



**United Nations Commission on
International Trade Law**
Working Group I (MSMEs)
Twenty-eighth session
New York, 1-9 May 2017

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.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.¹

2. As the Working Group may recall, document [A/CN.9/WG.I/WP.92](#) was 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 organization² — as well as any other materials adopted by UNCITRAL in respect of MSMEs. In summary, [A/CN.9/WG.I/WP.92](#) 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 enter 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 through:
 - a. Creating flexible and simplified business forms for MSMEs;³ and

¹ Para. 1, [A/CN.9/WG.I/WP.93](#).

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

³ 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. Ensuring that business registration is accessible, simple and streamlined.

3. In light of that general approach, in order to encourage entrepreneurs to start their business in, or to migrate their business into, 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. Many studies support the approach that faster and simpler procedures to start a business will assist in business formation and migration to 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.⁴ 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.⁵

4. Further to discussion in the Working Group and decisions made at its twenty-fifth (October 2015) and twenty-sixth sessions (April 2016)⁶ of the Working Group, the Secretariat has prepared this draft legislative guide, which addresses legal, technological, administrative and operational issues involved in the creation and implementation of a business registration system. It combines 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. In addition, the Secretariat has made certain light editorial adjustments necessary to facilitate the creation of a single text, as well as including changes to the text arising from decisions made by the Working Group in those sessions. The footnotes contained throughout the text guide the reader in identifying where each paragraph appeared in the previous texts, as well as changes made as a result of decisions made by the Working Group. Further, although this text has in some cases changed the order of the recommendations, in order to avoid confusion, each recommendation in the present draft guide bears the same number that it did in document A/CN.9/WG.I/WP.96 and Add.1. Once the Working Group has settled upon the preferred order of the recommendations, they will be renumbered consecutively and any cross-references will be adjusted accordingly.

A. Purpose of the present guide

5. 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

⁴ See also A/CN.9/WG.I/WP.85, which provides information on several best practices in respect of business registration.

⁵ Para. 2, A/CN.9/WG.I/WP.93.

⁶ See para. 73, A/CN.9/860 and para. 51, A/CN.9/866.

registry, both at the outset and throughout the course of their lifespan.⁷ This 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 and/or clients and reducing risk when entering into business partnerships.⁸ In performing its functions, the registry can thus play a key role in the economic development of a State.⁹ 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 context¹⁰ by facilitating access to business information of interested users from foreign jurisdictions (see also paras. 111-116 below).¹¹

6. 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 legislation. 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.¹² These features are reflected as recommendations in this legislative guide.

7. This draft 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.¹³ 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. 111-116 below).¹⁴

8. This 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 promote the registration of MSMEs. Establishing a single interface for business registration and

⁷ See L. Klapper, R. Amit, M. F. Guillén, J. M. Quesada, *Entrepreneurship and Firm Formation Across Countries*, 2007, page 8.

⁸ See World Bank and International Finance Corporation, *Doing Business*, 2015, page 47 and para. 35, [A/CN.9/WG.I/WP.92](#).

⁹ Para. 4, [A/CN.9/WG.I/WP.93](#).

¹⁰ See European Commission, *Green Paper, The interconnection of business registers*, 4 November 2009, page 2.

¹¹ Council of the European Union, *Council conclusions on the interconnection of business registers*, 25 May 2010.

¹² Para. 5, [A/CN.9/WG.I/WP.93](#).

¹³ The opening sentence of this paragraph is the opening sentence of para. 6, [A/CN.9/WG.I/WP.93](#). For further reference, see para. 8, [A/CN.9/WG.I/WP.85](#).

¹⁴ See European Commission, *Green Paper, The interconnection of business registers*, 4 November 2009, pages 2 ff.

registration with other authorities such as tax authorities, social services and the like also increases the likelihood that MSMEs will enter the legally regulated economy. In this regard, it should be noted that the terms “business registry” and “single interface for business registration” (or “one-stop shop”) 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 “single interface” (or “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, but a single entry point to all other regulatory 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.¹⁵

9. These materials have benefitted from various tools prepared by international organizations that have supported those 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:¹⁶

- How Many Stops in a One-Stop Shop? (Investment Climate World Bank Group, 2009)
- 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)¹⁷
- The Business Facilitation Programme website (developed by UNCTAD)¹⁸
- [...]

[The Working Group may wish to note that other resources may be added as the materials are further developed.]

10. This legislative guide is addressed to States interested in the reform or improvement of their business registry 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 such a registry, such as:

- (a) Policymakers;

¹⁵ At its twenty-sixth session, the Working Group requested that the Secretariat clarify the meaning of “business registry” and “single interface for business registration” and should clearly establish the overall approach of providing a single interface for all businesses to enter the legally regulated economy in the introductory paragraphs of the draft legislative guide (see para. 55, A/CN.9/866).

¹⁶ Para. 6, A/CN.9/WG.I/WP.93 (the second part of the paragraph has been slightly modified by inserting the sentence “in various States around the world” between the terms “their affiliates” and “referenced”).

¹⁷ 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.

¹⁸ UNCTAD is the United Nations Conference on Trade and Development. See <http://businessfacilitation.org/index.html>.

(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

(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.¹⁹

11. The present guide uses neutral and generic 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.²⁰

B. Terminology

12. The following paragraphs explain the meaning and use of certain expressions that appear frequently in this draft legislative guide:²¹

- *Annual accounts*: The term “annual accounts” means financial information on the business’ activities prepared at the end of a financial year of the business.²²
- *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, active registered businesses may be required to file with an appropriate authority.
- *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 jurisdiction.²³ The branch is not a subsidiary and does not have a separate legal personality from the original or main business.²⁴
- *Business name*: The term “business name” means a name registered on behalf of a business.²⁵
- *Business registry or business registration system*: The term “business registry or business registration system” means a State’s system for receiving, storing and

¹⁹ Para. 7, A/CN.9/WG.I/WP.93.

²⁰ Para. 8, A/CN.9/WG.I/WP.93.

²¹ Para. 9, A/CN.9/WG.I/WP.93.

²² See Guide to the International Business Registers Surveys 2015, page 2.

²³ This draft legislative guide deals with the registration of branches of foreign companies.

²⁴ See The International Business Registers Report, 2015, page 43.

²⁵ See Guide to the International Business Registers Surveys 2015, page 2.

making accessible to the public certain information about businesses; and “business” does not include those professions otherwise regulated by professional bodies.

- *Deregistration*: The term “deregistration” means the removal of a business from the registry, or an indication that the business is no longer registered, once that business, for whatever reason, has permanently ceased to operate, including as a result of a merger or forced liquidation due to bankruptcy.²⁶
- *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.²⁷
- *ICT*: The term “ICT” means information and communications technology.
- *Jurisdiction*: The term “jurisdiction” means the territory over which a State exercises its authority.
- *Law of the enacting State*: The term “the law of the enacting State” means the applicable law in the enacting State and is intended to include the broader body of domestic law that may be relevant to issues related to the business registry outside of the specific law or regulation establishing the business registry (referred to below as the “Regulation”).
- *Micro, small and medium-sized enterprises (MSMEs)*: The term “MSMEs” means micro, small and medium-sized enterprises as they are defined in the laws and regulations of the State undertaking the business registration reforms.
- *One-stop shop*: The term “one-stop shop” means a physical office, an electronic platform (see “single interface”) or an organization that carries out more than one function relating to register a business with the business registry and other government agencies (e.g. the taxation and social services authorities and the pension fund).
- *Registered business*: The term “registered business” means those businesses that, further to filing an application for registration, have been officially registered in the business registry.
- *Registered information*: The term “registered information” means information contained in the registry.
- *Registrant*: The term “registrant” means the natural or legal person that submits the prescribed application form and 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.
- *Registration*: The term “registration” means the entry of information required by domestic law into the registry.
- *Registration number*: The term “registration number” means a unique number assigned by the business registry to a registered business and that is associated with that business during its life cycle.
- *Regulation*: The term “Regulation” means the body of rules adopted by the enacting State to establish the business registry, whether such rules are found in specific legislation or in administrative regulations or guidelines.

²⁶ When a business is deregistered, the public details about the business usually remain visible on the register, but the current status of the business indicates that it has been “removed”.

²⁷ See UNCITRAL Model Law on Electronic Signatures (2001), article 2.

- *Reliable*: A business registry system and the information it contains is “reliable” when the data and the system may be considered positively in terms of quality and performance. “Reliable” does not refer to the system used pursuant to the legal tradition of the State to ensure quality and performance, nor to whether the information is legally binding on the registry, the registrant or third parties.
- *Single interface*: A single interface is the electronic version of a one-stop shop.
- *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 uniform and unique identifier that is used consistently by the public agencies of a State, and may be used internationally, and that consists of a set of characters (numeric or alphanumeric) that is allocated only once to a business and that will not change throughout the lifetime of that business.

[The Working Group may wish to note that the list of defined terms will be adjusted as the materials are further developed.]

C. Legislative drafting considerations

13. 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 for enacting States to decide in accordance with their own legislative drafting conventions.²⁸ However, it should be noted that this guide distinguishes between those concepts by referring to “the Regulation” and the “law of the enacting State”. As noted in the section on terminology, the “Regulation” is intended to mean the body of rules adopted by the enacting State with respect to the business registry, whether such rules are found in administrative guidelines or in the law of the enacting State governing business registration. The term “law of the enacting State” is intended to denote those provisions of domestic legislation in the enacting State in the broader sense that are somehow relevant to and touch upon issues related to business registration.²⁹

D. The reform process³⁰

14. 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

²⁸ Para. 31, [A/CN.9/WG.I/WP.93](#).

²⁹ Para. 3, [A/CN.9/WG.I/WP.96](#).

³⁰ The Working Group agreed at its twenty-fifth session that subject to future deliberation, the section formerly called “Implementation considerations” might be moved to a more prominent position in the text, such as to the introduction (see para. 64, [A/CN.9/860](#)).

consider and several similar recommended steps for reform regardless of jurisdictional differences that may exist. These issues are examined below.³¹

1. The reform catalysts

15. 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.³² 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.³³

(a) Relevance of a reform advocate

16. 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 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.³⁴

(b) The reform committee

17. 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.³⁵

18. Experience indicates that reform committees should have clearly defined functions and accountability; it is advisable that their initial setup be small and that they 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

³¹ Para. 32, [A/CN.9/WG.I/WP.93](#).

³² See A. Mikhnev, *Building the capacity for business registration reform*, 2005, page 16.

³³ Para. 36, [A/CN.9/WG.I/WP.93](#).

³⁴ Para. 37, [A/CN.9/WG.I/WP.93](#). For further reference, see *Investment Climate*, (World Bank Group) *Reforming Business Registration: A Toolkit for the practitioners*, 2013, page 23.

³⁵ Para. 38, [A/CN.9/WG.I/WP.93](#). 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.

into more permanent institutions that drive ongoing work on regulatory governance and regulatory impact analysis.³⁶

19. The reform committee must nurture the reform process and consider how to address concerns raised in respect of it.³⁷ 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.³⁸

(c) The project team

20. In collaboration with the reform 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 ICT matters (for example, software design, hardware, database and Web specialists).³⁹

(d) Awareness-raising strategies

21. 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 business 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 to protect the business' unique name and other intangible assets; opportunities for the business to grow and to have 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 obligations taken on by registration (e.g. payment of taxes) and penalties for non-compliance is similarly clear and easily available.⁴⁰

22. Effective communication may also be expected to encourage the development of new enterprises and the registration of existing unregistered businesses, as well as providing 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 registry system. In coordination with the reform 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, online and print advertisements, and preparing detailed instructions on submitting registration information and conducting searches.⁴¹

³⁶ Para. 39, [A/CN.9/WG.I/WP.93](#).

³⁷ See Investment Climate, (World Bank Group) *Reforming Business Registration: A Toolkit for the practitioners*, 2013, page 25.

³⁸ Para. 40, [A/CN.9/WG.I/WP.93](#).

³⁹ Para. 41, [A/CN.9/WG.I/WP.93](#).

⁴⁰ For a more detailed presentation of these issues see para. 35, [A/CN.9/WG.I/WP.92](#) and [A/CN.9/WG.I/WP.98](#), Section D.2. See also para. 128 of this working paper.

⁴¹ See Investment Climate, (World Bank Group) *Reforming Business Registration: A Toolkit for the practitioners*, 2013, pages 26-27.

In order to raise MSME awareness of the reforms to the business registry system, it may be advisable to consider communication strategies tailored specifically to that audience (see, for example, paras. 36 to 38, [A/CN.9/WG.I/WP.92](#)).⁴²

(e) Incentives for businesses to register

23. 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.⁴³

2. Phased reform process

24. 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.⁴⁴ 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 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.⁴⁵

⁴² Para. 42, [A/CN.9/WG.I/WP.93](#).

⁴³ For a more comprehensive list of incentives, see para. 42, [A/CN.9/WG.I/WP.92](#) and [A/CN.9/WG.I/WP.98](#), Section C.6(c).

⁴⁴ See Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, page 26.

⁴⁵ Para. 43, [A/CN.9/WG.I/WP.93](#). 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 45.

I. Objectives of a business registry

A. Purposes of the business registry

25. The opening provisions of the law or regulation which set 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.⁴⁶

26. The following overarching principles should govern an effective system of business registration: (a) enabling businesses⁴⁷ 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.⁴⁸

Recommendation 1: Purposes of the business registry⁴⁹

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

(a) Providing to a business an identity that is recognized by the enacting State and entitles the business to participate in, and receive the benefits of participating in, the legally regulated economy of the State;⁵⁰ and

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

B. Simple and predictable legislative framework permitting registration for all businesses⁵¹

27. States should set the foundations of their business registry either by way of law or regulation.⁵² In order to foster a transparent and reliable business registration system, with clear accountability of the registrar (see also paras. 43-44 below), such law or regulation 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.⁵³ 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 or the regulation and prior notice to the

⁴⁶ Para. 5, [A/CN.9/WG.I/WP.96](#).

⁴⁷ The Working Group suggested at its twenty-fifth session (para. 32, [A/CN.9/860](#)) that the term “commercial entities” would be broad enough to cover different types of enterprises, and that it would be for domestic legislation to decide which business forms must be registered. The Secretariat has suggested using the word “business” in order to be consistent throughout the draft guide.

⁴⁸ These concepts were formerly found in subparagraphs. 10(a) and (b), [A/CN.9/WG.I/WP.93](#). At its twenty-fifth session, the Working Group considered those subparagraphs and made slight drafting suggestions (to change “the key” to “a key” in (a) and to delete “particularly” from (b) (para. 30, [A/CN.9/860](#)). Those subparagraphs have been rephrased in the current text.

⁴⁹ Former recommendation 2, [A/CN.9/WG.I/WP.96](#).

⁵⁰ At its twenty-sixth session (para. 59, [A/CN.9/866](#)), the Working Group requested the Secretariat to clarify recommendation 2 as set out in [A/CN.9/WG.I/WP.96](#), in particular subpara. (a) thereof, which read: “(a) Providing an identity recognized by the enacting State to a business that fulfils the requirements established by law”.

⁵¹ As decided by the Working Group at its twenty-sixth session (paras. 56 to 58, and 70, 71 and 74, [A/CN.9/866](#)), this section combines recommendations 7, 1 and 4 of [A/CN.9/WG.I/WP.96](#) (and the accompanying commentary found in paras. 10 and 33, [A/CN.9/WG.I/WP.93](#); paras. 5, 13, 22 and 28, [A/CN.9/WG.I/WP.93/Add.1](#); and paras. 24, 25 and 59 to 71, [A/CN.9/WG.I/WP.93/Add.2](#)).

⁵² Opening sentence of para. 33, [A/CN.9/WG.I/WP.93](#).

⁵³ This sentence is based on former recommendation 7.

registrant, the registrar may be allowed to correct material errors in the information registered (see also paras. 146 and 211 below).

28. The applicable law in each State should determine which business forms are required to register, and which additional conditions they may have to fulfil as part of that requirement.⁵⁴ Since business registration is considered the key means through which all businesses, including MSMEs, can participate effectively in the legally regulated economy,⁵⁵ States may wish to consider requiring or enabling businesses of all sizes and legal forms to register in an appropriate business registry, or creating a single business registry that is tailored to accommodate registration by a range of different sizes and different legal forms of business.⁵⁶

29. The law or regulation⁵⁷ governing business registration should also provide for simplified registration and post-registration procedures in order to promote registration of MSMEs.⁵⁸ 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.⁵⁹

30. Further, regardless of the approach chosen to maintain updated information in the business registry, it would be advisable that updating MSME records be made as simple as possible. This could involve a number of different approaches examined in greater detail below, such as extending the period 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.⁶⁰

Recommendation 2⁶¹: Simple and predictable legislative framework permitting registration for all businesses

The Regulation or the law of the enacting State should:

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

(b) Establish a system for the registration of businesses that permits⁶² registration of businesses of all sizes and legal forms; and [first half of former recommendation 1]

(c) Ensure that micro, small and medium-sized enterprises (MSMEs) are subject to the minimum procedural requirements except where such a business is subject to additional requirements under the law of the enacting State as a consequence of its particular legal form. [former recommendation 4]

⁵⁴ Second and third sentences of para. 33, [A/CN.9/WG.I/WP.93](#).

⁵⁵ Para. 4, [A/CN.9/WG.I/WP.96](#).

⁵⁶ Para. 5, [A/CN.9/WG.I/WP.93/Add.1](#).

⁵⁷ This paragraph and the following one referred to former recommendation 4 now merged in new recommendation 1.

⁵⁸ See also paras. 61-67, [A/CN.9/WG.I/WP.99](#).

⁵⁹ Para. 13, [A/CN.9/WG.I/WP.93/Add.1](#).

⁶⁰ Para. 28, [A/CN.9/WG.I/WP.93/Add.1](#). See also paras. 152-154 in this working paper on “Maintaining a current registry”.

⁶¹ Former recommendations 7, 1 and 4 of [A/CN.9/WG.I/WP.96](#). See also footnote 51 above.

⁶² The Working Group agreed at its twenty-sixth session that the phrase “and facilitates” should be deleted and the concept of facilitation expressed elsewhere ([A/CN.9/866](#), para. 58). The Secretariat suggests that the concept of facilitation may be adequately reflected in subpara. (c) of former recommendations 7, 1 and 4, as consolidated in current recommendation 2.

C. Key features of a business registration system

31. To be effective in registering businesses of all sizes, a business registration system should ensure that, to the extent possible,⁶³ the registration process is simple, time and cost efficient, user-friendly and publicly accessible. Moreover, care should be taken to ensure that the 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.⁶⁴

32. The concept of “reliable” business registry systems and the information contained in the registry is a recurring theme in the present guide. In the context of this legislative guide, the “reliability” of information or the system used to collect and store it refers to information or systems in which the data are consistently good in quality or performance and are able to be trusted. The term does not refer to the method that a State uses to ensure such reliability, and leaves it to each enacting State to determine how best to ensure the reliability of that information or system 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, on registrants or on third parties, nor to whether the enacting State relies upon 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 uses a declaratory or approval system are aspects that should be made clear by the enacting State in its business registry legislation and on the business registry itself.⁶⁵

33. 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 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.⁶⁶ It is thus important that the information meet 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.⁶⁷

34. The registry can implement certain actions in order to ensure that the information maintained in the registry is of good quality and reliable. By way of example, those actions, which will be further discussed in the following sections of the present guide, may include:

(a) The prevention of corporate identity theft⁶⁸ through the use of monitoring systems, checks by an intermediary, or establishing access through the use of passwords;

⁶³ The phrase “as ... as possible” has been removed from its previous placement in subpara. 10(c), [A/CN.9/WG.I/WP.93](#) and replaced with “to the extent possible”. The Working Group agreed at its twenty-fifth session that it was important to retain in the text the concept that different levels of development could result in some States not achieving the highest levels of effectiveness ([A/CN.9/860](#), para. 33).

⁶⁴ Para. 10(c), [A/CN.9/WG.I/WP.93](#).

⁶⁵ This paragraph has been inserted in order to address a concern that had been raised in the Working Group at its twenty-fifth and twenty-sixth sessions in respect of the meaning of “reliability” ([A/CN.9/860](#), paras. 18, 22, 27, 31, 35, 42 and 61 and [A/CN.9/866](#), paras. 60 to 64).

⁶⁶ Para. 21, [A/CN.9/WG.I/WP.93/Add.1](#).

⁶⁷ The last sentence of this paragraph is from para. 21, [A/CN.9/WG.I/WP.93/Add.1](#).

⁶⁸ See para. 30, [A/CN.9/WG.I/WP.93/Add.2](#).

(b) The adoption of identity verification methods for those who deliver information to the business register and secure signature requirements for the provision of that information (such as through the use of electronic signatures or electronic certificates);⁶⁹

(c) Requiring businesses to reregister at certain intervals, which would provide a means of confirming whether the information in the register is up to date;⁷⁰ and

(d) Updating the registry in real time or where this is not possible, ensuring daily updates of the registry.⁷¹

35. Moreover, in order to enhance the quality and reliability 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.⁷²

Recommendation 3: Key features of a business registration system

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

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

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

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

[(d) The registry system and the registered information are kept as current, reliable and secure as possible.]⁷³

⁶⁹ See paras. 27 to 30, [A/CN.9/WG.I/WP.93/Add.2](#).

⁷⁰ See The International Business Registers Report 2015, page 134.

⁷¹ Para. 78, [A/CN.9/WG.I/WP.93/Add.1](#). For further reference, see The International Business Registers Report 2015, pages 119 ff.

⁷² Para. 39, [A/CN.9/WG.I/WP.93/Add.1](#); the paragraph has been edited as follows: the opening sentence “Other steps to ensure the integrity and security of the registry record include ...” has been replaced with the sentence “Moreover, in order to enhance ... and security of the registry record itself” and the final sentence (“With regard to (b), however, it can be noted ... it is considered to be registered”) has been removed. Para. 38, [A/CN.9/WG.I/WP.93/Add.1](#) has been deleted since it appeared to be a duplication of previous paragraphs.

⁷³ At its twenty-fifth session, there was support in the Working Group for the view that three important themes running through the draft business registry materials formed an appropriate foundation for the continuation of work in the area: efficiency, reliability and transparency (para. 27, [A/CN.9/860](#)). At its twenty-sixth session (para. 65, [A/CN.9/866](#)), the Working Group agreed that subpara. (d) should be placed in square brackets for inclusion in a future iteration of the text, along with additional information in the commentary (see para. 32 of this working paper) referring to the consideration of the issues in respect of “reliability” as set out in paras. 60 to 64, [A/CN.9/866](#) and 31, 35 and 61, [A/CN.9/860](#). In light of the inclusion of a definition of “reliable” in para. 12 of this working paper and a discussion of this issue generally in para. 32 above, the Working Group may wish to revisit that decision. The Working Group also reiterated its agreement (para. 65, [A/CN.9/866](#)) that the text should be very clear so as to avoid appearing to favour either the declaratory system or the approval system of business registration.

II. Establishment and functions of the business registry⁷⁴

36. 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.⁷⁵

A. Responsible Authority

37. 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,⁷⁶ 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. As previously noted, 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 strictly concerned with verifying the business requisites for registration but does not require prior judicial approval of a business seeking to register.⁷⁷

38. 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.⁷⁸ 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.⁷⁹ However, operating the registry through public-private partnerships or private sector companies does not yet appear to be as common as the operation of the registry by a government agency. One reason might be that arrangements involving contracting with the private sector to provide business registration services require careful consideration of several legal and policy issues,

⁷⁴ A section titled “Minimum regulatory burden on micro, small and medium-sized enterprises (MSMEs) was previously placed before this chapter of the draft and contained recommendation 4 from [A/CN.9/WG.I/WP.96](#) which read: “The Regulation should ensure that micro, small and medium-sized enterprises (MSMEs) are subject to the minimum obligations necessary pursuant to the Regulation, 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.” The Working Group decided at its twenty-sixth session (para. 66, [A/CN.9/866](#)) that the principle should be retained but that the recommendation should be deleted, ultimately agreeing that it should be included along with recommendations 1 and 7 from [A/CN.9/WG.I/WP.96](#) in a new recommendation (paras. 71 and 74, [A/CN.9/866](#)), included as recommendation 2 in the present text.

⁷⁵ Para. 14, [A/CN.9/WG.I/WP.93](#).

⁷⁶ 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.

⁷⁷ Para. 23, [A/CN.9/WG.I/WP.93](#).

⁷⁸ See European Commerce Registers’ Forum, International Business Registers Report, 2014, page 15.

⁷⁹ For instance, Gibraltar, cited in Investment Climate (World Bank Group), Outsourcing of Business Registration Activities, Lessons from Experience, 2010, pages 55 ff.

such as the responsibilities of the government and the private provider, the form of the arrangements, the allocation of risk, and dispute resolution.⁸⁰ States may also decide to form entities with separate legal personality, such as chambers of commerce, with the object of managing and developing the business registry,⁸¹ 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,⁸² while in another State the registry is an administratively separate executive agency of a government department, but does not have separate legal status.⁸³ 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.⁸⁴

39. 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 or regulation. 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 ownership of the registry record.⁸⁵ 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 4⁸⁶: Responsible authority⁸⁷

The Regulation should establish that the organization and operation of the business registry is a function of the enacting State.⁸⁸

⁸⁰ The Working Group may wish to consider whether further details on the implications of operating the registry by way of private-public partnership should be included in a future annex to this draft legislative guide.

⁸¹ See Luxembourg, cited in Investment Climate (World Bank Group), *Outsourcing of Business Registration Activities, Lessons from Experience*, 2010, 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.

⁸² 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.

⁸³ See the United Kingdom of Great Britain and Northern Ireland; for further reference see also Lewin and others, cited above, page 44.

⁸⁴ Para. 24, [A/CN.9/WG.I/WP.93](#).

⁸⁵ Para. 44, [A/CN.9/WG.I/WP.93](#), the paragraph has been slightly edited: the opening sentence ("It will be necessary at an early stage to determine whether the registry is to be operated by a State entity, such as governmental agency or the judicial system, or whether it will be operated in partnership with a private sector firm with demonstrated technical experience and a proven record of financial accountability (see para. 24 above). However ...") has been deleted.

⁸⁶ Former recommendation 5, [A/CN.9/WG.I/WP.96](#).

⁸⁷ The Secretariat has considered merging former recommendations 5 and 6 as requested by the Working Group at its twenty-sixth session (para. 69, [A/CN.9/866](#)), but was of the view that those two recommendations should remain separate as they addressed different aspects that ought to be considered when establishing or reforming the business registry.

⁸⁸ As decided by the Working Group at its twenty-sixth session (para. 67, [A/CN.9/866](#)), subparas. (a) and (b) have been removed from the previous version of recommendation 5 (in [A/CN.9/WG.I/WP.96](#)) but their content has been retained in para. 35 of the present text.

B. Appointment of the registrar

40. The law or the regulation established by the State should set out, either directly or by reference to the relevant primary or secondary legislation (for further discussion on the topic of primary and secondary legislation, see para. 216 below),⁸⁹ 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.⁹⁰

41. 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.⁹¹

Recommendation 5⁹²: Appointment of the registrar⁹³

The Regulation should:

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

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

C. Transparency in the operation of the business registration system and accountability of the registrar

42. 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 require limited interaction with registry authorities, as well as provide short and specified turn-around times, be

⁸⁹ Primary legislation concerns texts such as laws and codes that must be passed by the legislative bodies of a State. 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.

⁹⁰ Para. 34, [A/CN.9/WG.I/WP.93](#). At its twenty-fifth session, the Working Group observed that care should be taken not to appear to dictate who the State might name as registrar by specifying too restrictively a registrar’s attributes. The Working Group expressed agreement on the principles expressed in the paragraph and suggested that additional insight might be gained from additional work undertaken by Working Group VI on similar provisions in the secured transactions materials (see para. 62, [A/CN.9/860](#)).

⁹¹ As requested by the Working Group at its twenty-fifth session, the Secretariat has amended para. 34, [A/CN.9/WG.I/WP.93](#) in order to avoid any restrictive specifications of the registrar’s attributes, which should be left to the discretion of the State (See para. 62, [A/CN.9/860](#) and footnote 90 above).

⁹² Former recommendation 6, [A/CN.9/WG.I/WP.96](#).

⁹³ While some drafting suggestions in respect of former recommendation 6 were made by the Working Group at its twenty-sixth session (paras. 68 and 69, [A/CN.9/866](#)), there was no agreement on how to proceed. The Secretariat has left the text untouched from the version in [A/CN.9/WG.I/WP.96](#), but for the insertion of square brackets so as to better mirror recommendation 2 of the UNCITRAL Guide on the Implementation of a Security Rights Registry (on which recommendation 6 was based) which reads as follows: “The Regulation should provide that [the person authorized by the enacting State or by the law of the enacting State] appoints the registrar, determines the registrar’s duties and monitors the registrar’s performance.”

inexpensive, result in registration of a long-term or unlimited duration, apply throughout the jurisdiction and make registration very accessible for registrants.⁹⁴

43. 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 corruption. In this regard, it should be ensured that the applicable law of the enacting State establishes principles for the liability of the registrar and the registry staff to ensure their appropriate conduct in administering the business registry.

44. 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. 27 above, and 146 and 211 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 6⁹⁵: Transparency of the business registration system and accountability of the registrar

The designated authority should ensure that rules or criteria that are developed are made public to ensure transparency of the registration procedures and the accountability of the registrar in terms of respecting those procedures.⁹⁶

D. Use of standard registration forms

45. 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 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.⁹⁷

⁹⁴ Para. 62, [A/CN.9/WG.I/WP.93/Add.2](#).

⁹⁵ Former recommendation 8, [A/CN.9/WG.I/WP.96](#).

⁹⁶ At its twenty-sixth session, the Working Group expressed concern (para. 75, [A/CN.9/866](#)) in respect of the meaning of "accountability", and the phrase "in terms of respecting those procedures" has been added to the recommendation to clarify the meaning of the term. See Working Group decision para. 75, [A/CN.9/866](#). See also Working Group decision para. 79, [A/CN.9/866](#). In addition, after considering whether recommendation 8 should also include the availability of online information to registrants, the Working Group observed that recommendation 17 or other recommendations might adequately cover that aspect, and that no decision should be made in this regard until the Working Group had further examined the text (para. 79, [A/CN.9/866](#)).

⁹⁷ Para. 64, [A/CN.9/WG.I/WP.93/Add.2](#). In regard to this paragraph, the Working Group may wish to note its decision to prepare standard forms in respect of its work on a legislative text on simplified business entities (see para. 63, [A/CN.9/800](#)).

Recommendation 7⁹⁸: Use of standard registration forms

The Regulation should provide that standard registration forms are introduced to request the registration of a business and that guidance is available to registrants on how to complete those forms.⁹⁹

E. Capacity-building for registry staff

46. 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.¹⁰⁰ 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.¹⁰¹

47. 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.¹⁰² In other cases, States have opted for developing action plans with annual targets for improvement of the registry's standing in international rankings, and linking promotions and bonuses for staff to the achievement of the action plan's goals. In still other cases, States have decided to introduce new corporate values in order to enhance the public service system, including business registration.¹⁰³ 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.¹⁰⁴

48. Peer-to-peer learning as well as 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

⁹⁸ Former recommendation 7 (from [A/CN.9/WG.I/WP.96](#)), titled "Simple and predictable legislative framework" has been deleted. It read: "The Regulation should adopt a simple structure for rules governing the business registry and should avoid the unnecessary use of exceptions or discretionary power." The Working Group decided at its twenty-sixth session (paras. 70, 71 and 74, [A/CN.9/866](#)) that that principle should be retained and combined along with recommendations 1 and 4 from [A/CN.9/WG.I/WP.96](#) in a new recommendation which appears in the present text as recommendation 2.

⁹⁹ The Working Group requested at its twenty-sixth session (para. 77, [A/CN.9/866](#)) that the Secretariat prepare a recommendation on the use of standard registration forms.

¹⁰⁰ 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, Investment Climate (World Bank Group), *Reforming Business Registration: A Toolkit for the practitioners*, 2013, page 37.

¹⁰¹ Para. 81, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see para. 60, [A/CN.9/WG.I/WP.85](#).

¹⁰² See K. Rada and U. Blotte, *Improving business registration procedures at the sub-national level: the case of Lima, Peru*, 2007, page 3.

¹⁰³ See para. 60, [A/CN.9/WG.I/WP.85](#) and Investment Climate (World Bank Group), *Reforming Business Registration: A Toolkit for the practitioners*, 2013, page 21.

¹⁰⁴ Para. 82, [A/CN.9/WG.I/WP.93/Add.2](#).

registration systems. In order to maximize the impact of such visits, it is important that they occur in jurisdictions familiar to the jurisdiction undergoing 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.¹⁰⁵

49. 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. 118 and 119 below).

Recommendation 8: Capacity-building for registry staff¹⁰⁶

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

F. Core functions of business registries

50. 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.¹⁰⁷

51. In keeping with the overarching principles governing an effective business registration system (see para. 26 above), the core functions of business registries are to:¹⁰⁸

(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;¹⁰⁹

(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 State¹¹⁰ to enable a business to interact with business partners, the public and the State.

52. 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

¹⁰⁵ Para. 83, [A/CN.9/WG.I/WP.93/Add.2](#).

¹⁰⁶ At its twenty-sixth session (para. 76, [A/CN.9/866](#)), the Working Group requested the Secretariat to reflect the concepts in paras. 81 to 83 of [A/CN.9/WG.I/WP.93/Add.2](#) as a new draft recommendation. This is now reflected in paras. 41 to 43 and recommendation 8.

¹⁰⁷ Para. 11, [A/CN.9/WG.I/WP.93](#).

¹⁰⁸ Para. 12, [A/CN.9/WG.I/WP.93](#).

¹⁰⁹ In keeping with the suggestion of the Working Group at its twenty-fifth session (para. 34, [A/CN.9/860](#)), subpara. (d) of this paragraph was thought to be a more general statement and has been moved to become the first subparagraph.

¹¹⁰ At its twenty-fifth session, there was support in the Working Group for the suggestion that the phrase "provide authority" should be replaced with a different term that did not imply the exercise of State power (see para. 34, [A/CN.9/860](#)).

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.¹¹¹ 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. 94 to 116 below).¹¹² 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 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.¹¹³

53. Business registries also provide forms (either in paper or electronic form) 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 regimes 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 regimes 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.¹¹⁴

54. Payment of a registration fee (if any — see paras. 185 to 191 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 the registered information must be disclosed to interested parties, registries make it publicly 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.¹¹⁵

55. Registered information made available to the public can include basic information about the business, such as the telephone number and address, or,

¹¹¹ Para. 15, [A/CN.9/WG.I/WP.93](#).

¹¹² At its twenty-fifth session, the Working Group agreed that registration of a business name should be mandatory, and that States should determine on what basis names would be distinguishable, such as on the basis of the type of business being conducted. It was further observed that assigning a unique business identifier to a business would enhance its distinguishability, particularly across jurisdictions and borders (paras. 38 to 39, [A/CN.9/860](#)).

¹¹³ Para. 16, [A/CN.9/WG.I/WP.93](#). For further reference, see paras. 50-52, [A/CN.9/WG.I/WP.99](#).

¹¹⁴ Para. 17, [A/CN.9/WG.I/WP.93](#). For further reference, see Investment Climate (World Bank Group), Innovative Solutions for Business Entry Reforms: A Global Analysis, 2012, page 9.

¹¹⁵ Para. 18, [A/CN.9/WG.I/WP.93](#).

depending on the requirements of applicable law, more specific¹¹⁶ information on the business structure, such as who is authorized to sign on behalf of the business or who serves as the enterprise's legal representative.¹¹⁷ 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. 185 below).¹¹⁸

56. 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.¹¹⁹ 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.¹²⁰ 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.¹²¹

57. 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.¹²² 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.¹²³ 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.¹²⁴

58. The opening provisions of the law or regulation 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 or the regulation in which those functions are addressed in detail. The advantage of this approach is clarity and

¹¹⁶ At its twenty-fifth session, the Working Group agreed to change the word "sophisticated" to "specific" (para. 41, [A/CN.9/860](#)).

¹¹⁷ See, for instance, paras. 62-67, [A/CN.9/WG.I/WP.99](#).

¹¹⁸ At the twenty-fifth session of the Working Group, it was suggested that at least some information be provided to the public free of charge (para. 41, [A/CN.9/860](#)).

¹¹⁹ The original sentence read: "The business registry normally provides to entrepreneurs information on the necessary requirements of other agencies and refers them to the relevant agencies." Changes were made in response to a concern raised in the Working Group: see para. 44, [A/CN.9/860](#).

¹²⁰ Para. 20, [A/CN.9/WG.I/WP.93](#).

¹²¹ This sentence reflects the broad view of the Working Group as expressed at its twenty-fifth session (para. 44, [A/CN.9/860](#)).

¹²² Para. 18, [A/CN.9/WG.I/WP.93/Add.1](#).

¹²³ Para. 19, [A/CN.9/WG.I/WP.93/Add.1](#). For further reference, see European Commerce Registers' Forum, International Business Registers Report 2014, pages 33 ff.

¹²⁴ See paras. 201-205 of this working paper.

transparency as to the nature and scope of the issues that are dealt with in detail later in the law or regulation. 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 or regulation to which cross reference is made. Accordingly, implementation of this approach requires special care to avoid any omissions or inconsistencies¹²⁵ 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.¹²⁶

Recommendation 9: Core functions of business registries

The Regulation should establish that the functions of the business registry include:¹²⁷

- (a) Publicizing the means of access to the services of the business registry, and the opening days and hours of any office of the registry (see paras. 122 to 124 and 172 to 174, and recommendations 18 and 34);
- (b) Providing access to the services of the business registry (see paras. 179 to 184 and recommendation 36);
- (c) Providing guidance on choosing the appropriate legal form for the business, on the registration process and on the business's rights and obligations in connection thereto (see para. 45 and recommendation 7);
- (d) Listing all the information that must be submitted in support of an application to the registry (see paras. 129 to 132 and recommendation 20);
- (e) Assisting businesses in searching and reserving a business name (see para. 52);
- (f) Providing the basis for any rejection of an application for business registration (see paras. 145 to 148 and recommendation 26);
- (g) Registering the business when the business fulfils the necessary conditions established by the law of the enacting State (see para. 136 and recommendation 22);
- (h) Ensuring that any required fees for registration have been paid (see paras. 185 to 189 and recommendation 37);
- (i) Assigning a unique business identifier to the registered business (see paras. 103 to 104 and recommendation 14);
- (j) Ensuring the entry of the information contained in the application submitted to the registry, any amendments thereto and any filing related to that

¹²⁵ Para. 35, [A/CN.9/WG.I/WP.93](#).

¹²⁶ At its twenty-fifth session, the Working Group supported the suggestion that care should be taken in drafting this paragraph so that it was not seen as imposing excessive limitations on the registry, which could make it more difficult to establish the registry's interoperability with other registries in the jurisdiction and to access the information maintained in the registry (see para. 63, [A/CN.9/860](#)).

¹²⁷ Para. 1, [A/CN.9/WG.I/WP.93/Add.1](#) has been deleted from the text as its elements are already reflected in this recommendation. The Working Group may wish to note that this recommendation is based upon recommendation 3 of the UNCITRAL Guide on the Implementation of a Security Rights Registry, which similarly lists the functions of the registry that the law establishing the registry is recommended to include, without designating them as more or less mandatory. The Working Group considered at its twenty-sixth session (paras. 81 to 82, [A/CN.9/866](#)) whether to divide the recommendation into a list of mandatory and less mandatory functions, but decided that that decision should be postponed until the Working Group had considered the entire draft text.

business into the registry record, and indicating the time and date of each registration (see paras. 144, 157 and 158, and recommendations 25 and 30);

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

(l) Providing public notice of the registration in the means specified by the enacting State (see para. 137 and recommendation 23);

(m) Indexing or otherwise organizing the information in the registry record so as to make it searchable (see paras. 182 and 183 and recommendation 36);

(n) Providing information on the point of contact of the business as established by the law of the enacting State (see paras. 130 and 151 and recommendations 20 and 27);

(o) Sharing information among the requisite public agencies (see para. 110 and recommendation 16);

(p) Monitoring that a registered business has fulfilled and continues to fulfil any obligation to file information with the registry throughout the lifetime of the business (see paras. 155 to 158 and recommendations 29 and 30);¹²⁸

(q) Ensuring the entry of information on the declaration of deregistration of a business from the registry record, including the date of and any reasons for the deregistration (see paras. 201 to 205 and recommendations 43 to 45);

(r) Ensuring that the information in the registry is kept as current as possible (see paras. 152 to 153 and recommendation 28);

(s) Promoting compliance with the Regulation (see paras. 42 to 44 and recommendation 6);

(t) Protecting the integrity of the information in the registry record (see paras. 213 to 215 and recommendations 50 and 51);

(u) Ensuring that information from the registry record is archived as necessary (see paras. 208 to 210 and recommendation 48); and

(v) Offering services incidental to or otherwise connected with business registration (see paras. 80 to 83 and recommendation 11).

G. Structure of the business registry¹²⁹

59. When organizing the storage of and access to the information contained in the business registry, it may be structured in one of two ways. The first approach would be to adopt a centralized registration system with an electronic format. Such a registry allows for consistency in identifying and classifying businesses, which usually permits more efficient collection of data from business and avoids duplication of procedures. In order to function efficiently, an electronic central registry should be accessible by terminals in the various regions and/or cities of a State, where other registry offices

¹²⁸ At its twenty-fifth session, the Working Group requested the Secretariat to clarify that subpara. (p) of the list did not intend to grant discretion to the business registry to arbitrarily delay the registration of a business (para. 34, [A/CN.9/860](#)).

¹²⁹ The Secretariat suggests that the original title (“Storage of and access to information contained in the registry”) be changed to “Structure of the business registry” which is thought to better reflect the content of the commentary and the recommendation.

are located. This central system should also be able to process and store information from the local registries, even if this information is provided to those registries in paper format. Centralized registry systems with such features will allow equality of access for users in remote locations who otherwise might be at a great disadvantage, assuming they have Internet or other electronic access. In one State, for instance, registration is conducted at the local commercial courts which are connected via a network to the central registry.¹³⁰ Recent international experience of States that have undertaken a reform of their business registration system shows that maintaining a central registry (in electronic format) is the most common approach.¹³¹

60. When the establishment of an electronic central registry is not possible, States may turn to a decentralized structure where registries can be organized as either autonomous or non-autonomous local offices (although autonomous local offices in a jurisdiction are not common and organizing the registry through such an arrangement does not facilitate access to information).¹³² However, decentralization of the registration system may pose problems. In States where the conduct of the registration process and its regulatory oversight are delegated to the local level, confusion can arise if each locality follows its own approach rather than adhering to a central vision. In States with a federal system that requires companies to register in the locality where they regularly conduct their business, companies may have to undertake the cumbersome process of registering in every locality where they would like to open an office.¹³³ While it is possible to imagine the physical integration of decentralized registries, the goals of efficiency, accessibility and transparency in the registration system are more fully achieved through consolidation and centralization of an electronic-form registry through the interconnection of those registries. This approach has the advantage of combining simplified access to registry services with the rapid exchange of information among the interconnected business registries.¹³⁴ Regardless of the chosen architecture of the business registration system, however, it is advisable that information on registered businesses be stored and made accessible in digital format through a single jurisdictional database that would allow the exchange of such information, possibly in real time, among different government agencies.¹³⁵

Recommendation 10: Structure of the registry

The Regulation should establish an interconnected registry system that would process and store all information received from registrants and/or entered by registry staff. Where such a system of interconnected business registries is set

¹³⁰ See Austria in 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 46.

¹³¹ Para. 25, [A/CN.9/WG.I/WP.93](#).

¹³² The International Business Registers Report 2015, shows that while in all of the observed regions (i.e. Africa and Middle East, Asia-Pacific, Europe and the Americas) there are a few decentralized business registry systems, a very low percentage of those systems are organized as autonomous local offices. See the Report at pages 16 and 17.

¹³³ See L. Klapper, R. Amit, M. F. Guillén, J. M. Quesada, *Entrepreneurship and Firm Formation Across Countries, 2007*, page 11.

¹³⁴ Para. 26, [A/CN.9/WG.I/WP.93](#). The phrase “through the interconnection of those registries.” and the final two sentences have been added to the text in this current draft.

¹³⁵ At its twenty-sixth session, the Working Group expressed support for the view that reference to interconnected registries should be included in the draft paragraph and that the need for such registries to be mutually consistent should be emphasized. Furthermore, support was also expressed for the comment that information on registered businesses should be stored and made accessible in digital format through a single jurisdictional database (see para. 84, [A/CN.9/866](#)).

up, the registries should possess mutually consistent technical features so that stored information is accessible throughout the system.¹³⁶

III. Operation of the business registry

61. 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. Evidence¹³⁷ shows that reform efforts rely to a different extent on a core set of tools, including: establishment of single interfaces for business start-up (better known as “one-stop shops”); the use of ICT; and ensuring interconnectivity between the different authorities involved in the registration process (with the possible adoption of a unique business identifier). Other important components include a domestic legal framework that is generally supportive of business registration, establishing appropriate pricing policies for the use of business registry services and developing the capacity of registry operators.¹³⁸

A. Electronic, paper-based or mixed registry

62. 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.¹³⁹ In addition, any copies of the documents required must usually be provided on paper. Paper-based registry systems can facilitate “face-to-face” communication between the registrant and the registry, and thus may offer an opportunity to clarify aspects of the requirements for registration.¹⁴⁰ 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

¹³⁶ Adjustments have been made to the text of recommendation 10 as originally set out in [A/CN.9/WG.I/WP.96](#) in order to accommodate the views the Working Group expressed at its twenty-sixth session (paras. 83 to 86, [A/CN.9/866](#)).

¹³⁷ See J. Olaisen, *Business Registration Reform Case Studies, Malaysia, 2009*, page 3.

¹³⁸ Para. 1, [A/CN.9/WG.I/WP.93/Add.2](#).

¹³⁹ See para. 43, [A/CN.9/WG.I/WP.85](#).

¹⁴⁰ At its twenty-fifth session, the Working Group agreed that a balanced presentation of paper-based and mixed paper and electronic registries should be presented in the draft materials and that the materials should recognize that in several developing States, paper-based registries might be the only option available due to a lack of advanced technological infrastructure (see para. 67, [A/CN.9/860](#)).

paras. 208 to 210 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.¹⁴¹

63. In comparison, ICT-supported 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. ICT is also instrumental in the development of integrated registration systems and the implementation of unique identification numbers.¹⁴²

64. 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 enterprises 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 corrupt 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 from other businesses and financial institutions that seek company information to inform their risk analysis of potential trading counterparties and borrowers.¹⁴³

65. Introducing ICT-based registration processes, however, often requires an in-depth re-engineering of the way the service is delivered, which may involve several core aspects of the State's apparatus in addition to their level of technological

¹⁴¹ Para. 47, [A/CN.9/WG.I/WP.93](#) and para. 11, [A/CN.9/WG.I/WP.93/Add.2](#).

¹⁴² Para. 48, [A/CN.9/WG.I/WP.93](#). For further information, see also paras. 38-49, [A/CN.9/WG.I/WP.93/Add.2](#).

¹⁴³ Para. 49, [A/CN.9/WG.I/WP.93](#); subparas. (a), (c), and (g) are from para. 29, [A/CN.9/WG.I/WP.93](#).

infrastructure, including: financial capability, organization and human resources capacity, legislative framework (e.g. commercial code and company law)¹⁴⁴ and institutional setting. Therefore, States launching a reform process aiming at the automation of business registries 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.¹⁴⁵ 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 ICT.¹⁴⁶ While the adoption of a mixed registration system that combines electronic processing and paper-based manual submission and processing (see para. 79 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 ICT-based registration systems (see section C below).¹⁴⁷

B. Features of an electronic registry

66. 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. 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 to allocate registry resources).¹⁴⁸ 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.¹⁴⁹

67. Implementing an online business registration system will require defining the technical standards of the online system, a careful evaluation of the hardware and

¹⁴⁴ At its twenty-fifth session, the Working Group reiterated its support for the use of ICT technology as a good practice in business registration and for the suggestion that reference to changes that could be required to the commercial code and company law of a State could be included in the draft (see para. 57, [A/CN.9/860](#)).

¹⁴⁵ Para. 30, [A/CN.9/WG.I/WP.93](#).

¹⁴⁶ Para. 13, [A/CN.9/WG.I/WP.93/Add.2](#).

¹⁴⁷ See footnote 140 above.

¹⁴⁸ 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.

¹⁴⁹ Para. 51, [A/CN.9/WG.I/WP.93](#).

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 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.¹⁵⁰

68. 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 ICT-supported registration system, since the registry does not have to maintain its own ICT 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.¹⁵¹

69. Additional aspects that States may consider when adopting an ICT-supported 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 jurisdiction¹⁵² and online or mobile payment portals;

(d) Costs: the ICT infrastructure should be financially sustainable both in term 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.¹⁵³

70. 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.

¹⁵⁰ Para. 52, [A/CN.9/WG.I/WP.93](#).

¹⁵¹ Para. 53, [A/CN.9/WG.I/WP.93](#). For further reference see International Finance Corporation (World Bank Group), Task Manager's ICT Toolkit for Designing and Implementing Online Registry Applications (draft 8/3/2015), page 28.

¹⁵² See, for instance, paras. 105 to 109 of this working paper.

¹⁵³ Para. 54, [A/CN.9/WG.I/WP.93](#). For further reference see International Finance Corporation (World Bank Group), Task Manager's ICT Toolkit for Designing and Implementing Online Registry Applications (draft 8/3/2015), page. 29.

Low security may deter parties from using electronic services (unless it is mandatory), but costly high security measures could have the same effect.¹⁵⁴

C. Phased approach to the implementation of an ICT-based registry¹⁵⁵

71. 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 reengineering 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.¹⁵⁶ Moreover, subject to the level of development of the implementing State, 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.¹⁵⁷

72. 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.¹⁵⁸

73. 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 e-mail 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.

74. 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.

¹⁵⁴ Para. 37, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference see also *supra*, note 153, page 12.

¹⁵⁵ At its twenty-fifth session, the Working Group supported comments on the importance of the implementation of a phased-in approach (which should start with the adoption of more simple electronic solutions and then progress to more sophisticated solutions) and on the importance for developing States to receive technical and capacity-building assistance in order to move from paper-based to electronic registries (see para. 68, [A/CN.9/860](#)).

¹⁵⁶ 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, Investment Climate (World Bank Group), *Reforming Business Registration: A Toolkit for the practitioners*, 2013, pages 12 ff.

¹⁵⁷ Para. 15, [A/CN.9/WG.I/WP.93/Add.2](#). It may be noted that at its twenty-fifth session, the Working Group supported the view that achieving a completely electronic system was the goal to which all registries could aspire (see para. 67, [A/CN.9/860](#)).

¹⁵⁸ Para. 14, [A/CN.9/WG.I/WP.93/Add.2](#).

75. Once the State's capacity in ICT 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. ICT systems incorporating this facility should include error checks, so that applications are not submitted before payments are completed and registry officials can see payment information along with the application.¹⁵⁹ 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.¹⁶⁰

76. As noted above (see para. 65) when introducing ICT-based registration systems, States should adopt legislation that facilitates the implementation of these electronic solutions, although the obligation to use these 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 legislation, 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.¹⁶¹

77. Enacting States should also be aware that establishing an ICT-supported registration system requires a well-designed legal and regulatory framework that supports simplicity and flexibility and avoids, to the greatest extent possible, discretionary power and the making of exceptions (see para. 27 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.¹⁶²

78. When a State has developed the ICT infrastructure to achieve full business registry automation, integration of other online registration processes for taxation, social services and other purposes could be considered. Even if no integration with other registrations is built into the system, it would nevertheless be advisable that States implement data interchange capabilities so that the relevant company information could be shared across government agencies (see para. 69 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; in States with highly developed online registration systems, registries can derive up to 40 per cent of their operating revenues by selling such information.¹⁶³

¹⁵⁹ See Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, page 13.

¹⁶⁰ Para. 18, [A/CN.9/WG.I/WP.93/Add.2](#).

¹⁶¹ Para. 25, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, page 14.

¹⁶² Para. 24, [A/CN.9/WG.I/WP.93/Add.2](#).

¹⁶³ Para. 19, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see Investment Climate (World Bank Group), *Reforming Business Registration: A Toolkit for the practitioners*, 2013, page 13.

79. One issue that would likely arise when the online registry is able to offer full-fledged ICT 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.¹⁶⁴ This approach may result in considerable cost for registries,¹⁶⁵ 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.¹⁶⁶

D. Other registration-related services supported by ICT solutions

80. Automation should enable the registry to perform other functions in addition to the processing of applications. Where jurisdictions require user-friendly electronic filing and repopulated forms,¹⁶⁷ for instance, it can assist businesses in the mandatory filing of periodic returns and/or annual accounts. Electronic filing and automated checks also help reduce processing time by the registry.¹⁶⁸

81. ICT supported registration could also assist the registry in deregistration procedures, i.e. notations on 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.¹⁶⁹ ICT can provide for 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 ICT-based system needs to be supported by streamlined procedures that enable the deregistration of businesses in a simplified and quick way.¹⁷⁰

82. 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

¹⁶⁴ Para. 55, [A/CN.9/WG.I/WP.93](#).

¹⁶⁵ See also paras. 47 to 55, [A/CN.9/WG.I/WP.93](#).

¹⁶⁶ Para. 20, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, page 13. See also para. 14, [A/CN.9/WG.I/WP.93/Add.1](#).

¹⁶⁷ 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.

¹⁶⁸ Para. 20, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, page 15.

¹⁶⁹ See para. 22 of [A/CN.9/WG.I/WP.93](#) and para. 20, [A/CN.9/WG.I/WP.93/Add.1](#).

¹⁷⁰ Para. 22, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, page 16.

financial data facilitates the aggregation and analysis of financial information, which could be of significant value to users of the registry.

83. ICT solutions 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 an order for compulsory liquidation, the court notifies the registry which deregisters the business.¹⁷¹

Recommendation 11: Electronic, paper-based or mixed registry

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

E. One-stop shop: a single interface for business registration and registration with other authorities

84. As discussed above (see para. 56), a business is usually required to register with several different government agencies, which 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 control of the process by the agencies involved. Possibly worse for MSMEs wishing to register, the overall process can require weeks, if not months.¹⁷²

85. 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 interfaces 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.¹⁷³

86. 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

¹⁷¹ Para. 23, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see Norway in Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, page 16.

¹⁷² Para. 2, [A/CN.9/WG.I/WP.93/Add.2](#). 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 30.

¹⁷³ Para. 3, [A/CN.9/WG.I/WP.93/Add.2](#). The paragraph has been clarified through the removal of the final sentence, “Some States have several one-stop shops throughout their territory.”

functions related to business start-up.¹⁷⁴ 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. In rare cases,¹⁷⁵ 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.¹⁷⁶

87. 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. Of course, online business registration can also be offered as one option available for registering, the other being visiting the one-stop shop (or the registration office). Online one-stop shops, or single interfaces, take advantage of solutions supported by ICT, which allows for rapid completion of several formalities due to the use of dedicated software. Such online portals may provide a fully integrated facility or may still entail separate registration in respect of some requirements, for example taxation services.¹⁷⁷

88. 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.¹⁷⁸ As may be apparent, this solution is relatively uncomplicated and would normally not require any change in legislation 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?¹⁷⁹ Similarly, it is also important to consider clarifying the lines of accountability of the various representatives from the different agencies to the one-stop shop administrator.¹⁸⁰

89. 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.¹⁸¹ 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

¹⁷⁴ 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.

¹⁷⁵ See Georgia, in World Bank and International Finance Corporation, *Doing Business 2011*, page 21; see also para. 38, [A/CN.9/WG.I/WP.85](#).

¹⁷⁶ Para. 4, [A/CN.9/WG.I/WP.93/Add.2](#).

¹⁷⁷ Para. 5, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see Investment Climate (World Bank Group), *How Many Stops in a One-Stop Shop? A Review of Recent Developments in Business Registration*, 2009, page 4.

¹⁷⁸ *Ibid.*, page 3.

¹⁷⁹ *Ibid.*, page 2, and see para. 42, [A/CN.9/WG.I/WP.85](#).

¹⁸⁰ Para. 6, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see para. 42, [A/CN.9/WG.I/WP.85](#).

¹⁸¹ *Supra*, note 177, page 3.

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 company information.¹⁸² In some cases, taking such an approach may also require a change in legislation.¹⁸³

90. 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. Although this approach results in adding a step, it could be useful to 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 registrant's perspective, however, the advantage of being able to deal with a single organization remains.¹⁸⁴

91. 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.¹⁸⁵

92. 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.¹⁸⁶ There are very few examples of courts that have adopted a one-stop shop approach in those States where business registration is court-based.¹⁸⁷

93. 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

¹⁸² 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 31.

¹⁸³ Para. 7, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see Investment Climate (World Bank Group), *How Many Stops in a One-Stop Shop? A Review of Recent Developments in Business Registration*, 2009, page 3.

¹⁸⁴ Para. 8, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see Benin and France, *supra*, note 183, page 4.

¹⁸⁵ Para. 9, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see Albania's National Registration Center in Investment Climate (World Bank Group), *supra*, note 183, page 7.

¹⁸⁶ *Supra*, note 177, page 7.

¹⁸⁷ Para. 10, [A/CN.9/WG.I/WP.93/Add.2](#).

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 shops 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.¹⁸⁸

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

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

- (a) May consist of a web platform or physical offices; and
- (b) Should integrate the services of as many public agencies requiring the same information as possible, but at a minimum should include taxation and social services agencies.

F. Use of unique business identifiers

94. As discussed above (see paras. 56 and 84), 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 agencies assign registration numbers to the businesses they register, and the use and uniqueness of those numbers is restricted to the authority assigning them, information exchange among the agencies requires each authority to map the different identification numbers applied by the other agencies. When electronic 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.¹⁸⁹

95. In recent years, several jurisdictions have thus adopted integrated registration systems in which the application submitted for business registration includes all of the information required by the different agencies. Once completed, the information in 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.¹⁹⁰ 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.¹⁹¹

¹⁸⁸ Para. 11, [A/CN.9/WG.I/WP.93/Add.2](#).

¹⁸⁹ Para. 38, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see *supra*, note 177, page 22.

¹⁹⁰ See Investment Climate (World Bank Group), *Reforming Business Registration: A Toolkit for the practitioners*, 2013, page 9.

¹⁹¹ Para. 39, [A/CN.9/WG.I/WP.93/Add.2](#).

96. 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.¹⁹²

97. 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.¹⁹³

98. 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. 69 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,¹⁹⁴ 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.¹⁹⁵

99. 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.¹⁹⁶ 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.¹⁹⁷

100. 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

¹⁹² Para. 40, [A/CN.9/WG.I/WP.93/Add.2](#). The UNCTAD Business Facilitation Programme provides for an online tool designed to computerize simple or complex administrative procedures (eRegistration) and that can handle simultaneous operations involving multiple agencies (such as the business registry, tax office, and social services) thus promoting interoperability among these different agencies. See <http://businessfacilitation.org/> and para. 40, [A/CN.9/WG.I/WP.81](#).

¹⁹³ Para. 41, [A/CN.9/WG.I/WP.93/Add.2](#).

¹⁹⁴ 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.

¹⁹⁵ Para. 42, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, page 20.

¹⁹⁶ *Ibid.*, page 22.

¹⁹⁷ Para. 43, [A/CN.9/WG.I/WP.93/Add.2](#).

prefer to rely on the identifier for the individual, who may be a natural person, rather than on the business identifier.¹⁹⁸

101. Situations may arise in which different agencies in the same jurisdiction allocate identifiers to businesses based on the particular legal form of the enterprise. States should thus consider adopting a verification system to avoid multiple unique identifiers being allocated to the same business by different public agencies.¹⁹⁹ If the identifier is assigned through a single jurisdictional database the risk of several identifiers allocated to one business or several businesses receiving the same identifier is considerably reduced.²⁰⁰

102. The effective use of unique identifiers is enhanced by the adoption of full electronic solutions which 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.²⁰¹ When unique identifiers are connected to an online registration system, it is important that the solution adopted fits the existing technology infrastructure.²⁰²

Recommendation 13: Use of unique business identifiers

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

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

G. Allocation of unique business identifiers

103. 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 register and taxation authority should be involved. Information

¹⁹⁸ Para. 50, [A/CN.9/WG.I/WP.93/Add.2](#).

¹⁹⁹ Para. 51, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see [A/CN.9/WG.I/WP.85](#), paras. 36 ff. and Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, page 21.

²⁰⁰ This paragraph and the previous one were the commentary to former recommendation 16: Unique business identifiers and individual businesses, which read as follows: “The Regulation or the law of the enacting State should adopt a verification system to avoid multiple unique business identifiers being allocated to the same business by different public agencies”. In preparing this consolidated draft of the legislative guide, the Secretariat has deleted former recommendation 16 and incorporated the commentary under current recommendation 13.

²⁰¹ Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, page 22.

²⁰² Para. 44, [A/CN.9/WG.I/WP.93/Add.2](#).

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.²⁰³

104. 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;
- (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.^{204, 205}

Recommendation 14: Allocation of unique business identifiers

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

H. Implementation of a unique business identifier

105. 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.²⁰⁶

106. 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

²⁰³ Para. 45, [A/CN.9/WG.I/WP.93/Add.2](#).

²⁰⁴ Para. 46, [A/CN.9/WG.I/WP.93/Add.2](#).

²⁰⁵ See Investment Climate (World Bank Group), *Reforming Business Registration: A Toolkit for the practitioners*, 2013, page 32.

²⁰⁶ Para. 47, [A/CN.9/WG.I/WP.93/Add.2](#).

registry, and is then re-used by all agencies.²⁰⁷ 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 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 number²⁰⁸ although the business carries a unique identifier.²⁰⁹

107. 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.²¹⁰ Examples also exist in which, rather than introducing a completely new number, the taxation number itself is retained as the enterprise's unique 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 name, address, and type of activity.²¹¹

108. In some jurisdictions, advanced interconnectivity among the different agencies involved in the registration process has resulted in a single form for registration with all agencies. Examples exist of consolidated (electronic) registration forms that can be repopulated²¹² 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.²¹³

109. As discussed above (see paras. 70 and 96), the interoperability of the different agencies' ICT 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

²⁰⁷ See Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, page 20 and [A/CN.9/WG.I/WP.85](#), paras. 34 ff.

²⁰⁸ 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.

²⁰⁹ Para. 48, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, page 20.

²¹⁰ See Belgium in para. 35, [A/CN.9/WG.I/WP.85](#).

²¹¹ Para. 49, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see Norway, in para. 35, [A/CN.9/WG.I/WP.85](#).

²¹² For details on repopulated forms, see footnote 167 above.

²¹³ Para. 54, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see Norway in Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, page 23.

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 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.²¹⁴

Recommendation 15: Implementation of a unique business identifier

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

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

I. Sharing of private data between public agencies

110. While facilitating information-sharing, it is important that unique business identifiers protect sensitive data and privacy. Legislation in each State often includes provisions on data protection and privacy and in some States, registered information related to businesses is considered private and is not publicly available. However, a major trend towards increased transparency in order to avoid misuse of corporate vehicles for illicit purposes²¹⁵ has resulted from international efforts to fight money-laundering and terrorist and other illicit activities, as well as from the adoption of policies to know your customers and business counterparts. Such an enhanced quest for transparency has an impact on the way the information retained in the registry is shared among the different authorities. When a State introduces interoperability among different authorities, it should address issues of individual privacy²¹⁶ so that no protected information about the business is made public, but that information that must be made public by the registry can legally be made public (see also paras. 170 to 171 below).²¹⁷

Recommendation 16²¹⁸: Sharing of private data between public agencies

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

- (a) Conform with the applicable rules in the enacting State on public disclosure of private data;
- (b) Enable public agencies to access private data included in the unique business identifier system only in order to carry out their statutory functions; and

²¹⁴ Para. 53, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see *supra*, note 213, page 23.

²¹⁵ See also para. 75, [A/CN.9/WG.I/WP.93/Add.1](#).

²¹⁶ See para. 37, [A/CN.9/WG.I/WP.85](#).

²¹⁷ Para. 52, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, 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 50.

²¹⁸ Former recommendation 36, [A/CN.9/WG.I/WP.96/Add.1](#).

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

J. Exchange of information among business registries

111. Introducing unique business identifiers that enable different public authorities to exchange information about the business among themselves is relevant not only at the national level, but also in an international context. Unique identifiers allow interoperability 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 reliable information for consumers and existing or potential business partners, including small businesses that provide cross-border services.²¹⁹ Moreover, enhanced interoperability among business registries, coupled with appropriate national legislation, may result in enhanced protective measures for businesses, for example, by preventing business owners or managers sanctioned in one jurisdiction for “unfit conduct” in running a business from being allowed to become business owners or managers in other jurisdictions (see also paras. 50-58 above).²²⁰

112. In the European Union (EU), EU-Directive 2012/17²²¹ requires member States to ensure that companies have a unique identifier “to be unequivocally identified” in the new system of interconnected business registries that the Directive aims to establish.²²² The intention is to facilitate exchanging information between the registry of a company and those of its branches in other member States on the opening and termination of any winding-up or insolvency proceedings of the company and on the deregistration of the company from the business registry. As a result, when a company has been dissolved or otherwise stricken from the registry, its foreign branches are likewise removed from the business register without undue delay.²²³

113. There are, at present, no other examples of similar initiatives²²⁴ in other regions of the world. However, the adoption of unique identifiers by non-EU States could lay the groundwork for future coordination in the regulatory community in order to create international standards for a global unique identifier.²²⁵

114. Introducing unique identifiers does not only benefit businesses that have branches outside their State. It is also beneficial for local entrepreneurs since it enables those entrepreneurs to establish commercial relationships with multinationals or other foreign businesses that are active in the domestic markets where the local entrepreneurs operate. In a global economy, it is often difficult for a micro-entrepreneur to become a supplier or a customer of larger companies since it may not be easy for those companies to obtain information on the existence and the reliability (for instance, in terms of their financial situation) of the small businesses. A unique identifier, recognizable worldwide, would assist in creating a safe and reliable

²¹⁹ Para. 55, [A/CN.9/WG.I/WP.93/Add.2](#).

²²⁰ For instance, in Singapore if a business director is disqualified by a foreign court from managing a business, that director can no longer be involved in the management of any company in the territory of the State unless certain requirements of domestic company law are satisfied. Available at: <https://support.rikvin.com/faq/who-are-disqualified-directors/>.

²²¹ See Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012.

²²² See para. 32, [A/CN.9/WG.I/WP.85](#).

²²³ Para. 56, [A/CN.9/WG.I/WP.93/Add.2](#).

²²⁴ However, see the collaboration between Australia and New Zealand reported in footnote 228.

²²⁵ Para. 57, [A/CN.9/WG.I/WP.93/Add.2](#).

“connection” between a business and all of the information that relates to it, thus making it possible for the small business to obtain visibility in bigger markets.²²⁶

115. The internationalization of businesses of all sizes creates an increasing demand for access to information on companies operating outside their national borders. Making the exchange of such information across borders as simple and fast as possible is of key importance in order to ensure the traceability of companies, the transparency of their operations and to create a more business-friendly environment. However, official information on registered businesses is not always readily available on a cross-border basis and business clients and other interested parties must search the register on a State-by-State basis when in need of information. This can result in a time-consuming and expensive effort that many interested users of the business registry may not be able to undertake due to travel distances, high costs and other potential obstacles.²²⁷

116. States are increasingly aware of the importance of improving the cross-border exchange of data between registries,²²⁸ and sustained progress in respect of ICT now allows this aspect to be addressed. 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 approaches²²⁹ that allow for such interoperability.²³⁰ 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.

Recommendation 17²³¹: Exchange of information among business registries

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

IV. Registration of a business

A. Scope of examination by the registry

117. The method through which a business is registered varies from State to State,²³² 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. 53 above).²³³ In this regard, a jurisdiction aiming at reforming the registration system must first decide which

²²⁶ Para. 58, A/CN.9/WG.I/WP.93/Add.2.

²²⁷ Para. 27, A/CN.9/WG.I/WP.93.

²²⁸ For instance, Australia and New Zealand have agreed to mutual exchanges of data and documents. The two States have also amended their legislation to help reduce duplicate entries for New Zealand companies operating in Australia. See the section “New Zealand companies registered as foreign companies with ASIC” at <https://www.companiesoffice.govt.nz>.

²²⁹ See paras. 55-58, A/CN.9/WG.I/WP.93/Add.2. Australia and New Zealand have developed an application (NZAU Connect app) that allows users to carry out simultaneous searches of both the Australian and the New Zealand registries by using their smartphones or mobile devices. See the section “NZAU Connect App” in <http://asic.gov.au/online-services>.

²³⁰ Para. 28, A/CN.9/WG.I/WP.93.

²³¹ Former recommendation 37, A/CN.9/WG.I/WP.96/Add.1.

²³² See para. 6, A/CN.9/WG.I/WP.85.

²³³ 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 2.

approach it will take so as to determine the scope of the examination that will have to be carried out by the registry. The jurisdiction 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.²³⁴

118. Jurisdictions 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.²³⁵ 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, verification of an event's legal status is made after it has taken place, and registration is under the oversight of a government department or agency,²³⁶ which can choose whether to operate the business registry system itself or to adopt other arrangements (see paras. 38 to 39 above).²³⁷

119. 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. Notaries and/or lawyers and courts exercise a formal review and, 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 deter 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.²³⁸

B. Accessibility of information on how to register

120. In order for the business registry to facilitate trade and interactions between business partners, the public and the State, easy access to business services should be provided both to businesses that want to register and to interested stakeholders who want to search registered information.²³⁹

121. 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.²⁴⁰ 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)²⁴¹ and 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

²³⁴ Para. 2, [A/CN.9/WG.I/WP.93/Add.1](#).

²³⁵ See para. 9, [A/CN.9/WG.I/WP.85](#) and Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, pages 25-26.

²³⁶ See para. 24, [A/CN.9/WG.I/WP.93](#).

²³⁷ Para. 3, [A/CN.9/WG.I/WP.93/Add.1](#). For further reference, see para. 24, [A/CN.9/WG.I/WP.93](#) and 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 28.

²³⁸ Para. 4, [A/CN.9/WG.I/WP.93/Add.1](#).

²³⁹ Para. 54, [A/CN.9/WG.I/WP.93/Add.1](#).

²⁴⁰ M. Bruhm, D. McKenzie, *Entry Regulation and Formalization of Microenterprises in Developing Countries*, 2013, pages 7-8.

²⁴¹ See for instance, Section C.4, [A/CN.9/WG.I/WP.98](#).

meetings with registry officials in order to be apprised of the registration requirements, or the involvement of intermediaries to facilitate the registration process.²⁴²

122. In jurisdictions with developed ICT infrastructures, information on the registration process and documentation requirements should be available on the registry website or the website of the government agency overseeing the process. 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. 135 below).²⁴³

123. 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 business registry offices stating their processes, time requirements and fees.²⁴⁴ In any event, information for businesses that want to register should be made available at no cost.²⁴⁵

124. 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.²⁴⁶ In some States, for instance, prospective users of the system are referred to classroom-based and/or eLearning opportunities available through local educational institutions or professional associations.²⁴⁷

Recommendation 18²⁴⁸: Accessibility of information on how to register²⁴⁹

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

C. Businesses required or permitted to register²⁵⁰

125. States must also define which businesses are required to register under the applicable law. One of the key objectives of business registration is to permit businesses of all sizes and legal forms to be visible in the marketplace and to operate in the legally regulated commercial environment.²⁵¹ This objective is of particular importance in assisting MSMEs to participate effectively in the economy, and States may wish to consider requiring or enabling businesses of all sizes and legal forms to

²⁴² Para. 55, [A/CN.9/WG.I/WP.93/Add.1](#).

²⁴³ Para. 56, [A/CN.9/WG.I/WP.93/Add.1](#).

²⁴⁴ See Bangladesh and Guinea cited in para. 31, [A/CN.9/WG.I/WP.85](#).

²⁴⁵ Para. 57, [A/CN.9/WG.I/WP.93/Add.1](#).

²⁴⁶ See also para. 7, [A/CN.9/WG.I/WP.93/Add.1](#).

²⁴⁷ Para. 84, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see Service Alberta, Canada, at www.servicealberta.com/1005.cfm.

²⁴⁸ Former recommendation 17, [A/CN.9/WG.I/WP.96](#).

²⁴⁹ The Working Group requested (see para. 79, [A/CN.9/866](#)) verification of any overlap between recommendation 8 and 17 as they appeared in [A/CN.9/WG.I/WP.96](#). In this regard, the content of recommendation 8, which has been renumbered as recommendation 6 in this working paper, has been slightly modified to differentiate between the two. See footnote 96 above.

²⁵⁰ The Working Group may wish to consider whether recommendation 18 and paras. 120 to 122 of the commentary should be added to recommendation 2 (i.e. combined former recommendations 1, 4 and 7) and to the commentary in paras. 27 to 30 above.

²⁵¹ Para. 12, [A/CN.9/WG.I/WP.93](#).

register in an appropriate business registry, or creating a single business registry that is tailored to accommodate registration by a range of different sizes and different legal forms of business.²⁵²

126. 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.²⁵³ 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;²⁵⁴ while in other legal traditions, only corporations and similar entities (with legal personality and limited liability) are required to register.²⁵⁵ 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, for example, because they are not economic entities or because they are not engaged in business activities.²⁵⁶

127. 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.²⁵⁷

128. As noted above (see para. 21), 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, the separation of personal assets from assets devoted to business or limiting the liability of the owner of the business.²⁵⁸ Businesses that voluntarily register must, however, fulfil the same obligations and will be subject to the same penalties for non-compliance with obligations taken on by registration as those businesses that are required to register.

Recommendation 19²⁵⁹: Businesses required or permitted to register²⁶⁰

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

- (a) Which businesses are required to register; and

²⁵² Para. 5, [A/CN.9/WG.I/WP.93/Add.1](#).

²⁵³ See L. Klapper, R. Amit, M. F. Guillén, J. M. Quesada, *Entrepreneurship and Firm Formation Across Countries*, 2007, pages 6 ff.

²⁵⁴ See para. 23, [A/CN.9/825](#).

²⁵⁵ See L. Klapper, R. Amit, M. F. Guillén, J. M. Quesada, *Entrepreneurship and Firm Formation Across Countries*, 2007, pages 6 ff.

²⁵⁶ Para. 6, [A/CN.9/WG.I/WP.93/Add.1](#). For further reference, see L. Klapper, R. Amit, M. F. Guillén, J. M. Quesada, *Entrepreneurship and Firm Formation Across Countries*, 2007, pages 6 ff.

²⁵⁷ Para. 7, [A/CN.9/WG.I/WP.93/Add.1](#). For further reference, see para. 51, [A/CN.9/WG.I/WP.85](#).

²⁵⁸ See para. 35, [A/CN.9/WG.I/WP.92](#) and Section D.2, [A/CN.9/WG.I/WP.98](#).

²⁵⁹ Former recommendation 18, [A/CN.9/WG.I/WP.96](#).

²⁶⁰ The Working Group may wish to consider whether this recommendation should instead be included as a subparagraph in recommendation 2 of the present text (which combines former recommendations 1, 4 and 7 from [A/CN.9/WG.I/WP.96](#)), along the following lines: “The Regulation or the law of the enacting State should: ... (d) Specify which businesses are required to register.”

- (b) That all businesses are permitted to register.

D. Minimum information required for registration

129. 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,²⁶¹ 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 business life of the enterprise.²⁶²

130. General requirements for the registration of all legal forms of enterprise are likely to include the following:²⁶³

- (a) Providing information in respect of the business and its founders, such as:
 - (i) 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);
 - (ii) The name(s) and contact details of the registrant(s);
 - (iii) The identity of the person or persons who may legally bind the business; and
 - (iv) The legal form of business that is being registered; and²⁶⁴
- (b) Payment of any required fees to the registry.

131. 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.²⁶⁵

132. 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

²⁶¹ On this matter, see also paras. 61-67, [A/CN.9/WG.I/WP.99](#).

²⁶² Para. 8, [A/CN.9/WG.I/WP.93/Add.1](#). It should be noted that information required for the registration of a simplified business is likely to be a less comprehensive list, and that this portion of the materials should be made consistent with what the Working Group agrees in respect of the requirements for a simplified business.

²⁶³ See also paras. 60-67, [A/CN.9/WG.I/WP.99](#).

²⁶⁴ Para. 9, [A/CN.9/WG.I/WP.93/Add.1](#).

²⁶⁵ Para. 10, [A/CN.9/WG.I/WP.93/Add.1](#).

constitute information that may also be required by registries in respect of certain legal forms of business.²⁶⁶ 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.²⁶⁷ In some other jurisdictions, it is now practice to register beneficial ownership details and changes in those details,²⁶⁸ although the business registry is not always the authority entrusted with this task.²⁶⁹ Transparency in the beneficial ownership of businesses can help prevent the misuse of corporate vehicles, including MSMEs, for illicit purposes.²⁷⁰

Recommendation 20²⁷¹: Minimum information required for registration

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

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

E. Language in which information is to be submitted

133. 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.²⁷² 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-in court interpreter's translation into the registry's national

²⁶⁶ See The International Business Registers Report 2015, pages 26 ff.

²⁶⁷ See European Commerce Registers' Forum, International Business Registers Report 2014, page 26.

²⁶⁸ See The International Business Registers Report 2015, page 37.

²⁶⁹ 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.

²⁷⁰ Para. 12, [A/CN.9/WG.I/WP.93/Add.1](#). For further reference, see also paras. 65-66, [A/CN.9/WG.I/WP.99](#).

²⁷¹ Former recommendation 19, [A/CN.9/WG.I/WP.96](#).

²⁷² See European Commerce Registers' Forum, International Business Registers Report 2014, page 23.

language(s) or any other form of authenticating the documents or electronic records that is used in the State.²⁷³

134. 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.²⁷⁴

135. 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. Whatever approach is 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.²⁷⁵

Recommendation 21²⁷⁶: Language in which information is to be submitted²⁷⁷

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

F. Notice of registration

136. The enacting State is to choose the shortest possible appropriate time period within which the registrant should be notified of the effectiveness of the business registration.²⁷⁸ Obligating the registry to promptly notify the applicant business about

²⁷³ Para. 51, [A/CN.9/WG.I/WP.93/Add.1](#). For further reference, see also European Commerce Registers' Forum, International Business Registers Report 2014, page 24.

²⁷⁴ Para. 52, [A/CN.9/WG.I/WP.93/Add.1](#).

²⁷⁵ Para. 53, [A/CN.9/WG.I/WP.93/Add.1](#).

²⁷⁶ Former recommendation 20, [A/CN.9/WG.I/WP.96](#).

²⁷⁷ The Working Group may wish to note that this recommendation mirrors recommendation 22 of the UNCITRAL Guide on the Implementation of a Security Rights Registry, which reads as follows: "The Regulation should provide that the information in a notice must be expressed in [the language or languages to be specified by the enacting State], and in the character set determined and publicized by the registry." The Working Group may wish to insert square brackets into the recommendation to reflect fully the text on which it is based.

²⁷⁸ Para. 24, [A/CN.9/WG.I/WP.96](#).

the registration helps to ensure the integrity and security of the registry record.^{279, 280} 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 22²⁸¹: Notice of registration

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

G. Content of notice of registration

137. 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 23²⁸²: Content of notice of registration

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

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

H. Period of effectiveness of registration

138. States may adopt one of two approaches in terms of determining the period of effectiveness of the registration of a business. Under the first approach, 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 the date stated in the certificate of registration or upon the termination of the business.²⁸³ While this approach provides certainty as to the existence of the

²⁷⁹ Para. 39, [A/CN.9/WG.I/WP.93/Add.1](#). See also paras. 58-59, [A/CN.9/WG.I/WP.99](#).

²⁸⁰ The Secretariat suggests that para. 63, [A/CN.9/WG.I/WP.93/Add.2](#) might best be placed in a footnote. The text of that paragraph is therefore reproduced as follows, with some editorial modifications: “In some cases, jurisdictions have introduced statutory time limits on business registration procedures and/or ‘silence is consent’ rules. As a result of the ‘silence is consent’ rule, when a business fails to receive a decision on its application for registration within the time limit established by law or regulation, the business is nonetheless considered to have been duly registered.”

²⁸¹ Former recommendation 21, [A/CN.9/WG.I/WP.96](#).

²⁸² Former recommendation 22, [A/CN.9/WG.I/WP.96](#).

²⁸³ 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 the applicable law or regulation 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.

business and the reliability of the information provided, it imposes a burden on the registrant to regularly re-register or risk termination of the business. This danger could be particularly problematic for MSMEs, which 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.²⁸⁴

139. 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. While this approach may provide less certainty in terms of the currency of the information in the registry, it simplifies the intake process and both encourages registration and reduces its burden on businesses, and in particular on MSMEs.²⁸⁵

140. 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.²⁸⁶

141. When a registered business that is required to renew its registration fails to do so, the registry may be given the authority to deregister the business (see also para. 202 below) subject to providing an official notice to the business in accordance with the applicable law or regulation.

Recommendation 24²⁸⁷: Period of effectiveness of registration

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

I. Time and effectiveness of registration

142. 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. States usually 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.²⁸⁸

143. 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

²⁸⁴ Para. 29, [A/CN.9/WG.I/WP.93/Add.1](#).

²⁸⁵ *Ibid.*, para. 30.

²⁸⁶ See, for example, Singapore at <http://www.guidemesingapore.com/incorporation/other/singapore-sole-proprietorship-registration-guide>.

²⁸⁷ Former recommendation 23, [A/CN.9/WG.I/WP.96](#).

²⁸⁸ Para. 31, [A/CN.9/WG.I/WP.93/Add.1](#).

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.²⁸⁹

144. 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 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 changes 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 registration.²⁹⁰

Recommendation 25²⁹¹: Time and effectiveness of registration²⁹²

The Regulation should:

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

J. Refusal to register

145. 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 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.²⁹³ When registration concerns

²⁸⁹ Ibid., para. 32.

²⁹⁰ Ibid., para. 33.

²⁹¹ Former recommendation 24, [A/CN.9/WG.I/WP.96](#).

²⁹² The Working Group may wish to note recommendation 11 of the UNCITRAL Guide on the Implementation of a Security Rights Registry on “Time of effectiveness of the registration of a notice.”

²⁹³ See, for instance, Section 1068, UK Companies Act 2006.

an MSME, it would be advisable that such requirements be kept at 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.²⁹⁴

146. 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 proper 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 ICT-based registration system is usually designed so as to allow built-in data error checks (see also paras. 175 to 178) 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 or the regulation should strictly determine under which conditions those responsibilities may be discharged (see also para. 211 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. 196 to 200 below). The Regulation 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 the consent of the registrant. 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.²⁹⁵ The Regulation or the applicable law of the enacting State should specify an appropriate length of time within which the registry should make such a request.

147. States should provide that registries may reject the registration of a business if its application does not meet the requirements prescribed by the legislative and regulatory framework for registration. 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 basis on which it was rejected, and the registrant must be allowed time to appeal against that decision.²⁹⁶

148. In cases where the application for business registration 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 electronically and the relevant information directly to the registry, the system should be designed, when permitted by the State's technological infrastructure, so as to automatically reject the submission of incomplete or illegible applications and to display the basis of the rejection on the registrant's screen.²⁹⁷

²⁹⁴ Para. 22, [A/CN.9/WG.I/WP.93/Add.1](#).

²⁹⁵ Para. 23, [A/CN.9/WG.I/WP.93/Add.1](#).

²⁹⁶ Para. 24, [A/CN.9/WG.I/WP.93/Add.1](#).

²⁹⁷ Para. 25, [A/CN.9/WG.I/WP.93/Add.1](#).

Recommendation 26²⁹⁸: Refusal to register²⁹⁹

The Regulation should provide that the business registrar:

(a) Must refuse registration of the business if the application does not meet the requirements specified in the Regulation or the law of the State and is required to provide to the registrant the basis for refusal in written form; and

(b) Is granted the authority to correct its own errors as well as any incidental errors that may appear in the information submitted in support of the registration of the business, provided that the conditions under which the registrar may exercise this authority are clearly established.

K. Registration of branches

149. Most States require the registration of national branches of a foreign company 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. Registration of a company 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 abroad 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 to another State, it may find that setting up a foreign branch is cheaper and requires fewer formalities than establishing a local subsidiary.³⁰⁰

150. There may be considerable differences among those jurisdictions that register foreign company branches in terms of what triggers the obligation of those companies to register their branches. Some approaches are based on a wide 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 recognizability, such as a place of business in the foreign State.³⁰¹ Other approaches define more precisely the elements that constitute a branch that needs to be registered. They may include the presence of some sort of management, the maintenance of an independent bank account, the relation between the branch and the parent company, or the requirement that the parent company has its main office registered abroad.³⁰² Not all States define the notion of branch in their legislation, or state under which circumstances a foreign establishment in the State should 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.³⁰³ When this occurs, the guidelines should not be seen as an attempt to legislate by providing their own definition of branch, but rather as a tool to

²⁹⁸ Former recommendation 25, [A/CN.9/WG.I/WP.96](#).

²⁹⁹ The Working Group may wish to note recommendation 8 of the UNCITRAL Guide on the Implementation of a Security Rights Registry on “Rejection of the registration of a notice”.

³⁰⁰ Para. 15, [A/CN.9/WG.I/WP.93/Add.1](#). 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.

³⁰¹ K. E. Sørensen, *ibid.*, page 12.

³⁰² *Ibid.*, page 12.

³⁰³ *Ibid.*, page 13.

explain the features required by a branch of a foreign business in order to be registered.³⁰⁴

151. When simplifying or establishing their business registration system, States should consider enacting provisions governing the registration of branches of foreign companies. 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.³⁰⁵ Duplication of names could represent a major issue when registering foreign company branches, and it would be 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. 94 to 104 above).³⁰⁶

Recommendation 27³⁰⁷: Registration of branches

The Regulation should ensure that:

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

V. Post-registration

A. Maintaining a current registry

152. In addition to the function performed in the registration of an enterprise, business registries typically support businesses throughout their life cycle. Once the information is collected and properly recorded in the business registry, it is imperative that it be kept current in order to be of value to users of the registry. As noted above (see paras. 33 to 34), it would thus be advisable for States to have in place provisions that enable the registration system to achieve this purpose.

³⁰⁴ Para. 16, [A/CN.9/WG.I/WP.93/Add.1](#).

³⁰⁵ *Ibid.*, para. 17. The Working Group may wish to consider whether further details on this topic should be included in a future annex to these materials.

³⁰⁶ The Working Group agreed at its twenty-fifth session that the duplication of business names could be a problem in the cross-border context and that the use of unique identifiers could assist in ensuring the identity of a business within and across jurisdictions (para. 39, [A/CN.9/860](#)).

³⁰⁷ Former recommendation 26, [A/CN.9/WG.I/WP.96](#).

153. One approach through which information in the business registry may be kept current is for the State to require that the business re-register at regular intervals. A similar approach is to require the business to file at regular intervals, for example once a year, an updating declaration stating that certain core information contained in the register concerning the business is accurate or, as applicable, stating what changes should be made. Although these approaches may be valuable as a means of identifying companies that have permanently ceased to operate and may be deregistered, and may not necessarily be burdensome for larger business with sufficient human resources, they could be quite demanding for less generously staffed MSMEs, in particular if there is a cost associated with making such submissions. A third approach, which seems preferable as it better takes into account the needs of MSMEs, and in particular the less experienced ones, is for the business to update the 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 updated information. In order to minimize the burden for the registries and 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 form, it would be desirable for the registry to identify appropriate means to perform 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.³⁰⁸ Regardless of the approach chosen to ensure that businesses promptly inform the registry of any changes in their registered information, States could also adopt provisions declaring the liability of the registrant to a fine on conviction if changes are not filed with the business registry within the time prescribed by the law or the Regulation.

154. Other methods to 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.³⁰⁹

Recommendation 28: Maintaining a current registry³¹⁰

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

- (a) Sending an automated request to registered businesses at periodic intervals requiring them to report whether the information maintained in the registry continues to be accurate or stating which changes should be made; and
- (b) Updating the registry immediately upon receipt of the amending information or as soon as practicable thereafter.

³⁰⁸ This is the practice in Sri Lanka. See, for example, <http://www.sundaytimes.lk/090503/FinancialTimes/ft322.html>.

³⁰⁹ Para. 27, [A/CN.9/WG.I/WP.93/Add.1](#).

³¹⁰ At its twenty-fourth session, there was broad agreement in the Working Group that information maintained in the registry should be kept as current as possible. Different views were expressed on how to accomplish that goal (para. 73, [A/CN.9/831](#)).

B. Information required after registration

155. 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 returns³¹¹ of enterprises that are useful sources of information on businesses in that jurisdiction for investors, clients, potential creditors and government agencies.³¹² Although the submission and publication of detailed financial statements might be appropriate for public companies, depending on their 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.³¹³ 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.

156. Once a business has been registered, in order for it to remain registered, certain information is typically required by the registry throughout the course of the life of the business. This information may be prompted by periodic returns that are required by the registry at regular intervals in order to keep the information on 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;³¹⁴
- (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. 57 above).³¹⁵

Recommendation 29³¹⁶: Information required after registration

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

- (a) Any changes or amendments to the information that was initially required for the registration of the business pursuant to recommendation 20 or to

³¹¹ It was noted in the twenty-fifth session of the Working Group (para. 45, [A/CN.9/860](#)) that annual returns should be included; the term “periodic returns” is a defined term and has been used here.

³¹² Para. 21, [A/CN.9/WG.I/WP.93](#).

³¹³ See Working Group comments in paras. 45-47, [A/CN.9/860](#). See also paras. 62-67, [A/CN.9/WG.I/WP.99](#) and paras. 53-55, [A/CN.9/WG.I/WP.99/Add.1](#).

³¹⁴ See L. Klapper, R. Amit, M. F. Guillén, J. M. Quesada, *Entrepreneurship and Firm Formation Across Countries*, 2007, page 7.

³¹⁵ Para. 11, [A/CN.9/WG.I/WP.93/Add.1](#).

³¹⁶ Former recommendation 27, [A/CN.9/WG.I/WP.96](#).

the current information in the business registry as soon as those changes occur; and

(b) Periodic returns, which may include annual accounts, as required by the law of the enacting State.³¹⁷

C. Time and effectiveness of amendments to registered information

157. In keeping with the previous discussion (see paras. 142 to 144 above), States should also determine the time when 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.³¹⁸

158. As in the case of business registration, if the registry allows users to submit information electronically without the intervention of the registry staff, the information should become effective immediately or nearly immediately after it is transmitted, to avoid delay.³¹⁹ If the registry allows or requires paper-based information to be submitted to it and the registry staff enters the information into the registry on behalf of the registrant, it should be ensured that the registry enter the information received into the registry record as soon as practicable and possibly set a deadline by which the changes should be registered. In a mixed registry system which allows information 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 registration.³²⁰

Recommendation 30³²¹: Time and effectiveness of amendments to registered information

The Regulation should:

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

(b) Require the business registry to notify the registered business as soon as practicable that its registered information has been amended; and

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

³¹⁷ The Secretariat suggests that former subpara. (b) of recommendation 27 (with some minor edits) be included in a footnote, which would read: "In order to comply with international standards promoting disclosure of the beneficial ownership of a business, States may wish to consider whether the business should also be required to provide information on the identity of the owner of the business if the owner is a person other than the registrant." See also paras. 132 and 180 of this working paper.

³¹⁸ Para. 31, [A/CN.9/WG.I/WP.93/Add.1](#).

³¹⁹ *Ibid.*, para. 32.

³²⁰ *Ibid.*, para. 33.

³²¹ Former recommendation 29, [A/CN.9/WG.I/WP.96](#).

VI. Accessibility and information-sharing

A. Public access to the business registry

159. 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 enterprise. This will allow interested users to make informed decisions about who they wish to do business with, and for organizations and other stakeholders to gather business intelligence. This function of a business registry is demonstrably valuable to the economy of a State.³²²

160. 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 legislation.³²³ For instance, an aspect on which States may differ concerns the criteria that may be used to search the registry.³²⁴

161. Further, in order to facilitate dissemination of the information, it should be made available at no cost or for a low cost. This approach may be greatly facilitated by the development of ICT supported 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 the information is sent to them on paper. In both cases, registry staff may need to assist the user to locate the information and prepare it for disclosure. Again, paper-based information access is associated with delay, higher costs, and the potential for error and for information to be less current.³²⁵

162. The rules relating to access to business registry services are typically set out either in the applicable law or regulation, or both. They may also be addressed in the “terms and conditions of use” established by the registry. For example, the terms and conditions of access may 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 registrant.³²⁶ Assigning a unique user name and a password to the registrant, or employing other modern security techniques would help reduce such risks (see paras. 34 and 35 above),³²⁷ as would require the registry to notify the registrant of any changes made by others in the deposited information. Since access to the registered information by the general users also enhances certainty of and transparency in the way the registry operates, the

³²² Ibid., para. 64. The Secretariat suggests that what was formerly the last sentence of para. 159 should instead be included in a footnote, which would read as follows: “[Moreover], in several States certain information deposited in the registry is of a legal nature and has third-party effectiveness, so that users of the registry can rely upon the information as it appears on the registry, and assert that information against third parties.”

³²³ See L. Klapper, R. Amit, M. F. Guillén, J. M. Quesada, *Entrepreneurship and Firm Formation Across Countries*, 2007, page 8.

³²⁴ Para. 65, [A/CN.9/WG.I/WP.93/Add.1](#).

³²⁵ Ibid., para. 67. See above, paras. 62 and 63.

³²⁶ Para. 45, [A/CN.9/WG.I/WP.93](#).

³²⁷ See UNCITRAL Guide on the Implementation of a Security Rights Registry, paras. 80 and 257.

principle of public access to the information deposited in the registry should be stated in the law or the regulation governing business registration.³²⁸

Recommendation 31³²⁹: Public access to business registry services³³⁰

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

B. Public availability of information

163. Evidence shows that in most States, public access to the information on 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.³³¹

164. 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 granting 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.³³²

165. 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.³³³ In the same vein, States should be encouraged to abolish or keep to a bare minimum fees to access basic information on the registered entities (see para. 54 above and paras. 185 to 186 below).³³⁴

166. The applicable business registration law or regulation 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 the search services of 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.³³⁵

167. 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.³³⁶

³²⁸ Para. 66, [A/CN.9/WG.I/WP.93/Add.1](#).

³²⁹ Former recommendation 30, [A/CN.9/WG.I/WP.96/Add.1](#).

³³⁰ The Working Group may wish to note recommendation 4 of the UNCITRAL Guide on the Implementation of a Security Rights Registry on “Public access”.

³³¹ Para. 68, [A/CN.9/WG.I/WP.93/Add.1](#).

³³² *Ibid.*, para. 69.

³³³ *Ibid.*, para. 70. See also paras. 62-67, [A/CN.9/WG.I/WP.99](#).

³³⁴ At its twenty-fifth session, the Working Group expressed its support for the adoption of policies by business registries of no or of low registration fees (para. 40, [A/CN.9/860](#)).

³³⁵ Para. 71, [A/CN.9/WG.I/WP.93/Add.1](#).

³³⁶ *Ibid.*, para. 72.

168. The applicable law or regulation 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. In registry systems that allow registrants 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 basis for the refusal on the electronic screen.³³⁷

169. Simply because information is made available for use does not necessarily equate with that information 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 ICT supported registries that allow direct and continuous access for stakeholders (except for periods of scheduled maintenance) will promote the actual use of the information. Communication campaigns³³⁸ on the services available at the registry will also contribute to the active take-up of registry services by potential users.³³⁹

Recommendation 32³⁴⁰: Public availability of information

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

C. Where information is not made public

170. To maintain the integrity and reputation of the registry as a trusted collector of information that has public relevance and while access to the registries should be granted to all interested entities and to the public at large, access to sensitive data should be controlled to avoid any breach of confidentiality. States should thus put in place proper disclosure procedures. They can do so by adopting provisions that list which information is not available for public disclosure or they can follow the opposite approach and adopt provisions that list the information that is publicly accessible and at the same time state that information that is not listed cannot be disclosed.³⁴¹ States might also wish to determine to which public authorities or private entities (such as banks or credit bureaux) the registry may disclose information on the registered business that is not made public. When this approach is followed, information should only be shared subject to the authorization of the registrar and the prior consent of the business.

171. As previously noted (see para. 110 above), when establishing an ICT-supported registry, States must consider issues concerning the treatment of personal data that is included in the application for registration³⁴² and its protection, storage and use. Appropriate legislation should be in place to ensure that such data are protected. In the European Union, for instance, several Directives apply when data concerning individuals (for example, information on officers or directors) are included in the application for business registration.³⁴³

³³⁷ Ibid., para. 73.

³³⁸ See para. 42, [A/CN.9/WG.I/WP.93](#).

³³⁹ Para. 77, [A/CN.9/WG.I/WP.93/Add.1](#).

³⁴⁰ Former recommendation 34, [A/CN.9/WG.I/WP.96/Add.1](#).

³⁴¹ Para. 50, [A/CN.9/WG.I/WP.93/Add.1](#).

³⁴² See also para. 8, [A/CN.9/WG.I/WP.93/Add.1](#).

³⁴³ Para. 33, [A/CN.9/WG.I/WP.93/Add.2](#).

Recommendation 33³⁴⁴: Where information is not made public

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

- (a) Establish which information concerning the registered business is subject to the applicable rules in the enacting State on public disclosure of private data and require the registrar to list the types of information that cannot be publicly disclosed; and
- (b) Specify the circumstances in which the registrar may use or disclose information that is subject to confidentiality restrictions.

D. Hours of operation

172. 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 reliable 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 or regulation governing business registration or in administrative guidelines published by the registry, and the registry should ensure that its operating days and hours are widely publicized.³⁴⁵

173. 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 be aimed at ensuring 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.³⁴⁶ 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.³⁴⁷

174. The law, regulation 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

³⁴⁴ Former recommendation 35, [A/CN.9/WG.I/WP.96/Add.1](#).

³⁴⁵ Para. 58, [A/CN.9/WG.I/WP.93/Add.1](#).

³⁴⁶ For example, the law, regulation 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.

³⁴⁷ Para. 59, [A/CN.9/WG.I/WP.93/Add.1](#).

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).³⁴⁸

Recommendation 34³⁴⁹: Hours of operation³⁵⁰

The designated authority should provide that:

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

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

(ii) Information about any registry office locations and their opening days and hours is publicized on the registry's website, if any, or otherwise widely publicized, and the opening days and hours of registry offices are posted at each office;

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

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

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

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

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

³⁴⁸ Ibid., para. 60.

³⁴⁹ Former recommendation 31, [A/CN.9/WG.I/WP.96/Add.1](#).

³⁵⁰ The Working Group may wish to note that this recommendation mirrors recommendation 5 of the UNCITRAL Guide on the Implementation of a Security Rights Registry which provides as follows: "The Regulation should provide that: (a) If access to the services of the registry is provided through a physical office: (i) Each office of the registry is open to the public during [the days and hours to be specified by the enacting State]; and (ii) Information about any registry office locations and their opening days and hours is publicized on the registry's website, if any, or otherwise widely publicized, and the opening days and hours of registry offices are posted at each office; (b) If access to the services of the registry is provided through electronic means of communication, electronic access is available at all times; and (c) Notwithstanding subparagraphs (a) and (b) of this recommendation: (i) The registry may suspend access to the services of the registry in whole or in part for a period of time that is as short as practicable; and (ii) Notification of the suspension and its expected duration is published on the registry's website, if any, or otherwise widely publicized, in advance when feasible and, if not feasible, as soon thereafter as reasonably practicable, and, if the registry provides access to its services through physical offices, the notification is posted at each office".

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

175. 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. If the technological infrastructure of the State allows, or at a later stage of the reform, States should also consider adopting systems that allow registration 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.³⁵¹

176. When the registry allows for direct electronic access, users bear the sole responsibility for any errors or omissions they make in the registration or in their information searches and carry the burden of making the necessary corrections or amendments. Consequently, the potential for corruption or misconduct on the part of registry staff is greatly minimized, since their duties are 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.³⁵²

177. In addition, direct electronic access significantly reduces the costs of operation and maintenance of the system and also enhances the efficiency of the registration process by putting direct control over the timing of the business registration into the hands of the registrant. Direct electronic access also eliminates any time lag between submission of the information to the registry and the actual entry into the database of that information. In some States,³⁵³ electronic access (either from a client's premises or from a branch office of the registry) is the only available mode of access for both registration and information searches. While in many States, where the registration system is both paper-based and ICT-based, 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 registrants. 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. 63 above).³⁵⁴

178. It is thus recommended that, to the extent possible, States should establish a business registry 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

³⁵¹ Para. 50, [A/CN.9/WG.I/WP.93](#).

³⁵² Para. 45, [A/CN.9/WG.I/WP.93/Add.1](#).

³⁵³ See para. 44, [A/CN.9/WG.I/WP.85](#).

³⁵⁴ Para. 61, [A/CN.9/WG.I/WP.93/Add.1](#).

registration and information retrieval process as simple, transparent, efficient, inexpensive and publicly accessible as possible.³⁵⁵

Recommendation 35³⁵⁶: Direct electronic access to submit registration, to search and to request amendments

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

F. Facilitating access to information

1. Type of information provided

179. 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 (in both electronic and paper formats); a list of the business's divisions or places of business; the certificate 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 for the registry services.³⁵⁷ 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).³⁵⁸ 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.³⁵⁹

180. 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.³⁶⁰ 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

³⁵⁵ Ibid., para. 63.

³⁵⁶ Former recommendation 32, A/CN.9/WG.I/WP.96/Add.1.

³⁵⁷ See, for instance, European Commerce Registers' Forum, International Business Registers Report 2014, pages 77 ff.

³⁵⁸ See, for example, the Report of the Australian Business Registrar, 2013-2014, available at: abr.gov.au. Subpara. 46(c), A/CN.9/WG.I/WP.93.

³⁵⁹ Para. 74, A/CN.9/WG.I/WP.93/Add.1. For further reference, see European Commerce Registers' Forum, International Business Registers Report 2014, page 131.

³⁶⁰ Supra, note 359, [2014], pages 30 ff, and [2015] pages 35-36.

require the State to exercise caution before opting for disclosure of beneficial ownership without any limitation.³⁶¹

181. 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;

(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.³⁶²

2. Unnecessary barriers to accessibility

182. 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.³⁶³

183. One often overlooked barrier to accessing information, whether in order to register a business or to review data on 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).³⁶⁴ 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.³⁶⁵

³⁶¹ Para. 75, [A/CN.9/WG.I/WP.93/Add.1](#). For further reference, see para. 65, [A/CN.9/WG.I/WP.99](#).

³⁶² Para. 62, [A/CN.9/WG.I/WP.93/Add.1](#) and subparas. 46(b) and (c), [A/CN.9/WG.I/WP.93](#).

³⁶³ Para. 79, [A/CN.9/WG.I/WP.93/Add.1](#).

³⁶⁴ See The International Business Registers Report 2015, page 141.

³⁶⁵ Para. 80, [A/CN.9/WG.I/WP.93/Add.1](#). For further reference, see also paras. 122 and 133 to 135 of this working paper.

3. Bulk information

184. In addition to making information on individual business entities available, business registries in some jurisdictions also offer the possibility of obtaining “bulk” information,³⁶⁶ 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.³⁶⁷ Distribution of bulk information³⁶⁸ can represent a practicable approach for the registry to derive self-generated funds (see para. 190 below).³⁶⁹

Recommendation 36³⁷⁰: Facilitate access to information

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

VII. Fees

185. 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 to 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 company in the registry (these fees are unrelated to any particular activity), as well as fees to register annual accounts or financial statements.³⁷¹

186. Although they generate revenue for the registries, fees can affect a business’s decision whether to register, since such payments may impose a burden on businesses,

³⁶⁶ See Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, page 14. See also *The International Business Registers Report 2015*, pages 140-141.

³⁶⁷ Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, page 14.

³⁶⁸ See also para. 76, [A/CN.9/WG.I/WP.93/Add.2](#).

³⁶⁹ Para. 76, [A/CN.9/WG.I/WP.93/Add.1](#).

³⁷⁰ Former recommendation 33, [A/CN.9/WG.I/WP.96/Add.1](#).

³⁷¹ Para. 72, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see *European Commerce Registers’ Forum Report 2013*, page 72.

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.³⁷² For instance, in several States that consider business registration as a public service intended to encourage enterprises 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.³⁷³

A. Fees charged for registry services

187. 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 cost. 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 ICT supported 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.³⁷⁴

188. 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 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

³⁷² Para. 73, [A/CN.9/WG.I/WP.93/Add.2](#).

³⁷³ *Ibid.*, para. 74.

³⁷⁴ *Ibid.*, para. 77.

incur in order to promote business registration. In these cases, however, the services provided to businesses would likely be subsidized with public funds.³⁷⁵

189. 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.³⁷⁶

Recommendation 37³⁷⁷: Fees charged for registry services

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

B. Fees charged for information

190. 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 (for example, direct downloading or providing bulk information). Since fees charged for information products are likely to influence users in their choice of products, such fees should be set at a level low enough to make the use of less expensive products attractive to users; otherwise, users may request information products that are more costly for the registry to produce (for example, ordering printed versions by telephone) and for which their cost recovery falls short.³⁷⁸

Recommendation 38³⁷⁹: Fees charged for information

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

C. Publication of fee amounts and methods of payment

191. Regardless of the approach taken to determine the applicable fees, if any, States should clearly establish the registration and information fees charged to registry users,

³⁷⁵ Ibid., para. 78.

³⁷⁶ Ibid., para. 80.

³⁷⁷ Former recommendation 38, [A/CN.9/WG.I/WP.96/Add.1](#).

³⁷⁸ Para. 76, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, page 17.

³⁷⁹ Former recommendation 39, [A/CN.9/WG.I/WP.96/Add.1](#).

as well as 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. 233 below). When establishing registration and information fees, one approach would be for the State to set out the fees in a “regulation”, which could be either a formal regulation or more informal administrative guidelines that 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.³⁸⁰ The State may also wish to consider specifying in the law or the regulation on business registration the types of service that the registry may or must provide free of charge.³⁸¹

Recommendation 39³⁸²: Publication of fee amounts and methods of payment

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

VIII. Sanctions and liability

A. Sanctions

192. The State should have the ability to enforce proper compliance with initial and ongoing registration requirements. States with high quality registration systems usually possess enforcement mechanisms that may be used on businesses in respect of the information that the business is required to file throughout its life cycle (as well as additional required reporting).³⁸³ In some jurisdictions, for instance, the law establishes sanctions on businesses that fail to submit timely or accurate and complete information.³⁸⁴

193. Fines for breaching obligations related to business registration, such as late filing of periodic returns, can represent a means of revenue generation. Their collection, 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

³⁸⁰ 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>.

³⁸¹ Para. 79, A/CN.9/WG.I/WP.93/Add.2.

³⁸² Former recommendation 40, A/CN.9/WG.I/WP.96/Add.1.

³⁸³ See L. Klapper, R. Amit, M. F. Guillén, J. M. Quesada, *Entrepreneurship and Firm Formation Across Countries*, 2007, page 8.

³⁸⁴ Para. 14, A/CN.9/WG.I/WP.93/Add.1. 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.

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 determine fines at a level that encourages business registration without negatively affecting the funding of registries when compliance improves.³⁸⁵

194. 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. Recording information on a director's disqualification in the business registry not only may deter potential abuses by that director, but it may also represent a protective measure for third parties interacting with the business. As noted above, (see para. 111), the availability of such information in the business registry, in addition to enhanced interconnection among registries from different jurisdictions, may result in preventing disqualified directors from being appointed as directors of a business in another jurisdiction.

Recommendation 40³⁸⁶: Sanctions

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

B. Liability for submission of misleading, false or deceptive information

195. In order to ensure that reliable information is submitted to the business registry, States should adopt provisions, whether of an administrative or legal nature, that establish the responsibility of the registrant for any misleading, false or deceptive information that the registrant has knowingly or recklessly submitted to the registry. Adoption of such provisions could be of particular importance in States that chose business registration systems in which the registry only records facts and does not perform any ex ante legal verification.³⁸⁷

Recommendation 41³⁸⁸: Liability for submission of misleading, false or deceptive information

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

³⁸⁵ Para. 75, [A/CN.9/WG.I/WP.93/Add.2](#).

³⁸⁶ Former recommendation 41, [A/CN.9/WG.I/WP.96/Add.1](#).

³⁸⁷ Para. 26, [A/CN.9/WG.I/WP.93/Add.1](#).

³⁸⁸ Former recommendation 42, [A/CN.9/WG.I/WP.96/Add.1](#).

C. Liability of the business registry

196. The State, by way of law or regulation, 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.³⁸⁹

197. As noted above, registrants or users bear the responsibility for any errors or omissions in the information contained in an application for registration or an amendment request they submit to the registry, and carry the burden of making the necessary corrections. If applications 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 address the existence or the extent of its potential liability for the refusal or failure of the registry to enter correctly information contained in the application into the registry record or to register correctly the amendment.³⁹⁰

198. 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.³⁹¹

199. 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.³⁹²

200. 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.³⁹³

Recommendation 42³⁹⁴: Liability of the business registry

The Regulation or the law of the enacting State should establish whether the business registry may be held liable for loss or damage caused by error or

³⁸⁹ Para. 46, [A/CN.9/WG.I/WP.93/Add.1](#). 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. 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.

³⁹⁰ Para. 47, [A/CN.9/WG.I/WP.93/Add.1](#).

³⁹¹ *Ibid.*, para. 44.

³⁹² *Ibid.*, para. 48.

³⁹³ *Ibid.*, para. 49.

³⁹⁴ Former recommendation 43, [A/CN.9/WG.I/WP.96/Add.1](#).

negligence in the registration of businesses or the administration or operation of the registry.

IX. Deregistration

A. Deregistration

201. Deregistration is the removal of a business from the register once the business, for whatever reason, has permanently ceased to operate, including in cases of merger, winding-up, forced liquidation due to bankruptcy, or in cases where applicable law permits the registrar to deregister the business for failing to fulfil certain legal requirements.³⁹⁵

202. 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.³⁹⁶ In jurisdictions where this function is included, statutory provisions determine the cause of the deregistration and the procedures to follow in carrying it out. In order to deregister a business, registries are generally required to have reasonable cause to believe that a registered enterprise 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 a business has failed to submit its statutory periodic reports or annual accounts, including renewal of its registration when required (see para. 141 above), within a certain period 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 time for the business to reply. 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 the law, will the business be deregistered.³⁹⁷ A common requirement for a deregistration to become effective is that notice of it be published.³⁹⁸

203. Deregistration may also be carried out upon the request of the business (referred to here as “voluntary deregistration”), usually if the business ceases to trade or has never traded; or by court order, as a consequence of proceedings to wind up the business. In cases of voluntary deregistration of a business, States should specify in which circumstances businesses can apply for deregistration (an alternative approach may be to specify in which circumstances the business cannot apply for deregistration) and which persons associated with the business are authorized to request deregistration on behalf of the business.

204. The registrar, upon receiving notification of a business dissolution, shall issue an announcement stating that creditors have a certain length of time during which to advance their claims. After that period has passed, a notation is made on the registry

³⁹⁵ Para. 22, [A/CN.9/WG.I/WP.93](#).

³⁹⁶ European Commerce Registers’ Forum, International Business Registers Report 2014, page 26, and see The International Business Registers Report 2015, pages 40 ff.

³⁹⁷ See note 26 above for a short description of deregistration.

³⁹⁸ Para. 20, [A/CN.9/WG.I/WP.93/Add.1](#). 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. See also T. F. MacLaren, in Eckstrom’s Licensing in Foreign and Domestic Operations: Joint Ventures, 2015 [as it appears in Westlaw], page 30.

that the business is deregistered.³⁹⁹ This procedure ensures that businesses are not deregistered without providing creditors the opportunity to protect their rights.⁴⁰⁰ It should be noted that pending completion of the deregistration procedure, the business remains in operation and will continue to carry on its activities.

205. 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. 208 to 210).⁴⁰¹ The length of the period of preservation is likely to be influenced by the way in which the registry is structured and operated. ICT-based registries usually allow for the information to be preserved in perpetuity, if the registries have been developed according to technical standards of scalability and flexibility (see paras. 66 to 70 above). When the registry is paper-based or mixed, preserving documents indefinitely may not be a feasible approach, due to the high costs 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. 208 to 210 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.⁴⁰²

Recommendation 43⁴⁰³: Voluntary deregistration

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

Recommendation 44⁴⁰⁴: Compulsory deregistration

The Regulation should:

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

Recommendation 45⁴⁰⁵: Process of deregistration

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

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

³⁹⁹ See footnote 26 above.

⁴⁰⁰ Para. 22, [A/CN.9/WG.I/WP.93](#).

⁴⁰¹ At its twenty-fifth session, the Working Group agreed that historical information on businesses that had been deregistered should be maintained (para. 49, [A/CN.9/860](#)).

⁴⁰² This observation was made during the twenty-fifth session of the Working Group (para. 49, [A/CN.9/860](#)).

⁴⁰³ Former recommendation 44, [A/CN.9/WG.I/WP.96/Add.1](#).

⁴⁰⁴ Former recommendation 45, [A/CN.9/WG.I/WP.96/Add.1](#).

⁴⁰⁵ Former recommendation 46, [A/CN.9/WG.I/WP.96/Add.1](#).

B. Reinstatement of registration

206. In several States, it is possible to reinstate the registration of a business that has been deregistered either by way of a court order or upon request to the registrar when certain conditions are met (in some States this latter procedure is defined as “administrative restoration”). In certain States, both procedures are available and choosing either of them usually depends on why the business was deregistered and/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 on filing an application for restoration. The requirements for “administrative restoration” in States which 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,⁴⁰⁶ 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.⁴⁰⁷ 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 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 46⁴⁰⁸: Reinstatement of registration

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

C. Time of effectiveness of business deregistration

207. The time of effectiveness of the deregistration should be established by way of law or regulation, which should distinguish between deregistration on the registrar’s initiative, deregistration upon court order and deregistration at the request of the business. While the requirements for these three types would vary, in all cases it would be advisable that the notation of deregistration states the date of effect of the deregistration in addition to the reasons therefor. Moreover, in cases where deregistration is decided by the registrar, the registrant should be given sufficient time to oppose that decision. As in the case of the application for registration or a subsequent change, the effective date and time of registration of a notice of deregistration should be indicated on the registry record relating to that deregistration. If the notice of deregistration is provided electronically, the time between receipt of that notice and amendment of the information on the registry record should be very short. If the request for deregistration is provided in paper form, there will be a greater time lag before it is published in the business registry.⁴⁰⁹

⁴⁰⁶ See, for instance, UK in Companies House, Strike off, dissolution & restoration, 2015, pages 12 and 17.

⁴⁰⁷ See, for instance, Ireland, in <https://www.cro.ie/Termination-Restoration/Overview>.

⁴⁰⁸ Former recommendation 47, [A/CN.9/WG.I/WP.96/Add.1](#).

⁴⁰⁹ Para. 34, [A/CN.9/WG.I/WP.93/Add.1](#).

Recommendation 47⁴¹⁰: Time and effectiveness of deregistration

The Regulation should:

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

X. Preservation of records**A. Preservation of records**

208. As a general rule, the information in the business registry is kept indefinitely. However, as noted in paragraph 205 above, the length of the preservation period for records is most often influenced by the way the registry operates, and whether the registry is ICT-supported, paper-based or a mixed system. Those States with paper-based or mixed registration systems, should adopt rules that specify a minimum period of time for which documents submitted in hard copy should be kept by the registry.⁴¹¹

209. In the case of ICT-supported registries, original documents submitted in hard copy could be kept for a short period (for example, not over 5 years after they were received by the registry) providing that the information contained in such documents has been recorded in the registry⁴¹² or that the paper documents have been digitized (through scanning or other electronic processing).

210. In the case of a paper-based registry which cannot convert the documents received into an electronic form or other non-paper forms (for instance, microfilm) that allow transmission, storage, reading, and printing of the documents, the records should be preserved until the business is deregistered and for an appropriate period of time after deregistration has occurred (see also para. 205 above). The enacting State should decide on the appropriate length of time for such a period. States may also choose to apply their general rules on preservation of public documents.⁴¹³

Recommendation 48⁴¹⁴: Preservation of records⁴¹⁵

The Regulation should provide that:

- (a) Documents and information submitted electronically by the registrant and the registered business, including information in respect of deregistered businesses, should be preserved by the registry in perpetuity so as to enable the information to be retrieved by the registry and other interested users;
- (b) Where paper documents have been submitted and the information contained in them has been entered into an electronic registry that meets the reliability standards established by the State, a minimum period of preservation of such documents should be specified by the enacting State; and

⁴¹⁰ Former recommendation 48, A/CN.9/WG.I/WP.96/Add.1.

⁴¹¹ Para. 35, A/CN.9/WG.I/WP.93/Add.1.

⁴¹² Ibid., para. 36.

⁴¹³ Ibid., para. 37.

⁴¹⁴ Former recommendation 49, A/CN.9/WG.I/WP.96/Add.1.

⁴¹⁵ The Working Group may wish to note recommendation 21 of the UNCITRAL Guide on the Implementation of a Security Rights Registry on “Archiving of information removed from the public registry record”.

(c) Where paper documents have been submitted and the information contained in them has not been entered into an electronic registry the period of preservation of such documents should be specified by the enacting State, and should be for at least the life of the business, plus a reasonable time after any deregistration of that business.

B. Amendment or deletion of information

211. By way of law or regulation, it should be established that registry staff may not alter or remove registered information, except as specified in the law or the regulation and that any change can be made only in accordance with the law or the regulation. However, to ensure the smooth functioning of the registry, in particular when registrants submit registration information using paper forms, it would be advisable that registry staff be authorized to correct clerical errors (see paras. 27, 44 and 146 above) made by registry staff in entering the registration 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.⁴¹⁶

212. 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; (b) 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; and (c) instituting audit mechanisms which regularly assess the efficiency and the financial and administrative effectiveness of the registry.⁴¹⁷

Recommendation 49⁴¹⁸: Amendment or deletion of information⁴¹⁹

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

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

213. 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.⁴²⁰

214. The threats that can affect an ICT-supported registry also include criminal activities that may be committed through the use of ICT. Providing effective

⁴¹⁶ Para. 41, [A/CN.9/WG.I/WP.93/Add.1](#).

⁴¹⁷ *Ibid.*, para. 43, [A/CN.9/WG.I/WP.93/Add.1](#). The Secretariat suggests that the current formulation of subpara. (c) is more consistent with the purpose of the section. In the former version, subpara. (c) read: "... designing the registry infrastructure so as to ensure that it can preserve the information and the documents concerning any business for as long as prescribed by the law or the regulation."

⁴¹⁸ Former recommendation 50, [A/CN.9/WG.I/WP.96/Add.1](#).

⁴¹⁹ The Working Group may wish to note recommendation 17 of the UNCITRAL Guide on the Implementation of a Security Rights Registry on "Integrity of the registry record".

⁴²⁰ Para. 42, [A/CN.9/WG.I/WP.93/Add.1](#).

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.⁴²¹

Recommendation 50⁴²²: Protection against loss of or damage to the business registry record⁴²³

The Regulation or the law of the enacting State should:

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

D. Safeguard from accidental destruction

215. 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 will want to ensure that any interruptions in operations are brief, infrequent and minimally disruptive to users and to States.⁴²⁴ For this reason, States should devise appropriate measures to facilitate protection of the ICT-based registry.⁴²⁵ 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.⁴²⁶

Recommendation 51⁴²⁷: Safeguard from accidental destruction

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

⁴²¹ Para. 35, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, page 49.

⁴²² Former recommendation 51, [A/CN.9/WG.I/WP.96/Add.1](#).

⁴²³ The Working Group may wish to note recommendation 17 of the UNCITRAL Guide on the Implementation of a Security Rights Registry on “Integrity of the registry record”.

⁴²⁴ See Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, page 49.

⁴²⁵ Para. 34, [A/CN.9/WG.I/WP.93/Add.2](#).

⁴²⁶ For instance, this is the practice in the United Kingdom Companies’ House.

⁴²⁷ Former recommendation 52, [A/CN.9/WG.I/WP.96/Add.1](#).

XI. The underlying legislative framework⁴²⁸

A. Changes to underlying laws and regulations

216. As noted above (see para. 40), 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.⁴²⁹

217. 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. There is no single solution in this process that will work for all States, since the reforms will be influenced by the 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 use of flexible legal entities.⁴³⁰

218. Regardless of the approach chosen, i.e. whether to implement a reform using primary or secondary legislation, 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 registration⁴³¹ 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 tools⁴³² or, as mentioned above, by adopting or reforming secondary legislation. 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.⁴³³

⁴²⁸ The Working Group may wish to consider moving Chapter XI from the main text into an Annex to the draft legislative guide, since the chapter highlights best practices in legal reform that contribute to improving business registration, but that would have broader application in the State.

⁴²⁹ Para. 59, [A/CN.9/WG.I/WP.93/Add.2](#).

⁴³⁰ *Ibid.*, para. 60.

⁴³¹ 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.

⁴³² *Ibid.*, page 74.

⁴³³ Para. 61, [A/CN.9/WG.I/WP.93/Add.2](#).

B. Clarity of the law

219. 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 would depend on the status of the domestic legal framework and a variety of examples, based on States' experiences, are available.⁴³⁴

220. These reforms may include decisions by States to shift the focus of the law towards private companies (such as the simplified business entities being considered by the Working Group), as opposite 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 companies to the beginning of any new company law in order to make them easier to find or to use simpler language in any updated company law.⁴³⁵

221. 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.⁴³⁶

Recommendation 52⁴³⁷: Clarity of the law

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

C. Flexible legal entities⁴³⁸

222. Evidence suggests⁴³⁹ 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 the articles of association (or other rules governing the operation or management of the 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.⁴⁴⁰

⁴³⁴ Ibid., para. 65.

⁴³⁵ Ibid., para. 66. For further reference, see para. 56, [A/CN.9/WG.I/WP.85](#).

⁴³⁶ Para. 67, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see Investment Climate (World Bank Group), Business Registration Reform case study: Norway, 2011.

⁴³⁷ Former recommendation 53, [A/CN.9/WG.I/WP.96/Add.1](#).

⁴³⁸ 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](#)).

⁴³⁹ See para. 7, [A/CN.9/WG.I/WP.93/Add.1](#).

⁴⁴⁰ Para. 68, [A/CN.9/WG.I/WP.93/Add.2](#). 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](#)).

223. Legislative changes to abolish or reduce the minimum paid in capital requirement⁴⁴¹ 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, 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.⁴⁴²

224. Introducing new simplified forms of limited liability and other enterprises is often coupled with a considerable reduction or complete abolition of the minimum capital requirements that other legal forms of enterprise 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.⁴⁴³ In other cases, progressive capitalization is required only if the simplified limited liability enterprise 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.⁴⁴⁴

225. 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.⁴⁴⁵ 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 enterprises 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 privately held companies, to state objectives for registration purposes.⁴⁴⁶

⁴⁴¹ For a more thorough discussion on minimum capital requirements and simplified business entities, see paras. 75-79, [A/CN.9/825](#) as well as paras. 46-47, [A/CN.9/WG.I/WP.99/Add.1](#).

⁴⁴² Para. 69, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see para. 28, [A/CN.9/WG.I/WP.85](#).

⁴⁴³ See Italy, para. 29, [A/CN.9/WG.I/WP.85](#).

⁴⁴⁴ Para. 70, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see, for instance, Germany, by Dr. Leif Boettcher, Federal Ministry of Justice, “Simplified business forms in the context of small and medium enterprises, the German approach”, presentation 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>.

⁴⁴⁵ This is a feature on which the Working Group has already agreed in its discussion of a legislative text on a simplified business entity (see [A/CN.9/825](#), para. 70). See also paras. 31-34, [A/CN.9/WG.I/WP.99](#).

⁴⁴⁶ Para. 71, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see para. 52, [A/CN.9/WG.I/WP.85](#).

Recommendation 53⁴⁴⁷: Flexible legal forms

The law of the enacting State 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

226. 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.⁴⁴⁸ Once the business registration process is fully automated, States should establish provisions (preferably in the secondary legislation) or policies that discipline government-to-government data exchange in order to avoid any lack of cooperation among different agencies.⁴⁴⁹

Recommendation 54⁴⁵⁰: Primary and secondary legislation to accommodate the evolution of technology

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

E. Electronic documents and electronic authentication methods

227. Entering information into an ICT-supported registry is a business-to-government transaction that should be subject to the same treatment, under domestic legislation, as any other electronic transaction.⁴⁵¹ 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.⁴⁵² 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

⁴⁴⁷ Former recommendation 54, [A/CN.9/WG.I/WP.96/Add.1](#).

⁴⁴⁸ See Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, page 7.

⁴⁴⁹ Para. 26, [A/CN.9/WG.I/WP.93/Add.2](#).

⁴⁵⁰ Former recommendation 55, [A/CN.9/WG.I/WP.96/Add.1](#).

⁴⁵¹ 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.

⁴⁵² 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.

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.⁴⁵³

228. 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”).⁴⁵⁴ 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.⁴⁵⁵

229. 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 documents should have in order to minimize any risk of corporate identity theft⁴⁵⁶ and the transmission of invalid information.⁴⁵⁷

230. 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 appropriate user names and passwords; electronic certificates; biometric verification (for example, fingerprints); monitoring systems and/or e-mail 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 and/or misleading information submitted to the commercial registries. An approach followed in some jurisdictions is to require the identity of the person registering the business to be checked by a notary public or by another designated authority. Where this is not possible, entrepreneurs may be required to visit the registry office in order for their identity to be verified. Another approach, employed in other jurisdictions, allows only those individuals expressly identified in the law to submit an application for entry into the register or to change an entry in the register. This application must then be legalized by a public notary or another designated authority (if submitted in paper form). However, recourse to a notary or other intermediary or personal visits to the registry office may present expensive and time-consuming barriers for businesses wishing to register, in particular for MSMEs.

⁴⁵³ Para. 27, [A/CN.9/WG.I/WP.93/Add.2](#).

⁴⁵⁴ See Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, page 12.

⁴⁵⁵ Para. 28, [A/CN.9/WG.I/WP.93/Add.2](#).

⁴⁵⁶ 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.

⁴⁵⁷ Para. 29, [A/CN.9/WG.I/WP.93/Add.2](#). For further reference, see para. 78, [A/CN.9/WG.I/WP.93/Add.1](#).

Therefore, in order to facilitate MSME registration, States may wish to opt for the adoption of simpler ways to ensure the authentication of business entrepreneurs, such as the use of appropriate user names and passwords. This could be particularly appropriate in the case of micro-businesses or in cases where MSMEs intend to register but choose a simplified business form.⁴⁵⁸

F. Dispatch and receipt of electronic messages⁴⁵⁹

231. 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.⁴⁶⁰

G. UNCITRAL Model Laws

232. States that enact legal regimes on electronic communications and electronic signatures may wish to consider the UNCITRAL Model Law on Electronic Commerce and the UNCITRAL Model Law on Electronic Signatures.⁴⁶¹ These two legislative texts establish those principles of reliability, noted above, that are needed to ensure equal treatment between paper-based and electronic communications and 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 Model Laws, as well as all 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 Model Laws will greatly facilitate cross-border recognition of electronic documents and signatures.⁴⁶²

Recommendation 55⁴⁶³: Electronic documents and electronic authentication methods

The law of the enacting State should:

- (a) Permit and encourage the use of electronic documents as well as of electronic signatures and other equivalent identification methods;
- (b) Regulate such use pursuant to the following principles:
 - (i) Documents cannot be denied legal effect, validity or enforceability solely on the grounds that they are in electronic format, or that they are signed electronically;

⁴⁵⁸ Para. 30, [A/CN.9/WG.I/WP.93/Add.2](#).

⁴⁵⁹ 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 48.

⁴⁶⁰ Para. 31, [A/CN.9/WG.I/WP.93/Add.2](#).

⁴⁶¹ See http://www.uncitral.org/uncitral/texts/electronic_commerce.html.

⁴⁶² Para. 32, [A/CN.9/WG.I/WP.93/Add.2](#).

⁴⁶³ Former recommendation 56, [A/CN.9/WG.I/WP.96/Add.1](#).

- (ii) The place of origin of the electronic signature should not determine whether and to what extent the electronic signature is legally effective;
 - (iii) Different technologies that may be used to communicate, store and/or sign information electronically should be subject to the same legal treatment; and
 - (iv) Electronic documents and electronic signatures have the same purpose and function as their paper-based counterparts and are thus functionally equivalent to them; and
- (c) Establish criteria to reliably identify the person submitting an electronic document and/or using an electronic signature or equivalent authentication method.

H. Electronic payments

233. Once States have reached a certain level of technological maturity,⁴⁶⁴ they could consider developing electronic platforms that enable businesses to pay online when filing their application with the registry. This will require enacting appropriate legislation 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.⁴⁶⁵

Recommendation 56⁴⁶⁶: Electronic payments

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

⁴⁶⁴ See para. 51, [A/CN.9/WG.I/WP.93](#).

⁴⁶⁵ Para. 36, [A/CN.9/WG.I/WP.93/Add.2](#).

⁴⁶⁶ Former recommendation 57, [A/CN.9/WG.I/WP.96/Add.1](#).