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### Summary of the Chair and the Rapporteur on the work of Working Group I (MSMEs) at its thirty-fifth session (Vienna, 25–29 January 2021)

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## I. Introduction

### Preparation of legal standards in respect of micro, small and medium-sized enterprises

1. At its forty-sixth session, in 2013, the Commission requested that a working group should commence work aimed at reducing the legal obstacles encountered by micro, small and medium-sized enterprises (MSMEs) throughout their life cycle.<sup>1</sup> At that same session, the Commission agreed that consideration of the issues pertaining to the creation of an enabling legal environment for MSMEs should begin with a focus on the legal questions surrounding the simplification of incorporation.<sup>2</sup> The Commission reaffirmed the mandate of the Working Group at its forty-seventh to fifty-second sessions, from 2014 to 2019, commending the Working Group for the progress made.<sup>3</sup>

2. At its twenty-second session (New York, 10 to 14 February 2014), Working Group I (MSMEs) commenced its work according to the mandate received from the Commission. The Working Group engaged in preliminary discussion in respect of a number of broad issues relating to the development of a legal text on simplified incorporation<sup>4</sup> as well as on what form that text might take,<sup>5</sup> and business registration was said to be of particular relevance in the future deliberations of the Working Group.<sup>6</sup>

3. From its twenty-third session (Vienna, 17 to 21 November 2014) to its thirtieth session (New York, 12 to 16 March 2018), the Working Group proceeded to consider two main topics aimed at the creation of an enabling legal environment for MSMEs: the legal issues surrounding the simplification of incorporation and good practices in business registration.<sup>7</sup> At its twenty-third session, the Working Group commenced its deliberations on the legal issues surrounding the simplification of incorporation by considering the questions outlined in the framework set out in working paper [A/CN.9/WG.I/WP.86](#), and agreed that it would continue its consideration of the working paper at its twenty-fourth session beginning with paragraph 34 of that document.

4. At its twenty-fourth session (New York, 13 to 17 April 2015), after initial consideration of the issues as set out in working paper [A/CN.9/WG.I/WP.86](#), the Working Group decided that it should continue its work by considering the first six articles of the draft model law and commentary thereon contained in working paper [A/CN.9/WG.I/WP.89](#), without prejudice to the final form of the legislative text, which had not yet been decided. Further to a proposal from several delegations, the Working Group agreed to continue its discussion of [A/CN.9/WG.I/WP.89](#), bearing in mind the general principles outlined in the proposal, including the “think small first” approach, and to prioritize those aspects of the draft text in [A/CN.9/WG.I/WP.89](#) that were the most relevant for simplified business entities. The Working Group also agreed that it would discuss the alternative legislative models for MSMEs introduced in [A/CN.9/WG.I/WP.87](#) at a later stage.

<sup>1</sup> *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17 (A/68/17)*, para. 321.

<sup>2</sup> For a history of the evolution of this topic on the UNCITRAL agenda, see [A/CN.9/WG.I/WP.97](#), paras. 5 to 20.

<sup>3</sup> *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17 (A/69/17)*, para. 134; *ibid.*, *Seventieth Session, Supplement No. 17 (A/70/17)*, paras. 225 and 340; *ibid.*, *Seventy-first Session, Supplement No. 17 (A/71/17)*, para. 347; *ibid.*, *Seventy-second Session, Supplement No. 17 (A/72/17)*, para. 235; *ibid.*, *Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 112; and *ibid.*, *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 155.

<sup>4</sup> See Report of Working Group I (MSMEs) on the work of its twenty-second session [A/CN.9/800](#), paras. 22 to 31, 39 to 46 and 51 to 64.

<sup>5</sup> *Ibid.*, paras. 32 to 38.

<sup>6</sup> *Ibid.*, paras. 47 to 50.

<sup>7</sup> Since the Commission adopted the UNCITRAL Legislative Guide on Key Principles of a Business Registry at its fifty-first session, in 2018, paras. 4 to 13 only outline the history of the Working Group’s discussion on simplification of incorporation.

5. At its twenty-fifth session (Vienna, 19 to 23 October 2015), the Working Group resumed its consideration of the draft model law on a simplified business entity as contained in working paper [A/CN.9/WG.I/WP.89](#), starting with chapter VI on organization of the simplified business entity, and continuing on with chapter VIII on dissolution and winding up, chapter VII on restructuring, and draft article 35 on financial statements (contained in chapter IX on miscellaneous matters).<sup>8</sup>

6. At its twenty-sixth session (New York, 4 to 8 April 2016), the Working Group reviewed chapters III and V of working paper [A/CN.9/WG.I/WP.89](#). Following its discussion of the issues in those chapters,<sup>9</sup> the Working Group decided that the text being prepared on a simplified business entity should be in the form of a legislative guide, and requested the Secretariat to prepare for discussion at a future session a draft legislative guide that reflected its policy discussions to date (see [A/CN.9/WG.I/WP.99](#) and Add.1).<sup>10</sup>

7. At its twenty-seventh session (Vienna, 3 to 7 October 2016), the Working Group considered the issues outlined in working papers [A/CN.9/WG.I/WP.99](#) and Add.1 on an UNCITRAL limited liability organization (UNLLO), beginning with section A on general provisions (draft recommendations 1 to 6), section B on the formation of an UNLLO (draft recommendations 7 to 10), and section C on the organization of an UNLLO (draft recommendations 11 to 13). The Working Group also heard a short presentation of working paper [A/CN.9/WG.I/WP.94](#) of the French legislative approach known as an “Entrepreneur with Limited Liability” (or EIRL), which represented a possible alternative legislative model applicable to micro and small businesses.

8. At its twenty-eighth session (New York, 1 to 9 May 2017), the Working Group continued the work begun at its twenty-seventh session, and considered the recommendations (and related commentary) of the draft legislative guide on an UNLLO in sections D, E and F of documents [A/CN.9/WG.I/WP.99](#) and Add.1.

9. The Working Group devoted its twenty-ninth (Vienna, 16 to 20 October 2017) and thirtieth (New York, 12 to 16 March 2018) sessions to reviewing and finalizing the draft legislative guide on key principles of a business registry, which was adopted by the Commission in July 2018.

10. The Working Group resumed its discussion on the draft legislative guide on an UNLLO at its thirty-first session (Vienna, 8 to 12 October 2018). At that session, the Working Group considered a revised draft of the legislative guide (contained in [A/CN.9/WG.I/WP.112](#)) including changes arising from its deliberations at its twenty-seventh and twenty-eighth sessions. The following selected recommendations, and relevant commentary, were discussed: recommendations 7 to 12 (sections B on formation and C on organization), save for recommendation 10 and relevant commentary; recommendation 15 (section D on management) and recommendations 16 and 17 (section E on ownership of the UNLLO and contributions by members).

11. At its thirty-second session (New York, 25 to 29 March 2019),<sup>11</sup> the Working Group continued its discussion on the draft legislative guide on an UNLLO considering the issues included in working paper [A/CN.9/WG.I/WP.114](#). The Working Group first discussed several definitions included in the Terminology section, then proceeded to consider other aspects of the draft guide and to provide additional clarity on certain recommendations discussed at its previous session. The following recommendations and relevant commentary were discussed: recommendation 9 (section B on formation), recommendation 10 (section C on organization), recommendations 11 to 16 (section D on

<sup>8</sup> [A/CN.9/860](#), paras. 76 to 96.

<sup>9</sup> See Report of Working Group I (MSMEs) on the work of its twenty-sixth session, [A/CN.9/866](#), paras. 23 to 47.

<sup>10</sup> *Ibid.*, paras. 48 to 50.

<sup>11</sup> The first two days (25 and 26 March) of the thirty-second session were devoted to a colloquium on contractual networks and other forms of inter-firm cooperation (see [A/CN.9/991](#)). The Working Group convened from 27 to 29 March.

management of the UNLLO) and recommendation 17 (section E on members' share of and contributions to the UNLLO).

12. At its thirty-third session (Vienna, 7 to 11 October 2019), the Working Group completed the first review of the draft legislative guide on an UNLLO (contained in [A/CN.9/WG.I/WP.116](#)) by discussing the following recommendations and related commentary: recommendation 1 (section A on general provisions), recommendation 10 (section C on organization of the UNLLO), recommendation 11 (section D on membership in an UNLLO), recommendation 18 (section F on member's share of and contributions to the UNLLO), recommendations 19 to 21 (section G on distributions), recommendation 22 (section H on transfer of rights), recommendation 23 (section I on restructuring or conversion), recommendation 24 (section J on dissolution and winding-up), recommendation 25 (section K on dissociation or withdrawal), recommendations 26 and 27 (section L on record-keeping, inspection and disclosure) and recommendation 28 (section M on dispute resolution).

13. The thirty-fourth session of the Working Group, originally scheduled to take place in New York from 23 to 27 March 2020, was postponed due to the spread of the coronavirus disease 2019 (COVID-19). The session was held in Vienna, in hybrid form, from 28 September to 2 October 2020. The Working Group completed another review of recommendations 2 to 31 and related commentary, in Part II (Establishment and operation of the UNLLO) of the draft legislative guide. It also reviewed the draft model organization rules prepared by the Secretariat upon request of the Working Group at its thirty-third session.

## II. Organization of the session

14. Working Group I, which was composed of all States members of the Commission, held its thirty-fifth session in Vienna from 25 to 29 January 2021 in accordance with the decision of the State members of the Commission dated 9 December 2020 (contained in document [A/CN.9/LIII/CRP.14](#)). The session was held in line with the decision on the format, officers and methods of work of the UNCITRAL working groups during the COVID-19 pandemic, adopted on 19 August 2020 by the States members of UNCITRAL (contained in document [A/CN.9/1038](#)). Arrangements were made to allow delegations to participate in person and remotely.

15. The session was attended by representatives of the following States members of the Working Group: Algeria, Argentina, Austria, Belgium, Brazil, Burundi, Canada, Chile, China, Colombia, Croatia, Czechia, Dominican Republic, Finland, France, Germany, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Italy, Japan, Lebanon, Libya, Malaysia, Mali, Mexico, Pakistan, Peru, Philippines, Republic of Korea, Russian Federation, Singapore, Spain, Sri Lanka, Switzerland, Thailand, Turkey, Ukraine, United States of America, Viet Nam and Zimbabwe.

16. The session was attended by observers from the following States: Angola, Armenia, Azerbaijan, Bangladesh, Benin, Burkina Faso, Costa Rica, Egypt, El Salvador, Guatemala, Jordan, Kuwait, Madagascar, Morocco, Myanmar, the Netherlands, Nicaragua, Qatar, Senegal, Slovakia, Trinidad and Tobago, Tunisia and Uruguay.

17. The session was attended by observers from the Holy See.

18. The session was also attended by observers from the European Investment Bank (EIB).

19. The session was further attended by observers from the following international organizations:

(a) *Organizations of the United Nations system*: World Bank Group (WB);

(b) *Intergovernmental organizations*: International Institute for the Unification of Private Law (Unidroit) and Organization of American States (OAS);

(c) *Invited international non-governmental organizations*: Alumni Association of the Willem C. Vis International Commercial Arbitration Moot (MAA), American Bar Association (ABA), China Council for the Promotion of International Trade (CCPIT), Centro de Estudios de Derecho, Economía y Política (CEDEP), Council of the Notariats of the European Union (CNUE), European Law Students' Association (ELSA), Fondation pour le Droit Continental (FDC), Group of Latin American International Commercial Law Lawyers (GRULACI), International Union of Notaries (UINL), Inter-Pacific Bar Association (IPBA), Kozolchyk National Law Center (NatLaw) and Law Association for Asia and the Pacific (LAWASIA).

20. According to the decision made by the State members of the Commission (see para. 14 above), the following persons continued their offices:

*Chair*: Ms. Maria Chiara Malaguti (Italy)

*Rapporteur*: Ms. Beulah Li (Singapore)

21. The Working Group had before it the following documents:

(a) Annotated provisional agenda ([A/CN.9/WG.I/WP.121](#));

(b) Note by the Secretariat on a draft legislative guide on an UNCITRAL Limited Liability Organization ([A/CN.9/WG.I/WP.122](#)); and

(c) Notes by the Secretariat on access to credit for micro, small and medium-sized enterprises (MSMEs) ([A/CN.9/WG.I/WP.119](#) and [Add.1](#)).

22. The Working Group adopted the following agenda:

1. Opening of the session.
2. Adoption of the agenda.
3. Preparation of legal standards in respect of MSMEs.

### III. Deliberations

23. The Working Group engaged in discussions in respect of the preparation of legal standards aimed at the creation of an enabling legal environment for MSMEs, in particular, on a draft legislative guide on an UNCITRAL Limited Liability Organization ([A/CN.9/WG.I/WP.122](#)). The deliberations of the Working Group on these topics are reflected in the paragraphs below.

24. At the closing of the session, the Working Group approved the text of the draft legislative guide on an UNCITRAL Limited Liability Organization and agreed to transmit it for finalization and adoption by the Commission at its fifty-fourth session, in 2021. That text, as revised by the Secretariat to reflect the deliberations of the Working Group at its thirty-fifth session is contained in document [A/CN.9/1062](#).

25. The Working Group further agreed to request the Commission to mandate the Secretariat to draft guidance, with the assistance of experts, to assist States in the preparation of model organization rules on the establishment and management of the UNLLO and the rights and obligations of its members that UNLLO members may use where appropriate.

## IV. Preparation of legal standards in respect of micro, small and medium-sized enterprises: draft legislative guide on an UNCITRAL Limited Liability Organization

### A. Presentation of [A/CN.9/WG.I/WP.122](#)

26. The Working Group heard a short presentation on the origin of its current mandate, how its work had progressed to date and some of the features of the draft

legislative guide. It also heard an introduction to the new iteration of the guide as contained in working paper [A/CN.9/WG.I/WP.122](#). The Secretariat highlighted some of the changes the Working Group had agreed upon at its thirty-fourth session (Vienna, 28 September to 2 October 2020).

## **B. Name of the UNLLO**

27. The Working Group considered possible names to replace UNLLO, as that name had been used on an interim basis until the Working Group could agree on a preferred term to denote the simplified business entity with limited liability discussed in the draft legislative guide.

28. There was support for avoiding the term “UNCITRAL” in the future name, since in some countries a business entity including terms such as “UNCITRAL” or “UN” in its definition may be felt as a legal structure not consistent with the domestic legal tradition.

29. There was general agreement that the future name should be neutral and simple and should include the term “limited liability” as this was a distinctive feature of the UNLLO. No clear preference was indicated as to the use of the word “organization” or “entity”. Certain delegations considered “organization” too broad and often associated with institutional bodies and thought “entity” be more appropriate for a business form. Others preferred retaining “organization”, which had been used since the first draft of the guide. In this regard, it was suggested that if “organization” was retained, references to “entity” in the final text of the guide should be replaced accordingly.

30. A suggestion to include the word “simplified” did not receive sufficient support as it might not be attractive for a business. In the view of some delegations, it also could appear contrasting the UNLLO with other more complex corporate forms, which would not be appropriate given that the intention of the draft legislative guide was to create a new type of business separate from any existing corporate forms. The Working Group also heard proposals that the new name should clearly indicate that it referred to a new or specific form for MSMEs. In this regard, it was also proposed that a distinctive phrase or an abbreviation similar in all languages could be added in brackets or parenthesis next to the name replacing UNLLO. This would assist UNLLOs engaged in cross-border transactions. There was support for that suggestion. After discussion, the Working Group agreed to revert to this matter at a later stage.

## **C. Introduction**

31. The Working Group agreed to start its deliberations from the Introduction of the draft legislative guide.

### **Purpose of the Legislative Guide (paras. 1 to 5)**

32. Paragraph 1: the Working Group supported the suggestion to emphasize the goal of many economies, in particular in developing countries, to enhance MSME competitiveness after the first sentence of this paragraph.

33. Paragraph 2: support was expressed by the Working Group for the suggestion to replace the phrase “business forms that permit asset partitioning without requiring a separate legal personality” by “business forms that entail asset partitioning with or without requiring a separate legal personality”, noting that, while the current text summarized the legislative models in Italy and France as cited in footnote 6, a more neutral and general phrase would better describe the various types of legislations adopted globally.

34. Paragraph 3: the following suggestions to revise paragraph 3 also received support: (i) deleting the first sentence and revising the second sentence to read “The adoption of simplified business forms has in a number of jurisdictions...”; (ii) replacing the phrase “migration of informal businesses to the formal economy”



by “the business and tax registration of previously unregistered business, their greater compliance with legal requirements, and better visibility with the public”; and (iii) clarifying that a large informal sector may impede economic development as one of the purposes of the draft legislative guide was to help businesses to move from the informal sector to the formal economy.

35. Paragraph 5: noting the cross reference between paragraphs 5 and 29, a suggestion was made to delete paragraph 29 as redundant and repetitive of paragraph 5. The Working Group was reminded that the latter was added to clarify that the draft legislative guide would not address any taxation matter. Another suggestion was to, instead of removing paragraph 29 in its entirety, refrain from referring to taxation policy in paragraph 5 as the gist was that there could be a disconnect between legal personality and taxation in some jurisdictions. The Working Group agreed to revert to the matter at a later stage.

#### **“Think small first” (paras. 6 to 17)**

36. Paragraph 7: in respect of MSME entrepreneurs’ “freedom and autonomy”, it was suggested that the issue of third-party protection could also be addressed in paragraph 7 as a limitation thereto. It was recalled that a proposal introducing the need for such balance had already been made (see [A/CN.9/1009](#) (EN), France’s comments, p. 6). As to “flexibility”, a concern was raised that excessive flexibility might give rise to abuse of the legal form of the UNLLO. In this regard, a proposal was made to clarify that States would be permitted to introduce limits, for example, concerning capital, turnover or employment so that the implementing legislation may provide for conversion of the UNLLO into another form once such limit is exceeded.

37. After discussion, the Working Group agreed to include reference to third-party protection in paragraph 7 and to clarify the possibility for States to introduce limits to address the concern of excessive flexibility at the end of the section on “Think small first”.

38. Paragraph 17: the Working Group emphasized the non-mandatory nature of the recommendations contained in the draft legislative guide for implementing States. It also noted that the guide included two types of mandatory provisions: (i) provisions that cannot be derogated from by agreement of the UNLLO members, and (ii) provisions that reflect the fundamental principles of the draft guide and that States are thus strongly recommended to adopt.

39. The Working Group considered whether to include in paragraph 17 a list of mandatory recommendations. It was pointed out that draft recommendations already identified those provisions that can be derogated from by agreement of the UNLLO members with the phrase “unless otherwise agreed” or the like. It was also noted that in light of the holistic approach adopted by the guide, identifying all the provisions in item (ii) above might encourage States to pick and choose certain recommendations, thereby undermining the purpose of the guide. In this regard, it was agreed that the efforts to minimize variation from the recommendations were sufficiently addressed in paragraph 4 and thus, any further elaboration on States’ exercise of discretion when implementing the draft legislative guide seemed unnecessary.

40. After discussion, the Working Group decided not to include lists of mandatory and non-mandatory provisions in paragraph 17 and instead to explain that recommendations which contain the phrase along the lines of “unless otherwise agreed” can be derogated from by the members, without necessarily referring to the term “mandatory”.

## **D. Terminology**

41. With respect to the terms defined in the Terminology section, the Working Group agreed to retain the current drafting of “financial statement”, “majority” and “member(s)” and to amend the other definitions as follows:

(a) Designated manager: agreed to revise the definition for improved clarity along the lines of “the person or one of the persons responsible for managing the

UNLLO when the UNLLO is not managed by all of its members exclusively. A ‘designated manager’ can be either a non-member or a member of the UNLLO”;

(b) Qualified majority: agreed to leave to States to determine the percentage of UNLLO members that represent a qualified majority and to revise the definition in a more generic way to indicate that “qualified majority” is greater than the threshold required for “majority” (i.e., more than half of the UNLLO members determined by number); and

(c) Restructuring: supported proposals to (i) delete the term “finances” in the first sentence to avoid potential conflict with the same term used in the current work of UNCITRAL Working Group V focusing on the financial aspects of restructuring; and (ii) delete the last sentence of the definition as draft recommendation 27(a) explicitly distinguished converting UNLLO into another legal form from restructuring.

42. In respect of the definition of “organization rules”, different views were expressed on whether organization rules should be limited to those rules agreed by UNLLO members. In support of the view that the “organization rules” could encompass more than the rules agreed by UNLLO members, it was noted that the scope of the Model Organization Rules in the Appendix was not limited to those rules agreed by UNLLO and also included default rules and mandatory rules applicable by operation of the law. While there was some support for the proposal in favour of a broader scope (including default rules not agreed upon by the members and mandatory rules as established by operation of the law), the majority view was that organization rules should be limited to those rules agreed by UNLLO members on the basis of party autonomy, also noting the distinction made between the law implementing the guide and the organization rules in draft recommendations 1, 12 and 13. In addition, there was general support for keeping the reference to “establishment” and the proposal to clarify in the definition that certain rules may not need to be agreed upon by all members as contemplated in draft recommendation 13. Another proposal to delete the phrase “between themselves and the UNLLO” at the end of this definition was not taken up by the Working Group. Accordingly, the Working Group agreed to keep the definition in its current form, retain the words “establishment and” without square brackets and insert the word “members” after “agreed by”.

## **E. Model Organization Rules**

43. With respect to the introductory note, the Working Group agreed to clarify that these model organization rules were drafted only for multi-member UNLLOs managed by all members exclusively and that suggestions on how such rules could be adjusted for single-member UNLLOs or multi-member UNLLOs managed by designated managers were included by way of footnotes. A concern was raised that the scope of the model organization rules seemed wider than the definition of such rules as agreed by the Working Group, considering that it included rules beyond those agreed by the members, such as mandatory rules established by the operation of law. The Working Group requested the Secretariat to amend the last two sentences to address this concern.

44. A suggestion to include a reference to “precise geographical location” in article 1(a) was taken up by the Working Group, on the basis that some businesses may not have a standard form address as contemplated in draft recommendation 9(a)(ii). In relation to article 1(b), there was broad support for retaining the text without square brackets and deleting the examples provided in footnote 126 given their regulatory nature. To ensure consistency, the Working Group agreed to incorporate the required information for the registration of the UNLLO (as set out in draft recommendation 9(a)) into footnote 126 to the extent relevant, e.g. excluding the identity of the registrants, and including in particular, a list of all members of the UNLLO. It was explained that each member would be the person who manages the



UNLLO in a multi-member UNLLO managed by all members exclusively, thereby making it consistent with the requirement in draft recommendation 9(a)(iii).

45. In relation to article 2(a), there was general support for deleting the text “(i.e., each member has one vote)” in the first option, as limiting the application of the equality principle to voting rights could be misleading. Concerns were expressed that the two options provided therein were not sufficient to cover all scenarios concerning the allocation of members’ rights in the UNLLO, which, for example, could be (i) equal, (ii) proportional to the value of their contributions or (iii) unequal but non-proportional to the value of their contributions. In particular, it was emphasized that members may choose to determine their rights in accordance with the percentage or ratio of each member’s ownership in the UNLLO. After discussion, the Working Group agreed to add a third option to indicate that members may choose other methods to determine the allocation of their rights in the UNLLO.

46. For article 2(b), a suggestion to merge it into the second option under article 2(a) was not taken up by the Working Group, noting that these provisions serve different purposes and that article 2(b) focuses on recording the type, timing and value of their contributions as set out in draft recommendation 21, not the allocation of members’ rights. It was pointed out that merging it as suggested would risk losing the recording requirement in the event that the second option was not chosen by the members.

47. After discussion, the Working Group agreed to request the Commission to mandate the Secretariat to draft guidance, with the assistance of experts, to assist States in the preparation of model organization rules (see also para. 25 above). A view was expressed that the mandate given to the Secretariat by the Commission should be broad enough to allow the Secretariat to rename the instrument if its content continues to be inconsistent with the definition of “organization rules” in the draft legislative guide.

## **F. General Provisions**

### **Paragraphs 19 to 24 and recommendation 1**

48. A question was raised as to the difference in the meaning of “Establishment” in the heading of chapter II and “Formation” in that of section B (paras. 44 to 47). The Working Group requested the Secretariat to address the inconsistency, noting that these two terms shared the same meaning.

49. Paragraph 19: the Working Group agreed to replace the term “corporations” at the end of the opening sentence with “publicly traded companies” for improved clarity, as in some States corporations may be public or private companies and MSMEs that are not public can have a corporate form.

50. Paragraph 20: a concern was expressed that the second last sentence (“Legislation enacted...State’s legal system”) contradicted the approach of the draft guide to propose a distinct business form that would be enacted as a stand-alone regime and that it could be understood as indicating to legislators that they need to harmonize the law enacted on the basis of the draft legislative guide with existing law. It was explained that being a distinct business form implied that it might not be consistent with the State’s legal system. In response, it was noted that the sentence may be superfluous since a law does not exist in a vacuum, but it is always part of a legal system; however, it would be useful to stress the link between the regime underpinning the UNLLO and the domestic legal system of an enacting State, since a number of concepts in the draft legislative guide (e.g., rules concerning evidence and succession) referred back to national law. It was added that deleting the sentence would leave only the reference to general legal principles in the last sentence which would be too restrictive. After discussion, the Working Group agreed to retain the sentence and only delete the clause “but would need to be consistent with the State’s legal system”.

51. Recommendation 1: the Working Group agreed to: (i) retain the term “this law” without square brackets; (ii) keep footnote 39, but with appropriate editorial revisions, in the final text of the draft guide; and (iii) and place the footnote superscript immediately after “this law”.

#### **Paragraphs 25 and 26 and recommendation 2**

52. The Working Group agreed to replace the word “organized” by “formed” in draft recommendation 2 and related commentary, since “organize” and similar terms in the guide often refer to the management and structure of the UNLLO. It also heard a suggestion to insert the phrase “unless otherwise agreed in the organization rules to limit such activities” in draft recommendation 2. It was said that while the recommendation made it clear that the States could not impose limits on the purpose of an UNLLO, members themselves may be allowed to restrict the scope of the business. The suggestion did not receive support as it was said that obviously an UNLLO could decide on the purpose of its activities and the current drafting of the recommendation was considered sufficiently clear.

#### **Paragraphs 27 to 29 and recommendation 3**

53. Paragraphs 27 and 28: a suggestion was made to insert an additional sentence in paragraph 27 to explain that draft recommendation 3 is a mandatory provision that cannot be amended by domestic law or organization rules. In response, the previous discussion on the term “mandatory provision” in the context of paragraph 17 was recalled. While concerns were raised about prioritizing certain recommendations over others, there was support for clarifying that legal personality and limited liability are essential characteristic of the UNLLO underpinning the overall system. As an alternative, a suggestion was made to revise the last sentence in paragraph 28 along the following lines: “Providing for the separation of UNLLO assets from the personal assets of its members through legal personality and limited liability protection (see rec. 4) is fundamental to the structure of the UNLLO.” The Working Group requested the Secretariat to revise paragraph 28 accordingly.

54. Paragraph 29: following a suggestion to delete paragraph 29 as redundant in light of paragraph 5 (see also para. 35 above), different views were expressed on whether the draft guide should include a reference to taxation policy, and if so, whether that reference should be kept in paragraph 5 and/or paragraph 29. While the necessity for the draft guide to explicitly state what it does not cover was questioned by some delegations, it was generally felt that there was merit in clarifying that taxation policy, generally understood as a matter different from other laws, such as labour law, is not addressed therein. In this regard, some delegations were of the view that the reference to taxation should be made in paragraph 5 as part of the introduction to the draft guide. In response, the relevance of taxation for draft recommendation 3 was emphasized, noting that in some jurisdictions taxation was considered as a matter closely linked to the legal personality of an entity. It was further explained that favourable taxation policies for the UNLLO could be seen as consistent with the purpose of creating such a new entity type (i.e., to help MSMEs). After discussion, the Working Group agreed to retain paragraph 29 as drafted.

#### **Paragraphs 30 to 36 and recommendation 4**

55. Paragraph 30: having recalled its discussion on the term “mandatory provision” in the context of paragraph 17 and draft recommendation 3, the Working Group requested the Secretariat to amend the last sentence of paragraph 30 to avoid using the term “mandatory provision”.

56. Paragraph 31: doubts were expressed as to whether limited liability would allow entrepreneurs to take business risks “without fear of failure”. A suggestion to replace the word “failure” by “being personally liable for the possible failure of the organization” was taken up by the Working Group. Another suggestion to shorten this paragraph by retaining only the first two sentences and deleting the rest did not

receive support. In relation to the fourth sentence, the Working Group agreed to make it clear in that sentence and, where needed, elsewhere in the draft guide, that the subject which would not enjoy limited liability protection in that context was not MSMEs, but members of MSMEs.

57. Paragraph 34: noting the cross-references between paragraphs 34 and 48, it was suggested that the last sentence in paragraph 48 should be moved to paragraph 34, on the ground that a registered UNLLO may take over obligations incurred by its members on its behalf before formation if permitted under the governing law. It was pointed out that such matter could not be left to the contractual freedom of the UNLLO members, as discussed in paragraph 34, but should be left to the domestic legislation in order to ensure protection of third parties. The Working Group requested the Secretariat to revise paragraphs 34 and 48 accordingly.

58. Paragraph 36: a suggestion was made to revise this paragraph so as to clarify that confusion should be avoided between personal assets of the UNLLO members and business assets of the UNLLO. In this regard, another suggestion was made to include the requirement for UNLLOs (especially single member UNLLOs) to set up a separate bank account as an example of how States can address the issue of separation of personal and business assets. Both suggestions were taken up by the Working Group.

#### **Paragraphs 37 to 40 and recommendation 5**

59. Paragraph 37: a suggestion to require minimum capital for the formation of an UNLLO did not receive support. Previous deliberations of the Working Group on this issue were recalled.

60. Paragraph 38(e): considering that paragraph 35 describes examples of exceptions to the limited liability protection in a more neutral and comprehensive manner, the Working Group agreed to delete the examples provided in paragraph 38(e) and to keep the reference to paragraph 35.

61. Paragraph 40: while the necessity of this whole paragraph was questioned, there was general support for retaining it with the understanding that paragraphs 37 to 39 focused on minimum capital requirement as a measure to protect third parties, whereas paragraph 40 referred to other policy reasons. To better illustrate the distinction between these paragraphs, it was suggested that the phrase “other than the protection of third parties” could be inserted in the first sentence of paragraph 40. The Working Group agreed to retain paragraph 40 and to revise the first sentence as suggested.

#### **Paragraphs 41 to 43 and recommendation 6**

62. The Working Group approved draft recommendation 6 and related commentary as drafted.

### **G. Formation of the UNLLO**

#### **Paragraphs 44 to 47 and recommendation 7**

63. Paragraph 44: The Working Group agreed to delete the second last sentence in paragraph 44 (referring to the dissolution of a single-member UNLLO) and to include a cross reference to paragraph 132 as the same issue was already adequately addressed in that paragraph in the context of dissolution.

64. Paragraph 46: it was observed that paragraph 46 might be seen as promoting non-member legal person as managers of the UNLLO. The Working Group agreed to replace the last two sentences of the paragraph with the following: “For example, they could establish that only natural persons can be involved in the UNLLO management (see para. 86) or that a legal person might acquire member status only in a multi-member UNLLO where other members are natural persons. These measures

may prevent the creation of an UNLLO without active business operations (a “shell organization”).”

65. Recommendation 7(b): it was suggested that the question whether a legal entity could become a member of an UNLLO should be manifested in a more succinct and reader-friendly manner. In this regard, while some preference was expressed for the previous formulation (see [A/CN.9/WG.I/WP.118](#), rec. 7(b)), various drafting proposals were also put forward in an attempt to clearly indicate the following possible composition of an UNLLO as options for States’ consideration: (i) natural person(s) only; (ii) legal person(s) only; and (iii) a mixture of both natural and legal persons. The Working Group was reminded of the “think small first” approach focusing on the actual needs of the smallest business entities, and was cautioned that the draft legislative guide should not be seen as inducing States to permit legal persons to be an UNLLO member.

66. After discussion, the Working Group adopted the following as reflecting its position that by and large, only natural persons would become the members of an UNLLO, while confirming in a neutral tone the possibility for States to allow legal persons too becoming members of an UNLLO: “Specify whether an UNLLO may only have natural persons as members and if not, the extent to which legal persons are permitted.” The Working Group also agreed to clarify in the commentary that the phrase “the extent to which legal persons are permitted” leaves open to States to specify the limitations (if any) on legal persons becoming members of an UNLLO.

#### **Paragraphs 48 to 50 and recommendation 8**

67. Paragraph 49: with respect to the last sentence, it was observed that the moment at which the registration of an UNLLO becomes effective would depend on the respective jurisdiction, whereas the current wording might be read as signalling an either-or situation. It was added that the UNCITRAL Legislative Guide on Key Principles of a Business Registry (thereinafter the Business Registry Guide) did not recommend any standard to specify such moment. The Working Group agreed to clarify that the two options provided in paragraph 49 were only examples and that there could be other standards by adding another example, such as upon issuance of a certificate confirming the registration (see Business Registry Guide, para. 55 and rec. 24).

#### **Paragraphs 51 to 57 and recommendation 9**

68. Paragraph 55: a suggestion was made to specify in the first sentence that the draft guide does not require information concerning beneficial ownership to be made public and also to include a cross reference to draft recommendation 30 given its relevance to beneficial ownership. The Working Group requested the Secretariat to amend the first sentence as suggested.

69. Paragraph 57: the location of the cross reference to paragraph 138 at the end of the first sentence was questioned. Whereas the first sentence describes that most States provide that all registered information should be publicly available unless it is protected by the law, it was observed that paragraph 138 addressed a different issue in the context of disclosure requirements and allowed States to require other information to be made public. After discussion, the Working Group agreed to insert a new sentence along the lines of “The law of the State may require that other information be made public” after the third sentence and to insert the cross reference to paragraph 138 at the end of that new sentence. A suggestion for the draft guide to require information concerning the domicile of the UNLLO did not receive support.

70. Recommendation 9: a concern was raised that draft recommendation 9(a)(iv) referring to each person “who manages the UNLLO” seemed to conflict with recommendation 21(d) of the Business Registry Guide referring to the person who is authorized to sign on behalf of the business or serves as the business’s legal representative. In light of the possibility in draft recommendation 19(a) for members to agree in the organization rules that certain managers do not have the authority to

bind the UNLLO, it was explained that information concerning the identity of these managers would be required under the draft guide on an UNLLO but not required under the Business Registry Guide. In response, the different purposes and focuses of the draft guide on an UNLLO and the Business Registry Guide were emphasized. It was also said that draft recommendation 19(b) was intended to protect third parties against restrictions imposed on certain managers under draft recommendation 19(a). In this regard, a suggestion was also made to insert the phrase “upon formation” at the end of draft recommendation 9(a)(iv).

71. A suggestion to replace the word “UNLLO” by “proposed UNLLO” did not receive support. A question was raised as to why draft recommendation 9(a)(iv) required the identity of managers but not members of the UNLLO.

72. After discussion, the Working Group agreed to retain the current drafting of recommendation 9 and to explain in the commentary the rationale for draft recommendation 9(a)(iv) to adopt a standard slightly different from that in recommendation 21(d) of the Business Registry Guide.

## **H. Organization of the UNLLO**

### **Paragraphs 58 to 65 and recommendation 10**

73. Paragraph 58: in keeping with its previous deliberations (see paras. 38 to 40 above), the Working Group requested the Secretariat to eliminate reference to “mandatory” and “non-mandatory” in the second part of the paragraph and throughout the draft legislative guide.

74. Paragraph 59(d): for improved clarity of the subparagraph, the Working Group agreed to: (i) replace the word “criteria” with another word that could better reflect the substance of the examples provided, such as measures or procedures; and (ii) to make the example of “casting voting mechanisms” more explicit. Moreover, the Working Group noted that some of the measures listed in the subparagraph were also included in the current version of the model organization rules and although final deliberations on the model rules were pending, it requested the Secretariat to ensure consistency of the subparagraph with the model rules as appropriate.

75. Recommendation 10: a suggestion to insert the phrase “such as in writing or in electronic form or by any other appropriate technological means” at the end of draft recommendation 10(a) was not taken up by the Working Group. Previous deliberations of the Working Group on this issue were recalled and reference was made to paragraph 61 permitting organization rules to be recorded orally or through a course of conduct.

## **I. Members’ rights and decision-making in the UNLLO**

76. It was observed that this section of the draft guide did not address the situation in which members were no longer able to exercise their rights because of permanent incapacitation or disability. Reference was made to paragraph 117 where this issue was discussed in the context of transfer of rights and it was suggested that a new sentence should be added in the commentary along the following lines: “Members may agree on rules in the organization rules on how members’ rights could be exercised in the event of incapacitation or permanent disability as long as they are in compliance with the law of the State on this issue.” The Working Group agreed to insert a new sentence in this section of the commentary as suggested.

### **Paragraphs 66 to 68 and recommendation 11**

77. Paragraph 68: a suggestion was made to delete the phrase “and share in the losses of the UNLLO through, for example, receiving no distributions” on the ground that a legal obligation on members to share the losses of the UNLLO would run counter to the nature of limited liability. Although the view was expressed that not

being able to claim contributions back in the event of dissolution might be seen as loss sharing in some legal systems, there was broad support for deleting that phrase. The Working Group requested the Secretariat to revise paragraph 68 accordingly.

78. A suggestion in favour of a default rule that determines the rights of members in proportion to the value of their contributions did not receive support.

#### **Paragraphs 69 to 72 and recommendation 12**

79. The Working Group approved draft recommendation 12 and related commentary as drafted.

#### **Paragraphs 73 and 74 and recommendation 13**

80. Recommendation 13: the Working Group agreed to delete the text in square brackets in draft recommendation 13(a) with reference made to footnote 73, noting that paragraph 74 already addressed the possibility for States to deviate from the unanimity rule. The Working Group also agreed to the following editorial changes: (i) replacing the word “on” by “concerning” in draft recommendation 13(a); and (ii) replacing the phrase “a majority of member” by “majority” in draft recommendation 13(b).

#### **Paragraphs 75 to 77 and recommendation 14**

81. Paragraph 75: a suggestion to recommend to States to establish a maximum number of UNLLO members in the law did not receive support, considering that paragraph 40 already discussed this issue in a more neutral manner.

82. Recommendation 14: with reference to footnote 75, a query was raised as to whether this draft recommendation should provide an additional default approach for instances in which not all members are legally eligible to serve as managers. While views were expressed in favour of amending the recommendation, it was generally felt that such an additional default approach should not be included in the recommendation itself. There was broad support for amending the related commentary to highlight this issue in a neutral manner and to specify that the law of the State would apply without making specific references to guardianship. The Working Group requested the Secretariat to revise the related commentary to draft recommendation 14 accordingly.

83. A suggestion to replace the term “the UNLLO” by “they” (referring to members) did not receive support because in some legal systems the entity itself with separate legal personality would enter into a service contract or employment agreement with managers. It was further explained that the appointment of designated managers by the UNLLO would be consistent with draft recommendation 20 providing that managers owe a duty of care to the UNLLO itself. Another suggestion to avoid the word “exclusively” also did not receive support. After discussion the Working Group agreed to revise the second part of the draft recommendation as “unless members agree in the organization rules that one or more designated managers shall be appointed”, which was said to be consistent with the approach taken in draft recommendation 16.

#### **Paragraphs 78 to 81 and recommendation 15**

84. Paragraph 79: the Working Group agreed to insert cross references to draft recommendations 12 and 13 at the end of this paragraph.

## **J. Management of the UNLLO**

#### **Paragraphs 82 and 83 and recommendation 16**

85. Recommendation 16: the Working Group heard a suggestion to replace the word “may” with “shall” as this would signal the need to appoint at least one designated manager if the UNLLO was not managed by all of its members exclusively. It was,

however, noted that the intention of the draft recommendation was to specify the quantum necessary to appoint and remove designated managers and not to indicate that designated managers must be appointed to avoid a management vacuum in the UNLLO. In an effort to clarify the intention of the draft recommendation, a suggestion to delete the phrase “one or more” and retain the word “may” was taken up by the Working Group.

#### **Paragraphs 84 and 85 recommendation 17**

86. Recommendation 17(a): the Working Group heard a suggestion to revise draft recommendation 17(a) as “pursuant to this law and, where applicable, to the organization rules”. It was noted that the word “or” seemed to imply that matters reserved to the decision of the members could only be described either in the law enacted on the basis of the draft guide or in the organization rules. It was said that the suggested revision would better reflect the intention of this recommendation, that is, both the law and the organization rules, when adopted, would indicate which matters are reserved to members. There was support for this proposal.

87. Recommendation 17(b): a proposal to replace “Disputes” with “Decisions” was not taken up by the Working Group as the purpose of draft recommendation 17(b) was not to require designated managers to take every decision collectively.

#### **Paragraphs 86 to 88 and recommendation 18**

88. Paragraph 86: a proposal was made to delete the last sentence as it might be interpreted as encouraging States to permit non-member legal person managers. While the view was expressed that the second part of that sentence was drafted in a neutral manner, there was general support for deleting the last sentence in its entirety.

89. With respect to the legal requirements that a person managing an UNLLO has to meet, it was noted that such requirements would mostly be contained in statutes on corporate law. In this regard, a suggestion was made to include in paragraph 86 further clarification that in case the statutes were silent, the legislation enacted on the basis on the draft legislative guide could provide for such legal requirements for those in a management position.

#### **Paragraphs 89 to 91 and recommendation 19**

90. Paragraph 89: it was recalled that the Working Group had requested the Secretariat to eliminate any ambiguity in the use of the term “manager” in the draft legislative guide (see [A/CN.9/1042](#), para. 88). The Working Group thus asked the Secretariat to include reference to paragraphs 110 and 140 in paragraph 89, since the word “manager” used in those paragraphs also applied to all those in a managerial position regardless of whether they were members or designated managers.

91. Paragraph 91: having recalled previous deliberations on issues concerning the terms “notice” and “knowledge”, the Working Group agreed to retain the current drafting of recommendation 19 and to clarify in the last sentence in paragraph 91 that the term “notice” would also include the concept of “knowledge”.

#### **Paragraphs 92 to 97 and recommendation 20**

92. Paragraph 97: a concern was raised that paragraph 97 might be seen as suggesting that members could agree to deviate from recommendation 20. The Working Group agreed to request the Secretariat to redraft this paragraph to ensure consistency with recommendation 20.



## **K. Members' contributions to the UNLLO**

### **Paragraphs 98 to 102 and recommendation 21**

93. Paragraph 98: in respect of the first sentence, it was observed that there was no logical connection between the two constituent clauses. In this regard, a suggestion was made to remove the first part of that sentence since the point was addressed elsewhere in the draft legislative guide. After discussion, the Working Group agreed to amend the first two sentences along the following lines: "The legislative guide does not require members to make contributions. However, members may choose to require contributions in their organization rules and to establish what each member will provide to the UNLLO by way of contribution."

## **L. Distributions**

### **Paragraphs 103 and 104 and recommendation 22**

94. Paragraph 103: a concern was raised that the phrase "equally adjusted" at the end of the third sentence might be considered to go against recommendation 22 providing for distributions in proportion to members' rights. The Working Group agreed to make clear that such adjustment would be made accordingly, that is, to the same extent and in the same proportion as the deviation from the default rule of having equal rights.

95. Paragraph 104: a proposal was made to include a reference to recommendations 23 and 24 since matters on distribution may not entirely be at the discretion of the members. The Working Group agreed to specify in the first sentence that any agreement of the members on the type and timing of distributions should be in conformity with recommendations 23 and 24.

### **Paragraphs 105 to 107 and recommendation 23**

96. Paragraph 107: it was observed that the phrase "leaves it open for States to opt for either one of the standards listed" would be read as inviting States to choose only one standard, while in fact States could include both standards in the legislation and specify that distributions should be prohibited if either standard was met. The Working Group requested the Secretariat to redraft paragraph 107 to ensure that States are not discouraged to choose both standards.

## **M. Transfer of rights**

### **Paragraphs 112 to 117 and recommendation 25**

97. Paragraph 112: it was said that in the strictest sense, members in their capacity as members might not have right to participate in the management. In this regard and in light of recommendation 12, a proposal was made for coherence and clarity to replace "to participate in the management and control of the UNLLO" with the following: "including rights to decide on the management structure of the UNLLO and its modification, on the conversion, restructuring and dissolution of the UNLLO, on contributions by members, and on internal governance matters". The Working Group agreed to make such change to paragraph 112.

98. Paragraph 114: the Working Group agreed to split the paragraph in two parts, after "(see rec. 11)", as it was noted they dealt with different topics.

99. Concerns were raised regarding the term "assignment" given that in some legal systems the terms "transfer" and "assignment" were used interchangeably to describe the same legal concept. In response, it was noted that references to "assignment" could be deleted as long as it would be clear that, even when partial transfer of rights was not allowed, members were still able to make use of their financial rights in the UNLLO. A suggestion was made to insert the phrase "various contractual agreements

with third parties” to clarify that in practice members would make use of their financial rights through contractual arrangements. While there was some support for deleting all references to “assignment”, it was pointed out that the proposed deletion should not affect the substance of the fifth sentence, that is, any agreement on a member’s financial rights with a third party would not by itself entitle the third party to interfere in the management of the UNLLO. After discussion, the Working Group requested the Secretariat to avoid any references to “assignment” without affecting the substance of the paragraph.

100. Paragraph 116: with respect to the last sentence, accuracy of the phrase “it may be unusual for the law to require the consent of the minority members” was questioned, noting that in some legal systems requiring such consent might not be unusual. The suggestion that the two options in the last sentence should be presented in a more neutral manner received support from the Working Group. A suggestion was also heard to split the paragraph into two parts as the first part (consisting of the first three sentences) was rather descriptive.

101. Paragraph 117: a concern was expressed that issues concerning permanent incapacitation or disability in the context of transfer of rights should be addressed by the law of the State, not the organization rules. It was added that members may agree on additional rules in the organization rules as long as they were in compliance with the law of the State on this issue. The Working Group requested the Secretariat to revise the last two sentences accordingly.

## **N. Withdrawal**

### **Paragraphs 118 to 126 and recommendation 26**

102. The Working Group requested the Secretariat to ensure consistency between the commentary and draft recommendation 26 to reflect that only paragraph (b) is a default rule, under which the members may agree on the time period and calculation method for payment but cannot deviate from the principle that withdrawing members are entitled to be compensated for their rights in the UNLLO.

103. Paragraph 121: different views were expressed on whether the rights that cease at the moment of withdrawal were limited to decision-making rights. While there was some support for the view that all rights except the right to receive payment under paragraph (b) would cease at the moment of withdrawal, it was generally felt that the last sentence should be redrafted in a neutral manner leaving it to States to decide when the withdrawal should become effective and when the rights should cease. The Working Group requested the Secretariat to revise the last sentence accordingly. A suggestion to delete reference to “qualifying events” and “domestic law of the State” in the first sentence to align it with recommendation 26(a) was taken up by the Working Group.

104. Paragraph 122: A concern was expressed that the example given in parenthesis in letter (b), i.e. “not to distribute profits for five consecutive years where the UNLLO has been profitable”, might be too specific. It was thus suggested replacing the word “five” with “some” or deleting the example. There was agreement in the Working Group and the Secretariat was requested to make the change as appropriate. A suggestion to allow members to withdraw without the agreement of other members after four years of membership was not taken up by the Working Group.

105. Paragraph 126: The Working Group agreed to replace the word “may” with “should” in the last sentence, noting that an expelled member is entitled to receive compensation for its rights in the UNLLO. The Secretariat was, however, requested to clarify that the payment to the expelled member may not necessarily reflect the fair value of its rights in the UNLLO.

## **O. Conversion or restructuring**

### **Paragraphs 127 to 129 and recommendation 27**

106. Paragraph 127: The Working Group heard a suggestion to include at the end of the paragraph a reference to situations when restructuring was the result of reorganization plans prepared in the context of insolvency proceedings. There was no support for that proposal, but the Working Group agreed to include a reference in the draft guide to the work UNCITRAL Working Group V (insolvency Law) in the area of MSME insolvency, as appropriate.

## **P. Dissolution**

### **Paragraphs 130 to 136 and recommendations 28 and 29**

107. Title of the section: The Working Group supported the Secretariat's suggestion to retain "Dissolution" as title and to footnote it along the lines of the text suggested in footnote 108 of [A/CN.9/WG.I/WP.122](#).

108. Paragraph 130: the Working Group agreed to replace "resignation" with "withdraw" since the former was not used in the draft guide.

109. Paragraph 131: the Working Group agreed to replace "liquidation" with "dissolution".

110. Recommendation 28(a)(ii): A concern was raised about the unanimity requirement and a suggestion was made in favour of a three-quarter majority. In response, previous deliberations of the Working Group on this issue were recalled and it was noted that the requirement of "unanimity" was not mandatory and could be changed to a different quantum by agreement of the members, pursuant to draft recommendations 12 and 13. After discussion, the Working Group agreed to delete "unanimous" in the text of the recommendation and clarify in the commentary that the members would determine the quantum of the decision to dissolve pursuant to draft recommendations 12 and 13.

111. Recommendation 28(a)(iv) and paragraph 132: With reference to footnotes 110 and 116 of [A/CN.9/WG.I/WP.122](#) highlighting the issue of permanent incapacitation of members, the Working Group agreed to revise this recommendation and related commentary to state that the UNLLO should be dissolved when it is left without any member having the appropriate capacity thereto. The Working Group requested the Secretariat to revise accordingly and, in particular, to avoid references to "conducting its business" as it might suggest a managerial role.

112. Recommendation 28(a)(v): A drafting suggestion to replace "the law" with "this law" was also taken up by the Working Group.

## **Q. Record-keeping, inspection and disclosure**

### **Paragraphs 136 to 140 and recommendations 30 and 31**

113. Paragraph 140: the Working Group agreed to delete the last sentence as inconsistent with the rest of the paragraph, but to add the qualificative "member" before "access to certain information" in the second to last sentence to indicate that restrictions and conditions to access information on the UNLLO would not apply to public authorities.

114. Recommendation 30: the Working Group agreed to add the words "identity of" at the beginning of draft recommendation 30(c) for improved clarity and to retain "if any" without parentheses in draft recommendation 30(d). A suggestion to include the word "significant" in draft recommendation 30(f) to refer to important activities only as discussed in the related commentary was not taken up by the Working Group.

115. A suggestion was heard to replace the last part of the draft recommendation (“concerning its ... and operations”) with “under recommendation 30” to make clear that members had the right to obtain information on all items listed under that latter recommendation. There was however support to retain the current drafting of recommendation 31 since it clarified that members can require additional information than what is on records.

## **R. Dispute resolution**

### **Paragraphs 141 to 145 and recommendation 32**

116. Recommendation 32: With reference to footnote 123 of [A/CN.9/WG.I/WP.122](#), the Working Group agreed to adopt the alternative text suggested in the footnote referring to “any dispute concerning the governance and operation of the UNLLO”, noting that a broader scope would be more consistent with the first sentence in paragraph 143 providing that ADR mechanisms would also benefit the UNLLO in commercial disputes with third parties such as creditors, suppliers or clients. It was also explained that the chapeau of the draft recommendation did not recommend States to “require” the submission of disputes to ADR mechanisms, but only to “facilitate”.

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