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Draft Legislative Guide on an UNCITRAL Limited Liability Organization

Note by the Secretariat

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I. Introduction

1. At its forty-sixth session in 2013, the United Nations Commission on International Trade Law (UNCITRAL) requested that work be commenced aimed at reducing the legal obstacles and barriers encountered by micro, small and medium-sized enterprises (MSMEs) throughout their life cycle, with a particular focus on their context in developing economies.¹ The life cycle of a business could be said to consist of several stages, which may be summarized as starting a business, operating a business, restructuring a business and dissolving a business. The mandate granted to Working Group I by the Commission was that work should focus on the first stage in that life cycle, i.e. starting a business.²

2. To that end, Working Group I commenced its deliberations at its twenty-second session in February 2014. At its most recent session (twenty-sixth session, New York, 4 to 8 April 2016), Working Group I continued its consideration of two main topics, one of which is discussion of a simplified business entity as a business suited to the needs of MSMEs.³ These deliberations had been taking place on the basis of the framework of issues drawn from the key features of simplified business regimes (outlined in A/CN.9/WG.I/WP.86), and as illustrated in the draft model law on a simplified business entity (A/CN.9/WG.I/WP.89), as well as other possible models (for example, that contained in the annex to A/CN.9/WG.I/WP.83).

3. Following its discussion of the framework of issues that might be considered in a simplified business regime, the Working Group decided that the legislative text it was preparing on a simplified business entity should be in the form of a legislative guide. To that end, the Working Group requested the Secretariat to prepare for discussion at a future session a draft legislative guide (consisting of recommendations and commentary) that reflected its policy discussions to date.⁴ This draft legislative guide has been prepared by the Secretariat in response to that request.

4. The vast majority of businesses in both the developing and the developed world are MSMEs. As recognized by the Commission through its decision to grant Working Group I its current mandate, in the light of the forces of globalization and economic integration it is important to strengthen the economic role and position of MSMEs. The Working Group has thus sought to establish the best practices of States and policymakers to create a legal business form tailored to facilitate the operation of MSMEs, thereby also stimulating entrepreneurship and innovation.

¹ *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17 (A/68/17)*, para. 321; reiterated at subsequent sessions of the Commission: *ibid.*, *Sixty-ninth Session, Supplement No. 17 (A/69/17)*, para. 321 and *Seventieth Session, Supplement No. 17 (A/70/17)*, paras. 220, 225, 340 and 321.

² The Commission stated that “such work should start with a focus on the legal questions surrounding the simplification of incorporation” and has confirmed Working Group I’s approach that such work should proceed on two relevant issues: legal questions surrounding the creation of a simplified business entity and key principles in business registration. *Supra*, note 1, and *ibid.*, *Seventy-first Session, Supplement No. 17 (A/71/17)*, under preparation.

³ Report of Working Group I (MSMEs) on the work of its twenty-sixth session, A/CN.9/866, paras. 22 to 47.

⁴ *Ibid.*, paras. 48 to 50.

5. In its discussions to date, the Working Group has considered a number of different simplified business forms on which legislation has been enacted in various jurisdictions representing different legal traditions around the world. A selection of such business forms included in the comparative analysis that the Working Group first considered in this regard (A/CN.9/WG.I/WP.82) was drawn from 11 different States from different regions of the world and included 16 different legal regimes in total.⁵ The Working Group has also received documentation and information in respect of several other simplified business forms that have been adopted in certain States to provide the benefits of, *inter alia*, asset partitioning to business entities, in a less complex form that may not necessitate the granting of legal personality.⁶

6. Other information in respect of different approaches to creating simplified business forms has been provided by delegations to Working Group I. These reforms have included specific legislative efforts to provide for single member businesses or business entities,⁷ as well as broader reforms to assist MSMEs that have been implemented in various States, including in developing economies.⁸

7. Discussion in the Working Group on this topic has also provided a rich source of information relevant to the present topic. Many delegations have intervened to share the benefit of their lengthy experience in creating an appropriate national legislative framework to deal appropriately with key issues in respect of the various corporate business forms in their State.

8. Many of these business forms, simplified and otherwise, have enjoyed economic success in their respective jurisdictions. Moreover, the Working Group's combined experience regarding the various domestic approaches to creating and reforming legal business forms — both MSME-specific and otherwise — has highlighted that States' good practices share a number of key principles. These principles appear to transcend national borders and could be said to be international in their application.

9. This draft legislative guide has attempted to distil these good practices and key principles into a series of draft recommendations on how a State should institute and regulate a legal form for MSMEs that can best promote their success and sustainability. The draft commentary that precedes each recommendation relies on

⁵ Those States were Colombia, France, Germany, India, Japan, New Zealand, Singapore, South Africa, the United Arab Emirates, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. See footnote 4, A/CN.9/WG.I/WP.82.

⁶ See the alternative legislative models for micro and small businesses described by Italy and France in A/CN.9/WG.I/WP.87 and A/CN.9/WG.I/WP.94.

⁷ Information shared with the Working Group has included, for example, that in respect of the "auto-entrepreneur", in force both in France (see paras. 22 to 23, A/CN.9/WG.I/WP.87) and the Member States of the Organisation for the Harmonization of Business Law in Africa (known by its French acronym, OHADA) (Acte Uniforme Révisé Portant Sur Le Droit Commercial Général, adopted 15 December 2010, see www.ohada.com/actes-uniformes/940/999/titre-2-statut-de-l-entreprenant.html). Other efforts to create particular regimes for single member businesses have included those of the European Union (Proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies, European Commission, Brussels, 9.4.2014 (COM (2014) 212 final)), as well as a draft model law on a single member business entity prepared by the Secretariat (A/CN.9/WG.I/WP.86/Add.1).

⁸ Information in this respect has been shared in the Working Group in respect of such reform efforts in a number of States, including Chile, China, Colombia, El Salvador, Mexico, the Philippines, Rwanda, Thailand, and others.

discussions that have taken place in the Working Group and on documentation it has considered at its sessions to explain in greater detail the rationale leading to those recommendations. The Working Group may wish to note that the Secretariat has made every effort to ensure that each issue that has been considered in discussions in the Working Group to date, as well as any agreement that has been reached on such issues, has been reflected in this draft legislative guide.⁹ To assist readers in that regard, the present text is heavily footnoted.

10. As emphasized in materials previously considered by the Working Group,¹⁰ and in keeping with its desire to create a legal text that can accommodate the evolution of the MSME from a very small single entrepreneur model to a more complex multi-member entity,¹¹ a “think small first” approach has also been taken in this draft legislative guide. To that end, this draft text has been prepared with a focus on the actual needs of MSMEs and consideration of how those entrepreneurs who operated them could most benefit from legislation based on these recommendations and be encouraged to conform to the rules they contain. Such entrepreneurs could range from individual street vendors working in busy marketplaces, to small family business owners wishing to scale up and formalize their operations, to small firms seeking to grow and position themselves in more innovative sectors, such as the information technology field.

11. In order to “think small first” and assess how best to design these draft legislative recommendations to meet the needs of entrepreneurs operating MSMEs, the Working Group may wish to consider what those needs might be. These could include a number of items, but it is suggested that, at a minimum, such needs might be the following.

12. First, most entrepreneurs could be expected to want *freedom, autonomy and flexibility* in how they operate their business, without the need to resort to rigid and formalistic rules and procedures or have detailed requirements dictated to them regarding how they must carry out their activities. They are likely to want to decide for themselves on many aspects of the business’ current operations, as well as on how it might evolve and develop over time.

13. Second, MSME entrepreneurs are likely to want *speed and simplicity* to characterize not only the legal establishment of their business, but also its administration and operation. The rules governing the business should be in simple and accessible terms, and the use of modern technology and other simple techniques, such as the use of mobile applications to complete payments or prepare balance sheets, should be encouraged to assist such entrepreneurs.

14. Third, MSMEs need an *identity and visibility* in order to successfully compete in the market and to attract clients. These features facilitate their recognition in the market and permit third parties to more easily locate the business and its products. In addition to the obvious protections and advantages associated with taking on a

⁹ Of course, the Secretariat would be grateful if any oversight in that regard is highlighted so that those issues can be included in a future iteration of this draft text.

¹⁰ See paras. 1 and 5, A/CN.9/WG.I/WP.86/Add.1; para. 3 (iii), A/CN.9/WG.I/WP.90; and paras. 2 and 39, A/CN.9/WG.I/WP.89.

¹¹ As agreed by the Working Group at its previous sessions (see paras. 24, 32 and 42 to 43 of A/CN.9/800, paras. 67 and 74 of A/CN.9/825, and para. 19 of A/CN.9/831).

legally recognized identity and operating within a framework of statutory laws,¹² the business can also use its identity to develop the reputation and “brand” of the business, which can add value to it.

15. Fourth, such entrepreneurs need *certainty in and protection of their property rights*. As such, MSME operators may be expected to want to be permitted to control the ownership rights in their business and to be able to take advantage of asset partitioning, so as to protect their personal assets from the claims that their creditors may have against the business. It is equally important for the personal creditors of those who own and/or manage these businesses not to be able to seize the assets of such businesses in order to satisfy such personal debts.

16. Finally, MSME operators generally want *to control and to manage their business*, rather than leaving those details to a professional manager.

17. Through “thinking small first” and considering the above-described real world business needs, this draft legislative guide aims at assisting States in the creation of legal rules tailored to satisfy those needs and expectations. For example, the need of MSME entrepreneurs for freedom, autonomy and flexibility is woven throughout this draft legislative guide in its recognition of the importance of freedom of contract and the text’s avoidance of formalistic and rigid corporate law rules. However, this draft guide also acknowledges through its many default rules that such entrepreneurs may also require protection against circumstances or events that they may not foresee. Second, speed and simplicity characterize not only the recommendations for rules on the establishment of the business entity, but this guide as a whole uses accessible terminology, clearly acknowledges technology and welcomes its use. In addition, to provide MSMEs with identity and visibility, the draft recommendations provide the business entity with legal personality and provide a simple vehicle for the entrepreneur to create a legally recognized business. Further, limited liability protection for the business entity and rules on the transfer of rights of its members are some of the mechanisms that provide certainty and protection for the property rights of MSME operators. Finally, control by the MSME entrepreneur over the operation and management of their business is assured through an emphasis on member-management as the default governance approach and on the more horizontal hierarchical governance structure that characterizes this draft legislative guide.

18. The Working Group has also considered different approaches that could be taken to achieving its goal of creating a specific and simplified legal form to facilitate the operation of MSMEs. There was broad agreement in the Working Group that its goal should not be to reform and simplify outdated company law regimes, but rather to develop a separate and innovative approach based on the collective domestic experience of delegations, and to specifically tailor it to MSMEs.¹³

¹² Such protections and advantages have been enumerated in para. 35 of A/CN.9/WG.I/WP.92, and include, inter alia, asset partitioning, protection against potential administrative abuse and other abuse of rights, easier access to credit, labour law protection for employees, and similar features.

¹³ As agreed by the Working Group at its twenty-fourth session (New York, April 2015) (para. 54, A/CN.9/831). See, also different approaches to legal reform as outlined in paras. 5 to 7, A/CN.9/WG.I/WP.82.

19. In view of that agreement and in recognition that more formalistic and rigid corporate-style rules may not be appropriate for such businesses, this draft legislative guide has taken the view that the optimal solution for the creation of an appropriate simplified legal regime for MSMEs is to draw ideas from the good practices in corporate law reform identified by the Working Group to date, while creating an innovative legal regime for MSMEs capable of standing on its own. The scheme envisioned in this draft legislative guide is thus neither dependent upon nor specifically linked to existing company law in any State.

20. One clear advantage of that approach is that it enables States to more easily adopt a regime that implements the legislative recommendations. Perhaps more important, however, is that this approach permits States to craft appropriate legislative measures using a clean slate approach, allowing them to step away from existing business forms and to respond to the real needs of the types of businesses that such a scheme seeks to serve. The approach favoured in this draft legislative guide is intended to acknowledge and focus on the real nature of many businesses in developing economies. Some of these businesses, of course, share common traits with businesses in more developed economies. The recommendations in this draft legislative guide create a legal business form that moves away from more traditional, hierarchical and formal governance towards less rigid and formalistic structures based on the actual needs and expectations of entrepreneurs. This approach may also present the best possible opportunity for the Working Group to achieve a unified text capable of being used in a cross-border context, and not dependent on the legal regime of any particular State, but rather representing a product of good practices drawn from legal regimes around the world.

21. Further, such an approach may also have important cross-border effects. As was indicated in the materials before UNCITRAL during its deliberations in 2013 leading to the establishment of the present MSME work, in addition to reducing barriers to MSMEs registering and operating their businesses within statutory frameworks and helping them to maximize their economic potential, work on the simplification of business incorporation and registration could have additional international effects. In particular, an internationally recognized simplified business form could facilitate cross-border trade for MSMEs, since it would provide a recognizable basis for such business forms and avoid problems that might arise due to a lack of international recognition of the business form of the enterprise.¹⁴

22. In pursuit of this informed and innovative approach to MSME law reform, this draft legislative guide has adopted revised terminology that is intended to be as neutral as possible. In order to assist the Working Group in considering the real issues facing MSMEs and to learn from existing company law solutions but not to rely on their more rigid rules, “corporate” and “company” terminology is not used. Nor is the previous term “simplified business entity” used.¹⁵ Instead, this guide describes a new entity: the “UNCITRAL Limited

¹⁴ Note by the UNCITRAL Secretariat, A/CN.9/780, para. 10.

¹⁵ The Working Group may wish to recall its previous discussions on what might be the best and most neutral term for the business entity being created. Although there was support for the use of the term “simplified business entity”, a view was expressed that the phrase “simplified company” should be used, and the Working Group agreed to use the former term in the draft model law but to place it in square brackets (see para. 68, A/CN.9/825; and paras. and 38, A/CN.9/831).

Liability Organization” (the “UNLLO”). Like all aspects of this draft text, use of this term is of course subject to the approval of the Working Group, but it is suggested that the term be adopted on an interim basis as a reminder of the innovative and independent goal to which the Working Group aspires.

23. Similarly, this draft text has dispensed with other corporate-related terminology in favour of more neutral terms. As previously agreed by the Working Group, the term “members” (and not “shareholders”)¹⁶ is used to describe the owners of the UNLLO, and a member’s interest in the UNLLO is referred to as “ownership” or “interest” (and not “shares”).¹⁷ In addition, non-corporate terminology has also been chosen by describing as “formation information” the set of data that must be submitted upon the formation of an UNLLO and will largely be made public. The rules agreed by the members for the operation of the UNLLO, which will not generally be publicly disclosed, are referred to as the “members’ agreement”.¹⁸

24. The UNLLO approach in this draft legislative guide has been taken in an effort to fulfil each of the desired goals and considerations outlined above.¹⁹ In addition, this text is intended to include all of the business law concepts considered by the Working Group to date, using them to create an innovative but informed legal business form based upon the actual needs of MSMEs in emerging markets.

¹⁶ The Working Group agreed at its twenty-sixth session (New York, April 2016) that the term “share” should be replaced with an alternative and more neutral term (see para. 25, A/CN.9/866).

¹⁷ The Working Group agreed at its twenty-fourth session (New York, April 2015) to use the term “member” rather than “shareholder”, since it was thought to be more system-neutral and inclusive (see para. 48, A/CN.9/831).

¹⁸ Although the terms “formation document” and “operating document” were chosen as neutral terms in previous iterations of the materials before the Working Group, concern was expressed since the legal regime in some States did not recognize two separate documents that corresponded to the functions as indicated. The Working Group agreed that the important feature to be preserved in a future iteration was not necessarily regarding the terminology, but rather in respect of the contents or information contained therein and which aspects of that information would be made public (see para. 39 and 68, A/CN.9/831).

¹⁹ This draft legislative guide also takes into account those considerations said by some delegations to be key (see para. 66, A/CN.9/825 and para. 2, A/CN.9/WG.I/WP.89) including: (i) permitting the simplified business entity to have one or more members; (ii) providing for full-fledged limited liability; (iii) establishing simple registration (see the draft legislative guide on business registration currently under preparation by the Working Group) and formation requirements; (iv) enabling maximum freedom of contract for members while establishing clear default rules to fill any gaps in rule-making; (v) providing for a flexible organizational structure; (vi) making minimum capital optional; (vii) not requiring a statement of the entity’s purpose; (viii) permitting the optional use of intermediaries; (ix) providing for fiscal transparency and simplified accounting; and (x) building on the presumption that a ready-made business form statute should focus on the needs of the smallest entities first (the “think small first” principle).

II. Draft legislative guide on an UNCITRAL Limited Liability Organization (UNLLO)

A. General Provisions

25. As noted above, the approach taken in this draft legislative guide on an UNLLO is to create a legal business form that does not depend for its establishment, definition or operation on the existing law in an enacting State. Instead, the UNLLO is intended to be a distinct product of independent legislation whose preparation is guided by the recommendations in this draft legislative guide, and which is not specifically linked to any existing legislation in the enacting State.²⁰

26. Although the legal forms for privately held businesses may vary from State to State, one of their main hallmarks could be said to be to function as independently as possible from the strict rules that govern public companies. For example, privately held businesses tend to have specific relief from the rules governing public companies including: simpler formation rules; nominal or no minimum capital requirement; greater freedom of contract; and fewer disclosure requirements.²¹

27. The main focus of legislative reforms to assist the creation of privately held business entities to date has been on the creation of flexible business forms that can be tailored to the needs of certain types of closely held businesses, including: MSMEs wishing to formalize and segregate personal and business assets; family firms; joint ventures; and professional service firms.²² By way of this legislative guide, the UNLLO can now be added to this list. This flexibility in business form has been achieved in part by allowing the members of the business to agree through contractual mechanisms on the internal governance of the enterprise, to contract around the more superfluous and cumbersome protective requirements traditionally associated with public companies, and to tailor rights and duties that are more consistent with the needs of privately held businesses. Of course, most simplified business entity legislation also includes certain mandatory rules that cannot be contracted out of by agreement among the members, as well as default provisions to fill any gaps in their agreement.²³

28. The Working Group has agreed in principle that freedom of contract should be a guiding principle in establishing the internal organization of the UNLLO.²⁴ In

²⁰ It will be recalled that this draft legislative guide takes an informed but innovative approach, first assessing the real needs of MSMEs in their economic context and then applying principles learned from existing domestic legal business forms to create an innovative and independent approach to satisfy those particular needs. This approach includes a movement away from more traditional, hierarchical and formal corporate governance structures to a more flexible and responsive regime so as to meet the needs and expectations of MSMEs, particularly in developing economies.

²¹ International Encyclopedia of Comparative Law, Volume XIII, Business and Private Organizations (1998), Detlev Vagts ed., Chapter 2, Limited Liability Companies and Private Companies, pp. 2 and 13.

²² See Working Paper A/CN.9/WG.I/WP.82, paras. 8-11.

²³ See Working Papers A/CN.9/WG.I/WP.82, paras. 10-11 and A/CN.9/WG.I/WP.86, para. 22.

²⁴ In that regard, the Working Group also observed that MSMEs could find it difficult to establish such rules, and that standard forms could be useful to assist such businesses (see para. 63, A/CN.9/800 and para. 23 of A/CN.9/WG.I/WP.86). Once the Working Group has advanced its

recognition of the importance of freedom of contract for such privately held businesses, the operation of the UNLLO is governed to as great an extent as possible by the contractual agreement reached by its members, except in cases where the legislation establishing the UNLLO is mandatory and cannot be contracted out of by agreement. Of course, in the case where an UNLLO has only one member, this agreement will be a reflection of the will of the single member of the UNLLO. The contractual agreement between the members of the UNLLO is referred to in this text as the “members’ agreement”.

29. In addition to offering broad flexibility and freedom of contract in establishing the internal governance of the enterprise, the provisions establishing the UNLLO as recommended in this draft legislative guide provide default provisions to fill any gaps that might exist in the rules established by the members of the UNLLO. These default rules can be particularly important for smaller or less-experienced business persons who may not foresee every eventuality required for the successful operation of the UNLLO.

30. The fact that the UNLLO is established through an independent and delinked legislative approach along with expansive freedom of contract among its members to organize the UNLLO’s operations is reflected in draft recommendation 1. In addition, the fact that the operation of the UNLLO will in large part be governed by the principle of the freedom of contract of its members is reflected below (in A/CN.9/WG.I/WP.99/Add.1) in draft recommendation 11.

Recommendation 1: The law should provide that an UNCITRAL Limited Liability Organization (“UNLLO”) is governed by this law and by the members’ agreement, if any.

31. Draft recommendation 2 permits an UNLLO to be organized for any lawful activity. Although the UNLLO must naturally be a privately held enterprise, this legislative guide takes a very broad approach to the permitted activity of an UNLLO in order to provide maximum flexibility to the MSMEs that are anticipated will use the business form. No mention is made in this draft legislative guide in respect of general objectives clauses, since the modern trend in that respect is to allow business entities to engage in all lawful activities under the law of the relevant State and to leave it open to the members of the UNLLO to decide whether or not they wish to include a more restrictive purpose clause in the members’ agreement.²⁵

32. The Working Group may wish to note that while it previously suggested that a simplified business entity could be limited to commercial or business purposes,²⁶ such a narrowing of the broad scope of the UNLLO may not be warranted in a text

work on this draft legislative guide, it may wish to consider whether it would be useful to prepare such standard form members’ agreements to assist MSMEs in this regard.

²⁵ The Working Group agreed at its twenty-third session (November 2014) during a discussion of whether purpose clauses were necessary that a very broad approach should be taken in this regard in order to provide maximum flexibility for MSMEs wishing to use the legal form being established (see para. 70, A/CN.9/825, para. 27 of A/CN.9/WG.I/WP.86, and para. 9 of A/CN.9/WG.I/WP.89).

²⁶ The Working Group suggested at a previous session that the simplified business entity be limited to a commercial privately held entity (see para. 69, A/CN.9/825), and later modified its view to suggest that the legal form should be limited to lawful “business”, rather than “commercial” activity (see paras. 33, 36 and 37, A/CN.9/831).

like the present legislative guide. Although this text recommends that a very permissive approach should be taken to drafting legislation to create the UNLLO legal form, a State referring to the legislative guide in the preparation of its legislation could nonetheless decide to narrow the permitted scope of an UNLLO according to its particular policy requirements.

33. As the recommendation is currently drafted, it would permit UNLLOs to engage in a very broad range of lawful activities, which could include non-profit activities as well as activities that may not necessarily be considered business activities under the law of the State, such as the simple ownership of property.

34. States wishing to more specifically enumerate the industrial sectors or activities in which an UNLLO may participate could prohibit an UNLLO from engaging in certain regulated industries, such as in the banking, microcredit or insurance industry.²⁷ Similarly, for additional clarity, participation in specific activities could also be specifically permitted, and might include activities in the agricultural, artisanal and cultural sectors,²⁸ or participation by cooperatives and funds.²⁹

Recommendation 2: The law should provide that an UNLLO may be organized for any lawful activity.

35. This draft legislative guide on an UNLLO embraces the granting of legal personality in order to give clear expression to the nature of the UNLLO as a legal entity separate from its members.³⁰ Legal personality in this context confers upon the UNLLO the legal rights and duties necessary for it to function within a legal system, including the ability to acquire rights and assume obligations in its own name.³¹

36. Legal personality provides a means through which the UNLLO's assets can be separated from the personal assets of its members, a process which has been

²⁷ The Working Group agreed that it might be useful to establish what the scope of application of the legal text would be, for example, that it might exclude enterprises in certain highly regulated sectors (see para. 24, A/CN.9/800, para. 68, A/CN.9/825 and para. 8, A/CN.9/WG.I/WP.89).

²⁸ The Working Group agreed on such an inclusion at its twenty-fourth session (April 2015) (see para. 36 of A/CN.9/831).

²⁹ The Working Group agreed on the possibility of such an inclusion at its twenty-second (February 2014) and twenty-third (November 2014) sessions (see para. 25 of A/CN.9/800 and para. 69 of A/CN.9/825).

³⁰ At its twenty-second session (February 2014), the Working Group expressed general support for the view that limited liability and legal personality offered MSMEs important advantages in doing business and that it was important to provide access to these advantages to such enterprises (see para. 28, A/CN.9/800 and para. 69, A/CN.9/800). Legal personality was also considered by the Working Group at its twenty-third (November 2014) and twenty-fourth (April 2015) sessions (see para. 10 of A/CN.9/WG.I/WP.89, para. 72 of A/CN.9/825 and paras. 42-49 of A/CN.9/831), including key aspects that should be included in the concept of legal personality.

³¹ The concept of legal personality of the entity has also been variously described as including the power to do all things necessary or convenient to carry on its activities, the ability to acquire and hold tangible or intangible assets, the ability to act through agents, and the capacity to sue and be sued in its own name.

referred to as affirmative asset partitioning.³² This, in turn, facilitates defensive asset partitioning by an UNLLO that has been granted limited liability and which can then protect the personal assets of the UNLLO members from exposure in the event that the UNLLO does not do well or becomes involved in legal disputes. At the same time, the distinct legal personality of the UNLLO also permits it to be shielded from potential claims by the personal creditors of its members.

37. Legal personality and limited liability protection (see draft recommendation 4) provide a convenient legal mechanism for the UNLLO to separate its assets from the personal assets of its members. However, it should be noted that, in some States, there are legislative models that permit the separation of business assets of an entity from the personal assets of its members without resort to legal personality and limited liability, thus providing the benefits of asset partitioning for MSMEs and their members by way of a legal structure that stops short of full limited liability and legal personality.³³

38. It should be noted that this draft legislative guide does not consider domestic taxation policy in respect of the legal form of an UNLLO. In the interests of preparing a system-neutral legal form, such policy matters were thought best left to States drafting legislation on the basis of this guide, with the understanding that States consider their policy options in terms of how best to reduce legal obstacles for UNLLOs, and MSMEs, more generally.³⁴

Recommendation 3: The law should provide that the UNLLO has a legal personality.

39. Limited liability is a legal concept that permits entrepreneurs to take business risks without fear that their personal assets will be jeopardized in case of failure. This is important both for the protection of the members of the organization and for the promotion of innovation and business creation. However, many MSMEs do not currently enjoy the benefits of limited liability protection. As such, and in order to offer that important and attractive feature to such economic actors, the legislative regime establishing the UNLLO offers limited liability protection to UNLLO members.³⁵

40. The presence of such a liability shield generally prevents the members of an UNLLO from incurring direct or indirect personal liability as a result of the activities of the UNLLO. In effect, the financial liability of a member of the UNLLO is limited to a fixed sum, usually the value of the member's contribution to the UNLLO. Limited liability plays an important role to assist MSMEs in that it

³² See, for example, Henry Hansmann and Reinier Kraakman, "The Essential Role of Organizational Law", 110 Yale L.J. 387 (2000) (www.yalelawjournal.org/article/the-essential-role-of-organizational-law).

³³ See, for example, the mechanisms described in paras. 47 to 49 of A/CN.9/WG.I/WP.92, as reported to the Working Group in A/CN.9/WG.I/WP.87, and referred to in para. 29 of A/CN.9/800, paras. 56 to 61 of A/CN.9/825 and para. 20 of A/CN.9/831. An additional such legislative mechanism is described in A/CN.9/WG.I/WP.94.

³⁴ The Working Group was encouraged at its twenty-fourth session (New York, April 2015) to avoid an overemphasis on tax-related issues and focus on developing a system-neutral legal instrument, and it was suggested that although tax issues need not be directly addressed in the draft text, they should be noted in the commentary (see paras. 18 and 50, A/CN.9/831).

³⁵ As agreed by the Working Group at its previous sessions (paras. 25, 28 to 30, A/CN.9/800; paras. 51, 69 and 71, A/CN.9/825; paras. 51 to 60, A/CN.9/831).

provides the members of an UNLLO with a convenient means for defensive asset partitioning, separating a member's personal assets from those owned by the UNLLO, thus protecting a member's personal assets from exposure in the event that the business does not thrive or becomes involved in legal disputes. In addition, as noted above, limited liability of members and distinct legal personality of the organization often go hand in hand (see draft recommendation 3). Granting both attributes to the UNLLO will assist in promoting the stability of the organization and access by it to lower cost credit.

41. Of course, the UNLLO itself has unlimited liability to its creditors and all of the assets of the UNLLO are available to satisfy those claims. In addition, it is important to note that the limitation on the liability of the member for the obligations of the UNLLO refers to liability that results solely from that person's status as a member of the UNLLO. Members of the UNLLO may still have personal liability (including tort liability), or liability to other members of the UNLLO, or for example, a member may be liable for a personal guarantee that has been undertaken in respect of the obligations of the UNLLO.

42. Draft recommendation 4 establishes the default rule that members of the UNLLO will enjoy limited liability for the obligations of the UNLLO in the ordinary course of business. It would also be possible under the draft recommendation for members to agree in the members' agreement that one or more of them would forego the limited liability protection offered by the default rule, or that a member's limited liability for the losses of the UNLLO would be greater than the value of that member's contribution.

43. Of course, it will remain open for courts to lift the limited liability protection of an UNLLO ("piercing the corporate veil") and impose personal liability on members and managers in cases of fraud or other wrongful acts done in the name of the UNLLO.³⁶ Such an abuse of the UNLLO legal form could arise, for example, where a member makes use of UNLLO assets as though they were that member's personal assets.

Recommendation 4: The law should provide that, unless otherwise agreed,³⁷ a member is not liable for any obligation of the UNLLO solely by reason of being a member of that UNLLO.

44. Some States maintain the view that a minimum capital requirement is a reasonable quid pro quo for members of a privately held business to receive the benefit of limited liability protection. However, even such States have in many instances dramatically reduced minimum capital requirements for privately held

³⁶ See, also, para. 45(e) in relation to draft recommendation 5, as well as draft recommendations 14, 20 and 21.

³⁷ If the Working Group is of the view that the draft recommendation would be clearer if these two concepts were separated from each other (see also the discussion of the Working Group reflected in para. 52 of A/CN.9/831), the draft recommendation could appear in two parts as follows:

"Recommendation 4.1: The law should provide that a member is not personally liable for the obligations of the UNLLO solely by reason of being a member of the UNLLO."

"Recommendation 4.2: The law should provide that members may agree that one or more members will be personally liable for the obligations of the UNLLO in the circumstances specified in the members' agreement."

businesses to nominal or initially low but progressively increasing sums. There was agreement in the Working Group that the modern trend in simplified business forms is that a minimum capital requirement is not typically required, or if it is required, it is only for a nominal amount, thus reducing the initial financial burden on smaller entrepreneurs wishing to create legally recognized businesses.³⁸ Since the minimum capital required to create such a business is often one of the most expensive considerations for new businesses, its elimination or reduction may be expected to be one factor that can positively affect the rate of establishment of legally recognized business entities.³⁹

45. Moreover, the Working Group agreed that the issue of minimum capital requirements should be dealt with in the context of general mechanisms for the protection of creditors and other third parties dealing with the UNLLO.⁴⁰ The more important of such mechanisms are included in this draft legislative guide as mandatory rules, while others may be found elsewhere in a State's legislative framework. These mechanisms include:⁴¹

(a) Making members of the UNLLO liable for improper distributions and obliging them to repay the UNLLO for any such distributions (see draft recommendations 20 and 21, which are mandatory rules);

(b) Prescribing standards of conduct including good faith and fiduciary responsibilities (see draft recommendation 14, which is a mandatory rule);

(c) Requiring transparency and accessibility in the keeping and sharing of UNLLO records and information (see recommendations 26 and 27, which are mandatory rules);

(d) Requiring that the entity's business name contain an indicator of its limited liability status (for example, "UNLLO") and that its name be set out in contracts, invoices and other dealings with third parties (see draft recommendation 6, which is a mandatory rule);

(e) Permitting exceptions to the limited liability protection of members of the UNLLO in certain circumstances (a rule on "piercing the corporate veil" is a judicial remedy in respect of corporations that is available in some States but that should not necessarily be imported in respect of the UNLLO, where it might better be characterized in terms of mandatory rules prohibiting a member's abuse of the UNLLO legal form; such mandatory rules are found in draft recommendations 14, 20 and 21);⁴²

³⁸ See paras. 51 to 54 of A/CN.9/800 and paras. 56 and 75 to 76 of A/CN.9/825. It was also observed in the Working Group that in the case of MSMEs, a minimum capital requirement could have serious negative effects on the ability of such businesses to become legally recognized, and that even a low initial capital requirement that increased progressively could present a difficult hurdle for MSMEs for which the first few years of operation were most critical. See Report of Working Group I, A/CN.9/800, paras. 29 and 51 to 59; Working Paper A/CN.9/WG.I/WP.85, paras. 26 to 29; and Working Paper A/CN.9/WG.I/WP.86/Add.1, paras. 10-12.

³⁹ See para. 30, A/CN.9/WG.I/WP.86.

⁴⁰ See paras. 55 to 59 of A/CN.9/800 and paras. 77 to 78 of A/CN.9/825.

⁴¹ See the general discussion of these issues by the Working Group in paragraph 32 of A/CN.9/WG.I/WP.86 and paragraphs 77 to 78 of A/CN.9/825.

⁴² The Working Group may also wish to recall that it has previously considered the issue of "piercing the corporate veil", reaching general agreement that "rules on piercing the corporate

(f) Establishing requirements in respect of the transparency, quality and public availability of registered information on the UNLLO and its managers (this could be expected to be a function of the business registry law of a State and recommendations in this respect are included in the draft legislative guide on business registration, also under preparation by this Working Group);

(g) Establishing a supervisory role for commercial registries or specialized agencies (this could also be expected to be a function of the business registry law of the State);

(h) Establishing credit bureaux (this would be a policy decision of the State); and

(i) Requiring corporate governance oversight (this would be a policy decision of the State).

46. In keeping with the nature of the UNLLO as a mechanism to assist MSMEs, as well as the modern trend away from minimum capital requirements and the inclusion of other mechanisms to protect third parties dealing with the UNLLO, this draft legislative guide does not contain a minimum capital requirement for the establishment of an UNLLO. As noted above, the main mechanisms included in the draft legislative guide to provide protection to third parties dealing with the UNLLO is found by way of the mandatory rules in draft recommendations 6, 14, 20, 21, 26 and 27, as outlined in subparagraphs 45 (a) to (e) above.⁴³

47. Should a State's policy considerations necessitate the imposition of a minimum capital requirement, even of a nominal or progressively increasing amount, it is not recommended that that requirement be placed on the UNLLO. Instead, such a State may consider other mechanisms, such as the establishment of a maximum size (for example, based upon the number of employees) or level of profitability of the UNLLO, which would then be required to convert to another legal form (of which the State might require minimum capital) upon exceeding that maximum. It should be cautioned, however, that such an approach could unnecessarily restrict the growth of UNLLOs.

Recommendation 5: The law should not contain a minimum capital requirement for the formation of an UNLLO.

48. In order to signal to third parties dealing with the UNLLO that its members, by definition, enjoy limited liability protection (as well as the other features associated with being an UNLLO), the law should require that the name of the UNLLO must include a phrase or abbreviation (such as "UNLLO") that would enable it to be distinguished from other types of business entity.⁴⁴ The use of the same or a similar phrase or abbreviation in different States would assist UNLLOs engaging in

veil were quite detailed and could vary widely from State to State, such that it might not be productive to attempt to establish such standards in the draft text, outside of noting the potential importance of such a remedy in the commentary and leaving the establishment of standards on it to enacting States." (paras. 56 and 58, A/CN.9/831). In any event, courts may still "pierce the corporate veil" under State law if the UNLLO legal form is abused by its members, and such a tool need not be specifically inserted into the text of the draft legislative guide.

⁴³ See also para. 16 of A/CN.9/WG.I/WP.89.

⁴⁴ The Working Group agreed on this approach at its previous sessions (see para. 69, A/CN.9/825 and paras. 61 to 63, A/CN.9/831).

cross-border trade in that the defining characteristics of the entity would be immediately known upon recognition of the phrase or abbreviation, even in the cross-border context. Since the UNLLO legal form is intended as an innovative legal form specifically tailored to MSMEs and existing independently from a State's existing laws on business associations,⁴⁵ the choice of an appropriate identifying phrase or abbreviation need not be dependent on the local legal context. As such, it may be possible and appropriate for the Working Group to agree on a suggested unified term to be used for the identification of the UNLLO.

49. While some States may wish to require the UNLLO to use its distinctive phrase or abbreviation in all correspondence with third parties in order to signal to those parties the UNLLO's limited liability, specifying in the UNLLO legislation that a failure to do so would result in a sanction such as denial of the benefit of limited liability protection might be too harsh a penalty to impose on MSMEs. Instead, States may wish to encourage the UNLLO to use its distinctive phrase or abbreviation in all correspondence in order to enhance legal certainty, but not make it mandatory so as to avoid creating an additional burden on the UNLLO by potentially increasing its administrative costs of compliance and verification.⁴⁶ Practically speaking, since the distinctive phrase or abbreviation forms part of the name of the UNLLO, it would likely be included in all correspondence involving the UNLLO, in any event.

50. In terms of the name chosen for the UNLLO, some States provide for or require prior registration (and approval) of company names to enable the appropriate commercial registry or other body administering business associations under its law to prevent the proposed name of the UNLLO from conflicting or being confused with the name of another entity or existing trade names.⁴⁷

51. While States may continue to follow the approach of requiring advance reservation of the name of the UNLLO, it should be noted that many of the UNLLOs that will be established will be MSMEs, and care should be taken that such name reservation requirements do not inadvertently create additional hurdles for such enterprises. Further, name reservation may be dealt with by the State's business registration regulations rather than in the UNLLO law itself.

52. States usually also require that the name of a business be sufficiently distinguishable from other business entities. States may wish to include a provision permitting authorities to authorize the use of an UNLLO name that is similar to or even indistinguishable from that of another business entity; this approach may best be understood in the context of MSMEs, where two entities could possess similar names but be engaged in very different industries and/or distant geographical areas, and thus be quite distinguishable in fact.⁴⁸ States should, of course, make their own policy choices in respect of how best to determine whether the name of an UNLLO is sufficiently distinguishable for that State's particular context and taking into

⁴⁵ As generally agreed upon by the Working Group at its twenty-fourth session (New York, April 2015) (see para. 54, A/CN.9/831).

⁴⁶ As agreed by the Working Group at its twenty-fourth session (New York, April 2015) (see para. 62, A/CN.9/831).

⁴⁷ See para. 13 of A/CN.9/WG.I/WP.86/Add.1 and para. 17 of A/CN.9/WG.I/WP.89.

⁴⁸ See para. 19 of A/CN.9/WG.I/WP.89.

account the resources required and available to ensure that there is compliance with the State's name requirements.⁴⁹

Recommendation 6: The law should provide that the name of the UNLLO must include a phrase or abbreviation that identifies it as an UNLLO.

B. Formation of the UNLLO

53. In order to accommodate the creation of an UNLLO by a sole member, including by an individual entrepreneur engaged in relatively simple business activities, and to permit the UNLLO legal form to evolve from a very small single member model to a more complex multi-member entity,⁵⁰ this draft legislative guide takes a flexible approach and recommends that the law should permit an UNLLO to be established and operated with a single member or with multiple members. Moreover, in keeping with the view expressed by the Working Group, a member of an UNLLO may be any legal or natural person.⁵¹ As an additional feature to enhance the flexibility of the UNLLO, draft recommendation 7 does not specify a maximum number of members for the UNLLO.⁵²

54. It should be noted that should a State have strong policy considerations that require it to specify that an UNLLO may have a maximum number of members, or that a legal person may not be a member of an UNLLO, these restrictions should be made clear in the legislation.

55. In addition, the requirement that an UNLLO must have at least one member throughout its life cycle is in line with this draft legislative guide's objective of simplicity, as well as with making the UNLLO transparent and accountable. Indeed, requiring that an UNLLO have at least one member at all times may help prevent the creation of organizations without active business operations or assets ("shell" organizations) and make transparency and accountability requirements more easily enforceable (see draft recommendation 9).

Recommendation 7: The law should provide that the UNLLO must have at least one member from the time of its formation until its dissolution, and that any person may be a member of the UNLLO.

56. In order to provide legal certainty as to when the UNLLO comes into existence, this draft legislative guide recommends that the law should specify the time of formation of the UNLLO.⁵³

57. The draft legislative guide on business registration (also under preparation by the Working Group) considers inter alia the optimal approach for the registration of

⁴⁹ As agreed by the Working Group at its twenty-fourth session (New York, April 2015) (see para. 63, A/CN.9/831).

⁵⁰ As agreed by the Working Group at its previous sessions (see paras. 24, 32 and 42 to 43 of A/CN.9/800, paras. 67 and 74 of A/CN.9/825, and para. 19 of A/CN.9/831).

⁵¹ As agreed by the Working Group at its twenty-fourth session (New York, April 2015) (see para. 64, A/CN.9/831).

⁵² See also para. 20 of A/CN.9/WG.I/WP.89.

⁵³ The Working Group may wish to note that this draft legislative guide also, of course, deals with the dissolution and winding-up of an UNLLO in draft recommendation 24.

all businesses, including for an UNLLO.⁵⁴ Consequently, this draft legislative guide takes the view that, outside of the specific information required for the valid registration of an UNLLO (see draft recommendation 9), matters relating to the operation of the business registry should be dealt with by legislation prepared on the basis of the dedicated legislative guide on business registration.

58. Regardless of whether an UNLLO is registered using an electronic, paper-based or mixed business registration system, upon fulfilling the necessary requirements, the UNLLO will receive a notice of registration from the designated State authority. The State may choose at which specific time the UNLLO is formed, but in keeping with the view expressed by the Working Group,⁵⁵ the State may wish to specify that the time of formation of the UNLLO is at the moment of issuance of the notice of the UNLLO's registration. In order to accommodate the simple nature of the UNLLO, and in keeping with the recommendations of the draft legislative guide on business registration, issuance of the notice of registration should be as fast and as streamlined as possible.

59. In States that do not adhere to the declaratory system of business registration, formation of the UNLLO is coupled with a review of the formal correctness of the formation information as overseen by judicial authorities, an administrative agency or an intermediary,⁵⁶ and a notice of registration of the UNLLO could be expected to be issued following that review.⁵⁷ While these issues are discussed in greater detail in the draft legislative guide on business registration, they would not affect the recommendation in this draft legislative guide that the law should specify the time of formation of the UNLLO. In effect, regardless of whether or not a State uses a declaratory system of business registration, the most appropriate time of formation is likely to be at the moment of issuance of the UNLLO's notice of registration.

Recommendation 8: The law should specify the time of formation of the UNLLO.

60. In this draft legislative guide, the "formation information"⁵⁸ refers to the whole of the electronic, paper-based or mixed media information that must be submitted to the designated State authority in order to create the UNLLO.

⁵⁴ As a consequence, discussion and recommendations on certain business registration issues referred to by the Working Group (for example, using electronic means for registration and providing a single interface for business registration and intergovernmental and cross-border collaboration and information-sharing, see paras. 26 to 27, A/CN.9/800; in respect of keeping delays in the issuance of the notice of registration to a minimum and avoiding arbitrary rejection of an application for formation of a business entity, see para. 65 of A/CN.9/831) are contained in the draft legislative guide on business registration and are not repeated in this draft legislative guide.

⁵⁵ As agreed by the Working Group at its twenty-fourth session (New York, April 2015) (see para. 65, A/CN.9/831).

⁵⁶ See para. 20 of A/CN.9/WG.I/WP.89.

⁵⁷ For further discussion of this issue by the Working Group at its twenty-fourth session (New York, April 2015), see para. 67, A/CN.9/831, which also notes that a business would not be permitted to begin operations until it had obtained the necessary licences, but that such considerations were not related to the legal formation of the business entity.

⁵⁸ The term "formation information" has replaced the previous term "formation document" (see para. 39 and 68, A/CN.9/831) used in the draft texts that the Working Group has considered to date (A/CN.9/WG.I/WP.86/Add.1 and A/CN.9/WG.I/WP.89).

61. States typically require different types and amounts of information to be submitted for the valid formation of a legal business entity usually dependent on the type of business entity being created. In a reflection of the intended simplicity of the UNLLO, this draft legislative guide reduces the required information for its formation to the minimum information necessary for the establishment and operation of the UNLLO, as well as the protection of third parties dealing with it. In addition, draft recommendation 9 respects the principle that it should be as simple as possible for an MSME or individual entrepreneur to provide the information required so as to avoid creating unnecessary burdens and to encourage compliance with the law.⁵⁹ Keeping the information required for formation of business entities (including the UNLLO) as current as possible⁶⁰ is a matter that is dealt with in some detail in the draft legislative guide on business registration.

62. Paragraph (a) of draft recommendation 9 sets out the information⁶¹ that must be submitted for the formation of the UNLLO and that will be made public by the designated State authority, usually through publication on the State's business register.⁶² That information must include the name of the UNLLO as well as its business address. In some cases, where the business does not have a standard form address, a precise description of the geographic location of the business should be inserted instead of the business address. In any event, the business address or geographic location of the UNLLO would be used for service or mailing purposes. The formation information should also include a statement of whether the UNLLO is managed by its member or members ("member-managed"), which may be expected to be the case in most instances, or whether it is to be managed by a designated manager or managers ("manager-managed").⁶³

63. The final piece of mandatory information that must be provided for formation of the UNLLO and which will be publicly available is the name of each manager. It is important to disclose this information in order to provide protection for third parties since the manager is the person with legal authority to bind the UNLLO in its dealings with such parties (see also draft recommendation 15, which establishes that each publicly disclosed manager has individual authority to bind the UNLLO).⁶⁴ If the business is member-managed, the name of each member must be included; if the business is manager-managed, the name of each designated manager must be included. It should be noted that the term "manager" as used in this draft legislative guide includes both a member-manager and a manager-manager. Further, information on the residential address of each manager is not required; the rationale for this is that public availability of the residential address of a manager may

⁵⁹ The Working Group reached agreement on this point at its twenty-fourth session (New York, April 2015) (see para. 69, A/CN.9/831).

⁶⁰ See the discussion of the Working Group on this issue at para. 73 of A/CN.9/831.

⁶¹ At its twenty-fourth session (New York, April 2015), the Working Group did not come to an agreement on what information should be mandatory and what should be publicly disclosed, but it considered a number of the items of information now found in draft recommendation 9 (see paras. 23 to 27 and 68 to 75, A/CN.9/831).

⁶² These and other issues relating to the business register are dealt with in the draft legislative guide on business registration, also under preparation by the Working Group.

⁶³ As agreed by the Working Group at its twenty-fifth session (Vienna, October 2015) (para. 84(b), A/CN.9/860).

⁶⁴ As agreed by the Working Group at its twenty-fifth session (Vienna, October 2015) (para. 83, A/CN.9/860).

present a risk to personal safety and is not essential to fulfil the objective of protection of third parties.⁶⁵

64. It is thought that the mandatory information set out in paragraph (a) of draft recommendation 9 strikes an appropriate regulatory balance. Because the formation information required pursuant to paragraph (a) is made public, it should provide sufficient legal and commercial certainty for the State and for the protection of third parties dealing with the UNLLO. In addition, because the required information is kept to the minimum necessary, providing it should not be overly burdensome on the MSME or individual entrepreneur that is seeking to form an UNLLO.

65. Paragraph (b) of the draft recommendation sets out the information that must be submitted for the formation of the UNLLO but which will not be made public by the designated State authority, that is, the name and address of each member of the UNLLO. It should be noted that if the UNLLO is member-managed, the list of names of its members will also be the list of its managers, and, as such, that list of members' names only (not including their addresses) will be made public pursuant to paragraph (a). Requiring the UNLLO to submit the names and addresses of its members, but not necessarily to disclose them publicly, fulfils an important role in providing transparency to State authorities in terms of the beneficial ownership of the UNLLO.

66. This approach to the information that an UNLLO must provide to State authorities would be expected to meet the requirements of the international standards on beneficial ownership, and in fact, likely exceeds them in requiring that a list of the names and addresses of members of the UNLLO be submitted to State authorities (but not necessarily be made public, unless the UNLLO is member-managed, in which case only the names of the members would be publicly disclosed). The information requirements in this draft legislative guide⁶⁶ should thus assuage any concerns that the UNLLO legal form could be misused for illicit purposes, including money-laundering and terrorist financing.⁶⁷

⁶⁵ See para. 24 of A/CN.9/WG.I/WP.89.

⁶⁶ See, also, draft recommendations 26 and 27 on record-keeping, inspection and disclosure of UNLLO information to its members.

⁶⁷ Financial Action Task Force (FATF) Recommendation 24 in respect of transparency and beneficial ownership of legal persons encourages States to conduct comprehensive risk assessments of legal persons and to ensure that all companies are registered in a publicly available company registry. The basic information required is: (a) the company name; (b) proof of incorporation; (c) legal form and status; (d) the address of the registered office; (e) its basic regulating powers; and (f) a list of directors. In addition, companies are required to keep a record of their shareholders or members. (See International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations, Part E on Transparency and Beneficial Ownership of Legal Persons and Arrangements, Recommendation 24 (www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf). In addition, it should be recalled that business entities, in order to conduct activities, usually must open bank accounts that require the submission of taxation and other identification numbers, and financial institutions may remain the most suitable parties to prevent and combat money-laundering and other illicit activities. For consideration of these issues by the Working Group, see paras. 27 and 41 of A/CN.9/800 and paras. 47 to 55 of A/CN.9/825, as well as information contained in paras. 26 to 32 of A/CN.9/WG.I/WP.82 and paras. 21 and 26 of A/CN.9/WG.I/WP.89.

67. It should also be noted that draft recommendation 9 establishes the minimum mandatory information that must be submitted to State authorities in order to form an UNLLO. Of course, it is open to the UNLLO to include in its formation information any additional information it deems appropriate for inclusion and public disclosure.⁶⁸

Recommendation 9: The law should provide that only the following information is required for valid formation of the UNLLO:

(a) Information that will be made public:

(i) The name of the UNLLO;

(ii) The business address or precise geographical location of the UNLLO;

(iii) A statement of whether the UNLLO is member-managed or manager-managed; and

(iv) The name of each manager;⁶⁹ and

(b) Information that will not be made public: the name and address of each member.

68. In order to ensure that the formation information of the UNLLO is kept as current as possible,⁷⁰ the law should permit each manager to make any necessary amendment to it. While, of course, the business registry law in the State will contain provisions on any requirements for the amendment of the formation information, managers will have an incentive to keep at least the public information of the UNLLO current so as to avoid potentially misleading third parties dealing with the UNLLO. Further, in the case of member-managed UNLLOs, draft recommendation 10 means, of course, that each member has the authority to amend the formation information.

Recommendation 10: The law should provide that the formation information may be amended by any manager, unless otherwise agreed by the members.

⁶⁸ This approach is in keeping with the view of the Working Group expressed at its twenty-fourth session (New York, April 2015) (see para. 74, A/CN.9/831). See, also, the discussion below in respect of the additional information that an UNLLO might wish to disclose in order to access credit or attract investors, but should not be required to disclose (see, *infra*, footnote 38, A/CN.9/WG.I/WP.99/Add.1).

⁶⁹ Of course, the term “manager” in this draft legislative guide refers to both a member-manager and a manager-manager.

⁷⁰ See, also, *supra*, para. 61, which notes that the draft legislative guide on business registration (under preparation) deals in some detail with the techniques that may be used to keep the business registry as current as possible, without unduly burdening MSMEs or single entrepreneurs.