enterprise intends to graduate into a full-fledged limited liability company, for

⁶² For this section the Working Group may wish to note its discussion in respect of a legislative text on a simplified business entity. As those materials develop, their content will be reflected in this section on flexible legal entities.

⁶³ See, for example, Greece in V. Saltane, J. Pan, *Getting Down to Business: Strengthening Economies through Business Registration Reforms*, 2013, page 2. Other examples, including Colombia, exist (see A/CN.9/WG.I/WP.83).

⁶⁴ For a more thorough discussion on minimum capital requirements and simplified business entities, see A/CN.9/825, paras. 75-79.

⁶⁵ See A/CN.9/WG.I/WP.85, para. 28.

⁶⁶ See Italy, *ibid.*, para. 29.

which a higher share capital would be required. There is however no obligation to do so.⁶⁷

71. Another reform that would be conducive to improved business registration is to provide freedom to entrepreneurs to conduct all lawful activities without requiring them to specify the scope of their venture.⁶⁸ This is particularly relevant in those jurisdictions where entrepreneurs are required to list in their articles of association the specific activity or activities in which they intend to engage so as to restrain firms from acting beyond the scope of their goals and, according to certain literature, to protect shareholders and creditors. Allowing for the inclusion in the articles of association (or other rules governing the operation or management of a business) of a so-called “general purpose clause” which states that the company’s aim is to conduct any trade or business and grants it the power to do so, facilitates business registration. This approach is far less likely to require additional or amended registration in the future, as enterprises may change their focus since entrepreneurs could change activities without amending their registration, provided that the new business activity is a lawful one and that the appropriate licences have been obtained. Additional options to the inclusion of a general purpose clause, which would support the same goal, could be passing legislation that makes unrestricted objectives the default rule in the jurisdiction, or abolishing any requirement for businesses, in particular privately held companies, to state objectives for registration purposes.⁶⁹

E. Business registration and other fees

72. Payment of a fee in order to ensure the provision of registration services can be said to be a standard procedure across jurisdictions, including in those jurisdictions whose registries are run by the government and receive public funding. The most common types of fees are those for registration and for information products, while fines may also generate funding to a lesser extent. In some jurisdictions, registries may also charge an annual fee to keep a company in the registry (these fees are unrelated to any particular activity), as well as fees to register annual accounts or financial statements.⁷⁰

73. Although they generate revenue for the registries, fees can affect a business’ decision whether to register, since they may impose a heavy burden on businesses, in particular on MSMEs. Fees for new registrations, for instance, can prevent businesses from registering, while annual fees to keep a company in the registry or to register annual accounts could encourage businesses not to maintain their registered status. States should take these and other indirect effects into consideration when establishing fees for registration services. A registration system aiming to support MSMEs and increase the number of them that register should

⁶⁷ See, for instance, Germany, in Simplified business forms in the context of small and medium enterprises, the German approach, presentation at the UNCITRAL International Colloquium on Microfinance (16-18 January 2013), available at www.uncitral.org.

⁶⁸ This is a feature on which the Working Group has already agreed in its discussion of a legislative text on a simplified business entity (see A/CN.9/825, para. 70).

⁶⁹ See A/CN.9/WG.I/WP.85, para. 52.

⁷⁰ See European Commerce Registers’ Forum Report 2013, page 72.

adopt a balanced approach between recovering capital and operational costs within a reasonable period of time and encouraging MSMEs to register.

1. Registration fees

74. Several States see business registration as a public service that should encourage enterprises to enter the legally regulated economy rather than as a revenue-generating mechanism, and have thus set registration fees at a level that encourages businesses to register. In such States, the use of flat fee schedules for registration, regardless of the size of the business, is the most common approach. There are also examples of States that provide business registration free of charge. This approach may encourage businesses to register.

2. Fines

75. Fines for breaching obligations related to business registration, such as late filing, can represent a means of revenue generation. Their collection, however, again requires a balanced approach. Several jurisdictions use fines as disincentives for businesses to operate extra-legally. In some cases, legislative provisions link the company's enjoyment of certain benefits to the timely filing of required submissions; in others, a sequence of increasing fines for late filing is enforced that ultimately can result in compulsory liquidation. However, if fines are used as the main source of funding for the registry, as occurs in certain jurisdictions, it can have a detrimental effect on the efficiency of the registry. Since registries would lose revenue as a result of improved business compliance, they could have weak motivation to improve it. It is thus recommended that States should not consider fines as the main source of revenue of a registry, but that they determine fines at a level that encourages business registration without negatively affecting the funding of registries when compliance improves.

3. Fees from information products

76. As is the case in various jurisdictions, fees from information products can be a more viable option for registries to derive their self-generated funding. Such fees also motivate registries to provide valuable information to their clients, to maintain the currency of their records and to offer additional information services. A recommended good practice for jurisdictions aiming at improving this type of revenue generation would be to avoid charging fees for basic services, such as name searches, but to charge for more sophisticated services (for example, direct downloading or providing bulk information). Since fees for information products may influence consumers' choice of products, they should be set at a level low enough to make the use of less expensive products attractive to businesses; otherwise, businesses may request information products that are more costly for the registry to produce (for example, ordering printed versions by telephone).⁷¹

4. Fee determination

77. It is evident from the above paragraphs that striking a balance between the sustainability of the registry operations and the promotion of business registration is a key consideration when setting fees, regardless of the type of fee.

⁷¹ See supra footnote 19, page 17.

One recommended approach, followed in many States, is to apply the principle of “cost recovery” according to which there should be no profit from fees generated in excess of cost. When applying such a principle, States would be required to first assess the level of revenue from registry fees needed to achieve cost recovery. In carrying out the assessment, account should be taken not only of the initial start-up costs related to the establishment of the registry but also of the costs necessary to fund its operation. By way of example, these costs may include: (a) the salaries of registry staff; (b) upgrading and replacing hardware and software; (c) ongoing staff training; and (d) promotional activities and training for registry users. In the case of ICT supported registries, if the registry is developed in partnership with a private entity, it may be possible for the private entity to make the initial capital investment in the registry infrastructure and recoup its investment by taking a percentage of the service fees charged to registry users once the registry is operational.

78. Evidence shows, however, that even when the cost-recovery approach is followed, there is considerable room for variation among States, as the approach requires a determination of which costs should be covered, which can be interpreted in many different ways. In one jurisdiction, for instance, fees for new registrations are calculated according to costs incurred by an average business for registration activities over the life cycle of the business. In this way, potential amendments, apart from those requiring official announcements, are already covered by the fee that companies pay for new registration. This approach is said to result in several benefits, such as: (a) rendering most amendments free of charge, which encourages compliance among registered businesses; (b) saving resources related to fee payment for amendments for both the registry and the businesses; and (c) using the temporary surplus produced by advance payment for amendments to improve registry operations and functions. In other cases, jurisdictions have decided to charge fees below the actual costs registries need to sustain in order to promote business registration. In these cases, however, the services provided to businesses would likely be subsidized with public funds.

79. Regardless of the approach taken to determine the applicable fees, States should clearly establish which registration and information fees are due from the registry users. One approach would be to set out the fees in a “regulation”, which could be either a formal regulation or more informal administrative guidelines that the registry can revise according to its needs. If administrative guidelines are used, this approach would provide greater flexibility to adjust the fees in response to subsequent events, such as the need to reduce the fees once the capital cost of establishing the registry has been recouped. The disadvantage of this approach, however, is that the lack of a formal arrangement may be abused by the registry to unjustifiably adjust the fees upwards. Alternatively, a State may choose not to specify the registry fees in such a regulation, but rather to designate the administrative authority that is permitted to set the registry fees. The State may also wish to consider specifying in the law or the regulation on business registration the types of service that the registry may provide free of charge.

80. In setting fees in a hybrid (paper and electronic) registry system, it may be reasonable for the State to decide to charge higher fees to process applications and search requests submitted in paper form because they must be processed by registry staff, whereas electronic applications and search requests are directly submitted to the registry and do not require attention from registry staff. Charging higher fees

will also encourage the user community to eventually transition to using the direct electronic registration and search functionalities. However, in making this decision, States may wish to consider whether charging such fees may have a disproportionate effect on MSMEs that may not have easy access to electronic services.

F. Capacity development

81. Once a reform of the registration system has been initiated, developing the capacity of the personnel entrusted with registration functions is an important aspect of the process. Poor service often affects the efficiency of the system and it can result in errors or necessitate multiple visits to the registry by users.⁷² Capacity development of registry staff could not only focus on enhancing their performance and improving their knowledge of the new registration processes, ICT solutions and client orientation, but staff could also be trained in new ways of improving registration.⁷³

82. As seen in various States, different approaches can be followed, from the more traditional training methods based on lectures and classroom activities, to more innovative ways that can be driven by the introduction of new registration systems. In some jurisdictions, team-building activities and role-playing have been used with some success, since reforms often break barriers between various government departments and require the improvement of the flow of information among them, as well as an understanding of different aspects of the procedures with which specific registry staff may not be familiar.⁷⁴ In other cases, States have opted for developing action plans with annual targets for improving in international rankings, and linking promotions and bonuses for staff to the achievement of the action plan's goals. In still other cases, States have decided to introduce new corporate values in order to enhance the public service system, including business registration.⁷⁵ Although the relevant governmental authority will usually take the lead in organizing capacity development programmes for the registry staff, the expertise of the legal and business communities could be enlisted to assist.

83. Peer-to-peer learning and international networks are also effective approaches to build capacity to operate the registry. These tools enable registry staff to visit other jurisdictions and States with efficient and effective registration systems. In order to maximize the impact of such visits, it is important that they occur in jurisdictions familiar to the jurisdiction undergoing the reform. This approach has been followed with success in several jurisdictions engaging in business registration reform. International forums and networks also provide platforms for sharing knowledge and exchanging ideas among registry personnel around the world for implementing business registration reform.⁷⁶

84. It is equally important that potential registry users, whether they are business registrants or searchers, are given clear advice on the practical logistics of the

⁷² See *supra* footnote 15, page 37.

⁷³ See A/CN.9/WG.I/WP.85, para. 60.

⁷⁴ *Ibid.*, see also K. Rada and U. Blotte, *Improving business registration procedures at the sub-national level: the case of Lima, Peru, 2007*, page 3.

⁷⁵ See A/CN.9/WG.I/WP.85, para. 60 and *supra* footnote 15, page 21.

⁷⁶ *Ibid.*

registration and searching processes, for example, through the dissemination of guidelines and tutorials (ideally in both printed and electronic form) and the availability of in-person information and training sessions (see also para. 7 of A/CN.9/WG.I/WP.93/Add.1). In some States, for instance, prospective users of the system are referred to classroom-based and/or eLearning opportunities available through local educational institutions or professional associations.⁷⁷

⁷⁷ See Service Alberta, Canada, at www.servicealberta.com/1005.cfm.