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Draft recommendations on key principles of business registration

Note by the Secretariat

Contents

	<i>Paragraphs</i>	<i>Page</i>
Draft recommendations (<i>continued</i>)	1-28	2
VI. Accessibility and information-sharing.	1-8	2
VII. Fees	9-11	5
VIII. Sanctions and liability.	12-14	5
IX. Deregistration	15-19	6
X. Preservation of records	20-23	8
XI. The underlying legislative framework.	24-28	9



Draft Recommendations (*continued*)

VI. Accessibility and information-sharing

Recommendation 30: Public access to the business registry

The Regulation should permit any person to access the services of the business registry and the information contained in the registry.

1. The Working Group may wish to note that this draft recommendation should be read alongside paragraphs 64 to 67 of the draft commentary in A/CN.9/WG.I/WP.93/Add.1, which stress that in order to achieve the objectives of a business registration system (see draft recommendations 2 and 3) the system must facilitate access by general users of the registered information. The principle of public access enhances certainty and transparency in the operation of the business registry, and due to its importance, it should be stated in the Regulation governing business registration.

Recommendation 31: Hours of operation

The Regulation should provide that:

(a) If access to the services of the business registry is provided through a physical office:

(i) Each office of the registry is open to the public during [the days and hours to be specified by the enacting State]; and

(ii) Information about any registry office locations and their opening days and hours is publicized on the registry's website, if any, or otherwise widely publicized, and the opening days and hours of registry offices are posted at each office;

(b) If access to the services of the business registry is provided electronically, access is available at all times; and

(c) Notwithstanding subparagraphs (a) and (b) of this recommendation:

(i) The business registry may suspend access to the services of the registry in whole or in part for a period of time that is as short as practicable; and

(ii) Notification of the suspension and its expected duration is published on the registry's website, if any, or otherwise widely publicized, in advance when feasible and, if not feasible, as soon thereafter as reasonably practicable, and, if the registry provides access to its services through physical offices, the notification is posted at each office.

2. The Working Group may wish to note that this draft recommendation should be read alongside paragraphs 58 to 60 of the draft commentary in A/CN.9/WG.I/WP.93/Add.1, which explain that the approach to establish the operating days and hours of the business registry depends on whether the registry requires users to be physically present at the business registry office or whether they may access its services electronically from another location. With regard to

paragraph (c) of the draft recommendation, the commentary provides a non-exhaustive list of events justifying a suspension of registry services, such as fire, flood, earthquake or war, or if the registry provides users with direct electronic access, a breakdown in the Internet or network connection. Further, the Working Group may wish to consider whether it would be useful to add information to the draft commentary in respect of acceptable time periods for such service interruptions.

Recommendation 32: Electronic access to submit registration, to search and to request amendments

The Regulation should establish that, where information and communication technology is available, registrants should be permitted to enter and submit their information, and the public should be permitted to search the business registry, without requiring the physical presence in the business registry office of the user of the services or the intermediation of the registry staff.

3. The Working Group may wish to note that this draft recommendation should be read alongside paragraphs 45, 61 to 63 and 67 of the draft commentary in A/CN.9/WG.I/WP.93/Add.1, which explain that when business registries are operated electronically, they should allow users to submit applications or make searches without the need to rely on intermediation by the registry staff.

Recommendation 33: Unnecessary barriers to accessibility

The Regulation should ensure the facilitation of access to business registration and registered information by avoiding the creation of unnecessary barriers such as requirements for the installation of specific software; charging prohibitively expensive access fees; requiring users of information services to register; or unduly limiting the languages in which information on the registration process is available.

4. The Working Group may wish to note that this draft recommendation should be read alongside paragraphs 79 to 80 of the draft commentary in A/CN.9/WG.I/WP.93/Add.1, which clarify that information being publicly available does not mean that information is also easily accessible to users. States should thus identify potential barriers that prevent easy access to business registry services and implement the necessary measures to remove those barriers or minimize their negative effect.

Recommendation 34: Public availability of information

The Regulation should specify that all registered information is available to the public unless it is restricted for reasons of confidentiality as set out in the law of the enacting State, or for reasons of personal security.

5. The Working Group may wish to note that this draft recommendation should be read alongside paragraphs 68 to 73 of the draft commentary in A/CN.9/WG.I/WP.93/Add.1, which clarify that permitting full public access to the registered information should not compromise the confidentiality of private data, which can be protected by allowing users to search only certain types of information.

Recommendation 35: Where information is not made public

In cases where information in the business registry is not made public, the Regulation should:

(a) Establish which information concerning the registered business is subject to the applicable rules in the enacting State on public disclosure of private data and require the registrar to list the types of information that cannot be publicly disclosed; and

(b) Specify the circumstances in which the registrar may use or disclose information that is subject to confidentiality restrictions.

6. The Working Group may wish to note that this draft recommendation should be read alongside paragraph 50 of the draft commentary in A/CN.9/WG.I/WP.93/Add.1 and paragraph 33 of the draft commentary in A/CN.9/WG.I/WP.93/Add.2, which explain that in order to maintain the integrity of the registry, access to sensitive data, such as dates of birth or personal addresses, should be controlled.

Recommendation 36: Sharing of private data between public agencies

The Regulation should ensure that rules for the sharing of private data between public agencies pursuant to the unique business identifier system adopted:

(a) Conform with the applicable rules in the enacting State on public disclosure of private data;

(b) Permit public agencies to access private data included in the unique business identifier system only in order to carry out their official functions; and

(c) Permit public agencies to access private data included in the unique business identifier system only in relation to those businesses with respect to which they have statutory authority.

7. The Working Group may wish to note that this draft recommendation should be read alongside paragraphs 33, 52 and 55 to 58 of the draft commentary in A/CN.9/WG.I/WP.93/Add.2, which clarify that increased transparency to avoid misuse of the business for illicit purposes may affect the sharing of information among the different public authorities linked by the unique business identifier.

Recommendation 37: Exchange of information among business registries

The Regulation should specify that systems for the registration of businesses should adopt solutions that facilitate information exchange between registries from different jurisdictions.

8. The Working Group may wish to note that this draft recommendation should be read alongside paragraphs 27 to 28 of the draft commentary in A/CN.9/WG.I/WP.93.

VII. Fees

Recommendation 38: Fees charged for registry services

The Regulation should establish fees for registration and post-registration services, if any, at a level that is low enough that it encourages business registration, and that, in any event, does not exceed a level that enables the business registry to cover the cost of performing those services.

9. The Working Group may wish to note that this draft recommendation should be read alongside paragraphs 74, 77 to 78 and 80 of the draft commentary in A/CN.9/WG.I/WP.93/Add.2, which explain that business registration is a public service that should encourage businesses to register and that it should not serve as a revenue-generating mechanism.

Recommendation 39: Fees charged for information

The Regulation should establish that information contained in the business registry should be available to the public free of charge, but should permit modest fees to be charged for value-added information products produced or developed by the registry.

10. The Working Group may wish to note that this draft recommendation should be read alongside paragraph 76 of the draft commentary in A/CN.9/WG.I/WP.93/Add.2, which explains that providing information products upon the payment of a fee can be a viable option for registries to derive self-generated funding. However, fees should not be charged for basic services, such as name searches or access to the raw information contained in the business registry, but only for more sophisticated services.

Recommendation 40: Publication of fee amounts and methods of payment

The Regulation should provide that information that clearly establishes the amount of any fees for registration and information services should be widely publicized, as should acceptable methods of payment. Such methods of payment should include permitting users to enter into an agreement with the business registry to establish a user account for the payment of fees.

11. The Working Group may wish to note that this draft recommendation should be read alongside paragraph 79 of the draft commentary in A/CN.9/WG.I/WP.93/Add.2, which provides examples of how information on the amount of fees for registration and other services provided by the business registry could be publicized.

VIII. Sanctions and liability

Recommendation 41: Sanctions

The Regulation should establish and ensure wide publication of sanctions (including fines, deregistration and loss of access to services) that may be imposed on a business for a breach of its obligations under the Regulation.

Such rules may include provisions pursuant to which a breach of obligation may be forgiven provided it is rectified within a specified time.

12. The Working Group may wish to note that this draft recommendation should be read alongside paragraph 14 of the draft commentary in A/CN.9/WG.I/WP.93/Add.1 and paragraph 75 of the draft commentary in A/CN.9/WG.I/WP.93/Add.2, which suggest that it is important for a State to have the ability to enforce proper compliance with initial and ongoing registration requirements. It should also be noted that it would be possible to add a draft recommendation reflecting paragraph 35 of the draft commentary in A/CN.9/WG.I/WP.93/Add.2, which suggests that the law of the enacting State should include legislative and other measures to prevent unauthorized access to or interference with the business registry system; unauthorized interception of or interference with data; and misuse of devices and fraud and forgery.

Recommendation 42: Liability for submission of misleading, false or deceptive information

The Regulation or the law of the enacting State should establish the liability of the registrant or the registered business for any misleading, false, incomplete or deceptive information that the registrant or business has knowingly submitted to the business registry.

13. The Working Group may wish to note that this draft recommendation should be read alongside paragraph 26 of the draft commentary in A/CN.9/WG.I/WP.93/Add.1, which clarifies that in order to ensure that reliable information is always submitted to the registry, the liability of the registrant should be established for any deliberate act that results in serious inaccuracies in the information delivered to the business registry.

Recommendation 43: Liability of the business registry

The Regulation or the law of the enacting State should establish the liability of the business registry for loss or damage caused by error or negligence in the registration of businesses or the administration or operation of the registry.

14. The Working Group may wish to note that this draft recommendation should be read alongside paragraphs 46 to 49 of the draft commentary in A/CN.9/WG.I/WP.93/Add.1, which clarify that the registry is liable for its errors or negligence in the registration of businesses or in the administration or operation of the business registry.

IX. Deregistration

Recommendation 44: Voluntary deregistration

The Regulation should require the registrar to deregister a business on the application of the business for a declaration of deregistration that fulfils the requirements according to the law of the enacting State.

15. The Working Group may wish to note that this draft recommendation should be read alongside paragraphs 18 to 20 of the draft commentary in

A/CN.9/WG.I/WP.93/Add.1, which explain that deregistration is the removal of a business from the business registry record once the business, for whatever reason, has permanently ceased to operate.

Recommendation 45: Compulsory deregistration

The Regulation should:

- (a) Require the registrar to deregister a business when it is ordered to do so by a specified competent authority or the court; and
- (b) Provide that the decision or order for deregistration of the business must be placed on the registry.

16. The Working Group may wish to note that this draft recommendation should be read alongside paragraphs 18 to 20 of the draft commentary in A/CN.9/WG.I/WP.93/Add.1.

Recommendation 46: Process of deregistration

The Regulation should provide that:

- (a) A written notice of the request for a declaration of deregistration is sent to the registered business; and
- (b) The declaration of deregistration is publicized in accordance with the legal requirements of the enacting State.

17. The Working Group may wish to note that this draft recommendation should be read alongside paragraph 34 of the draft commentary in A/CN.9/WG.I/WP.93/Add.1, which explains that the law or regulation should distinguish between voluntary and compulsory deregistration and that in those cases where deregistration does not occur at the request of the business, the business should be given sufficient time to oppose that decision.

Recommendation 47: Revocation of deregistration

The Regulation or the law of the enacting State should specify the circumstances under which and the time limit within which the registrar is required to restore a business entity that has been deregistered.

18. The Working Group may wish to note that this draft recommendation is not currently supported by any corresponding paragraphs in the draft commentary, but that should the draft recommendation be retained, appropriate information could be inserted into the commentary.

Recommendation 48: Time and effectiveness of deregistration

The Regulation should:

- (a) Specify when the deregistration of a business has legal effect;
- (b) Specify that any required notice of the deregistration for that legal form of business has been publicized in accordance with the law of the enacting State; and
- (c) Specify the legal effects of deregistration.

19. The Working Group may wish to note that this draft recommendation should be read alongside paragraph 34 of the draft commentary in A/CN.9/WG.I/WP.93/Add.1, which clarifies that the time and effectiveness of the deregistration should be established by law or regulation, and that regardless of whether the deregistration is voluntary or compulsory, a notice of deregistration should be issued by the registry stating the date of effect of the deregistration, and the reasons therefor.

X. Preservation of records

Recommendation 49: Preservation of records

The Regulation should provide that:

(a) Documents and information submitted by the registrant and the registered business, including information in respect of deregistered businesses, should be preserved by the registry for a specified period of time in a manner that enables the information to be retrieved by the registry and other interested users;

(b) Where paper documents have been submitted and the information contained in them has been entered into an electronic registry that meets the reliability standards established by the State, the period of preservation should be [x] years, to be specified by the enacting State; and

(c) Where paper documents have been submitted and the information contained in them has not been entered into an electronic registry, the period of preservation should be longer, up to [x] years, to be specified by the enacting State.

20. The Working Group may wish to note that this draft recommendation should be read alongside paragraphs 35 to 37 of the draft commentary in A/CN.9/WG.I/WP.93/Add.1, which highlight the importance of preservation of the documents submitted by the registrant and the registered business. The length of the preservation period would be influenced by the way the registry operates, i.e. if it is electronic, paper-based or mixed.

Recommendation 50: Amendment or deletion of information

The Regulation should provide that the business registry does not have the authority to amend or delete information contained in the registry record except in those cases specified in the Regulation or elsewhere in the law of the enacting State.

21. The Working Group may wish to note that this draft recommendation should be read alongside paragraphs 41 and 43 of the draft commentary in A/CN.9/WG.I/WP.93/Add.1.

Recommendation 51: Protection against loss of or damage to the business registry record

The Regulation or the law of the enacting State should require the business registry to protect the registry records from loss or damage by maintaining

back-up mechanisms to allow for any necessary reconstruction of the registry record.

22. The Working Group may wish to note that this draft recommendation should be read alongside paragraph 42 of draft commentary in A/CN.9/WG.I/WP.93/Add.1, which explains that preserving the integrity and the security of the registry record also requires the business registry to implement measures to permit reconstruction of the business registry. Rules governing the security of other public records in the enacting State might be applicable in this context.

Recommendation 52: Safeguards from accidental destruction

The Regulation should provide that appropriate procedures should be established to mitigate risks from force majeure, natural hazards, or other accidents that can affect the processing, collection, transfer and protection of data housed in electronic or paper-based registries.

23. The Working Group may wish to note that this draft recommendation should be read alongside paragraph 34 of the draft commentary in A/CN.9/WG.I/WP.93/Add.2, which considers the risk-management procedures that the business registry should implement in order to ensure the reliable functioning of the registry. The Working Group may wish to note that while this draft recommendation refers to both electronic and paper-based registries, the draft commentary refers to electronic registries only, and should be amended accordingly if the draft recommendation is retained.

XI. The underlying legislative framework

Recommendation 53: Clarity of the law

The law of the enacting State should, to the extent possible, consolidate legal provisions pertaining to business registration in a single legislative text, which is clearly written and uses simple language that can be easily understood.

24. The Working Group may wish to note that this draft recommendation should be read alongside paragraphs 59 to 61 and 65 to 67 of the draft commentary in A/CN.9/WG.I/WP.93/Add.2, which clarify that States wishing to promote business registration, in particular of MSMEs, should consider reviewing their existing legal framework in order to identify possible impediments to the simplification of the registration process.

Recommendation 54: Flexible legal forms

The law of the enacting State should permit flexible and simplified legal forms for business in order to facilitate and encourage registration of businesses of all sizes, including those forms considered in the [UNCITRAL model law on a simplified business entity].

25. The Working Group may wish to note that this draft recommendation should be read alongside paragraphs 68 to 71 of the draft commentary in A/CN.9/WG.I/WP.93/Add.2. The Working Group may also wish to consider whether

the results of its ongoing discussion in respect of a legislative text on a simplified business entity should be reflected in this draft recommendation.

Recommendation 55: Primary and secondary legislation to accommodate the evolution of technology

The law of the enacting State should establish guiding legal principles in relation to electronic registration in primary legislation, and should set out specific provisions on the detailed functioning and requirements of the electronic system in secondary legislation.

26. The Working Group may wish to note that this draft recommendation should be read alongside paragraph 26 of the draft commentary in A/CN.9/WG.I/WP.93/Add.2, which explains that 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.

Recommendation 56: Electronic documents and electronic authentication methods

The law of the enacting State should:

- (a) Permit and encourage the use of electronic documents as well as of electronic signatures and other equivalent identification methods; and
- (b) Regulate such use pursuant to the following principles:
 - (i) Documents cannot be denied legal effect, validity or enforceability solely on the grounds that they are in electronic format, or they are signed electronically;
 - (ii) The place of origin of the electronic signature should not determine whether and to what extent the electronic signature is legally effective;
 - (iii) Different technologies that may be used to communicate, store and/or sign information electronically should be subject to the same legal treatment; and
 - (iv) Electronic documents and electronic signatures have the same purpose and function as their paper-based counterparts and are thus functionally equivalent to them; and
- (c) Establish criteria to reliably identify the person submitting an electronic document and/or using an electronic signature or equivalent authentication method.

27. The Working Group may wish to note that this draft recommendation should be read alongside paragraphs 27 to 32 of the draft commentary in A/CN.9/WG.I/WP.93/Add.2 and paragraph 78 of the draft commentary in A/CN.9/WG.I/WP.93/Add.1, which clarify the main features of a legislative reform undertaken to support electronic business registration. Such features include the adoption of laws permitting electronic signatures and the submission of electronic documents, which should establish, at a minimum, principles of non-discrimination,

technological neutrality and functional equivalence allowing for equal treatment of paper-based and electronic information. The commentary further notes that whether or not legislation on electronic signatures is adopted, various other techniques could and should be used by the business registry to prevent identity theft of the users of the electronic registry and ensure security of the information by them.

Recommendation 57: Electronic payments

The law of the enacting State should include legislation to enable and facilitate electronic payments.

28. The Working Group may wish to note that this draft recommendation should be read alongside paragraph 36 of the draft commentary in A/CN.9/WG.I/WP.93/Add.2, which clarifies that once the technological infrastructure of the State is sufficiently developed, users of the business registry should be enabled to pay electronically any required fees.
