



# General Assembly

Distr.: General  
12 November 2018

Original: English

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## United Nations Commission on International Trade Law

### Fifty-first session

#### Summary record of the 1072nd meeting

Held at Headquarters, New York, on Tuesday, 26 June 2018, at 3 p.m.

*Chair:* Ms. Malaguti (Chair of the Committee of the Whole) ..... (Italy)

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*The meeting was called to order at 3 p.m.*

**Agenda item 5: Consideration of issues in the area of micro, small and medium-sized enterprises (MSMEs) (continued)**

**(a) Finalization and adoption of a legislative guide on key principles of a business registry (continued)** (A/CN.9/928, A/CN.9/933 and A/CN.9/940; A/CN.9/LI/CRP.8)

1. **The Chair** invited the Committee to resume its consideration of the draft legislative guide on key principles of a business registry contained in document A/CN.9/940, taking up each recommendation in turn, together with the accompanying paragraphs of commentary.

*Recommendation 2 (continued)*

2. **The Chair** recalled that, at its previous meeting, the delegation of the United States of America had proposed a number of changes to recommendation 2, as reflected in document A/CN.9/LI/CRP.8.

3. **Mr. Gómez-Riesco Tabernero de Paz** (Spain) said that he agreed with the proposal of the United States to delete the phrase “[h]owever, since business registration may be viewed as a conduit through which businesses of all sizes and legal forms interact with the State and operate in the formal economy” from the fifth sentence of paragraph 26. However, the new wording proposed for the sixth sentence of that paragraph was technically inaccurate, as businesses did not receive assistance in searching and reserving a business name as part of the registration process, but rather as a consequence of registration.

4. **Mr. Huang Jie** (China) agreed that the proposed amendments to the sixth sentence of paragraph 26 and to recommendation 2 (a) seemed to constitute substantive changes that were at variance with the Commission’s understanding of the business registration process.

5. **Mr. Dennis** (United States of America) said that his delegation merely sought to ensure consistency between the description of the purposes of the business registry, as reflected in the sixth sentence of paragraph 26 and in recommendation 2 (a), and the description of the business registry’s core functions, as set out in paragraph 52 (h). If others believed that the wording of paragraph 26 and recommendation 2 (a) more accurately reflected the nature of the business registration process, paragraph 52 (h) could be amended instead.

6. **The Chair** said she took it that the Committee wished to approve the amendment to the fifth sentence of paragraph 26 proposed by the representative of the United States but not the other proposed amendments.

7. *It was so decided.*

*Recommendation 3*

8. **Ms. Simard** (Canada) said that, to enhance clarity and concision, subparagraph (a) of the recommendation should be amended to read “[b]e simple and avoid unnecessary exceptions or granting of discretionary power”. In subparagraph (b), the words “necessary pursuant to the law” should be deleted. Lastly, in the first sentence of paragraph 30, the words “the records” should be replaced with “the registered information” because the latter expression was used throughout the draft guide.

9. **Mr. Dennis** (United States of America) agreed with the proposed amendment to subparagraph (a).

10. **Mr. Soh** (Singapore) said that, should the proposed amendment to subparagraph (a) be approved, it would no longer be clear that the expression “the law” in the chapeau referred specifically to laws governing the business registry, as indicated in the existing wording.

11. **Mr. Noack** (Germany) said that the amendments proposed by the representative of Canada appeared to constitute editorial changes and should not distract the Committee from more substantive issues.

12. **Ms. Simard** (Canada) said that, as the term “the law” was defined in paragraph 12 of the draft legislative guide and was used throughout the text, further clarification in the recommendation seemed unnecessary.

13. **Mr. Soh** (Singapore) said that the clarification was still necessary, as the recommendations in the draft legislative guide might be read without reference to the definitions in paragraph 12.

14. **Ms. Joubin-Bret** (Secretary of the Commission) said that the Committee might wish to amend the chapeau and subparagraph (a) to read: “The laws governing the business registry should: (a) Adopt a simple structure and avoid the unnecessary use of exceptions or granting of discretionary power.”

15. **Mr. Dennis** (United States of America) said that he supported that formulation but proposed that the word “adopt” be replaced with the word “provide”.

16. **The Chair** said she took it that the Committee wished to amend the recommendation along the lines

suggested by the Secretary of the Commission but did not wish to approve the proposed amendments to subparagraph (b) of the recommendation and paragraph 30.

17. *It was so decided.*

#### *Recommendation 4*

18. **Mr. Dennis** (United States of America) said that the last three sentences of paragraph 32 should be deleted, as they amounted to an expanded definition of the term “good quality and reliable”, which was already defined in paragraph 12. If other delegations objected to that proposal, at the very least the reference in the third sentence to whether or not the information in the business registry was legally binding on the registry, the registrant, the registered business or third parties should be removed, as it duplicated part of the definition in paragraph 12, which the Working Group had decided should not be repeated elsewhere in the text (see [A/CN.9/333](#), para. 35). The sentence would thus read: “‘Good quality and reliable’ in this guide does not refer to whether the enacting State uses a declaratory approach or an approval approach in respect of its business registration system.” If others considered that the remaining part of the three sentences in question contained important elements of the definition of “good quality and reliable”, the relevant text could be moved to the definition in paragraph 12.

19. **Mr. Noack** (Germany) said that paragraph 32 should be retained as currently drafted because it went beyond the scope of the definition in paragraph 12. For example, the second sentence contained an important reference to the neutrality of the draft legislative guide with regard to the methods that enacting States used to ensure the good quality and reliability of their business registration systems.

20. **Mr. Dennis** (United States of America) said that he did not object to the inclusion of a reference to the neutrality of the draft legislative guide on that point. Rather, he was suggesting that, if such a reference was included, it would be more appropriate to place it in the definition of “good quality and reliable” in paragraph 12. In addition, the term “method” in the second sentence of paragraph 32 was inconsistent with the term “system” in the first sentence of paragraph 33. While either term would be acceptable, one of the two terms should be used consistently throughout the draft legislative guide.

21. **Ms. Simard** (Canada) agreed that definitions of terms should not be repeated or modified in subsequent sections of the text once they had been set out in paragraph 12.

22. **Mr. Gómez-Riesco Tabernero de Paz** (Spain) said that the last three sentences of paragraph 32 contained important explanatory information, in particular the specification that good quality and reliability did not refer to whether enacting States used a declaratory approach or an approval approach to business registration. The repetition of the definition of “good quality and reliable” in the third sentence was essentially an editorial matter; the relevant phrase could simply be deleted if delegations so wished.

23. **Mr. Noack** (Germany) said that his delegation could go along with the proposed amendment to the third sentence.

24. **The Chair** said she took it that the Committee wished to amend the third sentence of paragraph 32 along the lines proposed by the representative of the United States. She also took it that the Committee wished to request the Secretariat to ensure that the use of terms such as “method” and “system” was consistent throughout the text.

25. *It was so decided.*

#### *Recommendation 5*

26. **Ms. Nsanze** (Uganda) said that, in the second sentence of paragraph 40 and in subparagraph (b) of the recommendation, the word “competence” should be replaced with the word “authority” in order to emphasize the fact that, while the day-to-day operation of the registry might be delegated to another entity, the State was ultimately responsible for ensuring that the registry was operated in accordance with the applicable law.

27. **Mr. Dennis** (United States of America) said that, while his delegation tentatively supported the amendment proposed by the representative of Uganda, the use of the word “competence” was the result of extensive deliberations by the Working Group, the history of which should be reviewed before a decision was taken.

28. **Mr. Bellenger** (France) said that, in the French version, “autorité” was not the appropriate term in the context. His delegation would therefore prefer to retain the word “compétence”.

29. **The Chair** said that, prior to the Working Group’s decision to use the word “competence”, the word “ownership” had been used. She wondered whether it would be possible to replace “competence” with “authority” in the English version and retain “compétence” in the French version.

30. **Ms. Sande** (Observer for Uruguay) said that, in Spanish, the term “competencia” referred to an authority’s power to carry out a particular task and its responsibility to do so. The term “autoridad” was more vague and would not be appropriate in the current context.

31. **Mr. Dennis** (United States of America) said that, in earlier versions of paragraph 38, the second sentence had contained a footnote referring to the International Business Registers Report 2017, which indicated, inter alia, that 76 per cent of business registries were governed by State executive agencies and only 5 per cent by the judiciary. As proposed in document [A/CN.9/LI/CRP.8](#), the footnote should be reinstated, since the paragraph was unclear without it. Moreover, the phrase “oversight by the government” in the second sentence should be changed to “oversight by government executive agencies”, since the term “government” could be viewed as including the judiciary. In the third sentence, the expression “in such States” should be changed to “in most States”. The fourth sentence should be amended to read: “Another type of organization of a business registry used in some States is one that is subject to administrative oversight by the judiciary.” Lastly, in paragraph 40, the word “liability” in the first sentence should be changed to “responsibility”.

32. **Ms. Simard** (Canada) said that the footnote in paragraph 38 had been deleted by the Working Group in line with the usual editorial practice for Commission texts. However, she agreed that, without the footnote, the paragraph was unclear. Her delegation therefore supported the changes proposed by the representative of the United States.

33. **Mr. Gómez-Riesco Tabernero de Paz** (Spain) said that the current wording of the paragraph was clear. He did not see the value in specifying what percentage of States used a particular system for organizing their business registries.

34. **The Chair** said she took it that the Committee wished to approve the recommendation as currently drafted and to replace the word “liability” in paragraph 40 with the word “responsibility”, but that it did not wish to approve the other proposed amendments.

35. *It was so decided.*

#### *Recommendation 6*

36. **Mr. Dennis** (United States of America) said that, in line with the approach taken in the UNCITRAL Model Law on Secured Transactions, only the liability of the registry, not that of the registry staff, was

addressed in the draft legislative guide. The reference to the liability of the registry staff in the second sentence of paragraph 43 was therefore inconsistent with the rest of the draft guide. Accordingly, the sentence should be amended to read: “In this regard, the applicable law of the enacting State should establish the liability (if any) of the registry (see paras. 211 to 216 and rec. 47 below).”

37. **Ms. Simard** (Canada) and **Mr. Maradiaga** (Honduras) expressed support for that proposal.

38. **Mr. Gómez-Riesco Tabernero de Paz** (Spain) said that his delegation supported the inclusion of the words “if any”. However, if the expression “the registrar and the registry staff” was replaced with “the registry”, it would no longer be clear whether the sentence was referring to the liability of the State, of the registry as an entity or of the registrar as the individual responsible for the registry.

39. **Mr. Noack** (Germany) said that he supported the inclusion of the words “if any” but wondered whether the word “liability” should be changed to “responsibility”, in line with paragraph 40.

40. **Mr. Dennis** (United States of America) said that the word “liability” should be retained in paragraph 43, as it was a cross reference to paragraphs 211–216, in which the potential liability of the registry was addressed.

41. **Mr. Teehankee** (Philippines) said that his delegation supported the inclusion of the words “if any”, which would reflect the fact that different States could take different approaches to the issue of liability. He also agreed that the expression “the registrar and the registry staff” should be replaced with “the registry”. However, the phrase “to ensure their appropriate conduct in administering the business registry” in the existing text should be retained.

42. **Mr. Gómez-Riesco Tabernero de Paz** (Spain) said that one way to accommodate the proposal made by the representative of the United States would be to delete the words “and the registry staff” and refer simply to “the liability (if any) of the registrar”. That change would also make the sentence consistent with the title of section II.B and of recommendation 6. Another option would be to place the words “if any” after the words “registry staff” instead of after the word “liability”. A third option would be to replace the words “registry staff” with “persons liable for the registry” [*las personas responsables del registro*], which would accommodate the different approaches to liability taken by different countries. In Spain, for example, liability was borne by the registrar, not the registry staff.

43. **Mr. Dennis** (United States of America) said that, in his delegation's view, the cross reference to paragraphs 211 to 216 and recommendation 47 made the phrase "to ensure their appropriate conduct in administering the business registry" unnecessary. However, it could be retained if the Committee so wished. The most important proposed changes were the addition of the words "if any" and the deletion of the reference to the registry staff.

44. **Mr. Bellenger** (France) said that, since recommendation 6 related to the appointment and accountability of the registrar, he did not understand why the word "registrar" in the second sentence of paragraph 43 should be changed to "registry". The liability of the registry was addressed in recommendation 47.

45. **Mr. Dennis** (United States of America) said that the sections of the draft guide relating to liability covered the liability of the State rather than personal liability; therefore, any reference to the liability of the registrar or the registry staff was inappropriate. If other delegations considered that paragraph 43 should contain no reference at all to liability, the sentence in question could be deleted in its entirety.

46. **Mr. Soh** (Singapore) said that he supported the addition of the words "if any" but that it would not be appropriate to change the word "registrar" to "registry". The commentary to recommendation 47 included several references to the conduct of registry staff; it might have been better to move them to the commentary to recommendation 6 and delete the cross reference in paragraph 43.

47. **The Chair** said that the Secretariat suggested the following wording for the second sentence of paragraph 43: "In this regard, the applicable law of the enacting State should establish principles for the accountability of the registrar to ensure appropriate conduct in administering the business registry (the potential liability of the registry is addressed in paras. 211 to 216 and rec. 47 below)."

48. **Mr. Teehankee** (Philippines), **Mr. Dennis** (United States of America) and **Mr. De Giorgi** (Italy) expressed support for that wording.

49. **The Chair** said she took it that the Committee wished to amend paragraph 43 accordingly.

50. *It was so decided.*

#### *Recommendation 7*

51. *Recommendation 7 was approved.*

#### *Recommendation 8*

52. **Ms. Sande** (Observer for Uruguay), reiterating the need for a neutral approach to States' diverse legal traditions, said that paragraph 46 was not consistent with such an approach because it indicated that not using an intermediary reduced registration costs and contributed to the promotion of business registration among MSMEs. In the continental-law system, there was no option not to use an intermediary: a business could not be legally registered without one.

53. **Mr. Dennis** (United States of America) said that the draft guide contained numerous references to notaries. His delegation opposed any change to the paragraph.

54. **Ms. Simard** (Canada) said that the recommendation and the commentary thereto were not intended to undermine approval systems. Rather, the intention was to make business registration simpler in those States where the use of an intermediary was not mandatory, through the use of standard registration forms.

55. **Mr. Gómez-Riesco Tabernero de Paz** (Spain) said that, in an earlier draft of the guide, the last sentence of the paragraph had contained a reference to the principle of party autonomy. He suggested that the phrase "according to the principle of party autonomy" or similar wording be added at the end of the sentence.

56. **Mr. Dennis** (United States of America) said that, in other UNCITRAL texts, the concept of party autonomy had a specific meaning that was related to freedom of contract. It would not, therefore, be appropriate to refer to it in the current context.

57. **The Chair** said she took it that the Committee wished to approve the recommendation and the commentary thereto as currently drafted.

58. *It was so decided.*

#### *Recommendation 9*

59. *Recommendation 9 was approved.*

#### *Recommendation 10*

60. **Mr. Dennis** (United States of America), noting that the Committee had earlier decided not to approve his delegation's proposed amendment to the sixth sentence of paragraph 26, said that recommendation 10 (h) and paragraph 52 (h) would now need to be amended in order to make them consistent with that sentence.

61. **Mr. Bellenger** (France) said that the text in question had been negotiated line by line. He was therefore opposed to any changes.

62. **Mr. Soh** (Singapore) said that he agreed with the representative of France. The list set out in paragraph 52 and the recommendation had been discussed extensively and was a list of core functions, not a list of powers or desirable functions or services. The phrase “when required by the law” in paragraph 52 (h) and recommendation 10 (h), which would be lost if the United States proposal was accepted, was particularly important because it indicated that assisting businesses in searching and reserving a business name constituted a core function of the registry only when required by the law. In some systems, the registry did not provide assistance to businesses in searching and reserving a business name but rather had the power to determine, by conducting a search, whether the name proposed by a business was acceptable.

63. **Ms. Simard** (Canada) said that her delegation appreciated that the list of core functions in paragraph 52 had been extensively discussed by the Working Group. However, paragraph 52 (e) was redundant: the requirement that the information on a registered business be as current and accurate as possible was already covered by the reference in paragraph 52 (b) to good quality and reliable information, since the definition of “good quality and reliable” in paragraph 12 included the requirement of currency and accuracy. Paragraph 52 (e) could therefore be deleted.

64. The third sentence of paragraph 53 was confusing in that it contained a reference to both unique business identifiers and unique business names, and might be taken to imply that the two served the same purpose. That was not the case: a unique identifier was typically used by a business in its interaction with the State rather than with the public. Moreover, the use of unique identifiers was covered adequately elsewhere in the draft guide. The phrase “and in any event, the assignment of a unique identifier will assist in ensuring the unique identity of the business within and across jurisdictions (see also paras. 98 to 105 below)” should therefore be deleted.

65. **The Chair** drew attention to paragraph 44 of the report of Working Group I on the work of its thirtieth session (A/CN.4/933), which indicated that the Working Group had specifically decided that more emphasis could be placed on keeping information as current as possible in the commentary to recommendation 10 (e).

66. **Mr. Dennis** (United States of America) said that his delegation agreed with the comment made by the representative of Canada on paragraph 53. In the second

sentence of paragraph 56, the reference to email should be expanded, in line with other Commission texts, to include electronic addresses or other electronic means of communication, such as online chat. Similarly, the references to email in paragraphs 74, 120 and 196 of the draft legislative guide would have to be changed.

67. **Mr. Petrović** (Observer for Croatia) said that he did not find the reference to business names and unique identifiers in the same sentence in paragraph 53 confusing. However, if others supported the proposed amendment, he could go along with it.

68. **Mr. Maradiaga** (Honduras) said that his delegation supported the proposed amendment to paragraph 53.

69. **The Chair** said she took it that the Committee wished to approve the amendment to paragraph 53 proposed by the representative of Canada and to expand the references to email in paragraphs 56, 74, 120 and 196 to include electronic addresses or other electronic means of communication.

70. *It was so decided.*

#### *Recommendation 11*

71. *Recommendation 11 was approved.*

*The meeting was suspended at 4.45 p.m. and resumed at 4.55 p.m.*

#### *Recommendation 12*

72. **Ms. Simard** (Canada) said that the last sentence of paragraph 77 should be amended to read: “Furthermore, when developing laws with respect to these processes, States should also consider whether all aspects of registration can be accomplished electronically without the intervention of registry staff, or if some aspects require their intervention.” That wording would better reflect the fact that, in some cases, all stages of the registration process could be completed electronically.

73. **Mr. Dennis** (United States of America) said that the change suggested by Canada was consistent with the recommendation, which indicated that the optimal medium for a business registry was electronic. He suggested that the title of the recommendation be changed to “Electronic registry” for the sake of consistency with the body of the recommendation, in which there was no mention of paper-based or mixed registries. Otherwise, if the recommendation was read in isolation from the accompanying commentary, it might not be clear that an electronic registry was the preferred option.



74. **Mr. Gómez-Riesco Tabernero de Paz** (Spain) said that the new wording proposed for the last sentence of paragraph 77 was not consistent with paragraph 212, which reflected the fact that, even in some States that had electronic registration systems, information had to be entered into the registry record by the registrar or registry staff. That was the case, for example, in Spain. His delegation would therefore prefer to retain the existing wording.

75. **Mr. Bellenger** (France) said he agreed that the sentence should not be changed. In the draft guide, the Commission recommended a degree of caution with regard to the implementation of an electronic registry, as reflected in the words “phased approach” in the title of section III.C.

76. **Mr. Noack** (Germany) said that, if the title of recommendation 12 was changed to “Electronic registry”, it would no longer be consistent with the principle of technological neutrality. It should therefore remain as it stood.

77. **Ms. Simard** (Canada) said that her delegation supported the proposed new title, which would not preclude the use of paper-based or mixed registries; rather, it would reflect the essence of the recommendation, which was that the optimal medium for a registry was electronic.

78. **Mr. Teehankee** (Philippines) said that, while the recommendation reflected the preference for an electronic registry, its title should perhaps remain unchanged so as to be consistent with the headings of the relevant sections of the draft guide, in particular section III.A (Electronic, paper-based or mixed registry).

79. **Ms. Yamanaka** (Japan) agreed that the title of the recommendation should remain unchanged.

80. **Mr. De Giorgi** (Italy) proposed an alternative title, “Medium to operate a business registry”, which was based on the wording of the first sentence of the recommendation.

81. **Mr. Dennis** (United States of America) and **Mr. Noack** (Germany) expressed support for that proposal.

82. **The Chair** said she took it that the Committee wished to change the title of the recommendation to “Medium to operate a business registry”.

83. *It was so decided.*

#### *Recommendation 13*

84. **Mr. Dennis** (United States of America) said that the expression “electronic signatures” in the third sentence of paragraph 85 should be changed to wording along the lines of “electronic signatures or other means of identification and authentication”, which was based on paragraph 33 (f) of the UNCITRAL Technical Notes on Online Dispute Resolution. The Secretariat could be requested to check that that wording was also consistent with other Commission texts.

85. **Mr. Soh** (Singapore) said that his delegation supported that proposal, not for the sake of consistency with other Commission texts but because, in certain cases, there was actually no electronic signature. Rather, a person’s login credentials established his or her identity.

86. **The Chair** said she took it that the Committee wished to approve the proposed amendment, subject to the relevant checks by the Secretariat.

87. *It was so decided.*

#### *Recommendation 14*

88. **Mr. Dennis** (United States of America) said that the words “justice and employment” in the fourth sentence of paragraph 86 should be deleted, so that the sentence referred only to the taxation and social security authorities, in line with similar references elsewhere in the draft guide. In paragraph 88, the second sentence indicated that some one-stop shops provided only business registration services, which was inconsistent with the definition and usage of the term “one-stop shop” elsewhere in the draft guide. The sentence could be deleted in its entirety, as there was no need for an explanatory reference to one-stop shops at that point in the text. If it was retained, the references to one-stop shops throughout the remainder of the draft guide would have to be amended.

89. **Ms. Simard** (Canada) expressed support for the deletion of the second sentence of paragraph 88.

90. **Mr. De Giorgi** (Italy) said that, if that sentence was deleted, the third sentence of the paragraph might not make sense.

91. **The Chair** said that the removal of the word “additional” from the third sentence should resolve the problem. The Secretariat could adjust the text as appropriate. She took it that the Committee wished to approve the proposed amendments to paragraphs 86 and 88.

92. *It was so decided.*

*Recommendations 15 to 17*

93. **Mr. Dennis** (United States of America) said that the last sentence of paragraph 98 was inaccurate because the latest information and communications technology (ICT) solutions were capable of ensuring that different entities did not have the same identifier. Therefore, the sentence should be deleted or redrafted.

94. **Mr. Soh** (Singapore) agreed that the sentence should be deleted.

95. **Ms. Simard** (Canada) said that the reference to “registered entities” in the first sentence of paragraph 101, and also elsewhere in the draft guide, should be changed to “registered businesses” because “entity” could be taken to mean a business with legal personality. In paragraphs 101 and 104, the references to non-business entities should be deleted, in line with the Committee’s earlier decision to delete the words “or a non-business entity” from the definition of “unique identifier” in paragraph 12. In paragraph 102, the last two sentences should be deleted, since they referred to the use of unique identifiers in interactions by businesses with the private sector. Such interactions might not be desirable because of the risk of fraud and identity theft.

96. **Mr. Petrović** (Observer for Croatia) said that it was not clear to him why the use of unique identifiers in interactions with the private sector could raise privacy concerns or create a risk of fraud or malpractice. It was his understanding that a unique identifier could be used by a business in interactions with the private sector as well as with the State.

97. **Mr. Dennis** (United States of America) said he agreed with the representative of Canada that the use of unique identifiers in interactions with entities other than the State could raise privacy concerns. He therefore supported the proposal to delete the last two sentences of paragraph 102.

98. **The Chair** said she took it that the Committee wished to approve the proposed changes and to request the Secretariat to ensure that the term “registered entities” was replaced with “registered businesses” throughout the text.

99. *It was so decided.*

*Recommendation 18*

100. *Recommendation 18 was approved.*

*Recommendation 19*

101. **Mr. Dennis** (United States of America) said that the phrase “and take a shorter period of time for business

registration” should be added at the end of the fourth sentence of paragraph 117, so that the sentence would read: “On the other hand, declaratory systems are said to reduce the inappropriate exercise of discretion; furthermore, they may reduce costs for registrants by negating the need to hire an intermediary and appear to have lower operational costs and take a shorter period of time for business registration.” In document [A/CN.9/LI/CRP.8](#), his delegation had provided a reference to a study by the World Bank to support its proposal.

102. **The Chair** noted that the issue in question had already been discussed many times.

103. **Mr. Bellenger** (France) said that the debate on the issue should not be reopened. His delegation was against the proposed amendment.

104. **The Chair** said she took it that the Committee did not wish to approve the proposed amendment.

105. *It was so decided.*

*Recommendation 20*

106. **Ms. Simard** (Canada) proposed that the reference to government bodies in the fourth sentence of paragraph 124 be removed because the draft guide did not pertain to the registration of government bodies.

107. **The Chair** said that the reference had been included because the delegation of one country had previously stated that government bodies in that country were required to register. The phrase in question was merely a statement that, in some legal traditions, the registration of such bodies was common; it was not a recommendation that they should be registered. However, the reference could be deleted if the Committee so wished.

108. **Mr. Dennis** (United States of America) said he agreed that the registration of government bodies was not the focus of the text. His delegation therefore supported the amendment proposed by the representative of Canada. In addition, in the first sentence of the paragraph, “must” should be replaced with “may”, so that the sentence would read: “States may also define which businesses are required to register under the applicable law.” Some States simply required all businesses to register and would not, therefore, need to define which businesses were required to register.

109. **Ms. Simard** (Canada) said that her delegation supported that proposal.

110. **Mr. Gómez-Riesco Tabernero de Paz** (Spain) said that the reason for the proposed change from



“must” to “may” was not clear to him. The law had to determine in which cases it was mandatory for a company to register, for example in order to obtain legal personality.

111. **The Chair**, supported by **Mr. Petrović** (Observer for Croatia), said that the positions of the delegations of Spain and the United States both seemed to be accommodated by the current wording.

112. **Mr. Dennis** (United States of America), noting that paragraph 125 concerned voluntary registration, said that the first sentence should end at the word “markets” because the remainder of the sentence referred to circumstances in which registration was mandatory: the separation of personal assets from assets devoted to the business and the limitation of the liability of the owner of the business.

113. **Ms. Simard** (Canada) said that her delegation supported that proposal.

114. **Mr. Petrović** (Observer for Croatia) said that the separation of personal assets from the assets of a business and the limitation of liability were incentives for registration. It was therefore important to indicate that, in order to achieve those benefits, registration was required.

115. **Mr. Dennis** (United States of America) said he agreed that it was important to indicate that registration was required in those circumstances; however, that point should not be included in the sentence in question. Perhaps it could be placed in a separate sentence or moved to a more appropriate place in the draft guide. Another option would be to amend recommendation 20 (a) to expressly state that businesses that had separate legal personality and limited liability should be required to register.

116. **Mr. Bellenger** (France) said he agreed that the sentence was not logical as it stood. However, the last part of it should be reworded rather than deleted.

117. **Mr. Petrović** (Observer for Croatia) said that the phrase “that would not otherwise be required to register with the business registry (but may be subject to mandatory registration with other public authorities, such as taxation and social security)” could be deleted, as the question of which businesses were or were not required to register was already covered in paragraph 124. The sentence would thus simply indicate the benefits of registration.

118. **Mr. De Giorgi** (Italy) proposed that the sentence should end at the word “markets” and be followed by a new sentence along the following lines: “Where businesses are required to register, registration with the

business registry allows businesses also to benefit from the separation of personal assets from assets devoted to business or limiting the liability of the owner of the business.”

119. **Mr. Dennis** (United States of America) said that, since paragraph 124 related to businesses that were required to register, perhaps that would be the appropriate place to refer to the fact that, if a business had separate legal personality or limited liability, it should be required to register, as was the practice in most jurisdictions.

120. **Mr. Soh** (Singapore) said that some systems allowed for the separation of assets without the incorporation of a separate legal entity; perhaps the sentence as currently worded was intended to cover that possibility.

121. **The Chair** suggested that the representative of the United States present a specific proposal for the Committee to consider at its next meeting. She said she took it that the Committee wished to delete the reference to government bodies in the fourth sentence of paragraph 124 but did not wish to change the word “must” in the first sentence of that paragraph to “may”.

122. *It was so decided.*

*The meeting rose at 6.05 p.m.*