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Report of Working Group I (MSMEs) on the work of its twenty-eighth session (New York, 1-9 May 2017)

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I. Introduction

1. At its forty-sixth session, in 2013, the Commission requested that a working group should commence work aimed at reducing the legal obstacles encountered by micro, small and medium-sized enterprises (MSMEs) throughout their life cycle.¹ At that same session, the Commission agreed that consideration of the issues pertaining to the creation of an enabling legal environment for MSMEs should begin with a focus on the legal questions surrounding the simplification of incorporation.²
2. At its twenty-second session (New York, 10 to 14 February 2014), Working Group I (MSMEs) commenced its work according to the mandate received from the Commission. The Working Group engaged in preliminary discussion in respect of a number of broad issues relating to the development of a legal text on simplified incorporation³ as well as on what form that text might take,⁴ and business registration was said to be of particular relevance in the future deliberations of the Working Group.⁵
3. At its forty-seventh session, in 2014, the Commission reaffirmed the mandate of Working Group I, as set out above in paragraph 1.⁶
4. At its twenty-third session (Vienna, 17 to 21 November 2014), Working Group I continued its work in accordance with the mandate received from the Commission. Following a discussion of the issues raised in working paper [A/CN.9/WG.I/WP.85](#) in respect of best practices in business registration, the Working Group requested the Secretariat to prepare further materials based on parts IV and V of that working paper for discussion at a future session. In its discussion of the legal questions surrounding the simplification of incorporation, the Working Group considered the issues outlined in the framework set out in working paper [A/CN.9/WG.I/WP.86](#), and agreed that it would resume its deliberations at its twenty-fourth session beginning with paragraph 34 of that document.
5. At its twenty-fourth session (New York, 13 to 17 April 2015), the Working Group continued its discussion of the legal questions surrounding the simplification of incorporation. After initial consideration of the issues as set out in Working Paper [A/CN.9/WG.I/WP.86](#), the Working Group decided that it should continue its work by considering the first six articles of the draft model law and commentary thereon contained in Working Paper [A/CN.9/WG.I/WP.89](#), without prejudice to the final form of the legislative text, which had not yet been decided. Further to a proposal from several delegations, the Working Group agreed to continue its discussion of the issues included in [A/CN.9/WG.I/WP.89](#), bearing in mind the general principles outlined in the proposal, including the “think small first” approach, and to prioritize those aspects of the draft text in [A/CN.9/WG.I/WP.89](#) that were the most relevant for simplified business entities. The Working Group also agreed that it would discuss the alternative models introduced in [A/CN.9/WG.I/WP.87](#) at a later stage.
6. At its forty-eighth session, in 2015, the Commission noted the progress made by the Working Group in the analysis of the legal issues surrounding the simplification of incorporation and to good practices in business registration, both of which aimed at reducing the legal obstacles encountered by MSMEs throughout their life cycle. After discussion, the Commission reaffirmed the mandate of the Working Group under the terms of reference established by the Commission at its

¹ *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17 (A/68/17)*, para. 321.

² For a history of the evolution of this topic on the UNCITRAL agenda, see [A/CN.9/WG.I/WP.97](#), paras. 5-20.

³ [A/CN.9/800](#), paras. 22-31, 39-46 and 51-64.

⁴ *Ibid.*, paras. 32-38.

⁵ *Ibid.*, paras. 47-50.

⁶ *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17 (A/69/17)*, para. 134.

forty-sixth session in 2013 and confirmed at its forty-seventh session in 2014.⁷ In its discussion in respect of the future legislative activity, the Commission also agreed that document [A/CN.9/WG.I/WP.83](#) should be included among the documents under consideration by Working Group I for the simplification of incorporation.⁸

7. At its twenty-fifth session (Vienna, 19 to 23 October 2015), the Working Group continued its preparation of legal standards aimed at the creation of an enabling legal environment for MSMEs, exploring the legal issues surrounding the simplification of incorporation and on good practices in business registration. In terms of the latter, following a presentation by the Secretariat of documents [A/CN.9/WG.I/WP.93](#), [A/CN.9/WG.I/WP.93/Add.1](#) and [A/CN.9/WG.I/WP.93/Add.2](#) on key principles of business registration and subsequent consideration by the Working Group of [A/CN.9/WG.I/WP.93](#), it was decided that a document along the lines of a concise legislative guide on key principles in business registration should be prepared, without prejudice to the final form that the materials might take. To that end, the Secretariat was requested to prepare a set of draft recommendations to be considered by the Working Group when it resumed its consideration of Working Papers [A/CN.9/WG.I/WP.93](#), [A/CN.9/WG.I/WP.93/Add.1](#) and [A/CN.9/WG.I/WP.93/Add.2](#) at its next session.⁹ In respect of the legal issues surrounding the simplification of incorporation, the Working Group resumed its consideration of the draft model law on a simplified business entity as contained in working paper [A/CN.9/WG.I/WP.89](#), starting with Chapter VI on organization of the simplified business entity, and continuing on with Chapter VIII on dissolution and winding up, Chapter VII on restructuring, and draft article 35 on financial statements (contained in Chapter IX on miscellaneous matters).¹⁰ The Working Group agreed to continue discussion of the draft text in Working Paper [A/CN.9/WG.I/WP.89](#) at its twenty-sixth session, commencing with Chapter III on shares and capital, and continuing with Chapter V on shareholders' meetings.

8. At its twenty-sixth session (New York, 4 to 8 April 2016), Working Group I continued its consideration of the legal issues surrounding the simplification of incorporation and on key principles in business registration. In respect of the former, the Working Group resumed its deliberations on the basis of working paper [A/CN.9/WG.I/WP.89](#). Following its discussion of the issues in Chapters III and V,¹¹ the Working Group decided that the text being prepared on a simplified business entity should be in the form of a legislative guide, and requested the Secretariat to prepare for discussion at a future session a draft legislative guide that reflected its policy discussions to date (see [A/CN.9/WG.I/WP.99](#) and [A/CN.9/WG.I/WP.99/Add.1](#)).¹² In respect of key principles in business registration, the Working Group considered recommendations 1 to 10 of the draft commentary ([A/CN.9/WG.I/WP.93](#), [A/CN.9/WG.I/WP.93/Add.1](#) and [A/CN.9/WG.I/WP.93/Add.2](#)) and recommendations ([A/CN.9/WG.I/WP.96](#) and [A/CN.9/WG.I/WP.96/Add.1](#)) for a legislative guide, and requested the Secretariat to combine those two sets of documents into a single draft legislative guide for discussion at a future session.¹³ In addition, the Working Group also considered the general architecture of its work on MSMEs, and agreed that its MSME work should be accompanied by an introductory document along the lines of [A/CN.9/WG.I/WP.92](#), which would form a part of the final text and would provide an overarching framework for current and future work on MSMEs.¹⁴ The Working

⁷ *Official Records of the General Assembly, Seventieth Session, Supplement No. 17 (A/70/17)*, paras. 220 and 225; *Sixty-ninth Session, Supplement No. 17 (A/69/17)*, para. 134; and *Sixty-eighth Session, Supplement No. 17 (A/68/17)*, para. 321.

⁸ *Ibid.*, *Seventieth Session, Supplement No. 17 (A/70/17)*, para. 340.

⁹ See Report of Working Group I (MSMEs) on the work of its twenty-fifth session, [A/CN.9/860](#), para. 73.

¹⁰ *Ibid.*, paras. 76 to 96.

¹¹ Report of Working Group I (MSMEs) on the work of its twenty-sixth session, [A/CN.9/866](#), paras. 22 to 47.

¹² *Ibid.*, paras. 48 to 50.

¹³ *Ibid.*, paras. 51 to 85 and 90.

¹⁴ *Ibid.*, paras. 86 to 87.

Group also decided at its twenty-sixth session¹⁵ that it would devote its 27th session to deliberations on a draft legislative guide on a simplified business entity, and its deliberations at its twenty-eighth session (New York, 1 to 9 May 2017) to a consideration of a draft legislative guide reflecting key principles and good practices in business registration.

9. At its forty-ninth session (New York, 27 June to 15 July 2016), the Commission commended the Working Group for its progress in the preparation of legal standards in respect of the legal issues surrounding the simplification of incorporation and to key principles in business registration, both of which aimed at reducing the legal obstacles faced by MSMEs throughout their life cycle. The Commission also noted the decision of the Working Group to prepare a legislative guide on each of those topics and States were encouraged to ensure that their delegations included experts on business registration so as to facilitate its work.¹⁶

10. At its twenty-seventh session (Vienna, 3 to 7 October 2016), the Working Group continued its deliberations. As decided at its twenty-sixth session,¹⁷ the Working Group spent the entire twenty-seventh session considering a draft legislative guide on a simplified business entity, leaving consideration of the draft legislative guide on key principles of a business registry for the first week of its twenty-eighth session (New York, 1-9 May 2017). The Working Group considered the issues outlined in working papers [A/CN.9/WG.I/WP.99](#) and [A/CN.9/WG.I/WP.99/Add.1](#) on an UNCITRAL limited liability organization (UNLLO), beginning with section A on general provisions (draft recommendations 1 to 6), section B on the formation of an UNLLO (draft recommendations 7 to 10), and section C on the organization of an UNLLO (draft recommendations 11 to 13). The Working Group also heard a short presentation of working paper [A/CN.9/WG.I/WP.94](#) of the French legislative approach known as an “Entrepreneur with Limited Liability” (or EIRL), which represented a possible alternative legislative model applicable to micro and small businesses.

II. Organization of the session

11. Working Group I, which was composed of all States Members of the Commission, held its twenty-eighth session in New York from 1 to 9 May 2017. The session was attended by representatives of the following States Members of the Working Group: Austria, Argentina, Brazil, Burundi, Canada, China, Colombia, Cote d'Ivoire, Czechia, El Salvador, France, Germany, India, Indonesia, Israel, Italy, Japan, Kenya, Kuwait, Libya, Mexico, Namibia, Nigeria, Poland, Republic of Korea, Romania, Russian Federation, Sierra Leone, Singapore, Spain, Switzerland, Thailand, Turkey and United States of America.

12. The session was attended by observers from the following States: Congo, Croatia, Finland, Iraq, Netherlands, Niger, Saudi Arabia, Syrian Arab Republic and Tunisia.

13. The session was also attended by observers from the Holy See.

14. The session was also attended by observers from the following international organizations:

Invited international non-governmental organizations: American Society of International Law (ASIL); Conseil des Notariats de l'Union Europeene (CNUE); Fondation pour le droit continental (FDC); Grupo Latinoamericano de Abogados para el Derecho del Comercio Internacional (GRULACI); Jerusalem Arbitration Centre (JAC); the National Law Center for Inter-American Free Trade (NLCIFT);

¹⁵ Report of Working Group I (MSMEs) on the work of its twenty-sixth session, A/CN.9/866, para. 90.

¹⁶ *Official Records of the General Assembly, Seventy-first Session, Supplement No. 17 (A/71/17)*.

¹⁷ A/CN.9/866, para. 90.

the European Law Students' Association (ELSA) and the Law Association for Asia and the Pacific (LAWASIA).

15. The Working Group elected the following officers:

Chair: Ms. Maria Chiara Malaguti (Italy)

Rapporteur: Ms. Andrea Laura Mackielo (Argentina)

16. In addition to documents presented at its previous sessions, the Working Group had before it the following documents:

(a) Annotated provisional agenda ([A/CN.9/WG.I/WP.100](#));

(b) Note by the Secretariat on a draft legislative guide on key principles of a business registry ([A/CN.9/WG.I/WP.101](#));

(c) Proposal by the Government of Italy on contractual networks ([A/CN.9/WG.I/WP.102](#));

(d) Note by the Secretariat on compilation of draft recommendations on key principles of a business registry ([A/CN.9/WG.I/WP.103](#)); and

(e) Observations and model provisions from the Government of Colombia on the dissolution and liquidation of MSMEs ([A/CN.9/WG.I/WP.104](#)).

17. The Working Group adopted the following agenda:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Preparation of legal standards in respect of micro, small and medium-sized enterprises.
5. Other business.
6. Adoption of the report.

III. Deliberations and decisions

18. The Working Group engaged in discussions in respect of the preparation of legal standards aimed at the creation of an enabling legal environment for MSMEs, in particular, on a draft legislative guide on key principles of a business registry on the basis of Secretariat documents [A/CN.9/WG.I/WP.101](#) and [A/CN.9/WG.I/WP.103](#). The Working Group also continued its consideration of a draft legislative guide on an UNCITRAL limited liability organization on the basis of Secretariat documents [A/CN.9/WG.I/WP.99](#) and [A/CN.9/WG.I/WP.99/Add.1](#). In addition, the Working Group considered the proposals by States in documents [A/CN.9/WG.I/WP.102](#) and [A/CN.9/WG.I/WP.104](#). The deliberations and decisions of the Working Group on these topics are reflected below.

IV. Preparation of legal standards in respect of micro, small and medium-sized enterprises

A. Draft legislative guide on key principles of a business registry

1. Presentation of [A/CN.9/WG.I/WP.101](#) and [A/CN.9/WG.I/WP.103](#) and introductory observations

19. The Working Group was reminded that the draft legislative guide in [A/CN.9/WG.I/WP.101](#) was a compilation of documents that had previously been before the Working Group, i.e. the draft commentary on key principles of business registration in [A/CN.9/WG.I/WP.93](#), [A/CN.9/WG.I/WP.93/Add.1](#) and

[A/CN.9/WG.I/WP.93/Add.2](#) ([A/CN.9/860](#), paras. 17 to 68), and the draft recommendations on key principles of business registration in [A/CN.9/WG.I/WP.96](#) and [A/CN.9/WG.I/WP.96/Add.1](#) ([A/CN.9/866](#), paras. 51 to 85). Decisions made by the Working Group in respect of those documents were reflected in [A/CN.9/WG.I/WP.101](#), as were the original locations of the consolidated paragraphs and the original numbering of the draft recommendations. Moreover, it was noted that document [A/CN.9/WG.I/WP.103](#) merely reproduced the draft recommendations in [A/CN.9/WG.I/WP.101](#) in order to facilitate the reading and consideration of the latter text, which included a number of cross-references.

20. The Working Group recalled a number of the themes underlying the draft legislative guide, including: (a) that encouraging MSMEs to operate in the legally regulated economy was a key goal; (b) that the primary conduit through which businesses might enter the legally regulated economy was through registration, particularly if an approach based on the “one-stop shop” was adopted; (c) that all businesses should be permitted to register, but it was left to the State to determine which businesses were required to register; (d) that registration would permit the State to identify MSMEs and to provide them with assistance and incentives; (e) that the draft legislative guide was intended to be aspirational and meant for those economies engaging in major reforms and those that wished to improve their business registries; (f) that although the focus of the work was on MSMEs, any improvements to a State’s business registry system would also assist businesses of other sizes; (g) that three key factors in the draft text were to recommend a fully electronic registry, the use of a “one-stop shop”, and the use of unique business identifiers; and (h) that since the text was a legislative guide, it was intended to be a highly flexible text that States could refer to according to their needs.

21. It was further highlighted that throughout the draft recommendations, the term “Regulation” had been used to indicate the body of rules adopted by the enacting State with respect to the business registry, whether such rules were found in administrative guidelines or in the specific law governing business registration. The term “law of the enacting State”, on the other hand, had been used to denote those provisions of domestic law in the broader sense that were somehow relevant to and touched upon issues related to business registration. The Working Group was of the view that it was not necessary to distinguish in the legislative guide between the law specific to the business registry and the broader applicable law that might touch upon business registration, nor between primary or secondary legislation. Instead, it was suggested that the term “law” might be sufficient, leaving other aspects to the enacting State to decide, but that the Secretariat might have regard to recent treatment of a similar issue in the draft guide to enactment of the UNCITRAL model law on secured transactions in order to identify an appropriate solution. It was further observed that consequential changes would need to be made to the relevant definitions in paragraph 12 of the draft text.

2. Objectives of a Business Registry

Purposes of the business registry: paragraphs 25 and 26 and recommendation 1

22. It was again suggested that draft recommendation 12 on a single interface for business registration and registration with other authorities (“one-stop shops”) should be moved to the beginning of the legislative guide (see also para. 54 of [A/CN.9/866](#), when the Working Group had decided to leave structural considerations to be discussed at a later stage). After discussion, the Working Group agreed that the commentary related to recommendation 1 should instead refer to the concept of “one-stop shops”, focusing on the importance of the concept, particularly in terms of assisting MSMEs.

23. A suggestion was made that the commentary to recommendation 1 should contain greater emphasis on the importance of MSMEs and the underlying reasons for the work being undertaken by Working Group I. It was noted that paragraphs 2 (and the introduction generally) and 26 of the draft legislative guide contained such

information. In addition, the Working Group was reminded that it had agreed in general terms with the approach set out in [A/CN.9/WG.I/WP.92](#) (see paras. 86 to 88 of [A/CN.9/866](#)), wherein a document along the lines of [A/CN.9/WG.I/WP.92](#) would establish the overarching reasons for the MSME work and the policy support that States could provide to MSMEs, while the draft legislative guides being prepared by Working Group I and other working groups represented the legal pillars that would support that overarching policy approach. The Working Group agreed to add any necessary detail to the commentary on the importance of assisting MSMEs.

24. A concern was expressed that draft recommendation 1(a) did not sufficiently clarify that it should be left for enacting States to decide which businesses should be required to register (see also para. 56 of [A/CN.9/866](#)), and that businesses in some States operated in the legally regulated economy without registering. A suggestion to add the phrase “that is required to register” to recommendation 1(a) was not supported by the Working Group. It was also observed that paragraphs 125 to 128 and recommendation 19 of the draft legislative guide focused in detail on this issue and the Working Group decided that any necessary clarification or cross-reference in this respect could be made to the commentary, possibly as an additional paragraph, and that adjustments might be made to assist the understanding of recommendation 1, such as substituting the word “facilitates” for “entitles”.

25. A suggestion was made to add the phrase “and/or public institutions” after the word “public” in recommendation 1(b) in order to ensure that information relevant for public procurement initiatives was available to public entities. The Secretariat was requested to consider whether an adjustment could be made to the commentary to ensure clarity on that point.

26. Another suggestion was made to add to recommendation 1(b) the phrase “receiving, storing and” before the phrase “making accessible” so as to mirror the definition of “business registry” in paragraph 12. That suggestion was not taken up by the Working Group.

Simple and predictable legislative framework permitting registration for all businesses: paragraphs 27 to 30 and recommendation 2

27. In light of its earlier discussion in respect of clarifying the concept that the draft legislative guide left it to the enacting State to decide which businesses should be required to register (see para. 24 above), the Working Group agreed that the second sentence in paragraph 28 should be modified by deleting the phrase “may wish to consider requiring or enabling” and replacing it with “should enable”. Further, the Working Group agreed to add the phrase “or type of business” at the end of paragraph 29.

28. A suggestion was made to clarify recommendation 2(a) by including in it a cross-reference to the section in the legislative guide dealing with the correction of errors by registry staff and to the fact that electronic filings might be automatically rejected if the information was incorrectly completed. Those proposals were not taken up by the Working Group.

29. It was suggested that recommendation 2(b) should include reference to MSMEs, as well as to “businesses of all sizes and legal forms”. It was observed that the emphasis of the legislative guide on MSMEs was already evident in the introduction and ought not be unnecessarily repeated, and the Working Group did not support the suggested addition. Another proposal was made to add to the end of recommendation 2(b) the phrase “stipulated under the legislation of the enacting State”, but the Working Group agreed that that concept was already reflected in the introductory portion of the guide, which could be amplified, if necessary.

30. The Working Group supported a suggestion to delete as redundant the closing phrase of recommendation 2(c) “except where such a business is subject to

additional requirements under the law of the enacting State as a consequence of its particular legal form.”

Key features of a business registration system: paragraphs 31 to 35 and recommendation 3

31. A delegation suggested the deletion of paragraphs 32 and 33 from the draft legislative guide, because it was of the view that the concept of reliability was adequately defined in paragraph 12 of the text and by way of the examples provided in paragraph 34, subparagraphs (a) to (d). It was further suggested that the square brackets around subparagraph (d) of recommendation 3 could then be deleted and the text retained.

32. Other delegations were of the view that recommendation 3(d) should be retained in the text without eliminating paragraphs 32 and 33. It was observed that retaining the discussion of reliability in paragraphs 32 and 33 could be helpful for States that might consider reforming their business registry systems based upon the recommendations of the draft legislative guide. It was suggested that if the discussion in paragraph 32 in respect of the term “reliability” caused confusion in being too similar to the definition in paragraph 12, paragraph 32 might instead include text along the lines of “according to the definition of reliable in paragraph 12”. Further, it was noted that the term “reliable” might appear in other places throughout the legislative guide and that care should be taken to ensure that it was used consistently. After discussion, the Working Group agreed that paragraphs 32 and 33 should remain in the legislative guide and requested the Secretariat to adjust paragraph 32 based on the guidance provided by the delegations and to eliminate any duplication of the definition of “reliable”.

33. Although it was suggested that the phrase “of good quality and” could be deleted from paragraph 34 as it already appeared in the definition of “reliable” in paragraph 12, the Working Group agreed to retain it in order to ensure that adequate emphasis was given to the concept. A suggestion made to insert the phrase “good quality” into recommendation 3(d) to be consistent with the language of paragraph 34 was also accepted by the Working Group.

34. Several delegations expressed the view that subparagraph 34(c), which noted the example in some jurisdictions that businesses might be required to re-register at certain intervals to keep the registry reliable, should be deleted because the example was not considered to be good practice. In addition, it was thought that such a practice could be viewed as unduly burdensome on MSMEs. Although it was noted that certain jurisdictions required some process of periodic renewal of a business’s registration in order to ensure the accuracy of information in the registry, the Working Group agreed to delete subparagraph 34(c).

35. Further to a question regarding whether updating the registry in subparagraph 34(d) would be a task for the registry or for the registered business, it was clarified that the text was intended to refer to the registry. Some concern was expressed about the frequency of the updates to the registry and it was observed that technology might not always be available in all States to update the registry in real time. Nevertheless, it was thought that it would be useful to encourage regular updates in the draft legislative guide.

36. There was support in the Working Group for a suggestion to redraft paragraph 34 and focus on the general concepts of verification and security of information as well as on best practices for updating the registry. The Secretariat was also encouraged to include cross-references to later sections of the legislative guide that considered those aspects, including a reference to recommendation 28(a) on automated periodic update requests, and to recommendations 40 and 41 on recourses available to the State when businesses did not provide reliable information to the registry.

37. The Working Group agreed to delete the square brackets around recommendation 3(d) and to retain the text.

3. Establishment and functions of the business registry

Responsible authority: paragraphs 37 to 39 and recommendation 4

38. There was agreement in the Working Group that the reference to the enacting State retaining “ownership” of the registry record in paragraph 39 might not be sufficiently accurate, and that the Secretariat should consider the use of alternative text, possibly referring instead to “responsibility” or “rights”.

39. After discussion, the Working Group agreed that recommendation 4 should be clarified to indicate that the State should retain responsibility over the organization of the business registry, but that it could entrust the operation of the registry to an authority established for that purpose. There was support in the Working Group for a drafting suggestion of the recommendation along the following lines: “The law should establish that the organization of the business registry is within the competence of the enacting State. The business registry should be operated by the enacting State or by an authority appointed by that State”.

40. The Working Group further agreed to request the Secretariat to clarify the meaning of the term “authority” (as used in recommendations 4 and 5) and the term “designated authority” (as used in recommendations 6 and 8) and possibly to include a definition of both terms in paragraph 12 of the draft legislative guide.

Appointment of the registrar: paragraphs 40 and 41 and recommendation 5

41. The Working Group agreed with the substance of paragraphs 40 and 41 and recommendation 5 of the legislative guide as drafted.

Transparency in the operation of the business registration system and accountability of the registrar: paragraphs 42 to 44 and recommendation 6

42. There was support in the Working Group for the suggestion that paragraph 44 should cross-refer to the principles of liability of the registrar and registry staff, discussed in paragraphs 196 to 200 of the draft legislative guide.

Use of standard registration forms: paragraph 45 and recommendation 7

43. A comment was made that use of standard registration forms may not be the only way through which States could implement a transparent registration system. There was agreement in the Working Group that in the commentary to recommendation 7, it could be added that States may allow the submission of instruments of incorporation or contracts other than the standardized registration form.

Capacity-building for registry staff: paragraphs 46 to 49 and recommendation 8

44. There was agreement in the Working Group that the phrase “any improvement of the registry’s standing in international rankings” in paragraph 47 should be deleted and replaced with the notion that States pursued capacity-building for registry staff in order to be meet “global best practices and trends”.

45. The Working Group also expressed its support for the suggestion to include the phrase “service standards” in the third line of recommendation 8 after the phrase “business registration procedures”.

Core functions of business registries: paragraphs 50 to 58 and recommendation 9

46. In accordance with its deliberation at its twenty-sixth session in April 2016 (para. 82 of [A/CN.9/866](#)), the Working Group agreed to postpone the review of this draft recommendation until it had reviewed the rest of the draft recommendations and commentary.

Structure of the business registry: paragraphs 59 and 60 and recommendation 10

47. A concern was expressed that centralized registration systems might not be appropriate for developing States that needed to facilitate access to registration services for businesses in remote locations and possibly through multiple off-site access points. It was, however, noted that in many States, centralized and decentralized approaches to business registration coexisted, since the registration systems were structured as central systems accessible from multiple decentralized access points.

48. After discussion, the Working Group agreed to request the Secretariat to redraft the commentary in paragraphs 59 and 60 to focus less on the contrast between centralized and decentralized systems, and more on how the registry system should be interconnected, regardless of its structure, and have multiple access points.

4. Operation of the business registry**Electronic, paper-based or mixed registry: paragraphs 62 to 65**

49. A question was raised in the Working Group whether any delegation was aware of a jurisdiction that had implemented blockchain technology in its business registry system. It was observed that Dubai may be introducing the use of blockchain technology into its registry systems, but that no information on additional jurisdictions was available. It was noted that the issue of blockchain technology was increasingly under discussion globally and that it was on the programme of UNCITRAL's 50th Anniversary Congress (4 to 6 July 2017, Vienna). The Working Group agreed that the technology and its potential impact would be of interest in its current work on MSMEs and should be considered, but decided to defer discussion of it until a later stage.

50. The Working Group agreed with the substance of paragraphs 62 to 65 of the legislative guide as drafted.

Features of an electronic registry: paragraphs 66 to 70

51. The Working Group agreed with the substance of paragraphs 66 to 70 of the legislative guide as drafted.

Phased approach to the implementation of an ICT-based registry: paragraphs 71 to 79

52. A question was raised whether the term "Internet penetration", found in paragraphs 72 and 75 of the draft legislative guide, was the proper terminology in light of the increasing levels of Internet access globally. The view was expressed that other factors, such as cost, might also be relevant to how an ICT-based registry was appropriately phased in. The experience of some delegations indicated that in developing States in particular, additional factors may be of importance, including literacy rates, infrastructure issues (e.g. power outages), the types of intended users, and access to and reliance on mobile payment systems. The Working Group requested the Secretariat to review the commentary to ensure that such issues were adequately reflected. In addition, it was observed that business registries should also have contingency plans, and while reference to such plans appeared later in the text, the Working Group agreed to include a cross reference in this section of the draft.

53. Other than the adjustments noted in the paragraph above, the Working Group agreed with the substance of paragraphs 71 to 79 of the legislative guide as drafted.

Other registration-related services supported by ICT solutions: paragraphs 80 to 83 and recommendation 11

54. The Working Group agreed with the substance of paragraphs 80 to 83 and recommendation 11 of the legislative guide as drafted.

A single interface for business registration and registration with other authorities (“one-stop shop”): paragraphs 84 to 93 and recommendation 12

55. Several States informed the Working Group of legislative reforms they had enacted which had adopted a single interface for business registration and registration with other authorities (“one-stop shops”), and of the overall positive impact of those reforms in facilitating the registration of businesses. There was broad agreement in the Working Group on the benefits of establishing a “one-stop shop” and of the important advantages that could be gained by users of that single interface.

56. A suggestion was made that reference could be made in the last sentence in paragraph 86 to access for MSMEs to public and private banking as additional services that could be linked to the “one-stop shop”, and reference was also made to obtaining municipal licences through the “one-stop shop”. Another suggestion was made to add to the commentary, possibly in paragraph 87, reference to the practice of using mobile offices (i.e. offices on wheels) as additional access points for the “one-stop shops”, particularly in States with remote areas.

57. A reference was made to the section entitled “B. Definitions” from a document ([A/CN.9/WG.I/WP.98](#)) by the United Nations Conference on Trade and Development (UNCTAD) secretariat, and a suggestion was made that that section of the paper should be included in the draft legislative guide as a definition for “business registration”. There was support in the Working Group for concerns that were expressed that adopting the passage from the UNCTAD paper as a definition for “business registration” might not be appropriate, and that such an approach could have a negative impact on the remainder of the text and its scope in general. Further, it was indicated that the content of the passage from the UNCTAD paper was already found in the “one-stop shop” section of the legislative guide. The Working Group decided to delay its decision on the suggestion until it had had an opportunity to consider the consequences that such an approach might have on the legislative guide and the overall approach of the project.

58. Some concern was expressed that draft recommendation 12 should ensure clarity that it was not advocating the establishment of a single government agency with authority over all of the other agencies related to the “one-stop shop”, but rather that it was recommending that a single agency should have authority over the single integrated interface; government agencies would retain their autonomy.

59. Following discussion in the Working Group, the Secretariat was requested to make the necessary adjustments to clarify the commentary. Decisions in respect of the suggestion to move recommendation 12 to the beginning of the legislative guide (see para. 22 above) and to include a definition of “business registration” along the lines of the UNCTAD paper were deferred to a later stage.

Use of unique business identifiers: paragraphs 94 to 102 and recommendation 13

60. The Working Group was reminded that the purpose of a unique business identifier was to provide each business with a single identifier that the business could use for identification purposes across various agencies within a jurisdiction. At the same time, it was recognized that an agency might still assign a separate identifier to be used for internal purposes.

61. A suggestion was made by some delegations that paragraph 100 might refer to the fact that a State could assign a separate business identifier to a sole proprietor in both a business and an individual capacity.

62. A concern was raised that recommendations 13 and 14 had an inherent contradiction with respect to the time at which an identifier would be assigned because recommendation 13 provided that a “unique business identifier should be allocated to each registered business” whereas recommendation 14 contemplated that a unique business identifier could also be allocated before registration. It was noted that in some jurisdictions, a public agency might provide a unique identifier

for businesses that were permitted to operate before registration, but that States could make it possible for the same identifier to be used as its unique business identifier after registration. It was also noted that in some jurisdictions the registry and the issuer of the unique business identifier might not be the same agency.

63. It was agreed by the Working Group that it would be left to the enacting State to determine the format of the unique business identifier and which agency would have the authority to assign it. The Secretariat was requested to make any necessary adjustments to the commentary.

Allocation of unique business identifiers: paragraphs 103 and 104 and recommendation 14

64. The Working Group agreed with the substance of paragraphs 103 and 104 and recommendation 14 of the legislative guide as drafted.

Implementation of a unique business identifier: paragraphs 105 to 109 and recommendation 15

65. The Working Group agreed with the substance of paragraphs 105 to 109 and recommendation 15 of the legislative guide as drafted. The Working Group also supported a suggestion to combine recommendations 13 through 15 into three consecutive recommendations after one single commentary.

Sharing of private data between public agencies: paragraph 110 and recommendation 16

66. Concern was expressed with respect to the use of the term “private data” in paragraph 110 and in recommendation 16, noting that the concept was unknown in some jurisdictions, or referred to as “personal data” in others. It was suggested that the text might use the term “protected data” as a possible alternative in order to be more precise. There was, however, general agreement in the Working Group that enacting States should establish and adhere to their own rules for the sharing and use of such protected data among public agencies.

67. In addition, it was noted that although the commentary and recommendation were intended to regulate the sharing of data between government agencies, there were several confusing references to disclosure of information to the public. It was suggested that such issues should instead be considered in connection with draft recommendations 32 and 33 of the legislative guide.

68. After discussion, the Working Group agreed that the text of the recommendation should be amended (in particular, the chapeau and subparagraph (a)) so that it referred to “protected data” and recommended that such data should be shared among public authorities only in conformity with the law of the enacting State. There was further agreement that any necessary adjustments should also be made to paragraph 110, and that issues related to disclosure should be considered in relation to recommendations 32 and 33.

Exchange of information among business registries: paragraphs 111 to 116 and recommendation 17

69. Concern was raised whether paragraphs 111 to 116 and recommendation 17 should focus on the exchange of information among business registries, or whether the issue was instead one of cross-border access to information on businesses. It was observed that while the regional examples of information-sharing set out in paragraph 112 and footnote 229 were interesting and ambitious, both were examples of information-sharing as a component of larger projects involving significant economic integration among States. It was suggested that that aspect should be clarified in the text since most States would not share that characteristic, and that the more practical recommendation might be to recommend methods through which different jurisdictions could promote the cross-border accessibility of the

information on their registry, for example through providing it in a widely understood language. There was support in the Working Group for that view and to remove references in the entire text to specific States or regional economic integration organizations. As a solution, it was suggested that recommendation 17 could be amended by adding the phrase “access to the” after the word “facilitate”, and the phrase “by foreign businesses” after the word “information”, and deleting the phrase “exchange between registries from different jurisdictions”.

70. In addition, it was suggested that the example included in the closing sentence of paragraph 111 described an interesting use of shared information, but that the example might be more properly considered in conjunction with business entity law rather than with business registration.

71. In general, there was agreement in the Working Group that the approach in paragraphs 111 to 116 and recommendation 17 should be adjusted to one focusing more on cross-border access to information than of information-sharing. To that end, there was support for the suggestion that those issues might best be considered in conjunction with part VI of the draft legislative guide on accessibility and information-sharing.

5. Registration of a business

Scope of examination by the registry: paragraphs 117 to 119

72. A suggestion was made to delete paragraphs 117 through 119 because the discussion of the scope of examination by the registry was said to not be a necessary inclusion in a legislative guide. However, it was noted that an examination of the different types of registry systems would be useful for States which have not yet made a determination as to which system to select. Moreover, the Working Group recalled that it had discussed the advantages and disadvantages of the approval and declaratory systems of business registration at several previous sessions (see, for example, paras. 62 to 65 of [A/CN.9/866](#) and paras. 31, 35 and 61 of [A/CN.9/860](#)), and that the Working Group had consistently agreed that the text should be very clear to avoid appearing to favour either system. There was support in the Working Group for the view that paragraphs 117 to 119 respected that view that the main goal of either system should be to simplify registration and thus to encourage the number of registered businesses.

73. It was observed that the approval and declaratory systems represented two distinct approaches, but that many jurisdictions actually used a more nuanced or hybrid approach somewhere between the two extremes and incorporating aspects of both systems. For example, not all approval systems were judicial in nature, and there were variations in the level and type of verification done in the various systems. There was support in the Working Group for the suggestion to include descriptions of such hybrid systems in paragraphs 117 through 119.

74. As a matter of drafting, it was observed that the phrase “verification of an event’s legal status is made after it has taken place” in the final sentence of paragraph 118 might not be appropriate. A suggestion was made that the legislative guide could provide information on the minimum amount of information required for each system. A proposal to define “approval systems” and “declaratory systems” was not taken up by the Working Group.

75. After discussion, the Working Group agreed that paragraphs 117 through 119 should remain in the legislative guide and requested the Secretariat to redraft those paragraphs of the commentary based on the guidance provided. Recalling previous discussions, it was determined by the Working Group that the legislative guide should not be viewed as endorsing one system over another and that care should be taken to draft the characterization of each system neutrally.

Accessibility of information on how to register: paragraphs 120 to 124 and recommendation 18

76. A suggestion was made to make a reference to the earlier discussion of “one-stop shops” in paragraphs 120 to 124. The Secretariat was encouraged to consider providing an appropriate cross reference to the discussion of “one-stop shops” found previously in the legislative guide. With that adjustment, the Working Group agreed with the substance of paragraphs 120 to 124 and recommendation 18 of the legislative guide as drafted.

Businesses required or permitted to register: paragraphs 125 to 128 and recommendation 19

77. The Working Group was reminded that the text of paragraph 125 should be adjusted to be consistent with the agreed text of paragraph 28 (see para. 27 above), in deleting the phrase “may wish to consider requiring or enabling” and replacing it with “should enable”.

78. A suggestion was made to clarify in recommendation 19 that businesses could be required to register based on their legal form or the type of business in which they were engaged in paragraph 125.

79. Concerns were expressed regarding the clarity of the final phrase of the first sentence in paragraph 128 that “the separation of personal assets from assets devoted to business or limiting the liability of the owner of the business”, since those advantages would be offered to businesses not simply as a result of their registration, but by virtue of them registering as a specific legal form. The Working Group agreed that the commentary should be clarified in that regard, either through deleting that phrase or through noting that such advantages were subject to the legal form chosen by the business.

80. In addition, it was observed that the final phrase of paragraph 126, “for example, because they are not economic entities or because they are not engaged in business activities” and the last sentence in paragraph 128 might need to be clarified.

81. After discussion, the Working Group agreed that clarifications were required to the commentary, and requested the Secretariat make the appropriate adjustments to the text.

Minimum information required for registration: paragraphs 129 to 132 and recommendation 20

82. There was support in the Working Group for the proposal to delete subparagraph 130(b). It was also suggested that reference could be made in the commentary to additional information that the registry might require for the purposes of controlling any illicit purposes or activities of the business that is being registered.

83. Concern was expressed that recommendation 20(b) was not sufficiently clear, in that the “person or persons registering the business” could be either the owner of the business or simply an agent registering a business. A strong preference was expressed that the identity of the owner(s) of the business be added to the list of information in recommendation 20. While there was some support for that suggestion, it was observed that since the legislative guide applied to all types of business, the identity of the owners could change frequently. In addition, it was observed that recommendation 20 merely listed the minimum information required for registration, and that, in any event, paragraph 131 made it clear that enacting States could require additional information, including the identity of the owner(s) or beneficial owner(s). The Working Group did not support the addition of the identity of the owner(s) to recommendation 20, but it agreed to clarify recommendation 20(b) by referring to the defined term “registrant(s)” rather than to “person or persons registering the business”. The Secretariat was also requested to make any necessary

changes to paragraph 132 to reflect the view of those States that considered the identity of the business owner to be a key requirement for business registration.

Language in which information is to be submitted: paragraphs 133 to 135 and recommendation 21

84. The Working Group agreed with the substance of paragraphs 133 to 135 and recommendation 21 of the legislative guide as drafted.

Notice of registration: paragraph 136 and recommendation 22

85. It was observed that the translation of the phrase “as soon as practicable, and, in any event, without undue delay” in recommendations 22 and 25 needed to be standardized in the French text. The Working Group agreed with the substance of paragraph 136 and recommendation 22 of the legislative guide as drafted.

Content of notice of registration: paragraph 137 and recommendation 23

86. The Working Group agreed to add the phrase “at least” after the phrase “should contain” in recommendation 23 in order to clarify that reference was being made to a minimum requirement. With that adjustment, the Working Group agreed with the substance of paragraph 137 and recommendation 23 of the legislative guide as drafted.

Period of effectiveness of registration: paragraphs 138 to 141 and recommendation 24

87. It was proposed that the commentary should be clarified, particularly in paragraph 139, to indicate that simply because a business registry did not require businesses to renew their registration it did not mean that the information in the registry was any less reliable, since there were several other methods that were employed to ensure that businesses kept their registered information current, including the imposition of sanctions. A drafting suggestion was made to delete the phrase at the beginning of the second sentence, replacing it with text along the lines of “When the enacting State is taking this approach, it should take care to keep the information current” and including a reference to part V on “Maintaining a current registry”. There was support in the Working Group for those suggestions and the Secretariat was requested to make the necessary adjustments.

88. It was also observed that the Working Group had previously agreed (see para. 34 above) that, although some jurisdictions required businesses to periodically renew their registration, requiring businesses to re-register might not be considered a good practice, particularly in terms of the potential burden that could be placed on businesses having to meet that requirement. There was support in the Working Group for the suggestion that the Secretariat be requested to ensure that the commentary in the legislative guide be consistent with that approach.

89. It was noted that recommendation 24 could cause uncertainty as drafted, since registries that required businesses to renew their registration would likely offer a grace period to businesses to complete that requirement prior to deregistering them, and the period of effectiveness might thus be uncertain. It was suggested that that uncertainty could be remedied by deleting the final phrase of the recommendation “or until such time as a renewal of the registration is required”. There was support in the Working Group for that suggestion. It was also suggested that the definition of the term “deregistration” should be amended accordingly.

Time and effectiveness of registration: paragraphs 142 to 144 and recommendation 25

90. It was observed that in some jurisdictions, businesses may apply for the protection of certain rights, in particular, in the provisional registration of the trade name of the business in the period prior to registration. Such provisional registration

protected that name from being used by any other entity until the registration of the business was effective. The Working Group agreed that a reference to such a pre-registration matter could be added to the text, bearing in mind paragraph 52, and that with that adjustment, the substance of paragraphs 142 to 144 and recommendation 25 of the draft legislative guide were agreed as drafted.

Refusal to register: paragraphs 145 to 148 and recommendation 26

91. It was recalled that, as noted in the commentary, the purpose of recommendation 26 was to prevent registries from arbitrarily rejecting businesses that had requested to be registered. The importance of requiring a clear and legally permissible justification for refusal to register a business was raised by several delegations along with a suggestion to include such language in recommendation 26(a). In addition, several delegations were of the view that translations of the English word “basis” in recommendation 26(a) were not strong enough to ensure that registrars would be required to provide to the company a clear rationale if the application were rejected. A suggestion was noted to consider adding commentary on the effect of instances when an application for registration should have been rejected but was not.

92. It was suggested that just as registrars could have the authority to correct application errors on their own, electronic forms could automatically require correction if submitted with an error. A proposal to further differentiate between electronic and paper registry systems in the commentary and recommendation 26 was not supported by the Working Group, but the Secretariat was encouraged to review the commentary to ensure that it would take into account paper, electronic and mixed systems, as well as the treatment of similar issues in the UNCITRAL Guide on the Implementation of a Security Rights Registry.

93. A concern was raised that the text of recommendation 26(a) referred to refusals to register on both formalistic and substantive grounds. The Working Group determined that recommendation 26 should focus solely on refusal to register based on the formalistic ground of error in the application. A proposal to modify the title of recommendation 26 to refer specifically to errors in the application was also approved by the Working Group, possibly adopting text along the lines of “Rejection of an application for registration”.

94. A suggestion was made to create a second recommendation for instances when refusal to register was based on substantive grounds of the business being in violation of the laws of the State. That proposal was not taken up by the Working Group, due to the fact that errors of substance would be governed by other sets of laws in each jurisdiction. Instead, the Secretariat was asked to modify the commentary to elaborate on the difference between formalistic and substantive refusals.

Registration of branches: paragraphs 149 to 151 and recommendation 27

95. The Working Group agreed that the commentary should be clear in establishing that each State had its own requirements governing the rules for the operation of foreign businesses. In that respect, particular regard might be had to adjusting the final sentence of paragraph 149.

96. In addition, a number of proposals were made in order to make paragraphs 149 to 151 and recommendation 27 more consistent with the approach taken in the draft legislative guide including the following:

(a) The commentary should ensure proper use of terminology to indicate that in some States registration of branches of domestic companies was also required or permitted;

(b) Recommendation 27(c)(i) and (ii) should be redrafted. With regard to subparagraph (c)(i), a view was expressed that the issue of the time and registration of businesses was already covered in recommendation 25(b) and therefore

recommendation 27(c)(i) should indicate when a branch was registered. As to recommendation 27(c)(ii), it was observed that the legal form of the foreign company that registered the branch should be included among the disclosure requirements listed there. In addition, the reference in recommendation 27(c)(ii) to “the copy of the notice of registration of the foreign company” should be replaced with a reference to any current proof of existence of the foreign company issued by the authority dealing with such matters in the State in which that company was registered; and

(c) Recommendation 27(c)(iv) should be deleted, since the issue of the language in which the information was to be submitted was dealt with in recommendation 21.

97. After discussion, the Working Group agreed to take up those proposals and requested the Secretariat to modify the commentary and recommendation 27 accordingly.

6. Post-registration

Maintaining a current registry: paragraphs 152 to 154 and recommendation 28

98. It was noted that recommendation 28(b) used the phrase “immediately ... or as soon and practicable thereafter” whereas recommendations 22 and 25 used the phrase “as soon as practicable, and, in any event, without undue delay” and also provided greater detail on the meaning of the phrase in the commentary. It was agreed that a consistent approach should be taken in the text and commentary of recommendation 28(b).

99. It was also noted that paragraph 153 contained the word “re-register”. It was observed that the Working Group had previously agreed (see paras. 34 and 88 above) that requiring businesses to re-register might not be considered good practice and the Secretariat was requested to ensure that the commentary in this section of the legislative guide be consistent with that approach.

100. As an additional method of keeping the information on the registry current, it was proposed that possible sanctions on businesses failing to comply would be more effective than sending reminders, and could be added to the commentary in paragraph 154. There was some support for that proposal, but concerns were expressed that not all errors should be subject to sanctions, particularly because a failure to update information could be inadvertent, and that applying strict sanctions for a relatively minor issue might inhibit MSMEs from registering and entering the legally regulated economy. It was also noted that such sanctions would be challenging to enforce as a practical matter. After discussion, it was determined that appropriate reference to the possibility of establishing sanctions on businesses failing to update their information could be added to the commentary to recommendations 40 and 41, and possibly in the recommendation as well, taking into account the concerns expressed in the Working Group the likelihood that such failures could be inadvertent.

Information required after registration: paragraphs 155 and 156 and recommendation 29

101. The Working Group determined to insert the phrase “at least” into the chapeau of recommendation 29 so that the text read “the registered business must file with the business registry at least the following information”.

102. A proposal to eliminate recommendation 29(b) was not taken up by the Working Group, but it was agreed that because periodic returns were not required in all jurisdictions, the order of the clauses should be reversed along the lines of “When the law of the enacting State so requires, periodic returns ...”. It was suggested by several delegations to remove the reference to “annual accounts” as they might not be required from MSMEs and could be required to be filed with authorities other than registries. In that regard, the Working Group was encouraged

to consider the definitions of “annual accounts” and “periodic reports” in paragraph 12. A suggestion was also noted to make reference to the effect that a “one-stop shop” might have on the preceding obligations.

103. The Working Group agreed to switch the order of recommendations 28 and 29, and to reverse the order of recommendation 28(a) and (b), so that the legislative guide would focus first on the obligation of the business to update information and then on the obligation of the registry. A proposal to combine recommendations 28 and 29 was not taken up by the Working Group.

Time and effectiveness of amendments to registered information: paragraphs 157 and 158 and recommendation 30

104. It was observed that registries usually retained historical information on the business (see, for example, para. 205 in [A/CN.9/WG.I/WP.101](#)) and that changes to previously registered information should be added to the registry record. It was proposed that that aspect should be reflected in the commentary to recommendation 30.

105. In addition, a proposal was made to redraft recommendation 30(a) to reflect the order in which a registry actually proceeded when receiving and processing amendments to registered information. It was suggested that the text could reflect that the registry first processed the amendments received from a business in the order in which they were received (which could be dealt with as a subparagraph of recommendation 30(a)) and then entered such amendments into the registry record and informed the business (which could become a second subparagraph of recommendation 30(a)). Finally, it was observed that the phrase “time and date stamp” in subparagraph (a) of recommendation 30 applied to both electronic and paper media, and it was suggested that the text might clarify that point.

106. The Working Group agreed to those proposals and to making a consequential change to the title of recommendation 30 to text along the lines of “process of introducing amendments in the register”.

7. Accessibility and information-sharing

Public access to the business registry: paragraphs 159 to 162 and recommendation 31

107. There was agreement in the Working Group to add the term “more” between the words “make” and “informed” in the penultimate sentence of paragraph 159 and to delete the last sentence of that paragraph.

108. It was observed that section A (Public access to the business registry) and section B (Public availability of information) of Chapter VI dealt with two different aspects of accessibility to information: the provision of a service for prospective registrants and access to registered information by the public. In this regard, paragraphs 159 to 162 were said to be more relevant to section B and recommendation 32 and should be moved to that part of the text, while new commentary should be prepared for recommendation 31 dealing with access to the registry by the registrant. It was further noted that paragraph 162 should be redrafted to make it clear whether it referred to access to the registry by the registrant or by the public.

109. There was support in the Working Group for those suggestions and for the suggestion that the phrase “and the information contained in the registry” in recommendation 31 could be deleted to be consistent with the new structure.

Public availability of information: paragraphs 163 to 169 and recommendation 32 and where information is not made public: paragraphs 170 and 171 and recommendation 33

110. It was observed that the general approach of the legislative guide was that in order to facilitate access to the public information on the business registry, users should not be required to provide personal or other details in order to gain access to that information. A suggestion that that principle should be reflected in recommendation 32 was not supported. A proposal was made that the commentary in paragraph 167 should be clarified to state that a user should not be requested to provide additional information, such as the reason for desiring the information, prior to being granted access to it. The Working Group acknowledged that such an approach would be open to the enacting State in its domestic law.

111. It was suggested that the phrase “or for reasons of personal security” in recommendation 32 was too subjective and should be deleted. A proposal to move that phrase after the word “confidentiality” in order to make it subject to the law of the enacting State was accepted.

112. A suggestion made to delete reference to access to information by public authorities as having been already treated in recommendation 16 received some support. There was also support for a further drafting proposal to delete the final sentence of paragraph 170, since the sharing of such information should be dependent on the law of the enacting State rather than on the consent of the business or the registry. The Working Group agreed to those suggested amendments.

Hours of operation: paragraphs 172 to 174 and recommendation 34

113. A proposal to delete the reference in recommendation 34(a) to the days and hours of opening did not receive support. The Working Group agreed to reverse the order of subparagraphs (a) and (b) and with that change, agreed to the substance of paragraphs 172 to 174 and recommendation 34 of the legislative guide as drafted.

Direct electronic access to submit registration, to search and to request amendments: paragraphs 175 to 178 and recommendation 35

114. There was support for the strong concern expressed that the commentary in paragraphs 175 to 178 and recommendation 35 did not sufficiently take into account the important role of intermediaries in the business registry systems of some States. Although direct electronic access to search the business registry was said to be uncontroversial in the current text, recommending direct electronic access to submit business registrations and request amendments was thought to inappropriately recommend that intermediaries should not have a role in those processes. For example, the statement in paragraph 176 that “users bear the sole responsibility for any errors and omissions” and the statement in paragraph 177 that the registrant has “direct control over the timing of the business registration” were not thought to be representative of a system involving intermediaries. While the Working Group did not agree that the use of intermediaries should be recommended, there was agreement that resort to their services was an important facet of business registration and domestic legal systems in a number of economies and should be recognized in the legislative guide as an option. There was also agreement in the Working Group that the intention of the text had been to promote direct electronic access for business registration and registration services as opposed to requiring a physical presence in the registry premises, not in order to exclude intermediaries, but rather to ensure a reduction in opportunities for corruption or misconduct and to improve overall efficiency.

115. After discussion of various proposals to achieve the appropriate tone in the text, it was agreed that the Secretariat should revise the commentary in order to rebalance it, perhaps through reducing the emphasis on the verification aspects in paragraphs 176 and 177, and in possibly referring to paragraphs 117 to 119 of the text. In addition, the Working Group agreed that the recommendation could be

redrafted along the following lines: “The submission of the application and information to register a business should be permitted using information and communication technology, where available, without requiring physical presence in the business registry office, and subject to the laws of the enacting State.”

116. The Working Group further agreed that a separate recommendation on direct electronic access to search the business registry should also be included in the text.

Facilitating access to information: paragraphs 179 to 184 and recommendation 36

117. There was support in the Working Group for the suggestion that the final phrase in recommendation 36 (“or unduly limiting the languages in which the information on the registration process is available”) should be deleted. It was observed that in some jurisdictions it would not be possible to make available information on the registration process in a non-official language of the State.

8. Fees

Paragraphs 185 and 186

118. The Working Group agreed with the substance of paragraphs 185 to 186 of the legislative guide as drafted.

Fees charged for registry services: paragraphs 187 to 189 and recommendation 37

119. There was broad agreement in the Working Group that registration should be provided free of charge to MSMEs or that fees for such businesses should be established at the lowest level possible. Several delegations noted that in their jurisdictions businesses could register at no cost. A suggestion was made to slightly redraft recommendation 37 so that it highlighted such an approach and there was support in the Working Group to insert the phrase “in particular of MSMEs” between the terms “registration” and “and that” in recommendation 37.

Fees charged for information: paragraph 190 and recommendation 38

120. A proposal was made that the drafting of recommendations 37 and 38 should be made more consistent by including the notion of cost recovery in recommendation 38, since services provided by the registry should be governed by the same principles. The Working Group took up that suggestion.

Publication of fee amounts and methods of payment: paragraph 191 and recommendation 39

121. The Working Group agreed with the substance of paragraph 191 and recommendation 39 of the legislative guide as drafted.

9. Sanctions and liability

Sanctions: paragraphs 192 to 194 and recommendation 40

122. It was noted that the Working Group had agreed during the discussion of recommendation 28 (see para. 100 above) to include within recommendation 40 or 41 a reference to the responsibility of a business to update its registry information. Concerns about the use of fines, particularly to sanction MSMEs, and a range of possible sanctions for different degrees of violation were also recalled.

123. It was suggested that since the final sentence in paragraph 192 addressed the liability of businesses, it could be moved to paragraph 195. There was a proposal to place paragraph 194 elsewhere in the legislative guide, and other delegations were of the view that notices, warnings, and education should be considered alongside sanctions, particularly when dealing with MSMEs.

Liability for submission of misleading, false or deceptive information: paragraph 195 and recommendation 41

124. The Working Group agreed with a proposal to eliminate the word “incomplete” from the text of recommendation 41, as it did not appear in the title and because incomplete information should lead to a rejection of the application.

125. A proposal to delete the word “knowingly” led to a discussion of legal codes and standards of liability under various legal systems. The text of recommendation 41 would be too restrictive in some legal systems while it would need to be stricter in others. Similarly, concern was raised about the inclusion of “the registrant or the registered business” as the parties liable for misleading, false or deceptive information. The Working Group determined that the Secretariat should draft the recommendation in a manner that would be compatible with all legal systems. The following proposed text was approved by the Working Group: “The law of the enacting state should establish [appropriate] liability for any misleading, false, or deceptive information that is submitted to the registry”, and the Secretariat was encouraged to modify the commentary based on the guidance provided by the delegations.

126. The Working Group also agreed to reverse the order of recommendations 40 and 41 in the legislative guide so that liability would be discussed before sanctions.

Liability of the business registry: paragraphs 196 to 200 and recommendation 42

127. It was suggested that, while a security rights registry was quite different from a business registry, the UNCITRAL Model Law on Secured Transactions might provide a model for discussing the liability of the business registry. The Secretariat was encouraged to consider that text in its consideration of possible adjustments to the legislative guide.

128. A proposal to include the second sentence from paragraph 197 into a recommendation was not taken up by the Working Group, which agreed with the text of the recommendation as drafted.

10. Deregistration

Deregistration: paragraphs 201 to 205 and recommendations 43 to 45

129. The definition of deregistration in paragraph 201 was discussed in light of the practice in many jurisdictions not to remove the business from the register, but rather to change its status on the register. It was noted that the term “deregistration” was defined in paragraph 12 and the Secretariat was requested to ensure that commentary throughout the text was consistent with the definition, including the footnote to it. A reference to “one-stop shops” was encouraged to be included in paragraph 201.

130. The Working Group agreed to modify the sixth sentence of paragraph 202 along the lines of: “Such a situation may arise, for example, when the State requires periodic reports or annual accounts, including renewal of registration and a business has failed to do so ...”. A suggestion to delete paragraph 204 was not supported by the Working Group, but it was observed that the section on deregistration should take care to differentiate “striking off” by the registrar from winding-up and dissolution of a business, since the latter would be a matter of company law and would vary by jurisdiction. The Working Group agreed that the Secretariat should clarify that difference throughout the entire deregistration section of the legislative guide.

131. It was noted that the practice of determining when a business was no longer in operation was difficult for a registrar to determine, but might be necessary in order to achieve the important goal that the registry was not cluttered with such businesses, and that each jurisdiction could determine how best to achieve that goal. A suggestion to delete the phrase “or when the business is no longer in operation” in recommendation 44(a) was not taken up by the Working Group, but it was agreed to

amend the phrase to make such action subject to the law of the enacting State or possibly to use terminology such as “when a business is no longer registered”.

132. It was suggested to remove the word “written” from recommendation 45(a) or to ensure that the term applied to both electronic and paper notices.

133. There was a concern expressed that recommendations 43 and 44 suggested that registries have independent decision-making ability to deregister businesses. The Secretariat was encouraged to ensure that the commentary reflected that the registry did not have discretion to deregister businesses outside of that stated in the applicable law, as well as to clarify the purpose and scope of the entire section.

Reinstatement of registration: paragraph 206 and recommendation 46

134. In keeping with the discussion in respect of recommendation 45 and its commentary, the Secretariat was requested to redraft paragraph 206 and recommendation 46 to clearly state what pertained to the processes and law of the business registry and what pertained to other areas of the law.

135. A suggestion was made to adjust the Spanish text in paragraph 206 and use the phrase “dejar sin efecto” rather than “restablecer la inscripción”.

Time and effectiveness of deregistration: paragraph 207 and recommendation 47

136. The Secretariat was requested to make amendments as necessary recalling the discussion the Working Group had in respect of recommendations 45 and 46 and the relevant commentary.

11. Preservation of records

Preservation of records: paragraphs 208 to 210 and recommendation 48

137. While it was highlighted that the last two sentences of paragraph 210 referred to the ability of States to apply their general rules on preservation of public documents to the business registry, the Secretariat was asked to address concerns expressed in respect of the recommendation’s reference to “perpetuity” and the difference between the time requirements for print and electronic preservation. It was suggested that it was important to stress that the preservation of information was important, and that the preservation of electronic records might be easier and less costly than that of paper records, but to avoid suggesting a time period for either type.

Amendment or deletion of information: paragraphs 211 and 212 and recommendation 49

138. In response to a concern about the use of the word “amendment” in recommendation 49 versus its use in recommendation 30, the Working Group agreed to change the text of paragraphs 211 and 212 and recommendation 49 to “alteration.” The Secretariat was also asked to consider adding “limits to” to the title.

139. There was some concern expressed about whether subparagraphs (b) and (c) were properly placed within the context of paragraph 212 because the rest of the section pertained to the alteration of information. The Secretariat was requested to consider a cross-reference to recommendation 42 or to move the text. It was agreed to retain subparagraph 212(a), and to consider a cross-reference to paragraph 233 and recommendation 56.

Protection against loss of or damage to the business registry record: paragraphs 213 and 214 and recommendation 50

140. The Working Group agreed with the substance of paragraphs 213 and 214 and recommendation 50 as drafted.

Safeguard from accidental destruction: paragraph 215 and recommendation 51

141. The Working Group agreed with the substance of paragraph 215 and recommendation 51 as drafted.

12. The underlying legislative framework**Changes to underlying laws and regulations: paragraphs 216 to 218; Clarity of the law: paragraphs 219 to 221 and recommendation 52; Flexible legal entities: paragraphs 222 to 225 and recommendation 53; Primary and secondary legislation to accommodate the evolution of technology: paragraph 226 and recommendation 54**

142. The Working Group agreed with the substance of paragraphs 216 to 226 and recommendations 52 to 54, but decided to move them into an annex to the legislative guide.

Electronic documents and electronic authentication methods: paragraphs 227 to 230; Dispatch and receipt of electronic messages: paragraph 231; UNCITRAL Model Laws: paragraph 232 and recommendation 55; Electronic payments: paragraph 233 and recommendation 56

143. The Working Group agreed with the substance of recommendations 55 and 56 and the relevant commentary and to retain them in the legislative guide, locating an appropriate position for them in the text. The Secretariat was requested to consider whether it was necessary to include paragraph 231 in the text and to ensure that it had considered all relevant UNCITRAL e-commerce texts.

13. Structure of the legislative guide

144. A proposal was made to include text in the legislative guide along the following lines, but not to change the structure of the overall text:

“I. Objectives of a simplified registration system and the Purposes of the business registry

“Business registration is, in practice, a series of registration processes involving multiple public agencies. To enter the formal legal economy 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)

“The enacting State should look at simplified business registration holistically from the user’s standpoint. When implementing the reforms to create a business registry, States should keep in mind that this is just one of elements of creating a legal environment to enable MSMEs to enter into the formal legal sector. (Make cross reference to recommendation 12.)

“The following overarching principles should govern an effective system of business registration: (a) the 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; (b) enabling businesses of all sizes and legal forms to be visible in the marketplace and to operate in the legally regulated commercial environment; and (c) enabling MSMEs to increase their business opportunities and to improve the profitability of their businesses.

“Recommendation 1

“The Regulation should provide that the business registry is established for the purposes of (a) providing to the business an identity that is recognized by the

enacting State and (b) making accessible to the public information in respect of the registered business.

“The enacting State should bear in mind that one key purpose of reforming the business registry system would be to facilitate the movement of businesses from the informal sector to the legally regulated economy, as part of the system of all mandatory registries, which also include tax, and social security authorities.”

145. That proposal received some support in the Working Group, but concerns were reiterated similar to those raised in respect of an earlier suggestion regarding “one-stop shops” (see para. 57 above). The Working Group decided that the concepts expressed in the suggested inclusion and its general approach could be included in the commentary, along with a reference in recommendation 1 to the importance of “one-stop shops”, and requested the Secretariat to prepare an appropriate draft, as well as to insert appropriate references in the remainder of the text.

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

1. Introductory observations

146. The Working Group was reminded of the work it had completed at its twenty-seventh session in considering the draft legislative guide on an UNCITRAL limited liability organization (UNLLO) contained in [A/CN.9/WG.I/WP.99](#) and [A/CN.9/WG.I/WP.99/Add.1](#) (see [A/CN.9/895](#)), noting that its discussion should start at the current session with the commentary in paragraphs 12 to 16 and recommendation 14 of [A/CN.9/WG.I/WP.99/Add.1](#). The Working Group recalled that support had been expressed to use the term “UNLLO” on an interim basis on the understanding that it would be considered again at a later stage (para. 43 of [A/CN.9/895](#)) and that it had expressed support for the commentary in [A/CN.9/WG.I/WP.99](#) to more fully discuss the list of considerations found in footnote 19 of that document and other sources (subpara. 20(c) of [A/CN.9/895](#)).

2. Section D. Managers

Paragraphs 12 to 16 and recommendation 14

147. After discussion of the “opt-in” nature of the final sentence of paragraph 13, a proposal to reverse the proposition to require members to owe fiduciary duties to other members unless otherwise agreed was accepted by the Working Group. Although some concern was expressed that the term “fiduciary duty” was not used in all legal traditions, it was observed that the term was commonly used internationally in discussions of company law. The Working Group agreed to continue to use “fiduciary duty” in the legislative guide as a means to conveniently express the principles encompassed by the term, possibly noting in the text that using the term was by no means intended to import law from one legal tradition into another.

148. It was observed that, as noted in the first sentence of paragraph 15, the prohibition against self-dealing in subparagraph 12(2) (and subpara. 16(2)) was not ordinarily absolute. Text along the lines of “unless there was authorization from an independent body” was suggested to the Secretariat in order to adjust the text, taking into consideration the specific situation of MSMEs and the fact that an independent body might not be an appropriate mechanism to obtain such approval. There was some support for that suggestion.

149. The Working Group further agreed that the commentary to recommendation 14 should also include a paragraph on the enforcement of such fiduciary duties. The Secretariat was requested to include a discussion of how legal claims could be brought against managers in breach of their fiduciary duties (through actions

brought individually or collectively, as a derivative action on behalf of the UNLLO), regardless of whether the action was brought before a court or by way of an alternative dispute settlement mechanism. The Working Group also agreed to include a separate recommendation in the legislative guide encouraging the use of alternative dispute settlement in respect of the UNLLO, bearing in mind existing references in the current text (para. 52 and footnote 36) and in previous texts (for example, in draft art. 38 of [A/CN.9/WG.I/WP.89](#)).

150. A concern was also expressed that the use of a subjective standard such as that currently in recommendation 14 might not be appropriate and that the sole standard used should be that the manager must act in the best interests of the UNLLO. Several delegations expressed concern that the text of recommendation 14 did not include enough detail from the commentary, particularly in respect of the duties described in paragraph 12. Text along the lines of adding “good faith and loyalty” was suggested for inclusion in recommendation 14, but a problem of linking the concepts of good faith and loyalty was noted, in that the relevant duties were thought to be a duty of care and a duty of loyalty, but that good faith should be the standard for both duties.

151. In addition to the various amendments agreed to above, the Working Group also agreed that recommendation 14 should be redrafted by including the detail found in paragraph 12 of the commentary, possibly linking the duty of disclosure to recommendation 27.

Paragraphs 17 and 18 and recommendation 15

152. The Working Group recalled that recommendation 9 required that the name of each manager of the UNLLO be publicly disclosed, and that the intention of recommendation 15 was to provide a default rule that each manager could individually bind the UNLLO in its dealings with third parties. Moreover, it was observed that the commentary as drafted in paragraph 18 envisaged that members could agree to restrictions on the authority of managers to bind the UNLLO, or to limit that authority to certain managers, but that such a members’ agreement would only be binding on third parties who had notice of it.

153. The Working Group agreed that deletion of the phrase “publicly disclosed” from recommendation 15 was necessary to reflect the intention of recommendation 15 and to avoid suggesting that the names of some managers might not be made public. In addition, it was agreed that the content of the commentary in paragraph 18 should be reflected in the recommendation itself, so as to clarify that members could agree to vary the default rule, but that providing notice of such a change to third parties dealing with the UNLLO was mandatory in order to be effective against them.

Paragraphs 19 and 20 and recommendation 16

154. A previous decision generally to replace the phrase “simple majority” with “majority” in the legislative guide was recalled by the Working Group (para. 63 of [A/CN.9/895](#)). With that correction, the Working Group agreed with the substance of paragraphs 19 and 20 and recommendation 16 as drafted.

3. Section E. Contributions

Paragraphs 21 and 22 and recommendation 17; paragraphs 23 to 27 and recommendation 18

155. The Working Group commenced its discussion on paragraphs 21 and 22 and recommendation 17. Some delegations were of the view that recommendation 17 was inappropriate since membership in an UNLLO without making a contribution ought not to be permitted, and that at least a contribution in kind, in provision of services or a future contribution was necessary. Other delegations were of the view that contributions, regardless of their type, should not be required from members of the UNLLO, even over time, and it was further noted that that practice was already

established in the domestic law of some jurisdictions. In addition, it was recalled that “freedom of contract” was the guiding principle of the entire draft legislative guide, and that members of the UNLLO should be granted the freedom to determine whether a contribution was required to become a member, as well as deciding on the value of a contribution, if any.

156. In order to introduce the principles discussed in the paragraph above into recommendation 18, the Working Group agreed to ensure maximum flexibility for enacting States by inserting the qualifier “if any” into recommendation 18 after the phrase “agree upon contributions”, as well as to include the term “value”, so that recommendation 18 would read, in part, “including the amount, type and value of such contributions ...”. In addition, there was support in the Working Group to delete recommendation 17 as unnecessary in light of recommendation 18, and to incorporate the content of paragraphs 21 and 22 into the commentary for recommendation 18.

4. Section F. Distributions

Paragraphs 28 and 29 and recommendation 19

157. It was suggested that distributions by an UNLLO should be governed according to the amount of a member’s contribution, but it was noted that the Working Group should instead consider recommendation 19 in light of the decisions it had made in respect of recommendations 13, 17 and 18 in order to retain consistency with its earlier approach. It was recalled that that approach relied on a default rule of equality, which could be varied by the agreement of the members of the UNLLO. Moreover, it was suggested that relying on a member’s contribution to assess distributions and other rights could be unfair for those that made no contribution or for members that joined the UNLLO at different times and whose proportionate contribution might thus be valued differently.

158. Following discussion, there was support for the suggestion that it might be clearer for recommendation 13 to refer to the percentage or ratio of a member’s ownership to assess its rights of control, rather than referring to the proportion of the member’s contribution as had been decided at the last session of the Working Group (para. 67 of [A/CN.9/895](#)). To that end, a proposal was made to replace recommendations 13 and 18 with text along the following lines, and to provide the new text along the following lines for recommendation 17 (which had been deleted) as the overarching principle:

“Recommendation 13 (a)

“The members of the UNLLO have rights of control in proportion to their respective amount/percentage of the ownership of the UNLLO, as stated in the formation document or members’ agreement. When the amount/percentage of the ownership of the UNLLO is not stated in the formation document or members’ agreement, the members of the UNLLO have equal rights of control.

“E. Amount/percentage of the ownership of the UNLLO and contribution by members

“Recommendation 17

“The law should provide that members of the UNLLO should agree upon their respective amount/percentage of the ownership of the UNLLO in the formation document or members’ agreement. When the amount/percentage of the ownership of the UNLLO is not stated in the formation document or members’ agreement, it is deemed that the formation document or members’ agreement states that the members of the UNLLO share the ownership of the UNLLO equally.

“Recommendation 18

“The law should provide that, when deciding the members’ respective amount/percentage of the ownership of the UNLLO, the members of the UNLLO are permitted to agree upon contributions, if any, made to the UNLLO, including the amount, type and value of such contributions.”

159. Following discussion, there was support in the Working Group for that proposal, and the following additional suggestions were made:

(a) Text could be inserted into recommendation 13(a) or (b) to indicate that voting rights of members should be proportionate to ownership;

(b) The closing phrase of recommendation 18 in the current legislative guide could be retained for greater clarity (“but that in the absence of such agreement, contributions that are made to the UNLLO should be made in equal amounts by the members”);

(c) Recommendation 19 should then follow the logic of recommendation 13 and indicate that distributions would be made to members in proportion to their ownership unless the members had agreed otherwise;

(d) Any need for the establishment of more complex ownership structures or voting rights could be established by the members in their agreement according to the overarching freedom of contract principle, and in any event, was contemplated in paragraph 27;

(e) The use of the term “ownership” might not be sufficiently clear, as it required the identification of the rights that members had (which could include rights to vote, to participate in management, to distribution and to income);

(f) The drafting of the recommendations under discussion should be coordinated with the text in recommendation 9, for example, choosing to refer to either “members’ agreement” or “formation document”; and

(g) The Working Group was reminded that the legislative guide made a conscious attempt to use neutral terminology rather than corporate-related terminology such as “shares” (para. 23 of [A/CN.9/WG.I/WP.99](#)).

160. Following discussion, there was support in the Working Group for the proposal and the Secretariat was requested to adjust the commentary and recommendations in order to reflect that agreement. The Working Group also agreed that the text of recommendation 19 should reflect the approach taken in the revised version of recommendation 13.

Paragraphs 30 to 32 and recommendation 20; paragraphs 33 to 35 and recommendation 21

161. Support was expressed for paragraphs 30 to 32 and recommendation 20 and for paragraphs 33 to 35 and recommendation 21 as drafted. It was suggested that the word “knowingly” should be inserted after the phrase “each member who ...”, but it was observed that that could make the burden of proof too onerous. In response to a suggestion that managers should be held responsible for improper distributions, it was observed that drawing the distinction between managers and members (where they were not the same person) could make the text too complex and that since the legislative guide made the members rather than the managers responsible for making decisions regarding distributions, that care should be taken to be consistent in approach. It was further suggested that the insolvency and balance sheet tests in recommendation 20 were linked to the issue of financial statements in recommendation 26, but that any necessary link could be dealt with in discussing that recommendation in due course.

162. Additional comments were made that paragraphs 32 and 35 dealt with the liability of managers when an UNLLO made improper distributions, and that

recommendations 20 and 21 were concerned with the protection of creditors. It was suggested that reference should thus not be made to recommendation 14 in paragraph 35 (since that recommendation was intended to protect the UNLLO), and that the phrase “to the UNLLO” should be inserted after the phrase “also be held liable” in paragraph 35. Further, in response to a suggestion to ensure that distributions did not include payments of reasonable compensation for services or for bona fide debt owed to a member, the attention of the Working Group was drawn to paragraph 34.

163. The Secretariat was requested to consider those suggestions and to make any appropriate clarification to the commentary to recommendations 20 and 21.

V. Proposals by States

Proposal by the government of Italy (A/CN.9/WG.I/WP.102)

164. The Working Group heard a short introduction of working paper [A/CN.9/WG.I/WP.102](#) which included a proposal of the Italian delegation on a topic that might be considered for future work to support development of MSMEs. It was noted that participation of MSMEs in global trade was made difficult by fragmented legal frameworks and that an international legal instrument, structured as a multiparty contract between MSMEs located in the same or in different jurisdictions may assist in facilitating collaboration among businesses with a relatively low level of initial capital, low entry and exit costs, and a light governance infrastructure. It was further noted that such a multiparty contract may facilitate access: (a) to capital by providing joint collateral to credit institutions; (b) to new technologies with the creation of common technological platforms, where common intellectual property rights may be used; and (c) to a qualified labour force through the possibility of sharing employees who may rotate among the businesses participating in the network.

165. It was also observed that a legislative text with a similar scope had been enforced in Italy since 2009 under the definition of business network contract (or *contratto di rete*) and the main features of such text, outlined in greater detail in [A/CN.9/WG.I/WP.102](#), were highlighted. In response to questions, it was clarified that the networks, as established in Italian legislation, were legal entities resulting from contracts, whose governance was left to contractual freedom, that they needed to be registered, they might allow for segregation of assets and that they facilitated MSMEs accessing global trade and global supply chains of transnational corporations. It was further noted that such networks would differ from cooperatives as they were more flexible and wider in scope (for instance, in several jurisdictions cooperatives may be established only for non-profit purposes) and could also be established just to exchange information or services among the participating entities. It was also observed that contractual networks differed from contract farming, a topic discussed by the International Institute for the Unification of Private Law (Unidroit), in that contractual networks were wider in scope as they did not just address farming issues (although such networks could be widely used in agriculture, or agrifood industry) and they were not limited to the contract aspect but also considered the organizational structure and functioning of the network.

166. Finally, it was noted that the Italian delegation would submit the proposal to the attention of the Commission at its 50th session in July 2017.

Observations and model provisions from the Government of Colombia (A/CN.9/WG.I/WP.104)

167. The Working Group heard a presentation of [A/CN.9/WG.I/WP.104](#) containing observations and model provisions from the Government of Colombia on the dissolution and liquidation of MSMEs. Such businesses were said to need simplified processes to ensure that their liquidation and dissolution could be carried out clearly and rapidly, and that the model provisions in the working paper had been drafted

with that aim. It was suggested that detailed provisions on the liquidation and dissolution of MSMEs could complement and expand on the principles expressed in recommendation 24 of the UNLLO draft legislative guide, and might be attached as an annex to the legislative guide. There was some support for the proposal submitted in the working paper. Some concern was expressed that the current text of [A/CN.9/WPI/WG.104](#) seemed to use terminology that focused on corporate business forms rather than the neutral terms adopted in the UNLLO text, and that such model provisions presented in the paper could be too detailed to be attached to the legislative guide when compared with the general approach taken in that text.

168. After discussion, the Working Group agreed that any further consideration of the proposal should be first subject to domestic consultation by delegations and that the Working Group would consider the proposal in conjunction with its future discussion of recommendation 24 of the legislative guide.

VI. Other matters

169. The Working Group recalled that its twenty-ninth session was tentatively scheduled to be held in Vienna from 16 to 20 October 2017. The Working Group confirmed that it would consider the draft legislative guide on key principles of business registration at its twenty-ninth session, with a view to its possible adoption by the Commission at its fifty-first session in 2018.
