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## **Draft legislative guide on key principles of a business registry**

**Note by the Secretariat**

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## Introduction

1. The present legislative guide has been prepared on the understanding that, for the reasons described in document [A/CN.9/WG.I/WP.107](#) (formerly [A/CN.9/WG.I/WP.92](#)), it is in the interests of States and of micro, small and medium-sized enterprises (MSMEs) that such businesses migrate to or be created in the legally regulated economy. In addition, this guide is also intended to reflect the idea that entrepreneurs that have not yet commenced a business may be persuaded to do so in the legally regulated economy if the requirements for formally starting their business are not considered overly burdensome. Finally, these materials are prepared on the understanding that, regardless of the particular nature or legal structure of the business, the primary means for an MSME to enter the legally regulated economy in most cases is through registration of their business.

2. As the Working Group may recall, it agreed<sup>1</sup> at its twenty-fifth session that document [A/CN.9/WG.I/WP.107](#), should be prepared as an introductory document that, once adopted, was intended to form a part of the final text and provide an overarching framework for current and future work by UNCTRAL to assist MSMEs in overcoming the legal barriers faced by them during their life cycle. Underpinning that contextual framework would be a series of legal pillars, which would include both legislative guides currently under preparation by the Working Group — the present guide on key principles of a business registry and the other guide on an UNCITRAL limited liability organization<sup>2</sup> — as well as any other materials adopted by UNCITRAL in respect of MSMEs. In summary, [A/CN.9/WG.I/WP.107](#) currently outlines the following themes as key to UNCITRAL's approach to its MSME work:

- (a) The importance of MSMEs in the global economy;
- (b) Each State should decide what constitutes a micro, small or medium-sized business in its own economic context, the common factor being that the smallest and most vulnerable businesses require assistance;
- (c) Although MSMEs are incredibly disparate in their size, goals, the commercial sector in which they operate and their general nature, they usually face a number of common obstacles;
- (d) Improving the business environment assists businesses of all sizes, not only MSMEs;
- (e) Participation by MSMEs in the legally regulated economy can assist them in successfully negotiating the obstacles they face;
- (f) States should make it simple and desirable for MSMEs to participate in the legally regulated economy by:
  - (i) Explaining what it means and by setting out the advantages for entrepreneurs, as well as by ensuring appropriate communication and education on those advantages and opportunities;
  - (ii) Making it desirable for MSMEs to conduct their activities in the legally regulated economy, for example, by offering them incentives for doing so; and
  - (iii) Making it easy for MSMEs to enter the legally regulated economy by enacting laws that:
    - a. Facilitate creation and operation of legally recognized simple and flexible legal forms that meet the needs of MSMEs;<sup>3</sup> and

<sup>1</sup> As agreed by the Working Group (para. 87, [A/CN.9/866](#)) and approved by the Commission (*Official Records of the General Assembly, Seventy-first Session, Supplement No. 17 (A/71/17)* para. 222).

<sup>2</sup> See [A/CN.9/WG.I/WP.99](#) and [A/CN.9/WG.I/WP.99/Add.1](#).

<sup>3</sup> The Working Group is currently preparing a draft legislative guide aimed at this goal, see [A/CN.9/WG.I/WP.99](#) and [A/CN.9/WG.I/WP.99/Add.1](#).

b. Ensure that business registration is accessible, simple and streamlined.

3. In light of that general approach, in order to encourage entrepreneurs to start their business and conduct their activities in the legally regulated economy, States may wish to take steps to rationalize and streamline their system of business registration. The recommendations in this legislative guide are intended to be implemented by States that are reforming or improving their system of business registration. Further, as noted above, the present guide takes the approach that since business registration is the primary conduit through which MSMEs can become visible in the legally regulated economy and be able to access programmes intended to assist them, the business registry should continue to *require* only certain types of businesses to register, but it should *enable* all businesses to register. Moreover, general improvements made by a State to its business registration system may be expected to assist not only MSMEs, but businesses of all sizes, including those already operating in the legally regulated economy. Faster and simpler procedures to register a business will assist in business formation and its operation in the legally regulated economy. For these reasons, simplification and streamlining of business registration has become one of the most pursued reforms by States in all regions and at all levels of development. This trend has generated several good practices, whose features are shared among the best performing economies. In order to assist States wishing to reform their business registration procedures so as to take into consideration the particular needs of MSMEs, or simply to adopt additional good practices to streamline existing procedures, this guide sets out key principles and good practices in respect of business registration, and how to achieve the necessary reforms.

4. Further to discussion in the Working Group and decisions made at its twenty-fifth (October 2015) and twenty-sixth sessions (April 2016),<sup>4</sup> the Secretariat prepared a consolidated draft legislative guide (A/CN.9/WG.I/WP.101), which addressed legal, technological, administrative and operational issues involved in the creation and implementation of a business registration system. The draft combined into a single text the draft commentary (A/CN.9/WG.I/WP.93, Add.1 and Add.2) and recommendations (A/CN.9/WG.I/WP.96 and Add.1) considered by the Working Group at its twenty-fifth and twenty-sixth sessions.

5. At its twenty-eighth session (May 2017), the Working Group reviewed that consolidated text (A/CN.9/WG.I/WP.101) save for the introductory section and draft recommendation 9 (“Core functions of a business registry”) and its attendant commentary to which the Working Group agreed<sup>5</sup> to revert at a future session. The changes to the text arising from the deliberations of the Working Group at that session have been included in this revised draft legislative guide; guidance to the revisions made is reflected in footnotes throughout the text. In addition, the Secretariat has made editorial adjustments necessary to facilitate the cohesion and consistency of the text. Further to decisions of the Working Group at its twenty-eighth session, in some cases the Secretariat has also changed the order of the recommendations and the relevant commentary; the recommendations have been renumbered consecutively and any cross-references adjusted accordingly.

## A. Purpose of the present guide

6. Business registries are public entities, established by law, that record and update information on new and existing businesses that are operating in the jurisdiction of the registry, both at the outset and throughout the course of their lifespan.<sup>6</sup> This

<sup>4</sup> See para. 73, A/CN.9/860 and para. 51, A/CN.9/866.

<sup>5</sup> Agreed by the Working Group at its twenty-eighth session (para. 46, A/CN.9/900 and para. 82, A/CN.9/860).

<sup>6</sup> See L. Klapper, R. Amit, M. F. Guillén, J. M. Quesada, *Entrepreneurship and Firm Formation Across Countries*, 2007, page 8.

process not only enables such businesses to comply with their obligations under the domestic legal and regulatory framework applicable to them, but it empowers them to participate fully in the legally regulated economy, including enabling them to benefit from legal, financial and policy support services not otherwise available to unregistered businesses. Moreover, when information is appropriately maintained and shared by the registry, it allows the public to access business information, thus facilitating the search for potential business partners, clients or sources of finance and reducing risk when entering into business partnerships.<sup>7</sup> In performing its functions, the registry can thus play a key role in the economic development of a State. In addition, since businesses, including MSMEs, are increasingly expanding their activities beyond national borders, registries efficiently performing their functions can play an important role in a cross-border context<sup>8</sup> by facilitating access to business information of interested users from foreign jurisdictions (see also paras. 195 and 196 below),<sup>9</sup> which greatly reduces the risks of transacting and contracting.

7. Business registration systems vary greatly across States and regions, but a common thread to all is that the obligation to register can apply to businesses of all sizes depending on the legal requirements applicable to them under domestic law. Approaches to business registration reforms are most often “neutral” in that they aim at improving the functioning of the registries without differentiating between large scale business activities and much smaller business entities. Evidence suggests, however, that when business registries are structured and function in accordance with certain features, they are likely to facilitate the registration of MSMEs, as well as operating more efficiently for businesses of all sizes. These features are reflected as recommendations in this legislative guide.

8. This legislative guide draws on the lessons learned through the wave of reforms of business registration systems implemented since 2000 by various developed and developing economies.<sup>10</sup> Through this approach, the guide intends to facilitate not only efficient domestic business registration systems, but also cooperation among registries in different national jurisdictions, with a view to facilitating cross-border access to the registries by all interested users. Promoting the cross-border dimension of business registration contributes to foster transparency and legal certainty in the economy and significantly reduces the cost of businesses operating beyond their national borders (see also paras. 195 and 196 below).<sup>11</sup>

9. The present guide supports the view that transitioning to an electronic or mixed (i.e. paper and electronic) registration system, providing registration and post-registration services at no cost or at low cost, and collecting and maintaining high quality information on registered businesses greatly contribute to promoting the registration of MSMEs. Importantly, establishing a one-stop shop for business registration and registration with other authorities such as tax authorities, social services and the like greatly facilitates registration, particularly in the case of MSMEs, and can be expected to have a significant impact on their likelihood to enter the legally regulated economy. In this regard, it should be noted that the terms “business registry” and “one-stop shop” (i.e. a single interface for business registration) as used in this draft guide are not intended to be interchangeable. When these materials refer to the “business registry”, it means the system for receiving, storing and making accessible to the public certain information about business entities. When the term one-stop shop is used, it refers to a single entry point, physical or electronic, that a business can use to achieve not only its registration as a business in the legally-regulated economy, but a single entry point to all other regulatory

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<sup>7</sup> See World Bank and International Finance Corporation, *Doing Business*, 2015, page 47 and para. 35, [A/CN.9/WG.I/WP.92](#).

<sup>8</sup> See European Commission, *Green Paper, The interconnection of business registers*, 4 November 2009, page 2.

<sup>9</sup> Council of the European Union, *Council conclusions on the interconnection of business registers*, 25 May 2010.

<sup>10</sup> For further details, see para. 8, [A/CN.9/WG.I/WP.85](#).

<sup>11</sup> See *supra*, footnote 8, pages 2 ff.

functions in the State that relate to starting and operating a business, including, for example, registering for tax purposes and for social services associated with the operation of a business.

10. These materials have benefited from various tools prepared by international organizations that have supported such reform processes, in particular, in developing and middle income economies. Data made available through the activity of international networks of business registries that, among other activities, survey and compare the practices of their affiliates in various States around the world have also been referenced. The main sources used in the preparation of this draft legislative guide include:

- How Many Stops in a One-Stop Shop? (Investment Climate, World Bank Group, 2009)
- Outsourcing of business registration activities, lessons from experience (Investment Climate Advisory Services, World Bank Group, 2010)
- Innovative Solutions for Business Entry Reforms: A Global Analysis (Investment Climate, World Bank Group, 2012)
- Reforming Business Registration: A Toolkit for the Practitioners (Investment Climate, World Bank Group, 2013)
- The annual International Business Registers Report (prepared previously by ECRF, and currently by ASORLAC, CRF, ECRF and IACA)<sup>12</sup>
- The Business Facilitation Programme website (developed by UNCTAD)<sup>13</sup>
- Guide to the International Business Registers Surveys 2016 (available at <http://www.ecrforum.org>)
- [...]

*[The Working Group may wish to note that reference to these specific resources will be changed in the final text to reference to the international organizations that prepared them]*

11. This legislative guide is addressed to States interested in the reform or improvement of their business registration systems, including all stakeholders in the State that are interested or actively involved in the design and implementation of business registries, as well as to those that may be affected by or interested in the establishment and operation of a business registry, such as:

- (a) Policymakers;
- (b) Registry system designers, including technical staff charged with the preparation of design specifications and with the fulfilment of the hardware and software requirements for the registry;
- (c) Registry administrators and staff;
- (d) Registry clientele, including business persons, consumers, and creditors, as well as the general public and all others with an interest in the appropriate functioning of the business registry;
- (e) Credit agencies and other entities that will provide credit to a business;
- (f) The general legal community, including academics, judges, arbitrators and practising lawyers; and

<sup>12</sup> The report is prepared by the following registry organizations: Association of Registrars of Latin America and the Caribbean (ASORLAC); Corporate Registers Forum (CRF); European Commerce Registers' Forum (ECRF); and International Association of Commercial Administrators (IACA). These organizations include State registry officials from around the globe.

<sup>13</sup> UNCTAD is the United Nations Conference on Trade and Development. See <http://businessfacilitation.org/index.html>.

(g) All those involved in company law reform and the provision of technical assistance in the simplification of business registration, such as international organizations, bilateral donors, multilateral development banks and non-governmental organizations active in the field of business registration.

12. The present guide uses neutral legal terminology so that its recommendations can be adapted easily to the diverse legal traditions and drafting styles of different States. This draft legislative guide also takes a flexible approach, which will allow its recommendations to be implemented in accordance with local drafting conventions and legislative policies regarding which rules must be incorporated in principal legislation and which may be left to subordinate regulation or to ministerial or other administrative rules.

## B. Terminology

13. The meaning and use of certain expressions that appear frequently in this draft legislative guide is explained in this paragraph. It is to be noted that whenever expressions such as annual accounts, periodic returns, documents, forms (such as search forms, registration forms or other forms to request registry services), notices, notifications and written materials are used, reference is intended to include both their electronic and paper versions unless otherwise indicated in the text. The most used expressions in this draft legislative guide include the following:

- *Annual accounts*: The term “annual accounts” means financial information on the business’ activities prepared at the end of a financial year of the business (see “periodic returns”).<sup>14</sup>
- *Branch*: The term “branch” means an entity carrying on business in a new location either within the jurisdiction in which it was formed or in another domestic or cross-border jurisdiction. The branch is not a subsidiary and does not have a separate legal personality from the original or main business.<sup>15</sup>
- *Business name*: The term “business name” means a name registered on behalf of a business.<sup>16</sup>
- *Business registry or business registration system*: The term “business registry or business registration system” means a State’s system for receiving, storing and making accessible to the public certain information about businesses.
- *Deregistration*: The term “deregistration” means indicating in the registry that a business is no longer registered.
- *Electronic signature*: The term “electronic signature” means data in electronic form in, affixed to or logically associated with, a data message, which may be used to identify the signatory in relation to the data message and to indicate the signatory’s approval of the information contained in the data message.<sup>17</sup>
- *ICT*: The term “ICT” means information and communications technology.
- *Law*: The term “law” means the applicable law in the enacting State and is intended to include both the specific rules adopted to establish the business registry (whether such rules are found in legislation or in administrative regulations or guidelines, see para. 1 in the Annex) and the broader body of domestic law that may be relevant to issues related to the business registry but are found outside of the specific rules establishing the business registry.<sup>18</sup>

<sup>14</sup> See Guide to the International Business Registers Surveys 2016, page 2.

<sup>15</sup> See The International Business Registers Report, 2015, page 43.

<sup>16</sup> See *supra*, footnote 14.

<sup>17</sup> See UNCITRAL Model Law on Electronic Signatures (2001), article 2.

<sup>18</sup> This approach incorporates the Working Group’s suggestion at its twenty-eighth session to use the term “law” (para. 21, A/CN.9/900).

- *Legally regulated economy*: The term “legally regulated economy” means that economic activity which takes place in a State within the context of the legal and regulatory regime that the State has established to govern such activity. The legally regulated economy does not include commercial activity that takes place outside of that context (sometimes referred to as the “extra-legal economy”), nor does it include trade in illicit goods or services.
- *Micro, small and medium-sized enterprises (MSMEs)*: The term “MSMEs” means micro, small and medium-sized enterprises as they are defined according to the criteria established by the relevant authority of the State in the law of the State undertaking the business registration reforms.
- *One-stop shop*: The term “one-stop shop” means a physical office, a single interface on an electronic platform or an organization that carries out more than one function relating to the registration of a business with the business registry and other government agencies (e.g. the taxation and social services authorities, and the pension fund) necessary in order for the business to operate in the legally regulated economy.
- *Periodic returns*: The term “periodic returns” means a statement provided annually or at other prescribed intervals which gives essential information about a business’ composition, activities, and financial status, and which, subject to applicable law, registered businesses may be required to file with an appropriate authority (see “annual accounts”).
- *Protected data*: The term “protected data” means all information that must be kept confidential pursuant to the applicable law of the enacting State.
- *Registered business*: The term “registered business” means a business that, further to filing an application for registration, has been officially registered in the business registry.
- *Registered information*: The term “registered information” means information submitted to the registry, including protected data and information that will be made public.
- *Registrant*: The term “registrant” means the natural or legal person that submits the prescribed application form and any additional documents to a business registry.
- *Registrar*: The term “registrar” means the person appointed pursuant to domestic law to supervise and administer the operation of the registry.<sup>19</sup>
- *Registration*: The term “registration” means the entry of information required by domestic law into the business registry.
- *Reliable*: A business registration system and the information it contains is “reliable” when the registered data is of good quality and the system may be considered positively in terms of performance. “Reliable” is not a legal standard and does not refer to whether the information is legally binding on the registry, the registrant, the registered business, or third parties.<sup>20</sup>

<sup>19</sup> At its twenty-eighth session, the Working Group requested that the Secretariat clarify the difference between “authority” and “designated authority” in the legislative guide (para. 40, [A/CN.9/900](#)); instead, use of the defined term “registrar” is suggested as a means to clarify those concepts.

<sup>20</sup> The Working Group agreed at its twenty-eighth session (paras. 32-33, [A/CN.9/900](#)) that the Secretariat should adjust the definition of “reliable” in paragraph 13 (para. 12 in [A/CN.9/WG.I/WP.101](#)) and should ensure that the term was used consistently throughout the text. To that end, the Secretariat has revised the definition (see also para. 35 below and footnote 40).

- *Unregistered business*: The term “unregistered business” means those businesses that are not included in the business registry.
- *Unique identifier*: The term “unique identifier” means a set of characters (numeric or alphanumeric) that is allocated only once to a business and that is used consistently by the public agencies of a State.

### **C. Legislative drafting considerations**

14. States implementing the principles contained in this legislative guide should consider whether to include them in a law, in a subordinate regulation, in administrative guidelines or in more than one of those texts. This matter would be left for enacting States to decide in accordance with their own legislative drafting conventions. In this respect, it should be noted that this guide does not distinguish between those concepts and uses the general term “law” of the enacting State. As noted in the section on terminology, such term is intended to denote both the rules adopted by the enacting State to establish the business registry and those provisions of domestic legislation in the broader sense that are somehow relevant to and touch upon issues related to business registration.<sup>21</sup>

### **D. The reform process**

15. Streamlining business registration in order to meet the key objective of simplifying the registration process as well as making it time and cost efficient and user friendly (both for registrants and stakeholders searching the registry) usually requires undertaking reforms that address the enacting State’s legal and institutional framework. It may also be necessary to reform the business processes that support the registration system. Sometimes reforms are needed in all of these areas. The approach taken in these reforms may vary considerably among States as the design and features of a registration system are influenced by the State’s level of development, priorities and legal framework. There are, however, several common issues that States should consider and several similar recommended steps for reform regardless of jurisdictional differences that may exist. These issues are examined below.

#### **1. The reform catalysts**

16. Business registration reform is a multifaceted reform process that addresses various aspects of the State apparatus; its implementation requires the participation of a broad range of stakeholders and a thorough understanding of the State’s legal and economic conditions, as well as of the practical needs of registry personnel and the intended users of the registry. To be successful, the reform must be driven by the need to improve private sector development and, for this reason, it is advisable that the reform be part of a larger private sector development or public sector modernization programme.<sup>22</sup> It is thus essential to gain an understanding of the importance of business registration in relation to other business environment challenges and of its relationship to other potential reforms. This analysis will require, as crucial preliminary steps, ensuring that domestic circumstances are amenable to a business reform programme, that incentives for such a reform exist and that there is support for such initiatives in the government and in the private sector prior to embarking on any reform effort.

#### **(a) Relevance of a reform advocate**

17. Support or even leadership from the highest levels of the State’s government is of key importance for the success of the reform process. The engagement of relevant

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<sup>21</sup> This paragraph incorporates the Working Group’s suggestion at its twenty-eighth session to use the term “law” (para. 21, [A/CN.9/900](#)).

<sup>22</sup> See A. Mikhnev, *Building the capacity for business registration reform*, 2005, page 16.

government ministries and political leadership in the reform effort facilitates the achievement of consensus on the steps required. This can be particularly important to facilitate access to financial resources, to make and implement decisions or when it is necessary to move business registry functions from one branch of government to another or to outsource them.<sup>23</sup>

**(b) The steering committee**

18. In order to oversee the day-to-day progress of the reform and to manage difficulties as they may arise, it is advisable that a steering committee be established to assist the State representative or body leading the reform. In addition to experts with technological, legal and administrative expertise, this committee should be composed of representatives of the public and private sector and should include a wide range of stakeholders, including those who can represent the perspectives of intended users. It may not always be necessary to create such a committee, since it may be possible to use existing mechanisms; in any event, a proliferation of committees is to be avoided, as their overall impact will be weakened.<sup>24</sup>

19. Experience indicates that a steering committee should have clearly defined functions and accountability; it is advisable that its initial setup be small and that it should grow progressively as momentum and stakeholder support increase. Although linked to the high level government body spearheading and advocating for the reform, the committee should operate transparently and independently from the executive branch. In certain jurisdictions, regulatory reform bodies have later been transformed into more permanent institutions that drive ongoing work on regulatory governance and regulatory impact analysis.

20. The steering committee must nurture the reform process and consider how to address concerns raised in respect of it.<sup>25</sup> Concerns could include those arising from bureaucratic inertia, or fears that registry employees may lose their jobs if their ICT skills are weak or if technology replaces human capital. Thus, it is likely to be important for the body overseeing the reform to be able to consider diverse interests and fully inform potential beneficiaries and political supporters.

**(c) The project team**

21. In collaboration with the steering committee, it is advisable that a project team be assigned the task of designing a reform programme tailored to an enacting State's circumstances and providing technical expertise to implement the reforms. A successful reform will require a team of international and local specialists, with expertise and experience in business registration reform, in legal and institutional reform, and in a variety of technology matters (for example, software design, hardware, database and web specialists).

**(d) Awareness-raising strategies**

22. States embarking on a reform process should consider appropriate communication strategies aimed at familiarizing businesses and other potential registry users with the operation of the registry and of the legal and economic significance of business registration. This effort should include informing businesses about the benefits of registration and participation in the legally regulated economy (e.g. visibility to the public, the market and the banking system); opportunity to participate in public procurement; legal validation of the business; access to flexible business forms and asset partitioning; possibility of protecting the business' unique name and other intangible assets; opportunities for the business to grow and to have

<sup>23</sup> For further reference, see Investment Climate, (World Bank Group) Reforming Business Registration: A Toolkit for the practitioners, 2013, page 23.

<sup>24</sup> For further reference, see World Bank Group, Small and Medium Enterprise Department, Reforming Business Registration Regulatory Procedures at the National Level, A Reform Toolkit for Project Teams, 2006, page 39.

<sup>25</sup> See supra, footnote 23, page 25.

access to a specialized labour force and access to government assistance programmes. The awareness-raising strategy should also ensure that information on compliance with the law, fulfilment of the obligations taken on by registration (e.g. payment of taxes) and potential penalties for non-compliance is similarly clear and easily available.<sup>26</sup>

23. Effective communication may also be expected to encourage the development of new businesses and the registration of existing unregistered businesses, as well as to provide signals to potential investors about the enacting State's efforts towards improvement of the business environment. Awareness-raising strategies should commence early in the reform process and should be maintained throughout it, including after the enactment of the legal infrastructure and implementation of the new business registration system. In coordination with the steering committee, the project team should determine which cost-effective media can best be used: these can include private-public dialogues, press conferences, seminars and workshops, television and radio programmes, newspapers, advertisements, and the preparation of detailed instructions on submitting registration information and obtaining information from the business registry.<sup>27</sup> In order to raise MSME awareness of the reforms to the business registration system, it may be advisable to consider communication strategies tailored specifically to that audience.<sup>28</sup>

**(e) Incentives for businesses to register**

24. In addition to an efficient awareness-raising campaign, States should consider adding incentives for MSMEs and other businesses to register through the provision of ancillary services for registered businesses (see para. 2(f)(ii) above). The types of incentives will clearly vary according to the specific economic, business and regulatory context. By way of example, they may include: promoting access to credit for registered businesses; offering accounting training and services as well as assistance in the preparation of a business plan; providing credits for training costs; establishing lower and simplified taxation rates and tax mediation services; providing business counselling services; providing monetary compensation, government subsidies or programmes to foster MSME growth and providing low-cost technological infrastructure.<sup>29</sup>

**2. Phased reform process**

25. The duration of a reform process can vary considerably, depending on the types of reforms implemented and on other circumstances relevant to the particular economy. While the most comprehensive approach may entail a complete reform of the business registry and the legislation establishing it, this may not be realistic in all cases and enacting States may wish to consider a phased implementation of their reform. Lessons learned from experience in various jurisdictions demonstrate, for instance, that in States with a large number of unregistered businesses, a reform process that adopts a "think small" approach at the outset of the reform process, might be more effective than a reform with a broader focus, which could be introduced at a later stage.<sup>30</sup> For example, if the main objective is to promote the registration of MSMEs at the outset, simple solutions addressing the needs of MSMEs operating at the local level may be more successful than introducing sophisticated automated systems that require high-level technological infrastructures, changes in the legal and institutional framework and that may be more appropriate to larger businesses or businesses operating in the international market. Even when the reform is carried out

<sup>26</sup> For a more detailed presentation of these issues see section III.A.1 of [A/CN.9/WG.I/WP.107](#) and [A/CN.9/WG.I/WP.98](#), Section D.2. See also paras. 124 and 207 to 209 of this working paper.

<sup>27</sup> See *supra*, footnote 23, pages 26-27.

<sup>28</sup> See section III.A.2 of [A/CN.9/WG.I/WP.107](#).

<sup>29</sup> For a more comprehensive list of incentives, see section III.B of [A/CN.9/WG.I/WP.107](#) and [A/CN.9/WG.I/WP.98](#), section C.6(c).

<sup>30</sup> See Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, page 26.

in more developed jurisdictions, it may be advisable to “start small” and pilot the reforms at a local level (for example, in a district or the capital) before extending them state-wide. Success in a pilot stage can have a strong demonstration effect, and is likely to build support for continued reform.<sup>31</sup>

## I. Objectives of a business registry<sup>32</sup>

26. The focus of the present legislative guide is primarily the business registry of a State and the adoption of best practices in order to optimise the operation of the business registration system for its users so that it is simple, efficient and cost-effective. However, in most States, in order for a business to participate in the legally regulated economy, it must usually register not only with the business registry but also with various additional public authorities (see also para. 60 below). In addition to the business registry, these agencies often include taxation and social services authorities. States wishing to facilitate the entry of businesses into the legally regulated economy should thus assess the multiple public agencies with which a business must register in addition to the business registry, and consider ways to reduce the burden on businesses by streamlining those requirements. As examined in greater detail in this legislative guide (see paras. 90 to 100 below), one way to accomplish that goal would be for a State to establish a one-stop shop for business registration and for registration with other public authorities, subject to the legal and institutional organization of the enacting State.

### A. Purposes of the business registry

27. The opening provisions of the law that creates the foundation of a business registry should provide for the establishment of the registry and set out explicitly the purpose of a system for the registration of businesses.

28. The law of the enacting State should establish which businesses are required to register. Currently, many States require only businesses of a certain legal form to register, often focusing on those legal forms that have limited liability status. Requiring such businesses to register puts third parties dealing with them on notice of their limited liability status, as well as providing additional information in respect of them, depending on the requirements of the law establishing the legal form. However, since business registration may be viewed as the main conduit through which businesses of all sizes and legal forms interact with the State and operate in the legally regulated economy, States may wish to permit all such businesses to register. Through registration, a business becomes more visible not only in the marketplace, but also to States, who may then be able to more easily identify MSMEs in need of support, and design appropriate programmes for those purposes. As such, permitting the registration of all sizes and legal forms of business may encourage the registration of MSMEs, assisting them in their growth in addition to facilitating their operation in the legally regulated economy (see also para. 2 above, para. 130 below and [A/CN.9/WG.I/WP.107](#)).<sup>33</sup>

<sup>31</sup> For further reference, see *supra*, footnote 24, page 45.

<sup>32</sup> At its twenty-eighth session, the Working Group agreed that the commentary to this recommendation (recommendation 1 of [A/CN.9/WG.I/WP.101](#)) could highlight the importance of developing a one-stop shop in order to facilitate business registration and registration with other authorities (paras. 22, 57 and 144 to 145, [A/CN.9/900](#)) bearing in mind concerns raised by some delegations that broadening the concept of “business registration” could have a negative impact on the text and on its scope in general. The Working Group may also wish to consider on this issue the content of [A/CN.9/WG.I/WP.107](#) (formerly [A/CN.9/WG.I/WP.92](#)) which is intended to form the overarching introduction to all work on MSMEs.

<sup>33</sup> At its twenty-eighth session, the Working Group decided that the commentary to this recommendation (recommendation 1 of [A/CN.9/WG.I/WP.101](#)) should reflect that enacting States should decide which businesses were required to register (para. 24, [A/CN.9/900](#)).

29. In light of the above, the following overarching principles should govern an effective system of business registration: (a) enabling businesses of all sizes and legal forms to be visible in the marketplace and to operate in the legally regulated commercial environment; and (b) enabling MSMEs to increase their business opportunities and to improve the profitability of their businesses.<sup>34</sup>

**Recommendation 1: Purposes of the business registry<sup>35</sup>**

The law 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 enables businesses required to register, and assists those permitted to register, to participate in, and receive the benefits of participating in, the legally regulated economy of the State; and

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

**B. Simple and predictable legislative framework permitting registration for all businesses**

30. States should set the foundations of their business registry by way of law. In order to foster a transparent and reliable business registration system, with clear accountability of the registrar (see also paras. 44 and 46 below), that law should be simple and straightforward. Care should be taken to limit or avoid any unnecessary use of discretionary power, and to provide for appropriate safeguards against its arbitrary use. However, some discretion should be permitted to the registry in order to ensure the smooth functioning of the system. For instance, subject to the requirements of the law and prior notice to the registrant, the registrar may be allowed to correct errors in the registered information (see also paras. 150 and 228 below).

31. The applicable law in each State should determine which business forms are required to register, and which additional conditions those businesses may have to fulfil as part of that requirement. Since business registration is considered the key means through which all businesses, including MSMEs, can participate effectively in the legally regulated economy, States should enable<sup>36</sup> businesses of all sizes and legal forms to register in an appropriate business registry, or create a single business registry that is tailored to accommodate registration by a range of businesses of different sizes and different legal forms.

32. The law governing business registration should also provide for simplified registration and post-registration procedures in order to promote registration of MSMEs. The goal should be for States to establish registration procedures with only the minimum necessary requirements for MSMEs and other businesses to operate in the legally regulated economy. Of course, businesses with more complex legal forms would be subject to additional information requirements under the law of the enacting State as a consequence of their particular legal form or type of business.<sup>37</sup>

<sup>34</sup> The Working Group agreed at its twenty-eighth session (para. 23, [A/CN.9/900](#)) to add to the commentary of this recommendation any necessary detail on the importance of States assisting MSMEs in light of the content of [A/CN.9/WG.I/WP.107](#) (formerly [A/CN.9/WG.I/WP.92](#)), which is intended to form the overarching introduction to all work on MSMEs, and para. 2 and the introductory section of the present text.

<sup>35</sup> At its twenty-eighth session, the Working Group agreed to adjust the drafting of this recommendation (recommendation 1 of [A/CN.9/WG.I/WP.101](#)) by substituting a word for “entitles” in subparagraph (a) in order to clarify that the enacting State should decide which businesses should be required to register (para. 24, [A/CN.9/900](#)).

<sup>36</sup> At its twenty-eighth session, the Working Group decided to delete the phrase “may wish to consider requiring or enabling” and replace it with “should enable” (para. 27, [A/CN.9/900](#)).

<sup>37</sup> At its twenty-eighth session, the Working Group agreed to add the phrase “or type of business” at the end of paragraph 29 (para. 27, [A/CN.9/900](#)).

33. Further, regardless of the approach chosen to maintain updated information in the business registry, it would be advisable to make updating the records of MSMEs as simple as possible. This could involve a number of different approaches examined in greater detail below, such as extending the period of time for such businesses to declare a change; harmonizing the information needed when the same information is repeatedly required; or exempting MSMEs from certain obligations in specific cases.<sup>38</sup>

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

The law should:

- (a) Adopt a simple structure for rules governing the business registry and avoid the unnecessary use of exceptions or granting of discretionary power;
- (b) Establish a system for the registration of businesses that permits registration of businesses of all sizes and legal forms; and
- (c) Ensure that micro, small and medium-sized enterprises (MSMEs) are subject to the minimum procedural requirements.<sup>39</sup>

**C. Key features of a business registration system**

34. To be effective in registering businesses of all sizes, a business registration system should ensure that, to the extent possible, the registration process is simple, time and cost efficient, user-friendly and publicly accessible. Moreover, care should be taken to ensure that the public registered information on businesses is easily searchable and retrievable, and that the process through which the registered information is collected and maintained as well as the registry system are kept as current, reliable and secure as possible.

35. The reliability of the business registration system and the information contained in the registry is a recurring theme in the present guide. In keeping with the definition of reliable as set out in paragraph 13 above,<sup>40</sup> the reliability of the system refers to its positive performance and dependability in collecting and storing data, while reliable information refers to data that is consistently good in quality. The term does not refer to the method that a State uses to ensure that reliability, and this legislative guide leaves it to each enacting State to determine how best to ensure the reliability of its business registration system and the information it contains in light of its own context and legal tradition. Reliability in this guide does not refer to whether or not the information in the business registry is legally binding on the registry, the registrant, the registered business or on third parties, nor to whether the enacting State uses a declaratory or approval approach in respect of its business registration system. However, the extent to which information in the registry is legally binding and whether the State adopts a declaratory or approval system are aspects that should be made clear by the enacting State in its business registry law and on the business registry itself.

36. Regardless of which registration system is adopted, maintaining high quality, current and reliable information is imperative for the business registry in order to make the information useful for the registry users and to establish users' confidence

<sup>38</sup> See also paragraphs 160 to 164 in this working paper on "Maintaining a current registry".

<sup>39</sup> At its twenty-eighth session the Working Group agreed (para. 30, [A/CN.9/900](#)) to delete the closing phrase of subparagraph (c) of this recommendation (recommendation 2 of [A/CN.9/WG.I/WP.101](#)) ("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").

<sup>40</sup> The Working Group agreed at its twenty-eighth session (para. 32, [A/CN.9/900](#)) that the Secretariat should adjust the discussion in this paragraph as necessary to acknowledge the definition of "reliable" in paragraph 13 (para. 12 of [A/CN.9/WG.I/WP.101](#)), and should ensure that the term was used consistently throughout the text. To that end, the Secretariat has revised the definition and this paragraph.

in business registry services. This applies not only to the information provided when applying to register a business, but also to the information that the entrepreneur submits during the lifetime of the business. It is thus important that the information meets certain requirements in the way it is submitted to the registry and then made available to the public. For these reasons, States should devise provisions that allow the registry to operate according to principles of transparency and efficiency in the way information is collected, maintained and released.

37. The registry can implement certain procedures in order to ensure that the information maintained in the registry is of good quality and reliable.<sup>41</sup> Those procedures, which will be further discussed in the following sections of the present guide, can be grouped into two broad categories. One group comprises those measures aimed at protecting the identity and integrity of a business through the prevention of corporate identity theft or the adoption of identity verification methods for those who provide information to the business registry. A wide range of measures can be implemented in this regard, such as the use of monitoring systems or establishing access through the use of passwords to prevent corporate identity theft; or the use of electronic signatures and electronic certificates to verify the identity of those who submit information to the registry. Business registries usually adopt more than one type of measure.<sup>42</sup>

38. Another group of measures that registries can implement to ensure the good quality and reliability<sup>43</sup> of the registered information pertains to the way information is collected and maintained in the registry and the frequency with which it is updated (see paras. 156 to 164 below). In this regard, ensuring that the registry record is regularly updated is of key importance. In electronic registry systems, the software will usually provide for automated periodic updating as amendments are submitted by businesses. However, when registries use paper-based or mixed systems, the registry staff must ensure that updates to the registry record are entered as soon as practicable, and if possible, in real time or at least once daily (see para. 164 below). To underpin these measures, it is important for States to establish effective enforcement mechanisms upon which registries can rely when a business fails to provide accurate and complete information (see paras. 206 to 209 below).<sup>44</sup>

39. Moreover, in order to enhance the quality and reliability<sup>45</sup> of the information deposited in the registry, enacting States should preserve the integrity and security of the registry record itself. Steps to achieve those goals include: (a) requiring the registry to request and maintain the identity of the registrant; (b) obligating the registry to notify promptly the applicant business about the registration and any changes made to the registered information; and (c) eliminating any discretion on the part of registry staff to deny access to registry services.

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<sup>41</sup> At its twenty-eight session, the Working Group agreed to retain the phrase “good quality”, although such notion was included in the definition of “reliable” (see para. 33, [A/CN.9/900](#)). The Working Group may wish to consider whether it is necessary to retain such reference to “good quality” throughout the text.

<sup>42</sup> See International Business Registers Report 2016, page 128.

<sup>43</sup> See *supra* footnote 41.

<sup>44</sup> For further reference, see The International Business Registers Report 2015, pages 119 ff. At its twenty-eighth session, the Working Group requested the Secretariat to amend the text as follows: (a) the paragraphs should focus on the general concepts of verification and security of information as well as on best practices to ensure them; (b) cross-references to the concepts expressed in recommendations 28(a), 40 and 41 (as they appeared in [A/CN.9/WG.I/WP.101](#)) should be included; and (c) the reference to requiring business to reregister at certain intervals should be deleted since such a practice could be viewed as unduly burdensome on MSMEs (para. 36, [A/CN.9/900](#)).

<sup>45</sup> See *supra* footnote 41.

### **Recommendation 3: Key features of a business registration system**

The law 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 suited 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 of good quality and are kept as current, reliable and secure as possible.<sup>46</sup>

## **II. Establishment and functions of the business registry**

40. In order to establish an effective business registration system, several approaches may be taken. However, despite the fact that approaches vary in different States, there is broad agreement on certain key objectives of effective business registration systems. Regardless of differences in the way business registries may operate, efficient business registries have a similar structure and perform similar functions when carrying out the registration of a new business or in recording the changes that may occur in respect of an existing business.

### **A. Responsible Authority**

41. In establishing or reforming a business registry, enacting States will have to decide how the business registry will be organized and operated. Different approaches can be taken to its form,<sup>47</sup> the most common of which is based on oversight by the government. In such States, a government department or agency, staffed by civil servants, and usually established under the authority of a particular government department or ministry, operates the registration system. Another type of organization of a business registry is one that is subject to administrative oversight by the judiciary. In such contexts, the registration body might be a court or a judicial registry whose function, usually specified in the applicable commercial code, is concerned with verifying the business requisites for registration but does not require prior judicial approval of a business seeking to register.

42. States may also decide to outsource some or all of the registry operations through a contractual or other legal arrangement that may involve public-private partnerships or the private sector.<sup>48</sup> When registration is outsourced to the private sector, it remains a function of the government, but the day-to-day operation of the system is entrusted to privately-owned companies. In one jurisdiction, for instance, such an outsourcing was accomplished by way of appointing a private company, in accordance with the law, as the assistant registrar with full authority to run the registration function.<sup>49</sup> However, operating the registry through public-private partnerships or private sector companies does not yet appear to be as common as the

<sup>46</sup> At its twenty-eighth session, the Working Group agreed to include the phrase “good quality” into subparagraph (d) of this recommendation (recommendation 3 of [A/CN.9/WG.I/WP.101](#)) to be consistent with the language of paragraph 35 to delete the square brackets around the subparagraph and to retain the text (paras. 33 and 37, [A/CN.9/900](#)).

<sup>47</sup> According to The International Business Registers’ Report 2015, registries are organized in the following ways: 82 per cent of business registries are state-governed; 7 per cent are organized as public-private partnerships; 5 per cent are governed by the judiciary; and 1 per cent are operated by privately owned companies.

<sup>48</sup> See European Commerce Registers’ Forum, International Business Registers Report, 2014, page 15.

<sup>49</sup> For instance, Gibraltar, cited in Investment Climate (World Bank Group), Outsourcing of Business Registration Activities, Lessons from Experience, 2010, pages 55 ff.

operation of the registry by a government agency.<sup>50</sup> States may also decide to form entities with a separate legal personality, such as chambers of commerce, with the object of managing and developing the business registry,<sup>51</sup> or to establish by law registries as autonomous or quasi-autonomous agencies, which can have their own business accounts and operate in accordance with the applicable regulations governing public agencies. In one State, for example, the business registry is a separate legal person that acts under the supervision of the Ministry of Justice,<sup>52</sup> while in another State the registry is an administratively separate executive agency of a government department, but does not have separate legal status.<sup>53</sup> In deciding which form of organization to adopt, States will have to consider their specific domestic circumstances, evaluate the challenges and trade-offs of the various forms of organization and then determine which one best meets the State's priorities and its human, technological and financial resources.

43. While the day-to-day operation of the registry may be delegated to a private sector firm, the enacting State should always retain the responsibility of ensuring that the registry is operated in accordance with the applicable law. For the purposes of establishing public trust in the business registry and preventing the unauthorized commercialization or fraudulent use of information in the registry record, the enacting State should retain its competence over<sup>54</sup> the registry record. Furthermore, the State should also ensure that, regardless of the daily operation or the structure of the business registry, the State retains the right to control the access to and use of the data in the registry.

**Recommendation 4: Responsible authority<sup>55</sup>**

The law should provide that:

- (a) The business registry should be operated by the State or by an authority appointed by that State; and
- (b) The State retains its competence over the business registry.

**B. Appointment and accountability of the registrar**

44. The law of the State should set out<sup>56</sup> the procedure to appoint and dismiss the registrar, as well as the duties of the registrar, and the authority empowered to supervise the registrar in the performance of those duties.

<sup>50</sup> Arrangements involving contracting with the private sector to provide business registration services require careful consideration of several legal and policy issues, such as the responsibilities of the government and the private provider, the form of the arrangements, the allocation of risk, and dispute resolution.

<sup>51</sup> See Luxembourg, *supra* in footnote 49, pages 52 ff. In Luxembourg, the State, the Chamber of Commerce and the Chamber of Crafts formed an economic interest grouping, i.e. an entity with separate legal personality, with the object of managing and developing the business registry.

<sup>52</sup> See Latvia; for further reference see also A. Lewin, L. Klapper, B. Lanvin, D. Satola, S. Sirtaine, R. Symonds, *Implementing Electronic Business Registry (e-BR) Services, Recommendations for policymakers based on the experience of the EU Accession Countries, 2007*, page 44.

<sup>53</sup> See the United Kingdom of Great Britain and Northern Ireland; for further reference see also Lewin and others, cited in footnote 50 above, page 44.

<sup>54</sup> At its twenty-eighth session, the Working Group requested the Secretariat to replace the word "ownership" with a concept along the lines of "responsibility" or "rights" in order to be more accurate (para. 38, [A/CN.9/900](#)).

<sup>55</sup> At its twenty-eighth session, the Working Group agreed to redraft this recommendation (recommendation 4 of [A/CN.9/WG.I/WP.101](#)) in order to clarify 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 (para. 39, [A/CN.9/900](#)).

<sup>56</sup> Further to a decision of the Working Group at its twenty-eighth session that it is not necessary to distinguish between primary or secondary legislation in the legislative guide, the Secretariat has replaced the opening phrase of the paragraph ("The law or the regulation established ... (for further discussion on the topic of primary and secondary legislation, see para. 1 of the Annex below) ..." with the current drafting (para. 21, [A/CN.9/900](#)).

45. To ensure flexibility in the administration of the business registry, the term “registrar” should be understood as referring to a natural or legal person appointed to administer the business registry. States should permit the registrar to delegate its powers to persons appointed to assist the registrar in the performance of its duties.

46. In addition, the legal framework should clearly set out the functions of the registrar in order to ensure the registrar’s accountability in the operation of the registry and the minimization of any potential for abuse of authority. In this regard, the applicable law of the enacting State should establish principles for the liability of the registrar and the registry staff to ensure their appropriate conduct in administering the business registry (the potential liability of the registrar and the registry staff are addressed in paras. 210 to 215 below).<sup>57</sup>

#### **Recommendation 5: Appointment and accountability of the registrar**

The law 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.

### **C. Transparency in the operation of the business registration system**

47. A legal framework that fosters the transparent and reliable operation of the system for business registration has a number of features. It should allow registration to occur with a limited number of steps, and it should limit interaction with registry authorities, as well as provide short and specified turn-around times, be inexpensive, result in registration of a long-term or unlimited duration, apply throughout the jurisdiction and make registration easily accessible for registrants.

48. Registries should also establish “service standards” that would define the services to which users are entitled and may expect to receive, while at the same time providing the registry with performance goals that the registry should aim to achieve. Such service standards could include, for example, rules on the correction of errors (see paras. 30 above, and 150 and 228 below), rules governing the maximum length of time for which a registry may be unavailable (such as for electronic servicing) and providing advance notice of any expected down time. Service standards contribute to ensure further transparency and accountability in the administration of the registry, as such standards provide benchmarks to monitor the quality of the services provided and the performance of the registry staff.

#### **Recommendation 6: Transparency in the operation of the business registration system**

The registrar should ensure that the rules or criteria that are developed are made public to ensure transparency of the registration procedures.

### **D. Use of standard registration forms**

49. Another approach that is often used in association with the previous one to promote transparency and reliability in the operation of the business registry, is the use of standard registration forms paired with clear guidance to the registrant on how to complete them. Such forms can easily be filled out by businesses without the need to seek the assistance of an intermediary, thus reducing the cost and de facto contributing to the promotion of business registration among MSMEs. These forms

<sup>57</sup> At its twenty-eighth session, there was support in the Working Group for the suggestion to add a cross-reference to the potential liability of the registrar and registry staff (para. 42, A/CN.9/900).

also help prevent errors in entering the data by business registry personnel, thus speeding up the overall process. In some jurisdictions, the adoption of standardized registration forms has been instrumental in streamlining the registration requirements and disposing of unnecessary documents.<sup>58</sup>

#### **Recommendation 7: Use of standard registration forms**

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

### **E. Capacity-building for registry staff**

50. Once a reform of the business registration system has been initiated, developing the capacity of the personnel entrusted with business registration functions is an important aspect of the process. Poor service often affects the efficiency of the system and can result in errors or necessitate multiple visits to the registry by users.<sup>59</sup> Capacity development of registry staff could not only focus on enhancing their performance and improving their knowledge of the new registration processes, ICT solutions and client orientation, but staff could also be trained in new ways of improving business registration.

51. As seen in various States, different approaches to capacity-building can be followed, from the more traditional training methods based on lectures and classroom activities, to more innovative ways that can be driven by the introduction of new business registration systems. In some jurisdictions, team-building activities and role-playing have been used with some success, since reforms often break barriers between various government departments and require the improvement of the flow of information among them, as well as an understanding of different aspects of the procedures with which specific registry staff may not be familiar.<sup>60</sup> In other cases, States have also opted for developing action plans with annual targets in order to meet standards of performance consistent with global best practices and trends, and they have linked promotions and bonuses for staff to the achievement of the action plan's goals.<sup>61</sup> In other cases, States have decided to introduce new corporate values in order to enhance the public service system, including business registration.<sup>62</sup> Although the relevant governmental authority will usually take the lead in organizing capacity development programmes for the registry staff, the expertise of local legal and business communities could also be enlisted to assist.

52. Peer-to-peer learning as well as the establishment of national and international networks are also effective approaches to build capacity to operate the registry. These tools enable registry staff to visit other jurisdictions and States with efficient and effective business registration systems. In order to maximize the impact of such visits, it is important that they occur in jurisdictions familiar to the jurisdiction undergoing

<sup>58</sup> It should be noted that the use of standard registration forms should not preclude a business from submitting to the registrar additional materials and documents required by applicable law for the creation of the business, or in the exercise of the freedom of contract in establishing the business, such as agreements in respect of the internal operation of the business or additional information in respect of its financial state. (This footnote is intended to clarify, as agreed by the Working Group at its twenty-eighth session, that the submission of additional materials by businesses registering should be permitted: para. 43, A/CN.9/900.)

<sup>59</sup> The technical assistance experience of international organizations, in particular of the World Bank, has provided most of the background material upon which section "E" is based. See, in particular, *supra*, footnote 23, page 37.

<sup>60</sup> See K. Rada and U. Blotte, *Improving business registration procedures at the sub-national level: the case of Lima, Peru, 2007*, page 3.

<sup>61</sup> At its twenty-eighth session, the Working Group agreed to delete the phrase "any improvement of the registry's standing in international rankings", after the phrase "annual targets" and replace it with the notion that States aimed to meet "global best practices and trends" (para. 44, A/CN.9/900).

<sup>62</sup> See *supra*, footnote 23, page 21.

the reform. This approach has been followed with success in several jurisdictions engaging in business registration reform. International forums and networks also provide platforms for sharing knowledge and exchanging ideas among registry personnel around the world for implementing business registration reform.

53. In order to facilitate business registration, it may be equally important to build capacity on the part of intermediaries in States where the services of those professionals are required to register a business (see paras. 121 and 122 below).

#### **Recommendation 8: Capacity-building for registry staff**

The registrar should ensure that appropriate programmes are established to develop and strengthen the knowledge and skills of the registry staff on business registration procedures, service standards<sup>63</sup> and the operation of electronic registries, as well as the ability of registry staff to deliver requested services.

### **F. Core functions of business registries<sup>64</sup>**

54. There is no standard approach in establishing a business registry or in streamlining an existing one: models of organization and levels of complexity can vary greatly depending on a State's level of development, its priorities and its legal framework. However, regardless of the structure and organization of the registry, certain core functions can be said to be common to all registries.

55. In keeping with the overarching principles governing an effective business registration system (see para. 29 above), the core functions of business registries are to:

(a) Facilitate trade and interactions between business partners, the public and the State, including when such interactions take place in a cross-border context, through the publication of reliable (see paras. 32 and 33 above), current and accessible information that business must provide in order to be registered;

(b) Record the identity and disclose the existence of a business to other businesses, to the public and to the State (ideally in a comprehensive database);

(c) Provide a legal form to a business which, depending on the applicable law of a State, may include legal personality and limited liability; and

(d) Provide a commercial identity recognized by the State to enable a business to interact with business partners, including potential sources of finance, the public and the State.

56. In a standard registration process, the entry point for entrepreneurs to business registries may be the support provided to them in choosing a unique name for the new business that they wish to establish. When registering, businesses are usually required to have a name which must be sufficiently distinguishable from other business names within that jurisdiction so that the business will be recognized and identifiable under that name. Enacting States are likely to establish their own criteria for determining how to decide whether business names are sufficiently distinguishable from other business names, and in any event, the assignment of a unique business identifier will assist in ensuring the unique identity of the business within and across jurisdictions (see also paras. 101 to 118 below). Business registries usually assist entrepreneurs at this stage with a procedure that can be optional or mandatory, or they may provide business name searches as an information service. Registries may also offer a name reservation service prior to registering a new business, so that no other business can

<sup>63</sup> At its twenty-eighth session, the Working Group agreed to include the phrase "service standards" after the term "procedures" (para. 45, A/CN.9/900).

<sup>64</sup> At its twenty-eighth session, the Working Group, in accordance with its deliberation at its twenty-sixth session (para. 82, A/CN.9/866), agreed to postpone the review of this draft recommendation until it had reviewed the rest of the draft recommendations and commentary (para. 46, A/CN.9/900).

use that name. Such a name reservation service may be provided either as a separate procedure (again, which can be optional or mandatory), or as a service integrated into the overall business registration procedure.

57. Business registries also provide forms and various types of guidance to entrepreneurs preparing the application and other necessary documents for registration. Once the application is submitted, the registry performs a series of checks and control procedures to ensure that all the necessary information and documents are included in the application. In particular, a registry verifies the chosen business name as well as any requirements for registration that have been established in the State's applicable law, such as the legal capacity of the entrepreneur to operate the business. Some legal traditions may require the registry to perform simple control procedures (such as establishing that the name of the business is sufficiently unique), which means that if all of the basic administrative requirements are met, the registry must accept the information as filed and record it. Other legal traditions may require more thorough verification of the information filed, such as ensuring that the business name does not violate any intellectual property requirement or that the rights of businesses with similar names are not infringed before the registry can allocate a business name (in those regimes where the registry is mandated to do so). All such information is archived by the registry, either before or after the registration process is complete.<sup>65</sup>

58. Payment of a registration fee (if any — see paras. 197 to 201 below) must usually be made before the registration is complete. Once a business registration is complete, the registry issues a certificate that confirms the registration and contains information about the business. Since most of the registered information must be disclosed to interested parties, registries make its public components available through various means, including through publication on a website, or in publications such as the National Gazette or newspapers. Where the infrastructure permits, registries may offer, as an additional non-mandatory service, subscriptions to announcements of specific types of new registrations.

59. Registered information that is made available to the public can include basic information about the business, such as the telephone number and address, or, depending on the requirements of applicable law, more specific information on the business structure, such as who is authorized to sign on behalf of the business or who serves as the business's legal representative. In some States, public access to certain information in the business registry is provided free of charge (in respect of fees for information, see para. 202 below).

60. A new business must usually register with several government agencies, such as taxation and social services authorities, which often require the same information as that gathered by the business registry. In certain States, the business registry provides to entrepreneurs information on the necessary requirements of other agencies and refers them to the relevant agencies. In States with more developed registration systems, businesses may be assigned a registration number that also functions as a unique identifier across public agencies (see paras. 94 to 116 below), which can then be used in all of the interactions that the business has with government agencies, other businesses and banks. This greatly simplifies business start-up since it allows the business registry to exchange more easily information with the other public institutions involved in the process. In several States that have reformed their registration systems, business registries function as one-stop shops to support registration with other authorities. The services operated by such outlets may include providing any necessary licensing, or they may simply provide information on the procedures to obtain such licences and refer the entrepreneur to the relevant agency. This legislative guide takes the view (see paras. 84 to 93 below) that establishing such one-stop shops for business registration and registration with other public authorities is the best approach for States wishing to streamline their business registration system.

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<sup>65</sup> See *supra*, footnote 30, page 9.

61. One important aspect that States should take into account when establishing a business registration system is whether the registry should also be required to record certain procedures that affect the status of the business, for example bankruptcy, merger, winding-up, or liquidation. The approach to such changes in status appears to vary from State to State. For instance, in some States, registries are often also entrusted with the registration of bankruptcy cases. In developing States or economies in transition, registries tend not to perform this function. In certain jurisdictions, registries are also given the task of registering mergers as well as the winding-up and liquidation of businesses.<sup>66</sup> In any event, business registries naturally also record the end of the life span of any business that has permanently ceased to do business by deregistering it.<sup>67</sup>

62. The opening provisions of the law governing business registration may include a provision that lists the various functions of the registry, with cross references to the relevant provisions of the law in which those functions are addressed in detail. The advantage of this approach is clarity and transparency as to the nature and scope of the issues that are dealt with in detail later in the law. The possible disadvantage is that the list may not be comprehensive or may be read as implying unintended limitations on the detailed provisions of the law to which cross reference is made. Accordingly, implementation of this approach requires special care to avoid any omissions or inconsistencies as well as to allow for the registry's interoperability with other registries in the jurisdiction, and for access to the information maintained in the registry.

#### **Recommendation 9: Core functions of business registries**

The law 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. 125 to 127 and 182 to 184, and recommendations 18 and 34);
- (b) Providing access to the services of the business registry (see paras. 189 to 194 and recommendation 37);
- (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 paras. 49 and 57 and recommendations 7, 31 and 32);
- (d) Listing all the information that must be submitted in support of an application to the registry (see paras. 132 to 136 and recommendation 20);
- (e) Assisting businesses in searching and reserving a business name (see paras. 56 and 57);
- (f) Providing the reasons for any rejection of an application for business registration (see paras. 149 to 152 and recommendation 26);
- (g) Registering the business when the business fulfils the necessary conditions established by the law (see para. 140 and recommendation 22);
- (h) Ensuring that any required fees for registration have been paid (see paras. 199 to 201 and recommendation 39);
- (i) Assigning a unique business identifier to the registered business (see paras. 110 and 111 and recommendation 15);
- (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. 148, 165 and 166, and recommendations 25 and 30);

<sup>66</sup> For further reference, see European Commerce Registers' Forum, International Business Registers Report 2014, pages 33 ff.

<sup>67</sup> See paras. 216 to 221 of this legislative guide.

- (k) Providing the person identified in the application as the registrant of the business with a copy of the notice of registration (see para. 140 and recommendation 22);
- (l) Providing public notice of the registration in the means specified by the enacting State (see para. 141 and recommendation 23);
- (m) Indexing or otherwise organizing the information in the registry record so as to make it searchable (see paras. 192 and 193 and recommendation 37);
- (n) Providing information on the point of contact of the business as established by the law (see paras. 133 and 155 and recommendations 20 and 27);
- (o) Sharing information among the requisite public agencies (see para. 119 and recommendation 17);
- (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. 158 to 164 and recommendations 28 and 29);
- (q) Ensuring the entry of information on the declaration of deregistration of a business in the registry record, including the date of and any reasons for the deregistration (see paras. 216 and 220 and recommendations 46 to 48);
- (r) Ensuring that the information in the registry is kept as current as possible (see paras. 160 to 164 and recommendation 29);
- (s) Promoting compliance with the law (see paras. 47 and 48 and recommendation 6);
- (t) Protecting the integrity of the information in the registry record (see paras. 230 to 232 and recommendation 53 and 54);
- (u) Ensuring that information from the registry record is archived as necessary (see paras. 224 to 227 and recommendation 51); and
- (v) Offering services incidental to or otherwise connected with business registration (see paras. 85 to 88 and recommendation 11).

## **G. Storage of and access to information contained in the registry<sup>68</sup>**

63. When organizing the storage of the information contained in the business registry, States should be guided by the goals of efficiency, transparency and accessibility. Regardless of how a State decides to store and provide access to the information in its registry system, its goal should be to achieve consistency in the identification and classification of registered businesses, as well as the efficient, non-duplicative collection of data on those businesses. The system should be capable of storing, processing and making information collected anywhere in the system available to users in a timely fashion, even if that information is provided to users in paper format.

64. To achieve these goals, it is important that all business registration offices and repositories of registry information in a State are interconnected regardless of their physical location. Through these means, all information collected or stored anywhere in the system is capable of being shared throughout the system regardless of where or how it is collected, stored or submitted to the registry. This approach will assist the business registration system in processing in a timely fashion the information received, and in making it available to all interested users through multiple access

<sup>68</sup> As requested by the Working Group at its twenty-eighth session (para. 48, [A/CN.9/900](#)), the Secretariat has redrafted the commentary to this recommendation (paras. 59 and 60 of [A/CN.9/WG.I/WP.101](#)) to focus less on the contrast between centralized and decentralized systems, but more on how the registry system should be interconnected (regardless of its structure) and have multiple access points.

points without regard to their geographic location and without undue delay. In order to function efficiently, the interconnection of the entire business registry system should permit information to be stored and made accessible in digital format and should share such information, possibly in real time, throughout the entire registry system, and providing it to multiple access points (including registry offices, terminals, or using online technology). Access to the entirety of the information stored in the business registry should also allow for its integration with other public registries so as to permit information exchange with those agencies as well (see para. 74 (c) below).

65. Where such an interconnected business registry is set up, streamlining of technical standards and specifications may be required so that the information collected and shared is of similar quality and of a standardised nature. This will include establishing appropriate procedures to handle the exchange of information and communication of errors between the various collection points for and repositories of the information, regardless of their location within the State; providing minimum information technology security standards to ensure, at least, secure channels for data exchange (for instance, the use of “https” protocols); and ensuring the integrity of data while it is being exchanged.

#### **Recommendation 10: Storage of and access to information contained in the registry**

The law should establish an interconnected registry system that would process and store all information received from registrants and registered businesses or entered by registry staff.

### **III. Operation of the business registry**

66. As previously noted, business registration can be implemented through many different organizational tools that vary according to jurisdiction. States embarking on a reform process to simplify registration will have to identify the most appropriate and efficient solutions to deliver the service, given the prevailing domestic conditions. Regardless of the approach chosen by the State, aspects such as the general legal and institutional framework affecting business registration, the legal foundation and accountability of the entities mandated to operate the system and the budget needed by such entities should be carefully taken into account. Reform efforts rely to a different extent on a core set of tools, including: the establishment of a one-stop shop for business start-up; the use of technology; and ensuring interconnectivity between the different authorities involved in the registration process (with the possible adoption of a unique business identifier).

#### **A. Electronic, paper-based or mixed registry<sup>69</sup>**

67. An important aspect to consider when streamlining a business registration system is the form in which the application for registration should be filed and the form in which information contained in the registry should be stored. Paper-based registration requires sending the documents (usually completed in handwritten form) by mail or delivering them by hand to the registry for manual processing. Hand delivery and manual processing are not unusual in developing States due to a lack of advanced technological infrastructure. In such States, entrepreneurs must personally visit registration offices that are usually located in municipal areas which may not be easily reachable for many MSME entrepreneurs, particularly for those in rural areas. In addition, any copies of the documents required must usually be provided on paper.

<sup>69</sup> At its twenty-eighth session, the Working Group agreed that distributed ledger technology (sometimes referred to as “blockchain technology”) and its potential impact on business registries could be of interest in its current work on MSMEs. The Working Group, however, decided to defer discussion of this topic until a later stage (para. 49, [A/CN.9/900](#)).

Paper-based registry systems can facilitate in person communication between the registrant and the registry, and thus may offer an opportunity to clarify aspects of the requirements for registration. However, the labour-intensive nature of this procedure normally results in a time-consuming and expensive process (for example, it may require more than one visit to the business registry), both for the registry and for users, and it can easily lead to data entry errors. Furthermore, paper-based registry systems require considerable storage space as the documents with the registered information may have to be stored as hard copies (although some States using a mixed system may also scan documents and then destroy the paper versions after the expiry of a minimum legal period for their preservation, in this regard see paras. 224 to 227 below). Finally, business registrations transmitted by paper or fax also give rise to delays, since registrants must wait until registry staff manually carry out the business registration and certify it.

68. In comparison, online registration systems allow for improved efficiency of the registry and for more user-friendly services. This approach requires, at a minimum, that the information provided by the registrant be stored in electronic form in a computer database; the most advanced electronic registration systems, however, permit the direct electronic submission of business registration applications and relevant information as well as searches of the registry data over the Internet or via direct networking systems as an alternative to paper-based submissions. The adoption of such systems enhances data integrity, information security, registration system transparency, and verification of business compliance, as well as permitting the avoidance of unnecessary or redundant information storage. Furthermore, when electronic submission of applications is allowed, business registries can produce standard forms that are easier to understand and therefore easier to complete correctly. Although the use of ICT solutions can carry with them risks of software errors, electronic systems do more to reduce those risks by providing automated error checks and other appropriate solutions. Such technology is also instrumental in the development of integrated registration systems and the implementation of unique identification numbers.

69. In addition to these features, which result in a more streamlined process and user-friendly services, electronic business registration and access to the business registry also offer the following advantages:

(a) Improved access for smaller businesses that operate at a distance from the registrar's offices;

(b) A very significant reduction in the time and cost required of the entrepreneur to perform the various registration steps, and consequently in the time and cost required before successful registration of a business, as well as in the day-to-day cost of operating the registry;

(c) It permits the handling of increasing demands for company information from other government authorities;

(d) A reduction in the opportunity for fraudulent or improper conduct on the part of registry staff;

(e) A reduction in the potential liability of the registry to users who otherwise might suffer loss as a result of the failure of registry staff to enter accurately registration information;

(f) When direct electronic registration and access to an electronic public registry are allowed, it provides the possibility for the user to access registration and information services outside of normal business hours; and

(g) It provides possible revenue opportunities for the registry from other businesses and financial institutions that seek company information to inform their risk analysis of potential trading counterparties and borrowers.

70. Introducing electronic registration processes, however, often requires an in-depth re-engineering of the way in which the service is delivered, which may

involve several core aspects of the State's apparatus in addition to its level of technological infrastructure, including: financial capability, organization and human resources capacity, legislative framework (e.g. commercial code and company law) and institutional setting. Therefore, States launching a reform process aiming at the automation of the business registry would be advised to carry out a careful assessment of the legal, institutional and procedural dimensions (such as legislation to allow for electronic signatures or information security laws, or establishing complex e-government platforms or other ICT infrastructure) in order to identify those areas where reforms are needed and to adopt those technology solutions that are most appropriate to their current needs and capabilities. In several developing States and mid-level economies, only information about registering a business is currently available online, and a functioning electronic registry has not yet been implemented. Making information electronically available is certainly less expensive and less difficult to achieve than is the establishment of an electronic registry, and it does not require any legislative reform or specialized technology. While the adoption of a mixed registration system that combines electronic processing and paper-based manual submission and processing (see para. 84 below) might thus be an appropriate interim solution, it does involve higher maintenance costs, and the ultimate goal should remain the progressive development of fully electronic registration systems (see section C below).

## B. Features of an electronic registry

71. When the business registry record is computerized, the hardware and software specifications should be robust and should employ features that minimize the risk of data corruption, technical error and security breaches. Even in a paper-based registry, measures should be taken to ensure the security and integrity of the registry record, but this is more efficiently and easily accomplished if the registry record is electronic. (Regardless of its method of operation, it is important for the registry to have risk-mitigation measures in place: see paras. 230 and 231 below).<sup>70</sup> In addition to database control programs, software will also need to be developed to manage such aspects as user communications, user accounts, payment of any required fees, financial accounting, computer-to-computer communication, internal workflow and the gathering of statistical data. Software applications enabling data collection would also assist the registry in making evidence-based decisions which would facilitate efficient administration of the system (for example, the collection of data on more frequent requests by registry users would enable evidence-based decisions on how best to allocate registry resources).<sup>71</sup> When the State's technological infrastructure is not sufficiently advanced to allow the features mentioned above to be implemented, it is nevertheless important that the software put in place be flexible enough to accommodate additional and more sophisticated features as they become more feasible in the future.

72. Implementing an online business registration system will require defining the technical standards of the online system, a careful evaluation of the hardware and software needs of the business registry to make those standards operational in the context of the national technological infrastructure, and deciding whether it is feasible to develop the necessary hardware and software in-house or whether it must be purchased from private suppliers. In making that determination, it will be key to investigate whether a ready-made product is available that can easily be adapted to

<sup>70</sup> At its twenty-eighth session, the Working Group requested the Secretariat to highlight the importance of contingency planning for the registry and in that respect include a cross reference to it in the draft guide. The Secretariat suggests that such a reference would best be included here rather than in the following section as originally suggested (para. 52, A/CN.9/900).

<sup>71</sup> For example, "application programming interfaces" (APIs) may be adopted. APIs have a wide variety of possible uses, such as enabling the submission of applications to the registry through simplified procedures, for instance by pre-filling certain fields by default, or allowing users, and equipping systems with the proper software to connect directly to the registry and retrieve information automatically.

the needs of the State. If different suppliers are used for the hardware and the software, it is important that the software developer or provider is aware of the specifications for the hardware to be supplied, and vice versa.

73. Following more recent technological advances, one option States may want to consider is whether to rely on traditional software or to move to more sophisticated applications such as cloud computing, which is an Internet-based system that allows the delivery of different services, such as storing and processing of data, to an organization's computers through the Internet. The use of cloud computing allows for considerable reduction in the resources needed to operate an electronic registration system, since the registry does not have to maintain its own technological infrastructure. However, data and information security can represent an issue when introducing such a system and it would be advisable for States to conduct a careful risk analysis before establishing a system exclusively based on cloud applications.

74. Additional aspects that States may consider when adopting an online registry should include:

(a) Scalability of the ICT infrastructures, so that the system can handle an increasing volume of clientele over time as well as traffic peaks that may occasionally arise;

(b) Flexibility: the ICT infrastructure of the registry should be easily adaptable to new user and system requirements, and the migration of data from one technology to another may require data-cleansing aspects;

(c) Interoperability: the registry should be designed to allow (even at a later stage) integration with other automated systems, such as other governmental registries operating in the jurisdiction<sup>72</sup> and online or mobile payment portals;

(d) Costs: the ICT infrastructure should be financially sustainable both in terms of initial and operating costs; and

(e) Intellectual property rights: in order to avoid risks deriving from adverse circumstances affecting the intellectual property rights owner, for example, if the owner ceases to operate or is prohibited from doing business with the government, the State should always either be granted ownership of the system or an unrestricted licence to the source code.

75. With regard to the cost of the ICT infrastructure, it should be noted that the level of security needed by an electronic registration system and its relevant cost must be carefully addressed. In particular, it is important to align the risk attached to a specific interaction (between the registry and the business or the registry and other public agencies) with the costs and administration required to make that interaction secure. Low security may deter parties from using electronic services (unless it is mandatory), but costly high security measures could have the same effect.

### **C. Phased approach to the implementation of an electronic registry**

76. The methods used to establish the online system should be consistent with the reforms required as they would determine the success or the failure of the initiative. Moving directly to a full online solution before re-engineering registry business processes would be a mistake in many cases, as the solutions designed would not be able to capture the technology's full benefits.<sup>73</sup> Moreover, subject to the level of development of the implementing State, factors such as the existence and quality of the infrastructure and the literacy rates (including computer literacy) of the intended users should be carefully considered before the adoption of an online system. Several States, for example, must deal with a non-existent or weak communications

<sup>72</sup> See, for instance, paras. 112 to 116 of this legislative guide.

<sup>73</sup> The technical assistance experience of international organizations, in particular of the World Bank, has provided most of the background material upon which sections "C" and "D" are based. See, in particular, *supra*, footnote 23, pages 12 ff.

infrastructure, lack of dependable electricity supplies and Internet connectivity, and a low literacy rate, which may have a disproportionate effect on women and businesses in rural areas. In these instances,<sup>74</sup> technical and capacity-building assistance programmes coordinated by international organizations might be necessary in order to progress towards the goal of a fully automated electronic registry.

77. In locations where Internet penetration is not extensive, a phased-in approach may be an appropriate way forward. Automation would start with the use of simple databases and workflow applications for basic operations, such as name searches or the sharing of information with other government agencies, and then would progress to more sophisticated web-based systems that would enable customers to conduct business with the registry entirely online. These web-based systems could be quite convenient for smaller businesses operating at a distance from the registry, provided that those entrepreneurs were able to access the system. The final phase of the approach would be to accommodate ICT interoperability between those agencies involved in business registration.

78. The simplest approach for States beginning their activity in this area would be to develop a content-rich website that consolidates registration information, provides downloadable forms, and enables users to submit feedback. This simple resource would allow users to obtain information and forms in one place and would make registries more efficient by enabling users to submit email inquiries before going to registry offices with the completed forms. Since this solution does not require a stable Internet connection, it may appeal to States with limited Internet access.

79. If only limited Internet bandwidth is available, then automating front-counter and back-office operations prior to moving online would be a suitable approach. If the registry has sub-offices outside its main location (for instance, in rural areas), it would be important to establish a dedicated Internet connection with them. This approach would still require entrepreneurs to visit the registry, but at least it would establish a foundation on which the registry could later develop a more sophisticated web platform. A key factor even at this basic stage would be for the system to be able to digitize historical records and capture key information, such as the names of members or owners and directors, in the registry database.

80. Once the State's technological capacity and Internet penetration allows for digital commerce, then platforms that enable businesses to apply and pay for registration online as well as to file annual accounts and update registration details as operations change can be developed. With regard to online payment of a registration fee, it should be noted that ICT supported solutions would depend on a State's available modes of payment and on the regulatory framework that establishes the modes of payment a public authority can accept. When the jurisdiction has enacted laws that allow for online payment, experience shows that the most efficient option is to combine the filing of the electronic application and the fee payment into one step. Error checks should be included in ICT systems that incorporate this facility, so that applications are not submitted before payments are completed and registry officials can see payment information along with the application.<sup>75</sup> When fee payment is required before registration of the business, this constitutes a separate procedural step and the use of ICT solutions in order to be user-friendly would require streamlining the procedures for filing the applications and for payment (see also para. 74(c) above and 204 below). In some States, the use of mobile payment systems might allow for easier and more effective ways of paying for registration and other related fees. In such cases, the same considerations involved in establishing online payments (e.g. enacting appropriate laws, as well as designing efficient options to combine mobile

<sup>74</sup> At its twenty-eighth session, the Working Group requested the Secretariat to reflect in this section that factors in addition to Internet penetration were important, including literacy rates, infrastructure issues, types of intended users, and access to and reliance on mobile payment systems which were said to be of importance when establishing online registration systems (para. 52, A/CN.9/900).

<sup>75</sup> See *supra*, footnote 30, page 13.

payments and the filing of registration documents) should be applied in order to develop efficient solutions appropriate to the use of mobile technology.<sup>76</sup>

81. As noted above (see para. 70) when introducing electronic registration systems, States should adopt legislation that facilitates the implementation of these electronic solutions, although the obligation to use such solutions should be considered only when the various stakeholders concerned with the registration process (including the registrant, government agencies, and other relevant authorities) are prepared to comply. Furthermore, when developing such laws, States should take into account that while certain elements of a legal framework can be checked electronically, the most complex aspects of the process may need to be addressed by a registry official.<sup>77</sup>

82. Enacting States should also be aware that establishing an electronic registration system requires a well-designed legal and regulatory framework that promotes simplicity and flexibility and avoids, to the greatest extent possible, discretionary power and the making of exceptions (see para. 30 above). For instance, provisions requiring the interpretation of several documents and the collection of several pieces of information are difficult to adapt to electronic processing; the same applies to the use of discretionary power and complex structures of rules and exceptions.

83. When a State has developed the ICT infrastructure to achieve full business registry automation, the integration of other online registration processes for taxation, social services and other purposes could be considered. Even if no integration with registrations required by other public authorities is built into the system, it would nevertheless be advisable that States implement data interchange capabilities so that the relevant business information could be shared across government agencies (see para. 74 above). A final improvement would be the development of mechanisms for disseminating business information products to interested parties; such products could substantially contribute to the financial sustainability of the registry (see paras. 189 to 191 and 194 below).<sup>78</sup>

84. One issue that would likely arise when the online registry is able to offer full-fledged electronic services would be whether to abolish any paper-based submission or to maintain both paper-based and online registration. In many jurisdictions, registries choose to have mixed solutions with a combination of electronic and paper documents or electronic and manual processing during case handling. This approach may result in considerable cost for registries, since the two systems require different tools and procedures. Moreover, if this option is chosen, it is important to establish rules to determine the time of registration as between paper-based and electronic submissions. Finally, paper applications must be processed in any case, so that the information included in a hard document can be transformed into data that can be processed electronically; this can be done by scanning the paper-based application for registration (possibly using optical character recognition technology so to make the scanned document electronically searchable). However, in order to ensure that the record made by scanning correctly represents the paper application, the registry will likely have to employ staff to check that record, thus adding a step that increases costs and reduces the benefits of using an online system.<sup>79</sup>

#### **D. Other registration-related services supported by ICT solutions**

85. Automation should enable the registry to perform other functions in addition to the processing of applications. Where jurisdictions require user-friendly electronic

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<sup>76</sup> The Secretariat suggests including the final two sentences at the end of this paragraph to respond to a request of the Working Group, at its twenty-eighth session, that experiences in some developing States regarding the use of mobile payment systems should be properly reflected in the commentary (para. 52, [A/CN.9/900](#)).

<sup>77</sup> See *supra*, footnote 30, page 14.

<sup>78</sup> See *supra*, footnote 23, page 13.

<sup>79</sup> See *supra* footnote 30, page 13.

filing and repopulated forms,<sup>80</sup> for instance, it can assist businesses in the mandatory filing of periodic returns and annual accounts. Electronic filing and automated checks also help reduce processing time by the registry.<sup>81</sup>

86. Electronically supported registration could also assist the registry in deregistration procedures, i.e. notations in the registry that a particular business is no longer registered (see paras. 201 to 205 below). Such procedures usually require an official announcement that a business will be deregistered. The use of ICT can provide for the automation of such announcements, from initiating the process to producing a standard notice, thus helping registries to ensure that businesses are not deregistered before any time limit has elapsed and to reduce processing time. In order to be fully effective, however, adoption of an electronic registration system needs to be supported by streamlined procedures that enable the deregistration of businesses in a simplified and quick way.<sup>82</sup>

87. Further, ICT solutions could be applied to assist in the filing of financial information in machine-readable format (such as eXtensible Business Reporting Language, or XBRL). For example, a platform could be provided to assist in the conversion of paper-based financial statements to XBRL format. Machine-readable financial data facilitates the aggregation and analysis of financial information, which could be of significant value to users of the registry.

88. Solutions using ICT could also support follow-up and enforcement procedures of business registries when businesses fail to comply with registration requirements. In one jurisdiction, for instance, the back-office system of the registry monitors the records of businesses and detects whether certain circumstances suggest that the business is not in compliance with statutory requirements. An automatic notice to the business is then produced in order for it to remedy the situation. Should the business fail to do so within the statutory deadline, the ICT solution starts a new procedure to forward the case to the district court, which may make a decision on the compulsory liquidation of the business. Upon issuing an order for compulsory liquidation, the court notifies the registry which deregisters the business.<sup>83</sup>

#### **Recommendation 11: Electronic, paper-based or mixed registry**

The law 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.

### **E. Electronic documents and electronic authentication methods<sup>84</sup>**

89. States that enact legal regimes on electronic communications and electronic signatures may wish to consider the legislative texts prepared by UNCITRAL to

<sup>80</sup> Repopulated forms allow selected fields to be automatically filled based on information previously provided by the registrant or maintained in their user account. When changes in the registrant's information occur, the registrant is not required to fill out the entire form again, but only to enter the relevant changes. Information included in the repopulated form is stored and may be made accessible to and exchangeable with other relevant agencies.

<sup>81</sup> See *supra*, footnote 30, page 15.

<sup>82</sup> *Ibid.*, page 16.

<sup>83</sup> For further reference see Norway, *supra*, footnote 79.

<sup>84</sup> At its twenty-eighth session, the Working Group agreed with the substance of this recommendation (recommendation 55 of A/CN.9/WG.I/WP.101) and the relevant commentary and to retain them in the legislative guide, but to move them to an appropriate position in the text (para. 143, A/CN.9/900). Further to the decision of the Working Group, the Secretariat has moved the recommendation and commentary, which has been edited, to this location.

govern electronic transactions.<sup>85</sup> Such texts establish the principles of technological neutrality and functional equivalence (see also paras. 12 to 15 in the Annex)<sup>86</sup> that are needed to ensure equal treatment between paper-based and electronic communications; they also deal extensively with provisions covering the issues of legal validity of electronic documents and signatures, authentication, and the time and place of dispatch and receipt of electronic messages. Because of the way these texts, and other UNCITRAL legislative texts, are negotiated and adopted, they offer solutions appropriate to different legal traditions and to States at different stages of economic development. Furthermore, domestic legislation based on the UNCITRAL texts on electronic commerce will greatly facilitate cross-border recognition of electronic documents and signatures.

#### **Recommendation 12: Electronic documents and electronic authentication methods**

The law 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 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 using an electronic signature or equivalent authentication method.

#### **F. A one-stop shop for business registration and registration with other authorities**

90. As discussed above (see para. 60 above), before a business may operate in the legally regulated economy, it is often required to register with several different government agencies in addition to the business registry. Those additional agencies often require the same information that has already been gathered by the business registry. Entrepreneurs must often personally visit each agency and fill out multiple forms. Taxation, justice, employment and social services agencies are usually involved in this process; other administrative offices and institutions, specific to each jurisdiction, may also be involved. This often results in multiple procedures governed by different applicable laws, duplication of information and lack of ownership or full

<sup>85</sup> Such texts include: the UNCITRAL Model Law on Electronic Commerce (1996); the UNCITRAL Model Law on Electronic Signatures (2001) and the United Nations Convention on the Use of Electronic Communications in International Contracts (2005). For further information, see [http://www.uncitral.org/uncitral/uncitral\\_texts/electronic\\_commerce.html](http://www.uncitral.org/uncitral/uncitral_texts/electronic_commerce.html).

<sup>86</sup> The principle of “technological neutrality” means that the provisions of the law are “neutral” and do not depend on or presuppose the use of particular types of technology and can be applied to generation, transmission or storage of all types of information. The principle of “functional equivalence” establishes the criteria under which electronic communications and electronic signatures may be considered equivalent to paper-based communications and hand-written signatures.

control of the process by the agencies involved. Possibly worse for MSMEs wishing to register, the overall process can require weeks, if not months.<sup>87</sup>

91. The establishment of one-stop shops has thus become one of the most popular reforms to streamline business registration in recent years. One-stop shops are single outlets where entrepreneurs receive all of the information and forms they need in order to complete the necessary procedures to establish their business rather than having to visit several different government agencies.

92. Beyond this general definition, the scope of one-stop shops can vary according to the services offered. Some one-stop shops only provide business registration services, which may still be an improvement if the registration process previously involved a number of separate visits to the relevant authorities; others carry out other functions related to business start-up.<sup>88</sup> The most common of these other functions is tax registration, although there are also examples of one-stop shops dealing with registration for social services and statistical purposes and with obtaining the required licenses from municipal and other authorities.<sup>89</sup> In rare cases,<sup>90</sup> one-stop shops assist entrepreneurs not only with business licences and permits but also with investment, privatization procedures, tourism-related issues and State-owned property management, and may provide access to utilities and banking services.

93. The functions of one-stop shops can be carried out through physical offices or an electronic platform. Physical premises, when in rural areas, are particularly appropriate for businesses with limited access to municipal centres; so, too, are mobile offices, particularly in places that are too remote for States to have physical premises.<sup>91</sup> Of course, in addition to physical premises, online business registration can be offered as an option available for registering a business. Online one-stop shops take advantage of solutions supported by ICT, which allow for the rapid completion of several formalities due to the use of dedicated software. Such online portals may provide a fully interconnected system or may still entail separate registration in respect of some requirements, for example, for taxation services.<sup>92</sup>

94. When establishing one-stop shops, in particular those performing functions in addition to business registration, States can choose among different approaches. In the “one door” approach, representatives of different government agencies involved in registration are brought together in one physical place, but the applicant must deal separately with each representative (for example, the business registry official dealing with the approval of the business name, the clerks checking the documents, and the taxation official), although the different agencies liaise among themselves.<sup>93</sup> As may be apparent, this solution is relatively uncomplicated and would normally not require any change in law or ministerial responsibilities, but it would involve establishing effective cooperation between the different government ministries. One issue States should consider when opting for this approach would be how much authority the representatives of each agency should have; for example, should they have the discretion to process the registration forms on site or would they simply be acting on behalf of their agencies and be required to take the documents to their home agencies for further processing?<sup>94</sup> Similarly, it is also important to consider clarifying the lines

<sup>87</sup> See supra, footnote 24, page 30.

<sup>88</sup> Investment Climate (World Bank Group), *How Many Stops in a One-Stop Shop? A Review of Recent Developments in Business Registration*, 2009, pages 1 ff.

<sup>89</sup> At its twenty-eighth session of the Working Group, it was suggested that reference could be made to obtaining municipal licenses and access to banking services as examples of additional services that could be linked to the one-stop shop (para. 56, A/CN.9/900).

<sup>90</sup> See Georgia, in World Bank and International Finance Corporation, *Doing Business 2011*, page 21.

<sup>91</sup> See, for instance, the example of Uganda, available at: <http://ursb.go.ug/press-release-new-mobile-business-registration-office/>. At its twenty-eighth session, the Working Group suggested that reference to the use of mobile offices as additional access points for the one-stop shops be included in the text (para. 56, A/CN.9/900).

<sup>92</sup> See supra footnote 88, page 4.

<sup>93</sup> *Ibid.*, page 3.

<sup>94</sup> *Ibid.*, page 2.

of accountability of the various representatives from the different agencies to the one-stop shop administrator.<sup>95</sup>

95. Another form of one-stop shop is the so-called “one window” or “one table” version, which offers a higher level of integration of the different agencies involved in the start-up of a business.<sup>96</sup> In this case, the one-stop shop combines the process for obtaining business and other registrations, such as for taxation and social services, with other arrangements, like publishing the registration in a National Gazette or newspapers, when required. All relevant documents are submitted to the one-stop shop administrator who is authorized, and properly trained, to accept them on behalf of the various government agencies involved. Documents are then dispatched, electronically or by hand or courier, to the competent agency for processing. This type of one-stop shop requires detailed coordination between the different government agencies, which must modify their procedures to ensure an effective flow of information. A memorandum of understanding between the key agencies involved may be needed in order to establish the terms in respect of the sharing of business information.<sup>97</sup> In some cases, taking such an approach may also require a change in legislation.<sup>98</sup>

96. A third approach, which is less common, is based upon the establishment of a separate entity to coordinate the business registration function and to deal with other requirements that entrepreneurs must meet, such as making tax declarations, obtaining the requisite licences, and registering with social services authorities. Pursuant to this model, the entrepreneur would apply to the coordinating entity after having registered with the business registry in order to fulfil the various additional aspects of the procedures necessary prior to commencing business operations. Although this approach results in adding a step, it could be useful in some States since it avoids having to restructure the bodies with the main responsibility for business registration. On the other hand, the adoption of such a structure could involve an increase in the cost of the administrative functions and may only reduce timeframes to the extent that it allows the various functions to take place successively or enables participants in the one-stop shop to network with the other agencies to speed up their operations. From the user’s perspective, however, the advantage of being able to deal with a single organization remains.<sup>99</sup>

97. Finally, in States with developed ICT infrastructures, the functions of the agencies concerned with registration could be fully integrated through the use of a common database, which is operated by one of the agencies involved and provides simultaneous registration for various purposes, i.e. business registration, taxation, social services, etc. In some jurisdictions, a public agency (such as the tax administration) is responsible for the registration of business entities, or ad hoc entities have been set up to perform such simultaneous registration.<sup>100</sup>

98. Regardless of the approach chosen in the implementation of a one-stop shop, it is important to emphasize that such an arrangement does not require the establishment of a single government agency with authority over all of the other agencies related to the one-stop shop. Instead, it involves designating which government agency has authority over the single integrated interface, while all of the government agencies participating in the one-stop shop retain their functional autonomy.<sup>101</sup>

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<sup>95</sup> For further details, see para. 42, [A/CN.9/WG.I/WP.85](#).

<sup>96</sup> See *supra* footnote 88, page 3.

<sup>97</sup> See *supra*, footnote 24, page 31.

<sup>98</sup> See *supra*, footnote 88, page 3.

<sup>99</sup> See Benin and France, *supra* footnote 88, page 4.

<sup>100</sup> See Albania’s National Registration Center, *supra*, footnote 88, page 4.

<sup>101</sup> The Secretariat suggests the inclusion of this paragraph to respond to concerns expressed at the twenty-eighth session of the Working Group that more clarity was needed in the draft legislative guide on the relationship between the agency overseeing the one-stop shop and the other public agencies participating in that arrangement (para. 58, [A/9/900](#)).

99. One issue that States should consider when establishing a one-stop shop is its location. It is usually advisable for the one-stop shop to be directly connected to the business registry office, either because it is hosted there or because the registry is part of the one-stop shop. The organization(s) responsible for the one-stop shop could thus be the same as that/those which oversee(s) the business registration process. This approach should take into account whether such organizations are equipped to administer the one-stop shop. Examples from various jurisdictions indicate that where authorities such as executive agencies are responsible for business registration, they possess the skills to perform one-stop shop functions as well. The same can be said of chambers of commerce, government commissions, and regulatory authorities. There are very few examples of courts that have adopted a one-stop shop approach in those States where business registration is court-based.

100. Although one-stop shops do not necessarily require changes in the domestic legal framework, as seen in the paragraphs above, it is important for the operation of such mechanisms to be legally valid, which may involve adapting existing laws to the new structure and method of proceeding. For instance, effective functioning of the one-stop shop may require provisions governing the collection of information by public authorities as well as the exchange of information among such authorities. The extent of the changes will thus vary according to the different needs of States. In addition, one-stop shops should be given a sufficient budget, since they can be quite expensive to establish and maintain, they should be staffed with well-trained personnel, and they should have their performance regularly monitored by the supervising authority in accordance with client feedback.

**Recommendation 13: A one-stop shop for business registration and registration with other authorities**

The law should establish a one-stop shop for business registration and registration with other public agencies, including designating which public agency should oversee the functioning of 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.

**G. Use of unique business identifiers<sup>102</sup>**

101. As discussed above (see paras. 60 and 90), in those jurisdictions where the government agencies with which businesses are required to register (for example, for taxation and social services) operate in isolation from each other, it is not unusual for this procedure to result in duplication of systems, processes and efforts. This approach is not only expensive but may also cause errors. Moreover, if each agency assigns a registration number to the business when it registers with that agency, and the use and uniqueness of that number is restricted to the authority assigning it, information exchange among the agencies requires each authority to map the different identification numbers applied by the other agencies. When ICT solutions are used, they can facilitate such mapping, but even they cannot exclude the possibility that different entities will have the same identifier, thus reducing the benefits (in terms of cost and usefulness) obtained from the use of such tools.<sup>103</sup>

102. In recent years, several jurisdictions have thus adopted integrated registration systems in which an application submitted for business registration includes all of the information required by the different agencies. Once completed, the information in

<sup>102</sup> At its twenty-eighth session, the Working Group agreed to combine recommendations 13 through 15 of [A/CN.9/WG.I/WP.101](#) into three consecutive recommendations to follow a single commentary (para. 65, [A/CN.9/900](#)).

<sup>103</sup> See *supra*, footnote 88, page 22.

the application for business registration is transmitted by the registry to all relevant authorities. Information and any necessary approvals from the other agencies are then communicated back to the registry, which immediately forwards the information and approvals to the entrepreneur.<sup>104</sup> While this is beneficial for all businesses, regardless of their size, it is particularly valuable for MSMEs, which may not have the resources necessary to cope with the compliance requirements of multiple government authorities in order to establish their business.

103. States aiming at fostering such integration among different agencies may wish to consider that in recent years some international organizations have developed tools that facilitate inter-agency cooperation. For instance, one international organization has developed an online system that allows for the interoperability of the various public agencies involved in business registration with minimal or no change at all in the internal processes of the participating agencies nor in their computer systems.

104. Some developed States have introduced a more sophisticated approach, which considerably improves information exchange throughout the life cycle of a business. This approach requires the use of a single unique business identification number or unique identifier, which ties information to a given business and allows for information in respect of it to be shared among different public and private agencies.

105. A unique identifier is structured as a set of characters (they may be numeric or alphanumeric) which distinguishes registered entities from each other. When designing a unique identifier, it may be advisable to build some flexibility in the structure of the identifier (for instance, by allowing the addition of new characters to the identifier at a later stage) so that the identifier can be easily adaptable to new system requirements in a national or international context, or both (see also para. 74 above). The unique identifier is allocated only once (usually upon establishment) to a single business and does not change during the existence of that business,<sup>105</sup> nor after its deregistration. The same unique identifier is used for that business by all agencies, which permits information about that particular registered entity to be shared within or between the public and private sectors.<sup>106</sup>

106. The experience of States that have adopted unique identifiers has demonstrated their usefulness. As noted above, they permit all government agencies to identify easily new and existing businesses, and cross-check information in respect of them. In addition, the use of unique identifiers improves the quality of the information contained in the business registry, since the identifiers ensure that information is linked to the correct entity even if its identifying attributes (for example name, address, and type of business) change. Moreover, unique identifiers prevent the situation where, intentionally or unintentionally, businesses are assigned the same identification; this can be especially significant where financial benefits are granted to legal entities or where liability to third parties is concerned.<sup>107</sup> Unique identifiers have been found to produce benefits for businesses as well, in that they considerably simplify business administration procedures: entrepreneurs do not have to manage different identifiers from different authorities, nor are they required to provide the same or similar information to different authorities. Introducing unique identifiers can also contribute to improving the visibility of businesses, in particular of MSMEs, with possible partners as well as with potential sources of finance, since it would assist in creating a safe and dependable connection between a business and all of the information that relates to it. This access to relevant information could facilitate the establishment of business relationships, including in the cross-border context.<sup>108</sup>

<sup>104</sup> See *supra*, footnote 23, page 9.

<sup>105</sup> While the unique identifier does not change throughout the lifetime of a business, if the business changes its legal form, a new unique identifier must be allocated.

<sup>106</sup> See *supra*, footnote 30, page 20.

<sup>107</sup> *Ibid.*, page 22.

<sup>108</sup> This point has been moved to this paragraph further to a decision by the Working Group at its twenty-eighth session to relocate some of the concepts from paragraphs 111 to 116 of [A/CN.9/WG.I/WP.101](#) to other parts of the text (para. 71, [A/CN.9/900](#)).

107. One issue a State may have to consider when introducing unique identifiers is that of individual businesses that do not possess a separate legal status from their owners. In such cases, taxation or other authorities (such as social services) may often prefer to rely on the identifier for the individual, who may be a natural person, rather than on the business identifier. However, States may also opt to assign a separate identifier to a sole proprietor in a business capacity and in a personal capacity.<sup>109</sup>

108. Situations may arise in which different agencies in the same jurisdiction allocate identifiers to businesses based on the particular legal form of the business. States should thus consider adopting a verification system to avoid multiple unique identifiers being allocated to the same business by different public agencies.<sup>110</sup> If the identifier is assigned through a single jurisdictional database the risk of several identifiers being allocated to one business or of several businesses receiving the same identifier is considerably reduced.

109. The effective use of unique identifiers is enhanced by the adoption of full electronic solutions that do not require manual intervention. However, electronic solutions are not a mandatory prerequisite to introducing unique identifiers, as they can also be effective in a paper-based environment.<sup>111</sup> When unique identifiers are connected to an online registration system, it is important that the solution adopted fits the existing technology infrastructure.

**(a) Allocation of unique business identifiers**

110. The use of unique identifiers requires sustained cooperation and coordination among the authorities involved, and a clear definition of their roles and responsibilities, as well as trust and collaboration between the public and business sectors. Since the introduction of a unique identifier does not of itself prevent government agencies from asking a business for information that has already been collected by other agencies, States should ensure that any reform process in this respect start with a clear and common understanding of the reform objectives among all the stakeholders involved. Moreover, States should ensure that a strong political commitment is in place. Potential partners ideally include the business registry, the taxation authority, the statistics office, the social services agency, the pension fund, and any other relevant agencies. If agreement among these stakeholders is elusive, at a minimum, the business registry and taxation authority should be involved. Information on the identifiers in use by the other authorities and within the business sector is also a prerequisite for reform, as is a comprehensive assessment to identify the needs of all stakeholders.

111. In order to permit the introduction of a unique identifier, the domestic legal framework should include provisions on a number of issues including:

- (a) Identification of the authority charged with allocating the unique identifier;
- (b) Allocation of the unique identifier before or immediately after registration with the authorities involved in business entry;
- (c) Listing of the information that will be related to the identifier, including at least the name, address and type of business;
- (d) The legal mandate of the public authorities to use the unique identifier and related information, as well as any restrictions on requesting information from businesses;

<sup>109</sup> Further to comments at the twenty-eighth session of the Working Group that paragraph 100 in [A/CN.9/WG.I/WP.101](#) may also include reference to a separate business identifier being assigned to a sole proprietor in both a business and an individual capacity, the Secretariat suggests including the final sentence at end of the paragraph (para. 61, [A/CN.9/90](#)).

<sup>110</sup> See *supra*, footnote 30, page 21.

<sup>111</sup> *Ibid.*, page 22.

- (e) Access to registered information by public authorities and the private sector;
- (f) Communication of business registrations and amendments among the public authorities involved; and
- (g) Communication of deregistration of businesses that cease to operate.<sup>112</sup>

**(b) Implementation of a unique business identifier**

112. Adoption of a unique business identifier normally requires a centralized database linking the businesses to all relevant government agencies whose information and communication systems must be interoperable. This requirement can be a major obstacle when implementing this in practice if the technological infrastructure of the State is not sufficiently advanced.

113. States can introduce the unique business identifier in one of two ways. In the first approach, business registration is the first step and includes the allocation of a unique identifier, which is made available (together with the identifying information) to the other authorities involved in the registration process (for instance, taxation and social services authorities), and which is re-used by those authorities. In the second approach, the allocation of a unique business identifier represents the beginning of the process. The unique identifier and all relevant information are then made available to the government agencies involved in business registration, including the business registry, and is then re-used by all agencies.<sup>113</sup> Either of these two approaches can be followed by the authority entrusted with allocating unique business identifiers, regardless of whether the authority is the business registry, a facility shared by public agencies or the taxation authority. 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.<sup>114</sup> It is important to note that in some States, the use of a unique identifier may be restricted: in some jurisdictions, certain government agencies still allocate their own identification number<sup>115</sup> although the business carries a unique identifier.<sup>116</sup>

114. Introducing a unique business identifier usually requires adaptation both by public authorities in processing and filing information and by businesses in communicating with public authorities or other businesses. A unique business identifier requires the conversion of existing identifiers, which can be accomplished in various ways. Taxation identifiers are often used as a starting point in designing a new identifier, since the records of the taxation authorities cover most types of businesses and are often the most current.<sup>117</sup> Examples also exist in which, rather than introducing a completely new number, the taxation number itself is retained as the unique business number. New identification numbers can also be created using other techniques according to a country's registration procedures. In such a situation, it is important that each business, once assigned a new number, verifies the related identifying information, such as its name, address, and type of activity.<sup>118</sup>

115. In some jurisdictions, advanced interconnectivity among the different agencies involved in the registration process has resulted in a single form for registration with

<sup>112</sup> See *supra*, footnote 23, page 32.

<sup>113</sup> See *supra*, footnote 30, page 20.

<sup>114</sup> At its twenty-eighth session, the Working Group agreed that the commentary should clarify the role of the enacting State in deciding the format of the unique identifier and which agency should have the authority to allocate them (para. 63, [A/CN.9/900](#)).

<sup>115</sup> In certain cases, agencies may keep their own numbering system in addition to using the unique identifier because of "legacy data", i.e. an obsolete format of identifying the businesses which cannot be converted into unique identifiers. In order to access such information, the registry must maintain the old identification number for internal purposes. In dealing with the public, however, the government agency should use for all purposes the unique identifier assigned to the business.

<sup>116</sup> See *supra* footnote 113, page 20.

<sup>117</sup> See Belgium in paragraph 35, [A/CN.9/WG.I/WP.85](#).

<sup>118</sup> For further reference, see Norway, in para. 35, [A/CN.9/WG.I/WP.85](#).

all agencies. Examples exist of consolidated (electronic) registration forms that can be repopulated<sup>119</sup> with information from the different authorities concerned. Integration of registration functions can be facilitated by the use of one common database. In jurisdictions where this approach has been developed, agencies perform regular file transfers to update the database as well as their own records; they have direct access to the common database and use the same back-office systems to update it; and the information registered is regularly verified by trusted staff of the agencies. Such strong coordination among the concerned agencies is often based on regulatory provisions that allocate roles and responsibilities among the various agencies involved. Appropriate funding should also be allocated from the State's budget.<sup>120</sup>

116. As discussed above (see paras. 70 and 96), the interoperability of the ICT systems of different agencies systems could be a major obstacle when implementing unique business identifiers. The ability of different information technology infrastructures to exchange and interpret data, however, is only one aspect of interoperability that States should consider. Another issue is that of semantic interoperability, which can also pose a serious threat to a successful exchange of information among the agencies involved as well as between relevant agencies and users in the private sector. For this reason, it is important to ensure that the precise meaning of the information exchanged is understood and preserved throughout the process and that semantic descriptions are available to all of the stakeholders involved. Measures to ensure interoperability would thus require State action on a dual level: agreement on common definitions and terminology on one hand, and the development of appropriate technology standards and formats on the other. This approach should be based on a mutual understanding of the legal foundation, responsibilities and procedures among all those involved in the process.<sup>121</sup>

**(c) Exchange of information among business registries<sup>122</sup>**

117. States are increasingly aware of the importance of improving the cross-border exchange of data between registries,<sup>123</sup> and sustained progress in respect of ICT development now allows this aspect to be addressed. Introducing unique business identifiers that enable different public authorities to exchange information about a business among themselves could thus be relevant not only at the national level, but also in an international context. Unique identifiers can allow more efficient cross-border cooperation among business registries located in different States, as well as between business registries and public authorities in different States. Implementation of cross-border exchange of data can result in more dependable information for consumers and existing or potential business partners, including small businesses that provide cross-border services, as well as for potential sources of finance for the business (see paras. 195 and 196 below).

118. Accordingly, States implementing reforms to streamline their business registration system may wish to consider adopting solutions that will, in future, facilitate such information exchanges between registries from different jurisdictions and to consult with States that have already implemented approaches<sup>124</sup> that allow for

<sup>119</sup> For details on repopulated forms, see footnote 81 above.

<sup>120</sup> For further reference, see Norway, *supra*, footnote 30, page 23.

<sup>121</sup> *Ibid.*

<sup>122</sup> At its twenty-eighth session, the Working Group agreed that recommendation 17 of [A/CN.9/WG.I/WP.101](#) and the relevant commentary (paras. 111 to 116 of [A/CN.9/WG.I/WP.101](#)) should be adjusted to focus more on cross-border access to information than on information-sharing (paras. 69 to 71, [A/CN.9/900](#)). Having made the requested changes to that recommendation and the relevant commentary in the current text, the Secretariat has retained additional information from those paragraphs and relocated it here.

<sup>123</sup> For instance, there are some regional examples of cross-border information-sharing on businesses between States, but these are cases where the information-sharing was a component of a broader project involving significant economic integration of the relevant States.

<sup>124</sup> Some States with more integrated economies have developed an application that allows users to carry out simultaneous searches of the registries in both States by using their smartphones or mobile devices.

such interoperability. By way of example, one such reform could include developing a system of business prefixes that would make the legal form of the business immediately recognizable across jurisdictions and in a cross-border sense.

#### **Recommendation 14: Use of unique business identifiers**

The law 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 15: Allocation of unique business identifiers**

The law 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 16: Implementation of a unique business identifier**

The law 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.

## **H. Sharing of protected data between public agencies**

119. Although unique business identifiers facilitate information-sharing, it is important that they protect sensitive data and privacy. For this reason, when a State introduces interoperability among different authorities, it should address issues of how public agencies should share protected data relating to individuals and businesses so that the sharing does not infringe the right for protection of the data owners. States should thus ensure that all information-sharing among public agencies occurs in accordance with the laws of the State, which should establish the conditions under which such sharing is permitted.<sup>125</sup> Moreover, the law should clearly identify which public agencies are involved, the information shared and the purpose for sharing, and establish that the data owners should be informed that their protected data may be shared among public agencies and for what purpose. In order to further protect data owners, information-sharing should be based on the principle that only the minimum information necessary to achieve the public agency's purpose may be shared and that appropriate measures are in place to protect the rights to privacy of the business.<sup>126</sup> When devising appropriate law or policy on the sharing of protected data between public agencies, it is important for States to consider interoperability among those

<sup>125</sup> At its twenty-eighth session, the Working Group agreed that para. 110 of [A/CN.9/WG.I/WP.101](#) should focus solely on issues of sharing protected data between public agencies and that references to disclosure of information to the public should be considered in relation to recommendations 32 and 33 of [A/CN.9/WG.I/WP.101](#) (para. 67, [A/CN.9/900](#)).

<sup>126</sup> For a relevant example, see the website of the Data Protection Commissioner of the Republic of Ireland, available at: [www.dataprotection.ie](http://www.dataprotection.ie).

public agencies (such as the ability of different information technology infrastructures to exchange and interpret data; or the semantic interoperability).

**Recommendation 17: Sharing of protected data between public agencies**<sup>127</sup>

The law should establish that rules for the sharing of protected data between public agencies pursuant to the unique business identifier system that is adopted:

(a) Conform with the applicable rules in the enacting State on the sharing of protected data between public agencies;

(b) Enable public agencies to access protected data included in the unique business identifier system only in order to carry out their statutory functions; and

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

## IV. Registration of a business

### A. Scope of examination by the registry

120. The method through which a business is registered varies from State to State, ranging from those that tend to regulate less and rely on the legal framework that governs business behaviour, to States that opt for ex ante screening of businesses before the business may be registered (see also para. 57 above).<sup>128</sup> In this regard, a State aiming at reforming the registration system must first decide which approach it will take so as to determine the scope of the examination that will have to be carried out by the registry. The State may thus choose to have a system where the registry only records facts or a system where the registry is required to perform legal verifications and decide whether the business meets the criteria to register.

121. States opting for ex ante verification of legal requirements and authorization before businesses can register often have court-based registration systems in which the judiciary, notaries and lawyers perform a key role in the registration process.<sup>129</sup> Other States structure their business registration as a declaratory system, in which no ex ante approval is required before business start-up and where registration is an administrative process. In such declaratory systems,<sup>130</sup> registration is under the oversight of a government department or agency, which can choose whether to operate the business registration system itself or to adopt other arrangements (see paras. 41 to 43 above).<sup>131</sup> There are also States that do not fall neatly within either category and in which there is a certain variation in the level and type of verification carried out as well as in the level of judiciary oversight.<sup>132</sup>

122. Both the approval and the declaratory systems have their advantages and disadvantages. Approval systems are usually said to help prevent errors or omissions prior to registration. Courts and other intermediaries exercise a formal review and,

<sup>127</sup> At its twenty-eighth session, the Working Group requested the Secretariat to amend the text of the recommendation (in particular, the chapeau and paragraph (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 (para. 68, A/CN.9/900).

<sup>128</sup> See supra, footnote 24, page 2.

<sup>129</sup> See supra, footnote 30, pages 25-26.

<sup>130</sup> The Secretariat suggests the deletion of the phrase “verification of an event’s legal status is made after it has taken place, and” to improve the clarity of the paragraph as noted at the twenty-eighth session of the Working Group (para. 74, A/CN.9/900).

<sup>131</sup> See supra, footnote 24, page 28.

<sup>132</sup> See, for instance, Italy and the role of the Chambers of Commerce in business registration. The Secretariat has included the last two sentences of para. 121 in order to fulfil the decision of the Working Group, at its twenty-eighth session, that the commentary should include information on those jurisdictions that use a more nuanced approach between the declaratory and the approval systems (para. 73, A/CN.9/900).

when appropriate, also a substantive review of the pre-requirements for the registration of business. By contrast, declaratory systems are said to be easier to manage and better-suited to deterring corruption by avoiding opportunities for official decisions to be made with a view towards personal gain; furthermore, they may reduce costs for registrants by negating the need to hire an intermediary and appear to have lower maintenance costs. Systems in which business registration procedures are entrusted to an administrative body under the oversight of the judiciary have been said to merge advantages of both the declaratory and approval systems by combining *ex ante* verification of the requirements needed for establishing a business with a reduced role of the courts and other intermediaries, thus simplifying procedures and shortening the processing times.<sup>133</sup>

## **B. Accessibility of information on how to register**

123. In order for the business registry to facilitate trade and interactions between business partners, the public and the State, easy access to business registry services should be provided both to businesses that want to register and to interested stakeholders who want to search the information on the business registry.

124. For businesses wanting to register, surveys often show that many microbusinesses operating outside of the legally regulated economy are not aware of the process of registering or of its costs: often they overestimate time and cost, even after efforts to simplify the registration process.<sup>134</sup> Easily retrievable information on the registration process (such information could include: a list of the steps needed to achieve the registration; the necessary contacts; the data and documents required; the results to be expected; how long the process will take; methods of lodging complaints; and possible legal recourse), including on the advantages offered by a one-stop shop, where available,<sup>135</sup> in accessing multiple services relating to business registration (see also paras. 90 to 100 above) as well as on the relevant fees can reduce compliance costs, and make the outcome of the application more predictable, thus encouraging entrepreneurs to register. Restricted access to such information, on the contrary, might require meetings with registry officials in order to be apprised of the registration requirements, or the involvement of intermediaries to facilitate the registration process.

125. In jurisdictions with developed ICT infrastructures, information on the registration process and documentation requirements should be available in the registry website or the website of the government agency overseeing the process. Moreover, the possibility of establishing direct contact with registry personnel through a dedicated email account of the registry, electronic contact forms or client service telephone numbers should also be provided (see also para. 196 below). As discussed below, States should consider whether the information included on the website should be offered in a foreign language in addition to official and local languages. States with more than one official language should make the information available in all such languages (see para. 139 below).

126. Lack of advanced technology, however, should not prevent access to information that could be ensured through other means, such as the posting of communication notes at the relevant agency or dissemination through public notices. In some jurisdictions, for instance, it is required to have large signs in front of

<sup>133</sup> The Secretariat has included the sentence at the end of para. 122 further to a decision of the Working Group at its twenty-eighth session that information should also be provided on jurisdictions that used a more nuanced or hybrid approach between the declaratory and the approval systems (para. 73, A/CN.9/900). (See also footnote 133 above.)

<sup>134</sup> M. Bruhm, D. McKenzie, *Entry Regulation and Formalization of Microenterprises in Developing Countries*, 2013, pages 7-8.

<sup>135</sup> It was suggested at the twenty-eighth session of the Working Group that reference could be made here to the importance of one-stop shops, including a cross-reference to the earlier discussion of them in the legislative guide (para. 76, A/CN.9/900).

business registry offices stating their processes, time requirements and fees.<sup>136</sup> In any event, information for businesses that want to register should be made available at no cost.

127. It is equally important that potential registry users are given clear advice on the practical logistics of the registration and the public availability of the information on the business registry, for example, through the dissemination of guidelines and tutorials (ideally in both printed and electronic form) and the availability of in-person information and training sessions. In some States, for instance, prospective users of the system are referred to classroom-based or eLearning opportunities available through local educational institutions or professional associations.<sup>137</sup>

#### **Recommendation 18: Accessibility of information on how to register**

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

### **C. Businesses permitted or required to register**

128. One of the key objectives of business registration is to permit businesses of all sizes and legal form to be visible in the marketplace and to operate in the legally regulated commercial environment. This objective is of particular importance in assisting MSMEs to participate effectively in the economy, and States should enable<sup>138</sup> businesses of all sizes and legal form to register in an appropriate business registry, or create a single business registry that is tailored to accommodate registration by a range of different sizes and different legal forms of business.

129. As noted above (see para. 31), enabling the registration of businesses that would not otherwise be required to register allows such businesses to benefit from a number of services offered by the State and by the registry, including the protection of a business or a trade name, facilitating access to credit, increasing visibility to the public and to markets and, subject to the legal form chosen for the business which may require it to be registered, the separation of personal assets from assets devoted to business or limiting the liability of the owner of the business.<sup>139</sup> Businesses that voluntarily register must, however, fulfil the same registration obligations (e.g. timely filing of periodic returns, updating of registered information, accuracy of information submitted) as those businesses that are required to register and will be subject to the same penalties for non-compliance with those obligations.<sup>140</sup>

130. Nonetheless, States must also define which businesses are required to register under the applicable law. Laws requiring the registration of businesses vary greatly from State to State, but one common aspect is that they all require registration of a particular legal form of business. The nature of the legal forms of economic entity that are required or permitted to register in a given jurisdiction is, of course, determined by the applicable law.<sup>141</sup> In some legal traditions, it is common to require registration of all businesses, including sole proprietorships, professionals, and government bodies, since they are all said to constitute an economic entity;<sup>142</sup> while in other legal traditions, only corporations and similar entities (with legal personality

<sup>136</sup> See Bangladesh and Guinea cited in para. 31, [A/CN.9/WG.I/WP.85](#).

<sup>137</sup> For further reference, see Service Alberta, Canada, at [www.servicealberta.com/1005.cfm](http://www.servicealberta.com/1005.cfm).

<sup>138</sup> Further to the decision of the Working Group at its twenty-eighth session, the phrase “should enable” has replaced “may wish to consider requiring or enabling” to ensure consistency with para. 31 above (para. 77, [A/CN.9/900](#)).

<sup>139</sup> At its twenty-eighth session, the Working Group requested the Secretariat to clarify the paragraph to clarify that asset partitioning was related to the legal form of the business (see para. 79, [A/CN.9/900](#)).

<sup>140</sup> At its twenty-eighth session, the Working Group requested the Secretariat to adjust the text to clarify the scope of the last sentence (para. 80, [A/CN.9/900](#)).

<sup>141</sup> See supra, footnote 6, pages 6 ff.

<sup>142</sup> See para. 23, [A/CN.9/825](#).

and limited liability) are required to register.<sup>143</sup> This approach can exclude businesses like partnerships and sole proprietorships from mandatory registration. However, variations on these regimes also exist, and some jurisdictions permit voluntary registration for businesses that would not otherwise be required to register.<sup>144</sup>

131. In several jurisdictions, when entrepreneurs decide to establish and to register their business, they tend to choose the simplest legal form available to them in order to minimize the regulatory and financial burden, as well as the expense of establishing the business. A sole proprietorship or similar type of business with low legal and regulatory requirements is thus often the most popular business form. Some jurisdictions require that even simple business forms such as these be registered, and some jurisdictions have carried out reforms to facilitate the registration process for sole proprietorships or for simplified new types of limited liability entities.

#### **Recommendation 19: Businesses permitted or required to register**

The law should specify:

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

### **D. Minimum information required for registration**

132. As a general rule, businesses must meet certain requirements in order to be registered; those requirements are determined by the State based on its legal and economic framework. In addition, the registered information required usually varies depending on the legal form of business being registered — for example, sole proprietorships and simplified business entities may be required to submit relatively simple details in respect of their business, while businesses such as public and private limited liability companies will be required to provide more complex and detailed information. Although the requirements for registration of each legal form of business will vary according to the applicable law of the relevant jurisdiction, there are, however, some requirements that can be said to be common for many businesses in most States, both during the initial registration process and throughout the life of the business.

133. General requirements for the registration of all legal forms of business are likely to include information in respect of the business and its founders, such as:

- (a) The name and address at which the business can be deemed to receive correspondence (such an address can be a “service address” and need not be the residential address of the registrants or the managers of the business);
  - (b) The name(s) and contact details of the registrant(s);
  - (c) The identity of the person or persons who may legally bind the business;
- and
- (d) The legal form of business that is being registered.<sup>145</sup>

<sup>143</sup> See *supra*, footnote 6, page 6. At its twenty-eighth session, the Working Group requested the Secretariat to clarify the final phrase of this paragraph (para. 80, [A/CN.9/900](#)).

<sup>144</sup> For further reference, see *supra* footnote 6, pages 6 ff. In order to clarify the last part of the paragraph, the Secretariat suggests replacing the phrase after “register” (“for example, because they are not economic entities or because they are not engaged in business activities”) with the phrase “such as sole traders and professional associations” (para. 80, [A/CN.9/900](#)).

<sup>145</sup> At its twenty-eighth session, the Working Group agreed to delete subparagraph 130(b) of [A/CN.9/WG.I/WP.101](#) (para. 82, [A/CN.9/900](#)).

134. Other information that may be required for registration, depending on the jurisdiction of the registry and the legal form of the business being registered, can include:

- (a) The names and addresses of the persons associated with the business, which may include managers, directors and officers of the business;
- (b) The name and the address of the owner(s) or the beneficial owner(s);
- (c) The rules governing the organization or management of the business; and
- (d) Information relating to the capitalization of the business.

135. Depending on the legal form of the business being registered, other details may be required in order to finalize the registration process. In some jurisdictions, proof of the share capital, the name of the chairperson, information on the type of commercial activities engaged in by the business, and agreements in respect of non-cash property constitute information that may also be required by registries in respect of certain legal forms of business.<sup>146</sup> States should however be mindful that requesting a business that intends to register to submit complex and extensive information may result in making registration more difficult and expensive and thus may discourage MSMEs from registering.<sup>147</sup>

136. In addition, in several jurisdictions, registration of shareholder details and any changes therein may be required; in a few cases, registration of shareholder details is carried out by a different authority.<sup>148</sup> In some jurisdictions registration of the identity of the business owner(s) is considered a key requirement;<sup>149</sup> other jurisdictions now make it a practice to register beneficial ownership details and changes in those details,<sup>150</sup> although the business registry is not always the authority entrusted with this task.<sup>151</sup> Transparency in the beneficial ownership of businesses can help prevent the misuse of corporate vehicles, including MSMEs, for illicit purposes.<sup>152</sup>

<sup>146</sup> See *supra*, footnote 44, pages 26 ff.

<sup>147</sup> See *supra*, footnote 42, page 6.

<sup>148</sup> See *supra*, footnote 66, page 26.

<sup>149</sup> At its twenty-eighth session, the Working Group requested the Secretariat to reflect the practice of those States in which the identity of the owner is among the minimum information required for business registration (para. 83, A/CN.9/900).

<sup>150</sup> See *supra*, footnote 44, page 37.

<sup>151</sup> A “beneficial owner” is the natural person(s) who ultimately owns or controls a legal person or arrangement even when the ownership or control is exercised through a chain of ownership or by means of control other than direct control. These vehicles may include not only corporations, trusts, foundations, and limited partnerships, but also simplified business forms, and may involve the creation of a chain of cross-border company law vehicles created in order to conceal their ownership. See also, paras. 47 to 55, A/CN.9/825. The Working Group may wish to consider whether further details on this topic should be included in these materials, possibly as an annex.

<sup>152</sup> It should be noted that the Financial Action Task Force (FATF) Recommendation 24 in respect of transparency and beneficial ownership of legal persons encourages States to conduct comprehensive risk assessments of legal persons and to ensure that all companies are registered in a publicly available company registry. The basic information required is: (a) the company name; (b) proof of incorporation; (c) legal form and status; (d) the address of the registered office; (e) its basic regulating powers; and (f) a list of directors. In addition, companies are required to keep a record of their shareholders or members. (See International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations, Part E on Transparency and Beneficial Ownership of Legal Persons and Arrangements, Recommendation 24 ([www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF\\_Recommendations.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf))).

**Recommendation 20: Minimum information required for registration**

The law 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 registrant(s);<sup>153</sup>
- (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.

**E. Language in which information is to be submitted**

137. When requiring the submission of information for business registration, one important issue for the State to consider is the language in which the required information must be submitted. Language can be a barrier and can cause delays in registration if documents need to be translated into the language of the registry.<sup>154</sup> On the other hand, a business can be registered only if the content of the information is legible to the registry staff. For this reason, it is not common for jurisdictions to allow documents or electronic records to be submitted in a non-official language. States, however, may consider whether such documents can be accepted. There are some States that allow all or some of the information relating to the business registration to be submitted in a non-official language. Should States opt for this approach, it would be advisable to establish that the documents or electronic records must be accompanied by a sworn translation into the registry's national language(s) or any other form of authenticating the documents or electronic records that is used in the State.<sup>155</sup>

138. Another issue is whether the documents submitted to the business registry include information, such as names and addresses, which uses a set of characters different from the characters used in the language of the registry. In this case, the State should provide guidance on how the characters are to be adjusted or transliterated to conform to the language of the registry.

139. A number of States have more than one official language. In these States, registration systems are usually designed to accommodate registration in all official languages. To ensure that information on businesses operating in the State is available to all registrants and searchers, different approaches can be adopted. States may require parties to make their registration in all official languages; or they may permit filing in one language only, but then require the registry to prepare and register duplicate copies in all official languages. Both these approaches, however, may be quite costly and invite error. A more efficient way of dealing with multiple official languages, any one of which may be used to register, would be to allow registrants to carry out registration in only one of those official languages. Such a language could be that of the province or the region where the registry office or the registry sub-office is located and where the registrant has its place of business. This approach would also take into account the financial constraints of MSMEs and, according to circumstances, possible literacy issues, as entrepreneurs may not be equally fluent in all official languages spoken in a State. When such an approach is chosen, however, States should ensure that the registration and public information relating to the registry are available in all official languages of the registry. Whichever approach is

<sup>153</sup> At its twenty-eighth session, the Working Group agreed to clarify the content of this recommendation (recommendation 20(b) of [A/CN.9/WG.I/WP.101](#)) by replacing the phrase "person or persons registering the business" with the term "registrant(s)" (para. 83, [A/CN.9/900](#)).

<sup>154</sup> See supra, footnote 66, page 23.

<sup>155</sup> Ibid., page 24.

taken, however, States will have to consider ways to address this matter so as to ensure that the registration and any subsequent change can be carried out in a cost effective way for both the registrant and the registry and, at the same time, ensure that information can be understood by the registry's users.

**Recommendation 21: Language in which information is to be submitted**

The law 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.

**F. Notice of registration**

140. The enacting State should establish that the business registry must notify the registrant whether or not the registration of the business was effective as soon as practicable, and, in any event, without undue delay. Obligating the registry to promptly notify the applicant business about the registration helps to ensure the integrity and security of the registry record. In States where online registration is used, the registrant should receive an online notification of the registration of the business immediately after all of the requirements for the registration of that business have been successfully fulfilled.

**Recommendation 22: Notice of registration**

The law 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.

**G. Content of notice of registration**

141. The notice of registration should include the minimum information in respect of the registered business necessary to provide conclusive evidence that all requirements for registration have been complied with and that the business is duly registered according to the law of the enacting State.

**Recommendation 23: Content of notice of registration**

The law should provide that the notice of registration may be in the form of a certificate, notice or card, and that it should contain at least<sup>156</sup> 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 law under which the business has been registered.

**H. Period of effectiveness of registration**

142. States may adopt one of two approaches in terms of determining the period of effectiveness of the registration of a business. In some States, the registration of the business is subject to a maximum period of duration established by law. It follows that unless the registration is renewed, the registration of the business will expire on

<sup>156</sup> At its twenty-eighth session, the Working Group agreed to add the phrase "at least" to clarify that reference was being made to a minimum requirement (para. 86, [A/CN.9/900](#)).

the date stated in the notice of registration or upon the termination of the business.<sup>157</sup> This approach imposes a burden on the registrant, which could be particularly problematic for MSMEs, as they often operate with minimal staff and limited knowledge of the applicable rules. Further, if additional information is required and not furnished by the applicant, renewal of the registration could also be refused, thus further threatening the existence of the business.

143. Under the second approach, no maximum period of validity is established for the registered business and the registration is effective until the business ceases to operate and is deregistered. This approach simplifies the intake process and both encourages registration and reduces its burden on businesses, and in particular on MSMEs. However, States that opt for this approach should ensure the adoption of appropriate methods (e.g. sending regular prompts to businesses, establishing advertising campaigns as reminders, or, as a last resort, enforcement procedures) to encourage businesses to keep their registered information current (see paras. 160 to 164 below).<sup>158</sup>

144. In some cases, both approaches have been adopted: a maximum period of registration, subject to renewal, may apply to registered businesses that are of a legal form that does not have legal personality, while an unlimited period of registration may apply to businesses that have legal personality. This duality of approach reflects the fact that the consequences of the expiry of registration of a business that possesses legal personality are likely to be more serious and may affect the very existence of the business and the limited liability protection afforded its owners.<sup>159</sup>

145. Although some jurisdictions require registered businesses to renew their registration periodically, the practice of establishing registration without a maximum period of validity is a more desirable approach in that it meets the needs of businesses for simplified and fast procedures, while relieving them, in particular MSMEs, of a potential burden (see also para. 142 above).<sup>160</sup>

#### **Recommendation 24: Period of effectiveness of registration**

The law should clearly establish that the registration is valid until the business is deregistered.<sup>161</sup>

### **I. Time and effectiveness of registration**

146. In the interests of transparency and predictability of a business registration system, States should determine the moment at which the registration of a business or any later change made to the registered information is effective.<sup>162</sup> States usually

<sup>157</sup> It should be noted that the general law of the enacting State for calculating time periods would apply to the calculation of the period of effectiveness, unless specific legal provisions applicable to registration provides otherwise. For example, if the general law of the enacting State provides that, if the applicable period is expressed in whole years from the day of registration, the year runs from the beginning of that day.

<sup>158</sup> At its twenty-eighth session, the Working Group agreed to clarify that even without periodic renewal of registration, there were other methods of ensuring that information in the business registry was kept current (para. 87, A/CN.9/900).

<sup>159</sup> See, for example, Singapore at <http://www.guidemesingapore.com/incorporation/other/singapore-sole-proprietorship-registration-guide>.

<sup>160</sup> At its twenty-eighth session, the Working Group requested the Secretariat (para. 88, A/CN.9/900) to ensure that the commentary emphasized that requiring businesses to reregister might not be good practice, particularly in terms of the potential burden that could be placed on businesses having to meet that requirement. The Secretariat has thus redrafted the commentary to this recommendation (recommendation 24 of A/CN.9/WG.I/WP.101).

<sup>161</sup> At its twenty-eighth session, the Working Group agreed to delete the final phrase of this recommendation (recommendation 24 of A/CN.9/WG.I/WP.101) (para. 89, A/CN.9/900).

<sup>162</sup> In some jurisdictions, businesses may also apply for the protection of certain rights in the period prior to registration, for example, in the provisional registration of the trade name of the business to be registered (see para. 56 above), and the trade name is protected from being used by any other entity until the registration of the business is effective. In such cases, States should be

determine that a business registration or any subsequent change made to it is effective either at the time of the entry of that information into the registry record or when the application for registration or a change of registered information is received by the registry. Whichever approach is chosen, the most important factor is that the State makes it clear at which moment the registration or change is effective. In addition, the effective time of registration of the business or any later change to the registered information should be indicated in the registry record relating to the relevant business.

147. If the registry is designed to enable users to submit information electronically in respect of an application for registration or an amendment without the intervention of registry staff and to use online payment methods for the registration, the registry software should ensure that the information becomes effective immediately or nearly immediately after it is transmitted. As a result, any delay between the time of the electronic transmission of the information and the effective time of registration of the business will be eliminated.

148. In registry systems that allow or require registration information to be submitted to the registry using a paper form, registry staff must enter the information on the paper form into the registry record on behalf of the registrant. In such systems, there will inevitably be some delay between the time when the paper form is received in the registry office and the time when the information set out on the form is entered into the registry record. In these cases, the domestic legislative or regulatory framework should provide that the registry must enter the information received into the registry record as soon as practicable and possibly set a deadline by which the application or the amendments should be registered. In a mixed registry system which allows information to be submitted in both paper and electronic form, registrants who elect to use the paper form should be alerted that this method may result in some delay in the time of effectiveness of the registration.

#### **Recommendation 25: Time and effectiveness of registration**

The law should:

(a) Require the business registry to record the date and time that applications for registration are received and to process them in that order 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.

### **J. Rejection of an application for registration<sup>163</sup>**

149. A series of checks and control procedures are required to ensure that the necessary information and documentation is provided in order to register the business, however, the extent of such controls varies according to the jurisdiction. In those legal regimes where the registry performs simple control procedures, if all of the basic legal and administrative requirements established by the domestic legal and regulatory framework are met, the registry must accept the information as filed, record it, and register the business. When the legal regime requires a more thorough verification of the information filed, registries may have to check whether mandatory provisions of the law are met by the content of the application and information submitted, or any changes thereto. Whichever approach is chosen, States should define in their legislative or regulatory framework which requirements the information to be

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equally clear to establish the moment at which such pre-registration rights are effective and the period of their effectiveness (as agreed should be added at the twenty-eighth session of the Working Group: para. 90, A/CN.9/900).

<sup>163</sup> See footnote 168 below.

submitted to the registry must meet. In certain jurisdictions, the registrar is given the authority to impose requirements as to the form, authentication and manner of delivery of information to be submitted to the registry.<sup>164</sup> When an MSME is seeking to register, it would be advisable that such requirements be kept to a minimum in order to facilitate the registration process for MSMEs. This will reduce administrative hurdles and help in promoting business registration among such businesses.

150. Registration of MSMEs may also be facilitated if the registry is granted the power to accept and register documents that do not fully comply with the requirements for the form of the submission, and to rectify clerical errors, including its own incidental errors, in order to bring the entry in the business registry into conformity with the documents submitted by the registrant. This will avoid imposing the potentially costly and time-consuming burden of requiring the registrant to resubmit an application for registration. Entrusting the registry with these responsibilities, may be of particular importance if registrants do not have direct access to electronic submission of documents and where their submission, or the entry of data, requires the intervention of the registry staff. In States where it is possible for registrants to submit applications for registration directly online, the electronic registration system is usually designed so as to allow built-in data error checks (see also paras. 185 to 188 below) and to reject automatically an application or a request if it does not comply with the prescribed requirements. When the registry 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, the law of the enacting State should strictly determine under which conditions those responsibilities may be discharged (see also para. 228 below). Clear rules in this regard will ensure the integrity and security of the registry record and minimize any risk of abuse from or corruption by the registry staff (see also paras. 210 to 215 below). The law of the enacting State should thus establish that the registry may only exercise its discretion to correct errors upon having provided prior notification of the intended corrections to the registrant and having received the consent of the registrant in return, although this approach could create a delay in the registration of the business while the registry seeks such consent. When the information provided by the business is not sufficient to comply with the requirements for registration, the registry should be granted the authority to request from the business additional information in order to finalize the registration process. The law of the enacting State should specify an appropriate length of time within which the registry should make such a request.

151. States should provide that registries may reject the registration of a business if its application does not meet the objective requirements prescribed by the legislative and regulatory framework for registration.<sup>165</sup> This approach is implemented in several jurisdictions regardless of their legal tradition. In order to prevent any arbitrary use of such power, however, the registry must provide, in writing, a notice of the rejection of an application for registration and the reasons for which it was rejected, and the registrant must be allowed time to appeal against that decision as well as to resubmit its application. Moreover, it should be noted that the authority of the registrar to reject an application should be limited to situations where the application for registration does not meet the objective conditions for registration as required by law. The registrar should not have the authority over the substantive legal requirements for the establishment of a particular legal form of business; such matters should be governed by the law of the enacting State.<sup>166</sup>

<sup>164</sup> See, for instance, Section 1068, UK Companies Act 2006.

<sup>165</sup> Instances in which the registry improperly accepts an application and registers a business that does not meet the requirements prescribed by law should be governed by the provisions establishing liability of the business registry, if any (see paras. 210 to 215 below). Moreover, the law of the State should establish how rectification of business registration should be carried out in such instances.

<sup>166</sup> At its twenty-eighth session, the Working Group requested the Secretariat to elaborate in the commentary on the difference between rejection of an application based on formalistic and substantive grounds (para. 94, A/CN.9/900). The final two sentences of this paragraph are

152. The rejection of an application for registration is likely to be processed differently depending on whether the registration system is paper-based, electronic or mixed. In cases where the application for registration of a business is submitted in paper form and the reason for its rejection is that the application was incomplete or illegible, there might be some delay between the time of receipt of the application by the registry and the time of communication of its rejection, and the reasons therefor, to the registrant. In a registry system that allows registrants to submit applications and relevant information directly to the registry electronically, the system should be designed, when permitted by the State's technological infrastructure, so as to automatically require correction of the application if it is submitted with an error, and to automatically reject the submission of incomplete or illegible applications, displaying the reasons for the rejection on the registrant's screen. In mixed registry systems which allow applications to be submitted using both paper and electronic means, the design of the electronic medium should include the technical specifications that allow for automatic requests for correction or automatic rejection of an application. Moreover, registrants who elect to use the paper form when such a choice is possible should be alerted that this method may result in some delay between the time of receipt of the application by the registry and the time of communication of any rejection, and the reasons therefor.<sup>167</sup>

**Recommendation 26: Rejection of an application for registration**<sup>168</sup>

The law should provide that the registrar:

- (a) Must reject an application for the registration of a business if the application does not meet the objective requirements specified in the law;
- (b) Is required to provide to the registrant in written form the reason for any such rejection; and
- (c) 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.

## K. Registration of branches

153. Registration of branches of a business is common practice in all geographic regions.<sup>169</sup> Most States require the registration of national branches of a foreign business in order to permit those branches to operate in their jurisdiction and to ensure the protection of domestic creditors, businesses and other interested parties that deal with those branches. In several States, registration of a branch of a business established in another domestic jurisdiction is also required or permitted.<sup>170</sup>

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intended to address those concerns.

<sup>167</sup> In order to clarify the approach to the correction of errors in the three registry systems (paper-based, mixed and electronic) (para. 92, [A/CN.9/900](#)), the Secretariat has revised the text as follows: (a) including a new sentence at the beginning of the paragraph; (b) including the phrase "require correction of the application if submitted with an error and to automatically"; and (c) adding the final two sentences at the end of the paragraph.

<sup>168</sup> At its twenty-eighth session the Working Group agreed to modify the title of this recommendation (recommendation 26 of [A/CN.9/WG.I/WP.101](#)) ("Refusal to register" in [A/CN.9/WG.I/WP.101](#)) so that it would refer more specifically to errors in the application for registration (para. 93, [A/CN.9/900](#)). The Secretariat suggests that in order to ensure consistency with the new title, the language of subparagraph (a) of this recommendation be amended to use the term "rejection".

<sup>169</sup> See *supra*, footnote 42, page 42.

<sup>170</sup> At its twenty-eighth session, the Working Group agreed that the commentary to this recommendation (recommendation 27 of [A/CN.9/WG.I/WP.101](#)) should include reference to the practice of States that permit or require registration of branches of local businesses and adopt appropriate language therein (para. 96(a), [A/CN.9/900](#)). The Secretariat has sought to clarify this aspect in the commentary.

Registration of a business branch might not appear to be immediately relevant for MSMEs, whose main concern is more likely to be to consolidate their business without exceeding their human and financial capacity. However, this issue is relevant for those slightly larger business entities that, being of a certain size and having progressed to a certain volume of business, look to expand beyond their local or domestic market. In addition, even micro and very small businesses may be highly successful and may wish to expand their operations. For such businesses, establishing branches in a new location either within or outside the jurisdiction in which they were formed may be both an attractive goal and a realistic option. Although it may seem to be a daunting prospect, in fact, when a business expands, it may find that setting up a branch is cheaper and requires fewer formalities than establishing a subsidiary.<sup>171</sup> This is usually the case even when cross-border branches are established.<sup>172</sup>

154. States have their own rules for governing the operation of foreign businesses,<sup>173</sup> and there may be considerable differences among those jurisdictions that permit the registration of branches of foreign businesses in terms of what triggers the obligation to register them. Some approaches are based on a broad interpretation of the concept of foreign establishment, for example, those which include not only a branch, but also any establishments with a certain degree of permanence or recognisability, such as a place of business in the foreign State.<sup>174</sup> Other approaches define more precisely the elements that constitute a branch that needs to be registered, which may include the presence of some sort of management, the maintenance of an independent bank account, the relation between the branch and the original or main business, or the requirement that the original or main business has its main office registered abroad.<sup>175</sup> Not all States define the notion of branch in their laws, or state under which circumstances a foreign establishment in the State must be registered: laws may simply refer to the existence of a foreign branch. In these cases, registries may fill the gap by issuing guidelines that clarify the conditions under which such a registration should be carried out.<sup>176</sup> When this occurs, the registration guidelines should not be seen as an attempt to legislate by providing a discrete definition of what constitutes a branch, but rather as a tool to explain the features required by a branch of a business in order to be registered.

155. When simplifying or establishing their business registration system, States should consider enacting provisions governing the registration of branches of businesses from other jurisdictions. Those provisions should address, at minimum, issues such as timing of registration, disclosure requirements, information on the persons who can legally represent the branch and the language in which the registration documents should be submitted.<sup>177</sup> Duplication of names could represent a major issue when registering foreign company branches, and it is important to ensure the identity of a business across jurisdictions. In this regard, an optimal approach could be for a business registry to use unique identifiers to ensure that the identity of a business remains consistent and clear within and across jurisdictions (see paras. 101 to 111 above).

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<sup>171</sup> For further reference, see K. E. Sørensen, *Branches of companies in the EU: balancing the Eleventh Company Law Directive, national company law and the right of establishment*, 2013, page 9.

<sup>172</sup> The Secretariat suggests the inclusion of this sentence for further clarity.

<sup>173</sup> At its twenty-eighth session, the Working Group agreed that the commentary should clarify that each State has its own requirements concerning the operation of foreign businesses (para. 95, [A/CN.9/900](#)).

<sup>174</sup> See *supra* footnote 171, page 12.

<sup>175</sup> *Ibid.*

<sup>176</sup> *Ibid.*, page 13.

<sup>177</sup> *Ibid.*, page 17. The Working Group may wish to consider whether further details on this topic should be included in a future annex to these materials.

**Recommendation 27: Registration of branches**<sup>178</sup>

The law should establish:

- (a) Whether the registration of a branch of a business is required or permitted;
- (b) A definition of “branch” for registration purposes that is consistent with the definition provided elsewhere in the law; and
- (c) Provisions regarding the registration of a branch to address the following issues:
  - (i) When a branch must be registered;
  - (ii) Disclosure requirements, including: the name and address of the registrants; the name and address of the branch; the legal form of the original or main business seeking to register a branch; and current proof of the existence of the original or main business issued by a competent authority of the State or other jurisdiction in which that business is registered; and
  - (iii) Information on the person or persons who can legally represent the branch.

**V. Post-registration**

156. While a key function of a business registry is, of course, the registration of a business, registries typically support businesses throughout their life cycle. Further, once a business’s registered information is collected and properly recorded in the business registry, it is imperative that it be kept current in order to continue to be of value to users of the registry. Both the registered business and the registry play roles in meeting these goals.

157. In order for a business to remain registered, it is required to submit certain information during the course of its life, either periodically or when changes in its registered information occur, so that the registry is able to maintain the information on that business in as current a state as possible. The registry also plays a role in ensuring that its information is kept as current as possible, and may use various means to do so, such as those explored in greater detail below. Both of these functions permit the registry to provide accurate business information to its users, thus ensuring transparency and supplying interested parties, including potential business partners and sources of finance, the public and the State, with a trustworthy source of data.

**A. Information required after registration**<sup>179</sup>

158. In many jurisdictions, entrepreneurs have a legal obligation to inform the registry of any changes occurring in the business, whether these are factual changes (for example, address or telephone number) or whether they pertain to the structure of the business (for example, a change in the legal form of business). Information exchange between business registries and different government agencies operating in the same jurisdiction also serves the same purpose. In some cases, registries publish annual accounts, financial statements or periodic returns of businesses that are useful sources of information in that jurisdiction for investors, clients, potential creditors and government agencies. Although the submission and publication of detailed financial statements might be appropriate for public companies, depending on their

<sup>178</sup> At its twenty-eighth session, the Working Group agreed to redraft this recommendation as follows: (a) subparagraph (c)(i) should indicate when a branch was required to register; (b) subparagraph (c)(ii) should include the legal form of the foreign business registering the branch as well as proof of the existence of the foreign business issued by the competent authority rather than its notice of registration; and (c) subparagraph (c)(iv) should be deleted, as redundant in light of recommendation 21.

<sup>179</sup> At its twenty-eighth session, the Working Group agreed to reverse the order of recommendations 28 and 29 (as they appeared in [A/CN.9/WG.I/WP.101](#)) and the related commentary (para. 103, [A/CN.9/900](#)).

legal form, MSMEs should be required to submit far less detailed financial information, if any at all, and such information should only be submitted to the business registry and thus made public if desired by the MSME. However, to promote accountability and transparency and to improve their access to credit or attract investment, MSMEs may wish to submit and make public their financial information.<sup>180</sup> In order to encourage MSMEs to do so, States should allow MSMEs to decide on an annual basis whether to opt for disclosure of such information or not.

159. The submission of information that a business is required to provide in order to remain registered may be prompted by periodic returns that are required by the registry at regular intervals in order to keep the information in the registry current or it may be submitted by the business as changes to its registered information occur. Information required in this regard may include:

- (a) Changes in any of the information that was initially required for the registration of the business as set out in recommendation 20;<sup>181</sup>
- (b) Changes in the name(s) and address(es) of the person(s) associated with the business;
- (c) The submission of financial information in respect of the business, depending on its legal form; and
- (d) Depending on the jurisdiction, information concerning insolvency proceedings, liquidation or mergers (see para. 61 above).

#### **Recommendation 28: Information required after registration**

The law should specify that after registration, the registered business must file with the business registry at least<sup>182</sup> 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) When the law so requires, periodic returns, which may include annual accounts.<sup>183</sup>

## **B. Maintaining a current registry**

160. States should enact provisions that enable the business registry to keep its information as current as possible. A common approach through which that may be accomplished is for the State<sup>184</sup> to require registered businesses to file at regular intervals, for example once a year, a declaration stating that certain core information

<sup>180</sup> While MSMEs are not generally required to provide the same flow and rate of information as publicly held firms generally, they may have strong incentives for doing so, particularly as they develop and progress. Indeed, businesses wishing to improve their access to credit or to attract investment may wish to signal their accountability by supplying information about: (1) the business' objectives; (2) principal changes; (3) balance sheet and off-balance sheet items; (4) its financial position and capital needs; (5) the composition of any management board and its policy for appointments and remuneration; (6) forward-looking expectations; and (7) profits and dividends. Such considerations are not likely to trouble MSMEs while they remain small, but could be important for those businesses as they grow.

<sup>181</sup> See *supra*, footnote 6, page 7.

<sup>182</sup> At its twenty-eighth session, the Working Group agreed to add the phrase "at least" in the chapeau of this recommendation (recommendation 29 of [A/CN.9/WG.I/WP.101](#)) (para. 101, [A/CN.9/900](#)).

<sup>183</sup> At its twenty-eighth session, the Working Group agreed to reverse the order of the clauses in subparagraph (b) and to start that subparagraph with the phrase "When the law of the enacting State so requires, periodic returns..." (para. 102, [A/CN.9/900](#)).

<sup>184</sup> At its twenty-eighth session, the Working Group agreed that requiring businesses to re-register might not be considered a good practice and that this view should be reflected throughout the commentary as necessary (para. 99, [A/CN.9/900](#)). The Secretariat has accordingly deleted re-registration as one option that can be used to maintain a current registry.

contained in the register concerning the business is accurate or, as applicable, stating what changes should be made. Although this approach may be valuable as a means of identifying businesses that have permanently ceased to operate and may be deregistered, and may not necessarily be burdensome for larger business with sufficient human resources, it could be quite demanding for less generously staffed MSMEs, in particular if there is a cost associated with making such submissions.

161. Another approach, which seems preferable as it better takes into account the needs of MSMEs, and in particular the less experienced ones, is to require the business to update its information in the registry whenever a change in any of the registered information occurs. The risk of this approach, which is largely dependent on the business complying with the rules, may be that the filing of changes is delayed or does not occur. To prevent this, States could adopt a system pursuant to which regular prompts are sent, usually electronically, to businesses to request them to submit updated information. In order to minimize the burden for registries and to help them make the most effective use of their resources, prompts that registries regularly send out to remind businesses of the periodic returns required of them could also include generic reminders to update registered information. For the same reason, it would be desirable that prompts be sent in electronic format. If the registry is operated in a paper-based or mixed format, it would be desirable for the registry to identify an appropriate means of performing this task: sending paper-based prompts to individual businesses would be time and resource consuming and may not be a sustainable approach. In one State, for instance, where the registry is not operated electronically, reminders to registered businesses to update the information contained in the registry are routinely published in newspapers.<sup>185</sup>

162. Regardless of the approach chosen to prompt businesses to inform the registry of any changes in their registered information, States may adopt enforcement measures for businesses that fail to meet their obligations to file amendments with the registry. For example, a State could adopt provisions establishing the liability of the registered business to a fine on conviction if changes are not filed with the business registry within the time prescribed by the law (see paras. 207 to 209 below for a discussion in greater detail of liability and sanctions).

163. A more general method that may help mitigate any potential deterioration of the information collected in the business registry would include enhancing the interconnectivity and the exchange of information between business registries and other public registries.

164. Once the registry has received the updated information, it should ensure that all amendments are entered in the registry record without undue delay. Again, the form in which the registry is operated is likely to dictate what might constitute an undue delay. If the registry allows users to submit information electronically without the intervention of the registry staff, the registry software should permit the amendments to become immediately or nearly immediately effective. Where the registry system (whether paper-based, electronic or mixed) requires the registry staff to enter the information on behalf of the business, it should be ensured that all amendments are reflected in the registry as soon as possible, possibly stipulating a maximum time period in which that should be accomplished.<sup>186</sup>

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<sup>185</sup> This is the practice in Sri Lanka. See, for example, <http://www.sundaytimes.lk/090503/FinancialTimes/ft322.html>.

<sup>186</sup> At its twenty-eighth session, the Working Group requested the Secretariat to ensure that the commentary and recommendations 22, 25 and 28 were made consistent (para. 98, A/CN.9/900).

**Recommendation 29: Maintaining a current registry**

The law 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 to state which changes should be made; and

(b) Updating the registry as soon as practicable following the receipt of amended information and, in any event, without undue delay thereafter.<sup>187</sup>

**C. Making amendments to registered information**

165. In keeping with the previous discussion (see paras. 146 to 148 above), States should also determine the time at which changes to the information recorded is effective in order to promote transparency and predictability of the business registration system. It would be advisable for the changes to become effective when the information contained in the notification of changes is entered into the registry record rather than when the information is received by the registry, and that the time of the change should be indicated in the registry record relating to the relevant business. In order to preserve information on the history of the business, amendments to previously registered information should be added to the registry record, without deleting previously entered information.<sup>188</sup>

166. As in the case of business registration, if the registry allows users to submit amendments electronically without the intervention of the registry staff, the amendments should become effective immediately or nearly immediately after they are transmitted to avoid delay. If the registry allows or requires paper-based amendments to be submitted to it and the registry staff enters the amendments into the registry on behalf of the registrant, it should be ensured that the amendments received are entered into the registry record as soon as practicable, and possibly stipulate a maximum time period in which the changes should be registered. In a mixed registry system which allows amendments to be submitted using both paper and electronic means, registrants who elect to use the paper form should be alerted that this method may result in some delay in the time of effectiveness of the amendments.

**Recommendation 30: Making amendments to registered information**

The law should:

(a) Require the business registry to: (i) process amendments to the registered information in the order in which they are received; (ii) record the date and time when the amendments are entered into the registry record; and (iii) notify the registered

<sup>187</sup> At its twenty-eighth session, the Working Group agreed to replace the phrase “immediately... or as soon as practicable thereafter” in subparagraph (b) of this recommendation (recommendation 28 of [A/CN.9/WG.I/WP.101](#)) with the phrase “as soon as practicable, and, in any event, without undue delay” in order to be consistent with the language of recommendations 22 and 25 (para. 98, [A/CN.9/900](#)). Furthermore, although the Working Group agreed to reverse the order of the two subparagraphs in this recommendation (recommendation 28 of [A/CN.9/WG.I/WP.101](#)) so that the text would focus first on the obligation of the business to update information and then on the obligation of the registry (para. 103, [A/CN.9/900](#)), the Secretariat suggests that the original order of the subparagraphs be maintained in order to retain the logic of the steps required of the registry and to better reflect the reversal of recommendations 28 and 29 (as they appeared in [A/CN.9/WG.I/WP.101](#)).

<sup>188</sup> At its twenty-eighth session, the Working Group requested the Secretariat to clarify that all registered information about the business (previously registered information and any amendments thereof) should remain visible in the registry record (para. 104, [A/CN.9/900](#)).

business as soon as practicable and in any event, without undue delay, that its registered information has been amended;<sup>189</sup> and

- (b) Establish when an amendment to the registered information is effective.

## VI. Accessibility and information-sharing

### A. Public access to business registry services<sup>190</sup>

167. The rules relating to access to business registry services are typically set out in the law of the enacting State. It is desirable that those laws allow all potential registrants to access the registry services without any discrimination based on grounds such as sex, race, ethnic or social origin, religion, belief, or political view. In the interest of promoting domestic economic growth, an increasing number of States allow registrants who are neither citizens of, nor residents in, the State to register a business, provided that such registrants meet certain requirements and comply with certain procedures established by the law concerning foreign registrants.

168. Access of potential registrants to the services of the business registry should thus only be subject to compliance with minimum age requirements, if any, and with the procedural requirements for the use of such services, such as: that the request for registration be submitted via an authorised medium of communication and using the prescribed form; and that the registrant provide identification in the form requested by the registry (see paras. 133 and 134 above and recommendation 20) and has paid (or made arrangements to pay) any fee for registration, if such fee is required (see paras. 197 and 199 to 202 below).<sup>191</sup>

169. The registry should maintain a record of the identity of the registrant. In order to ensure a simple and straightforward registration process, the evidence of identity required of a registrant should be that which is generally accepted as sufficient in day-to-day commercial transactions in the enacting State. When registries are operated electronically and allow for direct access by users, potential registrants should be given the option of setting up a protected user account with the registry in order to transmit information to the registry. This would facilitate access by frequent users of registration services (such as business registration intermediaries or agents), since they would need to provide the required evidence of their identity only once when initially setting up the account.<sup>192</sup>

170. Once the registrant has complied with the requirements mentioned in para. 168 above (and others that may be established by the law of the State) for accessing the

<sup>189</sup> At its twenty-eighth session, the Working Group agreed to: (a) redraft recommendation 30(a) of [A/CN.9/WG.I/WP.101](#) to reflect the order in which a registry actually proceeds when receiving and processing amendments to registered information, i.e. the registry first processes the amendments received from a business in the order in which they were received (this part was said it could become a first subparagraph of the recommendation); then enters such amendments into the registry record and informs the business (this part was said it could become a second subparagraph of the recommendation); (b) ensure that the phrase “time and date stamp” in subparagraph (a) referred to both electronic and paper media; and (c) change the title of recommendation 30 of [A/CN.9/WG.I/WP.101](#) so that it reflects the changes made (paras. 105 and 106, [A/CN.9/900](#)). In respect of clarification of the phrase “time and date stamp”, it has been revised following a review of article 13(3) (“Time of effectiveness of the registration of a notice”) of the Model Registry Provisions included in article 28 of the UNCITRAL Model Law on Secured Transactions (2016).

<sup>190</sup> At its twenty-eighth session, the Working Group agreed to move relevant paragraphs of the commentary to recommendation 31 of [A/CN.9/WG.I/WP.101](#) to the commentary for recommendation 32 of [A/CN.9/WG.I/WP.101](#), and requested the Secretariat to prepare commentary for this recommendation of [A/CN.9/WG.I/WP.101](#) in respect of access to business registry services (para. 108, [A/CN.9/900](#)). Further to that request, the Secretariat has prepared revised commentary for this recommendation.

<sup>191</sup> This approach is consistent with the approach adopted in the UNCITRAL Guide on the Implementation of a Security Rights Registry at paragraphs 95 to 99.

<sup>192</sup> *Ibid.*

registry, the registry cannot deny access to the registry services. The only scrutiny that the registry may conduct at this stage (which is carried out automatically in an electronic registry) is to ensure that legible information (even if incomplete or incorrect) is entered in the form for business registration. If the registrant did not meet the objective conditions for access to the registration services, the registry should provide the reasons for denying access (e.g. the registrant failed to provide valid identification) in order to enable the registrant to address the problem. The registry should provide such reasons as soon as practicable (in this respect see paras. 150 to 152 above).<sup>193</sup>

171. Certain rules relating to access to business registry services may also be addressed in the “terms and conditions of use” established by the registry. For example, the terms and conditions of access to registry services may include offering registrants the opportunity to open an account with the registry to facilitate quick access to registry services and the payment of fees for those services, if any. The terms and conditions of access may also address the concerns of registrants regarding the security and confidentiality of their financial and other data or the risk of changes being made to registered information without the authority of the business. Assigning a unique user name and a password to the registrant, or employing other modern security techniques would help reduce such risks (see paras. 37 and 38 above), as would requiring the registry to notify the business of any changes made by others in the deposited information.

### **Recommendation 31: Public access to business registry services**

The law should permit any qualified person to access the services of the business registry.<sup>194</sup>

## **B. Public availability of information**

172. In keeping with its functions as a collector and disseminator of business-related information, the registry should make publicly available all information on a registered business that is relevant for those that interact with the business (whether they be public authorities or private entities) to be fully aware of the business identity and status of that business. This will allow interested users to make more informed decisions about who they wish to do business with, and for organizations and other stakeholders to gather business intelligence.<sup>195</sup> Moreover, since access to the registered information by general users also enhances certainty of and transparency in the way the registry operates, the principle of public access to the information deposited in the registry should be stated in the law of the enacting State. Evidence shows that in most States, public access to the information in the registry is generally unqualified. Allowing full public access does not compromise the confidentiality of certain registered information, which can be protected by allowing users to access only certain types of information.<sup>196</sup> For these reasons, it is recommended that the registry should be fully accessible to the public, subject only to necessary confidentiality restrictions in respect of certain registered information.

<sup>193</sup> Ibid.

<sup>194</sup> At its twenty-eighth session, the Working Group agreed to delete the phrase “and the information contained in the registry” after the term “registry”, in order to make it more consistent with the new structure of this part of the draft legislative guide (para. 109, [A/CN.9/900](#)).

<sup>195</sup> Further to the decision of the Working Group at its twenty-eighth session (see footnote 191 above), the Secretariat has: (a) included the term “more” in the second sentence; and (b) replaced the sentence “This function of a business registry is demonstrably valuable to the economy of a State.” (previously at the end of para. 159 of [A/CN.9/WG.I/WP.101](#)) with “... since access to ... the law of the enacting State” (previously, at the end of para. 162 of [A/CN.9/WG.I/WP.101](#) (para. 107, [A/CN.9/900](#))).

<sup>196</sup> This paragraph was formerly part of the commentary to recommendation 31 of [A/CN.9/WG.I/WP.101](#) (para. 159 of that document), but was moved here as decided by the Working Group at its twenty-eighth session (para. 108, [A/CN.9/900](#)).

173. While providing public disclosure of the registered information is an approach followed in most States, the way in which stakeholders access information, the format in which the information is presented and the type of information available varies greatly from State to State. This variation is not only a function of the technological development of a State, but of an efficient accessing framework, including that provided by national law.<sup>197</sup> For instance, an aspect on which States may differ concerns the criteria that may be used to search the registry.<sup>198</sup>

174. While this should be decided by the enacting State pursuant to its legislative framework, it is not recommended that States restrict access to search the information on the business registry or that users be required to demonstrate a reason to request access. Such a policy could seriously compromise the core function of the registry to publish and disseminate information on registered entities. Moreover, if a discretionary element is injected into the granting of an information request, equal public access to the information in the registry could be impeded, and some potential users might not have access to information that was available to others.

175. The law of the enacting State can, however, make access to the registry subject to certain procedural requirements, such as requiring users to submit their information request in a prescribed form and pay, or make arrangements to pay, any prescribed fee. If a user does not use the prescribed registry form or pay the necessary fee, the user may be refused access to search the registry. As in the case of refusing access to registration services, the registry should be obliged to give the specific reason for refusing access to information services as soon as practicable so that the user can remedy the problem.

176. Unlike the approach adopted for registrants, the registry should not request and maintain evidence of the identity of a user as a precondition to obtaining access to the information on the business registry since a user is merely retrieving information contained in registered information from the public registry record. Accordingly, identification evidence should be requested of users only if it is necessary for the purposes of collecting information retrieval fees, if any.

177. The law of the enacting State should also provide that the registry may reject an information request if the user does not enter a search criterion in a legible manner in the designated field but that the registry must provide the grounds for any rejection as soon as practicable, as in the case of non-compliance with the objective conditions for registration by registrants (see paras. 170 and 171 above). In registry systems that allow users to submit information requests electronically to the registry, the software should be designed to prevent automatically the submission of information requests that do not include a legible search criterion in the designated field and to display the reasons for the refusal on the electronic screen.

178. Further, in order to facilitate dissemination of the information, States should be encouraged to abolish or keep to a bare minimum fees to access basic information on the registered entities (see para. 58 above and para. 202 below). This approach may be greatly facilitated by the development of electronic registries that allow users to submit applications or make searches electronically without the need to rely on intermediation by registry personnel. Such an approach is also much cheaper for the registry. Where registration systems are paper-based, users must either visit the registry office and conduct the research on site (whether manually or using ICT facilities that are available) or have information sent to them on paper. In both cases, registry staff may need to assist the user to locate the information and prepare it for

<sup>197</sup> See *supra*, footnote 6, page 8.

<sup>198</sup> This paragraph was formerly part of the commentary to recommendation 31 of [A/CN.9/WG.I/WP.101](#) (para. 160 of that document), but was moved here as decided by the Working Group at its twenty-eighth session (para. 108, [A/CN.9/900](#)).

disclosure. Again, paper-based information access is associated with delay, higher costs, and the potential for error and for information to be less current.<sup>199</sup>

179. Simply because information is made available for use does not necessarily mean that the information is being used. It would be useful for the State to devise effective means that encourage customers actually to use the information services of the registry. Adoption of electronic registries that allow direct and continuous access for stakeholders (except for periods of scheduled maintenance) will promote the actual use of the information. Communication campaigns on the services available at the registry will also contribute to the active take-up of registry services by potential users.

### **Recommendation 32: Public availability of information**

The law should specify that all registered information is available to the public unless it is protected data under the applicable law.<sup>200</sup>

## **C. Where information is not made public**

180. Access to the business registry should be granted to all interested entities and to the public at large. In order to maintain the integrity and reputation of the registry as a trusted collector of information that has public relevance, access to sensitive data should be controlled to avoid any breach of confidentiality. States should thus put in place proper disclosure procedures. They may do so by adopting provisions that list which information is not available for public disclosure or they may follow the opposite approach and adopt provisions that list the information that is publicly accessible, indicating that information that is not listed cannot be disclosed.<sup>201</sup>

181. Legislation in each State often include provisions on data protection and privacy. When establishing a registry, in particular an electronic registry, States must consider issues concerning the treatment of protected data that is included in the application for registration and its protection, storage and use. Appropriate legislation should be in place to ensure that such data are protected, including rules on how it may be shared between different public authorities (see para. 119 above). States should also be mindful that a major trend towards increased transparency in order to avoid the misuse of corporate vehicles for illicit purposes has resulted from international efforts to fight money-laundering and terrorist and other illicit activities,<sup>202</sup> including the adoption of policies to know one's customer and business counterpart. States should thus adopt a balanced approach that achieves both transparency and the need to protect access to sensitive data maintained in the registry.<sup>203</sup>

<sup>199</sup> This paragraph was formerly part of the commentary to recommendation 31 of [A/CN.9/WG.I/WP.101](#) (para. 161 of that document), but was moved here as decided by the Working Group at its twenty-eighth session (para. 108, [A/CN.9/900](#)).

<sup>200</sup> The Secretariat suggests revising the text of the recommendation in order to align it with the definition of "protected data" provided in para. 13 above (para. 111, [A/CN.9/900](#) sets out the discussion of the Working Group at its twenty-eighth session regarding this recommendation).

<sup>201</sup> At its twenty-eighth session, the Working Group agreed to delete the two sentences at the end of the paragraph (para. 170 of [A/CN.9/WG.I/WP.101](#)), as it was noted that the sharing of information by public authorities had already been dealt with in recommendation 17 (i.e. recommendation 16 in of [A/CN.9/WG.I/WP.101](#)) and was dependent on the law of the enacting State rather than on the consent of the business or the registry (para. 112, [A/CN.9/900](#)).

<sup>202</sup> See information in respect of FATF Recommendation 24 above in footnote 152 supra.

<sup>203</sup> The Secretariat has added the sentence in respect of transparency (originally the third sentence of para. 110 of [A/CN.9/WG.I/WP.101](#)) further to a decision of the Working Group, at its twenty-eighth session, that that concept should be considered in relation to this recommendation (para. 68, [A/CN.9/900](#)).

### **Recommendation 33: Where information is not made public**

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

(a) Establish which information concerning the registered business is subject to the applicable rules in the enacting State on public disclosure of protected 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.

## **D. Hours of operation**

182. The approach to the operating days and hours of the registry depends on whether the registry is designed to allow direct electronic registration and information access by users or whether it requires their physical presence at an office of the registry. In the former case, electronic access should be available continuously except for brief periods to undertake scheduled maintenance; in the latter case, registry offices should operate during dependable and consistent hours that are compatible with the needs of potential registry users. In view of the importance of ensuring ease of access to registry services for users, these recommendations should be incorporated in the law of the enacting State or in administrative guidelines published by the registry, and the registry should ensure that its operating days and hours are widely publicized.

183. If the registry provides services through a physical office, the minimum hours and days of operation should be the normal business days and hours of public offices in the State. To the extent that the registry requires or permits the registration of paper-based submissions, the registry should aim to ensure that the paper-based information is entered into the registry record and made available to searchers as soon as practicable, but preferably on the same business day that the information is received by the registry. Information requests submitted in paper form should likewise be processed on the same day they are received. To achieve this goal, the deadline for submitting paper-based information requests may be set independently from the business hours.<sup>204</sup> Alternatively, the registry office could continue to receive paper forms (regardless if they are applications for registration or for changes) and information requests throughout its business hours, but set a “cut off” time after which information received may not be entered into the registry record, or information searches performed, until the next business day. A third approach would be for the registry to undertake that information will be entered into the registry record and searches for information will be performed within a stated number of business hours after receipt of the application or information request.

184. The law of the enacting State or administrative guidelines of the registry could also enumerate, in either an exhaustive or an indicative way, the circumstances under which access to registry services may temporarily be suspended. An exhaustive list would provide more certainty, but there is a risk that it might not cover all possible circumstances. An indicative list would provide more flexibility but less certainty. Circumstances justifying a suspension of registry services would include any event that makes it impossible or impractical to provide those services (such as force majeure, for example, fire, flood, earthquake or war, or where the registry provides users with direct electronic access, a breakdown in the Internet or network connection).

<sup>204</sup> For example, the law or administrative guidelines of the registry could stipulate that, while the registry office is open between 9 a.m. and 5 p.m., all applications, changes and search requests must be received by an earlier time (for example, by 4 p.m.) so as to ensure that the registry staff has sufficient time to enter the information included in the application into the registry record or conduct the searches.

**Recommendation 34: Hours of operation**

The registrar should ensure that:

- (a) If access to the services of the business registry is provided electronically, access is available at all times;
- (b) 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;<sup>205</sup> 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.

**E. Direct electronic access to submit registration, to request amendments and to search the registry**

185. If the State opts to implement an electronic registration system, the registry should be designed, if possible, to allow registry users to submit directly and to conduct searches from any private computer, as well as from computer facilities made available to the public at sub-offices of the registry or other locations. To further facilitate access to business registry services, the registry conditions of use may allow intermediaries (for instance, lawyers, notaries or private sector third-party service providers) to carry out registration and information searches on behalf of their clients when the applicable law allows or requires the involvement of such intermediaries (see also paras. 121 to 122 above).<sup>206</sup> If accommodated by the technological infrastructure of the State, or at a later stage of the reform, States should also consider adopting systems that allow registration, the filing of amendments and searches of the registry to be carried out through the use of mobile technology. This solution may be particularly appropriate for MSMEs in developing economies where mobile services are often easier to access than electronic services.

186. When the registry allows for direct electronic access, the registry user (including intermediaries) bears the burden of ensuring the accuracy of any request for registration or amendment, or of any search of the registry.<sup>207</sup> Moreover, the potential for misconduct on the part of registry staff is greatly minimized, since their duties are

<sup>205</sup> At its twenty-eighth session the Working Group agreed to reverse the order of subparagraphs (a) and (b) of this recommendation as it appeared in A/CN.9/WG.I/WP.101 (para. 113, A/CN.9/900).

<sup>206</sup> The Secretariat suggests including this reference to provide additional clarity in the paragraph (para. 115, A/CN.9/900).

<sup>207</sup> At its twenty-eighth session, the Working Group requested the Secretariat to rebalance the tone of paragraphs 186 and 187 (paras. 176 and 177 of A/CN.9/WG.I/WP.101) so that the notion of direct electronic access was placed at the core of this sub-section on registry services. Further to this request, the Secretariat has refocused the opening sentence of para. 186 on the advantages of direct electronic access for the registry (para. 115, A/CN.9/900).

essentially limited to managing and facilitating electronic access by users, processing any fees, overseeing the operation and maintenance of the registry system and gathering statistical data.

187. In addition, direct electronic access significantly reduces the costs of operation and maintenance of the system, increases accessibility to the registry (including when registration or searches are carried out through intermediaries, see para. 185 above) and also enhances the efficiency of the registration process by eliminating any time lag between the submission of information to the registry and the actual entry into the database of that information.<sup>208</sup> In some States,<sup>209</sup> electronic access (from the premises of a registrant or a business, or from a branch office of the registry) is the only available mode of access for both registration and information searches. In fact, in many States, where the registration system is both paper-based and electronic, electronic submission is by far the most prevalent mode of data submission and it is used in practice for the vast majority of registrations. As the data to be registered are submitted in electronic form, no paper record is ever generated. A fully electronic system of this kind places the responsibility for accurate data entry directly on the users of the registry. As a result, staffing and operational costs of the registry are minimized and the risk of registry personnel making an error in transcribing documents is eliminated (see also para. 68 above).

188. It is thus recommended that, to the extent possible, States should establish a business registration system that is computerized and that allows direct electronic access by registry clientele. Nonetheless, given the practical considerations involved in establishing an electronic registry, multiple modes of access should be made available to registry clientele at least in the early stages of implementation in order to reassure users who are unfamiliar with the system. Finally, to facilitate use, the registry should be organized to provide for multiple points of access for both electronic and paper submissions and information requests. However, even where States continue to use paper-based registries, the overall objective is the same: that is, to make the registration and information retrieval process as simple, transparent, efficient, inexpensive and publicly accessible as possible.

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

The law should establish that, in keeping with other applicable law of the enacting State, where information and communication technology is available, the submission of applications for the registration of a business and requests for amendment of the registered information of a business are permitted without requiring the physical presence of the registrant or user in the business registry office or the assistance of the registry staff.<sup>210</sup>

**Recommendation 36: Direct electronic access to search the registry**

The law should establish that, where information and communication technology is available, searches of the registry are permitted without requiring the

<sup>208</sup> In keeping up with the decision of the Working Group at its twenty-eighth session (see footnote 207, *supra*), the Secretariat has removed any reference to issues of direct control of the registration by the registrant and has accordingly replaced the phrase “by putting...the registrant” after the term “system” with the phrase “increases accessibility ...through intermediaries” (para. 115, [A/CN.9/900](#)).

<sup>209</sup> For further details, see para. 44, [A/CN.9/WG.I/WP.85](#).

<sup>210</sup> At its twenty-eighth session, the Working Group agreed that in order to clarify that business registration should not require the physical presence of the registrant in the registry office, this 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” (para. 115, [A/CN.9/900](#)).

physical presence of the user in the business registry office or the intermediation of the registry staff.<sup>211</sup>

## F. Facilitating access to information

### 1. Type of information provided

189. Information can be of particular value to stakeholders if it is available to the public, although the type of registered information that is available will depend on the legal form of the business being searched. Information available from the business registry that may be of value includes: the profile of the business and its officers (directors, auditors); annual accounts; a list of the business's divisions or places of business; the notice of registration or incorporation; the publication of the business's memoranda, articles of association, or other rules governing the operation or management of the business; existing names and history of the business; insolvency-related information; information on the business registration process; any share capital; certified copies of registry documents; notifications of events (late filing of annual accounts, newly submitted documents, etc.); related laws and regulations; information on registry fees; and information on the expected turnaround time in the provision of registry services.<sup>212</sup> In addition, some registries prepare reports relating to the operation of the business registry that may provide registry designers, policymakers and academic researchers with useful data (for example, on the volume of registrations and searches, operating costs, or registration and search fees collected over a given period).<sup>213</sup> According to a recent survey, information on business data, annual accounts and periodic returns, as well as information about fees for registry services, are the most popular pieces of information and the most requested by the public.<sup>214</sup>

190. If the State is one in which member or shareholder details must be registered, access to such information may also be advisable, as most States that register such details make the relevant information available to the public.<sup>215</sup> A similar approach can be recommended with regard to information on beneficial ownership, although, as previously noted, to date, not many jurisdictions collect information on beneficial ownership. A State may also consider making information on beneficial ownership available to the public in order to allay concerns over the potential misuse of business entities. However, the sensitive nature of the information on beneficial ownership may require the State to exercise caution before opting for disclosure of beneficial ownership without any limitation.<sup>216</sup>

191. Some States not only provide for electronic registration and information searches but also give clients the option of submitting a registration or information search request in other forms. The information is distributed through other channels that can complement the use of the Internet or that may even represent the main method of distribution if an online registration system is not yet fully developed. The following means of sharing information are also used in some States:

- (a) Telephone services to provide information on registered businesses and product ordering;
- (b) Subscription services to inform subscribers about events pertaining to specified businesses or for announcements of certain kinds of business registrations;

<sup>211</sup> At its twenty-eighth session, the Working Group requested the Secretariat to add a separate recommendation on direct access to search the business registry (para. 116, A/CN.9/900).

<sup>212</sup> See, *supra*, footnote 66, pages 77 ff.

<sup>213</sup> See, for example, the Report of the Australian Business Registrar, 2013-2014, available at: [abr.gov.au](http://abr.gov.au), subpara. 46(c).

<sup>214</sup> For further reference, see *supra* footnote 66, page 131.

<sup>215</sup> *Ibid.*, pages 30 ff, and footnote 44 [2015], pages 35-36.

<sup>216</sup> See information in respect of FATF Recommendation 24 above in footnote 152.

(c) Ordering services to enable access to various products, most often using an Internet browser; and

(d) Delivery services to convey various products, such as transcripts of registered information on a business, paper lists, or electronic files with selected data.

## 2. Unnecessary barriers to accessibility

192. The registry needs to ensure that searchable information is easily accessible. Even though the information is available, it does not always mean that it is easy for stakeholders to access. There are often different barriers to accessing the information, such as the format in which the information is presented: if special software is required to read the information, or if it is only available in one particular format, it cannot be said to be broadly accessible. In several States, some information is made available in paper and electronic formats; however, information available only on paper likely entails reduced public accessibility. Other barriers that may make information less accessible are charging fees for it, requiring users to register prior to providing access to the information, and if there is a fee connected to the user registration. States should find the most appropriate solutions according to their needs, their conditions and their legal framework.

193. One often overlooked barrier to accessing information, whether in order to register a business or to review data in the registry, is a lack of knowledge of the official language(s). Providing forms and instructions in other languages is likely to make the registry more accessible to users. However, recent evidence shows that, with the exception of Europe, business registries seldom offer such services in languages additional to the official language(s).<sup>217</sup> Although making all information available in additional languages may incur some expense for the registry, a more modest approach may be to consider making information on only core aspects of registration, for instance in respect of instructions or forms, available in a non-official language. In deciding which non-official language would be most appropriate, the registry may wish to base its decision on historical ties, the economic interests of the jurisdiction and the geographic area in which the jurisdiction is situated (see paras. 137 to 139 above).

## 3. Bulk information

194. In addition to making information on individual business entities available, business registries in some jurisdictions also offer the possibility of obtaining “bulk” information,<sup>218</sup> i.e. a compilation of data on selected, or all, registered businesses. Such information can be requested for commercial or non-commercial purposes and is often used by public agencies as well as private organizations (such as banks) that deal with businesses and perform frequent data processing on them. Distribution of bulk information varies according to the needs and capability of the receiving entity. In performing this function, one approach would be for the registry to ensure the electronic transfer of selected data on all registered entities, combined with the transfer of data about all new registrations, amendments, and deregistration during a specified period. Another option for the registry would be to make use of web-based or similar services for system-to-system integration that provides both direct access to selected data on specific entities and name searches. Direct access avoids unnecessary and redundant storage of information by the receiving organization and States where such services are not yet available should consider it as a viable option when streamlining their business registration system.<sup>219</sup> Distribution of bulk information can represent a practicable approach for the registry to derive self-generated funds (see para. 202 below).

<sup>217</sup> See *supra*, footnote 44, page 141.

<sup>218</sup> See *supra*, footnote 30, pages 140-141.

<sup>219</sup> See *supra*, footnote 30, page 14.

**Recommendation 37: Facilitating access to information**

The law 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; or requiring users of information services to register or otherwise provide information on their identity.<sup>220</sup>

**G. Cross-border access to registered information<sup>221</sup>**

195. The internationalization of businesses of all sizes creates an increasing demand for access to information on businesses operating outside their national borders. However, official information on registered businesses is not always readily available on a cross-border basis due to technical or language barriers. Making such cross-border access as simple and fast as possible is thus of key importance in order to ensure the traceability of businesses, the transparency of their operations and to create a more business-friendly environment.

196. A range of measures can be adopted to facilitate the retrieval of information stored in the business registry by interested users from foreign jurisdictions. Implementing an online business registration system that can allow registration and search requests in at least one foreign language (see also paras. 125 and 139 above) may facilitate cross-border access as it would eliminate the burden for interested users to travel to the jurisdiction where the business is registered and minimize the need for translation of the information into a language that is understandable to the user. In addition, adopting easy-to-use search criteria and an easy-to-understand information structure would further contribute to simplify access to users from foreign jurisdictions. In this respect, when streamlining their business registration system, States may wish to consider coordinating with other States (at least with those from the same geographic region) in order to adopt approaches that would allow for standardization and comparability across jurisdictions of the information transmitted. Finally, foreign users may also be provided information in at least one foreign language, on how to access the information in the registry, and, as in the case of domestic users of the registry, they should be advised of the possibility of establishing direct contact with registry personnel through a dedicated email account of the registry, electronic contact forms or client service telephone numbers.

**Recommendation 38: Cross-border access to registered information**

The registrar should ensure that systems for the registration of businesses adopt solutions that facilitate cross-border access to the information in the registry.<sup>222</sup>

<sup>220</sup> At its twenty-eighth session the Working Group agreed to delete the last phrase of the recommendation (“or unduly limiting the languages in which information on the registration process is available”) since it was noted 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 (para. 117, [A/CN.9/900](#)).

<sup>221</sup> At its twenty-eighth session, the Working Group agreed that the approach in paragraphs 111 to 116 and recommendation 17 of [A/CN.9/WG.I/WP.101](#) should be adjusted to one focusing more on cross-border access to information than on information-sharing and that those issues might best be considered in conjunction with part VI of the draft legislative guide on accessibility and information-sharing (para. 71, [A/CN.9/900](#)). Accordingly, the Secretariat has revised para. 115 of [A/CN.9/WG.I/WP.101](#) for insertion in the commentary here, in addition to a new paragraph and a revised text of recommendation 17 as it appeared in [A/CN.9/WG.I/WP.101](#) (see also footnotes 108 and 122 *supra*).

<sup>222</sup> As requested by the Working Group at its twenty-eighth session, the Secretariat has revised the text to focus on cross-border access to information on the business registry (para. 69, [A/CN.9/900](#)).

## VII. Fees

197. Payment of a fee in order to receive registration services can be said to be a standard procedure across jurisdictions. As previously noted, in return for that fee, registered businesses receive access to business registry services and to the many advantages that registration offers them, including receipt of a commercial identity recognized by the State that allows them to interact with business partners, the public and the State (see paras. 50 and 51 above). The most common types of fees are those payable for registration of a business and for the provision of information products, while fines may also generate funding to a lesser extent. In some jurisdictions, registries may also charge an annual fee to keep a business in the registry (these fees are unrelated to any particular activity), as well as fees to register annual accounts or financial statements.<sup>223</sup>

198. Although they generate revenue for the registries, fees can affect a business's decision whether to register, since such payments may impose a burden, in particular on MSMEs. Fees for new registration, for instance, can prevent businesses from registering, while annual fees to keep a company in the registry or to register annual accounts could discourage businesses from maintaining their registered status. States should take these and other indirect effects into consideration when establishing fees for registration services. A registration system aiming to support MSMEs and increase the number of them that register should thus consider the adoption of policies where registration and post-registration services, including access to the information on the business registry, are provided free of charge. Where it might be too onerous on States to implement such policies, States should adopt a balanced approach between recovering capital and operational costs within a reasonable period of time and encouraging MSMEs to register. For instance, in several States that consider business registration as a public service intended to encourage businesses to enter the legally regulated economy rather than as a revenue-generating mechanism, registration fees are often set at a level that encourages businesses to register. In such States, the use of flat fee schedules for registration, regardless of the size of the business, is the most common approach. There are also examples of States that provide business registration free of charge.

### A. Fees charged for registry services

199. Striking a balance between the sustainability of the registry operations and the promotion of business registration is a key consideration when setting fees, regardless of the type of fee. One recommended approach, followed in many States, is to apply the principle of cost-recovery, according to which there should be no profit from fees generated in excess of costs. When applying such a principle, States would be required to first assess the level of revenue needed from registry fees to achieve cost-recovery. In carrying out that assessment, account should be taken not only of the initial start-up costs related to the establishment of the registry but also of the costs necessary to fund its operation. By way of example, these costs may include: (a) the salaries of registry staff; (b) upgrading and replacing hardware and software; (c) ongoing staff training; and (d) promotional activities and training for registry users. In the case of online registries, if the registry is developed in partnership with a private entity, it may be possible for the private entity to make the initial capital investment in the registry infrastructure and recoup its investment by taking a percentage of the service fees charged to registry users once the registry is operational.

200. Evidence shows, however, that even when the cost-recovery approach is followed, there is considerable room for variation among States, as that approach requires a determination of which costs should be included, which can be interpreted in many different ways. In one jurisdiction, for instance, fees for new registrations are calculated according to costs incurred by an average business for registration

<sup>223</sup> For further reference, see European Commerce Registers' Forum Report 2013, page 72.

activities over the life cycle of the business. In this way, potential amendments, apart from those requiring official announcements, are already covered by the fee that companies pay for new registration. This approach is said to result in several benefits, such as: (a) rendering most amendments free of charge, which encourages compliance among registered businesses; (b) saving resources related to fee payment for amendments for both the registry and the businesses; and (c) using the temporary surplus produced by advance payment for amendments to improve registry operations and functions. In other cases, jurisdictions have decided to charge fees below the actual costs registries incur in order to promote business registration. In these cases, however, the services provided to businesses would likely be subsidized with public funds.

201. In setting fees in a mixed registry system, it may be reasonable for the State to decide to charge higher fees to process applications and information requests submitted in paper form because they must be processed by registry staff, whereas electronic applications and information requests are directly submitted to the registry and are less likely to require attention from registry staff. Charging higher fees for paper-based registration applications and information requests will also encourage the user community to eventually transition to using the direct electronic registration and information request functionalities. However, in making this decision, States may wish to consider whether charging such fees may have a disproportionate effect on MSMEs that may not have easy access to electronic services.

**Recommendation 39: Fees charged for registry services**

The law should establish fees, if any, for registration and post-registration services at a level that is low enough that it encourages business registration, in particular of MSMEs,<sup>224</sup> and that, in any event, do not exceed a level that enables the business registry to cover the cost of providing those services.

**B. Fees charged for information**

202. In various jurisdictions, fees charged for the provision of information products are a more viable option for registries to derive self-generated funding. Such fees also motivate registries to provide valuable information to their clients, to maintain the currency of their records and to offer additional information services. A recommended good practice for jurisdictions aiming at improving this type of revenue generation would be to avoid charging fees for basic information services such as name or address searches, but to charge for more sophisticated information services or for those that are more expensive for the registry to provide (for example, direct downloading or providing bulk information). Since fees charged for information products are likely to influence users, such fees should be set at a level low enough to make the use of such products attractive to users.<sup>225</sup>

**Recommendation 40: Fees charged for information**

The law 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 at a level that enables the business registry to cover the cost of providing

<sup>224</sup> At its twenty-eighth session, the Working Group agreed to add the phrase “in particular of MSMEs” to emphasize further that business registration should be provided at no cost or for the lowest fee possible for such businesses (para. 119, [A/CN.9/900](#)).

<sup>225</sup> In some States, registries can derive up to forty per cent of their operating revenues by selling such information. For further reference, see *supra*, footnote 30, page 17.

those services,<sup>226</sup> for value-added information products produced or developed by the registry.

### C. Publication of fee amounts and methods of payment

203. Regardless of the approach taken to determine the applicable fees, if any, States should clearly establish the amount of the registration and information fees charged to registry users, as well as the acceptable methods of payment. Such methods of payment should include allowing users to enter into an agreement with the business registry to establish a user account for the payment of fees. States in which businesses can register directly online should also consider developing electronic platforms that enable businesses to pay online when filing their application with the registry (see para. 204 below). When establishing registration and information fees, one approach would be for the State to set out the fees in either a formal regulation or more informal administrative guidelines, which the registry can revise according to its needs. If administrative guidelines are used, this approach would provide greater flexibility to adjust the fees in response to subsequent events, such as the need to reduce the fees once the capital cost of establishing the registry has been recouped. The disadvantage of this approach, however, is that this greater flexibility could be abused by the registry to adjust the fees upwards unjustifiably. Alternatively, a State may choose not to specify the registry fees in such a regulation, but rather to designate the administrative or other authority that is mandated to set the registry fees.<sup>227</sup> The State may also wish to consider specifying in the law the types of service that the registry may or must provide free of charge.

#### Recommendation 41: Publication of fee amounts and methods of payment

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

### D. Electronic payments<sup>228</sup>

204. Once States have reached a certain level of technological maturity, they should consider developing electronic platforms that enable businesses to pay online, including the use of mobile payments,<sup>229</sup> to access registry services for which a fee is charged. This will require enacting appropriate laws concerning electronic payments in order to enable the registry to accept online payments. By way of example, such laws should address issues like who should be allowed to provide the service and under which conditions; access to online payment systems; liability of the institution providing the service; customer liability and error resolution. Furthermore, such laws should be consistent with the general policy of the country on financial services.

#### Recommendation 42: Electronic payments

The law should include legislation to enable and facilitate electronic payments.

<sup>226</sup> At its twenty-eighth session, the Working Group agreed that the notion of cost-recovery should be included in the drafting of this recommendation in order to make it more consistent with recommendation 39 (i.e. recommendation 37 in [A/CN.9/WG.I/WP.101](#), see para. 120, [A/CN.9/900](#)).

<sup>227</sup> For instance, in the United Kingdom registry fees are set by statutory fee regulations and confirmed by the Parliament. See <https://www.gov.uk/government/organisations/companies-house/about/about-our-services#about-fees>.

<sup>228</sup> At its twenty-eighth session, the Working Group agreed with the substance of this recommendation (recommendation 56 of [A/CN.9/WG.I/WP.101](#)) and the relevant commentary and to retain them in the legislative guide in an appropriate location (para. 143, [A/CN.9/900](#)).

<sup>229</sup> Access to mobile payments has been identified in the Working Group as of particular importance in respect of developing States and MSMEs (para. 52, [A/CN.9/900](#), see also para. 80 above).

## VIII. Liability and sanctions<sup>230</sup>

205. While each business must ensure that its registered information is kept as accurate as possible by submitting amendments in a timely fashion, the State should have the ability to enforce proper compliance with initial and ongoing registration requirements. Compliance with those requirements is usually encouraged through the availability of enforcement mechanisms such as the impositions of sanctions on businesses that fail to provide timely and accurate information to the registry (see paras. 158 and 159 above).<sup>231</sup>

### A. Liability for misleading, false or deceptive information

206. In order to ensure that reliable information is contained in the business registry, States should adopt provisions that establish responsibility for any misleading, false or deceptive information that is submitted to the registry upon registration or amendment of the registered information, and for failure to submit such information when it ought to have been submitted.<sup>232</sup>

#### **Recommendation 43: Liability for misleading, false or deceptive information**

The law should establish appropriate liability for any misleading, false or deceptive information that is provided to the business registry or for failure to provide the required information.<sup>233</sup>

### B. Sanctions

207. The establishment of fines for the breach of obligations related to business registration, such as late filing of periodic returns or failure to record changes in the registered information (see para. 160 above) are measures often adopted by States to enforce compliance. In several cases, fines can also represent a means of revenue generation. Their imposition, however, again requires a balanced approach. Several jurisdictions use fines as disincentives for businesses to operate outside of the legally regulated economy. In some cases, legislative provisions link the company's enjoyment of certain benefits to the timely filing of required submissions; in others, a series of increasing fines for late filing is enforced that can ultimately result in compulsory liquidation. However, if fines are used as the main source of funding for the registry, as occurs in some jurisdictions, it can have a detrimental effect on the efficiency of the registry. Since registries in such jurisdictions lose revenue as a result of improved business compliance, they may have weak motivation to improve the level of compliance. It is thus recommended that States should not consider fines as the main source of revenue of a business registry, but that they establish and impose fines at a level that encourages business registration without negatively affecting the funding of registries when compliance improves.

208. Since the recurrent use of fines to sanction the breach of initial and ongoing registration requirements might discourage businesses, in particular MSMEs, from

<sup>230</sup> At its twenty-eighth session, the Working Group agreed to reverse the order of recommendations 40 and 41 of [A/CN.9/WG.I/WP.101](#) so that the issue of "liability" would be discussed before "sanctions" as it was said to be a more logical structure (para. 126, [A/CN.9/900](#)). Further to that decision, the concepts expressed in para. 192 of [A/CN.9/WG.I/WP.101](#) (the opening paragraph of subsection "A. Sanctions") have been inserted into para. 205.

<sup>231</sup> For further reference, see Ireland, in D. Christow, J. Olaisen, *Business Registration Reform Case Studies, Ireland, 2009*, pages 15 ff. Failure to notify the information required after registration, however, will not affect the validity of the registration, but will have legal consequences on the business pursuant to the applicable law of the enacting State.

<sup>232</sup> The commentary has been modified in keeping with the views of the Working Group, as expressed at its twenty-eighth session (paras. 124 and 125, [A/CN.9/900](#)).

<sup>233</sup> This recommendation has been revised as agreed by the Working Group at its twenty-eighth session (para. 125, [A/CN.9/900](#)).

registering or properly maintaining their registration, States might consider establishing a range of possible sanctions which would apply depending on the seriousness of the violation or, in the case of MSMEs meeting certain conditions established by the law, to forego any sanction for businesses defaulting for the first time. One remedy States may wish to consider is to include in the registry information on sanctions imposed by a court or other designated public authority on directors that have breached their legal duties in managing the business, which may include barring a director from taking part in the management of the business, and on the businesses.

209. Moreover, a system of notices and warnings could be set up in order to alert businesses of the consequences for failing to comply with specific requirements of business registration (for instance, late filing of periodic returns). When the registry is operated electronically, automated warnings and notices could be periodically sent out to registered businesses. In addition, notices and warnings could be visibly displayed on the premises of the registration offices and routinely published in newspapers and magazines. In order to best assist businesses, in particular MSMEs, States could also consider designing training programs, in particular addressing micro and small entrepreneurs, to raise awareness of businesses regarding their responsibility to comply with registration requirements and to advise them on how to discharge that responsibility.<sup>234</sup>

#### **Recommendation 44: Sanctions**

The law should:

(a) Establish 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 law, including the provision of accurate and timely information to the business registry;<sup>235</sup>

(b) Include provisions pursuant to which a breach of obligation may be forgiven provided it is rectified within a specified time; and

(c) Require the registrar to ensure broad publication of those rules.

### **C. Liability of the business registry**

210. The law of the State should provide for the allocation of responsibility for loss or damage caused by an error or through negligence in the administration or operation of the business registration and information system.<sup>236</sup>

211. As noted above, users of the registry bear the responsibility for any errors or omissions in the information contained in an application for registration or a request for an amendment submitted to the registry, and bear the burden of making the necessary corrections. If applications for registration and amendment requests are directly submitted by users electronically without the intervention of registry staff, the potential liability of the enacting State would, therefore, be limited to system malfunction, since any other error would be attributable to users. However, if paper-based application forms or amendment requests are submitted, the State must

<sup>234</sup> The Secretariat suggests the inclusion of this new paragraph in order to address concerns expressed at the twenty-eighth session of the Working Group that non-compliance with obligations related to business registration requires a more graduated approach for the treatment of violations of differing levels of seriousness (paras. 100, 122 and 123, [A/CN.9/900](#)).

<sup>235</sup> The recommendation has been revised in keeping with the changes made to the commentary in light of the views of the Working Group expressed its twenty-eighth session (paras. 100, 122 and 123, [A/CN.9/900](#)).

<sup>236</sup> In Norway, for instance, the registrar may be liable if it supplies incorrect information in transcripts, certificates or public notices, which causes damage to persons who relied on the incorrect information. See The Business Enterprise Registration Act (Act of 15 June 2001, No. 59 and Act of 19 December 2003, No. 120), § 10-3, available at [www.brreg.no](http://www.brreg.no). In some legal traditions, the liability of the registrar for causing damage through the negligent performance of its obligations is usually dealt with under a general legal doctrine requiring a duty of care.

address the existence and extent of its potential liability for the refusal or failure of the registry to enter correctly information contained in the application or amendment.

212. Further, it should be made clear to registry staff and registry users, *inter alia*, that registry staff are not allowed to give legal advice on the legal requirements for effective registration and amendment requests, or on their legal effects, nor should staff make recommendations on which intermediary (if any) the entrepreneur should choose to perform its registration or any amendments thereto. However, registry staff should be able to give practical guidance with respect to the registration and amendment request processes. In States that opt for a judiciary-based registry system, this measure should of course not be applicable to the judges, notaries and lawyers entrusted with the registration procedures.

213. While it should be made clear that registry staff are not allowed to give legal advice (subject to the type of registration system of the State), the State will also need to address whether and to what extent it should be liable if registry staff nonetheless provide incorrect or misleading information on the requirements for effective registration and amendment requests or on the legal effects of registration.

214. In addition, in order to minimize the potential for misconduct by registry staff, the registry should consider establishing certain practices such as instituting financial controls that strictly monitor staff access to cash payments of fees and to the financial information submitted by clients who use other modes of payment. Such practices may also include the institution of audit mechanisms that regularly assess the efficiency and the financial and administrative effectiveness of the registry. Additional mechanisms to limit the potential for misconduct by registry staff are considered in paragraph 229 below.<sup>237</sup>

215. If States accept legal responsibility for loss or damage caused by system malfunction or error or misconduct by registry staff, they may consider whether to allocate part of the registration and information fees collected by the registry to a compensation fund to cover possible claims, or whether the claims should be paid out of general revenue. States might also decide to set a maximum limit on the monetary compensation payable in respect of each claim.<sup>238</sup>

#### **Recommendation 45: Liability of the business registry**

The law 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**

### **A. Deregistration<sup>239</sup>**

216. Deregistration of a business means that a notation has been made in the registry that it is no longer registered, and that it has ceased to operate. In such instances, the

<sup>237</sup> This new paragraph consists of former subparagraphs (b) and (c) of para. 229 (para. 212 of [A/CN.9/WG.I/WP.101](#)). Further to a comment of the Working Group at its twenty-eighth session that those subparagraphs were not properly placed in the context of the Section “Alteration or deletion of information” and could be moved elsewhere (see also footnote 255 below), the Secretariat suggests including that part of the commentary here (para. 139, [A/CN.9/900](#)).

<sup>238</sup> A suggestion was made during the twenty-eighth session of the Working Group that the text of the UNCITRAL Model Law on Secured Transactions might provide guidance for the discussion of a legislative recommendation on the liability of the business registry (para. 127, [A/CN.9/900](#)). Article 32 of that text sets out three optional approaches to a model provision establishing a limitation on the liability of the secured transactions registry, but the Secretariat suggests that this reference in the commentary to the possibility of setting a limitation on the liability of the business registry may be sufficient for the purposes of the present legislative guide.

<sup>239</sup> At its twenty-eighth session, the Working Group requested the Secretariat to adjust the commentary in paras. 216 to 221 (paras. 201 to 205 of [A/CN.9/WG.I/WP.101](#)) by: (a) ensuring

public details in respect of the business usually remain visible on the register, but the status of the business has been changed to indicate that it has been removed or that the business is no longer registered. Deregistration occurs once the business, for whatever reason, has permanently ceased to operate, including as a result of a merger, or forced liquidation due to bankruptcy, or in cases where applicable law requires the registrar to deregister the business for failing to fulfil certain legal requirements.

217. States should consider the role of the registry in deregistering a business. In most jurisdictions, deregistration of a business is included as one of the core functions of the registry. It appears to be less common, however, to entrust the registry with the decision whether or not a business should be deregistered as a result of insolvency proceedings or winding-up.<sup>240</sup> In jurisdictions where this function is included, statutory provisions determine the conditions that result in deregistration and the procedures to follow in carrying it out.

218. Because deregistration pursuant to winding-up or insolvency proceedings of a business are matters regulated by laws other than those governing the registration of a business and since such laws vary greatly from State to State, this legislative guide refers only to deregistration of those solvent businesses that the enacting State has deemed dormant or no longer in operation pursuant to the legal regime governing the business registry. In such cases, most States allow for deregistration to be carried out either upon the request of the business (often referred to as “voluntary deregistration”) or at the initiative of the registry (frequently referred to as “striking-off”). In order to avoid difficulties for the registrar in determining when an exercise of the power to deregister is warranted because a business is a dormant solvent business or when is no longer in operation, the law should clearly establish the conditions that must be fulfilled. This approach will also avoid a situation where that power may be exercised in an arbitrary fashion. Permitting a registrar to carry out deregistration at its own initiative but pursuant to clear rules permits the maintenance of a current registry and avoids cluttering the record with businesses that do not carry on any activity. When deregistration is initiated by the registrar,<sup>241</sup> there must be reasonable cause to believe that a registered business has not carried on business or that it has not been in operation for a certain period of time. Such a situation may arise, for example, when the State requires the business to submit periodic reports or annual accounts and a business has failed to comply within a certain period of time following the filing deadline. In any case, the ability of the registrar to deregister a business should be limited to ensuring compliance with clear and objective legal requirements for the continued registration of a business. In several States, before commencing deregistration procedures, the registrar must inform the business in writing of its intended deregistration and allow sufficient time for the business to reply and to oppose that decision. Only if the registrar receives a reply that the business is no longer active or if no reply is received within the time prescribed by law will the business be deregistered. A common requirement for a deregistration to become effective is that notice of it be published.<sup>242</sup>

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that it was consistent with the definition of “deregistration” provided in paragraph 13 of the present guide; (b) differentiating “striking off” by the registry from winding-up; and (c) clarifying the purpose and scope of the entire section (see paras. 129 and 130, and 133, [A/CN.9/900](#)).

<sup>240</sup> See *supra*, footnote 66, page 34, and footnote 44, pages 40 ff.

<sup>241</sup> The Secretariat suggests adding the first three sentences at the beginning of this paragraph (formerly the second part of para. 202 of [A/CN.9/WG.I/WP.101](#)) further to a request of the Working Group at its twenty-eighth session that the section on deregistration should differentiate between “striking off” by the registrar and winding-up and dissolution of a business and that it should not focus on deregistration as a result of these latter procedures (para. 130, [A/CN.9/900](#)).

<sup>242</sup> For further reference, see Lexis PSL Corporate, Striking off and dissolution overview, [www.lexisnexis.com/uk/lexispsl/corporate/document/391387/55YB-2GD1-F186-H4MP-00000-00/Strikingoffanddissolutionoverview](http://www.lexisnexis.com/uk/lexispsl/corporate/document/391387/55YB-2GD1-F186-H4MP-00000-00/Strikingoffanddissolutionoverview). See also T. F. MacLaren, in Eckstrom’s *Licensing in Foreign and Domestic Operations: Joint Ventures*, 2015 [as it appears in Westlaw], page 30.

219. Deregistration may also be carried out upon the request of the business, which most often occurs if the business ceases to operate or has never operated.<sup>243</sup> States should specify in which circumstances businesses can apply for deregistration and which persons associated with the business are authorized to request deregistration on behalf of the business. Voluntary deregistration is not an alternative to more formal proceedings, such as winding-up or insolvency, when those proceedings are prescribed by the law of the State in order to liquidate a business.

**Recommendation 46: Voluntary deregistration**

The law should:

- (a) Specify the conditions under which a business can request deregistration; and
- (b) Require the registrar to deregister a business that fulfils those conditions.

**Recommendation 47: Deregistration at the initiative of the registrar**<sup>244</sup>

The law should specify the conditions pursuant to which a registrar can deregister a business at its own initiative.

**B. Process of deregistration**

220. Regardless of whether the deregistration is requested by the business or initiated by the registrar, where the business is registered as a separate entity, the registry must issue a public notice of the proposed deregistration and when that deregistration will become effective. Such an announcement is usually published on the website of the registry or in official publications such as the National Gazette or in both. This procedure ensures that businesses are not deregistered without providing creditors and other interested parties (e.g. members of the business) the opportunity to object to the procedure in order to protect their rights (the usual practice is to submit a written complaint corroborated by any required evidence to the registry). If there is no objection to the procedure, after the period indicated in the announcement has passed, a notation is made in the registry that the business is deregistered. It should be noted that pending completion of the deregistration procedure, the business remains in operation and will continue to carry on its activities.

221. Registries should retain historical information on businesses that have been deregistered, leaving it to the State to decide the appropriate length of time for which such information should be preserved (see paras. 224 to 227 below). The length of the period of preservation is likely to be influenced by the way in which the registry is structured and operated. Fully electronic registries usually allow for the information to be preserved indefinitely, if the registries have been developed according to technical standards of scalability and flexibility (see paras. 71 to 75 above). When the registry is paper-based or mixed, preserving documents indefinitely may not be a feasible approach, due to the high cost of storage involved. It may thus be desirable for States to establish a minimum period of time for the retention of such documents (see paras. 224 to 227 below). When the State has adopted a unique identifier system, the information related to the business will remain linked to that identifier even if the business is deregistered.

**Recommendation 48: Process of deregistration**

<sup>243</sup> The Secretariat has revised this paragraph of the commentary in keeping with the approach suggested by the Working Group at its twenty-eighth session (paras. 130 and 133, [A/CN.9/900](#)).

<sup>244</sup> In keeping with its revision of the section on “Deregistration”, the Secretariat has revised the title of the recommendation and subparagraph (a) to reflect the changes to the commentary as well as the decision of the Working Group at its twenty-eighth session that the recommendation should clarify that deregistration is subject to the law of the enacting State (para. 131, [A/CN.9/900](#)).

The law should provide that:

- (a) A written notice<sup>245</sup> 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.

### C. Time of effectiveness of business deregistration

222. The time of effectiveness of the deregistration should be established by way of law, and the status of the business in the registry should indicate the time and date of its effect, in addition to the reasons therefor. The registrar should enter such information in the registry as soon as practicable so that the users of the registry are apprised of the changed status of the business without undue delay.

#### Recommendation 49: Time and effectiveness of deregistration

The law 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 must be publicized in accordance with the law; and
- (c) Specify the legal effects of deregistration.

### D. Reinstatement of registration

223. In several States, it is possible to reinstate the registration of a business that has been deregistered at the initiative of the registrar or upon the request of the business,<sup>246</sup> provided that the request to the registrar for reinstatement meets certain conditions (in some States this latter procedure is defined as “administrative restoration”) or is made by way of a court order. In certain States, both procedures are available and choosing either of them usually depends on the reason for which the business was deregistered or the purpose of restoring the business. The two procedures usually differ in some key aspects, such as who can apply to have the business restored, which business entities are eligible for restoration and the time limit for filing an application for restoration. The requirements for “administrative restoration” in States that provide for both procedures are often stricter than those for restoration by court order. For instance, in such States, only an aggrieved person, which may include a former director or member, can submit an application to the registrar,<sup>247</sup> and the time limit within which the application can be submitted to the registry may be shorter than the time granted to apply for a court order.<sup>248</sup> Regardless of the method(s) chosen by the State to permit reinstatement of the registration of a business, once the registration has been reinstated, the business is deemed to have continued its existence as if it had not been deregistered, which includes maintaining

<sup>245</sup> Further to a suggestion at the twenty-eighth session of the Working Group that the term “written” should be understood as applicable to both electronic and paper notices (para. 132, A/CN.9/900), the Secretariat has implemented that approach throughout the draft legislative guide (in this regard, see para. 13 above).

<sup>246</sup> At its twenty-eighth session, the Working Group requested the Secretariat to redraft paragraph 223 (para. 206 of A/CN.9/WG.I/WP.101) and recommendation 50 (recommendation 46 of A/CN.9/WG.I/WP.101) to clearly state what pertains to the processes and law of the business registry and what pertains to other areas of the law (para. 134, A/CN.9/900). Further to the redrafting of paragraphs 216 to 221, the Secretariat has inserted the phrase “at the initiative of the registry or upon request of the business”.

<sup>247</sup> See, for instance, the United Kingdom in Companies House, Strike off, dissolution & restoration, 2015, pages 12 and 17, available at <https://www.gov.uk/government/organisations/companies-house>.

<sup>248</sup> See, for instance, Ireland, in <https://www.cro.ie/Termination-Restoration/Overview>.

its former business name. In cases where the business name is no longer available as having been assigned to another business registered in the interim, procedures are usually established by the State to govern the change of name of the reinstated business.

#### **Recommendation 50: Reinstatement of registration**

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

## **X. Preservation of records**

### **A. Preservation of records<sup>249</sup>**

224. As a general rule, the information in the business registry should be kept indefinitely. The enacting State should decide on the appropriate length of time for which such information should be kept and may choose to apply its general rules on the preservation of public documents.

225. However, the length of the preservation period for records is most often influenced by the way the registry operates, and whether the registry is electronic, paper-based or a mixed system. Those States with paper-based or mixed registration systems, for instance, must decide the length of time for which the paper documents submitted to it should be kept by the registry, in particular in situations where the relevant business has been deregistered (see para. 221 above). Considerations relating to the availability of storage space and the expense of storing such documents would likely play a role in that decision.

226. In the case of electronic registries, the preservation of original documents submitted in hard copy for extended periods of time might not be necessary, provided that the information contained in such documents has been recorded in the registry or that the paper documents have been digitized (through scanning or other electronic processing).

227. Regardless of the way in which the business registry is operated, providing prospective future users with long-term access to information maintained in the registry is of key importance, not only for historical reasons, but also to provide evidence of past legal, financial and management issues relating to a business that might still be of relevance. The preservation of electronic records is likely to be easier and more cost-effective than preserving paper records. In order to minimize the cost and considerable storage space required for the preservation of documents in hard copy, paper-based registries that cannot convert the documents received into an electronic form may adopt alternative solutions (for instance, the use of microfilm) that allow for the transmission, storage, reading, and printing of the information.

#### **Recommendation 51: Preservation of records**

The law should provide that documents and information submitted by the registrant and the registered business, including information in respect of deregistered businesses, should be preserved by the registry so as to enable the information to be retrieved by the registry and other interested users.<sup>250</sup>

<sup>249</sup> The Secretariat has revised the commentary (previously paras. 208 to 210 of [A/CN.9/WG.I/WP.101](#)) further to comments made at the twenty-eighth session of the Working Group that suggesting a time period for preservation of electronic and paper records was not appropriate and that the commentary to this recommendation should instead focus on the importance of preserving the information (para. 137, [A/CN.9/900](#)).

<sup>250</sup> At its twenty-eighth session, the Working Group requested the Secretariat to address concerns in respect of this recommendation's reference to "perpetuity" and the difference between the time requirements for print and electronic preservation (para. 137, [A/CN.9/900](#)). Subparagraphs (b) and (c) of the recommendation have thus been deleted and the remainder of the text has been

## B. Alteration or deletion of information<sup>251</sup>

228. The law should establish that registry staff may not alter or remove registered information, except as specified by law and that any change can be made only in accordance with the applicable law. However, to ensure the smooth functioning of the registry, in particular when registrants submit registration information using paper forms, registry staff should be authorized to correct its own clerical errors (see paras. 30, 48 and 150 above) made in entering the information from the paper forms into the registry record. If this approach is adopted, notice of this or any other correction should promptly be sent to the registrant (and a notification of the nature of the correction and the date it was effected should be added to the public registry record linked to the relevant business). Alternatively, the State could require the registrar to notify the registrant of its error and that person could then submit an amendment free of charge.

229. Further, the potential for misconduct by registry staff should be minimized by: (a) designing the registry system to make it impossible for registry staff to alter the time and date of registration or any registered information entered by a registrant; and (b) designing the registry infrastructure so as to ensure that it can preserve the information and the documents concerning a deregistered business for as long as prescribed by the law of the enacting State.<sup>252</sup>

### **Recommendation 52: Alteration or deletion of information**

The law should provide that the registrar does not have the authority to alter or delete information contained in the business registry record except in those cases specified in the law.

## C. Protection against loss of or damage to the business registry record

230. To protect the business registry from the risk of loss or physical damage or destruction, the State should maintain back-up copies of the registry record. Any rules governing the security of other public records in the enacting State might be applicable in this context.

231. The threats that can affect an electronic registry also include criminal activities that may be committed through the use of technology. Providing effective enforcement remedies would thus be an important part of a legislative framework aimed at supporting the use of electronic solutions for business registration. Typical issues that should be addressed by enacting States would include unauthorized access or interference with the electronic registry; unauthorized interception of or interference with data; misuse of devices; fraud and forgery.<sup>253</sup>

### **Recommendation 53: Protection against loss of or damage to the business registry record**

The law should:

(a) Require the business registry to protect the registry records from the risk of loss or damage; and

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adjusted accordingly.

<sup>251</sup> At its twenty-eighth session, the Working Group requested the Secretariat to change the text of this recommendation (recommendation 49 of [A/CN.9/WG.I/WP.101](#)) and the commentary to “alteration” instead of “amendment” (para. 138, [A/CN.9/900](#)).

<sup>252</sup> Further to a request of the Working Group at its twenty-eighth session, former subparagraphs (b) and (c) of paragraph 212 of [A/CN.9/WG.I/WP.101](#) have been relocated to the commentary to recommendation 45 (para. 139, [A/CN.9/900](#)) and what was previously subparagraph 43(c) of [A/CN.9/WG.I/WP.93/Add.1](#) was reinstated here as subparagraph (b).

<sup>253</sup> See *supra*, footnote 30, page 49.

(b) Establish and maintain back-up mechanisms to allow for any necessary reconstruction of the registry record.

#### **D. Safeguard from accidental destruction**

232. An aspect that may warrant consideration by States is that of natural hazards or other accidents that can affect the processing, collection, transfer and protection of the data housed in the electronic registry and under the responsibility of the registry office. Given user expectations that the business registry will function reliably, the registrar should ensure that any interruptions in operations are brief, infrequent and minimally disruptive to users and to States.<sup>254</sup> For this reason, States should devise appropriate measures to facilitate protection of the registry. One such measure could be to develop a business continuity plan that sets out the necessary arrangements for managing disruptions in the operations of the registry and ensures that services to users can continue. In one State, for instance, the registry has established a “risk register”, i.e. a dynamic document that is updated as changes in the operation of the registry occur. Such a risk register allows the registry staff to identify possible risks for the registration service as well as the appropriate mitigation measures. Designated staff are required to report on an annual basis the threats to the registry and the relevant actions taken to mitigate such threats.<sup>255</sup>

#### **Recommendation 54: Safeguard from accidental destruction**

The law 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.

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<sup>254</sup> Ibid., page 49.

<sup>255</sup> For instance, this is the practice in the United Kingdom Companies’ House.

## Annex\*

### The underlying legislative framework

#### A. Changes to underlying laws and regulations

1. Business registration reform can entail amending either primary legislation or secondary legislation or both. Primary legislation concerns texts such as laws and codes that must be passed by the legislative bodies of a State. Reforms that consider this type of legislation thus require the involvement of the legislature and, for this reason, can be quite time-consuming. Secondary legislation is that body of texts composed of regulations, directives and other similar acts made by the executive branch within the boundaries laid down by the legislature. Reform of secondary legislation does not need to be reviewed by the legislature and thus it can be carried out in a shorter time frame. Therefore, when domestic circumstances allow, the use of secondary legislation may be a more attractive option than the reform of primary legislation.

2. Business registration reform can entail amending different aspects of the domestic legislation of a State. In addition to legislation that is meant to prescribe the conduct of business registration, States may need to update or change laws that may simply affect the registration process in order to ensure that such laws respond to the needs of MSMEs and other businesses. There is no single solution in this process that will work for all States, since the reforms will be influenced by a State's legislative framework. However, the reforms should aim at developing a domestic legal framework that supports business registration with features such as: transparency and accountability, clarity of the law and the use of flexible legal entities.

3. Regardless of the approach chosen and the extent of the reform, changes in the domestic legal framework should carefully consider the potential costs and benefits of this process, as well as the capacity and the will of the government and the human resources available. An important preparatory step of a reform programme involves a thorough inventory and analysis of the laws that are relevant to business registration<sup>1</sup> with a view to evaluating the need for change, the possible solutions, and the prospects for effective reform. In some cases, this assessment could result in deferring any major legislative reform, particularly if significant gains to the process of simplification can be achieved by the introduction of operational tools.<sup>2</sup> Once it has been decided what changes should be made and how, ensuring their implementation is equally important. In order to avoid the possible risk of unimplemented reforms, the government, the reform steering committee and the project teams should carefully monitor the application of the new legal regime. The following paragraphs offer some examples of approaches that can be taken to streamline domestic laws and regulations with a view to simplifying business registration and to making it more accessible to MSMEs.

#### B. Clarity of the law

4. For jurisdictions wishing to facilitate business start-up, in particular of MSMEs, it is important to review the existing legal framework so as to identify possible impediments to the simplification of the registration process. The nature of the reform

\* At its twenty-eighth session, the Working Group agreed with the substance of the sections reproduced in this Annex (Chapter XI, Sections A through E of [A/CN.9/WG.I/WP.101](#)) and recommendations 52 to 54 of [A/CN.9/WG.I/WP.101](#), but decided to move them into an annex to the legislative guide (para. 142, [A/CN.9/900](#)).

<sup>1</sup> See World Bank Group, Small and Medium Enterprise Department, *Reforming Business Registration Regulatory Procedures at the National Level, A Reform Toolkit for Project Teams*, 2006, page 40.

<sup>2</sup> *Ibid.*, page 74.

would depend on the status of the domestic legal framework, and a variety of examples based on States' experiences are available.<sup>3</sup>

5. These reforms may include decisions by States to shift the focus of the law towards privately held businesses, as opposed to public limited companies, particularly if the former currently account for the majority of the firms in the State. Reforms could also include the decision to move the legal provisions pertaining to small businesses to the beginning of any new law on business forms in order to make such provisions easier to find or to use simpler language in any updated legislation.<sup>4</sup>

6. One particularly relevant reform that would especially serve the purpose of clarity of the law would be a comprehensive review of the legal framework on business registration and a resulting unification of the various rules into a single piece of legislation. This could also allow for some flexibility to be built into the system, with the adoption of certain provisions as regulations or simply providing for the development of the necessary legal basis in order to introduce legal obligations by way of regulation at a later stage.<sup>5</sup>

#### **Recommendation 1/Annex: Clarity of the law**

The law 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.

### **C. Flexible legal forms<sup>6</sup>**

7. Evidence suggests that entrepreneurs tend to choose for their business the simplest legal form available when they decide to register and that States with rigid legal forms have an entry rate considerably lower than States with more flexible requirements. In States that have introduced new and simplified legal forms for business, the registration process for those new business types is much simpler. Entrepreneurs are not required to publish their rules governing the operation or management of their business in the Official Gazette; instead, these can be posted online through the business registry; and the involvement of a lawyer, notary or other intermediary is not obligatory for the preparation of documents or conducting a business name search.<sup>7</sup>

8. Legislative changes to abolish or reduce the minimum paid in capital requirement<sup>8</sup> for businesses also tend to facilitate MSME registration, since micro and small businesses may have limited funds to meet a minimum capital requirement, or they may be unwilling or unable to commit their available capital in order to establish their business. Instead of relying on a minimum capital requirement to protect creditors and investors, some States have implemented alternative approaches such as the inclusion of provisions on solvency safeguards in their legislation; conducting solvency tests; or preparing audit reports that show that the amount a company has invested is enough to cover the establishment costs.<sup>9</sup>

<sup>3</sup> Ibid., para. 65.

<sup>4</sup> Ibid., para. 66. For further details, see para. 56, [A/CN.9/WG.I/WP.85](#).

<sup>5</sup> For further reference, see Investment Climate (World Bank Group), Business Registration Reform case study: Norway, 2011.

<sup>6</sup> The Working Group may wish to note parallel work that it is undertaking in respect of an UNCITRAL limited liability organization ([A/CN.9/WG.I/WP.99](#) and [A/CN.9/WG.I/WP.99/Add.1](#)).

<sup>7</sup> For further reference, see, for example, Greece in V. Saltane, J. Pan, Getting Down to Business: Strengthening Economies through Business Registration Reforms, 2013, page 2, as well as other examples, such as Colombia (see [A/CN.9/WG.I/WP.83](#)).

<sup>8</sup> For a more thorough discussion on minimum capital requirements and simplified business entities, see paras. 75 to 79, [A/CN.9/825](#) as well as paras. 46 and 47, [A/CN.9/WG.I/WP.99/Add.1](#).

<sup>9</sup> For further details, see para. 28, [A/CN.9/WG.I/WP.85](#).

9. Introducing new simplified forms of limited liability and other types of businesses is often coupled with a considerable reduction or complete abolition of the minimum capital requirements that other legal forms of business are required to deposit upon formation. In several States that have adopted simplified business entities, the minimum capital requirement has been abolished completely, and in other cases, initial registration or incorporation has been allowed upon deposit of a nominal amount of capital. In other States, progressive capitalization has been introduced, requiring the business to set aside a certain percentage of its annual profits until its reserves and the share capital jointly total a required amount.<sup>10</sup> In other cases, progressive capitalization is required only if the simplified limited liability entity intends to graduate into a full-fledged limited liability company, for which a higher share capital would be required. There is however no obligation to do so.<sup>11</sup>

10. Another reform that would be conducive to improved business registration is to provide freedom to entrepreneurs to conduct all lawful activities without requiring them to specify the scope of their venture.<sup>12</sup> This is particularly relevant in those jurisdictions where entrepreneurs are required to list in their articles of association the specific activity or activities in which they intend to engage so as to restrain firms from acting beyond the scope of their goals and, according to certain literature, to protect shareholders and creditors. Allowing for the inclusion in the articles of association (or other rules governing the operation or management of a business) of a so-called “general purpose clause” which states that the company’s aim is to conduct any trade or business and grants it the power to do so, facilitates business registration. This approach is far less likely to require additional or amended registration in the future, as businesses may change their focus since entrepreneurs could change activities without amending their registration, provided that the new business activity is a lawful one and that the appropriate licences have been obtained. Additional options to the inclusion of a general purpose clause, which would support the same goal, could be passing legislation that makes unrestricted objectives the default rule in the jurisdiction, or abolishing any requirement for businesses, in particular those that are privately held, to state objectives for registration purposes.<sup>13</sup>

#### **Recommendation 2/Annex: Flexible legal forms**

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

### **D. Primary and secondary legislation to accommodate the evolution of technology**

11. Since information technology is a field marked by rapid technological evolution, it would be advisable to establish guiding legal principles in the primary legislation, leaving secondary legislation to stipulate the specific provisions regulating the detailed functioning and the requirements of the system.<sup>14</sup> Once the business registration process is fully automated, States should establish provisions (preferably in the secondary legislation) or policies that discipline

<sup>10</sup> See Italy, para. 29, [A/CN.9/WG.I/WP.85](#).

<sup>11</sup> For further reference, see, for instance, Germany, presentation by Dr. Leif Boettcher, Federal Ministry of Justice on “Simplified business forms in the context of small and medium enterprises, the German approach” at the UNCITRAL International Colloquium on Microfinance (16-18 January 2013), available at <http://www.uncitral.org/uncitral/en/commission/colloquia/microfinance-2013-papers.html>.

<sup>12</sup> This is a feature on which the Working Group has already agreed in its discussion of a legislative text on a simplified business entity (para. 70, [A/CN.9/825](#)). See also paras. 31-34, [A/CN.9/WG.I/WP.99](#).

<sup>13</sup> For further details, see para. 52, [A/CN.9/WG.I/WP.85](#).

<sup>14</sup> See main text, *supra*, footnote 30, page 7.

government-to-government data exchange in order to avoid any lack of cooperation among different agencies.

**Recommendation 3/Annex: Primary and secondary legislation to accommodate the evolution of technology**

The law 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.

**E. Electronic documents and electronic authentication methods**

12. Entering information into an online registry is a business-to-government transaction that should be subject to the same treatment, under domestic legislation, as any other electronic transaction.<sup>15</sup> Therefore, if an appropriate domestic legislative framework for electronic transactions is not in place, a preliminary step for a reform aimed at supporting electronic business registration would be to recognize and regulate the use of such electronic transactions. Among other things, States should adopt laws permitting electronic signatures and the submission of electronic documents.<sup>16</sup> In some States, for instance, the use of an advanced electronic signature is mandatory when transmitting information to a business registry. When laws on electronic communication are enacted, they should establish, at minimum, principles of non-discrimination, technological neutrality and functional equivalence allowing for equal treatment of paper-based and electronic information. The principle of non-discrimination ensures that a document would not be denied legal effect, validity or enforceability solely on the grounds that it is in electronic form. The principle of technological neutrality mandates the adoption of provisions that are neutral with respect to the technology used. The principle of functional equivalence lays out criteria under which electronic communications and electronic signatures may be considered equivalent to paper-based communications and hand-written signatures.

13. Further, it would be advisable that the laws include provisions to mitigate the risks that the use of ICT can carry with it and that can affect the validity, and in certain jurisdictions the legal validity, of the information transmitted through the electronic means. The most common risks include: confirming the identity of the entrepreneur filing for registration (referred to as “authentication”); preventing conscious or unconscious alteration of information during transmission (referred to as “integrity”); ensuring that sending and receiving parties cannot deny having sent or received the transferred message (referred to as “non-repudiation”) and preventing disclosure of information to unauthorized individuals or systems (referred to as “confidentiality”).<sup>17</sup> In those States where the law does not require business registries to check the veracity of the information submitted during the registration process, these risks may be more problematic as it can be relatively easy to manipulate registration systems and filing processes.

14. Verifying the identity of the registrant and ensuring the integrity of the application and the supporting information are key elements to ensure trust in ICT-supported registration systems and their corresponding use. Consequently, States should carefully consider the requirements that electronic signatures and electronic

<sup>15</sup> See A. Lewin, L. Klapper, B. Lanvin, D. Satola, S. Sirtaine, R. Symonds, *Implementing Electronic Business Registry (e-BR) Services, Recommendations for policymakers based on the experience of EU Accession Countries*, 2007, page 47.

<sup>16</sup> UNCITRAL has adopted several texts dealing with electronic commerce. Those texts and relevant information on them can be found on the UNCITRAL website at: [http://www.uncitral.org/uncitral/uncitral\\_texts/electronic\\_commerce.html](http://www.uncitral.org/uncitral/uncitral_texts/electronic_commerce.html) (see also para. 89 above).

<sup>17</sup> See main text, *supra*, footnote 30, page 12.

documents should have in order to minimize any risk of corporate identity theft<sup>18</sup> and the transmission of invalid information.

15. Whether or not the adoption of legislation on electronic signatures is premature due to the technological infrastructure of the State, various other techniques can prevent corporate identity theft and ensure security. The experience of several States has laid the groundwork for practices that may be replicated in other regions. Simple methods include the use of user names and passwords; electronic certificates; biometric verification (for example, fingerprints); monitoring systems and email systems that notify registered users about changes or whenever documents are filed on their business record; and the implementation or increase of penalties for false or misleading information submitted to the commercial registries. In order to facilitate MSME registration, States may wish to opt for the adoption of such simple ways of ensuring the authentication of the identity of business entrepreneurs.

#### **F. Dispatch and receipt of electronic messages<sup>19</sup>**

16. Another issue to consider when implementing a business registry through the use of ICT solutions is that electronic registries may make it difficult to ascertain the time and place of dispatch and receipt of information. This is an aspect that may acquire relevance due to the time sensitivity of certain submissions, such as establishing the exact time and place at which a business has been registered. For this reason, it is important to have clear rules that define the time of “dispatch” and “receipt” of electronic messages. If such rules are not clearly defined in a State’s legislative framework, or if they are not defined with the specificity required for the purposes of time-sensitive registration applications, then ad hoc laws addressing the issues of dispatch and receipt may be required.

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<sup>18</sup> Corporate identity theft can occur through the theft or misuse of key business identifiers and credentials, manipulation or falsification of business filings and records, and other related criminal activities. Despite the use of the term “corporate”, corporations are not the only business entities that are victimized by this crime. Any type of business or organization of any size or legal structure, including sole proprietorships, partnerships and limited liability companies can be targets of business identity theft.

<sup>19</sup> See supra, footnote 15, page 48.