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Best practices in business registration

Note by the Secretariat

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I. Background

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. The Commission agreed that consideration of the issues pertaining to the creation of an enabling legal environment for MSMEs should initially focus on the legal questions surrounding the simplification of incorporation.¹

2. At its twenty-second session (New York, 10-14 February 2014), Working Group I commenced its work in accordance with the mandate received from the Commission. The discussion of the Working Group at that session, reflected in document A/CN.9/800, took place on a preliminary basis, with the aim to delineate the direction the work could take and the issues relevant for discussion at the next sessions of the Working Group. Several topics were considered by the Working Group that could be included in possible legislative models aimed at the simplification of incorporation for MSMEs and there was agreement that the Working Group should give particular emphasis in its work to the importance of business registration. The Working Group noted that business registration was an important aspect in assisting MSMEs, particularly in the case of microenterprises that may wish to formalize but not to incorporate. Moreover, there was no need to distinguish between the treatment of enterprises based on size at the registration stage, provided that registration could be accomplished quickly and at a low cost. However, it was observed that registration might not necessarily be available to or desirable for all micro-businesses and single person entrepreneurs and that the Working Group should continue to consider additional measures that could help these businesses to formalize.¹

3. After discussion, the Working Group requested the Secretariat to prepare a document for its next session in which best practices in respect of business registration would be considered by the Working Group. The following issues were highlighted as being relevant:

- (a) Identification of the minimum information necessary to register;
- (b) Establishment of a unique identification number for businesses, which would not conflict with global initiatives in this regard;
- (c) Data protection and confidentiality;
- (d) Ability to search for a unique business name;
- (e) Easily-updated information;
- (f) Identification of who would have access to the information, including credit institutions and the public;
- (g) Consider interconnectivity among relevant authorities, including that information need only be provided once by the user;
- (h) Low or no cost;

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

- (i) Quickly accomplished;
- (j) Minimal and simple procedures to follow;
- (k) A record of the history of the business should be maintained;
- (l) A standard model form should be provided electronically to the user and could possibly be used for the creation of company by-laws;
- (m) Provide the user with the necessary means to conduct business, such as providing a tax identification number; and
- (n) Provide proof of existence of the business.²

4. In response to that request, this note has been prepared to provide information on best practices in respect of business registration. It is mainly a review of publications written by international organizations particularly active in supporting business registration reform complemented by ad hoc information provided to the UNCITRAL Secretariat by some State delegations. Two publications of the World Bank Group³ were particularly relevant as they include an analysis of best practices in respect of business registration in particular of MSMEs. They are: *Innovative Solutions for Business Entry Reforms: A Global Analysis* (July 2012)⁴ and *Reforming Business Registration: A Toolkit for the Practitioners* (January 2013).⁵ They will be referred to as “the Global Analysis (2012)” and “the Toolkit (2013)” in this Working Paper. Both publications are based on a wealth of data, including that collected by the *Doing Business Project* of the World Bank Group (hereinafter “Doing Business”),⁶ which, until 2013, recorded 368 business registration reforms in 149 countries in the previous 8 years.⁷

² A/CN.9/800, para. 49.

³ The publications were prepared by the Investment Climate Advisory Services, a department of the World Bank Group supporting governments that implement reforms to improve their business environments thanks to funds provided by the World Bank Group (International Finance Corporation, the World Bank, and Multilateral Investment Guarantee Agency) and donor partners. Information is available at www.wbginvestmentclimate.org/index.cfm.

⁴ Investment Climate (World Bank Group), *Innovative Solutions for Business Entry Reforms: A Global Analysis*, 2012, is based, among other sources, on a 2011 survey of 41 business registries, case studies undertaken in the Former Yugoslav Republic of Macedonia, Italy, Viet Nam, and Norway, and the 2011 World Bank Group study of ICT solutions in 34 company registers. The publication is available at: www.brreg.no/internasjonalt/ISBER_Web.pdf.

⁵ Investment Climate (World Bank Group), *Reforming Business Registration: A Toolkit for the Practitioners*, 2013, includes case studies of Azerbaijan, Bangladesh, Macedonia, New Zealand and South Sudan. The publication is available at: www.wbginvestmentclimate.org/publications/loader.cfm?csModule=security/getfile&pageid=34841.

⁶ The Doing Business Project was launched in 2002 by the World Bank Group and looks at domestic small and medium-size companies, across 189 economies and selected cities at the subnational and regional level, in order to measure the regulations applying to those companies through their life cycle. The Doing Business is available online at www.doingbusiness.org/.

⁷ See, World Bank Group *Doing Business* 2013, page 57. The Doing Business 2014 records 244 business registration reforms in 135 countries in the previous 5 years.

II. Business registration: a key element of an enabling business environment

5. As also noted at the twenty-second session of the Working Group, in February 2014, there is wide recognition among experts of the importance of business registration for entrepreneurs, markets and governments. Registration can assist micro-businesses to raise shared capital, obtain financing and access to government assistance programmes such as subsidies and reduced-cost services, and reassure business partners that the information provided about the business can be trusted. Benefits for governments are said to include: consistency of business with the domestic legal framework, improved tax collection, minimized risk for the public of potentially dubious businesses, creation of legal entities which can be easily identified with their own sets of rights and responsibilities, and provision of key information for the government on sectors, size, and ownership of enterprises.⁸

6. The complexity of business registration varies widely across countries, but three core functions⁹ are considered to be common to all systems: (1) checking for the uniqueness of a business name, (2) enrolment in a public commercial registry, and (3) registration with tax authorities. These functions contribute to making a business registry an important information repository for the business community. Factors that affect the complexity of registration may include, among others, the level of development of the State and the State's legal traditions. Studies have highlighted that more developed countries tend to regulate less and instead rely on a firmly established legal system to govern business behaviour, while in contrast, many developing countries and economies in transition carry out significant ex ante screening of businesses.¹⁰ The State's legal system — whether common law or civil law — may also play a role in how the registry system is organized. For instance, in some civil law jurisdictions, business registration is a judicial function, usually specified as such in the law governing the judiciary, while in most common law jurisdictions the business registry is a government department staffed by civil servants. It has been noted that these latter jurisdictions may require fewer procedural steps for business start-ups than civil law jurisdictions.¹¹

7. Regardless of their legal tradition, many States still maintain obligations and requirements that make business registration difficult and entail substantial costs for their economy. It has been suggested that such strict business registration systems are conducive to consumer protection; only those businesses with a solid structure and with high quality products are likely to enter the market, thus reducing market failures and the risk that consumers buy from unreliable operators.¹² However, it has been noted that States with such entry barriers may lack the capacity to enforce

⁸ L. de Sa, *Business Registration Start-Up: A concept note*, International Finance Corporation and the World Bank, 2005, page 3.

⁹ It has been observed that the three core functions noted here are mainly of an administrative nature, and that business registries may also perform certain legal and commercial functions. See below, footnote 26.

¹⁰ World Bank Group, Small and Medium Enterprise Department, *Reforming Business Registration Regulatory Procedures at the National Level, A Reform Toolkit for Project Teams*, 2006, page 2.

¹¹ *Ibid.*, page 75.

¹² See S. Djankov, *The Regulation of Entry: A Survey*, 2009, page 184.

them, which results in enabling informal firms to sell goods and services without meeting quality standards, possibly harming consumer welfare.¹³ Another view maintains that stricter business entry systems inhibit the entry of new businesses, which leads to limited competition and high protection for incumbent firms, and results in higher profits for incumbents. According to a third view, strict business entry regulation may benefit public officials, who may use it to create and perpetuate rents through votes and bribes.¹⁴ This would encourage corruption and undermine transparency and political will for reform, thus resulting in strong opposition to business registration and other regulatory reforms by officials and beneficiaries of the status quo.¹⁵

8. Recognizing that easier business start-up is instrumental to improved competitiveness, in the early 2000s several members of the Organization for Economic Cooperation and Development (OECD) commenced reforms to streamline business registration and make it more efficient. Various middle income and developing economies followed the same path at the end of the 2000s. Key to these reforms were the need to promote business formalization and the fact that business registration reform is relatively easier and less costly than other reforms aiming at improving the legal environment for MSMEs. Studies have documented that faster and simpler procedures to start a business are conducive to business formalization. Economies with high registration costs or where a large number of days are required to start a business usually have a lower number of formal MSMEs and a larger informal sector.¹⁶ According to available examples, improvements in the registration process are likely to have a positive influence on company creation. For instance, in one State simplification of business registration procedures resulted in a 77 per cent increase in registered businesses in the year following the reform.¹⁷ In another country reducing registration fees in response to the economic crisis led to an increase by 15.8 per cent of new business registrations one year later.¹⁸ According to another set of data, cutting registration costs from the seventy-fifth to the twenty-fifth percentile is associated with a ten to eleven per cent increase in the number of new firms.¹⁹ In addition, business registration reforms seem to raise standards of efficiency and transparency for government agencies.²⁰

9. In order to be effective, business registration reforms, while informed by international best practices, cannot ignore each State's level of development and priorities, nor its legal framework. For instance, the Global Analysis (2012) has noted that in countries with large informal economies, a reform with a narrow focus, at least in the beginning, might be more effective than a broader one, which could be introduced at a later stage.²¹ If the main objective is formalization of the economy, simple solutions addressing the needs of MSMEs operating at the local

¹³ Supra, footnote 5, page 5.

¹⁴ Supra, footnote 12, pages 184 ff.

¹⁵ Supra, footnote 5, page 5.

¹⁶ International Finance Corporation, *Micro, Small, and Medium Enterprises: A Collection of Published Data*, 2006. See also, World Bank, *Reforming Business Registration Regulatory Procedures at the National Level, A Reform Toolkit for Project Teams* 2006.

¹⁷ See Rwanda, supra, footnote 5, page 1.

¹⁸ Malaysia, See World Bank Group, *Doing Business* 2011, page 24.

¹⁹ Supra, footnote 5, page 1.

²⁰ Supra, footnote 8, page 4.

²¹ Supra, footnote 4, page 26. See also footnote 26 below.

level may be more successful than high-tech solutions that are more appropriate to larger businesses and/or businesses operating in the international market. In terms of legal framework, it has been observed that in States where ex ante verification of legal requirements and authorizations before businesses can register are required, notaries and the judiciary perform a key role in the registration process (see also para. 6 above). As country examples show, establishing an administrative registration system (where the services of judiciary and notaries are not required or are made optional) may thus prove a lengthy and contentious process.²² It has been noted that, in contrast, States with a codified legal system that has been influenced by common law often provide for a declaratory business registration where no ex ante approval is required before business start-up and where registration is an administrative process.²³ These systems are said to be easier to reform, since the reform will not challenge the structure of the system, but rather focus on improving performance through simplification and automation.²⁴

III. Organization and functions of business registries

10. According to a recent survey, the most popular organizational model for business registries in the States examined is based on oversight by the government (all respondents in Africa, the Middle East and the Asia-Pacific, as well as most respondents in the Americas, indicated that this was the case), while the second most common type is based on oversight by the judiciary (mainly in Europe).²⁵ Despite different models of organization or levels of complexity, however, business registries perform similar core functions as mentioned in paragraph 6 above.²⁶ A short description of these functions may be helpful in understanding the goals and the impact of reforms aimed at simplifying business registration processes.

²² Small and Medium Enterprise Department (World Bank Group), *Reforming Business Registration Regulatory Procedures at the National Level*, 2006, page 7.

²³ *Supra*, footnote 4, pages 25-26.

²⁴ *Supra*, footnote 10, page 75.

²⁵ European Commerce Registers' Forum [supported by], *International Business Registers Report 2014*, page 14 ff. The publication notes that some results of the survey are completely opposite to those of the previous year, due to some countries changing their answers, but also due to a change in the respondents.

²⁶ It has been suggested that these functions are mainly administrative. In addition to such administrative functions (such as issuance of a unique identifier or information-sharing), it has been observed that business registries in some States, particularly those with ex ante verification of information provided during business registration, may also perform certain legally-required functions (such as verification of information as a prerequisite to obtaining corporate legal personality) and, arguably, certain commercial functions (such as reducing transaction costs and preventing disputes within the company and with third parties through ensuring reliable and authentic publicly available company information). However, it should be observed that most States, even those using an ex post verification system, legally require the submission of accurate information to the registry. In such States, as in the case of States with a large informal economy (see para. 9 above), a reform with a more narrow focus, such as on administrative functions, might also be more effective at the outset than one with a broader focus. See, also, the discussion in para. 6 above.

A. Business start-up

11. The entry point of business registries in the establishment of start-ups is usually the support provided to entrepreneurs in choosing a unique name for their business. Registries may have a separate procedure (optional or mandatory) to assist the entrepreneur at this stage or may provide name searches as an information service. Since the business name must not be used by other businesses, registries may offer a name reservation service, either as a separate procedure (optional or mandatory) or as one integrated into the registration procedure.

12. Business registries provide forms (paper or electronic) and guidance in various ways to entrepreneurs preparing the application and other necessary documents for registration. Once the application is submitted, a registry performs a series of controls to ensure that all the necessary information and documents are included. In particular, a registry verifies the chosen business name as well as the requirements established in the State's legislation, such as the legal capacity of the entrepreneur to operate the business. Certain legislation requires the registry to perform simple controls (e.g. establishing that the name of the business is unique), while others may require more thorough verification, such as ensuring that the business name does not violate any trademark requirement.²⁷

13. Payment of a registration fee must usually be made before the registration is completed, at which point the registry issues a certificate that confirms the registration and contains information about the business. Since information contained in the registration (the "registered information") must be disclosed to interested parties, registries make it publicly available through various means, including publication on a website, or in publications like the National Gazette or newspapers (although the trend is away from this latter approach). Registries may offer as an additional service subscriptions to announcements of certain kinds of registration, such as all new limited liability companies, or all new sole proprietors.²⁸

14. Registered information made available to the public can include basic information about the business, like the telephone number and address, or more sophisticated information on the business structure, such as who is authorized to sign on the company's behalf or who serves as the company's legal representative.²⁹ Registered information has legal validity and by virtue of registration, all parties dealing with the business are deemed to have had notice of such information.³⁰

²⁷ Supra, footnote 4, page 8.

²⁸ Ibid., page 9.

²⁹ The issue of beneficial ownership is to be noted in this regard. According to the International Business Registers Report 2014 (see pages 27 ff), which has surveyed jurisdictions from all over the world, only a small number of jurisdictions, among the respondents, currently register beneficial owner details. It is also common in most jurisdictions not to make beneficial owner details available to the public, although these data are made available to specific public authorities. See also the discussion on the transparency of beneficial ownership in A/CN.9/WG.I/WP82 paras. 26 ff.

³⁰ Supra, footnote 4, page 9.

B. Registration with other public authorities

15. A new business usually needs to register with several government agencies, which often require the same information gathered by the business registry. The business registry normally provides information on the necessary requirements to the entrepreneurs and refers them to the relevant agencies. In more modern systems, businesses may be assigned a registration number that also functions as a unique identifier that can be used in all of the business's interactions with government agencies, other businesses and banks (see paras. 31-35 below). This greatly simplifies business start-up since it allows the business registry to more easily exchange information with the other public institutions involved in the process. In some cases, business registries function as one-stop shops (see paras. 37 ff. below) to support registration with other authorities. The services operated by such outlets may include providing any necessary licensing, or they may simply provide information on the procedures to obtain licences and refer the entrepreneur to the relevant agency.

C. Businesses' life cycle

16. In addition to the function performed in the registration of a start-up, business registries typically support businesses throughout their life cycle. In many countries, entrepreneurs have a legal obligation to inform the registries of any changes occurring in the business, whether these are factual changes (e.g. address, telephone numbers) or whether they pertain to the structure of the business (e.g. a change of the legal representative). Information exchange between business registries and different government agencies also serves the same purpose. In some cases, registries publish annual accounts or financial statements that are useful for investors, clients, potential creditors and government agencies.

D. Deregistration: removal of a business from the register

17. Deregistration is defined as the removal of a business from the register once the business, for whatever reason, has permanently ceased to operate. The registry, upon receiving notification of the business dissolution, may issue an announcement stating that creditors have a certain length of time during which to advance their claims. After that period has passed, the business is removed from the register. This procedure ensures that businesses do not dissolve without providing creditors the opportunity to protect their rights.³¹

IV. Best practices in business registration

18. The wave of reforms of business registration systems mentioned in paragraph 8 above has generated several best practices with similar features among the best performing countries.³² These countries usually charge a fixed registration fee, use

³¹ Ibid., pages 9-10.

³² These countries are those indicated in the Doing Business statistics. Doing Business measures the number of procedures, time and cost for a small and medium-size limited liability company

standard registration forms and stipulate nominal (or no) paid-in minimum capital, assign unique business identification numbers and adopt information technology to facilitate the delivery of a range of business start-up services. In some cases, these practices have been integrated with the creation of new company types with simplified entry requirements.³³

A. Business registration and other fees

19. According to a recent survey, nearly all the respondent jurisdictions collect some fees for their services,³⁴ including those where registries are run by the government and receive public support. The Global Analysis (2012) indicates³⁵ that three types of fees are usually charged by registries: registration fees, fines and fees for information products. Such fees generate revenues for the registry, but they may also affect an entrepreneurs' decision to formalize. Registration fees are the most common practice and some countries consider them an actual revenue-generating mechanism, which may impose a heavy burden on new businesses. However, best practice countries follow the opposite approach. Since the government objective is to bring more companies into the formal sector and derive revenue from appropriate taxation of their legal operations, fees are set at a level that encourages businesses to formalize. Use of a flat fee schedule, regardless of the size of the business to register, is particularly common in these States. In some economies business registration is provided free of charge.³⁶

20. Other fees charged by the registries include annual fees to keep a company in the registry (which are unrelated to any particular registration activity), and fees to register annual accounts or financial statements. A survey among business registries,³⁷ has shown that as many as 31 per cent of the respondents, including best performing countries, maintain annual fees, 88 per cent charge fees for registering amendments and 42 per cent impose fees for registering annual accounts. These practices, which seem to contradict the trend of minimizing revenue generation from registration, can clearly affect the businesses' decision to register or to maintain their registered status. It has thus been suggested that fees should be set

to start up and operate formally. To make the data comparable across 189 economies, Doing Business uses a standardized business that is 100 per cent domestically owned, has start-up capital equivalent to 10 times income per capita, engages in general industrial or commercial activities and employs between 10 and 50 people within the first month of operations. More details are available on the Doing Business website at: www.doingbusiness.org/data/exploretopics/starting-a-business.

³³ See Doing Business website at www.doingbusiness.org/data/exploretopics/starting-a-business/good%20practices.

³⁴ *Supra*, footnote 25, pp. 89 ff. The publication notes that the slight majority of the respondents is mostly funded through fees (51 per cent), while the remaining are primarily funded by government (49 per cent). In the previous years, the number of respondents indicating government funding as their primary resource was slightly higher than the registries indicating private financing as their main source.

³⁵ *Supra*, footnote 4, pp. 17 ff.

³⁶ For instance, Armenia, Chile and Kosovo. Information on Armenia and Chile is available in World Bank Group, *Doing Business 2014*, page 73; information on Kosovo can be found in World Bank Group *Doing Business 2013*, page 213.

³⁷ See *supra*, footnote 4, page 17.

following the principle of cost recovery (i.e. fees are meant to cover the administrative and operating cost of the registry), which is applied by best performing countries when determining fees for new registration. Such a principle is said to be more appropriate for a public service.

21. Business registries also collect fines for late filing and other breaches.³⁸ Some State examples have provided evidence that these fines can constitute a direct incentive for businesses to comply with registration obligations. For instance, in one State a company's right of exemption from audit might be forfeited if the company files its annual returns late.³⁹ In another State, filing obligations are enforced by a sequence of fines for late filing and ultimately by compulsory liquidation.⁴⁰ In some cases, fines are used as a source of funding for the registry: the Global Analysis (2012) has noted that this might not be an incentive for registries to seek to improve business compliance, since such registries would lose revenue if compliance improved.⁴¹ Fines should thus be determined so as to encourage business registration without affecting the funding of registries when compliance improves.

22. Many registries derive most of their self-generated funding from fees for information products, which often motivates them to provide additional services to their clients. A recommended good practice is not to charge these fees for basic services, such as name searches, but only for more sophisticated ones (e.g. direct downloading).⁴² As in the case of registration fees and fines, fees for information products should also be set at a level low enough to make their use attractive to businesses.

23. Determination of fees, regardless of the fee type, is said to be a crucial issue since, even when the cost recovery principle is applied, there is considerable room for variation. One approach⁴³ is that fees for new registrations are calculated according to costs incurred by an average business for registration activities over the life cycle of the business. In this way, potential amendments, apart from those requiring official announcements, are already covered by the fee companies pay for new registration. This results in several benefits: (i) most amendments are free of charge, which encourages compliance among registered businesses; (ii) both the registry and the businesses save resources related to fee payment for amendments; and (iii) as part of the cost for processing amendments will be generated later, the temporary surplus produced can be used to improve registry operations and functions. In other countries, registries charge fees below their actual cost.⁴⁴

³⁸ Ibid.

³⁹ D. Christow, J. Olaisen, *Business Registration Reform Case Studies – Ireland*, 2009, page 15, available on the Investment Climate website at www.wbginvestmentclimate.org/uploads/Business+RegCase+StudiesIrelandfinal.pdf.

⁴⁰ Investment Climate (World Bank Group), NORAD (The Norwegian Agency for Development Cooperation), Brønnøysund Register Centre *Business Registration Reform Case Study: Norway*, 2011, page 32.

⁴¹ For instance, the former Yugoslav Republic of Macedonia, Serbia, Italy, some states in the United States of America, New Jersey and Colorado. See *supra*, footnote 4, page 17.

⁴² Ibid.

⁴³ Norway, *ibid.*, pages 17-18.

⁴⁴ For instance, Viet Nam, Ukraine, South Africa, Malawi and Colorado. *Ibid.*, page 18.

B. Standardizing incorporation documents

24. One of the most common features of business registration in countries with expedited and effective procedures is the use of standard registration forms. Such forms can be easily filled out by businesses without the need to seek the assistance of an intermediary, thus reducing the cost and de facto contributing to the promotion of business registration among MSMEs. In addition, such an approach eases the workload at registries, helps prevent errors, and speeds up registration. According to several States' examples, after introducing such standardized documents, application rejection rates and processing time at the registry are reduced. In some cases, registration requirements have been streamlined along with standardizing incorporation documents. In one State,⁴⁵ only the articles of incorporation are required to form a company; in others,⁴⁶ a company is incorporated by registering the founding deed. The founders may further describe their business relationship in a separate contract if they wish, but the contract does not have to be registered. In another State, when the standardized forms available on the website have not been properly completed, companies have 15 days to correct the errors and refile their application without paying additional fees. Only about a quarter of applications are returned for correction, and those are approved within 2 weeks.⁴⁷ In yet another State, the legislative framework provides for a "sample protocol" to be used by founders of a simplified limited liability company.⁴⁸ According to data gathered in 2009, 65 countries at that time had standard registration forms.⁴⁹

C. Minimizing judicial involvement in registration

25. As mentioned in previous paragraphs, business registration is a judicial process in several States. Evidence suggests, however, that involvement of the courts seems to result in longer and more expensive registration procedures when compared with States in which registration is an administrative function. In States where registration is a judicial process, entrepreneurs are said to spend 14 more days to start a business⁵⁰ and registration is said to average a cost of 32 per cent of income per capita, as opposite to 23 per cent income per capita in States where registration is an administrative process. Some States manage to have court registration procedures that run economically and efficiently, however this has required adjustments to the system. In one such State, for instance, a law was adopted that eliminates all registration-related costs and removes some procedural burdens. As a result, the number of new registrations rose from 19,000 the year before the reform to about 26,000 the year after.⁵¹ Another State,⁵² while keeping registration in the courts, has made registrars and administrative staff, rather than

⁴⁵ For instance, Jamaica, see World Bank Group, *Doing Business 2006*, page 13 and *supra*, footnote 5, page 7.

⁴⁶ For instance Serbia and Montenegro, World Bank Group, *Doing Business 2006*, page 13.

⁴⁷ For instance, Slovakia, *ibid.*

⁴⁸ For instance Germany, the German Limited Liability Act (up to three founders, one director; see Article 2, para. 1a, Limited Liability Act).

⁴⁹ *Supra*, footnote 12, page 188.

⁵⁰ World Bank Group, *Doing Business 2005*, page 22.

⁵¹ Austria, World Bank Group, *Doing Business 2004*, page 27.

⁵² Montenegro, see *supra*, footnote 5, page 21.

judges, responsible for doing the work. An increasing number of States, however, have turned, or are turning, registration into an administrative procedure, given the high cost of judicial registration and the fact that business registration is considered not to require judicial expertise. This often requires the creation of a centralized system, accessible online, which can provide more predictable and transparent information. The location of the registry can be moved to a government,⁵³ an executive agency, a private entity (such as a chamber of commerce),⁵⁴ or a private sector company,⁵⁵ and when the registry does remain affiliated with the judiciary, the relationship is usually limited to administrative oversight. For instance, in one State⁵⁶ the *State Enterprise Centre of Registers* is a public entity with limited liability, which belongs to the State as it is incorporated on the basis of State-owned property; property and assets transferred to the Centre and acquired by it are possessed, used and disposed of in trust. In another State, a public-private partnership was set up, with the contractor developing new systems, setting up and operating additional offices and introducing online facilities.⁵⁷

D. Making the use of notaries optional

26. When the business registration system is court-based, the mandatory use of notarial services is often required. Notaries perform mainly a verification role, such as verifying signatures or certifying that the required paid-in minimum capital (if any) has been deposited. Requiring the use of such notarial services often represents a considerable burden for entrepreneurs, with costs that can constitute up to 80-84 per cent of the total cost of registration.⁵⁸ A benchmarking exercise conducted by the European Commission in 2002 found that fees paid to lawyers or notaries because of their mandatory involvement was one of the two principal factors accounting for most of the differences in business registration costs among Member States.⁵⁹ Many countries have thus eliminated notarization or have made it optional through the use of standardized documents or online procedures; in some cases,⁶⁰ standardized articles of association have also been introduced. In some countries where notarial services in business registration are still mandatory, reforms have been undertaken with a view to making such use more efficient, for instance, by improving communication between the notary and the commercial registry,⁶¹ by allowing certain types of companies to file their registration

⁵³ For instance, Chile.

⁵⁴ For instance, Colombia, Honduras and Luxembourg, see *supra*, footnote 5, page 21; and World Bank Group, *Doing Business 2005*, page 24.

⁵⁵ For instance, Gibraltar, see Investment Climate Advisory Services, World Bank Group, *Outsourcing of Business Registration Activities, Lessons from Experience*, 2010, pages 55 ff.

⁵⁶ Lithuania, see European Commerce Registers' FORUM, *European Commerce Registers' FORUM Report 2013*, page 17.

⁵⁷ India, see *supra* footnote 55, page xi.

⁵⁸ For instance, Mexico and Turkey, see *supra*, footnote 5, page 7.

⁵⁹ See, European Commission Enterprise Directorate General, *Benchmarking the Administration of Business start-ups*, 2002, page 10.

⁶⁰ For instance, Lesotho, Mongolia and Uruguay, World Bank Group, *Doing Business 2014*, page 75.

⁶¹ Germany, available at the *Doing Business* website www.doingbusiness.org/reforms/overview/topic/starting-a-business.

application with the court registries electronically through the notary⁶² or by lowering notarial fees. In one State, such fees are based on the value of the share capital, for instance, with a share capital of up to 1,000 euros the notarial fees amount to 10 euros.⁶³ A recent survey has noted that only in Europe does the intermediation of a notary seem to be the most important pre-registration activity.⁶⁴

E. Reducing or eliminating the minimum capital requirement

27. The paid-in minimum capital requirement reflects the amount that the entrepreneur is required to deposit in a bank or with a notary before registration and up to three months following incorporation. The amount is typically specified in the commercial code or the company law of a State. It has been noted that many countries with a minimum capital requirement allow businesses to pay only a part of it before registration, with the rest to be paid after the first year of operation.⁶⁵

28. Several reforms in recent years have questioned the function of the minimum capital requirement, which is said to considerably slow the registration of new businesses.⁶⁶ Although supporters of the minimum capital requirement insist that it is necessary to protect creditors and investors, it has increasingly been observed that the requirement does not fulfil any regulatory function by protecting creditors, customers or the business itself against poor performance of the business. For instance, the requirement does not shield the business from insolvency: in several countries the minimum capital can be paid in kind or withdrawn immediately after registration. Furthermore, recovery rates in bankruptcy are not higher in countries with minimum capital requirements when compared with those with no such requirements.⁶⁷ Minimum capital requirements do not protect investors and consumers from new firms that are carelessly set up or might not be financially viable, since the minimum capital is often a fixed amount that does not take into account the firms' economic activities, size or risks. In some cases the amount of the capital requirement is the same even when the companies are of a different type.⁶⁸ In one State, for instance, a small company in the services industry with a low start-up capital has to pay the same amount as a large manufacturing company with high initial capital.⁶⁹ Research shows that States protect investors and creditors, particularly in the case of limited liability companies, through means other than the minimum capital requirements. Some economies adopt provisions on solvency safeguards in their legislation,⁷⁰ others conduct solvency tests⁷¹ or require an audit

⁶² Croatia, available at the Doing Business www.doingbusiness.org/reforms/overview/topic/starting-a-business.

⁶³ Germany, available at the Doing Business website www.doingbusiness.org/data/exploreeconomies/germany/starting-a-business/.

⁶⁴ See *supra*, footnote 25, page 65.

⁶⁵ See World Bank Group, *Doing Business 2008* page 70.

⁶⁶ See Doing Business website at www.doingbusiness.org/data/exploretopics/starting-a-business/good%20practices#reducing.

⁶⁷ *Ibid.*

⁶⁸ World Bank Group, *Doing Business 2014*, page 42.

⁶⁹ *Ibid.*, pages 42-43.

⁷⁰ For instance, Hong Kong, China, in its Company Act, see World Bank Group, *Doing Business 2011*, page 22.

⁷¹ Mauritius, *ibid.*, page 22.

report showing that the amount a company has invested is enough to cover its establishment cost.⁷²

29. Of the 189 economies reviewed in *Doing Business 2014*, 99 have no minimum capital requirement.⁷³ Some economies never required businesses to deposit money for incorporation, while others⁷⁴ have eliminated minimum capital requirements in the recent past. In other cases new forms of limited liability companies with lower minimum capital requirements and simplified incorporation procedures have been introduced.⁷⁵ Some States⁷⁶ allow initial incorporation of a simplified limited liability company for only 1 euro, provided that progressive capitalization occurs, for example, the company must set aside a certain percentage of its annual profits until its reserves and the share capital jointly total the required amount. In another State, the introduction of a lower capital requirement resulted in a 40 per cent increase in registration in the year following the reform.⁷⁷

30. According to a study of selected European Union (EU) States, lowering or abolishing the minimum capital requirement has led to a marked increase in the number of registered business in four of the States considered:⁷⁸ in the year after the reform, average daily incorporations in those States increased by as much as 85 per cent.⁷⁹

F. Providing information on the registration process

31. Easily retrievable information on the registration process and fees is said to often reduce compliance costs and to make the outcome of the application more predictable.⁸⁰ It has been noted that in States where fee schedules are easily accessible, starting a business costs 18 per cent of income per capita on average instead of 66 per cent.⁸¹ In most OECD States, fee schedules can be obtained from agency websites, notice boards or brochures without the need for an appointment with an official. In the Middle East and North Africa this is the case in only about 30 per cent of the States and in Sub-Saharan Africa in less than 50 per cent.⁸² Surveys of microenterprises have shown that many informal firms are not very well informed about either the process of formalizing, or the costs involved. In one Asian State, for instance, only 17 per cent of informal firms were said to know the cost of

⁷² For instance Taiwan, Province of China, see World Bank Group, *Doing Business 2011*, page 22.

⁷³ See *Doing Business* website at www.doingbusiness.org/data/exploretopics/starting-a-business/good%20practices#reducing.

⁷⁴ World Bank Group, *Doing Business 2014* reports that 39 economies have eliminated minimum capital requirements in the past seven years.

⁷⁵ For instance, Colombia, Croatia, France, Germany, Hungary, Poland, see World Bank Group, *Doing Business 2014*, page 43 and page 162.

⁷⁶ For instance, Italy.

⁷⁷ Morocco, see World Bank Group, *Doing Business 2011*, page 22.

⁷⁸ The States referred to are: France, Germany, Hungary and Poland. See World Bank Group *Doing Business 2014*, page 43.

⁷⁹ See L. Hornuf, H.G.M. Eidenmueller, A. Engert, R. Braun, Does Charter Competition Foster Entrepreneurship? A Difference-in-Difference Approach to European Company Law Reforms. European Corporate Governance Institute (ECGI) Finance Working Paper 308/2011, pages 20 ff.

⁸⁰ *Supra*, footnote 5, page 8.

⁸¹ World Bank Group, *Doing Business 2012*, page 4.

⁸² *Ibid.*, page 4.

registering. In another State, in Latin America, a study observed that only two-thirds of informal owners knew the locations of the tax office (which is also the registration location) and only 10 per cent were aware of the existence of a commerce registry.⁸³ The Toolkit (2013), however, provides examples of developing countries that have adopted a “citizen’s charter” or a “business bill of rights” requiring large signs in front of business registries stating their processes, time requirements, and fees.⁸⁴

G. Interconnectivity among different authorities and unique identifier denomination

32. New businesses are required to register with several government agencies, e.g. for tax, social security and pension purposes, which often require the same information as that collected by the business registry (refer also to para. 14 above). Several States have thus adopted integrated registration systems, in which one application includes all the information required by different government agencies and, once completed, it is transmitted by the registry to the relevant authorities.⁸⁵ Information from the various government agencies is then communicated back to the registry, which forwards it to the entrepreneur. Several best practice countries⁸⁶ have also introduced a unique business identification number, or unique identifier in order to further improve information-sharing throughout the life cycle of a business. In the European Union, a recent directive⁸⁷ requires Member States to ensure that companies have a unique identifier “to be unequivocally identified” in the new system of interconnected business registries that the directive aims to establish.⁸⁸

33. Unique identifiers not only allow all government agencies to easily identify new and existing companies and to cross-check information, but improve the quality of the information provided in the business registration, since the identifiers ensure that information is linked to the correct entity even if its identifying attributes

⁸³ See M. Bruhm, D. McKenzie, *Entry Regulation and Formalization of Microenterprises in Developing Countries*, 2013, pages 7-8.

⁸⁴ Bangladesh and Guinea, see *supra*, footnote 5, page 8. However, two randomized experiments have found that just improving quality and availability of information on the business registration process and its benefits might not result in increased formalization. See Belo Horizonte, Brazil, and Bangladesh, see G. H. Andrade, M. Bruhn, D. McKenzie, *A Helping Hand or the Long Arm of the Law? Experimental Evidence on What Governments Can Do to Formalize Firms*, 2013; and G. Degiorgi, A. Rahman, *SME’s Registration: Evidence from an RCT in Bangladesh*, 2013.

⁸⁵ See *Supra*, footnote 5, page 9.

⁸⁶ For instance, Malaysia introduced its first smart ID card for companies, Mykad, in 2001, in 2010 the country introduced the automated version called MyCoID. India uses a unique company ID number for multiple tax registrations. Singapore introduced a single ID number for all company interactions with government in January 2009, replacing multiple ID numbers. See World Bank Group, *Doing Business* website at www.doingbusiness.org/data/exploretopics/starting-a-business/good%20practices#Introducing.

⁸⁷ See Directive 2012/17/EU of the European Parliament and of the Council, 13 June 2012.

⁸⁸ Although not in the context of business registration, it is to be noted the global Legal Entity Identifier (LEI) initiative, endorsed by the G-20, which aims at the creation of a unique identifier which uniquely identifies parties to financial transactions (see G-20 Final Declaration, Cannes Summit 4 November 2011 and Communiqué issued by G-20 finance ministers and central bankers on 5 October 2011 for instance).

(e.g. name, address, type of business) change.⁸⁹ Moreover, unique identifiers prevent the intentional or unintentional duplication of entities, which is especially important where financial benefits are granted to legal entities or where liability to third parties is concerned.⁹⁰ Unique identifiers produce benefits for the businesses as well, in that they considerably simplify business administration procedures; entrepreneurs do not have to manage different identifiers from different authorities, nor are they required to provide information to different authorities. The business identifier enables the authorities to exchange information about the business among themselves.⁹¹

34. Adoption of a unique business identifier normally requires a centralized database linking the businesses to all relevant government agencies whose information and communication systems must be interoperable (often a major obstacle when implementing this practice).⁹² Adoption of a unique business identifier is often done in one of two ways. In some countries, business registration is the first step and includes the allocation of a unique identifier, which is made available to the other authorities involved in the registration process.⁹³ In other countries, the allocation of a unique business identifier represents the beginning of the process and all the relevant information is then made available to the government agencies involved in business registration, including the business registry.⁹⁴ Use of a unique identifier can be restricted: in some countries certain government agencies still allocate their own identification number although the business carries a unique identifier.⁹⁵

35. Introducing a unique business identifier requires the conversion of existing identifiers. In one case, for instance, the State decided to use the old value-added tax identifier number as an enterprise number, rather than introducing new numbers, in order to minimize administrative disruption.⁹⁶ In another case, since different registries were merged into a new register of legal entities, a new number was assigned to each business. A device of the new registry, calculating the numbers in chronological order, assigned a nine-digit organization number to each business, which was then requested to verify the related identifying information.⁹⁷

36. The Global Analysis (2012) has noted that when introducing unique identifiers, regard must also be had to the case of individual businesses. In some countries different organizations allocate identifiers to individual businesses and to companies. However, it may not always be evident that a certain business represents an individual business and not a company with one owner, which might result in the business being allocated several different identifiers. This would affect the uniqueness of the identifier, which requires avoiding that several identifiers are

⁸⁹ See Doing Business website at www.doingbusiness.org/data/exploretopics/starting-a-business/good%20practices#Introducing.

⁹⁰ *Supra*, footnote 4, page 21.

⁹¹ *Ibid.*

⁹² See *supra*, footnote 5, page 9.

⁹³ Belgium, see *supra*, footnote 4, page 20.

⁹⁴ Norway, *ibid.*

⁹⁵ For instance, Belgium, where businesses need to separately register with the social security administration. *Ibid.*, page 21.

⁹⁶ Belgium, *ibid.*

⁹⁷ Norway, *ibid.*

allocated to one business or that several businesses are allocated the same identifier. A common regime for the identification of all types of business and legal entities is thus suggested as a safeguard against this particular form of duplication.⁹⁸

Information-sharing and data protection

37. The Global Analysis (2012) has also drawn attention to the importance that a unique business identifier protect sensitive data and privacy, while facilitating information-sharing.⁹⁹ National legislation often includes provisions on data protection and privacy and in some States registered information related to businesses is considered private and is not publicly available. However, a major trend towards increased transparency is to be noted as a result of international efforts to fight money laundering and terrorist activity, as well as the adoption of policies of knowing your customers and your business partners. As the Global Analysis (2012) notes, such reforms aiming at the need for increased information-sharing do not present any particular challenges as long as individual privacy is considered and addressed.

H. A single interface for business registration: one-stop shops

38. One of the most popular reforms to improve business registration is the establishment of one-stop shops, i.e. single interfaces for business start-ups where entrepreneurs receive all the information and forms they need in order to complete the necessary procedures to establish their business rather than having to visit several different government agencies. One-stop shops can be virtual or physical offices (the latter, when in rural areas, are particularly appropriate for businesses with limited access to municipal centres), they can be for business registration only or carry out many integrated functions, including post-registration formalities with tax authorities or municipalities. Some one-stop shops automatically forward information from the company registry to the licensing authority,¹⁰⁰ others include separate desks with representatives from different agencies,¹⁰¹ others provide a single electronic interface for entrepreneurs¹⁰² and yet others are expanding beyond that. For instance, in one State¹⁰³ a public service centre assists entrepreneurs not only with business licenses and permits but also with investment, privatization procedures, tourism-related issues and State-owned property management.

39. According to recent data, 96 economies around the world have some kind of one-stop shop for business registration, and 35 of such economies have established

⁹⁸ Ibid.

⁹⁹ Ibid., pages 22-23.

¹⁰⁰ For instance, Ethiopia, available at Doing Business website www.doingbusiness.org/data/exploretopics/starting-a-business/good%20practices#creating.

¹⁰¹ For instance, Zambia, available at Doing Business website www.doingbusiness.org/data/exploretopics/starting-a-business/good%20practices#creating.

¹⁰² For instance, Denmark, New Zealand and Norway, available at Doing Business website www.doingbusiness.org/data/exploretopics/starting-a-business/good%20practices#creating.

¹⁰³ Georgia (the registration centre is located in Tbilisi), see World Bank Group, Doing Business 2011, page 21.

or improved one-stop shops in the past 5 years.¹⁰⁴ In these States, business start-up is more than twice as fast as in States without such services, which are said to be conducive to increasing registration volumes. In a recent case,¹⁰⁵ for instance, introducing a one-stop shop for business registration has led to a 17 per cent increase in new firm registrations; in another case, a 5.2 per cent increase in new firm registrations was recorded.¹⁰⁶

40. Research has noted, however, that not all reforms in this area have been successful: some resulted in additional procedural steps instead of simplification. In order to avoid this, establishing one-stop shops must be part of a larger set of organizational and procedural improvements supported by the collaboration of the relevant government authorities that share responsibilities for promoting business start-up. One recorded best practice is to simplify procedures, appoint an existing agency as the access point and bring together the other agencies.

41. Although one-stop shops do not necessarily require legal changes in the domestic framework, it is important for them to be legally valid and to be given a sufficient budget.¹⁰⁷ They should include at least business registration, income tax, and value-added tax authorities and, if the one-stop shops aim to integrate registration and post-registration services, social security, customs, and licensing and inspection authorities could participate. For instance, in 2010, a State¹⁰⁸ established a new company registry that acts as a one-stop shop, combining company and tax registration, as well as publication in the Official Gazette, while charging a flat registration fee. Another State, in 2008, implemented a one-stop shop combining company registration, approval of the company seal,¹⁰⁹ registrations with tax, statistical and social security authorities, and the State insurance company at the State Register.¹¹⁰

42. The Toolkit (2013)¹¹¹ has highlighted that agency representatives assigned to one-stop shops should have decision-making authority and that they should not simply accept documents on behalf of their agencies and then take the documents to those agencies for further processing. In addition, representatives of different

¹⁰⁴ See Doing Business website www.doingbusiness.org/data/exploretopics/starting-a-business/good%20practices#creating.

¹⁰⁵ Portugal, see World Bank Group Doing Business 2014, page 32.

¹⁰⁶ Colombia, available at Doing Business website www.doingbusiness.org/data/exploretopics/starting-a-business/good%20practices#creating.

¹⁰⁷ See supra, footnote 5, page 9.

¹⁰⁸ Afghanistan, available at Doing Business website www.doingbusiness.org/reforms/overview/topic/starting-a-business.

¹⁰⁹ The law in Belarus does not oblige the companies to have a company seal, but this is mandatory for certifying bank transactions, including for opening a bank account and also for power of attorneys. However, the State bodies and institutes, for example tax authorities, cannot refuse documents that do not have a company seal. See BridgeWest website, Set up a company in Belarus, at www.bridgewest.eu/article/set-up-company-belarus.

¹¹⁰ Belarus, available at Doing Business website www.doingbusiness.org/data/exploretopics/starting-a-business/reforms. In Viet Nam, the reform resulted in the creation of a one-stop shop combining the processes for obtaining a business license and tax license and by eliminating the need for a seal for company licensing. See, UNIDO, Business Registration Reform in Viet Nam: A situation analysis of the reform and of UNIDO support, 2011, available at www.unido.org/fileadmin/user_media_upgrade/Worldwide/Offices/Vietnam_BRR_Dec2011.pdf.

¹¹¹ Supra, footnote 5.

agencies should be accountable to the one-stop shops administrator as well as to the authorities in their respective agencies. Otherwise, they may neglect to show up at the one-stop shops or fail to deliver timely information or approvals to clients. Best practices have shown the importance of trained one-stop shop officials and of routine monitoring of one-stop shop performance by the supervising authority in accordance with client feedback. Properly set up and functioning one-stop shops allow for savings of time and money and increase transparency. For instance, in one State a one-stop shop was opened where civil servants sit in full view behind open counters, so that there is no opportunity for low level corruption through payment of money in order to facilitate timely consideration of the documents and decision-making, and a flat fee replaces the former variable fee schedule, thus further reducing discretion.¹¹²

I. Using information and communication technology

43. Establishing systems supported by information and communication technology (ICT) is another common reform that can improve business registration. Paper-based registration requires sending documents by mail or delivering them by hand to the registry for manual processing. It should be noted that delivering documents by hand is not unusual in developing countries where registration offices are usually located in the municipal areas and not easy to reach for many MSMEs of the rural areas.¹¹³ As the Global Analysis (2012) has noted, manual processes are time-consuming and expensive, both for the registries and the users, and they increase the risk of error while requiring considerable storage space. By way of contrast, ICT-supported solutions allow business registries to reduce the storage space necessary for paper-based systems and to produce standard forms that are easier to understand and therefore easier to complete correctly; in addition, they enhance data integrity, information security, registration system transparency, and verification of business compliance. Moreover, ICT is instrumental to the development of integrated registration systems and the implementation of unique identification numbers. As a result, use of ICT makes registration faster and more cost-effective.¹¹⁴ For instance, in one State¹¹⁵ the ICT based registry reduced total registration time from 46 days to less than a week; in another case¹¹⁶ the administrative costs of the registration process were reduced by 71.3 per cent with savings amounting to 10.2 million euros a year.

44. Introduction of online business registration can range from using simple databases and workflow applications for simple operations (e.g. name search) to sophisticated web-based systems that enable customers to conduct business with the registry entirely online (which may be quite convenient for smaller firms operating

¹¹² See Indonesia, World Bank Group, *Doing Business 2011*, page 21.

¹¹³ As noted by various experts, the quality of the postal services provided in developing countries is often poor, with legal service obligations (e.g. letter delivery to all customers) not being met. See for instance, The World Bank Group, *The Postal Sector in Developing and Transition Countries, Contributions to a Reform Agenda*, 2004, page 2.

¹¹⁴ *Supra*, footnote 5.

¹¹⁵ Malaysia, available at the *Doing Business* website www.doingbusiness.org/data/exploretopics/starting-a-business/good%20practices#creating.

¹¹⁶ Slovenia, available at the *Doing Business* website www.doingbusiness.org/data/exploretopics/starting-a-business/good%20practices#creating.

at a distance from the registry, provided that they can access the system) and to government-wide information structures. For instance, in one State entrepreneurs had to manually complete more than 30 forms and visit 6 different agencies — which led 96 per cent of them to hire a lawyer as their agent. After the State developed a new online system, entrepreneurs enter their information once, and the online system automatically distributes it. They can use the system, among other things, to conduct name searches, register a company, and pay local taxes and the corporate registration tax.¹¹⁷ In another case, the newly introduced online registration system allows for interoperability between two government agencies dealing, respectively, with business registration and tax administration, which is a ground-breaking initiative in the State. Furthermore, the online registration form has a gender field that allows the system to break out data by gender of the business shareholder.¹¹⁸ In one of the States considered among the top performers in business registration, no physical visit to the registry office is required during the whole registration process. The entrepreneurs find the necessary forms on an online filing centre and submit them electronically. The incorporation certificate is e-mailed to the company together with the articles of incorporation. After processing the business' articles of incorporation, the competent government agency provides the business with its business number (which is assigned by the federal taxation agency) at no charge and which allows registration with various government agencies.¹¹⁹

45. According to available data, electronic registration is possible in more than 80 per cent of high-income States,¹²⁰ in particular in those with the fastest business start-up. One of the first States to develop an online registration system has made its use mandatory since 2008;¹²¹ in another State¹²² registration has been entirely paperless since 2006; and some States allow for registration to be completed online in one simple procedure.¹²³ Online registration is accessible in about 30 per cent of low-income economies as well, a percentage that is increasing.¹²⁴ In such economies, internet facilities are often available at local community centres, post

¹¹⁷ Republic of Korea, see World Bank Group, *Doing Business 2012*, pages 27-28.

¹¹⁸ Nepal, additional information available at Investment Climate, *Facilitating Business Registration for Entrepreneurs in Nepal*, www.wbginvestmentclimate.org/advisory-services/regulatory-simplification/business-regulation/facilitating-business-registration-for-entrepreneurs-in-nepal.cfm.

¹¹⁹ Canada, the process described in the section refers to incorporation of businesses at the federal level, see *supra*, footnote 8, pages 6-7.

¹²⁰ For instance, New Zealand, Australia, Singapore, Canada, Portugal, Denmark and Estonia, available at the *Doing Business* website www.doingbusiness.org/data/exploretopics/starting-a-business/good%20practices#using.

¹²¹ New Zealand.

¹²² Canada.

¹²³ For instance, Canada and New Zealand, available at the *Doing Business* website www.doingbusiness.org/data/exploretopics/starting-a-business/reforms.

¹²⁴ In 2013, for instance, Guatemala launched *Mi Negocio*, an online platform that allows registering a new company with the commercial registrar, the tax authority, the social security institute and the Ministry of Labor. See *Doing Business* website at: www.doingbusiness.org/data/exploreeconomies/guatemala/starting-a-business.

offices, and municipalities. Recently, one such State has made it possible to register new businesses via mobile phone.¹²⁵

46. It has been noted that the rising use of online registration, however, carries with it risks for the security of the registry, in particular in the form of corporate identity theft. Several countries have thus adopted preventive measures. In some States, the identity of the acting person is checked. In one State, for instance, new registrations of sole traders that do not make use of notarial services, are half-automated, as the entrepreneur needs to attend the business registry office in person in order for his identification to be checked with a specific automated system.¹²⁶ In other States, a corporate key (unique identifier) is assigned to each corporation upon registration.¹²⁷ In one case, the key must be used to update information concerning the board of directors or the registered office address, and to dissolve the corporation.¹²⁸ Several States have established monitoring systems and/or e-mail systems that notify registered users about changes;¹²⁹ other economies use a combination of the systems described above.¹³⁰

47. A recent survey¹³¹ has indicated that the use of identity verification for those accessing registration services electronically is quite widespread among States around the world (for instance in Europe¹³² only 8 per cent of the respondents replied that no verification was required), although it is less common in the Americas. Europe is also the region where electronic signatures are most widespread, although they are not as common as identity verification.

V. Reforms underpinning business registration

48. The best practices discussed in paragraphs 17-46 above usually require reform processes addressing a State's legislative or institutional framework, or the operating procedures of the business itself. Sometimes all three areas need to be reformed. Different international organizations have been particularly active, since the beginning of the last decade, in providing support for such State processes, which has in turn generated diverse lessons learned. The following paragraphs are based on those experiences.

¹²⁵ For instance, Kenya, see *Kenyans Can Now Register Business Via Phones*, 27 June 2014, (available on line, for instance at www.capitalfm.co.ke/business/2014/06/kenyans-can-now-register-business-via-phones/).

¹²⁶ The Netherlands, see *supra*, footnote 56, page 26.

¹²⁷ For instance, Australia and Canada, *ibid.*

¹²⁸ Canada, *ibid.*

¹²⁹ For instance, Luxembourg, Estonia, Ireland, Sweden, *ibid.*, page 27.

¹³⁰ For instance, Hong Kong, China; and Singapore, *ibid.*, page 26.

¹³¹ See *supra*, footnote 25, pages 75 ff.

¹³² It is worth noting that on 23 July 2014 the European Council adopted a regulation on electronic identification and trust services for electronic transactions in the internal market (and repealing Directive 1999/93/EC). The regulation lays down a new framework for electronic identification and electronic trust services in order to ensure, among others, mutual recognition and acceptance of electronic identification across borders. One of the intended benefits of this new regime is to make it easier to do business in another EU country, allowing entrepreneurs, for instance, to easily set up a company and submit annual reports online. For further information see Press Release ST 11907/14, Presse 402, Brussels, 23 July 2014, available at www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/trans/144112.pdf.

A. Legal reform

49. Business registration reform could entail amending either primary legislation, (i.e. texts such as laws and codes that must be passed by the legislative bodies of a State), or secondary legislation (i.e. regulations, directives etc. that are made by the executive branch within the boundaries laid down by the legislature), or both. As has been noted, reform of primary legislation can be time-consuming, since it requires the involvement of the legislature. Reform of secondary legislation is suggested as a more viable option when circumstances allow. Such a reform can be equally effective as the reform of laws and codes and is certainly faster since it does not need to be reviewed by the legislature. Regardless of the approach, reforms of the domestic legal framework should carefully consider the potential costs and benefits of this process, the capacity and the will of the government and the human resources available. According to the Toolkit (2013),¹³³ reforms should aim at developing a domestic legal framework with the following features: transparency and accountability, flexible legal forms and general-objectives clauses for business entities, low or no minimum capital requirements, no mandatory use of notaries, a declaratory system, and clarity of the law.

Transparency and accountability

50. Efficient registration systems are said to be transparent and accountable, i.e. to have few steps, limited interaction with authorities, short time limits, be inexpensive, result in a registration of a long-term or unlimited duration, apply countrywide and allow applicants to register at one location — whether a physical site or a website. Best performing States have thus introduced short statutory time limits on business registration procedures and/or “silence is consent” rules (i.e. when a business does not receive a decision on its registration application within the time limit, it is considered registered).¹³⁴ It has been noted that the combination of e-registration and of the “silence is consent” rule can shorten considerably start up time. For instance, in one case a State¹³⁵ passed a new Company Act and a new Corporate Procedure Act, introducing standardized registration forms, a “silence is consent” rule, and electronic registration. Another State’s legislative reform linked various agencies through a central electronic database, and introduced a “silence is consent” rule ensuring automatic registration within 5 days.¹³⁶

Flexible legal entities

51. According to a study which refers to data collected in 59 countries, entrepreneurs tend to choose the simplest legal form available when they decide to formalize. Evidence further suggests that more flexible legal regimes encourage greater formal sector participation:¹³⁷ States with rigid legal forms have an entry

¹³³ Supra, footnote 5, pages 17 ff.

¹³⁴ Ibid., page 18.

¹³⁵ Hungary, available at the Doing Business website www.doingbusiness.org/reforms/overview/topic/starting-a-business.

¹³⁶ Serbia, see World Bank Group, Doing Business 2007, page 11.

¹³⁷ L. Klapper, A. Lewin, J. M. Quesada Delgado, The Impact of the Business Environment on the Business Creation Process, 2009, page 13.

rate less than half that of States with more flexible requirements.¹³⁸ Better performing States have simplified registration for sole proprietorship¹³⁹ and/or have introduced new types of limited liability vehicles to meet MSME needs.¹⁴⁰

General-objectives clauses

52. In several States, entrepreneurs are required to list in their articles of association the specific activity or activities in which they will engage. This is done to restrain firms from acting beyond the scope of their goals and, according to certain literature, to protect shareholders and creditors. Increasingly, however, States allow for the inclusion of a general purpose clause (in addition to the specific purpose clause or as a stand-alone clause), which provides freedom to the entrepreneur to conduct all lawful business activities allowed under the law of the State. In these States,¹⁴¹ entrepreneurs can change activities without reregistering. A general-objectives clause in the firm's articles of incorporation states that a company's aim is to conduct any trade or business and grants it the power to do so. In practice, this means that the firm has capacities and powers similar to those of natural persons and is not limited to what is stated in its articles. Another State passed a company act making unrestricted objectives the default rule.¹⁴² Many States no longer require businesses to state objectives for registration purposes. Once registered, businesses can engage in any lawful activity, except those which may require sector-specific licenses due to their nature.¹⁴³

Low or no minimum capital requirement and no mandatory use of notaries

53. Abolishing the mandatory use of notarial services and the minimum capital requirement (or lowering the latter) are reforms that require amendment of the domestic legal framework. When notarial services are abolished, for example, appropriate provisions to ensure the veracity of the information provided by the entrepreneurs should be established.¹⁴⁴ In some cases, entrepreneurs registering online without the intermediation of a notary, can use an advanced electronic signature, which contains all the information necessary to identify the signatory and is uniquely linked to it.¹⁴⁵

54. Countries with efficient registration regimes that have maintained the use of notaries have often streamlined the system. In one case, legislation was passed to ensure that (i) company registration is operated entirely electronically, which included providing the notaries with a qualified electronic signature, and (ii) all relevant company data, including financial statements, are stored centrally within a

¹³⁸ Supra, footnote 5, page 18.

¹³⁹ For example, Guyana, France, Germany and Jamaica, see supra, footnote 5, page 19.

¹⁴⁰ Working paper A/CN.9/WG.I/WP.82 provides some examples of those simplified corporate forms.

¹⁴¹ In Sweden, for instance, anyone who wants to own a company can buy a pre-registered firm from an intermediary without having to reregister based on its planned activities. See supra, footnote 5, page 18.

¹⁴² United Kingdom of Great Britain and Northern Ireland's 2006 Company Act, *ibid.*

¹⁴³ *Ibid.*

¹⁴⁴ Canada, see Business Registration Start-Up: A concept note, International Finance Corporation and the World Bank, 2005, page 6.

¹⁴⁵ See Chile for instance.

file. Notaries and their organizations were involved throughout the legislative process as well as in setting the necessary technical standards for a safe data pathway.¹⁴⁶

Declaratory system

55. Several best performing States use declaratory registration systems,¹⁴⁷ i.e. administrative systems where registration is governed by a company act and administered by company registrars reporting to the ministry in charge of trade and commerce and sometimes also of industry. Establishment of such regimes may require legal reform to reduce the involvement of the courts, which is often easier to accomplish in common law jurisdictions, due to their legal features (see also paras. 6 and 9 above). Since introducing a declaratory system can generate strong opposition, as some experiences at national level show,¹⁴⁸ careful consideration of the domestic context and of the most suitable approach (i.e. whether to adopt a declaratory system or to streamline the registration process within the courts) has been recommended.¹⁴⁹

Clarity of the law

56. Improving business registration systems may also require updating laws which no longer respond to the needs of MSMEs. In one case, a State reviewing its company law decided to shift the law's focus towards private companies limited by shares, which accounted for the majority of the firms. Provisions for public limited companies, which were the main focus of the old law, were mentioned in the new law as exceptions.¹⁵⁰ Another State moved the legal provisions pertaining to small companies to the beginning of the new company law in order to make them easier to find. The revised bill also used simpler language.¹⁵¹ In another case, facilitating business start-ups was achieved by a legislative reform process that streamlined procedures and allowed for company incorporation in one day. First, the old system of publishing incorporations, modifications and dissolution of companies in the Official Gazette was replaced with free online publication of the notice of a company's creation; new companies were provided with an immediate temporary operating license and the use of electronic billing was authorized. As a result, in less than 12 months since the enactment of the law, business start-ups were said to have increased by 35 per cent over the previous year. A second step of the reform addressed simplification of company incorporation, modification and dissolution processes and allowed entrepreneurs to register online.¹⁵² In another State, the reform of the business registration system was complemented by a comprehensive revision of the legal framework as a result of which rules on business registration

¹⁴⁶ See Germany for instance.

¹⁴⁷ For example, Australia, Canada, New Zealand, and the United Kingdom.

¹⁴⁸ For example, Honduras and Bulgaria, see *supra*, footnote 5, page 19.

¹⁴⁹ *Ibid.*

¹⁵⁰ Ireland, *ibid.* See also *supra*, footnote 39.

¹⁵¹ United Kingdom, see *supra*, footnote 5, page 19.

¹⁵² See Chile, Law 20.494 (published in the Official Gazette on 27 January 2011) and Law 20.659 (published in the Official Gazette on 8 February 2013). See also the statement of the delegation of Chile to the 22nd session of Working Group I (New York, 10-14 February 2014), sound recording available at: <https://icms.unov.org/CarbonWeb/Export.mvc/SpeakersRecordsXml/aa8e90b0-8615-4ec2-b4d3-a9e0d92c4e21>.

were unified in a single piece of legislation; the legal obligation for businesses to register was detached from the type of business being operated and harmonized; the subject of fees was extracted from the rules governing business registration and dealt with on a common basis by a centralized business registration system. In order to provide for flexibility, certain provisions were adopted as regulations or the legislator developed the legal basis to introduce legal obligations by means of regulation at a later stage.¹⁵³

57. In addition to those mentioned above, the Toolkit (2013) indicates other issues for consideration in a legislative reform process:¹⁵⁴ (i) enabling e-filing of documents,¹⁵⁵ and the use of e-signatures,¹⁵⁶ e-commerce, and e-payments; (ii) delegation of authority to register a business; (iii) standard but flexible mechanisms for future amendment of fees, procedures, and forms to allow the adoption of an ICT-led system; (iv) a single database of registered businesses; (v) public and free access to registered information in a searchable database; and (vi) information exchange and interoperability (see also paras. 32-36 above).

B. Business process re-engineering

58. Technical assistance experiences indicate that implementation of good practices may often require business process re-engineering, i.e. the analysis of workflows and processes in business registration with a view to establishing whether there are duplications or overlapping procedures.¹⁵⁷ Business process reengineering assesses the purpose of a particular process, its legal footing and the relation between the purposes of the regulations and the process. If the process is found to be necessary, then it should be streamlined; otherwise, it should be eliminated.

C. Institutional framework reform

59. Institutional reform is considered the third component of business registration improvement. Aimed at developing the most appropriate structures to support registration, it has been broadly categorized in two groups: institutional restructuring and capacity development.¹⁵⁸ Institutional restructuring focuses on the institutions most capable of registering businesses given the national context, their legal footing and their accountability, in particular when one-stop shops are established. Consideration is also given to the budget needed to maintain the new institutional setup, in particular when the reform is initiated with donor financing. Establishing a registration institution as a self-financing body is considered a good practice. Some of the new institutional models of business registration that have

¹⁵³ Investment Climate (World Bank Group), Business Registration Reform case study: Norway, 2011, page 25.

¹⁵⁴ See supra, footnote 5, page 19.

¹⁵⁵ Nepal, available at www.wbginvestmentclimate.org/advisory-services/regulatory-simplification/business-regulation/facilitating-business-registration-for-entrepreneurs-in-nepal.cfm.

¹⁵⁶ For instance, Canada, see supra, footnote 8, pages 6 ff.

¹⁵⁷ Supra, footnote 5, page 20.

¹⁵⁸ Ibid., pages 21 ff.

emerged in recent years (e.g. registration provided by tax authorities,¹⁵⁹ chambers of commerce,¹⁶⁰ or one-stop shops) seem to better respond to the quest for self-sustainability.

60. Capacity development of registry staff, the other aspect of institutional reform, is important both to enhance staff performance and to train staff on new ways of improving registration. Successful examples in this regard include team-building activities to streamline the information flow among departments;¹⁶¹ an aggressive action plan with annual targets for advancing in the Doing Business rankings, and promotions and bonuses for staff linked to the achievement of goals;¹⁶² and adoption of new corporate values.¹⁶³ Peer-to-peer learning and international networks are considered other effective approaches to build capacity. The former enables a reforming State to see how similar reforms were implemented elsewhere and with what results in order to illustrate lessons learned. Several States have provided opportunities to their registry staff to visit countries with efficient and effective registration systems, preferably jurisdictions familiar to their own.¹⁶⁴ The Toolkit (2013) has noted that the more conservative the States undertaking the reform, the more important the function of demonstrating proven practices elsewhere.¹⁶⁵ International fora and networks such as global corporate registrars' forums, the International Association of Commercial Administrators, and the European Union's Registrars Forum also provide platforms for sharing knowledge and exchanging ideas among registry personnel around the world for implementing business registration reform.¹⁶⁶

VI. Conclusion

61. The best practices discussed in this Working Paper indicate that while there is no standard approach in reforming business registration systems, in best performing States such systems possess similar features. These can be grouped around the following main areas: reducing or eliminating the minimum capital requirement; developing a non-judicial process; creating a single interface; introducing a unique company identifier; introducing information and communication technology; and making forms and fee schedules easily accessible.¹⁶⁷ It has been brought to the attention of the Secretariat that some data referred to in many of the sources cited in this Working Paper refer mainly to small and medium-sized enterprises, rather than to micro-businesses.¹⁶⁸ The Working Group might thus wish to consider whether

¹⁵⁹ For instance, Azerbaijan, Georgia and the Russian Federation.

¹⁶⁰ For instance, Colombia and Luxembourg.

¹⁶¹ Peru, see *supra*, footnote 5, page 22.

¹⁶² Saudi Arabia, *ibid.*

¹⁶³ Malaysia, *ibid.*

¹⁶⁴ For instance, Botswana, China, Malaysia, *ibid.*

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*

¹⁶⁷ See also the Doing Business website at: www.doingbusiness.org/data/exploretopics/starting-a-business/good%20practices#making.

¹⁶⁸ The Doing Business website, in presenting the methodology adopted to assess the category "starting a business", clarifies that it measures the number of procedures, time and cost for a small and medium-size limited liability company to start up and operate formally. For further

these best practices respond to the needs of micro-businesses or whether they require adjustments consistent with the features of micro-businesses (see discussion at the twenty-second session of the Working Group A/CN.9/800, para. 47).

62. In addition, a recent study¹⁶⁹ has noted that many small scale enterprises operating informally in developing countries remain informal despite efforts to simplify and lower the cost of business registration processes.¹⁷⁰ This would suggest that these firms may not see the advantages of registration and formalization even after a reform. According to the evidence collected in the study, improvement of registration systems would seem a necessary, but insufficient step, and policymakers should experiment with innovative approaches to encourage formalization.¹⁷¹ An example being tried in some countries is to link the tax receipt number to a lottery, so that customers have an incentive to demand a tax receipt at each transaction.¹⁷² According to another recent study, surveying existing literature on the topic of investment climate reforms, business entry reforms are also constrained by issues such as tax burden, land titling and registration, and lack of incentives to formalize.¹⁷³ Interventions around these issues are thus suggested as having a positive effect on formalization.

63. In furthering its work on simplified registration, the Working Group may wish to consider this discussion and its possible implications for further work in the area of business registration. In this regard, the extensive experience of international organizations in providing support to State reform processes should be noted. Therefore, the Working Group may wish to consider the following issues:

- (a) Are the best practices for business registration outlined above sufficient to meet the needs of micro-businesses?
- (b) Is it possible to add value to the existing work in this area without duplicating the efforts and achievements of other organizations?
- (c) If so, what form should that work take?

information see www.doingbusiness.org/data/exploretopics/starting-a-business/what%20measured.

¹⁶⁹ Supra, footnote 83, pages 1-2.

¹⁷⁰ The study mentioned in footnote 171 above refers, inter alia, to evaluations carried out in Sri Lanka, Bangladesh and Brazil.

¹⁷¹ M. Bruhm, D. McKenzie note that in some countries, legislation has been enacted that does not require “subsistence enterprises” with income below a certain threshold to register. See supra, footnote 84, page 14.

¹⁷² Ibid.

¹⁷³ See A. Rahman, Investment climate reforms and job creation in developing countries: what do we know and what should we do?, 2014, page 14.