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on International Trade Law**
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Compilation of draft recommendations on key principles of a business registry

Note by the Secretariat

In order to assist the Working Group in its consideration of the draft legislative guide on key principles of a business registry (A/CN.9/WG.I/WP.101), the Secretariat has prepared this reference document consisting of a compilation of only the draft recommendations contained in that text. The draft recommendations in this document are the same as those in A/CN.9/WG.I/WP.101, but without footnotes. References to paragraph numbers in this compilation are to the paragraphs of the commentary in A/CN.9/WG.I/WP.101.

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Draft recommendations on key principles of a business registry

I. Objectives of a business registry

Recommendation 1: Purposes of the business registry

The Regulation should provide that the business registry is established for the purposes of:

(a) Providing to a business an identity that is recognized by the enacting State and entitles the business to participate in, and receive the benefits of participating in, the legally regulated economy of the State; and

(b) Making accessible to the public information in respect of registered businesses.

Recommendation 2: Simple and predictable legislative framework permitting registration for all businesses

The Regulation or the law of the enacting State should:

(a) Adopt a simple structure for rules governing the business registry and avoid the unnecessary use of exceptions or granting of discretionary power; [former recommendation 7]

(b) Establish a system for the registration of businesses that permits registration of businesses of all sizes and legal forms; and [first half of former recommendation 1]

(c) Ensure that micro, small and medium-sized enterprises (MSMEs) are subject to the minimum procedural requirements 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. [former recommendation 4]

Recommendation 3: Key features of a business registration system

The Regulation should ensure that the system for business registration contains the following key features:

(a) The registration process is publicly accessible, simple, user-friendly and time- and cost-efficient;

(b) The registration process is adapted to the needs of MSMEs;

(c) The registered information on businesses is easily searchable and retrievable; and

[(d) The registry system and the registered information are kept as current, reliable and secure as possible.]

II. Establishment and functions of the business registry

Recommendation 4: Responsible authority

The Regulation should establish that the organization and operation of the business registry is a function of the enacting State.

Recommendation 5: Appointment of the registrar

The Regulation should:

(a) Provide that [*the person or entity authorized by the enacting State or by the law of the enacting State*] has the authority to appoint and dismiss the registrar and to monitor the registrar's performance; and

(b) Determine the registrar's powers and duties and the extent to which those powers and duties may be delegated.

Recommendation 6: Transparency of the business registration system and accountability of the registrar

The designated authority should ensure that rules or criteria that are developed are made public to ensure transparency of the registration procedures and the accountability of the registrar in terms of respecting those procedures.

Recommendation 7: Use of standard registration forms

The Regulation should provide that standard registration forms are introduced to request the registration of a business and that guidance is available to registrants on how to complete those forms.

Recommendation 8: Capacity-building for registry staff

The designated authority should ensure that appropriate programmes are established to develop and/or strengthen the knowledge of the registry staff on business registration procedures and the operation of ICT-supported registries, as well as the ability of registry staff to deliver requested services.

Recommendation 9: Core functions of business registries

The Regulation should establish that the functions of the business registry include:

(a) Publicizing the means of access to the services of the business registry, and the opening days and hours of any office of the registry (see paras. 122 to 124 and 172 to 174, and recommendations 18 and 34);

(b) Providing access to the services of the business registry (see paras. 179 to 184 and recommendation 36);

(c) Providing guidance on choosing the appropriate legal form for the business, on the registration process and on the business's rights and obligations in connection thereto (see para. 45 and recommendation 7);

(d) Listing all the information that must be submitted in support of an application to the registry (see paras. 129 to 132 and recommendation 20);

(e) Assisting businesses in searching and reserving a business name (see para. 52);

(f) Providing the basis for any rejection of an application for business registration (see paras. 145 to 148 and recommendation 26);

(g) Registering the business when the business fulfils the necessary conditions established by the law of the enacting State (see para. 136 and recommendation 22);

(h) Ensuring that any required fees for registration have been paid (see paras. 185 to 189 and recommendation 37);

(i) Assigning a unique business identifier to the registered business (see paras. 103 to 104 and recommendation 14);

(j) Ensuring the entry of the information contained in the application submitted to the registry, any amendments thereto and any filing related to that business into the registry record, and indicating the time and date of each registration (see paras. 144, 157 and 158, and recommendations 25 and 30);

(k) Providing the person identified in the application as the registrant of the business with a copy of the notice of registration (see para. 136 and recommendation 22);

- (l) Providing public notice of the registration in the means specified by the enacting State (see para. 137 and recommendation 23);
- (m) Indexing or otherwise organizing the information in the registry record so as to make it searchable (see paras. 182 and 183 and recommendation 36);
- (n) Providing information on the point of contact of the business as established by the law of the enacting State (see paras. 130 and 151 and recommendations 20 and 27);
- (o) Sharing information among the requisite public agencies (see para. 110 and recommendation 16);
- (p) Monitoring that a registered business has fulfilled and continues to fulfil any obligation to file information with the registry throughout the lifetime of the business (see paras. 155 to 158 and recommendations 29 and 30);
- (q) Ensuring the entry of information on the declaration of deregistration of a business from the registry record, including the date of and any reasons for the deregistration (see paras. 201 to 205 and recommendations 43 to 45);
- (r) Ensuring that the information in the registry is kept as current as possible (see paras. 152 to 153 and recommendation 28);
- (s) Promoting compliance with the Regulation (see paras. 42 to 44 and recommendation 6);
- (t) Protecting the integrity of the information in the registry record (see paras. 213 to 215 and recommendations 50-51);
- (u) Ensuring that information from the registry record is archived as necessary (see paras. 208 to 210 and recommendation 48); and
- (v) Offering services incidental to or otherwise connected with business registration (see paras. 80 to 83 and recommendation 11).

Recommendation 10: Structure of the registry

The Regulation should establish an interconnected registry system that would process and store all information received from registrants and/or entered by registry staff. Where such a system of interconnected business registries is set up, the registries should possess mutually consistent technical features so that stored information is accessible throughout the system.

III. Operation of the business registry

Recommendation 11: Electronic, paper-based or mixed registry

The Regulation should provide that the optimal medium to operate an efficient business registry is electronic. Should full adoption of electronic services not yet be possible, such an approach should nonetheless be implemented to as great an extent as permitted by the current technological infrastructure of the enacting State, as well as its institutional and legal framework, and expanded as that infrastructure improves.

Recommendation 12: One-stop shop: a single interface for business registration and registration with other authorities

The Regulation or the law of the enacting State should establish a single interface for business registration and registration with other public agencies, including designating which public agency should have overall authority for the single interface. Such an interface:

- (a) May consist of a web platform or physical offices; and

(b) Should integrate the services of as many public agencies requiring the same information as possible, but at a minimum should include taxation and social services agencies.

Recommendation 13: Use of unique business identifiers

The Regulation should provide that a unique business identifier should be allocated to each registered business and should:

- (a) Be structured as a set of numeric or alphanumeric characters;
- (b) Be unique to the business to which it has been allocated; and
- (c) Remain unchanged and not be reallocated following any deregistration of the business.

Recommendation 14: Allocation of unique business identifiers

The Regulation or the law of the enacting State should specify that the allocation of a unique business identifier should be carried out either by the business registry upon registration of the business, or before registration by a legally-designated authority. In either case, the unique business identifier should then be made available to all other public agencies sharing the information associated with that identifier, and should be used in all official communication in respect of that business.

Recommendation 15: Implementation of a unique business identifier

The Regulation or the law of the enacting State should ensure that, when adopting a unique business identifier across different public agencies:

- (a) There is interoperability between the technological infrastructure of the business registry and of the other public agencies sharing the information associated with the identifier; and
- (b) That existing identifiers are linked to the unique business identifier.

Recommendation 16 : Sharing of private data between public agencies

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

- (a) Conform with the applicable rules in the enacting State on public disclosure of private data;
- (b) Enable public agencies to access private data included in the unique business identifier system only in order to carry out their statutory functions; and
- (c) Enable public agencies to access private data included in the unique business identifier system only in relation to those businesses with respect to which they have statutory authority.

Recommendation 17: Exchange of information among business registries

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

IV. Registration of a business

Recommendation 18: Accessibility of information on how to register

The designated authority should ensure that information on the business registration process and the applicable fees, if any, should be widely publicized, readily retrievable, and available free of charge.

Recommendation 19: Businesses required or permitted to register

The Regulation or the law of the enacting State should specify:

- (a) Which businesses are required to register; and
- (b) That all businesses are permitted to register.

Recommendation 20: Minimum information required for registration

The Regulation or the law of the enacting State should establish the minimum information and supporting documents required for the registration of a business, including at least:

- (a) The name and address at which the business can be deemed to receive correspondence or, in cases where the business does not have a standard form address, the precise description of the geographical location of the business;
- (b) The identity of the person or persons registering the business;
- (c) The identity of the person or persons who are authorized to act on behalf of the business; and
- (d) The legal form of the business being registered.

Recommendation 21: Language in which information is to be submitted

The Regulation should provide that the information and documents submitted to the business registry must be expressed in the language or languages specified by the enacting State, and in the character set as determined and publicized by the business registry.

Recommendation 22: Notice of registration

The Regulation should establish that the business registry should notify the registrant whether or not its registration is effective as soon as practicable, and, in any event, without undue delay.

Recommendation 23: Content of notice of registration

The Regulation should provide that the notice of registration may be in the form of a certificate, notice or card, and that it should contain the following information:

- (a) The unique business identifier of the business;
- (b) The date of its registration;
- (c) The name of the business;
- (d) The legal form of the business; and
- (e) The legislation under which the business has been registered.

Recommendation 24: Period of effectiveness of registration

The Regulation should clearly establish that the registration is valid until the business is deregistered or until such time as a renewal of the registration is required.

Recommendation 25: Time and effectiveness of registration¹

The Regulation should:

- (a) Require the business registry to time and date stamp applications for registration and to process them in the order in which they are received and as soon as practicable, and, in any event, without undue delay;
- (b) Establish clearly the moment at which the registration of the business is effective; and
- (c) Specify that the registration of the business must be entered into the business registry as soon as practicable thereafter, and in any event without undue delay.

Recommendation 26: Refusal to register

The Regulation should provide that the business registrar:

- (a) Must refuse registration of the business if the application does not meet the requirements specified in the Regulation or the law of the State and is required to provide to the registrant the basis for refusal in written form; and
- (b) Is granted the authority to correct its own errors as well as any incidental errors that may appear in the information submitted in support of the registration of the business, provided that the conditions under which the registrar may exercise this authority are clearly established.

Recommendation 27: Registration of branches

The Regulation should ensure that:

- (a) Registration of a branch of a business is required or permitted;
- (b) Any definition of “branch” for registration purposes is consistent with the definition provided in the law of the enacting State; and
- (c) Provisions regarding branch registration should address the following issues:
 - (i) Time and date of registration of the branch;
 - (ii) Disclosure requirements, such as name, address of the person or persons registering the branch; name and address of the branch and copy of the notice of registration of the foreign company;
 - (iii) Information on the person or persons who can legally represent the branch; and
 - (iv) The language in which the registration documents should be submitted.

V. Post-registration**Recommendation 28: Maintaining a current registry**

The Regulation should require the registrar to ensure that the information in the business registry is kept current, including through:

- (a) Sending an automated request to registered businesses at periodic intervals requiring them to report whether the information maintained in the registry continues to be accurate or stating which changes should be made; and

¹ The Working Group may wish to note recommendation 11 of the UNCITRAL Guide on the Implementation of a Security Rights Registry on “Time of effectiveness of the registration of a notice”.

(b) Updating the registry immediately upon receipt of the amending information or as soon as practicable thereafter.

Recommendation 29: Information required after registration

The Regulation should specify that after registration, the registered business must file with the business registry the following information:

(a) Any changes or amendments to the information that was initially required for the registration of the business pursuant to recommendation 20 or to the current information in the business registry as soon as those changes occur; and

(b) Periodic returns, which may include annual accounts, as required by the law of the enacting State.

Recommendation 30: Time and effectiveness of amendments to registered information

The Regulation should:

(a) Require the business registry to time and date stamp amendments to registered information and to process them in the order in which they are received;

(b) Notify the registered business as soon as practicable that its registered information has been amended; and

(c) Establish when amendments to the registered information are effective.

VI. Accessibility and information-sharing

Recommendation 31: Public access to business registry services

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

Recommendation 32: Public availability of information

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

Recommendation 33: Where information is not made public

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

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

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

Recommendation 34: Hours of operation

The designated authority should provide that:

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

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

(ii) Information about any registry office locations and their opening days and hours is publicized on the registry's website, if any, or otherwise widely

publicized, and the opening days and hours of registry offices are posted at each office;

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

(c) Notwithstanding subparagraphs (a) and (b) of this recommendation, the business registry may suspend access to the services of the registry in whole or in part in order to perform maintenance or provide repair services to the registry, provided that:

(i) The period of suspension of the registration services is as short as practicable;

(ii) Notification of the suspension and its expected duration is widely publicized; and

(iii) Such notice should be provided in advance and, if not feasible, as soon after the suspension as is reasonably practicable.

Recommendation 35: Direct electronic access to submit registration, to search and to request amendments

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

Recommendation 36: Facilitate access to information

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

VII. Fees

Recommendation 37: Fees charged for registry services

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

Recommendation 38: Fees charged for information

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

Recommendation 39: Publication of fee amounts and methods of payment

The designated authority should ensure that fees payable for registration and information services should be widely publicized, as should acceptable methods of payment.

VIII. Sanctions and liability

Recommendation 40: Sanctions

The Regulation should establish and ensure broad publication of sanctions (including fines, deregistration and loss of access to services) that may be imposed on a business for a breach of its obligations under the Regulation. Such rules may include provisions pursuant to which a breach of obligation may be forgiven provided it is rectified within a specified time.

Recommendation 41: Liability for submission of misleading, false or deceptive information

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

Recommendation 42: Liability of the business registry

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

IX. Deregistration

Recommendation 43: Voluntary deregistration

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

Recommendation 44: Compulsory deregistration

The Regulation should:

- (a) Require the registrar to deregister a business when it is ordered to do so by a specified competent authority or the court or when the business is no longer in operation; and
- (b) Provide that the decision or order for deregistration of the business must be placed on the registry.

Recommendation 45: Process of deregistration

The Regulation or the law of the enacting State should provide that:

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

Recommendation 46: Reinstatement of registration

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

Recommendation 47: Time and effectiveness of deregistration

The Regulation should:

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

X. Preservation of records**Recommendation 48: Preservation of records²**

The Regulation should provide that:

- (a) Documents and information submitted electronically by the registrant and the registered business, including information in respect of deregistered businesses, should be preserved by the registry in perpetuity so as to enable the information to be retrieved by the registry and other interested users;
- (b) Where paper documents have been submitted and the information contained in them has been entered into an electronic registry that meets the reliability standards established by the State, a minimum period of preservation of such documents should be specified by the enacting State; and
- (c) Where paper documents have been submitted and the information contained in them has not been entered into an electronic registry the period of preservation of such documents should be specified by the enacting State, and should be for at least the life of the business, plus a reasonable time after any deregistration of that business.

Recommendation 49: Amendment or deletion of information

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

Recommendation 50: Protection against loss of or damage to the business registry record³

The Regulation or the law of the enacting State should:

- (a) Require the business registry to protect the registry records from the risk of loss or damage; and
- (b) Establish and maintain back-up mechanisms to allow for any necessary reconstruction of the registry record.

Recommendation 51: Safeguard from accidental destruction

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

² The Working Group may wish to note recommendation 21 of the UNCITRAL Guide on the Implementation of a Security Rights Registry on “Archiving of information removed from the public registry record”.

³ The Working Group may wish to note recommendation 17 of the UNCITRAL Guide on the Implementation of a Security Rights Registry on “Integrity of the registry record”.

XI. The underlying legislative framework

Recommendation 52: Clarity of the law

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

Recommendation 53: Flexible legal forms

The law of the enacting State should permit flexible and simplified legal forms for businesses in order to facilitate and encourage registration of businesses of all sizes, including those forms considered in the [UNCITRAL legislative guide on an UNCITRAL limited liability organization].

Recommendation 54: Primary and secondary legislation to accommodate the evolution of technology

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

Recommendation 55: Electronic documents and electronic authentication methods

The law of the enacting State should:

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

Recommendation 56: Electronic payments

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