



General Assembly

Distr.: Limited
5 August 2015

Original: English

**United Nations Commission
on International Trade Law**
Working Group I (MSMEs)
Twenty-fifth session
Vienna, 19-23 October 2015

Key principles of business registration

Note by the Secretariat

At its twenty-third session (Vienna, 17 to 21 November 2014), the Working Group considered issues outlined in Working Paper A/CN.9/WG.I/WP.85 on best practices in respect of business registration and related reform, which the Secretariat had prepared in response to a request by the Working Group at its twenty-second session. The Working Group was of the view that the issues and principles considered in that Working Paper should be explored more deeply in future discussions; in particular, parts IV (Best practices in business registration, paras. 18-47) and V (Reforms underpinning business registration, paras. 48-60) of A/CN.9/WG.I/WP.85 were thought to be particularly relevant.

This Working Paper and its addenda (A/CN.9/WG.I/WP.93/Add.1 and A/CN.9/WG.I/WP.93/Add.2) have been prepared in response to that request of the Working Group, but without prejudice to the final form of any future legislative text that the Working Group might wish to adopt on the topic of business registration.



Contents

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1-3	3
A. Purpose of UNCITRAL guidance on business registration	4-8	4
B. Terminology	9	6
C. Key objectives of an effective business registration system	10	7
D. Core functions of business registries	11-13	7
E. Overview of standard registration procedures	14-22	8
1. Business name	15-16	8
2. Business entry	17-19	8
3. Registration with other public authorities	20	9
4. Life cycle of a business	21	9
5. Deregistration: removal of a business from the registry	22	10
F. Organization of the registry	23-26	10
G. International cooperation among business registries	27-28	12
H. Preliminary considerations on the use of information technology and electronic services	29-30	12
I. Drafting considerations	31	13
I. Establishing the business registry	32-55	13
A. Foundations of the business registry	33	14
B. Appointment of the registrar	34	14
C. Functions of the registry	35	14
D. Implementation considerations	36-44	15
1. The reform catalysts	36-42	15
2. Phased reform process	43	17
3. Authority responsible for the registry	44	17
E. Registry terms and conditions of use	45-46	17
F. Electronic or paper-based registry	47-55	18

Introduction

1. This Working Paper 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) operating in the extra legal economy that such businesses migrate to the legally regulated economy. In addition, this Working Paper is also intended to reflect the idea that entrepreneurs that have not yet commenced a business may be persuaded to do so in the legally regulated economy if the requirements for formally starting their business are not considered overly burdensome. Finally, these materials are prepared on the understanding that, regardless of the particular nature or legal structure of the business, the primary means for an MSME to enter the legally regulated economy in most cases is through registration of their business.

2. In order to facilitate a migration of MSMEs from the extra legal to the legally regulated economy, and to encourage entrepreneurs to start their business in the legally regulated economy, States may wish to take steps to rationalize and streamline their systems of business registration. General improvements made by the 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 best practices, whose features are shared among the best performing economies.¹ 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, these materials set out key principles and best practices in respect of business registration, and how to achieve the necessary reforms.

3. This Working Paper has been prepared in the form of a guide, which addresses legal, technological, administrative and operational issues of a business registration system. It is intended to facilitate the discussion of the Working Group by presenting an illustration of how the principles of an effective and efficient business registration system could appear in a future legislative text aiming at providing guidance to States. The materials are not intended to pre-empt any deliberation of the Working Group, which may agree that a different type of legislative text is better suited to assist States in the goal of streamlining their business registration system. Following the Working Group's decision on the form in which such guidance for States should be prepared, recommendations could be added to the text for the consideration of the Working Group.

¹ See also A.CN.9/WG.I/WP.85, which provides information on several best practices in respect of business registration.

A. Purpose of UNCITRAL guidance on business registration

4. Business registries are public entities, established by law, that record and update information on new and existing businesses — throughout the course of their lifespan — that are operating in the jurisdiction of the registry.² 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 permitting them to benefit from legal and financial services not otherwise available to unregistered businesses.³ 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.⁴ In performing its functions, the registry can thus play a key role in the economic development of a State.

5. 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 thus 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.

6. This Working Paper draws on the lessons learned through the wave of reforms of business registration systems implemented since the beginning of the year 2000 by various developed and developing economies.⁵ Furthermore, 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 have also been referenced. The main sources used in the preparation of this Working Paper include:

- 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)

² See L. Klapper, R. Amit, M.F. Guillén, J.M. Quesada, *Entrepreneurship and Firm Formation Across Countries*, 2007, p. 8.

³ See World Bank and International Finance Corporation, *Doing Business*, 2015, p. 47.

⁴ *Ibid.*

⁵ See A/CN.9/WG.I/WP.85, para. 8.

- The International Business Registers Report 2015 (prepared by ASORLAC, CRF, ECRF and IACA)⁶
- The International Business Registers Report 2014 (prepared by ECRF)⁷
- The Business Facilitation Programme website (developed by the United Nations Conference on Trade and Development).⁸
- [... ...]

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

7. Should the Working Group decide to prepare a legislative text on the issue of facilitating business registration for MSMEs, those materials should be addressed to all stakeholders that are interested or actively involved in the design and implementation of business registration, as well as to those that may be affected by or interested in the establishment and operation of such a registry, including:

- (a) Policymakers;
- (b) Registry system designers, including technical staff charged with the preparation of design specifications and with the fulfilment of the hardware and software requirements for the registry;
- (c) Registry administrators and staff;
- (d) Registry clientele, including businesspersons, 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.

8. This Working Paper seeks to use neutral and generic legal terminology so that any future guidance resulting from the Working Paper can be adapted easily to the diverse legal traditions and drafting styles of different States. The present materials also take a flexible approach, which will allow the guidance they contain 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 regulations or to ministerial or other administrative rules.

⁶ The report was 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.

⁷ The European Commerce Registers' Forum.

⁸ See <http://businessfacilitation.org/index.html>.

B. Terminology

9. The following paragraphs explain the meaning and use of certain expressions that appear frequently in this Working Paper:

- *Annual accounts*: The term “annual accounts” means the accounts prepared at the end of a financial year.
- *Annual returns*: The term “annual returns” means an annual statement which gives essential information about a business’ composition, activities, and financial position, and which, subject to legislation, active incorporated or registered businesses must file with an appropriate authority.
- *Deregistration*: The term “deregistration” means the removal of a business from the registry once the business, for whatever reason, has permanently ceased to operate, including as a result of a merger or forced liquidation due to bankruptcy.
- *ICT*: “ICT” refers to information and communications technology.
- *Jurisdiction*: As used in this Working Paper, the term “jurisdiction” refers to the territory over which a State extends its authority.
- *Micro, small and medium-sized enterprises (MSMEs)*: As used in this Working Paper, the term “MSMEs” refers to 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*: As used in this Working Paper, the term “one-stop shop” refers to an office or an organization that carries out more than one function relating to business registration.
- *Registered business or entity*: The term “registered business or entity” refers to those business entities 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*: As used in this Working Paper, 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 and/or regulation to supervise and administer the operation of the registry.
- *Registration*: The term “registration” means the entry of information required by domestic law and/or regulation into the registry.
- *Registration number*: The term “registration number” means a unique number assigned to a registered business and that is associated with that business during its life cycle.

- *Registry/Registration system*: The term “registry or registration system” means a State’s system for receiving, storing and making accessible to the public certain information about business entities.
- *Unregistered business/entity*: The term “unregistered business or entity” means those business entities that are not included in the business registry.
- *Unique identifier*: The term “unique identifier” means a set of characters (numeric or alphanumeric) that is allocated only once to a business entity, that will never change throughout the business’ lifetime and that remains unique across public agencies.

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

C. Key objectives of an effective business registration system

10. An effective system of business registration, as envisaged in these materials, is governed by the following overarching principles:

(a) Business registration is the key to permitting enterprises of all sizes and legal forms to be visible in the marketplace and to operate in the legally regulated commercial environment;

(b) Business registration is particularly important to enable MSMEs to increase their business opportunities and to improve the profitability of their businesses; and

(c) To be effective in registering businesses of all sizes, a business registration system should ensure that:

- (i) The registration process is as simple, time and cost efficient, user-friendly and publicly accessible as possible;
- (ii) The registered information on business entities is as easily searchable and retrievable as possible; and
- (iii) The registered information is current, reliable and secure.

D. Core functions of business registries

11. 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.

12. The core functions of business registries are to:

(a) 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);

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

(c) Provide authority for the business to interact with business partners, the public and the State;

(d) Facilitate trade and interactions between business partners, the public and the State through the publication of the reliable, current and accessible information that business must provide in order to be registered; and

(e) Determine whether a business has fulfilled or continues to fulfil the conditions to operate in the commercial sector.

13. Effective and efficient performance of these functions will be examined in greater detail in A/CN.9/WG.I/WP.93/Add.1 and A/CN.9/WG.I/WP.93/Add.2.

E. Overview of standard registration procedures

14. Notwithstanding differences in the way business registries operate, efficient business registries perform similar steps when carrying out the registration of a new business or in recording the changes that may occur in respect of an existing business. A generic description of these steps may help to better understand the goals and impact of reforms aimed at streamlining the business registration process in a way that is more responsive to MSME needs. The following paragraphs intend to provide a non-exhaustive account of registration procedures, without reference to any specific legal form or size of business.

1. Business name

15. In a standard registration process, the entry point for entrepreneurs to business registries is often the support provided to them in choosing a unique name for the new business that they wish to establish. When registering, businesses are usually required to have a name which must be sufficiently distinguishable from other business names within that jurisdiction so that the business will be recognized and identifiable under that name.

16. 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 entity, 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.

2. Business entry

17. Business registries provide forms (either in paper or electronic form) and various types of guidance to entrepreneurs preparing the application and other necessary documents for registration.⁹ 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

⁹ Examples of registry forms could be attached in future to these materials as annexes.

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 legal and 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. All such information is archived by the registry, either before or after the registration process is complete.¹⁰

18. Payment of a registration fee (if any) must usually be made before the registration is complete, at which point 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 service, subscriptions to announcements of specific types of new registrations.

19. Registered information made available to the public can include basic information about the business, like the telephone number and address, or, depending on the requirements of applicable law, more sophisticated 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. In some jurisdictions, the registered information is legally binding on third parties.

3. Registration with other public authorities

20. 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. The business registry normally provides to entrepreneurs information on the necessary requirements of other agencies and refers them to the relevant agencies. In States with more developed registration systems, businesses may be assigned a registration number that also functions as a unique identifier (see A/CN.9/WG.I/WP.93/Add.2, paras. 38-49) 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 more easily exchange 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" (see A/CN.9/WG.I/WP.93/Add.2, paras. 2-11) 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.

4. Life cycle of a business

21. In addition to the function performed in the registration of an enterprise, business registries typically support businesses throughout their life cycle. In many

¹⁰ See Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, (2012), p. 9.

jurisdictions, entrepreneurs have a legal obligation to inform the registries 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 entity). 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 or financial statements of enterprises that are useful sources of information on businesses in that jurisdiction for investors, clients, potential creditors and government agencies.

5. Deregistration: removal of a business from the registry

22. 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, forced liquidation due to bankruptcy, or cases where applicable law permits the registrar to deregister the business for failing to fulfil certain legal requirements. The registry, upon receiving notification of a business dissolution, which in the case of bankruptcy may be made available through insolvency registries, may issue an announcement stating that creditors have a certain length of time during which to advance their claims. After that period has passed, the business is removed from the register. This procedure ensures that businesses do not dissolve without providing creditors the opportunity to protect their rights.

F. Organization of the registry

23. In establishing or reforming a business registry, States will have to decide in which form the business registry will be organized and operated. Different approaches can be taken,¹¹ the most common of which is based on oversight by the government. In such States, a government department or agency, staffed by civil servants, and usually established under the authority of a particular government department or ministry, operates the registration system. Another type of organization of business registries is one which is subject to oversight by the judiciary: in such contexts, the registration body might be a court or a judicial registry, but in any event, that function is usually specified in the applicable law governing the judiciary.

24. 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.¹² 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

¹¹ According to The International Business Registers' Report 2015, registries can be 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.

¹² See European Commerce Registers' Forum, International Business Registers Report, 2014, p. 15.

registration function.¹³ 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, such as the responsibilities of the government and the private provider, the form of the arrangements, the allocation of risk, and dispute resolution.¹⁴ 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,¹⁵ 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 registry is a separate legal person that acts under the supervision of the Ministry of Justice,¹⁶ while in another State the registry is an executive agency of a government department, which is administratively separate from that department, but does not have separate legal status.¹⁷ However, not all of these forms can be implemented in every State. 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 suits the State's priorities and its human, technological and financial resources.

25. When organizing a business registry, the question of how it should be structured is another key issue. This can be done 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 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, assuming they have Internet or other electronic access, who otherwise might be at a great disadvantage. In one State, for instance, registration is conducted at the local commercial courts which are connected via a network to the central registry.¹⁸ Recent international experience of States that have undertaken a reform

¹³ For instance, Gibraltar, cited in Investment Climate (World Bank Group), *Outsourcing of Business Registration Activities, Lessons from Experience*, 2010, p. 55 ff.

¹⁴ 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 Working Paper.

¹⁵ See Luxembourg, *supra* footnote 13, p. 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.

¹⁶ 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 policy makers based on the experience of the EU Accession Countries*, 2007, p. 44.

¹⁷ See the United Kingdom of Great Britain and Northern Ireland; for further reference see also Lewin and others, cited above, p. 44.

¹⁸ See Austria; for further reference see also Lewin and others, cited above, p. 46.

of the registration system shows that maintaining a central registry (in electronic format) is the most common approach.

26. When the establishment of an electronic central registry is not possible, States turn to a decentralized structure where registries can also be organized as either autonomous or non-autonomous local offices. However, decentralization of the registration system may pose problems. In States where the registration process and its regulatory oversight is 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.¹⁹ 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.

G. International cooperation among business registries

27. 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.

28. States are increasingly aware of the importance of improving the cross-border exchange of data between registries; sustained progress in information and communication technology (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 approaches that allow for such interoperability (see A/CN.9/WG.I/WP.93/Add.2, paras. 55-58).

H. Preliminary considerations on the use of information technology and electronic services

29. The use of modern technology in business registration procedures is becoming a widespread practice in many States and is often part of larger programmes to establish e-government solutions. Such solutions are considered particularly well-suited to promote better governance and transparency, as well as to improve

¹⁹ See supra footnote 2, p. 11.

service performance and to eliminate bottlenecks in the service delivery process. Automation of business registration processes can bring about several benefits: it reduces the time and cost required for business registration; it improves access for smaller firms that operate at a distance from the registrar's offices (in many States entrepreneurs must still go to the capital city to register); and it permits the handling of increasing demands for company information from other government authorities and the consequent need for government databases to share information. Automation also provides revenue opportunities from other businesses and financial institutions that seek company information to inform their risk analysis of potential trading counterparties and borrowers.

30. 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 infrastructure, including: financial capability, organization and human resources capacity, legislative framework and institutional setting. Therefore, States launching a reform process aiming at the automatization of business registries would be advised to carry out a careful assessment of the various issues outlined above 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.

I. Drafting considerations

31. States implementing the guidance contained in these materials should consider whether to place the various principles reflected in the commentary (and any recommendations that the Working Group may agree to include) in a law, in a subordinate regulation, in administrative guidelines or in more than one of these texts. This matter would be for States to decide in accordance with their own legislative drafting conventions.

I. Establishing the business registry

32. Streamlining business registration in order to meet the key objective of making the registration process simpler, time and cost efficient and user friendly (both for registrants and stakeholders searching the registry) usually requires undertaking reforms that address the 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 (see also para. 30 above). As already noted, the approach taken in these reforms may vary considerably among States as the design and features of a registration system are influenced by the State's level of development, priorities and legal framework. There are, however, several common issues that States should consider and several similar recommended steps for reform regardless of jurisdictional differences that may exist. These issues are examined in the sections below.

A. Foundations of the business registry

33. States should set the foundations of a business registry either by way of law or regulation. The opening provisions of such law or regulation will provide for the establishment of the registry and set out explicitly that the purpose of the registry is to receive, store and make available to the public relevant information relating to registered business entities. The applicable law in each State will determine which business entities must be registered, but it should be noted that these materials identify business registration as the key means by which businesses of all sizes, including MSMEs participate effectively in the legally regulated economic milieu. Subject also to the legal system of the State, whether influenced by particular legal traditions, or other policy considerations, States may establish that the information deposited in the registry has legal effect and ensure the protection of third parties in the framework of the mandatory provisions of private law. This means that the information can be relied upon by users in the form in which it is deposited in the registry. When States opt for a business registration system in which the registered information is considered to have such legal effect, the law or the regulation should establish the principle that the information stored in the business registry is original and legally valid.

B. Appointment of the registrar

34. The law or the regulation established by the State should identify, either directly or by reference to the relevant law, the authority that is empowered to appoint a natural or legal person as the registrar, to determine the registrar's duties, and generally to supervise the registrar in the performance of those duties. To ensure flexibility in the administration of the registry, the term "registrar" should be understood as referring to a natural or legal person, and that the term also includes a group of persons appointed to perform the registrar's duties under the registrar's supervision.

C. Functions of the registry

35. The opening provisions of the law or the regulation should also 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 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 inconsistencies.

D. Implementation considerations²⁰

1. The reform catalysts

36. Business registration reform is a multifaceted reform process which 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 the 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.²¹ 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. Part of this analysis will require, as a crucial step, ensuring that domestic circumstances are amenable to a business reform programme, that incentives for such a reform exist and that there is support in the government and in the private sector prior to embarking on any reform effort.

(a) Relevance of a reform advocate

37. As demonstrated by the example of several States, support or even leadership from the highest levels of government is of key importance for the success of the reform process. The engagement of relevant government ministries and political leadership in the reform 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.²²

(b) The reform committee

38. 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.²³

²⁰ For a more detailed discussion on the approaches to implement a business registration system see A/CN.9/WG.I/WP.93/Add.2.

²¹ See A. Mikhnev, Building the capacity for business registration reform, 2005, p. 16.

²² See Investment Climate, (World Bank Group) Reforming Business Registration: A Toolkit for the practitioners, 2013, p. 23.

²³ 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, p. 39.

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

40. The reform committee must nurture the reform process and consider how to address concerns raised in respect of it.²⁴ Concerns could include those arising from bureaucratic inertia, or fears that registry employees may lose their jobs if their ICT skills are weak or if technology replaces human capital. Thus, it is likely to be important for the body overseeing the reform to be able to consider diverse interests and fully inform potential beneficiaries and political supporters.

(c) The project team

41. In collaboration with the reform committee, it is advisable that a project team be assigned the task of designing a reform programme tailored to country 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).

(d) Awareness-raising strategies

42. States embarking on a reform process should consider appropriate communication strategies aimed at familiarizing business entities and other potential registry users with the operation of the registry and of the legal and economic significance of business registration. 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 government'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 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 documentation and conducting searches.²⁵ In order to raise the awareness of MSMEs of the reforms to the business registry system, it may be advisable to consider communications strategies tailored specifically to that audience (see, for example, the "Communication" section of A/CN.9/WG.I/WP.92).

²⁴ See supra footnote 22, p. 25.

²⁵ Ibid., pp. 26-27.

2. Phased reform process

43. The duration of a reform process can vary considerably, depending on the types of reform implemented and on other circumstances relevant to the particular economy. States may thus wish to consider a phased implementation of the reform. Lessons learned from experience in various jurisdictions demonstrate, for instance, that in countries 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.²⁶ For example, if the main objective is to promote the registration of MSMEs, 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.²⁷

3. Authority responsible for the registry

44. 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, 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. In addition, 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 and, when necessary, the registry infrastructure (see para. 51 below).

E. Registry terms and conditions of use

45. 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 in standard form agreements entered into with registry users. For example, the terms and conditions of access may address user concerns regarding the security and confidentiality of their financial and other data or the risk of changes being made to registration information without the authority of the registrant.

46. As noted in paragraphs 15-22 above, some registries may provide additional services, including the following: (a) assisting the registrant in searching an appropriate name for the business and offering a name reservation service pending

²⁶ See supra footnote 10, p. 26.

²⁷ See supra footnote 23, p. 45.

the finalizations of registration formalities; (b) offering users a subscription service for announcements of certain kinds of business registrations; (c) preparing 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).²⁸

F. Electronic or paper-based registry

47. An important aspect to consider when streamlining a business registration system is the form in which the application for registration should be filed and in which information contained in the registry should be stored and searchable. 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 where registration offices are often located in municipal areas which may not be easily reachable for many entrepreneurs, including MSMEs, in rural areas.²⁹ In addition, any copies of the documents required must usually also be provided on paper. 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 registries and for the users, and it may easily lead to data entry errors. Furthermore, paper-based systems require considerable storage space as the documents with the registered information must be stored as hard copies. Finally, business registrations and search requests transmitted by paper, fax or telephone also give rise to delays, since registrants and searchers must wait until registry staff manually carry out the business registration or search and certify the registration or report the results.

48. 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 documents as well as of search requests by the users 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 bugs and 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 (see A/CN.9/WG.I/WP.93/Add.2, paras. 38-49).

²⁸ See, for instance, the Report of the Australian Business Registrar, 2013-2014, available at: abr.gov.au.

²⁹ See A/CN.9/WG.I/WP.85, para. 43.

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

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

(b) Reduced opportunity for fraudulent or corrupt conduct on the part of registry staff;

(c) 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 registration information or search criteria at all or to enter such information accurately; and

(d) When direct registration and searches are allowed, the possibility for the user to access registration and search services outside of normal business hours.

50. If the State opts to implement an electronic registration system, the registry should be designed to permit registry users to submit registrations and conduct searches from any private computer, as well as from computer facilities made available to the public at branch offices of the registry or other locations. To further facilitate access to business registry services, the registry conditions of use may permit intermediaries (for instance, lawyers, notaries or private sector third-party service providers) to carry out registrations and searches on behalf of their clients when the applicable law permits or requires the involvement of such intermediaries. If the technological infrastructure of the State permits, or at a later stage of the reform, States should also consider adopting systems that will 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 ICT services.

51. 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 user communications, user accounts, payment of any required fees, financial accounting, computer-to-computer communication and the gathering of statistical data. When the State technological infrastructure is not sufficiently advanced to allow these features to be implemented, it is nevertheless important that the software put in place be flexible enough to accommodate additional and more sophisticated features in the future.

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

53. 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 and 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.³⁰

54. 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: as already noted (para. 51 above), the ICT infrastructure of the registry should be easily adaptable to new user and system requirements;

(c) Interoperability: the registry should be designed to allow (even at a later stage) integration with other automated systems, such as other governmental registries operating in the jurisdiction (see A/CN.9/WG.I/WP.93/Add.2, paras. 38-49) and online or mobile payment portals;

(d) Costs: the ICT infrastructure should be financially sustainable both in term of initial and operating costs (see also para. 37, A/CN.9/WG.I/WP.93/Add.2); 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 license to the source code (see also para. 44 above).³¹

55. One important issue that would likely arise when the online business registry is able to offer full-fledged services would be whether to abolish any paper-based submissions or whether to maintain both paper-based and online registration (see A/CN.9/WG.I/WP.93/Add.2, para. 20). In many jurisdictions, registries choose to have mixed solutions with a combination of electronic and paper documents or electronic and manual processing during case handling. This approach may result in considerable cost for the registries, since the two systems require different tools and procedures. However, if this option is chosen, States would be advised to establish rules to determine the order of priority between paper-based and electronic submissions. Paper applications will have to be processed in any case, so that the

³⁰ See International Finance Corporation (World Bank Group), Task Manager's ICT Toolkit for Designing and Implementing Online Registry Applications (draft 8/3/2015), p. 28.

³¹ *Ibid.*, p. 29.

information included in a hard document can be transformed into data that can be processed electronically; this can be done by way of scanning the paper-based application. However, since even the most advanced systems struggle with handwritten forms, either the registry must impose strict requirements for handwriting on paper applications or it must carefully check that the scanned record correctly represents the application.³²

³² See *supra* footnote 10, p. 13.