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Information from the United Nations Conference on Trade and Development (UNCTAD) Secretariat

The secretariat of the United Nations Conference on Trade and Development (UNCTAD) has submitted to the secretariat of the United Nations Commission on International Trade Law (UNCITRAL) the information in the annex attached in order to provide assistance to the Working Group in its deliberations. The information attached is reproduced in the form in which it was received by the UNCITRAL Secretariat.

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Annex

UNCITRAL Working Group I on MSMEs¹

Contribution by the United Nations Conference on Trade and Development (UNCTAD)

Lessons learned on business registration

Background

This paper is an initial contribution from the United Nations Conference on Trade and Development (UNCTAD). It reflects insights and best practices learned over the past decade by the Business Facilitation Program (www.businessfacilitation.org) in UNCTAD's Division on Investment and Enterprise, and by the Global Enterprise Registration team. The paper provides:

- (a) An overview of importance of formalization;
- (b) A definition of business registration and the challenges it poses;
- (c) Lessons learned regarding business registration;
- (d) Lessons learned regarding the business registry; and
- (e) Examples of effective business registration websites already implemented.

Over the past 10 years UNCTAD's business facilitation program has helped 27 countries put 1,786 administrative procedures online, and in the process reduced the number of steps required to register a business by 80 per cent on average.² UNCTAD's business facilitation program provides technical assistance to help countries develop computer systems (information portals and online single windows) that contribute to greater transparency and efficiency in public services and improved governance.

The Global Enterprise Registration portal (**GER.co**), launched at the United Nations World Investment Forum in October 2014, is the world's first website with links to all business registration websites worldwide and a rating of each website's user-friendliness. The GER.co website shows that as of March 11, 2016, 62 economies have not put their business registration processes online.

¹ The United Nations Commission on International Trade Law (UNCITRAL) established a working group to "work on international trade law aimed at reducing the legal obstacles faced by micro-, small- and medium-sized enterprises [MSMEs] throughout their life cycle and, in particular, those in developing economies ... The Commission also agreed that such work should start with a focus on the legal questions surrounding the simplification of incorporation ... The Commission agreed that the Secretariat should include in its preparatory documentation to the working group (a) empirical information demonstrating how that work affected sustainable development and inclusive finance and (b) information on how that work was complementary to the work of other international and intergovernmental organizations — both within and outside the United Nations — having a mandate in those fields." (UNCITRAL Commission Report 2013, para. 321).

² http://issuu.com/cfi.co/docs/cfi.co_summer_2015/21?e=6174959/14467542. p.21.

Twenty-eight economies have developed single windows to allow easy online registration; of those, four provide all mandatory registrations and certificates online. The remaining 107 economies with online business registration processes offer information portals describing those processes.³ Governments can reference GER.co to learn best practices from their peers.

A. Importance of Formalization

Recognizing the importance of formalizing businesses, the **United Nations' Sustainable Development Goal 8, Target 8.3** “encourages the formalization and growth of micro, small, and medium-sized enterprises⁴ **ILO labor standard (R204)** further recommends that International Labor Organization (ILO) members facilitate workers' transition from the informal to the formal economy.⁵

A 2010 report by UNCTAD shows that formalizing even just a small portion of the informal sector could significantly increase government fiscal revenues and support the infrastructure development vital for domestic growth and for attracting foreign investment.⁶

Informality is a global challenge. According to the Organization for Economic Cooperation and Development (OECD), 1.8 billion people work in the informal economy out of a global working population of 3 billion.⁷ That is 60 per cent of the global workforce, with the proportion projected to increase to around 66 per cent by 2020.⁸ In developing countries the problem of informality is particularly acute. The World Bank's International Finance Corporation (IFC) and the Global Partnership for Financial Inclusion estimate that over 90 percent of MSMEs in developing countries operate in the informal sector.⁹

Informality also has a gender dimension. According to the IFC, “worldwide, women are three times more likely than men to be working in the informal economy. This has huge implications. Formalization of a business is the first step toward accessing financial and other types of support that can help a small business grow to scale.”¹⁰

³ www.ger.co.

⁴ www.un.org/sustainabledevelopment/economic-growth/2030 Agenda on Sustainable Development, adopted by UNGA on Sept 15, 2015.

⁵ www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204.

⁶ UNCTAD (2010, February 15). Public investment in administrative efficiency for business facilitation- sharing best practices, 5.

⁷ OECD (2009, March). Is Informal Normal? Messages, figures and data.

⁸ Ibid.

⁹ Note by the Secretariat, Reducing the Legal Obstacles Faced by Micro, Small and Medium-Sized Enterprises (MSMEs), ¶ 20, UN Doc. A/CN.9/WG.I/WP.92 (Aug. 12, 2015) (citing studies by the International Finance Corporation and the Global Partnership for Financial Inclusion finding that “[t]he total number of MSMEs worldwide is estimated to be between 420 to 510 million businesses, of which 360 to 440 million (around 86 per cent) are in emerging markets. Of these, 36 to 44 million SMEs globally (comprising about 9 percent of the total MSME population) are registered, i.e. they are operating within the legally regulated economy.”

¹⁰ www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/gender+secretariat/entrepreneurship/investment+climate/win-business-registration.

Greater formalization is essential to inclusive economic growth, since formalization provides workers with the dignity of lawfulness and greater access to social and financial services and protections. Greater formalization will reduce corruption and opportunities for extortion. It will also increase government's tax revenues and ability to provide public services and infrastructure, which will contribute to economic growth.

B. Definitions

Business registration is, in practice, a series of processes involving multiple public agencies. To be able to work legally, an enterprise has to register with various registries.

In most countries these registries are:

- Business registry (declaration of legal existence)
- National tax administration (registration as a tax payer)
- Social Security (registration as an employer)

In addition to these basic registrations, depending on the country, additional registrations may be required:

- Subnational tax administration (state or municipal level)
- Ministry of Labor (if the company employs personnel)
- Pension funds
- Chamber of Commerce
- Statistical office
- Other offices

Depending on the business activity and location, specific licences may be required: hygiene and security, conformity to urban planning, banking and insurance licences, food processing, sale of liquors, etc.

The complexity of registration derives, for businesses, from the multiple registries and interactions or steps involved in the process, and from the quantity of information they are required to provide.

C. Lessons learned regarding business registration across all public agencies

1. **User-centric approach.** Governments' goals at all times should be simple, efficient, low cost registration, and simple, cost-effective procedures, as seen from the user's point of view.
2. **Procedures.** Governments should keep to a minimum:
 - (a) The number of different registries to which businesses should register. Governments should review carefully the services provided by existing registries, their relevance, and the cost/benefit relationship;

(b) The quantity and complexity of information requested from businesses by the various registries. The information requested should be strictly restricted to the data effectively necessary for the concerned registries to exercise properly the control, or grant the support, entrusted to them;

(c) The number of interactions and the time necessary for registration with the various registries.

3. **Single Windows.** Governments should make it possible for businesses to register simultaneously with all the mandatory registries, by providing data through a single form, providing only one set of documents and only one payment, through physical or electronic single windows.

4. **Information.** Governments should make publicly available, at a minimum:

(a) A list of all registries for which registration is mandatory, and for each registry indicate who must register and the purpose of that registration;

(b) For each registry, a list of the steps needed to achieve the registration, indicating for each step, the necessary contacts, the data, documents and payment required, the results to be expected, ways of complaints and recourse and the legal basis;

(c) Information about obligations taken on through business registration, clear instructions for compliance, and a description of penalties for non-compliance, if any;

(d) Information about the benefits of business registration, which typically include the ability to open a business bank account, protections through application of labor and safety standards, and improving infrastructure and services through tax payments;

(e) Whenever possible, this information should be made available online.

5. **Unique Business Identification Number.** Governments should grant to businesses a unique identification number that should be recognized and accepted by all public entities, at the national and subnational levels. The first registry with which a business registers should grant the unique identification number, and it should be easy for a business to retrieve that number if lost or forgotten. It would simplify registration and cross border trade and investment if all governments were to agree on a common alphanumeric system for registering businesses that would facilitate identification of a company's ultimate beneficiary ownership by country.

6. **Outreach, obligations and benefits.** Governments should proactively educate youth and entrepreneurs about the complete business registration process, including obligations taken on through registration, and the benefits of registration:

(a) Governments should promote business registration through public outreach campaigns to reduce informality arising from lack of access or understanding of the registration process and of the benefits of being registered;

(b) Governments should ensure that information regarding ongoing compliance with the law, such as issuance of licences and permits and notification of a business' closure, and fulfilment of obligations taken on by registration, such as tax payment, is similarly clear and easily available, and that penalties for non-compliance, if any, are known;

(c) Governments should consider adding incentives to the registration process, e.g. through access to ancillary services for registered businesses, such as establishment of a bank account, credit, training and access to health insurance.

D. Lessons learned regarding the business registry specifically

1. Registration at the business registry should be mandatory only for companies.
2. Individuals (i.e. sole traders/sole proprietorships) and partnerships should be offered the possibility to register if they want to benefit from services offered by the business registry, such as protecting a business or trade name, separating personal assets from assets devoted to the business or limiting their liability. (Removing the obligation for individuals to register at the business registry would not compromise the objective to formalize their activities, as they would still be required to register as tax payers and comply with all other registration procedures.)
3. Incorporation of non-publicly traded companies should be simplified through regimes such as the “SAS” (e.g. no minimum capital, no need for notarized by-laws, possibility of having only one shareholder, standardized incorporation documents, broad purpose clause permitting MSMEs to engage in all lawful activities, flexible organizational structure, maximum freedom of contract, full-fledged limited liability).

E. Examples of effective business registration websites already implemented in developing countries

The Global Registration Portal (GER.co) rates all the world’s official business registration websites using a 10 dot scale to show their user-friendliness. The rating criteria reflect lessons learned by UNCTAD and the Kauffman Foundation’s Global Entrepreneurship Network, which is the largest non-governmental organization in the world promoting the interests of entrepreneurs. GER.co is divided between online single windows and information portals. GER.co calls “online single windows” websites which either allow entrepreneurs to apply simultaneously for all mandatory registrations, with various public agencies, or will allow entrepreneurs to do so in the near future, even if that goal has not been achieved yet. Websites allowing registration with only one administration are not listed.

GER.co defines “Information portals” as websites showing information on the business registration process. These websites detail all of the mandatory registration processes with various public agencies or aim to do so in the future. Information portals describing processes for only one administration are not listed.

With the “[Assessment of websites](#)” tool on GER.co, governments can evaluate their own sites according to the GER rating criteria, which describe a website’s functionality and features. Through self-assessment, governments can see their sites from the vantage point of users and see how to make their sites more user-friendly. Governments can look at websites with higher ratings on GER.co to learn from their peers.

A perfect rating for an online single window (10 green dots) means a government has implemented a web platform that allows the user to: (1) apply for all mandatory

registrations through a single online form; (2) pay all fees through an electronic website included in the platform; (3) receive online all the certificates documenting that the business was successfully registered; and (4) contact a competent institution with any problems that may occur during the registration process.

A perfect rating for an information portal (10 green dots) means a government has clearly listed: (1) what to do: the mandatory steps to register a business, with the end goals of each mandatory registration clearly described and their legal justifications clearly indicated; (2) how to do it: clearly explained how to process the mandatory registrations by providing the contact information for each office involved in the registration process along with required documentation, downloadable forms, and the cost and average time to complete each registration, and (3) that the site has a user-friendly orientation: the process is presented step-by-step, from the user's point of view, and the site provides contact information to register a complaint.
